



**TOURO UNIVERSITY**  
JACOB D. FUCHSBERG LAW CENTER  
*Where Knowledge and Values Meet*

**Touro Law Review**

---

Volume 33 | Number 3

Article 10

---

2017

## **Rethinking East Mediterranean Security: Powers, Allies & International Law**

Sami Dogru

Herbert Reginbogin

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [International Law Commons](#)

---

### **Recommended Citation**

Dogru, Sami and Reginbogin, Herbert (2017) "Rethinking East Mediterranean Security: Powers, Allies & International Law," *Touro Law Review*: Vol. 33: No. 3, Article 10.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol33/iss3/10>

This Article is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lrass@tourolaw.edu](mailto:lrass@tourolaw.edu).

## RETHINKING EAST MEDITERRANEAN SECURITY: POWERS, ALLIES & INTERNATIONAL LAW

*Sami Dogru* \*  
*Herbert Reginbogin* \*\*

### Contents

#### Abstract

- I. Introduction
- II. Overview to Reduce Tensions in Eastern Mediterranean and Southeast Asia
- III. The Need for Maritime Delimitation
- IV. The Laws of Maritime Delimitation
- V. Tension Rising in the South and East China Seas
- VI. The Eastern Mediterranean Conundrum of Territorial Disputes
- VII. Reaction by the Republic of Turkey - Escalation of Tension
- VIII. Reaction by the Turkish Republic of Northern Cyprus (TRNC)—Escalation of Tension
- IX. USA, Russia, China, and Turkey's Shift in Eastern Mediterranean Geopolitics – Rising Tensions
- X. Case for an Eastern Mediterranean Delimitation Program
  - A.Relevant Area
  - B.Configuration of the Coasts
  - C.Proportionality
  - D.Islands
    - 1.Islands 'On the Wrong Side'
    - 2.Island State
  - E.Security and Navigation Factors
  - F.Economic Factors: *Joint Maritime Development Regime*
    - 1.The Characteristics of a Joint Maritime Development Regime
    - 2.Designing a Joint Development Area
    - 3.Maritime Joint Development Regime
- XI. The Arctic Model
- XII. Conclusion

---

\* Asst. Professor and Vice Dean of the Law Faculty at Cag University/Turkey. My deepest gratitude and thanks to “The Scientific and Technological Research Council of Turkey” in providing a postdoctoral scholarship to complete my academic research at the University of Miami School of Law related to maritime delimitation issues.

\*\* Professor of International Relations at Cag University, Guest Professor at Touro College Jacob D. Fuchsberg Law Center and the University of Kehl am Rhein. The authors would like to express their thanks to Professor Bernard H. Oxman for his interest and guidance in helping to complete the needed research. We are also grateful to both Professor Lawrence Rafal and Professor Dan Derby at Touro College Jacob D. Fuchsberg Law Center for their invaluable assistance and comments.

## ABSTRACT

The United States needs to do considerably more to counteract Russia and China's assertiveness in the Eastern Mediterranean and South and East China Sea with sophisticated, multidimensional, multilateral, and ambitious efforts of its own. By adopting a much more pro-active, comprehensive, and well-coordinated global energy security strategy embedded in a broad approach to human security<sup>1</sup>

---

<sup>1</sup> See generally BARRY BUZAN, PEOPLE, STATES AND FEAR: THE NATIONAL SECURITY PROBLEM IN INTERNATIONAL RELATIONS (1983) [hereinafter PEOPLE, STATES AND FEAR]; BARRY BUZAN, OLE WAEVER & JAAP DE WILDE, SECURITY: A NEW FRAMEWORK FOR ANALYSIS (1998); KEITH KRAUSE & MICHAEL C. WILLIAMS, CRITICAL SECURITY STUDIES: CONCEPTS AND CASES (1997) [CRITICAL SECURITY STUDIES]; Ken Booth, *Beyond Critical Security Studies*, in CRITICAL SECURITY STUDIES AND WORLD POLITICS 268 (Ken Booth ed., 2005); Keith Krause & Michael C. Williams, *Broadening the Agenda of Security Studies: Politics and Methods*, 40 MERSHON INT'L STUD. REV. 229 (1996). Traditional security approaches towards threat are confined to centrally government controlled military threats. These methodologies have expanded to include threats that challenge economic and environmental security and questions. In depth security studies have pursued greater understanding of the values within which security is embedded. Some critical approaches – such as the collection produced by Krause and Williams, *Critical Security Studies* – are deconstructionist, in a tentative sense of unpacking and problematizing prevailing understandings of security. See generally KRAUSE & WILLIAMS, CRITICAL SECURITY STUDIES, *supra*. They identify the limitations and contradictions of orthodox security studies and international relations theory and point the way to a better understanding of what security means. KRAUSE & WILLIAMS, CRITICAL SECURITY STUDIES, *supra*. Others propose a more coherent – and consciously alternative – agenda. However, beyond a common opposition to neorealism, the non-traditional and critical approaches to security often fundamentally diverge. In particular, they differ on what the referent object of security should be, whether the objective should be to securitize or de-securitize (and the implications of this), and whether the emphasis should be on normative or explanatory theory. Some non-traditional approaches retain the state as the referent object of study, and broaden their analysis of the threats to the state, to include – for example – economic, societal, environmental, and political security challenges. Barry Buzan's landmark book, *People, States and Fear*, suggested that the individual is the 'irreducible base unit' for explorations of security, but the referent of security must remain the state as it is the central actor in international politics and the principal agent for addressing insecurity. BARRY BUZAN, PEOPLE, STATES AND FEAR, *supra*. Other critical approaches challenge the state-centricity of security analysis fundamentally and argue that individuals or humans collectively should be the referent object of security. For Booth: "A critical theory of security seeks to denaturalize and historicize all human-made political referents, recognizing only the primordial entity of the socially embedded individual." Booth, *Beyond Critical Security Studies*, in CRITICAL SECURITY STUDIES AND WORLD POLITICS, *supra*, at 268. He continues: "The only transhistorical and permanent fixture in human society is the individual physical being, and so this must naturally be the ultimate referent in the security problematique." Booth, *Beyond Critical Security Studies*, in CRITICAL SECURITY STUDIES AND WORLD POLITICS, *supra*, at 264.

and international law of the sea,<sup>2</sup> allies together with other powers could achieve peace, stability, and prosperity in the regions.

America could complement the ambitions of regional pivotal or major powers by supporting international maritime law arbitration by becoming a signatory to the United Nations Convention on the Law of the Sea [‘UNCLOS’].<sup>3</sup> Such a move would give the United States greater credibility on the world stage<sup>4</sup> providing more

---

<sup>2</sup> See D.C. KAPOOR & ADAM J. KERR, A GUIDE TO MARITIME BOUNDARY DELIMITATION 1-10 (1986); TED L. McDORMAN, ALEXANDER J. BOLLA, DOUGLAS M. JOHNSTON & JOHN DUFF, INTERNATIONAL OCEAN LAW, MATERIALS AND COMMENTARIES 16-20 (2005); LOUS B. SOHN & KRISTEN GUSTAFSON, THE LAW OF THE SEA, at xvii (1984). “The law of the sea is an integral part of international law which has evolved over a period of five hundred years or more through customary and treaty law and the practice of States.” KAPOOR & KERR, *supra*, at 1. The history of the law of the sea has been one of balancing the conflicting interests of nations with a primary interest in shipping (maritime states) and nations with interests based on security or resource uses of their adjacent waters (coastal states). “There have been constant battles between the concepts of *mare liberum* and *mare clausum* through the history of the law of the sea.” SUN PYO KIM, MARITIME DELIMITATION AND INTERIM ARRANGEMENTS IN NORTH EAST ASIA 17 (2004). At the beginning *mare liberum* seemed to have won the battle against *mare clausum* and the principle of *freedom of seas* applied virtually to all of the sea, namely the high sea beyond a narrow belt of water along the coastlines, called the territorial sea, which was under the sovereignty of a coastal State. Freedom of navigation was the dominant custom in international sea law, subject to limited coastal state jurisdiction over waters adjacent to their shoreline. However, since 1945, a movement to extend jurisdiction over the sea emerged, then *mare clausum* has been dominant, and “the trend clearly has been toward enclosing the ocean with ever broader coastal state claims of sovereignty or other competence to exclude other users of the oceans. J. ASHLEY ROACH & ROBERT W. SMITH, EXCESSIVE MARITIME CLAIMS 3 (3d ed. 2012). “Over the last 60 years or so, many controversies relating to the law of the sea have involved the *right to control and exploit resources*, whether in the form of oil, fish, or other potentially valuable commodities.” Gerhard von Glahn & James Larry Taulbee, *Law Among Nations: An Introduction to Public International Law* 296 (9th ed. 2010). Claims to *control* and *have access* to the resources of the sea resulted in unilateral claims to extensive territorial seas, exclusive economic zones, and the continental shelf. In response, states made an effort to codify the existing customary law and created many new treaty rules and several institutions that fundamentally restructured the traditional law of the sea.

<sup>3</sup> See Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]; *Oceans and Law of the Sea, Division for Ocean Affairs and the Law of the Sea*, UN, [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/UNCLOS-TOC.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm) (last visited Mar. 26, 2017).

<sup>4</sup> The National Security Council, under George W. Bush’s administration, concluded after a careful interagency review that UNCLOS clearly serves U.S. national security, economic, and environmental interests. John B. Bellinger III, *Should the United States Ratify the UN Law of the Sea?*, COUNCIL OF FOREIGN REL. (Nov. 11, 2014), <http://www.cfr.org/treaties-and-agreements/should-united-states-ratify-un-law-sea/p31828> (last visited October 31, 2016). As a result, the Bush Administration strongly supported Senate approval of the Convention, as did the Obama administration. *Id.* “The Convention provides clear, treaty-based rights for U.S. ships and aircraft to travel through and over the territorial seas of other coastal states.” *Id.* The United States Navy strongly endorses that the United States become party to UNCLOS. *Id.* The flaws President Reagan identified and opposed in the treaty “were fixed

trustworthiness to address broader human security issues like the economy, environmental degradation, climate change, disease, poverty, democracy and terrorism. The U.S. could advocate a 'Joint Maritime Development Regime,' modeled after the Arctic Council.<sup>5</sup>

Eastern Mediterranean maritime disputes, as well as tensions in the South and East China Seas, encompass the challenges and issues that the Arctic Council is currently handling. The Council takes into account the welfare of indigenous people making it into a model for a 'Joint Maritime Development Regime' based on the security of the individual or humans collectively as the referent object while the states remain the central actors in international relations and the principal agent to address issues dealing with threats of security.

## I. INTRODUCTION

Increased exploration for oil and hydrocarbons in the East Mediterranean Basin on the periphery of countries such as Cyprus, Turkey, Lebanon, Israel, and Egypt has led to the discovery of enormously significant gas and oil fields while mounting military tensions rise in Syria with millions fleeing to neighboring countries and the European Union (EU).<sup>6</sup> Entrenched in an international crisis, the East Mediterranean is experiencing a 'Renaissance' in security terms by estimating the impact these developments will have on the strategic calculus of Europe, the U.S., and the Middle East. The prosperity and security of key Eastern Mediterranean states are increasingly affected by events in the Levant Basin and surroundings

---

by amendments to the treaty in 1994 (which led all other major industrial countries to join the treaty"). *Id.*; see also Robert C. "Rock" De Tolve, *At What Cost? America's UNCLOS Allergy in the Time of "Lawfare,"* 61 NAVAL L. REV. 1 (2012), <http://www.jag.navy.mil/documents/navylawreview/NLRVolume61.pdf> (last visited Oct. 31, 2016).

<sup>5</sup> SELECT COMMITTEE ON RESPONDING TO A CHANGING ARCTIC, Session 2014-15, HL 118 (UK); *20 Years of the Arctic Council: Making a Positive Future Impact*, ARCTIC COUNCIL (Sept. 21, 2016), <http://www.arctic-council.org/index.php/en/about-us/arctic-council/20-year-anniversary> (last visited May 12, 2017).

<sup>6</sup> See Tamsin Carlisle, *The Eastern Mediterranean Basin Showing Promise for Oil, Gas: Fuel for Thought*, THE BARREL (Nov. 16, 2015, 00:01 UTC), <http://blogs.platts.com/2015/11/16/eastern-mediterranean-basin-oil-gas/>; Najima El Moussaoui, *Wave of Syrian Refugees Comes at a High Cost*, DW (Apr. 9, 2013), <http://www.dw.com/en/wave-of-syrian-refugees-comes-at-a-high-cost/a-17067169>.

in comparison to the two regions, the East and South China Seas, discussed in greater detail later.

The volatile geopolitical region's capacity in the Eastern Mediterranean for producing crises as well as slow-moving challenges—with potentially far-reaching consequences—has begun to compel the attention of analysts and policymakers. The drivers for Eastern Mediterranean Security issues have started to occupy a more prominent place in security debates about Israel-Turkey-Iran-Iraq-Palestine-Cyprus-Lebanon-Egypt-Jordan-Saudi Arabia relations embedded in U.S., EU, and Russian national interests by imposing new intellectual and policy challenges on both sides of the Atlantic. This contrasts with the U.S. pivot to Asia and strong presence in dealing with regional conflicts including the territorial issues in the East and the South China Sea.<sup>7</sup>

Hence, fresh new approaches to security and cooperation in the East Mediterranean and China Seas is needed. Rethinking U.S. foreign policy and geopolitical alliances requires a major overhaul to deter Chinese expansionism and Russian policies aligned to a doctrine where neighboring countries are part of their 'sphere of influence.' As compared to China and the U.S. in Southeast Asia, Israel, Turkey, and Russia in the Eastern Mediterranean are all prepared to demonstrate military and naval force to protect their own and other countries' fundamental rights and interests (such as Northern Cyprus<sup>8</sup> in the case of Turkey and Syria in the case of Russia). This is true not only in cases involving fishing and marine life, but also mineral and hydrocarbon resources, navigation and other uses of the seas by upholding the fundamental integrity of a 'sovereign North Cypriot' or Syrian state.

---

<sup>7</sup> See Ian O. Lesser, *The United States and the Future of Mediterranean Security: Reflections from GMF's Mediterranean Strategy Group*, GERMAN MARSHALL FUND (Apr. 2015), [www.gmfus.org/file/5291/download](http://www.gmfus.org/file/5291/download).

<sup>8</sup> Northern Cyprus (Turkish: Kuzey Kıbrıs), officially the Turkish Republic of Northern Cyprus (TRNC), as part of an attempt to annex the island to Greece, prompted Turkey to intervene in Cyprus. Recognized only by Turkey, Northern Cyprus is considered by the international community to be part of the Republic of Cyprus. *Turkish Republic of Northern Cyprus*, GLOBAL SECURITY, <http://www.globalsecurity.org/military/world/europe/cy-trnc.htm> (last visited Apr. 10, 2017). Due to its lack of recognition, TRNC is heavily dependent on Turkey for economic, political, and military support for the northeastern portion of the island of Cyprus. *Id.* Because the international committees considers TRNC to be part of the Republic of Cyprus and, as such, a member of the EU, the *aquis communautaire* has been suspended in the area administered by Turkish Cypriots until political conditions permit the reunification of the island. *Id.*

Solutions are needed for the long term to resolve issues related to sustainable economic prosperity and political stability, not only in Syria, but the adjacent regions as well through greater cooperation instead of confrontation. The international maritime law can work in resolving Eastern Mediterranean and China Seas' disputes and contribute to preparing confidence building parameters for further discussions of relevant issues related to sovereignty, political stability, and economic growth.

The disputes over the sovereignty zones of the jurisdiction of islands are growing among regional players, most notably Turkey, Cyprus, and Israel, signaling an apparent return of power politics in regional relations in the Eastern Mediterranean, until recent events unfolded. In the past year presidential elections have been held on both sides of the Cypriot Island which led to successful negotiations indicating that a 'Cyprus Settlement' may be achievable very soon.<sup>9</sup> Also, a rapprochement between Turkey and Israel was achieved on June 28, 2016, in which Israel agreed to a \$20 million compensation for the victims' families following the 2010 Mavi Marmara incident in which nine Turkish participants died. Here, it seems as if diplomatic channels are playing a more significant role.<sup>10</sup> However, there are still major regional issues to be resolved requiring the states in the region to find an intergovernmental organization like the Arctic Council to reduce the perception of Turkey as a protagonist. China is portrayed by the West as the protagonist in the South China Sea, while China argues that it is fulfilling its legitimate sovereign rights. Of all actors involved in the two corresponding regions, Turkey and

---

<sup>9</sup> Emilia Christofi, *Negotiations for a Cyprus Settlement*, CYPRUS NEWS AGENCY, <http://www.cna.org.cy/webnews-en.aspx?a=a8b114e790954b108ebdd68225c3adb8> (last visited Apr. 10, 2017).

<sup>10</sup> In addition to apologizing to Turkey, Israel is allowing Turkey to deliver humanitarian aid to the Palestinians through Israeli ports under the deal. See Oren Liebermann & Elise Labott, *Israel, Turkey Strike Deal to Normalize Ties*, CNN (June 27, 2016, 3:15 PM), <http://www.cnn.com/2016/06/26/middleeast/israel-turkey-relations/index.html> (last visited November 5, 2016). The deal also entails an eventual return of ambassadors and initial talks on a possible natural gas pipeline. *Id.* Also in exchange, "Turkey will end all criminal or civil claims against Israeli military personnel and the State of Israel following the 2010 Israeli raid on a Gaza-bound Turkish aid flotilla" known as the Mavi Marmara incident. *Id.*; see also *Israel Sends \$20 Million to Turkey for Families of Mavi Marmara Victims*, THE TIMES OF ISRAEL (Sept. 30, 2016, 6:10 PM), <http://www.timesofisrael.com/israel-sends-20-million-to-turkey-for-families-of-mavi-marmara-victims>.

China are perceived as being a source of grave concern to other countries in the area due to their greater assertiveness and viewed hegemonic ambitions before Russia's intervention in the Syrian conflict in the late summer of 2015.<sup>11</sup>

The delimitation of maritime boundaries is governed by a body of law that has evolved through codification and progressive development as reflected in treaty provisions. In addition to the treaties, the decisions of the International Court of Justice (ICJ) and various arbitral tribunals have also greatly contributed to its development. The majority of maritime boundary disputes are resolved by agreement across the negotiating table.<sup>12</sup> Therefore, the significance of a state practice should not be overlooked.

Against the backdrop of recent regional developments and their international implications, the Eastern Mediterranean dispute over drilling rights off Cyprus' coasts is closely studied in terms of laying out the general rules of law relating to maritime delimitation in the Eastern Mediterranean Sea which has been defined by the Conventions and by courts as well as by state practice with the objective to resolve the disputes. Facing the grave challenges by considering the claims made by the different state regional actors, the study will analyze approaches to achieve a moderate and balanced approach based on the assumption that only cooperation and constructive dialogue can help realize its ambition of being pivotal in the region and reach a solution to its isolation, even with rival countries which are not recognized by some of the actors. According to the relevant provisions of the Conventions, delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts is to be effected by the agreement. In the absence of understanding, such a boundary is the line resulting from the application of equitable principles that produces a fair outcome, taking into account the circumstances of the area concerned. At the outset, it should be emphasized that the principles of delimitation which have been laid down in the Conventions have

---

<sup>11</sup> Elliot Friedland, *Turkey, China, Join Syrian Civil War*, THE CLARION PROJECT (Aug. 25, 2016), <http://www.clarionproject.org/analysis/turkey-china-join-syrian-civil-war#> (last visited May 7, 2017); Sam Heller, *Russia is in Charge in Syria: How Moscow Took Control of the Battlefield and Negotiating Table*, WAR ON THE ROCKS (June 28, 2016), <https://warontherocks.com/2016/06/russia-is-in-charge-in-syria-how-moscow-took-control-of-the-battlefield-and-negotiating-table/>.

<sup>12</sup> Anderson, *Recent Decision of Courts and Tribunals in Maritime Boundary Cases*, in VI INTERNATIONAL MARITIME BOUNDARIES, at 4119.



been formulated at a high level of generality. For this reason, it is difficult to offer any precise account of the principles of delimitation, which might be applied in the future to unresolved boundaries. Quite apart from the inherent generality and vagueness of the principles, each delimitation, including the Eastern Mediterranean delimitation, involves a situation with unique characteristics which must be taken into account. Previous decisions and practices will at best point to the kind of factors to be considered and approaches to be adopted, but will not permit the deduction of a precise boundary line to be established but will open the door to a negotiated settlement of disputes in the region.

## II. OVERVIEW TO REDUCE TENSIONS IN EASTERN MEDITERRANEAN AND SOUTH EAST ASIA

The Eastern Mediterranean and South China Sea disputes over islands' sovereignty and jurisdiction of maritime zones are flaring up. Maritime boundary delimitation, which belongs to the category of politically sensitive processes,<sup>13</sup> could be used to defuse such tensions by the states involved. It also could resolve issues including rights and interests of those states on fishing and marine living resources, mineral and hydrocarbon resources, navigation and other uses of the sea. Today, maritime boundary delimitation agreements have already been concluded providing a wealth of examples of state practices. The theoretical total of actual and potential boundaries is more than 400. Until now 188 maritime boundaries (about half of the total) have been delimited while much unrest still continues around the world about delimitation awaiting some peaceful resolution.<sup>14</sup>

---

<sup>13</sup> “ ‘There is no boundary which is not political. The maritime boundary, like the land boundary, is the fruit of hard negotiations between [coastal] States, or respect of a decision of an international court. The [International Court of Justice] ICJ observed that: ‘delimitation, whether of a maritime or of a land boundary, is a legal-political operation . . .’ ” See KIM, *supra* note 2, at 12; Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can./U.S.), Judgment, 1984 I.C.J. Rep. 246, ¶ 56 (Oct. 12).

<sup>14</sup> Political geographical experts have advised that the theoretical total of actual and potential boundaries is in excess of 400. Gerald H. Blake, *World Maritime Boundary Delimitation: The States of Play*, in MARITIME BOUNDARIES AND OCEAN RESOURCES 3 (Gerald H. Blake ed., 1987). In comparison, the six volumes of International Maritime Boundaries, published between 1993 and 2011, contain reports on 188 boundaries, nearly half of the total. I-III INTERNATIONAL MARITIME BOUNDARIES (Jonathan I. Charney & L.M. Alexander

Over the years, heightened tension in the Eastern Mediterranean Sea has escalated potentially into an energy war because of disputes over drilling rights off Cyprus' coasts. Turkey has taken a more assertive role by deploying naval frigates to accompany research vessels searching for hydrocarbons based on an agreement with the Turkish Republic of North Cyprus (TRNC)—in waters considered belonging to the Republic of Cyprus.<sup>15</sup> Also, China has signaled that the Chinese military intends to project power beyond its immediate periphery (China Seas), into the open ocean, in pursuit of “national rejuvenation” even by the use of force. Its aim is to counter what Chinese leaders see as U.S.-led efforts to check China's rise.<sup>16</sup>

Although the potential presence of hydrocarbon resources in both regions opens a great deal of opportunities for closer regional cooperation, the issue of sovereignty and nationalism often challenge or even outweigh such prospects. China's contracting economy paired with stock-market volatility and corruption have caused China to deflect attention from the country's domestic problems by drawing the ‘nationalist’ card.<sup>17</sup> Incidents have been reported involving the deployment of naval military assets in the South China Sea over Chinese land reclamation efforts in building artificial islands beyond its territorial claims in the China Seas.<sup>18</sup> With the Chinese fleet deployed to protect its territorial claims, tensions are rising between the U.S. and its allies against China in the region<sup>19</sup> while the U.S. counters efforts to limit freedom of navigation by deploying naval frigates

---

eds., 1993); IV INTERNATIONAL MARITIME BOUNDARIES (Jonathan I. Charney & Robert W. Smith eds., 2002); V INTERNATIONAL MARITIME BOUNDARIES (David Colson & Robert W. Smith eds., 2005); VI INTERNATIONAL MARITIME BOUNDARIES (David Colson & Robert W. Smith eds., 2011).

<sup>15</sup> Stephen Glain, *Gas Field Off of Cyprus Stokes Tensions with Turkey*, N.Y. TIMES (Dec. 12, 2012), <http://www.nytimes.com/2012/12/13/world/middleeast/gas-field-off-of-cyprus-stokes-tensions-with-turkey.html>.

<sup>16</sup> *Document: China's Military Strategy*, USNI NEWS (May 26, 2015, 12:13 PM), <http://eng.mod.gov.cn/Database/WhitePapers/>.

<sup>17</sup> Andrew Stevens, *China's Stock Watchdog Admits Market's Problems*, CNN (Jan. 18, 2016, 8:37 AM), <http://money.cnn.com/2016/01/18/investing/china-stock-market-watchdog-criticism/>; see Niall Ferguson, *Sinking Globalization*, N.Y. TIMES (Apr. 12, 2005), [http://www.nytimes.com/cfr/international/20050301faessay\\_v84n2\\_ferguson.html?pagewanted=print&position](http://www.nytimes.com/cfr/international/20050301faessay_v84n2_ferguson.html?pagewanted=print&position).

<sup>18</sup> Ben Dolven et al., *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, CONG. RES. SERV. (June 18, 2015), <https://fas.org/sgp/crs/row/R44072.pdf>.

<sup>19</sup> Ben Brumfield, *U.S. Defense Chief to China: End South China Sea Expansion*, CNN, <http://www.cnn.com/2015/05/30/china/singapore-south-china-sea-ash-carter/>.

through Chinese proclaimed delimited zones.<sup>20</sup>

In the Eastern Mediterranean Theater of operations, the prospect of prosperity by commercializing hydrocarbon discoveries has mixed implications for conflicting territorial claims. Overall the commercial opportunities to exploit natural resources have negatively impacted key strategic, regional, political, and military U.S. allies: Israel, the Republic of Cyprus (RoC),<sup>21</sup> and Turkey. The RoC and Israel have emerged as gas producers. Their newly discovered gas provides considerable sovereign wealth offering both a cost-effective source of energy for their import-dependent energy economies and a potential high-value source of revenues from gas exports into and be-

---

<sup>20</sup> Christopher Bodeen & Robert Burns, *China Warns U.S. Navy After Ship Sails by Chinese-built Island*, *FORT FRANCIS TIMES* (Oct. 28, 2015), <http://www.ftime.com/authors/christopher-bodeen-and-robert-burns-associated-press>; Phil Stewart & Nathaniel Taplin, *U.S. Navy Sends Warship Near Disputed South China Sea Island*, *REUTERS* (Jan. 30, 2016), <https://gcaptain.com/u-s-navy-sends-warship-near-disputed-south-china-sea-island/#.Vrm6uN-RYWE>.

<sup>21</sup> See MICHÁLIS STAVROU MICHAEL, *RESOLVING THE CYPRUS CONFLICT: NEGOTIATING HISTORY* (2009). In 1960, the Turkish-Cypriot and Greek-Cypriot communities established together the 'Republic of Cyprus' hereafter referred to as the (RoC). Britain, Greece and Turkey became guarantors of the country's independence based on the London and Zürich Agreements. The most significant and controversial of the treaties was the Treaty of Guarantee, among Cyprus, Britain, Greece and Turkey, to ensure the republic's " 'independence, territorial integrity, security and respect for its Constitution,' and prohibited 'all activity to promote directly or indirectly either union or partition of the Island.' " *Id.* at 25. In case of a breach, Britain, Greece and Turkey undertook to consult each other and take the "necessary steps" needed to rectify the situation. *Id.* at 26. If " 'common or concerted action [was to] prove impossible, each of the three' reserved the 'right to take action with the sole aim of re-establishing the state of affairs established by the present Treaty.' " *Id.* With a military coup on July 15, 1974, staged by Greek-Cypriot nationalists and elements of the Greek military Junta in an attempt to incorporate Cyprus into Greece, Turkey invaded Cyprus in accordance with the 1960 Treaty of Guarantee. Colin Smith, *Cyprus Divided: 40 Years on, a Family Recalls How the Island was Torn Apart*, *THE GUARDIAN* (July 5, 2014), <https://www.theguardian.com/world/2014/jul/06/turkish-invasion-divided-cyprus-40-years-on-eyewitness-greek-cypriot-family>. A separate state was set up in 1983 called the Turkish Republic of Northern Cyprus (TRNC) while continuing the search for reconciliation. Elihu Lauterpacht, *The Turkish Republic of Northern Cyprus-The Status of the Two Communities in Cyprus*, *REPUBLIC OF TURKEY MINISTRY OF FOREIGN AFFAIRS* (July 10, 1990), <http://www.mfa.gov.tr/chapter2.en.mfa>. Cyprus is the home of two nations and there exist two democratically organized states on the island. *Id.* Although Turkey and TRNC argued that the Greek Cypriot side had no authority to represent the Turk Cypriots on the behalf of the whole island, the international community recognized the Greek Cypriot community as the legitimate representative for all of the island known as the "Republic of Cyprus." *Id.* In this paper, the term "RoC" refers to the Greek Cypriot Administration located in the southern part of the island.

yond the region.<sup>22</sup> Turkey disputes the rights of the Greek Cypriots of the RoC to exploit these natural resources without the involvement of the Turk-Cypriots and perceive it as their responsibility to protect the rights and interests of the Turk-Cypriots by supporting the self-declared TRNC both economically and militarily.<sup>23</sup>

Accompanying the rhetoric of protecting the sovereignty and national interests of people is the perceived coercive strategic expansion of intimidation through the use of naval forces in both regions. Viewed as power politics by Turkey in the Eastern Mediterranean and the U.S. and China in Eastern Asia, their assertiveness stands out as apparent hegemonic ambitions fraught with growing tension. Unless diplomatic solutions are found to resolve the different interpretations of delimitation of maritime law, the same tensions in the South China Sea may expand and develop in the Eastern Mediterranean Sea. The implications of the EEZ<sup>24</sup> claims need to be sorted out according to international law of the sea. If a 'Joint Maritime Development Regime,'<sup>25</sup> modeled after the Arctic Council, is not established to arbitrate maritime boundary disputes, both conflicts now have the potential of escalating into another Persian Gulf Crisis.

Resolving the regional disputes among states in the Eastern Mediterranean and the China Seas, need to be accomplished diplomatically. General rules of law about maritime delimitation as laid down by international conventions, courts, as well as state practice, must be respected. Facing these serious challenges are countries in the Eastern Mediterranean and the South China Sea, which are rivals

---

<sup>22</sup> Laura El-Katiri & Dr. Mohammed El-Katiri, *Executive Summary: Strategic Studies Institute and U.S. Army War College Press*, STRATEGIC STUD. INST., <http://strategicstudiesinstitute.army.mil/files/1243-summary.pdf> (last visited Apr. 10, 2017).

<sup>23</sup> See generally *TCA Fact Sheet: H. Res. 676 (Cyprus Dispute)*, TCA, <http://www.tc-america.org/resource-center/tca-fact-sheet-h-res-676-cyprus-dispute-702.htm> (last visited Apr. 10, 2017).

<sup>24</sup> An exclusive economic zone (EEZ) is a sea zone prescribed by the 1982 United Nations Convention on the Law of the Sea over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind. UNCLOS, *supra* note 3, at Art. 56. It stretches from the baseline out to 200 nautical miles (nm) from its coast. UNCLOS, *supra* note 3, at Art. 57. See also Ayla Gürel & Laura Le Cornu, *Turkey and Eastern Mediterranean Hydrocarbons*, GLOBAL POL. TRENDS CTR. ISTANBUL KULTUR U., [http://www.gpotcenter.org/dosyalar/trhydrocarbons\\_gurel\\_lecornu\\_2013.pdf](http://www.gpotcenter.org/dosyalar/trhydrocarbons_gurel_lecornu_2013.pdf) (last visited Apr. 10, 2017).

<sup>25</sup> Joint development regime embraces a state to convey some of its sovereign rights to a supra-national authority which is responsible to regulate the exploration for and exploitation of natural resources on the continental shelf, as well as the living resources and other uses of superjacent waters.

and have no diplomatic relations.<sup>26</sup> Territorial claimant countries like Turkey and the divided Cyprus in the Eastern Mediterranean Sea and China and many neighboring countries in the China Seas are all in need of brokering a settlement.

The United States, China, and countries in both regions must go beyond the heated rhetoric. Different moderate and balanced approaches are required based on cooperation and constructive dialog to reach solutions to the territorial disputes to avoid escalating tensions in the Eastern Mediterranean and South China Sea into a far more dangerous situation that will prove difficult to reverse.<sup>27</sup> An explicit commitment and finely grained understanding of concerns, intentions and consequences are needed by the region's leaders to improve human security by alleviating human deprivation and protecting the people's health and welfare in the area. The aim is to avoid a potential escalation of tensions by accepting legal judgments about the delimitation of maritime boundaries and thus begin a process of achieving peace and prosperity.

### III. THE NEED FOR MARITIME DELIMITATION

Historically, states rarely delimited their maritime boundaries with other states. In fact, "[o]ne of Shakespeare's characters in *The Tempest* said he 'would give a thousand furlongs of sea for an acre of barren ground.' These days things are different: an acre of sea or seabed may be more valuable in some respects than an acre of the best ground."<sup>28</sup>

Therefore, this situation has changed in recent years. "*Economic considerations* as well as *political* and *security factors*

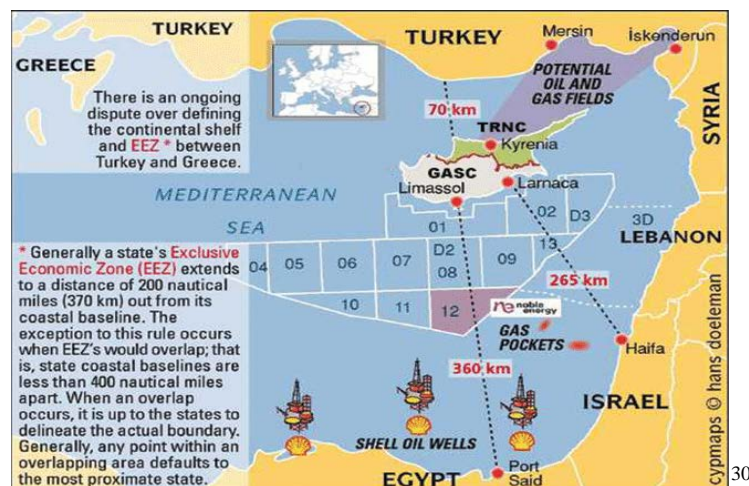
---

<sup>26</sup> James Holmes, *Why Are Chinese and Russian Ships Prowling the Mediterranean?*, FOREIGN POL. (May 15, 2015), <http://foreignpolicy.com/2015/05/15/china-russia-navy-joint-sea-2015-asia-pivot-blowback/>.

<sup>27</sup> China has long urged to organize an effort to promote the joint exploration of seabed resources without prejudice to sovereignty with other claimant regional states, as has already been done by Malaysia and Thailand (1979), Malaysia and Vietnam (1992), and Malaysia and Brunei (2009). Michael Swaine, *Averting a Deepening U.S.-China Rift Over the South China Sea*, CHINA-U.S. FOCUS (June 5, 2015), <http://www.chinausfocus.com/foreign-policy/averting-a-deepening-u-s-china-rift-over-the-south-china-sea>.

<sup>28</sup> David Anderson, *Maritime Delimitation: Early British Practice*, in MODERN LAW OF THE SEA: SELECTED ESSAYS 437 (2008) [hereinafter MODERN LAW OF THE SEA]; see also WILLIAM SHAKESPEARE, THE TEMPEST, act 1, sc. 1.

have made the delimitation of maritime boundaries an important issue for many governments.”<sup>29</sup>



**Figure-1: RoC-Egypt, RoC-Israel, and RoC-Lebanon EEZ borders, RoC license exploration blocks.**

The commercial exploitation of these natural resources often requires that operators be allocated specifically defined areas to explore and exploit. States became strongly motivated to claim new maritime zones within their jurisdiction.<sup>31</sup> States began to claim boundaries further seawards from their traditional 12-mile territorial sea zone with other countries to maximize the commercialization of natural resources over which they have exclusive authority.<sup>32</sup>

Because of the geographical proximity of many states, their maritime zones often overlap to a greater

<sup>29</sup> *Id.* Perhaps the primary force behind the move to establish these boundaries has been the development of technology to recover highly valuable hydrocarbons and other non-living resources of seabed and subsoil. Jonathan I. Charney, *Introduction*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at xxiii.

<sup>30</sup> Akin Unver, *Beyond a Turkish-Greek Problem*, FOREIGN POL. ASS'N (Sept. 28, 2011), <http://foreignpolicyblogs.com/2011/09/28/beyond-a-turkish-greek-problem/> (last visited May 12, 2017) (illustrating the Cyprus oil and gas drilling).

<sup>31</sup> Guillermo Hierrezuelo Conde, *La Postura Española en la Tercera Conferencia de las Naciones Unidas Sobre el Derecho del Mar con Respecto al Mar Territorial*, ENCICLOPEDIA VIRTUAL, <http://www.eumed.net/libros-gratis/2015/1432/espacios-marinos.htm> (last visited July 18, 2015).

<sup>32</sup> *Id.*



or lesser extent. There is therefore a need for boundaries between such zones in order to avoid disputes and uncertainties over the right to exercise sovereignty, sovereign rights or jurisdiction and to exploit resources.<sup>33</sup>

As a result, “[t]he significance of maritime boundaries in international relations grew in the . . . second half of the twentieth century.”<sup>34</sup>

The limits of sovereignty and title to resources involve delicate political and security issues. The risks involved in boundary disputes are often high: one need only recall Lord Curzon’s *dictum*: ‘frontiers are the razor’s edge on which hang suspended . . . issues of war and peace . . .’ “The existence of overlapping claims may inadvertently lead to disputes . . . Overlapping claims may be akin to accidents waiting to happen. For this reason alone, establishing maritime boundaries is an important task for coastal States.”<sup>35</sup>

---

<sup>33</sup> Aiman Rahman Khan, *Impacts of the Bangladesh v Myanmar Case Regarding Delimitation of Maritime Boundary* (unpublished LL.M. paper), [https://www.academia.edu/15062794/Impacts\\_of\\_the\\_Bangladesh\\_v\\_Myanmar\\_case\\_regarding\\_Delimitation\\_of\\_Maritime\\_Boundary](https://www.academia.edu/15062794/Impacts_of_the_Bangladesh_v_Myanmar_case_regarding_Delimitation_of_Maritime_Boundary) (last visited July 18, 2015); *see also* R.R. Churchill & A.V. Lowe, *THE LAW OF THE SEA* 181 (3d ed. 1999).. There are three typical situations in which states seek to agree on maritime boundaries:

The first situation arises where substantial activities subject to coastal state jurisdiction are conducted or are likely to be conducted in an area of actual or potential dispute . . . .

The second situation prompting a delimitation agreement arises where one or both states wish to stimulate uses, particularly fixed uses, of the area in question . . . .

The third situation . . . arises when governments seek to agree on a maritime boundary despite the absence of significant activity or interest in the region requiring a boundary.

Bernard H. Oxman, *International Maritime Boundaries: Political, Strategic, and Historical Consideration*, 26 U. MIAMI INTER-AM. L. REV. 243 (1994).

<sup>34</sup> DAVID ANDERSON, *Negotiating Maritime Boundary Agreements*, in *MODERN LAW OF THE SEA*, *supra* note 28, at 417.

<sup>35</sup> DAVID ANDERSON, *Negotiating Maritime Boundary Agreements*, in *MODERN LAW OF THE SEA*, *supra* note 28, at 418, 418 n.4 (“Lord Curzon of Kedleston’s words, uttered in 1908, provided the title for a collection of essays in honor of Professor Gerald Blake of the International Boundaries Research Unit of the University of Durham”) (“[I]f fishermen from

#### IV. THE LAWS OF MARITIME DELIMITATION

The body of law governing the delimitation of maritime boundaries was perpetuated by a new international economic order. It required codification and progressive development of principles and norms according to international law as exemplified in treaty provisions.<sup>36</sup> The jurisprudence of the International Court of Justice (ICJ) and ad hoc tribunals has significantly contributed to its development, as well as state practice.<sup>37</sup> The conventions, both the 1958 Geneva Conventions and 1982 United Nations Law of the Sea Convention (UNCLOS), rightly called “a Constitution for the Ocean,” have made significant contributions to developing general rules and principles to guide States in the drawing of boundaries.<sup>38</sup> In addition to the Conventions, customary law in this matter has been extensively developed through decisions of the ICJ and various arbitral tribunals.<sup>39</sup>

Quite apart from the inherent generality and vagueness of the principles, each delimitation either in the Eastern Mediterranean or the South China Sea, involves a situation that has its unique characteristics. In this context, the delimitation of the continental shelf and EEZ between littoral states in the China and Eastern Mediterranean Seas shall be effected by ‘agreement’ of international law taking account of all the relevant circumstances to achieve an ‘equitable solution.’ Previous *decisions* and *practice* will at best point to the kind of factors to be considered and approach to be adopted, but will not permit the deduction of a precise boundary line that must be established.<sup>40</sup>

#### V. RISING TENSION IN THE CHINA SEA

The East and South China Seas are troubled areas of international tension because of overlapping territorial claims. In the

---

one side are arrested by the coastguard of the other side or if traces of oil are discovered in an area of overlapping claims.”).

<sup>36</sup> G.A. Res. 41/73 (Dec. 3, 1986).

<sup>37</sup> Jonathan I. Charney, *Progress in International Maritime Boundary Delimitation Law*, 88 AM. J. INT’L L. 227-28 (1994).

<sup>38</sup> David Anderson, *Recent Decision of Courts and Tribunals in Maritime Boundary Cases*, in VI INTERNATIONAL MARITIME BOUNDARIES, *supra* note 12, at 4119.

<sup>39</sup> Churchill & Lowe, *supra* note 33, at 181.

<sup>40</sup> Churchill & Lowe, *supra* note 33, at 182.



East China Sea, China and Japan are both claiming a group of islands with Taiwan making a separate claim. Japan calls them the Senkaku Islands; China calls them the Diaoyu Islands and they are known as the Tiaoyutai Islands in Taiwan.<sup>41</sup> The territorial dispute between China and Japan has been going on more than 100 years dating back to the end of the nineteenth century to the Sino-Japanese War of 1894, while Japan's defeat in World War II and Cold War geopolitics added complexity to claims over the island.<sup>42</sup>

China is expanding its territorial claim in the South China Sea through reclamation efforts by building artificial islands and increasing its naval support of Beijing's geopolitical objectives.<sup>43</sup> Former U.S. President Barack Obama and leaders of the countries in the South China Sea agree that easing tensions is needed to resolve any territorial disputes through legal means "where international rules and norms and the rights of all nations, large and small, are upheld."<sup>44</sup> Reports, which China denies,<sup>45</sup> have gone as far as to deploy an advanced surface-to-air missile system to the disputed Woody Island, a part of the Paracel Islands chain, it has controlled in the South China Sea for more than forty years but also is claimed by Taiwan and Vietnam.<sup>46</sup>

---

<sup>41</sup> Mark E. Manyin, *The Senkakus (Diaoyu/Diaoyutai) Dispute: U.S. Treaty Obligations*, CONG. RES. SERV. (Oct. 14, 2016), <https://fas.org/sgp/crs/row/R42761.pdf>.

<sup>42</sup> Tadashi Ikeda, *Getting Senkaku History Right*, THE DIPLOMAT, (Nov. 26, 2013), <http://www.thediplomat.com/2013/11/getting-senkaku-history-right/3/>.

<sup>43</sup> *China's Maritime Dispute*, COUNCIL ON FOREIGN REL. (Jan. 2017), [http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#1/?cid=otr-marketing\\_use-china\\_sea\\_InfoGuide](http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#1/?cid=otr-marketing_use-china_sea_InfoGuide).

<sup>44</sup> Jeff Mason & Bruce Wallace, *Obama, ASEAN Discuss South China Sea Tensions, But No Joint Mention of China*, REUTERS (Feb. 17, 2016, 5:01 AM), <http://www.reuters.com/article/us-usa-asean-idUSKCN0VP1F7>.

<sup>45</sup> Patricia Loudres Viray, *China Denies Sending Missiles to Disputed Island*, PHIL. STAR, (Feb. 17, 2016, 3:34 PM), <http://www.philstar.com/headlines/2016/02/17/1554039/china-denies-sending-missiles-disputed-island>.

<sup>46</sup> J.R.Wu & Andrea Shalal, *China Sends Missiles to Contested South China Sea Island: Taiwan*, REUTERS, (Feb. 17, 2016, 3:50 AM), <http://www.reuters.com/article/southchinasea-china-idUSL3N15W1JP>.



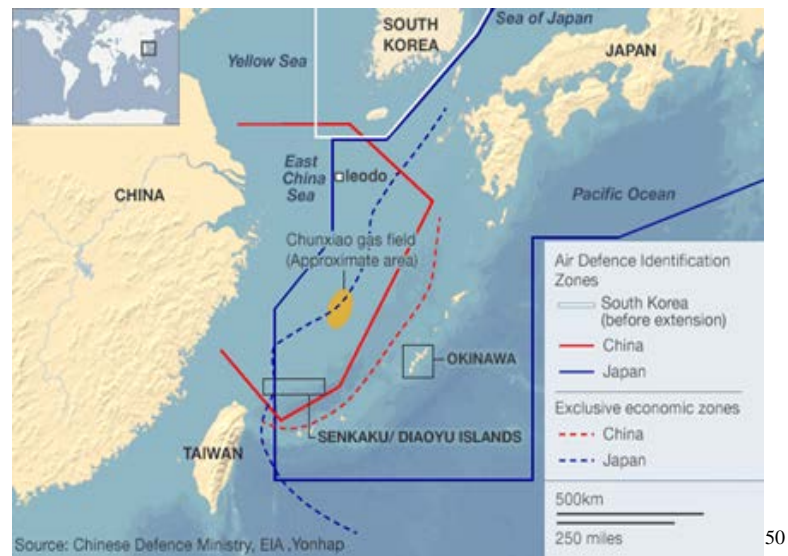
**Figure-2: Artificial Island**

The Senkaku/Diaoyu issue (See Figure-3) highlights the more robust attitude China has been taking to its territorial claims in both the East China Sea and the South China Sea.<sup>48</sup> It poses worrying questions about regional security as China's military modernizes amid the US "pivot" to Asia. In both China and Japan, meanwhile, the dispute ignites nationalist passions on both sides, putting pressure on politicians to appear tough and ultimately making any possible resolution even harder. Former President Obama has confirmed that the security pact with Japan<sup>49</sup> applies to the islands – but has also warned that escalation of the current row would harm all sides.

<sup>47</sup> Rupert Wingfield-Hayes, *China's Island Factory*, BBC News (Sept. 9, 2014), <http://www.bbc.co.uk/news/resources/idx-1446c419-fc55-4a07-9527-a6199f5dc0e2>.

<sup>48</sup> *Why is the South China Sea Contentious?* BBC (July 12, 2016), <http://www.bbc.com/bbcnews/world-asia-pacific-13748349>; see also "How Uninhabited Islands Soured China-Japan Ties," BBC (Nov. 10, 2014), <http://www.bbc.com/news/world-asia-pacific-11341139>; <http://www.bbc.com/world-asia-pacific-11341139>.

<sup>49</sup> *Japan-U.S. Security Treaty*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Jan. 19, 1960), <http://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html>. The U.S. and Japan forged a security alliance in the wake of World War II and formalized it in 1960. *Id.* Under the deal, the U.S. is given military bases in Japan in return for its promise to defend Japan in the event of an attack. Beina Xu, *The U.S.-Japan Security Alliance*, COUNCIL FOREIGN REL. (July 1, 2014), <http://www.cfr.org/japan/us-japan-security-alliance/p31437>. This means if conflict were to erupt between China and Japan, Japan would expect U.S. military back-up. *Id.*



**Figure-3: Dispute between Japan and China over Senkaku Islands/Diaoyu Islands**

In the case of the South China Sea, the Philippines, Republic of China (Taiwan), Malaysia, Brunei and Vietnam are principally affected by China's claim to vast swaths of the South China Sea also referred to as the 9-dash line and the Spratly Islands some which are distinct from the sovereignty of certain islands, maritime zones and the sea's resources under the national jurisdiction of such recognized states. (See Figure-4) The area and disputes in the South China Sea are also preferably designated by the countries in the region as 'Southeast Asia' to avoid the name of China.

<sup>50</sup> JAPANFOCUS, <http://japanfocus.org/data/43412.gif> (last visited Apr. 13, 2017).



51

**Figure-4: China and other Country Territorial Claims**

Arbitration of all of these maritime boundary disputes are required to make judgments about the EEZ claims of international law. A 'Joint Maritime Development Regime,' modeled on the Arctic Council, would provide a forum to find diplomatic solutions based on arbitration instead of countries taking decisive or hostile actions to protect their claimed rights. China's unwillingness to clearly state its intent to lay claim to waters around man-made (artificial) islands and other waters could be better communicated and managed through such a Joint Development Regime. Instead of Washington and others calling on Beijing to repeatedly clarify its stance on the "nine-dashed-line" (9DL), which is the demarcation line used by the People's Republic of China's claims to major parts of the China Sea, a

<sup>51</sup> VOA, <http://blogs.voanews.com/state-department-news/files/2012/07/BB-South-China-Sea-Rev3.jpg> (last visited May 1, 2017).

framework would exist to discuss and negotiate these issues based on Law of the Sea.

Two years ago, Beijing warned a Philippine military aircraft to leave areas around the Spratly Islands in the South China Sea.<sup>52</sup> On May 21, 2015, the Chinese navy warned a U.S. surveillance plane to leave Chinese airspace when flying over newly made islands publicly challenging Chinese island-building on disputed reefs and shoals in the South China Sea.<sup>53</sup> These incidents created new tension in a potential global tinderbox as both U.S. and China shift forces into the area to protect their maritime interests.<sup>54</sup> Former U.S. Defense Secretary Ash Carter called for “an immediate and lasting halt”<sup>55</sup> to the practice. In a speech to diplomats in Singapore, he said, “the prospect of further militarization as well as the potential for these activities to increase the risk of miscalculation or conflict among claimant states.”<sup>56</sup>

The Chinese Ministry of Defense issued a white paper titled, “Chinese Military Strategy”<sup>57</sup> which vowed to strengthen its naval power in support of Beijing’s geopolitical objectives by safeguarding China’s maritime rights and interests. The document clearly indicted the U.S. (and other neighbors) for taking “provocative actions” surrounding Chinese reefs and islands. China “reinforce[s] their military presence on China’s reefs and islands that they have illegally occupied.”<sup>58</sup>

Bellicose remarks accompanied the white paper and current events involving the U.S. sending aircraft carriers and warships into the South China Sea to demonstrate its dominant military power in

---

<sup>52</sup> Manuel Mogato, *China is Ordering Philippine Military Planes to get Away from Disputed Areas of the South China Sea*, BUSINESS INSIDER (May 7, 2015, 6:13 AM), <http://www.businessinsider.com/china-orders-philippine-military-to-leave-disputed-areas-of-south-china-sea-2015-5>.

<sup>53</sup> Jim Sciutto, *China Warns U.S. Surveillance Plane*, CNN (Sept. 15, 2015), <http://www.cnn.com/2015/05/20/politics/south-china-sea-navy-flight/index.html>.

<sup>54</sup> *Id.*

<sup>55</sup> Ben Brumfield, *U.S. Defense Chief to China: End South China Sea Expansion*, CNN, updated May 30, 2015, 10:31 AM), <http://www.cnn.com/2015/05/30/china/singapore-south-china-sea-ash-carter/index.html>.

<sup>56</sup> *Id.*

<sup>57</sup> *Document: China’s Military Strategy*, USNI NEWS (May 26, 2015), <https://news.usni.org/2015/05/26/document-chinas-military-strategy>.

<sup>58</sup> *Id.*

the region in the latest episode in a wary standoff between the U.S. and China over the two contested Parcels and the Spratly Island chains.<sup>59</sup> U.S. officials and military officers pledge to fight to defend U.S. interests while many Chinese believe Beijing must now more than ever not back down and demonstrate to the U.S. and others that it will not be intimidated. These tensions risk regional and global peace and prosperity.

Sino-U.S. relations are at a critical stage of being derailed into an adversarial global conflict because of a few rocks and islands in the corner of the Asia-Pacific region. A commitment by both Washington and Beijing is required to clarify their claims and grievances by addressing:

- 1) [W]hether man-made islands can be used to justify 12 nm territorial seas and EEZs that can be used to limit naval access; 2) [W]hether a coastal state with EEZs can demand that foreign militaries notify them before transiting or engaging in [activities within EEZ]; and 3) [Whether] the threat and resort to force over disputed territories or violations [of EEZ zones' natural resources are legally justifiable].<sup>60</sup>

About point 1), Man-made – “artificial islands, installations, and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the [EEZ] or the continental shelf.”<sup>61</sup> According to customary international law and the Law of the Sea Convention 1982 (“LOSC”) relating to continental shelf, a coastal state has sovereign rights ‘*ipso facto*’ and ‘*ab initio*.’<sup>62</sup> It does not depend on occupation or expressed proclamation to a continental shelf, which in any event shall not exceed 350 nm from the baselines. Also, a coastal state is entitled to claim an EEZ of a breadth of 200 nm. In these zones, the coastal state has exclusive

---

<sup>59</sup> Michael Forsythe & Jane Perlez, *Step by Step, China Expands its Military in Disputed Sea*, THE TIMES OF INDIA (Mar. 9, 2016, 10:51 PM), <http://timesofindia.indiatimes.com/world/china/Step-by-step-China-expands-its-military-in-disputed-sea/articleshow/51333509.cms>.

<sup>60</sup> Michael D. Swaine, *Averting a Deepening U.S.-China Rift Over the South China Sea*, CARNEGIE: ENDOWMENT FOR INTERNATIONAL PEACE (June 2, 2015), <http://carnegieendowment.org/2015/06/02/averting-deepening-u.s.-china-rift-over-south-china-sea-pub-60274>.

<sup>61</sup> UNCLOS, *supra* note 3, at Art. 60.

<sup>62</sup> UNCLOS, *supra* note 3, at Art. 77.

sovereign rights to explore and exploit natural resources either living or non-living which include the waters adjacent to the seabed, and of the seabed and the subsoil in its seabed.<sup>63</sup>

Consequently, other states cannot make assertions over the natural resources in another country's maritime zones. Nevertheless, in both the continental shelf and the EEZ the freedom of navigation shall not be hindered as those waters, in essence, form part of the high seas.<sup>64</sup> It is a trade-off between the viewpoints of the great maritime powers and the smaller coastal states. Major sea-faring countries were reluctant to concede expansion of state jurisdiction over the high seas while the smaller coastal states sought extended maritime rights to safeguard the natural resources of their sea waters.

As to point b) several coastal nations including China perceive the entering of foreign navies into the EEZ as hostile acts to conduct surveillance activities. China insists that it has the legal right, under the regulations of UNCLOS, to deny foreign navies free access in its EEZ. The U.S. and many other countries reject this interpretation.<sup>65</sup>

---

<sup>63</sup> UNCLOS, *supra* note 3, at Art. 55-58.

<sup>64</sup> UNCLOS, *supra* note 3, at Art. 56, 78; see Sami Doğru, *Uluslararası Hukukta Seyrüsefer Serbestliği ve Deniz Güvenliği/Freedom of Navigation and Maritime Security in International Law 125* (2003) (unpublished Ph.D. dissertation, Ankara University).

<sup>65</sup> UNCLOS, *supra* note 3, at Art. 58. According to Art. 58 of UNCLOS, all states, whether coastal or land-locked, enjoy the freedoms of navigation and overflight in EEZ:

Rights and duties of other States in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.



Finally, an unprovoked threat or use of force would constitute a clear violation of the UN Charter prohibiting such behavior according to UN Charter Chapter VII. Any sustained attempt by China to forcibly threaten or remove other claimants from disputed territories without any clear threat requiring selfdefense would seriously disrupt peace accompanied by a strong regional and international outcry. Beijing's choice to not clearly communicate its disavowal of unauthorized use of force undermines regional trust with the West and many regional powers. The introduction of China's white paper to use force has altered its 'peaceful development' policy to a policy of territorial aggrandizement for the sake of security—jeopardizing its relations with the West and many regional states.

At present, there seems little support for adopting a binding Code of Conduct to avoid future incidents of military confrontation. The United States and China must build the basis for demilitarizing and defusing the escalating tensions in the China Sea. Unless actions are initiated to alter the current course of events, the U.S.-Sino relation threatens to escalate into a far more dangerous situation that will prove difficult to reverse.

## **VI. THE EASTERN MEDITERRANEAN CONUNDRUM OF TERRITORIAL DISPUTES**

Eastern Mediterranean regional peace and maritime stability are jeopardized by two of the most prolonged religious/ethnic border conflicts: the Arab-Israeli and Cyprus conflicts. Both conflicts involve disputes over territorial claims and disputed boundaries and the ownership of hydrocarbon resources. In other words, the Cyprus conflict is a dispute today about the maritime jurisdiction of areas in the Eastern Mediterranean Sea and no longer about an island divided by a green line patrolled by the United Nations' peacekeeping troops.<sup>66</sup> TRNC, Turkey, and Lebanon have all staked claims in the gas fields conflicting with or raising legal objections by other parties involving disputes relating to the Aegean Sea and delimitation of the continental shelf. All these disputes affect relations among the neighbors of the Eastern Mediterranean Sea.<sup>67</sup>

---

<sup>66</sup> SERTAÇ HAMI BAŞEREN, DOĞU AKDENİZ DENİZ YETKİ ALANLARI UYUŞMAZLIĞI (DISPUTES OVER EASTERN MEDITERRANEAN MARITIME JURISDICTION AREAS) 176 (2010).

<sup>67</sup> Laura El-Katiri & Mohammed El-Katiri, *Regionalizing Eastern Mediterranean Gas: Energy Security, Stability, and the U.S. Role*, STRATEGIC STUD. INST. (Dec. 2014),





**Figure-5: Disputed Maritime Territory and Prospective Gas Fields**

The predicament about maritime jurisdictional zones' disputes surrounding Cyprus began in 2003 when the RoC concluded an EEZ delimitation agreement with Egypt. Two more delineations followed with Lebanon in 2007—awaiting ratification—and Israel in 2010.<sup>69</sup> However, the energy security speculation did not leapfrog until significant offshore hydrocarbon discoveries were made in Cyprus and Israel (the Tamar in 2009 and the Leviathan in 2010) together with a 2010 U.S. Geological Survey.<sup>70</sup> The report suggested that the Levant Basin could hold up to 122 trillion cubic feet (tcf) of natural gas and up to 1.7 billion barrels of oil.<sup>71</sup> The geological survey considered one-third of the region's potential natural resources from the RoC's and Israel's maritime zones to some coastal and offshore territories of Syria, Lebanon, and the Palestinian Territories. Two-thirds remained

<http://www.strategicstudiesinstitute.army.mil/pdf/PUB1243.pdf>.

<sup>68</sup> CIMSEC, <http://cimsec.org/wp-content/uploads/2013/04/gas2.png> (last visited Apr. 30, 2017).

<sup>69</sup> *Id.*

<sup>70</sup> *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean*, USGS 1 (Mar. 2010), <https://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>.

<sup>71</sup> *Id.*

undiscovered. Only then did energy experts begin to discuss gas transit opportunities for the region.<sup>72</sup> Two transport options were considered to carry the gas: “[S]hipping liquefied natural gas (LNG) to the Mediterranean Sea, or building a gas pipeline that runs from the north of Israel to Turkey and then onwards to Europe.”<sup>73</sup>

Due to the diplomatic relations between Turkey and the gas exporting countries in the region, it was highly unlikely that a pipeline through Turkey would be built<sup>74</sup> until news arrived that the Turkish and Israeli governments were poised to renew full diplomatic relations after years of tension.<sup>75</sup> Even the downing of a Russian military aircraft over Turkish airspace in October 2015 had far-reaching economic and commercial repercussions, including Russia’s ban of most fruit and vegetable imports from Turkey, as well as its halt of the flow of millions of Russian tourists to Turkey. While Russia continued gas sales to Turkey, “the countries’ \$30 billion in annual trade decreased by 43 percent.” In an attempt to normalize relations, Turkish President Erdogan offered an apology to Russian President Putin, which Putin had demanded for the downing of the Russian jet.<sup>76</sup>

After the July 15, 2016 coup d’état attempt in Turkey, efforts to restore ties between Russia and Turkey accelerated as President Putin was the first leader to offer his support for Turkey. According to President Erdogan, “[i]t was very important from a mental perspective, this kind of psychological support,” especially when com-

---

<sup>72</sup> Sarah Vogler & Eric V. Thompson, *Gas Discoveries in the Eastern Mediterranean: Implications for Regional Maritime Security*, GERMAN MARSHALL FUND (Mar. 2015), [www.gmfus.org/file/4519/download](http://www.gmfus.org/file/4519/download).

<sup>73</sup> Olgu Okumus, *Eastern Mediterranean Energy Sources Sunk by Political Waters*, NAT. GAS WORLD (Dec. 24, 2012, 12:15 AM), <http://www.naturalgaseurope.com/eastern-mediterranean-energy-sources-sunk-by-political-waters>; *List of Actions Selected for Receiving Financial Assistance Under the First CEF Energy 2015 Call for Proposals*, EUROPEAN COMMISSION, [https://ec.europa.eu/energy/sites/ener/files/documents/CEF\\_Energy\\_2015\\_call\\_for\\_proposals.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/CEF_Energy_2015_call_for_proposals.pdf) (last visited Apr. 30, 2017). The EU has requested that a feasibility study be completed involving a gas pipeline route from Cyprus to Greece Mainland via Crete. *List of Actions Selected for Receiving Financial Assistance Under the First CEF Energy 2015 Call for Proposals*, *supra*.

<sup>74</sup> Okumus, *supra* note 73.

<sup>75</sup> Don Nissenbaum, *Israel, Turkey Poised to Renew Diplomatic Relations; Secret Talks in Switzerland May Restore Ties Suspended Since 2010 Raid on Gaza-Bound Aid Ship*, WALL STREET J. (Dec. 18, 2015 1:14 PM), <http://www.wsj.com/articles/israel-turkey-poised-to-renew-diplomatic-relations-1450438539>.

<sup>76</sup> *Id.*

pared to former President Obama, who called much later offering his support “amid accusations that the United States played a role in the failed coup in Turkey” and Turkey’s “widespread resentment of the White House’s criticism of the resulting crackdown.”<sup>77</sup> When both leaders President Putin and President Erdogan met in August 2016, their focus was to repair relations to its pre-crisis level.

Against this backdrop, the friendly talks between these two historical antagonists raised alarm bells as Turkey is a member of NATO and essential to Europe’s efforts to halt the massive flow of refugees from Syria and Afghanistan. Tensions between Washington and Ankara rose due to American support of PYD/YPG in Syria<sup>78</sup> and Iraq, as well as “President Obama’s reluctance to hand over Fetullah Gulen, a reclusive Muslim cleric living in Pennsylvania whom [President] Erdogan ha[d] accused of leading the coup attempt”<sup>79</sup> on July 15, 2016. Without the due process of law in accordance with extradition treaties between both countries, growing anti-Americanism in Turkey could ultimately benefit Moscow’s interest “to draw Turkey into its orbit and into the security and trade organizations it is promoting in Asia.”<sup>80</sup> Yet, despite the pledges both heads of state made to work together, Syria remains a “major potential fault line” because both sides view Syria’s President Bashar al-Assad differently. President Erdogan sees him as a “bitter enemy” of Turkey while President Putin regards al-Assad as a longtime ally of Russia and has even “intervened with Iran in the Syrian conflict” to strengthen his country’s role in the region and secure Syria as Russia’s base of operations.<sup>81</sup>

In October 2016, President Putin visited Istanbul to accelerate reconciliation between Russia and Turkey by signing an agreement to

---

<sup>77</sup> Neil MacFarquhar, *Russia and Turkey Vow to Repair Ties as West Watches Nervously*, N.Y. TIMES (Aug. 9, 2016), <https://www.nytimes.com/2016/08/10/world/europe/putin-erdogan-russia-turkey.html>.

<sup>78</sup> YPG (Yekîneyên Parastina Gel/Kurdish People’s Protection Units) is the military arm of the PYD (Partiya Yekîtiya Demokrat/Democratic Union Party) considered by the Turkish government as the Syrian affiliate of the PKK (Partiya Karkerên Kurdistanê/Kurdistan Workers’ Party) recognized as a terrorist organisation by Turkey, the U.S. and a number of allied governments and organizations

<sup>79</sup> *Supra* note 77.

<sup>80</sup> *Supra* note 77.

<sup>81</sup> *Id.*

revive the suspended Turkish Stream natural-gas pipeline project which was “to run under the Black Sea to Turkey and then the Greek border.”<sup>82</sup> The pipeline would allow Russian gas to reach the West by circumventing Eastern Europe and also allow “Russia to cut off gas supplies to neighboring countries like Ukraine without disrupting sales to countries farther west like Italy or Austria.”<sup>83</sup> The revived Turkish Stream gas pipeline project would “replace a planned pipeline through Bulgaria that the EU blocked at the outset of the Ukraine crisis.”<sup>84</sup> The agreement to build the pipeline also included “a reduction in the price that Gazprom, the Russian natural gas giant, would charge for natural gas sold on Turkey’s domestic market,”<sup>85</sup> which Russia has been trying for years to establish. However, the Turkish Stream project was opposed by a few European governments, as well as the United States. With the mounting tension with Russia and the geopolitical shifts, the region’s energy security came to the forefront and current outlooks were re-evaluated to avoid dependency on a single major provider of energy and consider diversification of sources of upstream energy.

The discoveries of hydrocarbon energy have prompted states with a direct claim to the Levant Basin to commercialize their energy sectors. By creating the legislation to attract bids from companies to explore and exploit the oil and hydrocarbons within the proclaimed EEZs, the RoC and Israel have emerged as major regional gas producers. Both countries control cost-effective sources of energy for their import-dependent economies, as well as a potential high-value source of revenue from hydrocarbon exports to and beyond the region.<sup>86</sup> The potential wealth derived from the exploration and development of the natural resources has catalysed tensions in the Cyprus conflict. Issues of sovereign wealth derived from energy resources have raised alarm bells suggesting that these revenues belong to both Turk- and Greek-Cypriots and not only those living in the RoC.

---

<sup>82</sup> Neil MacFarquhar, *Warming Relations in Person, Putin and Erdogan Revive Pipeline Deal*, N.Y. TIMES (Oct. 10, 2016), <https://www.nytimes.com/2016/10/11/world/europe/turkey-russia-vladimir-putin-recep-tayyip-erdogan.html>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Sarah Vogler & Eric V. Thompson, *Gas Discoveries in the Eastern Mediterranean: Implications for Regional Maritime Security*, GERMAN MARSHALL FUND (Mar. 2015), [www.gmfus.org/file/4519/download](http://www.gmfus.org/file/4519/download).

Besides the regional tensions in Cyprus and deterioration of Turkish-Israeli relations since 2011, peace and security are advancing in tandem with trilateral cooperation among Israel-RoC-Greece and Egypt-RoC-Greece over security and energy. In the past year, Israel and RoC signed with Egypt a Memorandum of Understanding ('MOU') believing they could step in to alleviate Egypt's falling production levels.<sup>87</sup> However, Italian oil firm ENI announced on August 30, 2015, that it had discovered the largest known natural gas deposit in the Eastern Mediterranean off the coast of Egypt.<sup>88</sup> The findings are a significant game changer and could lead to the annulment of the MOU agreements that Israel and the RoC signed with Egypt. The discovery means that in upcoming years countries in Europe like Italy, as well as the Asian market and eventually Jordan, which plan to build their regasification terminals to handle LNG are the most important export markets for Egypt.<sup>89</sup> It delivers a stunning blow to the Israeli and Greek Cypriot economies, as well as the gas partners Delek Drilling and Noble Energy as they previously managed the only discoveries in the region, which included *Tamar*, *Leviathan*, *Karish* and *Tanin* in Israel and *Aphrodite* in Cyprus.<sup>90</sup> Delek Drilling and Noble Energy had hoped to recoup some of their investments with the delivery of gas to Egypt.

For the consortiums, a total strategic re-evaluation is needed for the European market and where it still has a competitive advantage. Cairo's energy security will improve the chances of government stability benefitting Israel, which "wants to see the military remain the core pillar of the Egyptian state."<sup>91</sup>

---

<sup>87</sup> Gal Luft, *Will Egypt's Zohr Gas Field Sink Israel's Leviathan?*, MIDDLE EAST F. (Aug. 31, 2015), <http://www.meforum.org/5463/zohr-leviathan>.

<sup>88</sup> *Id.* The gas field Zohr is estimated to be "thirty percent larger than the Israeli Leviathan field" with the "potential of 30 trillion cubic feet of gas" and is easier to develop because it is much shallower than Leviathan. *Id.* Also, it is not expected to face any major regulatory obstacles before development begins in early 2017, making Egypt energy independent while the commercialization of Leviathan is still held up by Israeli politics. *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Luft, *supra* note 87.

<sup>91</sup> *Energy Security Will Not Cure All of Egypt's Ills*, NAT. GAS WORLD (Sept. 7, 2015), [https://www.naturalgasworld.com/energy-security-will-not-cure-all-of-egypts-ills-25301?utm\\_source=Natural+%20Gas+Europe+Newsletter&utm\\_campaign=540a54ae87-RSS\\_EMAIL\\_CAMPAIGN&utm\\_medium=%20email&utm\\_term=0\\_c95c702d4c-540a54ae87-307796221](https://www.naturalgasworld.com/energy-security-will-not-cure-all-of-egypts-ills-25301?utm_source=Natural+%20Gas+Europe+Newsletter&utm_campaign=540a54ae87-RSS_EMAIL_CAMPAIGN&utm_medium=%20email&utm_term=0_c95c702d4c-540a54ae87-307796221).

## VII. REACTION BY THE REPUBLIC OF TURKEY - ESCALATION OF TENSION

Turkey, as a non-party to UNCLOS, objected to the RoC EEZ delimitation agreements with Egypt, Lebanon, and Israel.<sup>92</sup> It claims as a *de-facto* divided island that the Greek-Cypriot community cannot represent the island as the ‘Republic of Cyprus’ until reunified to establish a single EEZ.<sup>93</sup> Due to conflicting claims by the Greek- and Turk-Cypriot communities regarding maritime delimitation within the broader context of reconciliation and bi-communal negotiations, Turkey finds that exploitation of natural resources should be deferred until a comprehensive ‘Cyprus Settlement’ is reached, as the resources around the island belong to both communities and must be shared equitably. Although the international community position relating to sharing the sovereign wealth generated by commercializing natural resources is unclear, it is commonly accepted “that offshore natural resources belong to both communities.”<sup>94</sup>

Turkey perceives the concluded unilateral delimitation agreements between the RoC and other coastal countries as an infringement of international law and a border clash in the Eastern Mediterranean basin.<sup>95</sup> The Lebanese also perceive the Israeli-RoC agreement delineating an EEZ between the country’s joint maritime Mediterranean frontiers a violation of Lebanon’s sovereign and economic territorial rights that “jeopardizes peace and security in the region.”<sup>96</sup>

---

<sup>92</sup> Sami Doğru, *Doğu Akdeniz’de Hidrokarbon Kaynakları ve Uluslararası Hukuka Göre Bölgedeki Kıta Sahanlığı ve Münhasır Ekonomik Bölge Alanlarının Sınırlandırılması/Hydrocarbon Resources in the Eastern Mediterranean and Delimitation of the Exclusive Economic Zone and Continental Shelf in the Region According to International Law*, 119 UNION TURKISH B. ASS’N REV. 503, 514-15 (2015), <http://tbbdergisi.barobirlik.org.tr/m2015-119-1503>.

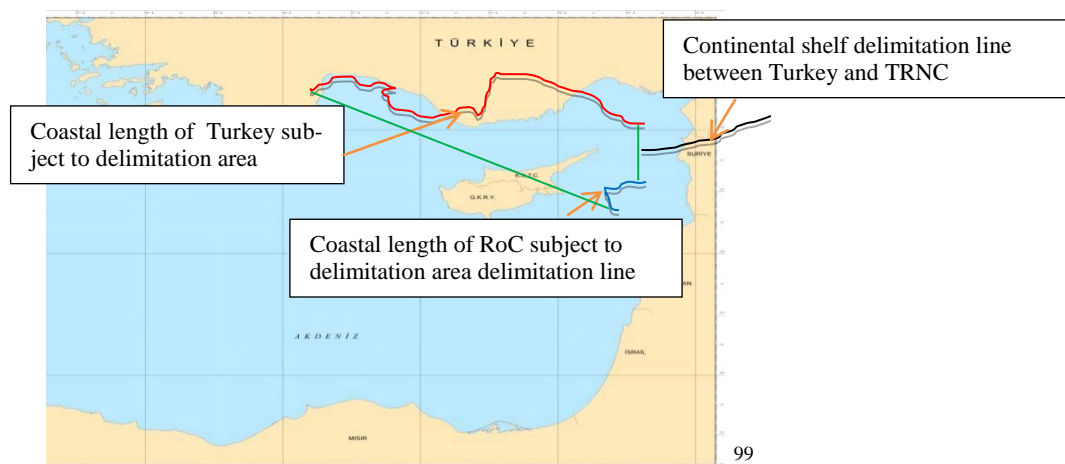
<sup>93</sup> *Id.*

<sup>94</sup> Gürel & Le Cornu, *supra* note 24, at 13.

<sup>95</sup> Gürel & Le Cornu, *supra* note 24, at 10-11.

<sup>96</sup> Andreas Filis & Rafael Leal-Arcas, *Legal Aspects of Inter-State Maritime Delimitation in the Eastern Mediterranean Basin*, 11 OIL, GAS & ENERGY L. INTELLIGENCE 1, 3 (2013), <http://ssrn.com/abstract=2257731>; Charles Kennedy, *Lebanon Protests Israeli-Cypriot Energy Agreement*, OILPRICE (June 21, 2011, 6:31 PM), <http://oilprice.com/Latest-Energy-News/World-News/Lebanon-Protests-Israeli-Cypriot-Energy-Agreement.html> “Lebanon’s Minister of Foreign Affairs Adnan Mansour has sent an official letter of protest to UN Secretary General Ban Ki-moon expressing Lebanon’s objection to a bilateral Israeli-Cypriot agreement delineating an exclusive economic zone (EEZ) between the country’s joint maritime Mediterranean frontiers. Mansour wrote that the agreement bilateral between Israel and Cyprus ‘violates Lebanon’s sovereign and economic rights and jeopardizes peace and securi-

Turkey's position regarding EEZ delimitation is based on the 'equity' principle that calls for consideration of 'special circumstances' to respect 'proportionality' and 'non-encroachment' rules.<sup>97</sup> Given the more than 20 times difference between coastal lengths of Cyprus and Turkey, the EEZ of Cyprus should be coextensive with its 12-mile-wide Territorial Waters according to the Turkish view. "Safe access to high seas and the underlying economic resources of the seabed are of key significance to sustain Turkey's high rate of economic growth. As a regional powerhouse, Turkey tries to reap the lion's share of natural gas trade to become an energy supplier and transit hub."<sup>98</sup>



**Figure-6: Turkey's Disputed Delimitation of Coastal Lines with RoC**

## VIII. REACTION BY THE TURKISH REPUBLIC OF NORTHERN

ty in the region.' "

<sup>97</sup> Serhat S. Çubukçuoğlu, *The EEZ Delimitation Dispute Between Cyprus and Turkey – Part I* 3-5 (The Fletcher School Tufts University) (Oct. 6, 2014), [http://www.academia.edu/9532415/Cyprus\\_and\\_Turkey\\_The\\_EEZ\\_Delimitation\\_Dispute\\_in\\_the\\_Eastern\\_Mediterranean\\_-\\_Part\\_I](http://www.academia.edu/9532415/Cyprus_and_Turkey_The_EEZ_Delimitation_Dispute_in_the_Eastern_Mediterranean_-_Part_I).

<sup>98</sup> *Id.* at 5.

<sup>99</sup> Sertaç Hami Başeren, "Disputes over Eastern Mediterranean Maritime Jurisdiction Areas/ Doğu Akdeniz Deniz Yetki Alanları Uyuşmazlığı," *Stratejik Araştırmalar*, 8(14), January 2010, p. 171.

**CYPRUS (TRNC)—ESCALATION OF TENSION**

The Turkish Cypriot government (TRNC) denounced the unilateral proclamation of the Greek Cypriot (RoC) government EEZ on behalf of the entire island. This denunciation expressed that the extraterritorial rights over extracting offshore energy reserves included in the bilateral agreements of Greek Cypriots with third parties were null and void.

The Eastern Mediterranean Basin exhibits an ever-increasing amount of tension through the disagreement between Greek- and Turk-Cypriots about exploration rights around the island. According to Turkey and TRNC, tensions are increased in the region because:

- Greek Cypriots do not represent the Island as a whole,
- “The Turkish Cypriots, who are the co-owners of the island of Cyprus, have equal, and inalienable rights over the exploration; extraction and processing of natural resources found within the maritime jurisdiction areas of the Island,”<sup>100</sup>
- The maritime delimitation in a semi-enclosed sea like the Eastern Mediterranean could only be possible through arrangements to be made among all the countries concerned and by observing the rights and interests of all the parties.
- “Consequently, neither the legislation adopted nor the bilateral agreements concluded by the Greek Cypriot Authorities have any effect.
- In addition, it must also be kept in mind that Turkey has legitimate and legal rights and interests in the Eastern Mediterranean” in the same exploration area claimed by the Greek Cypriots which overlap with

---

<sup>100</sup> Statement by the Ministry of Foreign Affairs of the Turkish Republic of Northern Cyprus (Nov. 28, 2013), <http://mfa.gov.ct.tr/statement-by-the-ministry-of-foreign-affairsof-the-turkish-republic-of-northern-cyprus/> (last visited Oct. 5, 2015).



Turkey's continental shelf.<sup>101</sup>

Turkey's tough stand escalates. In September 2011, the historically troubled relationship between Turkey and RoC became even more complicated with the exploration for hydrocarbons in the region. The RoC, in partnership with the U.S. Houston-based company Noble Energy, started exploratory offshore drilling in research Block #12, code-named "*Aphrodite*," a gas field partially overlapping Israel's EEZ.<sup>102</sup> It subsequently discovered, in the southern half of the island, gas in Block #12.<sup>103</sup> The estimated discovery, between 142 and 227bcm of gas, unleashed more political tension in Cyprus.<sup>104</sup> In February 2012, the RoC announced a second licensing round.<sup>105</sup> Turkey immediately contested the exploration of natural gas deposits because of maritime boundaries and Block #12's overlap with its continental shelf. Also, TRNC has given Turks a license to explore in the same area.<sup>106</sup>

As a result of the RoC's intent to carry on with unilateral exploration for hydrocarbons, Turkey started back in September 2011 to collaborate with the Turkish Cypriots in restoring the political balance, as they saw it. By taking *reciprocal steps of equal significance*, they signed an agreement demarcating the continental shelf between the island's northern coast and Turkey in 2011.<sup>107</sup> As part of this – mainly politically motivated – policy, in November 2011 the TRNC Ministry of Economy and Energy and Turkish National Oil Company (Turkish Petroleum Corporation also referred to as TPAO) signed a Petroleum Services and Production Sharing Contract.<sup>108</sup> The contract

---

<sup>101</sup> Duygu Guvenc, *Ankara Uneasy with US Ambassador's Statements*, HURRIYET DAILY NEWS, (Mar. 8, 2007, 12:00 AM), <http://www.hurriyetdailynews.com/ankara-uneasy-with-us-ambassadors-statements.aspx?pageID=438&n=ankara-uneasy-with-us-ambassadors-statements-2007-03-08>.

<sup>102</sup> Europe Report N°216, *Aphrodite's Gift: Can Cypriot Gas Power a New Dialogue?*, INT'L CRISIS GROUP 12 (April 2, 2012), <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/cyprus/aphrodite-s-gift-can-cypriot-gas-power-new-dialogue> last visited May 13, 2017.

<sup>103</sup> *Id.* at 3.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Gürel & Le Cornu, *supra* note 24, at 14.

<sup>108</sup> Gürel & Le Cornu, *supra* note 24, at 14.

authorized TPAO to conduct exploration for oil and gas, as well as drill and operate wells in the relevant areas. At the same time, the TRNC granted to the TPAO hydrocarbon exploration licenses for maritime zones in the region including in the south of the island partly overlapping Greek Cypriot exploration blocks.<sup>109</sup>

TRNC claims equal, inherent rights on offshore reserves and believes that EEZ delimitation is directly linked to the sovereignty issue, which is part of the ongoing comprehensive settlement negotiations, and should be left to the discretion of the new partnership government.<sup>110</sup> In response to unilateral pursuit by the RoC, the TRNC granted oil concessions to TPAO to conduct groundbreaking research and hydrocarbon exploration activities in seven EEZ areas that overlap with those demarcated by the RoC government. TRNC relies on Turkey's military and diplomatic support to assert its rights and jurisdiction over the maritime areas of Cyprus.<sup>111</sup> Turkey holds a long-standing position according to which islands facing longer coastal fronts should have diminished rights regarding generating maritime zones. Turkey argues that Turkey's related coasts, which face the mentioned delimitation area, extend from Gazipaşa/ Antalya to Deveboynu Cape of Muğla.<sup>112</sup> As indicated in the ICJ Decision in the Case Concerning the Continental Shelf Dispute of the St. Pierre and Miquelon Islands between France and Canada, for the non-encroachment of Turkey's relevant coasts, whose frontal length is relatively 10 times longer, the median line to be drawn between the related coasts of Turkey and RoC should head towards the east in a way to let Turkish coasts open into far distances.<sup>113</sup> Besides, the transportation to the Suez Canal, the most important waterway in the region, and Antalya and Mersin ports, which are among the most important ports in the region, should not be blocked, as indicated in the Guinea/Guinea-Bissau decision.<sup>114</sup> Turkey concluded a continental shelf delimitation agreement with the TRNC and

---

<sup>109</sup> Gürel & Le Cornu, *supra* note 24, at 14.

<sup>110</sup> Gürel & Le Cornu, *supra* note 24, at 17.

<sup>111</sup> Gürel & Le Cornu, *supra* note 24, at 20.

<sup>112</sup> See *infra* Figure 7.

<sup>113</sup> See generally Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, 1985 I.C.J. 13 (June 1985), <http://www.icj-cij.org/docket/files/68/6415.pdf>.

<sup>114</sup> International Legal Materials, *Guinea/Guinea-Bissau: Dispute Concerning Delimitation of the Maritime Boundary*, at § 104, 25 I.L.M. 251, 295 (Mar. 1986); see also MALCOLM D. EVANS, RELEVANT CIRCUMSTANCES AND MARITIME DELIMITATION, CLARENDON PRESS 179 (1989).

conducted seismic surveys in the western sector of the RoC's EEZ.<sup>115</sup>

Against this backdrop, tensions began to escalate again on September 26, 2014, when the RoC extended licensing rights to a joint-venture between the Italian multinational energy company *ENI* and the South Korean state-owned gas company *KOGAS* to begin exploratory drilling.<sup>116</sup> A week later the Ministry of Foreign Affairs of the TRNC issued a statement declaring the RoC's extension of licensing rights to *ENI-KOGAS*'s to drilling in the RoC's block #9 - the so-called Onasagoras field due south of the southern coastal city of Larnaca on the island - 'illegal.'<sup>117</sup> The TRNC considers such actions as an unlawful infringement of its sovereign right and seizure of sovereign wealth. It claims to possess these resources jointly with the RoC based on the 1960 Cyprus Accords and Constitution, which foresaw Turkish Cypriots and Greek Cypriots as equal constituent communities of the 1960 Republic.<sup>118</sup>

In reaction, Turkey and NAVTEX (Navigational Telex) on October 3, 2014 issued a warning to mariners that Turkey would be conducting a seismic survey period from October 20 through December 30.<sup>119</sup> It dispatched the research ship 'Barbaros Hayrettin Pasa' (hereafter referred to as Barbaros) and its escorting vessels 'M/V Deep Supporter' and 'M/V Bravo Supporter' into areas off the coast of the RoC.<sup>120</sup> They were escorted by Turkish Navy guided-missile frigate TCG Gelibolu. Based on the 2011 exploration license agreement TRNC had granted to TPAO the ships entered the TRNC's Block G that overlaps with the ROC's Block #9, bordering the *ENI-KOGAS* exploration site to survey the sea floor for hydrocarbons to protect Turkish Cypriot rights while monitoring *ENI*'s drilling vessel in Block #9.<sup>121</sup> At approximately the same time, Russia, Israel, and RoC conducted a joint naval exercise in the waters of the Eastern

---

<sup>115</sup> Gürel & Le Cornu, *supra* note 24, at 14-15.

<sup>116</sup> Micha'el Tanchum, *Turkey Temporarily Stands Down in Eastern Mediterranean Amidst Region-Wide Backlash*, 8 (2) *TURKEY ANALYST* (Jan. 28, 2015), <https://www.turkeyanalyst.org/publications/turkey-analyst-articles/item/370-turkey-temporarily-stands-down-in-eastern-mediterranean-amidst-region-wide-backlash.html>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Tanchum, *supra* note 116.

Mediterranean when the *Barbaros* entered the contested EEZ between the two countries to discover natural resources but also encroaching on Cyprus's EEZ.

The affair triggered a flurry of diplomatic reactions with Israel and RoC calling on Turkey to withdraw and respect the maritime boundaries of Cyprus. The incident caused international condemnation by the EU and the U.S.<sup>122</sup> The RoC president, Nicos Anastasiades, suspended further talks with the Turkish Cypriot leader, Dervis Eroglu, aimed at ending the division of the island, until Turkish offshore activities, which he deemed unlawful and threatening, ceased. He asked UN Secretary-General Ban Ki-Moon to persuade Turkey not to violate Cyprus's EEZ.<sup>123</sup> Turkey became more isolated by the end of 2014. .

In the international arena, the former European Commission urged Turkey to avoid any threats or actions directed against a member state. The Turkish government heeded no such advice and deployed the '*Barbaros*' in the RoC's EEZ zone, asserting its resolve to protect the interests of TRNC. However, Turkey faced even greater challenges with the emergence of a regional bloc aligned against Ankara consisting of Egypt, Israel, the RoC, and Greece along with its current situation of having no ambassadors to Egypt, Israel, RoC, Libya and Yemen. Two separate trilateral summit meetings held among Egypt, RoC, and Greece in November 2014 were of primary concern. The one summit dealt with strengthening Egypt's economic and security ties with the two EU members, Greece and RoC. The second summit included Egyptian expression of interest in expediting the export of natural gas from the RoC to Egypt and condemning Turkey's seismic explorations off the coast of southern Cyprus.<sup>124</sup> The emerging opportunities for trilateral energy cooperation among Israel, Greece, and RoC have made a strategic pivot toward Israel potentially isolating Turkey in participating in any deal about securing and transporting the natural resources under the sea. Through preliminary energy agreements with Israel and RoC, Egypt has also joined this game, especially with the recent discovery of hy-

---

<sup>122</sup> *Id.*

<sup>123</sup> Michael Leigh, *Why is Turkey Increasing Tensions in the Eastern Mediterranean?*, GERMAN MARSHALL FUND (Oct. 10, 2014), <http://www.gmfus.org/blog/2014/10/10/why-turkey-increasing-tensions-eastern-mediterranean>.

<sup>124</sup> Tanchum, *supra* note 116

drocarbons in Egypt.<sup>125</sup>

Thus, two distinct but overlapping partnerships have emerged: Israel-RoC-Greece and in a parallel process Egypt and two Hellenic states, RoC and Greece. As this suggests, RoC, Israel, and Egypt are key states primarily because of the pivotal role they play as rising energy producers. All of this demonstrates a closer cooperation within the Mediterranean framework and on January 27, 2016, Israeli Prime Minister Benjamin Netanyahu, Greek premier Alexis Tsipras, and Cypriot President Nicos Anastasiades respectively agreed to deepen energy and security interests through the exploitation of natural gas deposits off Israel and Cyprus.<sup>126</sup> Meanwhile, Turkish President Recep Tayyip Erdogan while still refusing to recognize the legitimacy of President Abdel Fattah al-Sisi since the June 2013 Egyptian coup d'état against the elected civilian rule of President Mohamed Morsi and ban of the Muslim Brotherhood,<sup>127</sup> allowed an economic delegation in early 2017 to visit Egypt following the normalization of relations between Israel and Turkey in June 2016. The events stir questions about Turkey jump-starting trade and investment activity between Cairo and Ankara and President Erdogan altering his icy relations toward Egypt, which could help Turkey to break out from increasing isolation among its neighbors.<sup>128</sup>

The cooperation among the countries of the Mediterranean has symbolic and economic value in ambitiously strengthening the relations between the Eastern Mediterranean and the EU. While it will take until 2019 or 2020 before the Leviathan and Aphrodite

---

<sup>125</sup> Gabriel Mitchell & Zenonas Tziarras, *Full of Gas, Full of Problems: The Eastern Mediterranean's Hydrocarbon Showdown*, NAT'L INTEREST (Jan. 6, 2015), <http://nationalinterest.org/feature/full-gas-full-problems-the-eastern-mediterraneans-11974>.

<sup>126</sup> Luke Baker, *Israel Hopes for E.U. Leverage with East Mediterranean Push*, REUTERS (Feb. 1, 2016, 9:43 AM), <http://uk.reuters.com/article/uk-israel-mediterranean-ties-idUKKCN0VA2PP?feedType=RSS&feedName=E.U.E.U>.

<sup>127</sup> Bryony Jones and Susannah Cullinane, "What is the Muslim Brotherhood?," CNN (July 3, 2013), <http://www.cnn.com/2013/07/03/world/africa/egypt-muslim-brotherhood-explainer/index.html>. Egyptian street protesters alleged "Brotherhoodization" of the government -- the imposition of the Islamist views propagated by the Muslim Brotherhood, of which President Morsi is a member, leading to the overthrow of the government.

<sup>128</sup> Khalid Hassan, "Can economic opportunity bring Turkey, Egypt closer?," AL MONITOR, (Feb. 17, 2017) <http://www.al-monitor.com/pulse/originals/2017/02/egypt-turkey-economic-interests-improved-relations-visits.html>.

fields start exporting gas, nonetheless, regional dynamics in regard to the economic and security prospects to transport gas by pipeline, possibly even via Turkey, or in liquefied form by ship to Europe have far reaching impacts. The EU will have an alternative to its current dependency on gas imports from Russia, especially in light of worsening relations with Russia due to the Ukraine crisis. Furthermore, the prospect of strengthening EU energy security implies prosperity and security for both regions.<sup>129</sup>

Other significant developments that fall within the same maritime geopolitical context include the long-standing Turkey-Greece (NATO members since 1952) dispute over the shared rights in the Aegean maritime zones. Turkey considers portions of the disputed Aegean Sea *gray areas* and maintains that any unilateral effort from Greece to expand its maritime zones constitutes a *casus belli* (cause for war).<sup>130</sup> Despite various efforts between Greece and Turkey to normalize ties, discussions remain focused on the economy, tourism, and energy to avoid the fundamental, but infinitely more sensitive issues with the potential of events evolving to the brink of war.

While the bilateral dispute between the Cypriot communities is lessening, the region remains engulfed by the Cyprus conflict's spillover. Inability to resolve the problem of sharing the hydrocarbon resources may turn the dispute into one of the sea with all adjacent coastal states not recognizing the established maritime boundaries in the region. Thus, cooperation among all the littoral states — Turkey, Syria, Lebanon, Israel, Egypt, Greece, Palestine, TRNC, and RoC — is needed but currently unlikely. Territorial claims of an EEZ pose increasing tensions and possible armed conflicts between interested parties in the region. RoC argues that Turkey's deployment of the "Barbaros" to Block #9 in the fall of 2014 was a serious violation of its sovereignty.<sup>131</sup> While the RoC authorities cannot prevent the "Barbaros" from traversing its waters within the EEZ according to UNCLOS,<sup>132</sup> the conduct of research operations undertaken in its EEZ by the Turkish Government is considered a breach of international law by the RoC. According to UNCLOS, "States shall have due regard to the rights and duties . . . and shall comply with the laws

<sup>129</sup> *Id.*

<sup>130</sup> Augusto Sinagra, *The Problem of Delimiting the Territorial Waters Between Greece and Turkey in the Aegean Sea*, in *THE AEGEAN SEA 2000, PROCEEDINGS OF THE INTERNATIONAL SYMPOSIUM IN THE AEGEAN SEA 170, 171* (Bayram Öztürk ed., 2000).

<sup>131</sup> Tanchum, *supra* note 116.

<sup>132</sup> See UNCLOS, *supra* note 3, at Art. 58.

and regulations”<sup>133</sup> of the coastal state in the EEZ. However, the Convention does not refer to the measures a littoral state is entitled to take in case its sovereign rights regarding the continental shelf and the EEZ are violated. Nonetheless, the International Law Commission back in 1956 considered the exercise of enforcement measures by the coastal state with the view of protecting its natural resources to fall within the scope of defending its “sovereign rights.”<sup>134</sup> Consequently, the RoC believed such unauthorized actions constituted criminal offenses and justified arresting the members of the crew and the company owning “Barbaros.” However, caution was warranted as an armed conflict could ensue.

Turkey’s policy of sending the “Barbaros” was not baseless. In its view, RoC’s EEZ zone remained unrecognized because the Greek-Cypriots of the RoC misused their power in acting as the sole legal representative of Cyprus, ignoring the entity in the north. “Barbaros” was sent to protect the rights and interests in the area, which is a constituent element of the TRNC. According to UNCLOS Art. 300 related to “Good Faith” and “Abuse of Rights”: “States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction, and freedoms recognized in this Convention in a manner that would not constitute an abuse of right.”<sup>135</sup>

The tense affairs in the eastern Mediterranean region are representative of new developments that have caused a shift in traditional patterns of enmity and amity among the Eastern Mediterranean’s primary actors: Israel, Egypt, Cyprus, Greece, and Turkey. Former President Obama’s global energy security policy as part of America’s national security was to fight the use of energy as an instrument to undermine the security of nations. Former U.S. Vice President President Joe Biden, in his November 22, 2014 address to the Atlantic Council summit in Istanbul, said, “For the [Eastern Mediterranean] region, it holds the promise of enhancing stability and prosperity by bringing together Israel, Turkey, Egypt, Greece, Cyprus and hopefully one day Lebanon. It also has the potential to bring new supplies to

---

<sup>133</sup> UNCLOS, *supra* note 3, at Art. 58(3).

<sup>134</sup> Rep. To the General Assembly, at 297, *reprinted in* ARTICLES CONCERNING THE LAW OF THE SEAS WITH COMMENTARIES (United Nations 1956).

<sup>135</sup> UNCLOS, *supra* note 3, at Art. 300.

Europe, to increase its energy security by diversifying energy resources.”<sup>136</sup> In other words, the U.S. envisions a liberal world order in which prosperity and stability are symbiotic in achieving security. The energy resources under the sea in the Eastern Mediterranean region harbor wealth that in turn can bring peace to the area. However, U.S. foreign policy fails to refer to the ultimate security necessary to attain peace, which is the socially, historically and religiously embedded individual physical being. This requires a deepening of the values within which ideas and beliefs are deconstructed and problematized.<sup>137</sup> U.S. foreign policy must replace current static concepts of security with a much more proactive comprehensive and well-coordinated security strategy through fine-tuned diplomacy drawing on broader human security issues like refugees, human trafficking on the high seas, environmental degradation, climate change, water shortage, disease, poverty, democracy, and terrorism as part of a securitized public policy. The individual is the “irreducible base unit” for explorations of security with the state remaining the central actor in international politics and principal agent for addressing security issues.<sup>138</sup> In a broad approach to human security and resolution of maritime disputes by international law, allies together with other powers could achieve peace, stability, and prosperity in the regions. The U.S. could complement the ambitions of regional pivotal or major powers by becoming a signatory to UNCLOS to support international maritime law arbitration as a gateway to addressing human and global energy security. The U.S. could advocate a “Joint Maritime Development Regime,” modelled on the Arctic Council where the organization would arbitrate maritime boundary disputes by sorting out the international law implications of the EEZ claims.

#### **IX. U.S., CHINA, TURKEY, AND RUSSIA’S SHIFT IN EASTERN MEDITERRANEAN GEOPOLITICS – RISING TENSIONS**

For over two decades, the United States has placed the issues

---

<sup>136</sup> Vice President Joe Biden, Remarks on European Energy to the Atlantic Council Energy and Economic Summit (Nov. 22, 2014) (transcript available on The White House website located at <https://obamawhitehouse.archives.gov/the-press-office/2014/11/22/remarks-vice-president-joe-biden-european-energy-security-atlantic-council> (last visited Sept. 2, 2015).

<sup>137</sup> Booth, *Beyond Critical Security Studies*, in *CRITICAL SECURITY STUDIES AND WORLD POLITICS*, *supra* note 1, at 268.

<sup>138</sup> Steve Smith, *The Contested Concept of Security*, in *CRITICAL SECURITY STUDIES AND WORLD POLITICS*, *supra* note 1, at 32.



of maritime disputes in the Eastern Mediterranean and China Seas on the backburner. As the Chinese economy contracts and potential domestic social unrest rises, the Chinese government has chosen a strategy to transition from a nation only interested in economic development to a country committed to defending Chinese global interests. China's commitment suggests a national tenacity to the extent of being prepared to use force, if need be, most notably in the China Seas. The prosperity and security of East Asian states are increasingly affected by this geopolitical shift involving disputes between China and its neighbors over islands' sovereignty and jurisdiction of maritime zones. China has decided to step forcefully onto the world stage while the U.S. is pursuing a strategy of rebalancing its military assets from the Middle East to the Asian-Pacific due to considerable economic and political challenges.

While Chinese warships have begun proclaiming control over disputed waters and islands, there have been naval skirmishes between China the Philippines and Japan. "China is using land reclamation to turn" rocky shoals into little fortresses some even having airfields.<sup>139</sup> It appears China intends to claim the entire South China Sea for itself. The U.S. reaction is full of threatening remarks pledging to defend the interests of open seas in international waters while many Chinese believe they must demonstrate their steadfastness and not back down through intimidation. In short, the cycle of tension is rising, risking regional and global peace and prosperity.

Many neighboring countries, such as Japan, Philippines, South Korea, and Taiwan, are objecting strongly.<sup>140</sup> The Republic of the Philippines filed a complaint against the People's Republic of China under the UNCLOS with the Permanent Court of Arbitration (PCA)<sup>141</sup> and on November 29, 2015, the PCA ruled in the Philip-

---

<sup>139</sup> *China is Flexing its Rapidly Modernizing Military Muscle. This was Going to Happen Eventually*, NAT'L POST (May 28, 2015, 6:18 PM), <http://news.nationalpost.com/full-comment/china-is-flexing-its-rapidly-modernizing-military-muscle-this-was-going-to-happen-eventually>.

<sup>140</sup> *Id.*

<sup>141</sup> The PCA is a permanent bureaucracy that assists temporary tribunals to resolve disputes among states (and similar entities), intergovernmental organizations, or even private parties arising out of international agreements. The cases span a range of legal issues involving territorial and maritime boundaries, sovereignty, human rights, international investment, and international and regional trade. *The Republic of the Philippines v. The*

piners' favor on the question of jurisdiction. With the jurisdictional issue resolved, the court evaluated the merit of four legal assertions made by the Philippines.

**a.** Status of Beijing's "nine-dash line" (9DL) claim in the South China Sea. Manila argued that the 9DL is an excessive maritime claim and not in line with the entitlements for coastal states under UNCLOS.

**b.** The Philippines argued that China's occupation of various features of the Spratly Islands are illegal and claims to title or sovereignty over completely submerged areas, or historical rights to living and non-living natural resources, including control of maritime navigation, are illegitimate.

**c.** The Court should evaluate the Philippines' argument that China is illegally exploiting natural resources within areas that would fall under the Philippines' EEZ under UNCLOS.

**d.** Manila claimed that China has interfered with its ability to navigate freely its own EEZ.<sup>142</sup>

On July 12, 2016, the tribunal at the Hague-based PCA issued a unanimous award to the Philippines in the case of *The Republic of*

---

People's Republic of China, PCA No 2013-19, at 1 ¶1 (Perm. Ct. Arb. Oct. 29, 2015), <http://www.pcacases.com/web/sendAttach/1506>.

<sup>142</sup> Ankit Panda, *Philippines v. China: Court Rules Favorably on Jurisdiction, Case Will Proceed*, THE DIPLOMAT (Oct. 30, 2015), <http://thediplomat.com/2015/10/philippines-v-china-court-rules-favorably-on-jurisdiction-case-will-proceed/>.

The fact is, according to the Treaty of Paris in 1898, the Treaty of Washington in 1900 and the Convention Between the United States and Great Britain of 1930 which defined the territory of the Philippines, the western boundary of the Philippines is delimited by 118 degrees east longitude. The Huangyan Island [Scarborough] and Nansha Islands [Spratly] are completely to the west of 118 degrees east longitude. They are not the Philippines' territory. After the Philippines gained independence, the domestic law of the Philippines, and the relevant treaties concluded by the Philippines all accepted the legal force of the three treaties mentioned above, and confirmed the scope of its territory to be limited by 118 degrees east longitude. Nevertheless, after the 1970s, the Philippines [dictator Marcos] staged four military operations and illegally invaded and occupied eight islands and reefs of China's Nansha Islands. This is what is at the bottom of the territorial dispute between China and the Philippines.

Wang Yi on the South China Sea issue at the ASEAN Regional Forum, CHINADAILY, [http://usa.chinadaily.com.cn/china/2015-08/07/content\\_21532990.htm](http://usa.chinadaily.com.cn/china/2015-08/07/content_21532990.htm) (last updated Aug. 7, 2015, 22:52).

Philippines vs. The People's Republic of China<sup>143</sup> concerning maritime entitlements and the status of features in the South China Sea, among other issues.

As to Point a) regarding the “Nine-Dash-Line . . . the Tribunal concluded, ‘that, to the extent China had historic rights to resources in the waters of the South China Sea, such rights were extinguished to the extent they were incompatible with the exclusive economic zones provided for in the Convention . . . [and] there was no legal basis for China to claim historic rights to resources within the sea areas falling within the ‘nine-dash line.’”<sup>144</sup>

As to Point b) the Tribunal concluded “that none of the Spratly Islands is capable of generating extended maritime zones. The Tribunal also held that the Spratly Islands cannot generate maritime zones collectively as a unit. Having found that none of the features claimed by China was capable of generating an exclusive economic zone, the Tribunal found that it could—without delimiting a boundary—declare that certain sea areas are within the exclusive economic zone of the Philippines because those areas are not overlapped by any possible entitlement of China.”<sup>145</sup>

As to Point c) Harm to Marine Environment, the Tribunal found “[t]hat China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species . . . (using methods that inflict severe damage on the coral reef environment) and had not fulfilled their obligations to stop such activities.”<sup>146</sup>

Finally, as to Point d), “the Tribunal found that China had violated the Philippines’ sovereign rights in its exclusive economic

---

<sup>143</sup> Ankit Panda, *International Court Issues Unanimous Award in Philippines v. China Case on South China Sea*, THE DIPLOMAT (July 12, 2016), <http://thediplomat.com/2016/07/international-court-issues-unanimous-award-in-philippines-v-china-case-on-south-china-sea>; see *PCA Case No 2013-19: In the Matter of the South China Sea Arbitration*, PCACASES.COM, <http://www.pcacases.com/pcadocs/PH-CN-20160712-Award.pdf> (last visited Nov. 5, 2016).

<sup>144</sup> Matikas Santos, *Key Points of Arbitral Tribunal’s Verdict on PH-China Dispute*, GLOBALNATION (July 12, 2016, 5:34 PM), <http://globalnation.inquirer.net/140947/key-points-arbitral-tribunal-decision-verdict-award-philippines-china-maritime-dispute-unclos-arbitration-spratly-islands-scarborough>.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

zone by (a) interfering with Philippines' fishing and petroleum exploration, (b) constructing artificial islands and (c) failing to prevent Chinese fishermen from fishing in the zone," interfered with the Philippines' ability to navigate freely its own EZZ.<sup>147</sup>

China's Foreign Ministry announced even before the Tribunal award that it neither accepts nor recognizes the legitimacy of the Tribunal's award and will continue its activities in the South China Sea.<sup>148</sup> After the Tribunal award the new government in the Philippines, under the leadership of President Rodrigo Duterte, cautiously responded, to allow China to "forge a path to compromise, attempting to provide China with a face-saving 'off ramp' after the highly embarrassing result of the award."<sup>149</sup>

The nature of future maritime and even territorial disputes in the South China Sea has changed considerably. "China's ambiguous and capacious nine dash line has been declared illegal under international law by a Tribunal convened under the United Nations Convention on the Law of Sea."<sup>150</sup> While features will not change anytime soon and while artificial islands will not return to their natural, pre-reclamation state as submerged reefs or partially exposed rocks, the legal understanding of these disputes will stand as an important precedent.

Unlike the geopolitical tension in the South China Sea, the Eastern Mediterranean disputes are overshadowed by Syria's President Assad's request that Russia intervenes militarily on its behalf to support governmental ground forces on the verge of defeat against rebel groups.<sup>151</sup> The Russian involvement in the Eastern Mediterranean until September 2015 was more about soft power demonstrating its presence in the region through naval maneuvers.<sup>152</sup> Russia's intervention provided Putin the opportunity to strengthen its influence in the Middle East, dilute the international criticism and sanctions related to Russia's annexation of the Crimea, and through massive bombing raids in Syria enhance directly and indirectly massive refu-

---

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Panda, *supra* note 142.

<sup>150</sup> Panda, *supra* note 142.

<sup>151</sup> Bill Chappell, *Russia Begins Airstrikes in Syria After Assad's Request*, NPR (Sept. 30, 2015, 8:37 AM), <http://www.npr.org/sections/thetwo-way/2015/09/30/444679327/russia-begins-conducting-airstrikes-in-syria-at-assads-request>.

<sup>152</sup> Holly Yan, *Syria Allies: Why Russia, Iran and China are Standing by the Regime*, CNN (Aug. 29, 2013, 9:01 PM), <http://www.cnn.com/2013/08/29/world/meast/syria-iran-china-russia-supporters/index.html>.

gee migration to Europe. This migration was designed to cause destabilization and polarization among NATO partners in the East due to their nationalistic and oppressive handling of the humanitarian refugee crisis.<sup>153</sup> The Syrian Conflict became the watershed resulting in a very efficient massive joint air and naval military build-up of 69 aircraft, weapon stockpiles, and more than a dozen warships.<sup>154</sup> The Kremlin is in Syria to stay and Putin recently called on Russia's Parliament to enact legislation to extend the deployment of the Russian Air Force at Khmeimim Air Base outside Latakia, Syria, where its planes have flown missions for almost a year in support of Assad's government.<sup>155</sup>

Before massive migration of refugees to Europe and Russia's intervention in Syria, tensions in the Eastern Mediterranean focused on Turkey's sending vessels in the fall of 2014 to accompany exploration vessels into EEZ waters off the coast of the RoC. Following international condemnation by Europe and the U.S., there was a *modus operandi* of "wait and see" during 2015.<sup>156</sup> Turkey did not send any vessels to the region again. Instead, the Turkish government demonstrated restraint partially due to parliamentary elections in Turkey in June 2015.<sup>157</sup> Also, Greek and Israeli elections were held in the earlier part of the same year as well as presidential elections in the TRNC in April 2015. Turkey waited to see how domestic and in-

---

<sup>153</sup> Ellie Geranmayeh & Kadri Liik, *The New Power Couple: Russia and Iran in the Middle East*, ECFR, at 1 (Sept. 13, 2016), [http://www.ecfr.eu/publications/summary/iran\\_and\\_russia\\_middle\\_east\\_power\\_couple\\_7113](http://www.ecfr.eu/publications/summary/iran_and_russia_middle_east_power_couple_7113).

<sup>154</sup> Gabriel Grosu, *The Increasing Influence of Russia in the Middle East Region*, MEDITERRANEAN AFF. (Feb. 10, 2016), <http://mediterraneanaffairs.com/increasing-influence-russia-middle-east-region> ("Based on satellite images, in the first stage, it was identified as twelve bombers Su-24M and Su-25SM attack aircrafts, six Su-34 bombers, four SU-30CM and helicopters Mi-24 and Mi-8 [were deployed to Syria]. On November 17, 2015, the involvement of 25 long-range bomber sandan, additional eight Su-34 bombers and four Su-24CM bombers into the operations in Syria was announced. To protect the air base in Syria, special forces from navy (from the black sea fleet) and special forces of the 7th air assault (mountain) airborne division were dislocated. According to [reports], a minimum of seven t-90 tanks, artillery and armored personnel carriers btr-80 were also present.").

<sup>155</sup> MacFarquhar, *Russia and Turkey Vow to Repair Ties as West Watches Nervously*, *supra* note 82.

<sup>156</sup> Tanchum, *supra* note 116.

<sup>157</sup> Alberto Nardelli, *Turkey Election Results: What You Need to Know*, THE GUARDIAN (June 8, 2015), <https://www.theguardian.com/news/datablog/2015/jun/08/turkey-election-results-what-you-need-to-know>.

ternational political developments unfolded in the region when Russia intervened.

Russia, China, and Turkey are pushing different foreign policy agendas rebalancing their roles internationally and regionally. The delicate geopolitical regional crises have begun to compel the attention of slow-moving U.S. analysts and policymakers to contend with conducting a campaign against ISIL and ambitious countries rivalling the vital interests of the U.S. through the use of energy as a tool to undermine the security of nations with potentially far-reaching consequences. Retrenchment until just recently was the guiding principle of U.S. foreign policy due to American political and economic conditions. Former President Obama's goal has been to limit U.S. foreign policy entanglements.<sup>158</sup> Militarily in the Middle East, the U.S. focused on using a combination of airstrikes with intelligence and reconnaissance missions, increased financial and military resources to advise and assist regional proxies, including moderate Syrian rebels, which have failed, and successful Kurdish *peshmerga* of Northern Iraq and Syria, referred to as YPD militia forces believed by Turkey to be closely associated with the Turk-Kurdish terrorist organization called PKK.<sup>159</sup> Diplomatically, "the Obama Administration . . . endorsed a parallel effort to build a regional coalition, which would curtail the flow of foreign fighters and money to ISIS" while seeking a political solution.<sup>160</sup>

Former President Obama attempted prudent steps to avoid an extensive commitment of U.S. troops. Instead, he supported a counterterrorist campaign consisting of regional partners. Neither of these missions requires an extensive commitment of U.S. Forces and stands in marked contrast to the previous Bush administration's ambitions for regime change and nation-building efforts in Afghanistan or manpower-intensive counterinsurgency campaigns in Iraq.<sup>161</sup> While the U.S. government's policy of retrenchment from the Eastern Mediterranean and the Middle East sounds theoretically fulfilling, the reality on the ground is more complex.

---

<sup>158</sup> *Lexington: The Obama Doctrine*, *ECONOMIST* (Dec. 1, 2012), <http://www.economist.com/news/united-states/21567354-barack-obamas-foreign-policy-goal-his-second-term-avoid-costly-entanglements>.

<sup>159</sup> Paul K. MacDonald & Joseph M. Parent, *The Retrenchment War: Why the War Against ISIS Will be Fought on the Cheap*, *FOREIGN AFF.* (Sept. 24, 2015), <https://www.foreignaffairs.com/articles/united-states/2014-09-24/retrenchment-war>.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

Weeks after Russian military intervention, Turkey on November 24, 2015, citing previous warnings about Russian violation of its airspace, shot down a Russian attack bomber Su-24, at the Syrian-Turkish border.<sup>162</sup> This incident and its outcomes resulted in an economic boycott of Turkey and other geopolitical tactics of isolation by Russia. Russia used the incident also as a pretext to reinforce its military deployments in Syria and rapidly install the S-400, one of the most advanced anti-aircraft defense systems in the world. S-400 allows the Russians to monitor any flight in the region within a radius of 600 kilometers across the entire Syrian territory plus flights of the U.S. and its allies. Besides monitoring the airspace of neighboring states such as Lebanon, Israel and small portions of Jordan, Iraq and Saudi Arabia, the S-400 provides aerial target defense at ranges of up to 400 kilometers hitting tactical and strategic aircraft, ballistic and cruise missiles from its military base in Latakia.<sup>163</sup> Furthermore, the Russians targeted the “moderate Islamists,” who fight Assad’s forces and were supported by Turkey, Saudi Arabia, and Qatar.<sup>164</sup> The U.S. and the West had already deployed aircraft to the NATO Incirlik Airbase near Adana, Turkey to destroy the Islamic State of the Levant (ISIL) before Russia’s military intervention in Syria.<sup>165</sup> The deployments of military assets by the U.S. and Russia to the region has put both countries at odds as to which rebel groups are primary targets to destroy. The power vacuum to jointly fight ISIL, a common adversary, led Turkey and Saudi Arabia to jointly flex their muscles and join forces to engage in a higher-intensity war in the Syrian theater to destroy the Assad regime and ISIL. Events of this kind bear serious risks for the West. They provoke further Russian and Iranian involvement in Syria, sparking a NATO-Russia confrontation. Consequently, talks in Geneva pursue a political solution to halt hostilities and provide humanitarian aid to the civilian population in the short term. It is uncertain if and when the spiral of violence, chaos, and the

---

<sup>162</sup> *Turkey’s Downing of Russian Warplane – What We Know*, BBC: NEWS, (Dec. 1, 2015), <http://www.bbc.com/news/world-middle-east-34912581>.

<sup>163</sup> Grosu, *supra* note 154.

<sup>164</sup> Ironically, Saudi Arabia differs with Qatar and Turkey about financing the Islamic organization, Muslim Brotherhood, whose Palestinian branch is Hamas, and an enemy of Egypt and Saudi Arabia making Qatar the exception to the Gulf Cooperation Council rule.

<sup>165</sup> *Incirlik Air Base*, GLOBAL SECURITY, <http://www.globalsecurity.org/military/facility/incirlik.htm> (last visited May 1, 2017).

civilizational humanitarian crisis that has extended from the Middle East across the Eastern Mediterranean with millions of Syrians seeking asylum in Europe will end.

Russia's and China's involvement in the Eastern Mediterranean Sea is demonstrated by their international presence by holding joint naval maneuvers affecting relations with Israel, Egypt, Turkey and Saudi Arabia.<sup>166</sup> A powerful new alliance of two major eastern giants is flexing its muscles in the Eastern Mediterranean Sea, which is the very backyard of Western Europe — much as China has done on its own in the Pacific. In the context of these regional developments, the driver related to maritime security and exploitation of hydrocarbon interests for the respective regions has begun to occupy a more prominent place in U.S. security. Closer analysis of regional dynamics is expanding. Israel-Turkey-Iran-Palestine-Cyprus-Lebanon-Egyptian relations embedded in U.S., EU, and Russian relations and Philippines-Vietnam-Malaysia-Brunei-Taiwan-Japan relations, respectively, entrenched in Chinese and U.S. interests have imposed new intellectual challenges.

These developments are impacting the strategic calculus of the U.S., Europe, and the Middle and Far East in light of the current conflict in Ukraine which spawned the worst crisis between Russia and the West since the end of the Cold War. Russia's annexation of Crimea and its military support for separatist forces in the Ukrainian regions of Donetsk and Luhansk have caused a hotspot of tension bordering at times on the brink of war between Russia and the Ukraine.<sup>167</sup> The geopolitical shifts have challenged European and NATO security creating an uneasy situation and altered the U.S. policy of retrenchment to implement a policy of demonstrating military resourcefulness through joint military exercises in Eastern Europe, deployment of F-22 fighters to eastern Europe and multilateral coordination of economic sanctions against Russia, economic diversity to fight countries using energy as a weapon to undermine a nation's security with a strong emphasis on respect for the sovereign integrity of Ukraine and international law. The challenges in the Far East require a deployment of U.S. naval forces to the China Seas. All these

---

<sup>166</sup> Carol J. Williams, *First Russia-China Naval War Games Underway in Mediterranean*, L.A. TIMES (May 11, 2015 7:13 PM), <http://www.latimes.com/world/E.U.urope/la-fg-china-russia-joint-naval-manE.U.vers-20150511-story.html>.

<sup>167</sup> Rob Ferguson, *Ukraine: Imperialism, War and the Left*, 144 INT'L SOCIALISM (Oct. 10, 2014), <http://isj.org.uk/ukraine-imperialism-war-and-the-left/>.



measures demonstrate different types of power to coerce Russia to rethink its policies towards Ukraine and China to reconsider its policies towards its neighbors in the China Seas region. Nothing has changed. Hence, a rethinking of new approaches to security and international relations in the Eastern Mediterranean and China Seas may bear more fruits.

As Russia uses international law to argue that the Assad government in Syria is the only legitimate government, turning all anti-Assad fighters into terrorists from ISIL or al Qaeda-related, U.S.- or Turkish-backed “moderates” are conceding the lead to Russia and its strategic aims. Without a clear goal or fixed positions beyond a ‘political process,’ to resolve the Syrian civil war, there is barely a glimmer of hope to end the humanitarian crisis in Syria and return peace and stability to the Eastern Mediterranean and Middle East regions. The U.S. needs to reverse its apparent restraint and do what historically Great Powers do best – fight for their national interest as they define them.

After the war with Georgia, Russia’s Prime Minister Dmitry Medvedev used the terms “near abroad” and “privileged interests.”<sup>168</sup> He considers bordering countries within a “sphere of interest” making Ukraine’s Crimea and Georgia’s Abkhazia and South Ossetia examples of aggravated concern about Russia’s strategic intentions and long-term policy towards its neighbors.<sup>169</sup> The same terms were used in the secret protocols of the Ribbentrop-Molotov Agreement of August 23, 1939, and supplemented on September 19, 1939, after the joint invasion of Poland in which Joseph Stalin and Adolf Hitler agreed to divide up Poland and other sovereign countries in Eastern Europe.<sup>170</sup> The U.S. must counter the ambitions of territorial expansion by regional and major power by using soft and hard power tactics to differentiate and deter powers to overstep international law.

In the aftermath of the Cold War the U.S. and Turkey under-

---

<sup>168</sup> Dmitri Trenin, *Russia’s Spheres of Interest, not Influence*, 32 (4) WASH. Q. 3, 3, 8 (OCT. 2009); see generally WALTHER HOFER, *DIE ENTFESSELUNG DES ZWEITEN WELTKRIEGES: EINES STUDIE UEBER DER INTERNATIONALEN BEZIEHUNGEN IM SOMMER 1939 MIT DOKUMENTEN* (S. Fischer Verlag, Frankfurt am Main 1964).

<sup>169</sup> Trenin, *supra* note 168, at 3-4, 7, 13.

<sup>170</sup> *World War II: The Molotov-Ribbentrop Pact*, JEWISH VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/the-molotov-ribbentrop-pact-august-1939> (last visited May 1, 2017).

went profound transformations. The U.S. rose as a superpower in a unipolar world whose policies 25 years later are aimed to consolidate its military because it overextended its economic capabilities by excessive military spending without comparison to any of its rivals, endorsing programs to expand NATO and dispatching forces around the world on humanitarian missions.<sup>171</sup> After 9/11, Washington enlarged these operations to include counterterrorism operations, missile defense programs and construction of more military bases around the world.<sup>172</sup>

Turkey also began to demonstrate signs of a foreign policy from deviating from that of the U.S. under Turkish President Ozal in the late 1990s.<sup>173</sup> In 2002, the Justice and Development Party (AKP) was elected to power with Recep Tayyip Erdoğan (prime minister 2003-2014 and president since 2014), Abdullah Gul (prime minister 2002-2003, president 2007-14), and Ahmet Davutoglu (chief advisor to Prime Minister Erdogan 2003-2009, Minister for Foreign Affairs 2009-2014, and prime minister 2014 - 2016) succeeded by Binali Yıldırım.<sup>174</sup>

Davutoglu was the architect of the new Turkish foreign policy concept and author of a book called *Stratejik Derinlik* (Strategic Depth).<sup>175</sup> Davutoglu advocated a foreign policy doctrine underscoring geographical and historical depth. Turkey, as a result of its historical legacy of the Ottoman Empire, possesses great geographical depth putting Turkey in the heartland of many geopolitical areas of influence calling for expanded engagement with all its neighbors.

---

<sup>171</sup> Eirik B. Lundestad & Tor G. Jakobsen, *A Unipolar World: System and Wars in Three Different Military Eras*, POPULAR SOCIAL SCIENCE (Feb. 5, 2013), <http://www.popularsocialscience.com/2013/02/05/a-unipolar-world-systems-and-wars-in-three-different-military-eras/> (last visited May 14, 2017).

<sup>172</sup> James Sterngold, *After 9/11, U.S. Policy Built World Bases*, SFGATE (Mar. 21, 2004 4:00 AM), <http://www.sfgate.com/news/article/After-9-11-U-S-policy-built-on-world-bases-2777808.php>.

<sup>173</sup> F. STEPHEN LARRABEE & IAN O. LESSER, *TURKISH FOREIGN POLICY IN AN AGE OF UNCERTAINTY* 3 (2003), [http://www.rand.org/pubs/monograph\\_reports/MR1612.html](http://www.rand.org/pubs/monograph_reports/MR1612.html).

<sup>174</sup> *Justice and Development Party: Political Party, Turkey*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Justice-and-Development-Party-political-party-Turkey> (last visited May 14, 2017).

<sup>175</sup> Turkish foreign policy under the AKP administration has been associated with the name of Ahmet Davutoğlu. Davutoğlu was the chief foreign policy advisor to Prime Minister Recep Tayyip Erdoğan before he was appointed foreign minister in 2009. Bezen Balamir Coskun, *The Post-Davutoglu Era in Turkish Foreign Policy*, E-INTERNATIONAL REL. (June 3, 2016), <http://www.e-ir.info/2016/06/03/the-post-davutoglu-era-in-turkish-foreign-policy/>. As an academic, he has outlined his foreign policy doctrine in several writings, most important of which is his book "Strategic Depth." *Id.*

Davutoglu calls for a reassessment of the role of the U.S. hegemony in global affairs and foresees Turkey as a regional power. When the Turkish Grand National Assembly in 2003 refused to ratify a bill backed by the AKP government under Turkish Prime Minister Abdullah Gul to allow more than 60,000 U.S. troops to operate from Turkish bases and ports in the event of war with Iraq, a position supported by many other American allies such as France and Germany. Gul argued that Iraq posed no imminent threat to the U.S. according to Chapter 7 of the U.N. Charter, and many considered this a turning point in relations between the U.S. and Turkey.<sup>176</sup> While Turkey and the U.S. continued to maintain a strategic relationship following the invasion of Iraq, anti-American sentiment grew over time, and the seeds of then Turkish President Ozal's Middle Eastern foreign policy shifted to an outspoken independent foreign policy with the beginning of the Arab Awakening in 2011.<sup>177</sup> At approximately the same time, an ambitious project unfolded to construct a warship without technological and financial support from a third country that was backed by Turkey's new ruling AKP. In 2004, Turkey began implementation of its \$3 billion "National Warship" program, known by its Turkish abbreviation MİLGEM (national ship).<sup>178</sup> Seven years later, in September 2011, on the occasion of the commissioning of MİLGEM's first surface combatant, *TCG Heybeliada*, then Prime Minister Recep Tayyip Erdoğan declared Turkey's national interests as "residing in the Suez Canal, the adjacent seas, and from there extending to the Indian Ocean."<sup>179</sup> Turkey's vision of becoming a regional power unveiled itself with the Arab Awakening by adopting multilateral policies often causing friction with the U.S. and its allies, which ultimately failed in a zero-sum foreign policy and isolated Turkey among its neighbors in the Eastern Mediterranean region today.

Under the AKP, millions of Turks had achieved a middle-class lifestyle. Between 2003 and 2013 the AKP overhauled Turkey's social services (education, pensions, health care), opened its domestic market to privatization while controlling a hyperinflationary

---

<sup>176</sup> Tanchum, *supra* note 116.

<sup>177</sup> Tanchum, *supra* note 116.

<sup>178</sup> Tanchum, *supra* note 116.

<sup>179</sup> Tanchum, *supra* note 116.

currency, and improved the country's infrastructure.<sup>180</sup> Foreign direct investments jumped eightfold from \$15 billion in 1923–2002 to \$123 billion in ten years.<sup>181</sup> Turkey's leadership provided the country with economic growth near 10% in the early 2010s, avoiding the global financial meltdown.<sup>182</sup> Turkey joined the ranks of the G20, and by spring 2013 all its debt to the International Monetary Fund (IMF) was paid off.<sup>183</sup>

In 2012, ten years after 9/11, a newly re-elected President Barack Obama initiated a different foreign policy in light of whether it furthers, protects, or risks key components of his domestic agenda. Moreover, the Obama administration was complacent in challenging Russia's military build-up and criticizing Putin's internal repression. He failed to advocate a robust and viable NATO to deter Russia's expansionism as Putin demonstrated in 2008 against Georgia believing that he could circumvent Putin by working with Prime Minister Medvedev.

It was not until Vladimir Putin's announcement that he would run for a third term as president and Russia's subsequent seizure of Crimea, followed by the invasion of eastern Ukraine that the Obama administration reassessed its policy towards Russia by implementing economic sanctions together with European partners and deploying military assets to eastern Europe as part of NATO's deterrence. The objective was to dissuade Russia from a new wave of Russian military exercises targeting the Baltic region and preparations for a phony Russian-minority uprising in one of the Baltic states or a struggle over the rail corridor through Lithuania connecting Kaliningrad and

---

<sup>180</sup> Jules Gray, *Turkey Aiming for Huge New Infrastructure Developments*, WORLD FIN. (Aug. 20, 2013), <http://www.worldfinance.com/infrastructure-investment/government-policy/turkey-aiming-for-huge-new-infrastructure-developments>.

<sup>181</sup> *Turkey's Secrets To Success*, BLOOMBERG MEDIA, [https://www.bloombergmedia.com/assets/pdfs/custom-publishing/150504\\_Turkey.pdf](https://www.bloombergmedia.com/assets/pdfs/custom-publishing/150504_Turkey.pdf) (last visited May. 2, 2017).

<sup>182</sup> *The Turkish Economy 2013*, ISTANBUL SANAYİ ODASI (May 2013), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjckGNgZ\\_SAhVCYyYKHdtpA1MQFggoMAI&url=http%3A%2F%2Fwww.iso.org.tr%2Ffile%2Fturkish\\_economy-41.pdf&usg=AFQjCNGsUfRpvk1MjHw4an6LHD4cVOdwrQ&sig2=5RK-JQUUM91DQlaAzUEYxQ](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjckGNgZ_SAhVCYyYKHdtpA1MQFggoMAI&url=http%3A%2F%2Fwww.iso.org.tr%2Ffile%2Fturkish_economy-41.pdf&usg=AFQjCNGsUfRpvk1MjHw4an6LHD4cVOdwrQ&sig2=5RK-JQUUM91DQlaAzUEYxQ).

<sup>183</sup> Yeni Şafak, *Turkey Among 11 Countries Cleared of IMF Debt*, REPUBLIC TURK. OFFICE PRIME MINISTER DIRECTORATE GEN. PRESS AND INFO., (May 5, 2016), <http://www.byegm.gov.tr/english/agenda/turkey-among-11-countries-cleared-of-imf-debt1/95003>.

the rest of Russia.<sup>184</sup> As the *Economist* observed in December 2012, “Mr. Obama and his team believe that his outstanding task is to secure a domestic legacy. Their fear is that foreign entanglements may threaten that goal.”<sup>185</sup> In itself retrenchment is a viable policy until potential threats in certain regions require greater assets to project power and deter others turning into protagonists as evidenced by the increasing presence of Chinese and Russian naval activities in the Eastern Mediterranean Sea.

With increased successful explorations for oil and hydrocarbons, many countries see an increased need for their military to secure their offshore energy interests and patrol their EEZs by procuring larger and more powerful surface vessels and maritime patrol aircraft to accomplish these goals. Until now the naval fleets in the Eastern Mediterranean are still quite small. Will the geopolitical dynamics of the major global powers in the eastern Mediterranean spiral into larger regional, national defense expenditures and growing mounting tensions among the countries in the region? Will the unimaginable become inevitable as a geopolitical crisis intensifies? Can diplomatic solutions be found through international maritime delimitation agreements as laid down in UNCLOS and the Geneva Convention of 1958?

Since the Arab Spring Awakening in 2011, revolutions ushered in hope for a ‘Renaissance’ and despair through “Counterrevolutions.”<sup>186</sup> Coup d’états in Egypt, the rise of terrorist led civil wars in Syria, Iraq, Yemen and Libya, Iran’s facilitating terrorist activities through its aides in the Gaza Strip and Lebanon together with the Russian and American military intervention depict the chaotic regional instability. Russia’s deployment of naval assets, weaponry, and air force to the region fills a power vacuum of uncertainty caused by former President Obama’s policy of rebalancing the strategic shift

---

<sup>184</sup> Anne Applebaum, *Obama and Europe: Missed Signals, Renewed Commitments*, FOREIGN AFF. (Sept.–Oct. 2015), <https://www.foreignaffairs.com/articles/europe/obama-and-europe>.

<sup>185</sup> *Lexington: The Obama Doctrine*, *supra* note 158.

<sup>186</sup> Craig Chamberlain, *Five Years After the Arab Spring: Despair, but Also Hope*, ILL. NEWS BUREAU (Jan. 21, 2016, 11:15 AM), <https://news.illinois.edu/blog/view/6367/314234>.

of gravity to the Asia-Pacific theatre of operations.<sup>187</sup> In recent weeks and months, the U.S. has been recalibrating its military intervention by collaborating more closely with Turkey and other rebel groups like the YPG in its military operations to fight ISIL in Syria.<sup>188</sup> President Donald Trump on May 9, 2017 announced his decision to approve a plan to arm the YPG causing a tumultuous outburst of criticism by the Republic of Turkey which fears that these arms will eventually fall into the PKK's hands to be used against Turks. How real this fear really is can be better understood in the context of a Washington Post article of January 7, 2017 titled: *U.S. military aid is fuelling big ambitions for Syria's leftist Kurdish militia*. The report says, "the method in which recruits for the PYD are prepped by Kurdish instructors before receiving military training from American troops [is] to learn and embrace the ideology of Abdullah Ocalan, [the PKK] leader imprisoned in Turkey whose group is branded a terrorist organization by both Washington and Ankara."<sup>189</sup> Amazingly, "U.S. officials and military advisers in Syria declined to discuss details of the training being provided to the Arabs in the force,"<sup>190</sup> admonishing any knowledge of ideological lessons they receive before their military training. While the U.S. Government doesn't comment, "the scene in the classroom captures some of the complexity of the U.S.-backed fight against the Islamic State in Syria, where a Kurdish movement that subscribes to an ideology at odds with stated U.S. policy has become America's closest ally against the extremists."<sup>191</sup> When the U.S. gave the Taliban in Afghanistan weapons to fight the Soviet Union in the 1980s, the same group of fighters became the arch enemy of the U.S. a decade later. How a balanced cooperation can be reached in utilizing Turkey's armed forces and fire power while combining the fighting spirit of the YPG to destroy ISIL con-

<sup>187</sup> Thomas R. Fedyszyn, *The Russian Navy 'Rebalances' to the Mediterranean*, 139/12/1,330 PROC. MAG (Dec. 2013), <http://www.usni.org/magazines/proceedings/2013-12/russian-navy-rebalances-mediterranean>.

<sup>188</sup> Tim Arango, Anne Barnard, & Ceylan Yeginsu, *Turkey's Military Plunges Into Syria, Enabling Rebels to Capture ISIS Stronghold*, N.Y. TIMES (Aug. 24, 2016), [https://www.nytimes.com/2016/08/25/world/middleeast/turkey-syria-isis.html?\\_r=0](https://www.nytimes.com/2016/08/25/world/middleeast/turkey-syria-isis.html?_r=0).

<sup>189</sup> Liz Sly, "U.S. military aid is fueling big ambitions for Syria's leftist Kurdish militia," WASHINGTON POST (Jan. 7, 2017) [https://www.washingtonpost.com/world/middle\\_east/us-military-aid-is-fueling-big-ambitions-for-syrias-leftist-kurdish-militia/2017/01/07/6e457866-c79f-11e6-acda-59924caa2450\\_story.html?tid=a\\_inl&utm\\_term=.9d3608bb9b13](https://www.washingtonpost.com/world/middle_east/us-military-aid-is-fueling-big-ambitions-for-syrias-leftist-kurdish-militia/2017/01/07/6e457866-c79f-11e6-acda-59924caa2450_story.html?tid=a_inl&utm_term=.9d3608bb9b13) (last visited May 16, 2017).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

tinues to be a major challenge requiring further re-evaluation. As anti-American sentiment among Turkish civil society grows, reassurances that the military armament supplied to the YPG by the U.S. will be returned or accounted for is questionable.

Before Russia's invasion of the Ukraine and annexation of Crimea on March 18, 2014, Russia played on the financial susceptibility of countries like Greece and Cyprus, a financial hub to launder Russian money and a holiday destination, by offering in 2013 both countries billions in financial help to manage the country's debt, which was causing social and political instability.<sup>192</sup> However, Russian overtures of funding eventually were curtailed not only because of sanctions but also due to the rapid decline in oil prices starting mid-2014 causing the Russian economy to sink into recession at the beginning of 2015.<sup>193</sup> Meanwhile, the economy in Cyprus was recovering so that the 2013 financial bailout program of €10 billion to Cyprus by the Eurogroup - (European Commission (EC), European Central Bank (ECB) and International Monetary Fund (IMF) - was already being repaid in 2015.<sup>194</sup>

Until Russia's military intervention in September 2015, Russian ships used Greek-Cypriot ports as alternatives to its Tartus base in Syria threatened by the conflict between rebels and the government of Bashar al-Assad.<sup>195</sup> According to a Reuters newspaper report of June 6, 2013, the naval task force consisted of approximately 16 ships and 3 Marine helicopters, and at times included Russia's one

---

<sup>192</sup> Ilya Arkhipov & Vladimir Kuznetsov, "Russia Readying Help for Companies With Funds Ensnared in Cyprus," BLOOMBERG (Mar. 27, 2013).

<https://www.bloomberg.com/news/articles/2013-03-27/russia-readying-help-for-companies-with-funds-ensnared-in-cyprus>; Tom Parfitt & Mehreen Khan, "Russia ready to offer Greeks cash in return for assets," TELEGRAPH (Apr. 7, 2015), <http://www.telegraph.co.uk/finance/economics/11519651/Russia-ready-to-offer-Greeks-cash-in-return-for-assets.html>.

<sup>193</sup> Ivana Kottasova, "Russia's economy has been in recession for 18 months," CNN:MONEY (Aug. 11, 2016) <http://money.cnn.com/2016/08/11/news/economy/russia-economy-recession-six-quarters/index.html>.

<sup>194</sup> "Eurogroup signs off on bailout agreement reached by Cyprus and troika," EKATHIMERINI (Mar. 25, 2013), <http://www.ekathimerini.com/149669/article/ekathimerini/news/eurogroup-signs-off-on-bailout-agreement-reached-by-cyprus-and-troika> (last visited May 15, 2017).

<sup>195</sup> Paul J Saunders, *Cyprus Port Deal Gives Russian Navy Alternative to Tartus*, AL MONITOR (Mar. 3, 2015) <http://www.al-monitor.com/pulse/originals/2015/03/russia-sanctions-europe-nato-economy-cyprus-mediterranean.html>.

aircraft carrier, the Admiral Kuznetsov.<sup>196</sup> Russian officials claimed that this presence would contribute to the fight against terrorism and piracy in the region. Russia has used its navy to evacuate Russian citizens from Syria amid the violence there. However, the increase in Russian naval presence together with the first joint naval war games in European waters with China's Peoples' Liberation Army Navy (PLAN) combined exercises in the Mediterranean Sea, comes at a time when the West's relations with Russia are at their tensest since the end of the Cold War. Much as the Royal Navy projected power in the 19<sup>th</sup> century by cruising in the Far East, "the Russian and Chinese fleets' project power in European waters" by sailing in the Mediterranean Sea.<sup>197</sup> The combined naval exercises with the Russians enhance China's ambitions to transform its country into a modern, maritime power capable of challenging the U.S. in the Asian-Pacific theatre and elsewhere in the world. The Chinese issued a white paper on May 27, 2015, signalling that China intends to project its military power beyond its immediate periphery, into the open ocean, in pursuit of 'national rejuvenation' aimed at countering what Chinese leaders see as U.S.-led efforts to check China's rise.<sup>198</sup> The document marks a remarkable transition from China's hands-off approach to global affairs to a reorientation of economic development towards a national tenacity in defending the global scope of Chinese interests even through the use of force.<sup>199</sup>

The U.S. could do considerably more to counteract these actions with sophisticated, multidimensional, multilateral, and ambitious efforts of its own. It could adopt a much more comprehensive and well-coordinated strategy aimed at resolving delimitation boundary issues by initiating a "joint development regime" based on the following criteria.

---

<sup>196</sup> Alexei Anishchuk, *Russia Announces Permanent Mediterranean Naval Presence*, REUTERS (June 6, 2013 4:53 PM), <http://www.reuters.com/article/us-russia-navy-mediterranean-idUSBRE95515I20130606> (last visited May 25, 2015).

<sup>197</sup> Holmes, *supra* note 26; *see also id.*

<sup>198</sup> Lauren Dickey & Stephen E. Liszewski, *Five Takeaways from China's Bold, New Military Strategy*, COUNCIL ON FOREIGN REL. (May 27, 2015), <http://blogs.cfr.org/davidson/2015/05/27/five-takeaways-from-chinas-bold-new-military-strategy>.

<sup>199</sup> *Id.*



## **X. CASE FOR AN EASTERN MEDITERRANEAN DELIMITATION PROGRAM**

As the delimitation should be effected to reach an equitable result,<sup>200</sup> the equitable character of the delimitation needs to be examined in each and every case. Thus, the consideration of relevant circumstances becomes essential. In fact, there are a number of relevant circumstances, which are divided into two groups, geographical and non-geographical factors.<sup>201</sup> Those factors will be examined relating to the Eastern Mediterranean Sea.

Regarding the maritime delimitation in the Eastern Mediterranean some of the factors will affect the location of the maritime boundary line such as regional geography, including economic factors; security and navigational factors; general characteristics; and particular features of the region (i.e., ocean, semi-enclosed sea); configurations of coasts; proportionality; presence of islands; and especially islands 'on the wrong side.'

Previous decisions and practice will point at best to the kinds of factors to be considered and approaches to be adopted, but will not permit the deduction of a precise boundary line that must be established.<sup>202</sup>

The analysis of the conceptual nature and relationships of the continental shelf and EEZ leads to the conclusion that the EEZ boundary will tend to follow the continental shelf boundary. For this reason, this consideration will concentrate on circumstances relevant to continental shelf delimitation. Except for geological and geomorphologic factors the same range of conditions would have potential relevance for both because the width of the Eastern Mediterranean Sea is less than 400 miles.

### **A. Relevant Area**

To achieve an equitable solution, all factors in the relevant ar-

---

<sup>200</sup> UNCLOS, *supra* note 3, at Art. 74, 83.

<sup>201</sup> U.N. DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA: OFFICE OF LEGAL AFFAIRS, HANDBOOK ON THE DELIMITATION OF MARITIME BOUNDARIES, at 25-46, U.N. Sales No. E.01.V.2 (2000) [hereinafter HANDBOOK].

<sup>202</sup> Churchill & Lowe, *supra* note 33, at 182.

ea have to be taken considered. The *sine qua non* of delimitation is the basic and often unarticulated premise that there must be an area over which each party in dispute claims sole jurisdiction.

Both the 1958 Convention<sup>203</sup> and 1982 Law of the Sea Convention<sup>204</sup> imply the area to be delimited. The relevant area is important in a case of adjudication. Both the judgments of the ICJ and the awards of arbitral tribunals contain at the beginning of their findings a general description of the area in which the delimitation operation is to be carried out.<sup>205</sup> The recourse to the relevant area is mainly useful when dealing with the proportionality exercise.

In this context, looking at the Eastern Mediterranean, being a part of a semi-closed sea, the coastal length of the coastal state is important. As part of “relevant circumstances,” it will affect the location of the boundary in the Eastern Mediterranean.

### B. Configuration of the Coasts

In the case of maritime law, the role of the coastal geography is dominant when applying delimitation, which is based on two core principles: “[t]he land dominates the sea, and it dominates it by the intermediary of the coastal front . . . .”<sup>206</sup> This has been underscored in all of the relevant decisions, i.e., in the *Libya-Malta* case; in the *Aegean Sea Continental Shelf* case; and in the *Guinea/Guinea-Bissau* case.<sup>207</sup> On configuration of the coast, it may be possible to point to three factors to be examined:

---

<sup>203</sup> UNCLOS, *supra* note 3, at Art. 6.

<sup>204</sup> UNCLOS, *supra* note 3, at Art. 83.

<sup>205</sup> The Court in its 1985 Libyan Arab Jamahiriya – Malta case stated: “It is appropriate to begin with a general description of the geographical context of the dispute before the Court . . . define in geographical terms the area which is relevant to the delimitation and the area in dispute between the Parties.” HANDBOOK, *supra* note 201, at 26. In the Anglo – French Case, the Court stated: “The area of continental shelf with which the court is concerned . . . forms part of the continental shelf of North-West Europe.” Delimitation of the Continental Shelf Between the United Kingdom of Great Britain and Northern Ireland, and the French Republic, 18 R.I.A.A. 3, ¶ 2, at 18 (Mar. 14, 1978), [http://legal.un.org/riaa/cases/vol\\_XVIII/3-413.pdf](http://legal.un.org/riaa/cases/vol_XVIII/3-413.pdf).E.U.

<sup>206</sup> Prosper Weil, *Geographic Considerations in Maritime Delimitation*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 115.

<sup>207</sup> Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, 1985 I.C.J. 13, ¶ 68, at 50 (June 3, 1985), <http://www.icj-cij.org/docket/files/68/6415.pdf>; The Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau (Guinea and Guinea-Bissau), 19 R.I.A.A. 149, ¶ 124, at 194 (Feb. 14, 1985), [http://legal.un.org/riaa/cases/vol\\_XIX/149-196.pdf](http://legal.un.org/riaa/cases/vol_XIX/149-196.pdf).

- (1) Opposite or adjacent coast;
- (2) Concavity or convexity of coast; and
- (3) The general direction of coastline.

In this context, when the Eastern Mediterranean Sea is considered, the general direction of the coast of the littoral States may be decisive in a delimitation agreement. For example, the agreement between Greek Cypriot and Egypt in the area of the west of the islands ignored Turkey's continental shelf rights and excluded Turkey from the region. Likewise, in the same area, Turkey's coastal configuration has projections toward Libya. Therefore, Turkey may sign a delimitation agreement between Egypt and Libya as well in this region.

### C. Proportionality

Proportionality is one of the most important relevant factors that is often taken into account in the maritime delimitation.<sup>208</sup> Maritime delimitation should consider the ratio of the maritime spaces attributed to each Party and the respective coastal lengths. These ratios mainly involve the determination of the length of relevant coastlines and the water areas to be attributed. However, in many cases, it may be difficult to determine the area to be used. However, in the case of the Eastern Mediterranean, there is no disagreement concerning the relevant area to be delimited.

In the beginning, ICJ accepted the concept of proportionality as a final factor to correct inequities produced by the equidistance method, only in the context of a concave or convex coast.<sup>209</sup> Furthermore, the international courts and tribunal enlarged the function

<sup>208</sup> Jonathan I. Charney, *The Delimitation of Ocean Boundaries* 18 OCEAN DEV. & INT'L L. 497, 515 (1987).

<sup>209</sup> "A final factor to be taken account of is the element of a reasonable degree of proportionality which a delimitation effected according to equitable principles ought to bring about between the extent of the continental shelf appertaining to the States concerned . . . ." North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, 1969 I.C.J. 3, ¶ 98 (Feb. 20, 1969), <http://www.internationalcourts.net/node/131>.

of proportionality geographically<sup>210</sup> and functionally.<sup>211</sup> Thus, proportionality has played a double role in the case law: as a test of equity and a justification for shifting first equidistance lines.<sup>212</sup>

The use of proportionality in State practice remains exceptional. In fact, only a few agreements involve maritime delimitation. In this context, a typical example is the 1974 Agreement between France and Spain in the Bay of Biscay.<sup>213</sup> Another example is the 1992 Protocol Supplementary to the Agreement between the United Kingdom and Ireland of September 7, 1988.<sup>214</sup> The authors also observe that it is hard to assess whether, and to what extent, this factor played a role in any specific delimitation agreement.<sup>215</sup>

---

<sup>210</sup> In the Tunisia/Libya case, the I.C.J. relied on proportionality when delimiting between adjacent coasts, although there was no situation of concavity or convexity. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, 1982 I.C.J. 18, ¶ 131 (Feb. 24), <http://www.icj-cij.org/docket/files/63/6267.pdf>. In some cases, proportionality was considered in delimitation between States with opposite coasts. *See Award of the Arbitral Tribunal in the Second Stage of the Proceedings (Maritime Delimitation) Eritrea/Yemen*, 22 R.I.A.A. 335, ¶ 165-168 (Dec. 17, 1999), [http://legal.un.org/riaa/cases/vol\\_XXII/335-410.pdf](http://legal.un.org/riaa/cases/vol_XXII/335-410.pdf); *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, 1993 I.C.J. 38, ¶ 61-69 (June 14, 1993), <http://www.icj-cij.org/docket/files/78/6743.pdf>; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, 1985 I.C.J. 13, ¶ 68, 74-75 (June 3, 1985), <http://www.icj-cij.org/docket/files/68/6415.pdf>; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, 1984 I.C.J. 246, ¶ 184-85 (Oct. 12, 1984), <http://www.icj-cij.org/docket/files/67/6369.pdf>. Proportionality was also taken into account in some cases where the geographical situations differ from the original situation in the North Sea Continental Shelf judgment. *See Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, 2009 I.C.J. 61, ¶ 210-16 (Feb. 3, 2009), <http://www.icj-cij.org/docket/files/132/14987.pdf>; *Arbitration Between Barbados and the Republic of Trinidad and Tobago, Relating to the Delimitation of the Exclusive Economic Zone and the Continental Shelf Between them*, Decision, 27 R.I.A.A. 147, ¶ 337-38 (Apr. 11, 2006), [http://legal.un.org/riaa/cases/vol\\_XXVII/147-251.pdf](http://legal.un.org/riaa/cases/vol_XXVII/147-251.pdf).

<sup>211</sup> Proportionality was to be applied as a test of the equitableness of the suggested delimitation line. *See Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, 1982 I.C.J. at ¶ 103; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, 1985 I.C.J. at ¶ 58. In other instance, proportionality was used as a factor for shifting provisionally drawn equidistance lines. *See Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, 1984 I.C.J. at ¶ 222.

<sup>212</sup> YOSHIFUMI TANAKA, *THE INTERNATIONAL LAW OF THE SEA* 201 (2012).

<sup>213</sup> *Report Number No. 9-2*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 1723.

<sup>214</sup> *Report Number No. 9-5(2)*, in III INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 2487.

<sup>215</sup> Weil, *Geographic Considerations in Maritime Delimitation*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 129.

#### D. Islands

One category of factors that has been regarded from the very beginning as constituting “relevant circumstances” in the context of equidistance is the presence of islands.<sup>216</sup> The coastal configurations of states are quite commonly complicated, or even distorted, by off-shore features such as islands, rocks, and reefs. These features affect maritime delimitation in different ways.<sup>217</sup> However, it is evident, however, that not all islands<sup>218</sup> can be treated as potential *relevant circumstances*. Only islands politically integrated into a mainland state that is itself involved in the delimitation can be deemed to be relevant circumstances.<sup>219</sup> In the Anglo-French Case, the “nature” of islands was a central issue taken account of by the Court as being relevant considerations in determining the extent of their influence on the boundary.<sup>220</sup>

Different factors may be considered when dealing with islands. In general, there are many examples of State practice in which islands have been given full effect, half effect, or reduced effect, and also no effect in the case of delimitation between islands and mainlands or between islands only. Sometimes other factors, such as the size of the islands and distance, come into play. In some situations, no effect has been granted to an island because its sovereignty was disputed.<sup>221</sup> “In some other cas-

---

<sup>216</sup> Islands have been regarded from the very beginning as constituting “special circumstances” in the context of equidistance. HIRAN W. JAYEWARDENE, *THE REGIME OF ISLANDS IN INTERNATIONAL LAW* 330 (1989).

<sup>217</sup> Derek Bowett, *Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations*, in *II INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 14, at 131.

<sup>218</sup> There are numerous examples of islands, as the sole unit of entitlement, i.e., Malta, Cuba, being given separate entitlement and full weight as against mainland coasts. *Id.* at 133. In this context, Malta is an exception of full effect. In Libya/Malta case, Malta, as an island state, was not given full effect vis-à-vis the opposite, mainland Libyan coast. The factor that dictated the Court’s holding was proportionality. See *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, 1985 I.C.J. at ¶ 58.

<sup>219</sup> EVANS, *supra* note 114, at 135.

<sup>220</sup> *Delimitation of the Continental Shelf Between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, 18 R.I.A.A. at ¶ 171, at 84.

<sup>221</sup> In the 1969 Agreement between Iran and Qatar, the island of Halul was ignored, because of its disputed status, in constructing the mainland-to-mainland equidistant line. *Report Number No. 7-6*, in *II INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 14, at 1511. Another solution, adopted in the 1986 Agreement between Burma (Myanmar) and India, is to acknowledge the sovereignty of India but reduce the effect of the island of Norcondam. *Report Number No. 6-3*, in *II INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 14, at 1329.

es, islands have also been ignored<sup>222</sup> in some instance because of the method of delimitation used.”<sup>223</sup> International courts and tribunals are to decide the effect given to islands within the framework of equitable principles. In analyzing the case law and State practice to specify islands’ effect in drawing a maritime boundary, it would be appropriate to use an analytical framework categorizing islands into several groups. In this respect, their geographical location provides a useful criterion. Based on the geographical location according to the coast, islands may be categorized into four groups: (1) offshore islands; (2) off-lying islands (detached islands); (3) islands in the median zone; and (4) islands ‘on the wrong side.’<sup>224</sup>

When considering the islands in the Eastern Mediterranean in this context, the Greek islands are categorized as ‘on the wrong side’ separating the Aegean Sea and Eastern Mediterranean such as Crete, Rhodes, Karpathos and Strongli as well as an island state like Cyprus.

### *1. Islands ‘On the Wrong Side.’*

In this regard, islands ‘on the wrong side’ are located at a distance from the mainland of the state under whose sovereignty they lie, and proximate to the coast under a different sovereignty (i.e., a Greek island Meis/Kastellorizo near to Kaş a town in the province of Antalya in Turkey). In this category, the most important factor is the position of a feature. It will often determine whether it will affect the choice or merely the application of the method. The position is often the crux of the issue. In such a situation where islands lie ‘on the wrong side’ of a line, a court, in choosing a boundary, may give them their small enclaves<sup>225</sup> of the continental shelf without modifying the provisional boundary line. This idea perhaps comes from Whittemore Boggs in his writing in 1951 and the adherents of the equidistant or median line would also follow Boggs’ suggestion above although they would ignore small islands and islets ly-

---

<sup>222</sup> The 1981 Agreement between Brazil and France uses an azimuth of 41°30’, thus ignoring the island of Le Grand Connetable off the coast of Guiana. *Report Number No. 3-3, in I INTERNATIONAL MARITIME BOUNDARIES*, *supra* note 14, at 771.

<sup>223</sup> HANDBOOK, *supra* note 201, ¶ 160, at 34.

<sup>224</sup> For another geographical categorization, see Bowet, *supra* note 217, at 131. For the typology of islands with respect to their effect in drawing a maritime boundary, see TANAKA, *THE INTERNATIONAL LAW OF THE SEA*, *supra* note 212, at 204-05.

<sup>225</sup> TANAKA, *THE INTERNATIONAL LAW OF THE SEA*, *supra* note 212, at 205. In this situation, the concerned states may opt to ignore the islands altogether for the purposes of constructing an overall division between their mainland coastlines. TANAKA, *THE INTERNATIONAL LAW OF THE SEA*, *supra* note 212, at 204.

ing ‘on the wrong side’ of the median or equidistant line.<sup>226</sup> This was done in the cases dealing with the Channel Islands in the *Anglo-French Continental Shelf* case and with the St. Pierre and Miquelon Islands in the *St. Pierre and Miquelon case*. These two cases are therefore crucial.

In the *Anglo-French case*,<sup>227</sup> the Court of Arbitration<sup>228</sup> considered the effect of the Channel Islands, which are under British sovereignty and lie only 6.6 miles off the French coast. Court of Arbitration adopted a two-fold solution. First, as the primary boundary, the Court drew a median line between the mainlands of the two States. Second, it created a 12-mile enclave to the north and west of the Channel Islands.

In this regard, another crucial case is the *St. Pierre and Miquelon case*.<sup>229</sup> Central to the dispute was a small group of Islands and islets under French sovereignty, far from France, and close to the Canadian coasts of Newfoundland and Nova Scotia. In this case, the Tribunal considered that “[g]eographical features are at the heart of the delimitation process,”<sup>230</sup> and has drawn a mushroom shape as a delimitation line.<sup>231</sup> “Regarding the cap of the mushroom, the [Tribunal] established a 24-mile enclave . . .<sup>232</sup> around St-Pierre and Miquelon” by a radial projec-

---

<sup>226</sup> See generally S. Whittemore Boggs, *Delimitation of Seaward Areas Under National Jurisdiction*, 45 AM. J. INT’L L. 240 (1951).

When a median line passes very near islands in the middle of lake or gulf (or even traverses some islands), if any island can be found to be ‘on the wrong side of the median line boundary’ (that is, if an island of clearly established sovereignty is in the water of another State), the alternatives appear to be: (1) Agree to shift the jurisdiction line from the exact median line, to accommodate the island in question; or (2) Agree that the State which has sovereignty over the island shall exercise jurisdiction over it (presumably including its normal belt of territorial sea) without regard to the median line.

*Id.* at 258-59; see also KRIANGSAK KITTICHAISAREE, *THE LAW OF THE SEA AND MARITIME BOUNDARY DELIMITATION IN SOUTH-EAST ASIA* 94 (1987).

<sup>227</sup> *Delimitation of the Continental Shelf Between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, 18 R.I.A.A. at ¶ 201-02, at 94-95.

<sup>228</sup> See generally Booth, *Beyond Critical Security Studies*, in *CRITICAL SECURITY STUDIES AND WORLD POLITICS*, *supra* note 1.

<sup>229</sup> *Delimitation of Maritime Areas Between Canada and France (St. Pierre and Miquelon)*, 11 R.I.A.A. 265, (June 10, 1992), [http://legal.un.org/riaa/cases/vol\\_XXI/265-341.pdf](http://legal.un.org/riaa/cases/vol_XXI/265-341.pdf).

<sup>230</sup> *Id.* at ¶ 24, at 1160.

<sup>231</sup> TANAKA, *THE INTERNATIONAL LAW OF THE SEA*, *supra* note 212, at 200-01.

<sup>232</sup> YOSHIFUMI TANAKA, *PREDICTABILITY AND FLEXIBILITY IN THE LAW OF MARITIME DELIMITATION* 199 (2006). The Tribunal determined to the west of the islands a limited EEZ of 12 miles from the outer limit of the territorial sea with respect to the westward delimitation. The Court of Arbitration “grant[ed]” an additional 12 miles for the EEZ. De-

tion<sup>233</sup> without providing any continental shelf or EEZ to the east of the islands concerned. In sum, the Tribunal gave in his decision to St-Pierre and Miquelon three kinds of effect: (1) “partial effect” in the west of St-Pierre and Miquelon; (2) “enclaving with no effect” in the east of St-Pierre and Miquelon; and (3) “full-effect” in the northwest and the south of St-Pierre and Miquelon.<sup>234</sup>

State practice, regarding islands located ‘on the wrong side,’ suggests establishing an arc of a determinate distance as the common solution.<sup>235</sup> There is little doubt that the enclave solution purports to eliminate the distorting effect of equidistance lines. The 1968 Agreement<sup>236</sup> between Iran and Saudi Arabia draws a 12-mile arc on the Saudi Arabian side of Farsi Island, which belongs to Iran. In the 1971 Agreement<sup>237</sup> between Italy and Tunisia, drawing a continental shelf boundary, the Italian island of Lampedusa, and a 12-mile arc surrounded by Pantelleria are on the Tunisian side. “The 1993 Agreement between Colombia and Jamaica also provides an intriguing solution in that it creates a 12-mile enclave around Colombia’s keys on Serranilla and Baja Nuevo.”<sup>238</sup> This raises difficult questions regarding the effect of the islands of one State on the coast of another State. For instance, such difficulties were dealt with in the 1978 Agreement<sup>239</sup> between Australia and Papua New Guinea where the Australian islands of Boigu and Saibai lie within 3-4 miles off the coast of Papua New Guinea. On the landward side, facing the coast where the distance is less than 6 miles, a clear equidistance line was established. On the seaward side, however, the territorial seas of all 15 Australian islands lying to the north of the seabed jurisdiction line, in-

---

limitation of Maritime Areas Between Canada and France (St. Pierre and Miquelon), 11 R.I.A.A. at ¶ 69, at 1170.

<sup>233</sup> *Id.* With respect to the stem of the mushroom, the 200-mile corridor was created based on the theory of frontal projection. Delimitation of Maritime Areas Between Canada and France (St. Pierre and Miquelon), 11 R.I.A.A. at ¶ 70, at 1170.

<sup>234</sup> TANAKA, *THE INTERNATIONAL LAW OF THE SEA*, *supra* note 212, at 204-05.

<sup>235</sup> However, there are some agreements which were given full effect to islands. See Bowett, *Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 144-47.

<sup>236</sup> *Report Number No. 7-7*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 1519.

<sup>237</sup> *Report Number No. 8-6*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 1611.

<sup>238</sup> TANAKA, *THE INTERNATIONAL LAW OF THE SEA*, *supra* note 212, at 213; see also *Report Number No. 2-18*, in III INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 2179.

<sup>239</sup> *Report Number No. 5-3*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 929.



cluding Boigu and Saibai, were restricted to a 3-mile territorial sea arc.<sup>240</sup>

In the light of these judgments and agreements, islands in the Eastern Mediterranean will be a relevant factor. In this context, maritime delimitation between Turkey and Greece should be between the mainlands of both countries in the semi-enclosed sea and the Greek island on the wrong side should not be given a continental shelf or an EEZ except for its territorial waters due to its geographical position on the opposite side.

## 2. *Island State*

The 1985 Malta/Libya Case is an example of these types of islands. In the Libya/Malta case, Malta, as an island state, was not given full effect vis-à-vis the opposite, mainland Libyan coast.<sup>241</sup> In this context, Cyprus as an island state is similar to Malta in the Mediterranean. As a matter of fact, the median line, which has been drawn in the agreement demarcating the continental shelf between the island's northern coast and Turkey, was adjusted for Turkey towards Cyprus.

## E. Security and Navigation Factors

The direct influence of these factors on maritime delimitation in the case of continental shelf<sup>242</sup> and EEZ remains somewhat unclear. In fact, there is little evidence that maritime boundaries were established to reflect security and navigation interests.<sup>243</sup> However,

---

<sup>240</sup> *Treaty Between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area Between the two Countries, Including the Area Known as Torres Strait, and Related Matters*, signed 18 December 1978, 1986 ATS 4 (entered in to force 15 February 1985), art 3, <http://www.austlii.edu.au/au/other/dfat/treaties/1985/4.html>.

<sup>241</sup> See generally *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, 1985 I.C.J. 13.

<sup>242</sup> Theoretically, navigation has little relationship to the institution of the continental shelf. As with Article 3 of the 1958 Convention on the Continental Shelf, Article 78(1) of the 1982 Law of the Sea Convention stipulates: "The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters." UNCLOS, *supra* note 3, at Art. 3.

<sup>243</sup> Oxman, *Political, Strategic, and Historical Considerations*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 22.

the right to “freedom of navigation” in EEZ is “subject to the relevant provisions of the 1982 Law of the Sea Convention,”<sup>244</sup> and accordingly, unlike navigation on the high seas, States prefer to avoid situations where a navigational route of high strategic relevance will come under the jurisdiction of another coastal State, i.e., Aegean Sea. There are nevertheless aspects of these regimes that States may perceive as affecting their security interests.<sup>245</sup> Therefore, “States may desire to ensure that specific navigation routes are within their waters, or at least outside the waters of the neighboring state.”<sup>246</sup> Moreover, there is a belief that particular navigable channels should be taken into account in any delimitation.<sup>247</sup>

Some cases before the ICJ and an arbitral tribunal, respectively, interpreted security as proximity to the coasts by two of the States pleading in those cases. The ICJ, in the *Libya/Malta* case, regarded security factors as a relevant circumstance; however, it did not affect the location of the continental shelf boundary because the delimitation line drawn by the Court was “not so near to the coast of either Party as to raise questions of security as a particular consideration in the present case.”<sup>248</sup> The same applied to the *Guinea/Guinea-Bissau*,<sup>249</sup> *Greenland/Jan Mayen*,<sup>250</sup> and *Romania/ Ukraine*<sup>251</sup> cases.

In State practice, some agreements take into account the consideration of security and navigation factors. In the 1988 Agree-

---

<sup>244</sup> Article 58(3) of the Convention prescribes that, “in exercising their rights . . . States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by that State in accordance with the provisions of this Convention and other rules of international law.” UNCLOS, *supra* note 14, at Art. 58(3).

<sup>245</sup> Oxman, *Political, Strategic, and Historical Considerations*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 23.

<sup>246</sup> Oxman, *Political, Strategic, and Historical Considerations*, in I INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 26.

<sup>247</sup> EVANS, *supra* note 114, at 179.

<sup>248</sup> Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, 1985 I.C.J. at ¶ 51.

<sup>249</sup> The Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau (Guinea and Guinea-Bissau), 19 R.I.A.A. at ¶ 124, at 252 (accepting that security factors might be relevant circumstances; however, the Arbitration Court also held that they would not affect the conclusion).

<sup>250</sup> Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), Judgment, 1993 I.C.J. at ¶ 81, at 74-75 (discarding Norway’s argument requiring protection since the boundary to be established was not sufficiently near Jan Mayen’s coast to create a security problem).

<sup>251</sup> Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, 2009 I.C.J. at ¶ 204, at 128 (“The provisional equidistance line determined by the Court fully respects the legitimate security interests of either Party. Therefore, there is no need to adjust the line on the basis of this consideration.”).

ment<sup>252</sup> between Sweden and the former Soviet Union, the island Gotland, which has a Curial role in the national defense system of Sweden, influenced delimitation. In the 1980 Agreement<sup>253</sup> between Norway and Iceland, security considerations influenced Norway's concession for Iceland accepting its full 200-mile EEZ. Furthermore, agreements contain specific clauses to protect maritime interests. For instance, the 1978 Agreement<sup>254</sup> between the Netherlands (Antilles) and Venezuela made detailed provisions on the right of transit passage and the 1990 Agreement<sup>255</sup> between Trinidad, Tobago, and Venezuela specifies the right of transit passage through the Strait concerned.<sup>256</sup>

In sum, security and navigation, according to these decisions and agreements, become relevant in association with the decision-makers power to shift a provisional line to reflect equity, taking into consideration the distance between the two states.<sup>257</sup>

#### **F. Economic Factors: *Joint Maritime Development Regime***

The economic value of any natural resources is a dominant element in the eyes of the parties,<sup>258</sup> and this is reflected in bilateral agreements. Though the Courts recognize the parties' concerns, they do not place much weight upon the location of natural resources

---

<sup>252</sup> *Report Number No. 10-9, in II INTERNATIONAL MARITIME BOUNDARIES, supra* note 14, at 2057.

<sup>253</sup> *Report Number No. 9-4, in II INTERNATIONAL MARITIME BOUNDARIES, supra* note 14, at 1755.

<sup>254</sup> *Report Number No. 2-12, in I INTERNATIONAL MARITIME BOUNDARIES, supra* note 14, at 615.

<sup>255</sup> *Report Number No. 2-13(3), in I INTERNATIONAL MARITIME BOUNDARIES, supra* note 14, at 675.

<sup>256</sup> Oxman, *Political, Strategic, and Historical Considerations, in I INTERNATIONAL MARITIME BOUNDARIES, supra* note 14, at 126.

<sup>257</sup> FARAJ ABDULLAH AHNISH, *THE INTERNATIONAL LAW OF MARITIME BOUNDARIES AND THE PRACTICE OF STATES IN THE MEDITERRANEAN SEA* 100 (1993).

<sup>258</sup> Robert W. Smith, *The Maritime Boundaries of the United States* 71 *GEOGRAPHICAL REV.* 396, 410 (1981) (explaining that R. W. Smith, the one-time chief officer of the U.S. Office of the Geographer, Department of State, in case of the negotiation of boundary delimitation by agreement stated that, "Attention must be given to unique characteristics of each environment, as well as to other factors such as coastal configurations, resource locations and marine uses"); EVANS, *supra* note 114, at 198.

when drawing boundaries.<sup>259</sup> Regarding natural resources related to continental shelf, some judgments have considered natural resources as relevant but did not take them into account when creating maritime boundaries, i.e., the *North Sea Continental Shelf*,<sup>260</sup> *Tunisia/Libya*,<sup>261</sup> and *Libya/Malta*<sup>262</sup> cases.

Also, State practice involving economic factors usually have not directly affected the location of boundaries although economic considerations played a decisive role in some agreements. In the 1969 Agreement<sup>263</sup> between Qatar and the United Arab Emirates (Abu Dhabi), the boundary line was drawn to coincide with the location of the al-Bunduq oilfield. In the 1958 Agreement<sup>264</sup> between Bahrain and Saudi Arabia, the boundary was delimited so as to coincide with the limits of the oil field. The 1988 Agreement<sup>265</sup> between Sweden and the former Soviet Union is a typical example of fishery resources. In the 1978 Agreement<sup>266</sup> between the Netherlands (Antilles) and Venezuela, the boundary was drawn to preserve the jurisdiction of the Netherlands on the west side of Aruba, which had potential hydrocarbon deposits. In the 1989 Agreement<sup>267</sup> between Trinidad and Tobago and Venezuela, the equidistance line was modified in the Columbus Channel and in the southeastern sector for the purpose of preserving the integrity of the existing oil fields.

---

<sup>259</sup> Smith, *The Maritime Boundaries of the United States*, *supra* note 258, at 401.

<sup>260</sup> See generally *North Sea Continental Shelf* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, 1969 I.C.J. 3 (considering the presence of natural resources as a relevant circumstance, but rejected the argument referring to natural resources as the concept of a just and equitable share).

<sup>261</sup> See generally *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, 1982 I.C.J. 18. The court regarded natural resources as relevant circumstances; however, it did not come into play in the process of delimitation. *Id.* at ¶ 107, at 77-78.

<sup>262</sup> See generally *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, 1985 I.C.J. 13. The court indicated that natural resources could be relevant circumstances "so far as known or readily ascertainable." *Id.* at ¶ 50, at 41. When drawing a continental shelf boundary, however, it was based solely on geographical factors, and economic considerations played no role in the judgment since little information had been given relating to natural resources. *Id.* at ¶ 50, at 41.

<sup>263</sup> *Report Number No. 8-7*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 1541.

<sup>264</sup> *Report Number No. 7-3*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 1499.

<sup>265</sup> In this agreement fisheries were the vital issue. *Report Number No. 10-9*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 2957.

<sup>266</sup> *Report Number No. 2-12*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 615.

<sup>267</sup> *Report Number No. 2-13(2)*, in II INTERNATIONAL MARITIME BOUNDARIES, *supra* note 14, at 655.

Besides these agreements above, in cases where States have been unable to establish a maritime boundary for various political, geographical or legal reasons, and State practice has adopted flexible solutions in this field: ‘joint development zones.’

The International Court of Justice observed in *The North Sea Cases* that a regime of joint jurisdiction or exploitation was an option for States where delimitation efforts produced overlapping claims to areas of natural resources.<sup>268</sup> Many more joint development agreements have emerged since the ICJ made that observation.

On the other hand, articles 74 and 83 of the Law of the Sea Convention provide that if countries fail to agree on delimitation, they should develop provisional arrangements of a practical nature. Article 123 of the 1982 Law of the Sea Convention provides in part that States bordering an enclosed or semi-enclosed sea, such as the Mediterranean Sea, should cooperate in the exercise of their rights and the performance of their duties under this Convention.

### ***1. The Characteristics of a Joint Maritime Development Regime***

Joint development regime should exhibit certain characteristics. “First, it should be between States, rather than between a State and a private firm or between private companies.” Second, each State party may convey some of its sovereign rights to a supra-national authority that is responsible for regulating the zone.

The third element of a joint development regime is its concern with exploration for and exploitation of natural resources on the continental shelf, as well as the living resources and other uses of superjacent waters . . . .

Many of the joint maritime regimes have been established as provisional measures, as opposed to final settlements.<sup>269</sup>

---

<sup>268</sup> North Sea Continental Shelf (Fed. Republic of Ger./Den; Fed. Republic of Ger./Neth.), Judgment, 1969 I.C.J. at ¶ 99.

<sup>269</sup> Yücel Acer, *A Proposal for a Joint Maritime Development Regime in the Aegean Sea*, 37 J. MAR. L. & COM. 49, 55 (2006).

## 2. *Designing a Joint Development Area*

The factors relevant to defining a joint development area may limit its extent to only some part of a whole maritime area. A key factor is the location of a known natural resource that straddles a boundary or an area of overlapping claims. In some cases, the possibility of finding a common resource was enough incentive for States to establish a regime.

The precedents make it clear that overlapping claims are another relevant factor [for States to establish a regime] . . . . In the Malaysia-Thailand Agreement, for instance, the area of overlapping claims was the key factor. The Sudan-Saudi Arabia Agreement established a joint regime covering the middle section, which could have been the area of conflicting claims in case of a delimitation attempt.<sup>270</sup>

In some instances where the countries disagreed on the exact location of a boundary previously determined by a third party, they eventually agreed on a joint development regime to overcome remaining disagreements.

There are other factors. In all of these examples, the joint development areas cover only a designated section of the whole maritime area.

## 3. *Maritime Joint Development Regime*

It is up to the parties to decide what level of cooperation is appropriate through a joint regime. Many factors affect their choice, including their expectations and the characteristics of the area in geographical, political, and legal terms.<sup>271</sup>

## XI. THE ARCTIC MODEL

The Arctic Council serves as a model of a Maritime Joint Development Regime. The organization established on September 19, 1996, with the signing of the Ottawa Declaration gives the Arctic

---

<sup>270</sup> MASAHIRO MIYOSHI, THE JOINT DEVELOPMENT OF OFFSHORE OIL AND GAS IN RELATION TO MARITIME BOUNDARY DELIMITATION, *in* 2 MARITIME BRIEFING 30 (Clive Schofield eds., 1999).

<sup>271</sup> Acer, *supra* note 269, at 55-56.

Council as a high-level intergovernmental forum a broad mandate to address issues of relevance to the Arctic Region and its peoples; in particular, matters of sustainable development and environmental protection in the Arctic.<sup>272</sup> The eight member states: Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden, and the United States joined with six organizations as Permanent Participants representing the Arctic Indigenous peoples<sup>273</sup> together produced many groundbreaking studies dealing with a range of environmental issues, safety, and the protection of indigenous cultures. In recent years, the Arctic Council plays a significant role in resolving matters in the Arctic. It adopted legally binding agreements in 2011 about search and rescue collaboration and coordinated response efforts in the Arctic and 2013 marine pollution incidents.<sup>274</sup> China and other non-Arctic Asian countries, intergovernmental and inter-parliamentary organizations, and non-governmental organizations (NGOs) have expressed interest in gaining observer status.<sup>275</sup>

---

<sup>272</sup> *The Arctic Council: A Backgrounder*, ARCTIC COUNCIL (May 23, 2016), <https://www.arctic-council.org/index.php/en/about-us> (last visited May 15, 2017).

<sup>273</sup> *Id.* Six international organizations representing Arctic Indigenous Peoples have permanent participant status: the Arctic Athabaskan Council, Aleut International Association, Gwich'in Council International, Inuit Circumpolar Council, Russian Association of Indigenous Peoples of the North and Saami Council. *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *The Growing Importance of the Arctic Council*, STRATFOR (May 17, 2013), <https://www.stratfor.com/analysis/growing-importance-arctic-council>. Twelve non-Arctic countries have been admitted as observers to the Arctic Council: China (admitted May 2013), France (admitted October 2000), Germany (admitted September 1998), India (admitted May 2013), Italy (admitted May 2013), Japan (admitted May 2013), The Netherlands (admitted September 1998), Poland (admitted September 1998), Singapore (admitted May 2013), South Korea (admitted May 2013), Spain (admitted October 2006), United Kingdom (admitted September 1998). *Observers*, ARCTIC COUNCIL (July 28, 2016), <http://www.arctic-council.org/index.php/en/about-us/arctic-council/observers>. Nine inter-governmental and inter-parliamentary organisations have been given observer status: International Federation of Red Cross & Red Crescent Societies (admitted October 2000), International Union for the Conservation of Nature (admitted October 2000), Nordic Council of Ministers (admitted September 1998), Nordic Environment Finance Corporation (admitted November 2004), North Atlantic Marine Mammal Commission (admitted October 2000), Standing Committee of the Parliamentarians of the Arctic Region (admitted September 1998), United Nations Development Program (UNDP) (admitted October 2002), United Nations Economic Commission for Europe (admitted September 1998), United Nations Environment Program (UNEP) (admitted September 1998). *Id.* Eleven non-governmental organizations are observers to the Arctic Council: Advisory Committee on Protection of the

Due to the climate change and melting of Arctic polar glaciers, trading routes providing Europe with increased access to Asia's markets are becoming now more accessible as well as vast reserves of oil, gas, and minerals under the Arctic Ocean.<sup>276</sup> It means that geopolitical matters have become eminently important in the Arctic region. As the Arctic region becomes ever more economically viable, the Arctic Council is becoming a forum to sort out the implications of the environmental changes. As member states attempt to prove that their continental shelf extends beyond the 200 nm limit from their coastlines, overlapping EEZ boundary claims disputes are rising. Disputes have emerged in the South China Sea or Eastern Mediterranean region over reefs and several rocks located between Canada and Greenland, Chukchi Seas and Bering Seas between the U.S. and Russia, and between Denmark and Canada the Hans Island and the Lincoln Sea. Despite these international maritime claims the Arctic Council has maintained a zone of peace and stability. Also disputed are waterways like the Northwest Passage viewed by Canada as a national waterway while by other countries as an international passageway.<sup>277</sup>

---

Seas (ACOPS) (admitted October 2000), Arctic Cultural Gateway (admitted November 2004), Association of World Reindeer Herders (admitted October 2000), Circumpolar Conservation Union (admitted October 2000), International Arctic Science Committee (IASC) (admitted September 1998), International Arctic Social Sciences Association (admitted October 2002), International Union for Circumpolar Health (admitted September 1998), International Work Group for Indigenous Affairs (admitted October 2002), Northern Forum (admitted September 1998), University of the Arctic (admitted November 2004), World Wide Fund for Nature—Global Arctic Program (WWF) (admitted September 1998). *Id.*

<sup>276</sup> *UK Climate Change Risk Assessment: Government Report*, at 28 (Jan. 2012), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69487/pb13698-climate-risk-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69487/pb13698-climate-risk-assessment.pdf) “According to the International Energy Agency’s 2013 World Energy Outlook, ‘the Arctic likely contains the world’s largest remaining area of conventional, undiscovered oil and natural gas, estimated at 13 percent of recoverable oil and 30 percent of recoverable natural gas resources.’ ” SELECT COMMITTEE ON THE ARCTIC, RESPONDING TO A CHANGING ARCTIC, REPORT, 2014-5, HL 118, ¶ 78, at 32 (UK).

<sup>277</sup> Jill Mahoney, *Canadians Rank Arctic Sovereignty as Top Foreign-Policy Priority*, THE GLOBE AND MAIL, <http://www.theglobeandmail.com/news/politics/canadians-rank-arctic-sovereignty-as-top-foreign-policy-priority/article563348/> (last updated Jan. 25, 2011).





**Figure-7: Arctic Circle**

<sup>278</sup> *The Roar of Ice Cracking*, ECONOMIST, <http://www.economist.com/news/international/21571127-will-asian-countries-consolidate-or-disrupt-arctic-stability-roar-ice-cracking> (last visited Apr. 30, 2017).



**Figure-8: Arctic Circle**

In the 2013 “Vision for the Arctic,” Ministers of the Arctic States wrote: “We are confident that there is no problem that we cannot solve together through our cooperative relationships with existing international law and good will.”<sup>280</sup> This commitment was reaffirmed in (2011), Kiruna (2013), and Iqaluit (2015). Each of the Ministers of Arctic States recognized that constructive cooperation among the

<sup>279</sup> *Arctic Region*, CIA, [https://www.cia.gov/library/publications/the-world-factbook//graphics/ref\\_maps/political/jpg/arctic\\_region.jpg](https://www.cia.gov/library/publications/the-world-factbook//graphics/ref_maps/political/jpg/arctic_region.jpg) (last visited Apr. 30, 2017).

<sup>280</sup> *Vision for the Arctic*, ARCTIC COUNCIL 2 (May 15, 2013), [https://oarchive.arctic-council.org/bitstream/handle/11374/287/MM08\\_Kiruna\\_Vision\\_for\\_the\\_Arctic\\_Final\\_formatted%20%281%29.pdf?sequence=1&isAllowed=y](https://oarchive.arctic-council.org/bitstream/handle/11374/287/MM08_Kiruna_Vision_for_the_Arctic_Final_formatted%20%281%29.pdf?sequence=1&isAllowed=y).

members of the Arctic Council is essential to maintaining peace and stability.

## XII. CONCLUSION

Not all joint development agreements have been successful in cooperatively utilizing the natural resources of a maritime area, but exploitation is not the only benefit of such agreements. They can abate a delimitation dispute and create a friendlier atmosphere facilitating settlement of other maritime disputes and critical human security issues.

These benefits will no doubt be realized if a joint development regime is established in the Eastern Mediterranean and China Seas. Attention, therefore, ought to be turned to identifying an appropriate regime. The analyses of State practice above demonstrate that there are various options, some of which may be well suited to the area and acceptable to the parties.

Cooperation among the different parties needs to be comprehensive. The parties should jointly establish an organizational structure for the exploration and exploitation of the natural resources in the seabed, sharing the costs and revenues in proportion to various factors. In order to reduce tensions and improve the environment for negotiations, Washington should work behind the scenes to promote and organize an effort for a joint exploration of seabed resources without prejudice to sovereignty, as has already been done by Malaysia and Thailand (1979), Malaysia and Vietnam (1992), and Malaysia and Brunei (2009).<sup>281</sup> With the U.S. adopting a much more proactive, comprehensive, and well-coordinated global energy security strategy aimed at resolving international maritime boundary disputes and improving human security, allies together with other powers could achieve peace, stability, and prosperity in the Eastern Mediterranean and China Sea regions. The U.S. could complement the ambitions of regional pivotal or major powers by supporting international

---

<sup>281</sup> *America's Security Role in the South China Sea: Hearing Before the Subcomm. on Asia and the Pacific of the Comm. on Foreign Affairs*, 114th Cong. (July 23, 2015) (statement of Michael D. Swaine, Ph.D., Senior Associate, Asia Program, Carnegie Endowment for International Peace), <http://docs.house.gov/meetings/FA/FA05/20150723/103787/HHRG-114-FA05-Wstate-SwaineM-20150723.pdf> (last visited Oct. 10, 2015).

maritime law arbitration as a gateway to address broader human security issues such as the migration of Syrian refugees seeking asylum in central Europe. Finally, the U.S. could become a party to UNCLOS clearly servicing U.S. national security, economic, and environmental interests while advocating a “Joint Maritime Development Regime,” modelled after the Arctic Council where the organization would arbitrate maritime boundary disputes by sorting out the implications of the EEZ claims of international law.

As an intergovernmental organization, the Arctic Council bases its work on consensus building among the member states when possible and not the International Court of Justice, which the U.S. tends not to favor for its disputes let alone for other disputes and a reason for not joining UNCLOS. Moreover, many of the member states of the Arctic Circle as in the Eastern Mediterranean and China Sea regions are signatories to the United Nations Law of the Sea Convention prone to using international adjudication by calling on the International Court of Justice (ICJ) or Permanent Court of Arbitration (PCS) to settle disputes. America’s differentiation from countries like Russia and others can best be demonstrated by the insistence on a government by laws rather than by personal ambitions. With the U.S. government supporting such a strategy, the security providers—specifically the states in the region – would invest the time and resources to resolve international maritime disputes as a prospect for cooperation in the field of energy and a panacea for improving human security. U.S. involvement would assist countries in the region in tackling Islamist terrorist threats from the eastern shores among them ISIL, reduce the escalation of tensions in the area from becoming an international crisis, and help develop a common strategic, economic and political identity. This positive impact would provide part of a solution to the Eastern Mediterranean challenges to facilitate the region’s becoming one of the key areas for global security in the context of a diversified energy hub for the Eastern Mediterranean region and Europe’s energy security. Many of the problems affecting the world cannot be solved at a national level, from global warming to the fight against terrorism. The judicial integration of the U.S. in the international legal community is an essential condition of soft power tactics for restoring U.S. influence in the world today. Under this framework, the U.S. would promote liberal internationalism to support multilateral cooperation through international organizations such as the Arctic Council, which it recently chaired, by en-

couraging binding agreements and collective compliance with international law. It means adopting a policy pursued by Franklin Delano Roosevelt<sup>282</sup> to embrace great power cooperation within international institutions and international law relinquishing the concept of American exceptionalism but emphasizing the model of America as a nation that treats regional hegemonies and all countries as partners, if they uphold the principles of the United Nations Charter and other international accords. However, the U.S. would not relinquish its dominant role as a power of last resort when all threads break within the liberal world order, and countries usurp territories belonging to other nations such as Russia's annexation of the Crimea and parts of Georgia or Iran's pursuit of nuclear weapons. In such cases, U.S. strength should be implemented through other soft power policies such as multilateral sanctions and cyberattacks as a template to stimulate cooperation concerning China and Russia with the goal of achieving consensus about the regional order in their respective theaters. The U.S. should seek cooperative engagement with both regional powers but respond to provocations with deterrent actions including hard power consistent with its security commitments. Deployment of naval assets and American forces in the Eastern Mediterranean and the South China Sea are measures of deterrence to raise the costs of future perceived aggression by other countries. Unlike Russian policies of aggression violating international law, China has demonstrated its "bold" stand to defend its national interests through serious incidents in the region including collisions between Vietnamese and Chinese vessels and Chinese and Filipino fishing ships in the areas claimed by both countries. China has not shown aggression through military force because China still believes in bilateral negotiations as to their claims to sovereignty over islands in the South China Sea but refusing to recognize the judgment in the case of *The South China Sea Arbitration* (*The Republic of the Philippines vs. The People's Republic of China*).<sup>283</sup> The tactics of soft and hard power do not facilitate

---

<sup>282</sup> *Franklin D. Roosevelt: Foreign Affairs*, UVA: MILLER CTR., <http://millercenter.org/president/biography/fdroosevelt-foreign-affairs> (last visited Feb. 25, 2017).

<sup>283</sup> Permanent Court of Arbitration Press Release *The South China Sea Arbitration: The Republic of the Philippines vs. The People's Republic of China* (July 12, 2016), <http://www.pcacases.com/web/view/7>.

future cooperation as much as they maintain the geopolitical status quo with China using coercion instead of multilateral consensus to pursue its national interests. With the U.S. government supporting a Joint Maritime Development Regime strategy, the security providers—specifically the states in the region – would invest the attention and resources generated from resolving international maritime disputes as a panacea for improving human security and reducing the escalation of tensions in both regions from becoming an international crisis.

Consensus should be the driver of negotiations, and self-centered politics should be subsidiary as much as possible. A strong body composed of politicians and experts from all parties should be in charge to perform a broad range of functions and administer the joint regime effectively. TRNC made two similar proposals for off-shore cooperation through the UN Secretary General in September 2011 and September 2012, respectively, which Turkey endorses.<sup>284</sup> The latter proposal, titled the “plan regarding the activities related to hydrocarbon resources off the coastlines of the island of Cyprus (both North and South),” was to be agreed by both sides “without prejudice to their legal and political positions on the Cyprus problem.”<sup>285</sup> The plan also contains a suggestion that the hydrocarbon resources, extracted from both sides, be “transported through a pipeline via Turkey.”<sup>286</sup> The RoC rejected both proposals.

Could American diplomacy towards the Eastern Mediterranean region be based on more than economic opportunity as suggested by Turkey such as transporting hydrocarbons through a pipeline? Can American foreign policy embrace not only networks to resolve maritime disputes in the region but also human security issues imbued with the historical, nationalist, and cultural identities in the region to end religious intolerance, fight climate change and other ecological threats, stabilize mass migration, eradicate human trafficking, and enhance pluralistic forms of government? Does American foreign policy take into account Turkey’s threat perceptions and interests? Since congruence of interests is key to a successful alliance, the United States must do more to redefine its role by allowing regional security dynamics to end regional disputes. Even after its scheduled

---

<sup>284</sup> Gürel & Le Cornu, *supra* note 24, at 15.

<sup>285</sup> Gürel & Le Cornu, *supra* note 24, at 15.

<sup>286</sup> Gürel & Le Cornu, *supra* note 24, at 15.

withdrawal from the Middle East, the U.S. remains an important factor in the regional balance of power. The fundamental question remains: What strategy will the U.S. pursue?

In recent years under former President Obama, a pivot to Asia had begun as well as a recalibration in various regions to align American interests with the rise of China and Russia in East Asia, Eurasia, and other parts of the world while currently engaging militarily in strategic areas of Europe and the Middle East. The U.S. cannot be the global policeman to manage security in all parts of the world. It needs allies. The recent joint effort of the U.S. and Turkey to fight ISIS reflects just such an understanding, for it is based on both an appreciation of Turkey's stabilizing role in the region and a willingness to allow Turkey to assume regional responsibilities. Although this cooperation should not dictate how Ankara defines its priorities, it should not be at the price of a country targeting other ethnic groups along with ISIS or abusing the principles of democracy and individual liberties. Furthermore, the U.S. should play a significant role in brokering daily issues related to state and human rights security issues by creating a "Joint Maritime Development Regime," modeled after the Arctic Council making the meaning and the advantages of an ally dependent on the congruence of interests. In the past, Turkey was an active trans-Atlantic partner in helping contain the threat of ethnic nationalism in the Balkans and contributing to the overall stability of Southeastern Europe. Turkey was eager to serve as a "pivotal" power in assisting the West to gain meaningful access to the Black Sea, Caucasus and Central Asia based on its centuries' long history at the heart of the Ottoman Empire. The expansion of the Western security umbrella to these regions seemed the most efficient strategy to stabilize them and ensure their peaceful transitions. It also provided Turkey an opportunity to expand its influence into post-Soviet geography and implement its foreign policy of *Strategic Depth*.<sup>287</sup> However, the U.S. has not pursued a coordinated effort with its trans-Atlantic allies to improve the human security in these regions due to lack of America's political will and the thinking that at

---

<sup>287</sup> Joshua W. Walker, *Understanding Turkey's Foreign Policy Through Strategic Depth*, TRANSATLANTIC ACAD. (2010), <http://www.transatlanticacademy.org/publications/understanding-strategic-depth-joshua-walker>.

least it has undertaken attempts to understand and consider the interests of potential allies' interests. President Erdogan might be more receptive if he could expand Turkey's role as a "pivotal power" by endorsing a "Joint Maritime Development Regime" and sort out the EEZ claims of other regional states by international law. With the U.S. government partnering with countries in the region in a "Joint Maritime Development Regime" strategy, the changing dynamics of Turkey's relations with the West economically, politically and strategically would trigger a new foreign-policy activism throughout the Silk Road from China to the Balkans. Turkey's role would elevate into an increasingly active, capable, and valuable partner and ally in resolving the immediate global energy security issues in the Eastern Mediterranean and, in return strengthening relations with the West as a bulwark against al-Qaeda and ISIL terrorism, Russian expansionism, and anti-Islamism. Once the civil war in Syria ends, a "Joint Maritime Regime" would facilitate peace, prosperity and human security by opening the door to use the region's natural resources to rebuild and modernize member states infrastructures, judiciary, economy, social services, and human security. The Eastern Mediterranean region would become a bridge between Europe and the Middle East bolstering economic resources as a force for stability and consolidate power to protect humanity in terms of human security against disruptive forces. The region could achieve these goals by adopting maritime delimitation approaches to establish the boundaries and jurisdictions of all states in the area as a vital step in developing regional cooperation and security with adversarial powers and allies under the umbrella of international law.