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“Delimitation of the Maritime Zones in the Eastern Mediterranean Sea: The Case of Turkey”

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## 1. Introduction

At present, there are 195 countries in the world, recognised by the United Nations<sup>1</sup> and about one-fifth of all of the States are landlocked.<sup>2</sup> Accordingly, it can be said that the majority has a right to comment on the maritime-based issues such as maritime delimitation, protection of the maritime environment, maintenance of international peace and security at sea. Among these issues, the delimitation of maritime zones has to be considered as a priority in order to avoid possible disputes and uncertainties since it is directly related to the right to utilize sovereignty, sovereign rights or jurisdiction and to exploit resources.<sup>3</sup>

In principle, whilst defining the jurisdictional range of the coastal State over marine spaces, the distance of the State from the coast is accepted as the primary determinant of the maritime boundary.<sup>4</sup> Before 1945, maritime zones were all about the territorial sea that was around three miles in breadth, and apart from exceptions the need for boundaries was limited.<sup>5</sup> After 1945, the previous approach was changed with the emergence of the scarcity of land-based natural resources and the realization of the hidden potential of the high seas as well.<sup>6</sup> Thus, in order to increase the States' radius of action, the new maritime zones were established, such as continental shelf and exclusive economic zone. As a result, these innovations provided a fertile environment for conducting the new trend, however, in many cases, due to geographic configurations and proximity, expansion of the zones posed delimitation problem between the States that appeared in the form of overlapping or converging of the maritime spaces.<sup>7</sup> In other words, with the exception of appropriate conjuncture, if each State requests equal maritime zones irrespective of the conditions in question, a conflict of interest will inevitably arise.

There is no doubt that maritime delimitation has a vexatious character that includes amputation of the area at stake, and parties have to endure the consequences of the process. That is to say; each party have to face the sacrifices to make in order to reach an equilibrium point, but the question is whether there is a perfect prescription to implement by excluding current political or economic powers of the parties and focusing the real facts of the dispute or not?<sup>8</sup> In this regard, some international conferences, namely, the

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<sup>1</sup> 'Member States' (*Un.org*, 2019) <<https://www.un.org/en/member-states/>> accessed 15 June 2019.

<sup>2</sup> 'Landlocked Countries' (*Worldpopulationreview.com*, 2019) <<http://worldpopulationreview.com/countries/landlocked-countries/>> accessed 15 June 2019.

<sup>3</sup> R. R. Churchill and A. V. Love, *The Law of the Sea* (3rd edn, Manchester University Press 1999), 181.

<sup>4</sup> Yoshifumi Tanaka, *The International Law of the Sea* (Cambridge University Press 2012), 186.

<sup>5</sup> *Ibid* (n 3) 181.

<sup>6</sup> Nugzar Dundua, 'Delimitation of Maritime Boundaries between Adjacent States' (*Un.org*, 2006), 1. <[https://www.un.org/depts/los/nippon/uniff\\_programme\\_home/fellows\\_pages/fellows\\_papers/dundua\\_0607\\_georgia.pdf](https://www.un.org/depts/los/nippon/uniff_programme_home/fellows_pages/fellows_papers/dundua_0607_georgia.pdf)> accessed 17 June 2019.

<sup>7</sup> Igor V Karaman, *Dispute Resolution in the Law of the Sea* (Martinus Nijhoff Publishers 2012), 169.

<sup>8</sup> Prosper Weil, *The Law Of Maritime Delimitation: Reflections* (Grotius Publications Limited 1989), 5.

1958 Geneva Convention and 1982 Law of the Sea Convention were organised in order to codify, clarify and consolidate pre-existing rules of international customary law as well as meeting the needs of States' interests by considering the technological progress.<sup>9</sup> Besides, the international courts and arbitral tribunals have made significant contributions to the process of delimitation by including some fundamental principles into their decisions that they have established over time. Notwithstanding, maritime delimitation still has a paradoxical nature, and there are numbers of factors to be dealt with such as a source of authority, principal methods, dispute settlement process and technical challenges in order to form an equation that might be able to reach a solution.<sup>10</sup>

Despite the existence of current delimitation methodology and the successful delimitation implementations in the North, the Baltic, the Black and the Caribbean seas, it is a fact that no single ocean or sea that have been wholly delimited so far.<sup>11</sup> Moreover, as in the Eastern Mediterranean Sea, a unique and complex geographical and political structure can be seen in some regions that make the situation even worse. Furthermore, some recent studies have indicated that the Eastern Mediterranean has a considerable amount of undiscovered natural gas potential that might be able to ensure European energy security.<sup>12</sup> Therefore, the area at stake entails strategic and critical concerns not only for the Eastern Mediterranean region but also for Europe.

The States in the Eastern Mediterranean coast have their own agendas and different assertions in terms of maritime delimitation to achieve their goals. Among those, Greek Cypriot Administration of Southern Cyprus (GCASC), Greece, Turkish Republic of Northern Cyprus (TRNC) and Turkey have a problematic relationship which creates a major impediment to be eliminated for a successful delimitation. Despite the unsettled structure of the region, GCASC has already started to make bilateral agreements as well as issuing gas exploration licences to the multinational companies without considering the rights of TRNC and Turkey. On the contrary, Turkey has adopted an approach that on the basis of rejecting all bilateral delimitation agreements concluded by other parties as well as conducting its own gas exploration with owned ships by taking the principle of reciprocity as a reference. In this regard, Turkey has seemed like the one who has an irreconcilable character, and its claims as well as actions are always assessed as irrational and unlawful by world public opinion.

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<sup>9</sup> E. D Brown, *The International Law Of The Sea Volume I* (Dartmouth Publishing Company Limited 1994), 9.

<sup>10</sup> Lewis M. Alexander, 'The Delimitation of Maritime Boundaries' (1986) 5 *Political Geography Quarterly*, 1-2.

<sup>11</sup> *Ibid* (n 7) 169.

<sup>12</sup> Theodoros Tsakiris, 'The Importance of East Mediterranean Gas for EU Energy Security: The Role of Cyprus, Israel and Egypt' [2018] 30 *Cyprus Review* 25, 25.

In this study, the structure of the content will be divided into two parts. In Part I, primarily the nature and extents of maritime zones, will be expounded with the help of subheadings in order to establish the base of analysing the case of Turkey. Secondly, general rules of maritime delimitation and its development will be investigated chronologically by referencing the essential conventions. Lastly, the principles and methods of maritime delimitation will be examined in depth by referencing the significant cases related to the case of Turkey.

In Part II, firstly the background of the Eastern Mediterranean will be explained in light of numerical facts to broad general knowledge of the region in question. Secondly, the policies of the riparian States will be scrutinised to reveal the clear picture of the Eastern Mediterranean by mentioning the actions of Turkey. Then, the approach of Turkey towards maritime zones under international law will be identified, and after that, the claims of Turkey in the region and counter criticisms will be discussed. Afterwards, the degree of applicability of Turkish claims and the strength of its grounds will be assessed in light of counter criticisms, and the question of whether there is room for Turkey's claims in the maritime world will be tried to be answered. Finally, the results of the argument will be summarised in the conclusion section.

## **PART I**

### **2. The Nature and Extent of Maritime Zones**

#### **2.1 Internal Waters**

Internal, or interior, or national,<sup>13</sup> waters are defined both under Article 5(1) of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958 (TSC) and Article 8(1) of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) similarly. Accordingly, the internal waters of a State can be defined as those waters located on the landward side of the baseline of the territorial sea. Also, unlike Article 5 of TSC, there is an exception regarding the archipelagic States placed in Article 8 of UNCLOS.

The seaward limit of internal waters is determined by a baseline from which can be used to measure the Territorial Sea,<sup>14</sup> and the type of the baseline can be changed due to geographical features of the coastline. There are two types of standard baselines, namely, normal and straight baselines. The low-water line parameter has been prescribed as a general rule both conventional<sup>15</sup> and customary law<sup>16</sup> and is known

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<sup>13</sup> Ibid (n 3) 60.

<sup>14</sup> Ibid (n 4) 77.

<sup>15</sup> Article 5 of UNCLOS; Article 3 of TSC.

<sup>16</sup> *Fisheries Case (United Kingdom v Norway)* ICJ Reports [1951] 116,128.

as a normal baseline.<sup>17</sup> In particular cases, the method of the straight baseline might be used by considering specified land points due to where the coastline is deeply indented and cut into or a fringe of islands in the vicinity of the coast as datum points in order to form a baseline.<sup>18</sup> As a result, baselines are the main determinants of setting the limits of internal waters. Besides, coastal States have a right to enjoy full sovereignty over its internal waters, and even the right of the innocent passage does not have any validity<sup>19</sup> except for where the internal waters have been determined in recent times by implementing a straight baseline method.<sup>20</sup>

## 2.2 Territorial Sea

The territorial sea is known to be one of the oldest and pioneer concepts of the law of the sea. The principal aim of the concept is to ensure the sovereignty of coastal State over a sea belt adjacent to its coast.<sup>21</sup> In the beginning, the limits of the territorial sea were attributed to the cannon shot rule which enabled protection of the ports as well as the ships located within the range of cannons.<sup>22</sup> In this sense, the range was determined at around three nautical miles (nm) due to the technology of 18th-century cannons.<sup>23</sup> Therefore, the breadth of the territorial sea was accepted as three nm at that time.

The sovereignty of a coastal State over its territorial waters is defined in Article 2 of TSC that “extends to the air space over the territorial sea as well as to its bed and subsoil.” However, TSC does not provide sufficient explanation regarding the question of the breadth of the territorial sea.<sup>24</sup> Accordingly, Article 6 points out that “the outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea”. In addition, the right of innocent passage for ships of all States through the territorial sea is guaranteed under Article 14(1) of TSC.

Article 2 of UNCLOS also adopts the same approach for the subject of sovereignty as TSC does. However, Article 3 of UNCLOS offers considerable clarity regarding the breadth of the territorial sea that “Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nm, measured from baselines determined in accordance with this Convention”. Accordingly, there is no need to

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<sup>17</sup> Kriangsak Kittichaisaree, *The Law Of The Sea And Maritime Boundary Delimitation In South-East Asia* (Oxford University Press 1987), 13.

<sup>18</sup> Article 7 of UNCLOS; Article 4 of TSC.

<sup>19</sup> *Ibid* (n 4) 78.

<sup>20</sup> Article 8 of UNCLOS; Article 5(2) of TSC.

<sup>21</sup> Krateros M. Ioannou, ‘The Greek Territorial Sea’, in Theodore C Kariotis (ed), *Greece and the Law of the Sea* (Kluwer Law International 1997), 119.

<sup>22</sup> D. P O’Connell and I. A Shearer, *the International Law of the Sea Volume I* (Clarendon Press 1982), 125-26.

<sup>23</sup> *Ibid* (n 21).

<sup>24</sup> *Ibid* (n 9) 44.

proclaim the breadth of the territorial sea as it can be considered as a mere consequence of the sovereignty on land (*ipso iure*).<sup>25</sup> Lastly, the right of innocent passage for ships of all States is also part of the UNCLOS placed in Article 17.

### **2.3 Contiguous Zone**

The contiguous zone can be defined as a maritime zone contiguous to and located on the seaward side of the territorial sea where coastal States have certain specific powers to enforce administrative interests.<sup>26</sup> The roots of the concept of the contiguous zone date back to the Hovering Acts legitimised by Great Britain in the 18th century<sup>27</sup> and this concept was aimed of protecting coastal States' revenue against smuggling as well as their public health against disease.<sup>28</sup>

The concept of the contiguous zone in international law has for the first time been prescribed in Article 24(1) of TSC that "In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; (b) Punish infringement of the above regulations committed within its territory or territorial sea." Besides, the limit of the contiguous zone is determined in Article 24(2) of TSC that "may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured". The definition of the concept is also adopted in Article 33 of UNCLOS with certain amendments regarding breadth, and accordingly, the limit of the contiguous zone is extended to 24 nm by Article 33(2) of UNCLOS. Lastly, under both TSC and UNCLOS, the proclamation of the contiguous zone must be expressed by the coastal States; otherwise, the zone in question cannot be ascribed by itself.<sup>29</sup>

### **2.4 Continental Shelf**

The introduction of technological innovations and rising anticipation for the exploitation of the seabed resources are the main motivations behind the concept of the continental shelf.<sup>30</sup> Pursuant thereto, firstly the 33th President Truman of the United States (US) declared a proclamation that "Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but

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<sup>25</sup> Tullio Scovazzi, 'Maritime Boundaries in the Eastern Mediterranean Sea' (*The GMF of the US*, 2012)1, 2. <<http://www.gmfus.org/publications/maritime-boundaries-eastern-mediterranean-sea>> accessed 21 June 2019.

<sup>26</sup> Christos L Rozakis and Constantine A Stephanou, *The New Law Of The Sea "Selected And Edited Papers Of The Athens Colloquium On The Law Of The Sea"* (North-Holland 1983), 69.

<sup>27</sup> *Ibid* (n 4) 121.

<sup>28</sup> D. P O'Connell and I. A Shearer, *The International Law Of The Sea Volume II* (Clarendon Press 1984), 1034.

<sup>29</sup> *Ibid* (n 3) 135–36.

<sup>30</sup> *Ibid* (n 17) 57.

contiguous to the coasts of the United States, subject to jurisdiction and control".<sup>31</sup>Then, the concept became accepted as a customary law after having made analogous communiques by the majority of States.<sup>32</sup>

As a geological term, the continental shelf can be defined as the natural extension of coastal States under the sea, and the legal definition of the term is also derived from the geological identifications regarding the issue.<sup>33</sup> The term continental shelf is prescribed under the Article 1 of Geneva Convention on the Continental Shelf, 1958 ("CSC") that "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas". According to this definition, there are two criteria to set the seaward limits of the continental shelf: the depth of 200 metres and the exploitability test. However, the exploitability test creates an unequal and uncertain environment with respect to different technological capacities of States as the outer limits of the continental shelf are depended upon the technological abilities of they have.<sup>34</sup>

In order to form a precise definition in particular the limits of the seaward, unlike Article 1 of CSC, an alternative definition is provided by Article 76(1) of the UNCLOS that "The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance". That is to say; geological (the outer edge of the continental margin) and distance-based (200 nm from the baselines) features are established as alternative factors.

Lastly, Article 2 of CSC and Article 77 of UNCLOS point out that unlike the contiguous zone, the continental shelf is automatically ascribed to the coastal State<sup>35</sup> without depending on the occupation, effective or notional, or any express proclamation. They are also identical in terms of expressing the aim of performing sovereign rights within the States' continental shelf, which is the "exploration and exploitation of the natural resources".

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<sup>31</sup> 'Proclamation 2667 "Policy Of The United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf"' (*Trumanlibrary.org*, 2017)

<<https://www.trumanlibrary.org/proclamations/index.php?pid=252&st=&st1=>> accessed 23 June 2019.

<sup>32</sup> *Ibid* (n 6) 2.

<sup>33</sup> Hüseyin Pazarcı, *Uluslararası Hukuk Dersleri II. Kitap* (Ankara Üniversitesi SBF Yayınları 1989), 318.

<sup>34</sup> *Ibid* (n 4) 133.

<sup>35</sup> *Ibid* (n 3) 135.

## 2.5 Exclusive Economic Zone (“EEZ”)

The concept of EEZ, generally known as the 200-mile limit and is also referred to as "patrimonial sea" throughout its generic phase, symbolizes the victory of individualism over collectivism in international relations. The concept aims to ensure the rights of coastal States over the resources of the seabed, the subsoil and as well as the sea, regardless of any conditions such as economic, geographical or ecological.<sup>36</sup>

In 1945, President Truman declared another proclamation that allows the US "to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale".<sup>37</sup> Afterwards, the proclamation of fisheries has never put into operation; however, it is regarded as a milestone in the law of the sea by urging other developing coastal States on propounding extensive maritime claims.<sup>38</sup> At that time, developing coastal States did not have advanced fleets to benefit from the doctrine of freedom of fishing in the high seas, and in their point of view, the situation was seen as unfair. Because there was no chance to compete with the fleets of developed States such as Japan, the Soviet Union or the US have. Therefore, in order to tackle this injustice, in 1947 first Chile and after a while Peru issued proclamation regarding national sovereignty over the continental shelf and the seas adjacent to its coasts up to a limit of 200 nm,<sup>39</sup> and this was regarded as the first reflection of the concept of EEZ in State practice.<sup>40</sup> Later, the same approach was adopted by the many Latin American States such as Ecuador, Panama and Argentina.<sup>41</sup>

Despite the customary background of EEZ, the concept has been for the first time integrated in international literature with UNCLOS.<sup>42</sup> The context of the concept is regulated between Article 55 and 85 of UNCLOS, and the concept of EEZ is explained as "EEZ is an area beyond and adjacent to the territorial sea,<sup>43</sup> up to a limit 200 nm from the baselines where the breadth of territorial waters are started to be measured.<sup>44</sup> According to Article 56 of UNCLOS, coastal States have certain specific powers over the EEZ, and these are namely that administrative, economic and jurisdictional. The said Article regulates the following points:

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<sup>36</sup> Ibid (n 22) 552.

<sup>37</sup> 'Proclamation 2668"Policy of the United States with respect to Coastal Fisheries in Certain Areas of the High Seas"( *Trumanlibrary.org*, 2017) <<https://www.trumanlibrary.org/proclamations/index.php?pid=253&st=&st1=>> accessed 24 June 2019.

<sup>38</sup> David Joseph Attard, *The Exclusive Economic Zone In International Law* (Clarendon Press 1987), 2.

<sup>39</sup> Tommy T. B. Koh, 'The Exclusive Economic Zone' [1988] 30 MALAYA L. REV. 1, 4.

<sup>40</sup> Ibid (n 3) 124.

<sup>41</sup> Ibid (n 22) 558.

<sup>42</sup> Ibid (n 38) 43.

<sup>43</sup> Article 55 of UNCLOS.

<sup>44</sup> Article 57 of UNCLOS.

- Exploration, exploitation, conservation and supervision of the living and non-living natural resources in the seabed as well as the subsoil areas,
- Economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds,
- The establishment and use of artificial islands, installations and structures,
- Carry out the marine scientific research,
- The protection and preservation of the marine environment.

The scope of the rights and duties of the other States is regulated within Article 58 of UNCLOS, namely, the freedom of navigation, overflight and of the laying of submarine cables, pipelines and of other internationally lawful uses of the sea related to these freedoms, such as those related to operation of ships, aircraft and submarine cables and pipelines.

Lastly, there is no pertinent provision in the UNCLOS about addressing whether a State must claim an EEZ in order to be ascribed to it. However, it has been regarded as there has to be a claim to be entitled to it. Nevertheless, the way of notifying charts and lists of geographical coordinates to the public and depositing a copy of each document to the Secretary-General of the United Nations are pointed out in Article 75 of UNCLOS. Therefore it has been regarded as there has to be a declaration in order to be entitled to it.<sup>45</sup>

## **2.6 High Seas**

The principle of freedom is applied to the high seas. However, it does not mean that there is no authority on the high seas. The order on the high seas is fulfilled by the doctrine of the exclusive jurisdiction of the flag State.<sup>46</sup> The high seas are defined in the Geneva Convention on High Seas, 1958 ("HSC") as "all parts of the sea that are not included in the territorial sea or in the internal waters of a State". However, due to the introduction of EEZ and archipelagic waters, the definition in question has to be amended.<sup>47</sup> Pursuant thereto, the scope of the high seas is described in Article 86 of UNCLOS as "all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State".

Freedom of the high seas is described in Article 2 of HSC and expanded with Article 87 of UNCLOS. Accordingly, various matters such as freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations permitted under

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<sup>45</sup> Ibid (n 9) 218.

<sup>46</sup> Ibid (n 4) 149.

<sup>47</sup> Ibid (n 3) 203.

international law, freedom of fishing, freedom of scientific research are encompassed, and in this sense, these freedoms might be utilised by all States under the condition of considering the interests of other States in their exercise of the freedom of the high seas.

### **3. General Rules of Maritime Delimitation**

#### **3.1 The Hague Conference 1930**

In spite of its futility, the Hague Codification Conference of 1930 is known as the primary international endeavour to codify the rules and also methods of maritime delimitation.<sup>48</sup> The conference mainly focuses on the territorial waters and the contiguous zone rather than dealing with the delimitation between States with adjacent or opposite coasts.<sup>49</sup>

During the conference and its preparatory work, the idea of applying the method of negotiation or agreement in maritime delimitation was highlighted by referring to an individual character of each case. On the other hand, as a delimitation rule, the technical method of taking perpendicular to the general configuration of the coast was also given significant prominence. (Before the invention of the equidistance rule)<sup>50</sup> Nonetheless, in the end of the conference participants could not reach an agreement regarding the matter of delimitation.<sup>51</sup>

#### **3.2 The International Law Commission (1949-1956) and the 1958 Geneva Conference**

In order to encourage the progressive development of international law and its codification, the duty of starting studies and making recommendations was given to the United Nations General Assembly ("UNGA") by the Article 13 of Charter of the United Nations, 1945 and in this regard the International Law Commission ("ILC") was assigned to conduct this work. ILC initiated its task in 1949 by giving precedence to the high seas which encompassed the concept of the continental shelf. Later, in 1951, the priority of the ILC shifted from the high seas to the regime of the territorial sea due to the recommendation of the UNGA.<sup>52</sup>

ILC established a committee composed of maritime delimitation specialists for assessing and reporting the issue technically. According to the report of the committee of experts, they explicitly suggested that implementing the method of the median line was the best way of delimitation in an opposite situation; however, they also emphasised that navigational interests and fishing rights might trigger the need for using

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<sup>48</sup> Ibid (n 6) 7.

<sup>49</sup> S. P Jagota, *Maritime Boundary* (Martinus Nijhoff Publishers 1985), 49.

<sup>50</sup> Thomas Cottier, *Equitable Principles of Maritime Boundary Delimitation "The Quest for Distributive Justice in International Law"* (Cambridge University Press 2015), 205.

<sup>51</sup> Ibid (n 48).

<sup>52</sup> Ibid (n 49) 50.

an alternative method to solve the matter. In addition, they proposed that the method of equidistance from the respective coastlines should be used while determining the lateral boundaries.<sup>53</sup>

After having released the report, the majority of the ILC members was assessed the report as reasonable to adopt. This method was decided to use both the regime of territorial sea and the concept of the continental shelf. On the other hand, there was a tendency among some members to implement the median line/equidistance method as a general rule by excluding the other determinants. However, other members stated that adopting such a rigid approach would limit the inclusionary feature of the method and also reduce the chance of successful implementation for all cases.<sup>54</sup>

As a result, the rule of median line/equidistance was determined as the point of departure while initiating the delimitation process, and ILC pointed out in the draft report that the boundary at stake would be subject to modification in cases in which special circumstances justify another boundary line.<sup>55</sup> That is to say, the method in question gained an elastic character with the introduction of special circumstances.

After having finished the process of draft, UNGA organised the First United Nation Conference on the Law of the Sea that also known as the 1958 Geneva Conference. Four international conventions called Geneva Conventions were acknowledged after having completed the conference.

The delimitation of the territorial sea is provided in Article 12 of TSC as follows:

1. Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

2. The line of delimitation between the territorial seas of two States lying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

The delimitation of the continental shelf is provided in Article 6 of CSC as follows:

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is

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<sup>53</sup> Edward Jr. Collins and Martin A. Rogoff, 'The International Law Of Maritime Boundary Delimitation' [1982] 34 ME. L. REV. 1, 26.

<sup>54</sup> Ibid (n 6) 8-9.

<sup>55</sup> Ibid (n 49) 54.

justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

In conclusion, it can be said that the proposed draft articles were accepted with minor amendments. For example, the wording of "special circumstances" was changed to "historic title and special circumstances". Also, Article 24 of TSC adopted the same approach taken by Article 12 in terms of delimitation of the contiguous zone; however, there was no reference regarding historic title or special circumstances.

### **3.3 The United Nations Convention on the Law of the Sea 1982 ("UNCLOS")**

UNCLOS is one of the most contemplated and comprehensive Conventions of recent times, and it has brought significant innovations in several fields.<sup>56</sup> It was concluded in 1982 and entered into force in 1994. Moreover, hitherto it has been ratified by 168 States.<sup>57</sup> The legal structure of UNCLOS can be defined as the combination of quasi-legislation, the creation of new law, codified customary law and consensus.<sup>58</sup> Hence, these features enable UNCLOS to reach a considerable number of ratifications. Despite the high rate approval, UNCLOS does not provide a predetermined prescription for maritime delimitation; instead, it creates an opportunity to discuss the matters internationally and paves the way of consensus by setting blueprint of delimitation.<sup>59</sup>

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<sup>56</sup> S. Jayakumar, 'Unclos—Two Decades On' [2005] 9 S.Y.B.I.L. 1, 1.

<sup>57</sup> 'Chronological Lists of Ratifications of UNCLOS' (*Un.org*, 2019) <[https://www.un.org/depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm](https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm)> accessed 30 June 2019.

<sup>58</sup> David L. Larson, 'Conventional, Customary, and Consensual Law in the United Nations Convention on the Law of the Sea' (1994) 25 *Ocean Development & International Law* 75, 79.

<sup>59</sup> *Ibid* (n 56) 2.

The UNCLOS incorporates in three articles on the subject of maritime delimitations, namely, Article 15, 74 and 83. The text of Article 15, relating to the delimitation of the territorial sea, provides for the implementation of equidistance rule in case of not reaching an agreement between the States<sup>60</sup> which is almost identical in comparison with the wording of Article 12 of TSC.<sup>61</sup> Besides, Article 15 also is not contain any detailed explanation regarding the scope of historic title and special circumstances and its application. In conclusion, the delimitation is not turned into a controversial issue due to the outer limit of the territorial sea has been determined as 12 miles.<sup>62</sup>

The text of Article 74, relating to the delimitation of the EEZ, provided as follows:

1. The delimitation of the EEZ between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the EEZ shall be determined in accordance with the provisions of that agreement.

After having examined the text above, it can be said that the text of Article 83, relating to the delimitation of the continental shelf, is identical, in terms of all practical features, as Article 74 above. According to both articles, the States are under the obligation of behaving in "good faith" whilst conducting the process of negotiations to reach an agreement on the delimitation. However, except for the instructions regarding the way of behaving or the necessity of putting in the effort to strike a balance, articles at stake do not say much. Specifically, they do not indicate any substantive regime that provides the necessary steps to

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<sup>60</sup> David J. Attard, Malgosia Fitzmaurice and Norman A Martínez Gutiérrez, *The IMLI Manual on International Maritime Law: Volume I: The Law of the Sea* (Oxford University Press 2014), 304.

<sup>61</sup> James R Crawford, *Brownlie's Principles of Public International Law* (8th Edn, Oxford University Press 2012), 283.

<sup>62</sup> *Ibid* (n 6) 13.

follow for tackling the problem in case of a lack of agreement.<sup>63</sup> Moreover, due to the texts' blur approach and the placed reference in the first paragraph, the verdicts of the courts and tribunals would gain a pivotal position for comprehending the delimitation issue.<sup>64</sup>

The vague characteristics of the articles are stemmed from practical reasons. For example, States encountering various issues of delimitation depending on, configurational differences of their coastlines and the various neighbouring States involved. Therefore, some States need specific solutions to implement in accordance with the features of their maritime zones. As a result, it can be said that the vagueness style is preferred deliberately to be able to reach a consensus between States and also to broaden the comprehensiveness of articles in question by acquiring flexibility.<sup>65</sup>

#### **4. Principles and Methods of Delimitation**

##### **4.1 The Method of Equidistance**

The principle of equidistance or the median line is one of the most prominent and prevalent techniques applied as the method of delimitation. The term was created by Whittemore Boggs and defined as "the line every point of which is equidistant from the nearest point or points on opposite shores", but his method was designed only for delimitation in lakes, rivers, gulfs or straits between opposite States.<sup>66</sup> After that, it is also incorporated in Article 12 of TSC as well as Article 6 of TSC by specifying the location of nearest points as "of the baselines from which the breadth of the territorial sea of each State is measured."

The main determinants of this method are the islands and the configuration of the coasts. Since it procures the establishment of baselines in which the breadth of the territorial sea is started to be measured. Accordingly, a single line is produced, either as an equidistant line between adjacent States or as a median between opposite States.<sup>67</sup> In addition, it can lead to some controversial issues if the States implement different methods for setting their baselines because the starting points of each baseline depends on the selected method.<sup>68</sup>

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<sup>63</sup> Oswald K. Seneadza, 'The Law and Practice in Maritime Boundary Delimitation: Lessons for the Resolution of Dispute Between Cote D'Ivoire And Ghana' (2011) 37 Commonwealth Law Bulletin 295, 301-02.

<sup>64</sup> David Freestone, Richard Barnes and David Ong, *The Law of the Sea: Progress and Prospects* (Oxford University Press 2006), 138.

<sup>65</sup> Tullio Scovazzi, 'The Assumption that the United Nations Convention on the Law of the Sea is the Legal Framework for All Activities Taking Place in the Sea', in Aricò S (Ed), *Ocean Sustainability in the 21st Century* (Cambridge University Press 2015), 234.

<sup>66</sup> S. Whittemore Boggs, 'Delimitation of Seaward Areas under National Jurisdiction' (1951) 45 The American Journal of International Law, 240, 256-57.

<sup>67</sup> Ibid (n 50) 184.

<sup>68</sup> Ibid (n 10) 22.

Equidistance is widely acknowledged that is part and parcel of delimitation, or in other words, it is inherent in the process of delimitation. It ensures the allocation of areas which States have evenly legitimate entitlements on the grounds of "closer propinquity". Moreover, it also offers an objective criterion to protect the participants of the delimitation, and with the help of this, predictability can be provided.<sup>69</sup> Nevertheless, it should be remembered that those features are fully implemented and resulted in an equitable solution under the condition of "ceteris paribus"<sup>70</sup>. That is to say, in case of the absence of any special circumstances or historical title objections, it will be the best option as a delimitation method. For example, there are successful bilateral agreements concluded by using original concept free from any modifications such as Black and Baltic Sea applications due to the suitable conditions.

Despite its conventional background and popularity, the privileged status of the method has been diminished over time by International Court of Justice ("ICJ") and the arbitral tribunals because the results of the method are considered as inequitable and unreasonable.<sup>71</sup> In particular, the case of *North Sea Continental Shelf*<sup>72</sup> is known as a precursor of this tendency, and it changes the general perception from "the equidistance can in some cases lead to an inequitable result" to "only in some, it is eligible to reach an equitable one". In other words, the rule has become an exception, the exception the rule. Afterwards, specific criticisms against the equidistance extend its grounds, and the method started to be presented as an almost unmitigated evil.<sup>73</sup> Ultimately, apart from Article 15 of UNCLOS, neither equidistance nor median line is not incorporated in Article 74 or 83 of UNCLOS.

Upon scrutinising the case law, it can be said that the notion of diminishing the effect of the equidistance method has evolved in case basis, and all started with the *North Sea Case* as aforementioned. Accordingly, in *North Sea Case*<sup>74</sup> the court points out that the principle of equidistance is not reflecting or crystallizing a rule of customary international law and later State implications do not have an ability to convert the conventional rule into a rule of customary international law.<sup>75</sup> In addition, they state that it cannot be

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<sup>69</sup> Nuno Sérgio Marques Antunes and Vasco Becker-Weinberg, 'Entitlement to Maritime Zones And Their Delimitation', in Alex G. Oude Elferink, Tore Henriksen, Signe Veierud Busch (eds), *Maritime Boundary Delimitation: The Case Law* (Cambridge University Press 2018), 74- 75.

<sup>70</sup> "with other conditions remaining the same; other things being equal"

<sup>71</sup> Sora Lokita, 'The Role of the Archipelagic Baselines in Maritime Boundary Delimitation' (*Un.org*, 2010), 46. <[https://www.un.org/depts/los/nippon/unff\\_programme\\_home/fellows\\_pages/fellows\\_papers/lokita\\_0910\\_in\\_donesia.pdf](https://www.un.org/depts/los/nippon/unff_programme_home/fellows_pages/fellows_papers/lokita_0910_in_donesia.pdf)> accessed 1 July 2019.

<sup>72</sup> *North Sea Continental Shelf Case (Germany v Denmark; Germany v Netherlands)* [1969] ICJ Reports 3.

<sup>73</sup> *Ibid* (n 8) 204.

<sup>74</sup> *Ibid* (n 72).

<sup>75</sup> *Ibid* 4.

accepted as a mandatory rule of customary law.<sup>76</sup> In *Tunisia/Libya Case*<sup>77</sup>, the court holds that "equidistance is not either a mandatory legal principle or a method having some privileged status in relation to other methods".<sup>78</sup> In *Canada/United States of America Case (Gulf Of Maine)*<sup>79</sup>, the court shares the same view of *North Sea Case* have,<sup>80</sup> and additionally, state that "none of the potential methods has intrinsic merits which would make it preferable to another in the abstract [...] at any rate, there is no single method which intrinsically brings greater justice or is of greater practical usefulness".<sup>81</sup> Lastly, in *Guinea/Guinea-Bissau Case*<sup>82</sup>, the court also reiterates the previous judgements by emphasizing that there is no requirement to apply or to give precedence to the rule of equidistance.<sup>83</sup>

After assessing the principle of equidistance in terms of reaching equitable results, it can be said that with time, the initial perception has evolved from trouble-shooting to trouble-making. For this reason, almost in every case, before making necessary adjustments by considering the curvature of the coastline or the islands' location in closer proximity, only the starting point function of the method is underlined.<sup>84</sup> Because in order to initiate a successful and reasonable delimitation, States has to need a take-off point.<sup>85</sup> Therefore, strictly speaking, the method in question should be named as a simple tool instead of a principle or school of thought.

#### **4.2 Equity and the Equitable Principle**

The term of equity is defined in the Black's Law Dictionary as "The body of principles constituting what is fair and right; natural law".<sup>86</sup> According to the definition, it can be said that there is a strong correlation and virtual synonymy between the equity and law which cannot be thought separately as both of them are based on the idea of justice.<sup>87</sup>

When examining the historical relationship between the equity and law in the maritime delimitation process, the equitable principle was primarily introduced in 1945 Truman's Proclamation by stating that "In cases where the continental shelf extends to the shores of another State or is shared with an adjacent State,

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<sup>76</sup> Ibid 46, para 83.

<sup>77</sup> *Case Concerning the Continental Shelf (Tunisia v Libyan Arab Jamahiriya)* [1982] ICJ Reports 18.

<sup>78</sup> Ibid 65, para 110.

<sup>79</sup> *Case Concerning Delimitation of the Maritime Boundary in the Gulf Of Maine Area (Canada/United States of America)* [1984] ICJ Reports 286.

<sup>80</sup> Ibid 55, para 107.

<sup>81</sup> Ibid 73, para 162.

<sup>82</sup> *Case Concerning Delimitation of the Maritime Boundary (Guinea/Guinea Bissau)* [1985] 25 ILM 251.

<sup>83</sup> Ibid para 99.

<sup>84</sup> Umberto Leanza, 'The Delimitation of the Continental Shelf of the Mediterranean Sea' (1993) 8 IJMCL, 373, 385.

<sup>85</sup> Ibid (n 8) 207.

<sup>86</sup> Bryan A. Garner, *Black's Law Dictionary* (9th edn, West 2009), 619.

<sup>87</sup> Ibid (n 8) 164.

the boundary shall be determined by the United States and the State concerned in accordance with equitable principles".<sup>88</sup>

As aforesaid in the previous subheading, *North Sea Case*<sup>89</sup> triggers a rebellion against the principle of equidistance; however, it also lays the foundation for the court's doctrine of implementation of equitable principles to maritime boundary delimitation.<sup>90</sup> In this sense, the court states that "delimitation is to be effected by agreement in accordance with equitable principles, and taking into account all the relevant circumstances".<sup>91</sup> Besides, the paths of these two concepts intersect again in the negotiation phase of UNCLOS, and the notion of equity is adopted in both Article 74 and 83 instead of the equidistance method.

In addition to *North Sea Case*<sup>92</sup>, there are also several attempts made by ICJ and arbitral tribunals in order to form and determine the body of equitable principles. For example, *Tunisia/Libya Case*<sup>93</sup>, *Gulf Of Maine Case*<sup>94</sup> and *Libya/Malta Case*<sup>95</sup> can be counted as the representatives of this trend. Among these, there is a need to mention the decision of the *Gulf Of Maine Case*<sup>96</sup> as it emphasizes the uniqueness of each case, in this regard the court states that "each specific case is, in the final analysis, different from all the others, that it is monotypic [...] the most appropriate criteria/method/combination of methods [...] can only be determined in relation to each particular case and its specific characteristics".<sup>97</sup>

In conclusion, despite the absence of a structured body to lead the way out and also the lack of a prescribed equitable principles list to implement each unique case, it can be said that the notion of equity has had a place in both the conventional and the case law. Because the process of maritime delimitation has a dynamic nature rather than a static one. Thus, as long as taking all of the determinants or special circumstances into consideration objectively while conducting the process, the equitable solution will be appeared needless of any prescription.

### **4.3 Geographical Circumstances**

After having examined the history, definition and rationale of the respective zones in terms of conventional and case law, it can be assumed that the geographical circumstances are the one that has a

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<sup>88</sup> Ibid (n 31).

<sup>89</sup> Ibid (n 72).

<sup>90</sup> Barbara Kwiatkowska, 'The International Court Of Justice and Equitable Maritime Boundary Delimitation' [1998] 28 ENVTL. POL'Y & L. 261, 261.

<sup>91</sup> Ibid (n 72) 54, para 101.

<sup>92</sup> Ibid (n 72).

<sup>93</sup> Ibid (n 77).

<sup>94</sup> Ibid (n 79).

<sup>95</sup> *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya v Malta)* [1985] ICJ Reports 13.

<sup>96</sup> Ibid (n 79).

<sup>97</sup> Ibid 48, para 81.

dominant character amongst the relevant conditions implemented.<sup>98</sup> That is to say; there is no doubt that geography is at the core of the maritime delimitation.<sup>99</sup> In particular, the court decisions have perpetually underlined the significance of the land and coastal configuration for maritime delimitation on the basis of an equitable principle.<sup>100</sup>

As the case law has repeatedly noted that "the land dominates the sea"<sup>101</sup> which has for the first time been formulated in the *North Sea Case*.<sup>102</sup> Accordingly, the right of States on maritime zones stem from the coast, are thus dictated by coastal geography.<sup>103</sup> Moreover, the court states in the same decision that "It is necessary to examine closely the geographical configuration of the coastline of the countries [...] to be delimited".<sup>104</sup> Furthermore, they also point out that "It is therefore not a question of totally refashioning geography whatever the facts of the situation but [...] abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result."<sup>105</sup> In other words, they emphasize the necessity of assessing the geographical conditions before delimitating the zone as well as the impossibility of reshaping the geography.

There are also other cases worth mentioning that put emphasis on the subject in question. For example, in *Tunisia/Libya Case*<sup>106</sup>, the court takes the radical change in the general direction of the Tunisian coastline into account while reaching its verdict.<sup>107</sup> Another example is that in the *Barbados/Trinidad-Tobago Case*<sup>108</sup> mainly focuses on the length of coasts in order to make necessary adjustments by shifting the provisional equidistance line.<sup>109</sup> In conclusion, owing to the impossibility of redesigning the geography, the other principles in use have been shaped on geographical grounds such as "the principle of non-encroachment (non-cutting off)" and "the principle of fair and reasonable proportionality" Pursuant thereto, the modern jurisprudence mainly focuses on the following three determinants since they may lead to the modification of the provisional equidistance line in order to achieve an equitable solution:

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<sup>98</sup> Ibid (n 50) 526.

<sup>99</sup> Alex G. Oude Elferink, 'Relevant Coasts and Relevant Area, in Alex G. Oude Elferink, Tore Henriksen, Signe Veierud Busch (eds), *Maritime Boundary Delimitation: The Case Law* (Cambridge University Press 2018), 173.

<sup>100</sup> Ibid (n 79) 48, para 81.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid (n 72) para 96.

<sup>103</sup> Stephen Fietta and Robin Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation* (Oxford University Press 2016), 67.

<sup>104</sup> Ibid (n 102).

<sup>105</sup> Ibid (n 72) para 91.

<sup>106</sup> Ibid (n 77).

<sup>107</sup> Ibid para 122.

<sup>108</sup> *Delimitation of Exclusive Economic Zone and Continental Shelf (Barbados/the Republic of Trinidad and Tobago)* 28 RIAA 147.

<sup>109</sup> Ibid 100, para 328.

- The Principles of Non-Encroachment (Non-Cutting Off),
- The Principle of Proportionality,
- Disproportionate distorting effect that islands, rocks, promontories, and other small features.<sup>110</sup>

#### 4.3.1 The Principle of Non-Encroachment (Non-Cutting Off)

The Principle of Non-Encroachment (Non-Cutting Off) has first introduced in the *North Sea Case*<sup>111</sup> and regarded as the founding principle of natural prolongation.<sup>112</sup> In this sense, the court emphasizes that delimitation has to be conducted “without encroachment on the natural prolongation of the land territory of the other party”.<sup>113</sup> Moreover, after having introduced the distance-based approach regarding entitlements under UNCLOS, the significance of natural physical prolongation has decreased; however, the principle of non-encroachment maintains its importance.<sup>114</sup>

In *Bangladesh/Myanmar Case*<sup>115</sup>, Bangladesh experiences the cutting off issue as Germany has experienced before in North Sea region due to its coastal concavity. Accordingly, it can be said that both cases have similar characteristics. In this regard in *Bangladesh/Myanmar Case*<sup>116</sup> arbitral tribunal summarizes the principle of non-encroachment and states that “when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States, as a result of the concavity of the coast, then an adjustment of that line may be necessary in order to reach an equitable result”.<sup>117</sup>

In *Canada/France Arbitration (St. Pierre and Miquelon)*<sup>118</sup>, the tribunal indicates that two French islands namely St. Pierre and Miquelon cannot “encroach upon or cut off a parallel frontal projection of the adjacent segments of the Newfoundland southern coast”.<sup>119</sup> Similarly, in *Nicaragua/Colombia Case*<sup>120</sup>, the court states that “the effect of the provisional median line is to cut Nicaragua off from some three quarters of the area into which its coast projects [...] that cut-off effect is produced by a few small islands which are many nautical miles apart [...] the cut-off effect is a relevant consideration which requires adjustment or

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<sup>110</sup> Ibid (n 103) 67-8.

<sup>111</sup> Ibid (n 72).

<sup>112</sup> Ibid (n 50) 530.

<sup>113</sup> Ibid (n 72) 54, para 101.

<sup>114</sup> Ibid (n 103) 68.

<sup>115</sup> *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, 4.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid para 292.

<sup>118</sup> *Case Concerning the Delimitation of Maritime Areas (Canada/France)* [1992] 31 ILM 1145.

<sup>119</sup> Ibid para 70.

<sup>120</sup> *Territorial and Maritime Dispute (Nicaragua/Colombia)* [2012] ICJ Reports 624.

shifting of the provisional median line in order to produce an equitable result.<sup>121</sup> In conclusion, both decisions demonstrate that in order to achieve an equitable result, the provisional equidistance line has to be modified in favour of the mainland country if there is a cut-off effect stems from the islands.

As a result, upon considering the aforementioned cases, it can be assumed that there has been settled case-law in favour of the States that may be exposed to the cut-off effect due to other State's islands located in closer proximity to their mainland or configurational differences of their coasts. In addition, it should be remembered that the principle of non-encroachment is just one of the principles that assist in reaching an equitable result by carrying out necessary adjustments. In addition, there is no guarantee that the implication of this principle would be useful in every similar case since each case has its own determinants.

#### **4.3.2 The Principle of Proportionality**

The principle of proportionality has a pivotal role in maritime delimitation, and it has been incorporated in virtually all cases. Accordingly, maritime delimitation should be concluded by considering the ratio between the relevant maritime zones of each party and the lengths of their relevant coasts.<sup>122</sup> There are two functions of this principle. First, as a test to verify the equitableness of the delimitation line in the final stage of delimitation<sup>123</sup>, secondly, as a tool for determining marked disparity in coastal lengths so as to exert it in the process of delimitation.<sup>124</sup>

The concept of proportionality has first emerged in *North Sea Case*<sup>125</sup>, and the justification of the decision is based on three conditions to be met to exert: (i) the coasts of three States at stake are adjacent to each other, (ii) the coastlines of Germany are concave, (iii) the coastline of the States abutting on the North Sea are comparable in length.<sup>126</sup> However, the subsequent cases do not prefer to abide by the justification concerned, and the idea of proportionality is started to be evolved.

In *Tunisia/Libya Case*<sup>127</sup>, despite the absence of anomalies in terms of geographical circumstances, the proportionality is regarded as a fundamental principle to be applied for ensuring an equitable

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<sup>121</sup> Ibid para 215.

<sup>122</sup> Tanaka Yoshifumi, 'Reflections on the Concept of Proportionality in the Law of Maritime Delimitation' (2001) 16 IJMCL, 433, 433-34.

<sup>123</sup> Tanaka Yoshifumi, 'The Disproportionality Test in the Law of Maritime Delimitation', in Alex G. Oude Elferink, Tore Henriksen, Signe Veierud Busch (eds), *Maritime Boundary Delimitation: The Case Law* (Cambridge University Press 2018), 291.

<sup>124</sup> Ibid (n 103) 72.

<sup>125</sup> Ibid (n 72).

<sup>126</sup> Ibid (n 122) 435.

<sup>127</sup> Ibid (n 77).

delimitation.<sup>128</sup> In *Libya/Malta Case*<sup>129</sup> and also in *Gulf Maine Case*<sup>130</sup>, the application area of proportionality is extended, and the proportionality is started to be practised in a delimitation between States with opposite coasts. In this sense, Churchill and Lowe states that coastal length differences are a relevant circumstance, “especially (perhaps only) in the case of opposite coasts”.<sup>131</sup> In *Barbados/Trinidad-Tobago Case*<sup>132</sup>, the significance of the coastal lengths in the process of delimitation is emphasized, however, it is also stated that there is no obligation to determine the line of delimitation should be based on the ratio between the relevant maritime zones of each party and the lengths of their relevant coasts or on some other mathematical calculation.<sup>133</sup> Lastly, in *Romania/Ukraine Case (Black Sea)*<sup>134</sup>, the test function of the proportionality is highlighted as it reveals whether there is an equitable result or not.<sup>135</sup>

Upon examining the implementation of proportionality on a case-by-case basis, it can be seen that the interpretation of the ratios is different from case to case. In the *Black Sea Case*<sup>136</sup>, the court points out that the ratio of the relevant coastal lengths and the ratio of the relevant area are approximately 1:2.8 and 1:2.1, respectively.<sup>137</sup> Hence, they hold that there is no need to make any alteration over the line constructed due to the test of equitableness.<sup>138</sup> In *Eritrea/Yemen Arbitration*<sup>139</sup>, the tribunal finds that the ratios of the lengths of the coasts and the relevant areas are 1: 1.31 and 1:1.09, respectively. Accordingly, they decide that there is no disproportionality.<sup>140</sup> On the other hand, there are also other cases that include marked disparities in terms of the ratio of coastal lengths between the States. For example, in the *Malta/Libya Case*<sup>141</sup>, the court comments the coastal length ratio of 8: 1 as a great disparity in favour of Libya.<sup>142</sup> In *Denmark/Norway Case (Jan Mayen)*<sup>143</sup>, the difference is even greater than 9: 1 in favour of Denmark.<sup>144</sup> Lastly, in the *Nicaragua/Colombia Case*<sup>145</sup>, the court confirms that the ratio of 8.2: 1 as a substantial disparity

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<sup>128</sup> Ibid 61, para 103.

<sup>129</sup> Ibid (n 95).

<sup>130</sup> Ibid (n 79).

<sup>131</sup> Ibid (n 3) 189.

<sup>132</sup> Ibid (n 108).

<sup>133</sup> Ibid 72, para 236.

<sup>134</sup> *Maritime Delimitation in the Black Sea (Romania/Ukraine)* [2009] ICJ Reports 61.

<sup>135</sup> Ibid 103, para 122.

<sup>136</sup> Ibid (n 134).

<sup>137</sup> Ibid 130, para 215.

<sup>138</sup> Ibid para 216.

<sup>139</sup> *Eritrea v Yemen Arbitration* (1999) 119 ILR 1.

<sup>140</sup> Ibid 50, para 168.

<sup>141</sup> Ibid (n 95).

<sup>142</sup> Ibid 41, para 68.

<sup>143</sup> *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark/Norway)* [1993] ICJ Reports 38.

<sup>144</sup> Ibid para 61, 90.

<sup>145</sup> Ibid (n 120).

in favour of Nicaragua.<sup>146</sup> In conclusion, the above-mentioned cases are resulted in an adjustment of the provisional median line so as to attribute a larger maritime area in favour of the State, which has a longer coastline.

As a result, the principle of proportionality has evolved with the help of the court decisions and arbitral awards to contribute to achieving equitable results. Nevertheless, it should be taken into account that this principle cannot directly issue the precise solution and also there is no necessity for the courts to determine the line of delimitation by referencing the ratios at stake. The proportionality is just capable of providing data to lead the process of delimitation in the right direction. The ultimate decision can be made only after considering all determinants for each unique case.

#### **4.3.3 The Effect of Islands**

The islands are one of the main determinants of maritime delimitation since they have a capacity to engender distorting impact on a delimitation line.<sup>147</sup> The definition of the island is made identically by both Article 10 of TSC and Article 121(1) of UNCLOS; “an island is a naturally formed area of land, surrounded by water, which is above water at high tide”. Moreover, Article 121(2) of UNCLOS confers on islands the same entitlements as other land territories in terms of enjoying its territorial sea, EEZ and continental shelf. On the other hand, the international conventions do not provide a clear definition for the rocks, and this situation causes controversial issues between States because the rocks cannot have any EEZ or continental shelf unless being recognised as an island. Accordingly, Article 121(3) of UNCLOS states some criteria that are to “sustain of human habitation or economic life of their own” as distinctive features for the rocks, but even so, there is a lack of proper definition to distinguishing rocks from islands.<sup>148</sup> In this regard, differentiation can be made with the help of court decisions and bilateral agreements.

Despite the potential of drawing and adjusting of equidistance lines, the distorting impacts of islands can be differed due to various features<sup>149</sup> such as the size of the island, its status, its overall economic, social and political importance, and last but not least the distance from the mainland.<sup>150</sup> Hence, the islands may be given full weight, no weight or something in between with respect to features concerned.<sup>151</sup> For

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<sup>146</sup> Ibid 82, para 211.

<sup>147</sup> Ibid (n 103) 73.

<sup>148</sup> Heeyong Daniel Jang, 'Diminishing Role of Islands In Maritime Boundary Delimitation: Case Studies Of Dokdo/Tajeshima Island And The Senkaku/Diaoyu Islands' [2013] 35 U. HAW. L. REV. 139, 141-42.

<sup>149</sup> Ibid (n 103) 73.

<sup>150</sup> Rodman R. Bundy 'Preparing for a Delimitation Case: The Practitioner's View' in Rainer Lagoni and Daniel Vignes (Eds), *Maritime Delimitation* (Martinus Nijhoff 2006), 95, 106.

<sup>151</sup> Ibid 107.

example, in the *Guinea/Guinea-Bissau Case*<sup>152</sup>, the tribunal decides not to take into account all of the islands.<sup>153</sup> They classify islands into three categories. First, the coastal islands are accepted as integral parts of the continent. Second, the Bijagos archipelago is given a partial effect in determining the general direction of the coast. Third, the scattered islands located in the south are mostly ignored.<sup>154</sup> In *United Kingdom/France Arbitration (the Channel Islands)*<sup>155</sup>, the Channel Islands, which belongs to the UK is located near France coasts. Accordingly, the tribunal describes the position of the islands as “on the wrong side of the median line and wholly detached geographically from the UK”.<sup>156</sup> Therefore, they design a median line without taking into account the Channel Islands, and instead, the islands are partially enclaved with twelve-mile territorial seas due to its population, political independence and economic reasons.<sup>157</sup> In the *Black Sea Case*<sup>158</sup>, the court does not give an effect to the Serpents’ Island for the construction of provisional equidistance line and states that the island at stake is 20 nm away from the mainland of Ukraine, is not one of a cluster of fringe islands constituting “the coast” of Ukraine. Moreover, they underline that to count the island as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine’s coastline which neither the law nor practice of maritime delimitation authorizes. That is to say; the court is against the refashioning of the geography by a judicial decision.<sup>159</sup>

As a result, after having examined the cases above, it can be said that unlike the wording of Article 121(2) of UNCLOS, the islands cannot be considered as other land territories in terms of having rights for EEZ and continental shelf in every case. Strictly speaking, mentioned rights depend on the special circumstances, and the distance of the island from its mainland as well as from the coast of opposite State is a crucial factor for deciding the issue.

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<sup>152</sup> Ibid (n 82).

<sup>153</sup> Ibid (n 50) 293.

<sup>154</sup> Ibid (n 148) 144.

<sup>155</sup> *Case Concerning the Delimitation of the Continental Shelf Between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK/France)* (1977) 18 RIAA 3.

<sup>156</sup> Ibid para 199.

<sup>157</sup> Ibid para 186.

<sup>158</sup> Ibid (n 134).

<sup>159</sup> Ibid 109-10, para 149.

## PART II

### 5. An Overview of the Eastern Mediterranean Sea

The area of the Mediterranean Sea, including the Sea of Marmara, is approximately 970,000 square miles. From west to east from Gibraltar to Syria is around 2,500 miles, and its average north-south breadth, from the coasts of Croatia to that of Libya, the distance is about 500 miles.<sup>160</sup> The Mediterranean Sea can be divided into three separate geographic areas: Western Mediterranean: the Central Mediterranean: and the Eastern Mediterranean.<sup>161</sup> The Eastern Mediterranean is a semi-enclosed sea, has an intercontinental character, is surrounded by Africa, Asia and Europe and lying latitude 30°49' N and between longitudes 016° 30' E and 036° 12'E. Its average north-south extent and west-east distances are 340 miles and 450 miles, respectively. In addition, the area is approximately 90.000 square miles. The Eastern Mediterranean coastal States consist of Turkey, Syria, Lebanon, Israel, Egypt, Greece (Rhodes, Kastellorizo), GCASC, TRNC, and their coastal lengths are 569, 95, 107, 128, 522, 188, 220 and 205 miles, respectively.<sup>162</sup>

The Eastern Mediterranean has been a significant area for States throughout history and dubbed as "fertile crescent".<sup>163</sup> At present, it still maintains as well as strengthens its reputation due to explored energy resources and also promising untouched reserves. Because the world economy of today strictly depends on the energy, however, the current energy supplies are limited and not promising to reach an equilibrium point in order to respond to the increasing demand in the long run. According to the 2010 US Geological Survey, the mean of estimated undiscovered oil is approximately 1,763 Million Barrels of Oil ("MMBO"), with a range from 491 to 4,266 MMBO. For undiscovered gas, the total average volume is 223,242 billion cubic feet of gas ("BCFG"), with a range from 92,614 to 425,935 BCFG. For natural gas liquids, the total mean volume is 5,974 million barrels of natural gas liquids ("MMBNGL"), with a range of 2,451 to 11,464 MMBNGL.<sup>164</sup> Moreover, Mediterranean basin has a high producible gas hydrate potential which is approximately 98,160 standard trillion cubic meter, and the Eastern Mediterranean basins have the highest gas hydrate potential in comparison with the Western Mediterranean due to its lower geothermal gradient and high amount of source

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<sup>160</sup> 'Mediterranean Sea' (*Encyclopedia Britannica*, 2019) <<https://www.britannica.com/place/Mediterranean-Sea>> accessed 10 July 2019.

<sup>161</sup> *Ibid* (n 84) 386.

<sup>162</sup> Ali Kocamanoğlu, *Türkiye Açısından Doğu Akdeniz'in Stratejik Önemi* (Deniz Basımevi 2005), 18.

<sup>163</sup> Daniel Pipes, *Greater Syria: The History of an Ambition* (Oxford University Press 1992), 15.

<sup>164</sup> 'U.S. Geological Survey Fact Sheet 2010-3027: Assessment of Undiscovered Oil and Gas Resources of the Nile Delta Basin Province, Eastern Mediterranean' (*Pubs.usgs.gov*, 2010) <<https://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>> accessed 10 July 2019.

gas potential.<sup>165</sup> In light of these facts, there is nothing to be surprised for an excessive interest over the Eastern Mediterranean region.

Upon considering the maritime delimitation, the parts of the Mediterranean demonstrate different characteristics. Whilst the delimitation problem can be tackled on the basis of technical matters in the Western and Central Mediterranean, on the contrary in the Eastern Mediterranean is much more intricate due to the political and territorial instability and uncertainty in that region.<sup>166</sup> There is an in-depth historical and political relationship between the participants of the region that resembles an equation with multiple variables to solve. Furthermore, the energy issues at stake make things more difficult. In this regard, there is a need to scrutinise each State's position in order to make objective assessments.

## **6. Policies of Riparian States**

Before explaining the subject, it is necessary to clarify the type of delimitation. As it has been mentioned in the first part of the paper, there are various types of maritime zones regulated in international law. However, in the Eastern Mediterranean, the argument continues with the basis of EEZ. That is to say; instead of delimitating territorial waters or contiguous zones, the States mostly have focused on solely EEZ so as to create a single maritime boundary between the parties.

In this regard, Syria, Lebanon, Israel, and GCASC has already proclaimed their EEZs either concluding agreements or unilateral declaration of EEZ.<sup>167</sup> Nevertheless, because of the dual governing structure of Cyprus Island, the agreements concluded by GCASC has not been accepted by TRNC since their existence and rights are ignored. On the other hand, Turkey also objects the GCASC actions in question on the basis of not accepting GCASC as a true representative of the entire island<sup>168</sup> and due to its guarantor State position over TRNC.<sup>169</sup> Following sections will expound the agendas of the riparian States by referring to the actions of Turkey.

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<sup>165</sup> Şükrü Merey and Sotirios Nik. Longinos, 'The Gas Hydrate Potential of the Eastern Mediterranean Basin' (2019) 159 Bulletin of the Mineral Research and Exploration, 1, 1.

<<https://www.researchgate.net/publication/329912184>> accessed 10 July 2019.

<sup>166</sup> Ibid (n 84) 386.

<sup>167</sup> Cihat Yaycı, 'The Problem of Delimitation of Maritime Areas in Eastern Mediterranean and Turkey' [2012] 4(6) Bilge Strateji Dergisi, 1, 16. <<http://www.bilgesam.org/Images/Dokumanlar/0-159-2014040713bs-2012-1-1-70.pdf>> accessed 11 July 2019.

<sup>168</sup> Serhat H. Başeren, 'Tension in the Eastern Mediterranean' (*Tudav.org*) <<http://tudav.org/calismalar/deniz-alanlari/munhasir-ekonomik-bolge/dogu-akdeniz-serhat-h-baseren/>> accessed 11 July 2019.

<sup>169</sup> Nur Jale Ece, 'The Exclusive Economic Zone in the Eastern Mediterranean: Delimitation Agreements, Stakeholders And Strategies' (2017) 5 Journal of ETA Maritime Science, 81, 82.

## 6.1 Greek Cypriot Administration of Southern Cyprus (“GCASC”)

GCASC is a coastal State in the Eastern Mediterranean region with a coastline of 220 miles. Besides, it is one of the member States of the European Union (“EU”) and is a party to both CSC<sup>170</sup> and UNCLOS<sup>171</sup>. Its territorial waters are determined as 12 nm,<sup>172</sup> its continental shelf is regulated as 200 meters or operable depth for exploitation compatible with the CSC,<sup>173</sup> and its outer limits of the contiguous zone and EEZ are regulated as 24 nm and 200 nm, respectively.<sup>174</sup>

GCASC has been recognised as the Republic of Cyprus (RoC) and the representative of the whole island by international community.<sup>175</sup> In this regard, whilst delimitating the aforementioned maritime zones, GCASC has not taken into account the rights of TRNC as well as the principle of equity which is the main principle for the process of delimitation in international law.<sup>176</sup> However, technically the Republic of Cyprus does not exist at all because Turkish Cypriots are one of the constituent elements of the Republic and the formed partnership of the Republic as Greek and Turkish people of Cyprus in 1960 was broken down in 1963.<sup>177</sup> That is to say; it is incongruous to claim that GCASC is the continuation of the Republic of Cyprus by oneself. Accordingly, Turkey and TRNC have not recognised the Republic of Cyprus as the true representative of the island; instead, they define the southern part of the island as Greek Cypriot administration.<sup>178</sup>

In the subject of delimitating the maritime zones of the island, GCASC has adopted the median line principle regardless of the relevant circumstances, unlike Turkey and TRNC.<sup>179</sup> In this sense, the Greek Cypriot administration submits its claims in the presence of the UN, as a response to Turkey’s objections.

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<sup>170</sup> ‘The ratification date of Geneva Convention on the Continental Shelf: April 11, 1974’

<sup>171</sup> ‘The ratification date of UNCLOS: December 12, 1988’

<sup>172</sup> ‘The Territorial Sea Law, No. 45’ (*Un.org*, 1964)

<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CYP\\_1964\\_Law.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CYP_1964_Law.pdf)> accessed 20 July 2019.

<sup>173</sup> ‘Continental Shelf Law, Law No.8’ (*Un.org*, 1974)

<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CYP\\_1974\\_Law.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CYP_1974_Law.pdf)> accessed 20 July 2019.

<sup>174</sup> ‘The Contiguous Zone and the EEZ of CYPRUS’ (*Un.org*, 2004)

<<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CYP.htm>> accessed 20 July 2019.

<sup>175</sup> Atilla SANDIKLI, Türkan BUDAK and Bekir ÜNAL, “Doğu Akdeniz’de Enerji Keşifleri ve Türkiye” | Wise Men Center for Strategic Studies’ (*Bilgesam.org*, 2013), 1, 24 <<http://www.bilgesam.org/incele/2/-dogu-akdeniz-de-enerji-kesifleri-ve-turkiye/>> accessed 12 July 2019.

<sup>176</sup> *Ibid.*

<sup>177</sup> ‘Cyprus (Historical Overview)’ (*Republic of Turkey Ministry of Foreign Affairs*, 2019)

<[http://www.mfa.gov.tr/cyprus-\\_historical-overview\\_.en.mfa](http://www.mfa.gov.tr/cyprus-_historical-overview_.en.mfa)> accessed 20 July 2019.

<sup>178</sup> *Ibid.*

<sup>179</sup> ‘Statement Dated 28 December 2004 of the Position of the Government of the Republic of Cyprus with Respect to the Information Note by Turkey’ (*Un.org*, 2004), 1, 129.

<[https://www.un.org/Depts/los/doalos\\_publications/LOSBulletins/bulletinpdf/bulletin57e.pdf](https://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin57e.pdf)> accessed 20 July 2019.

Firstly, despite the existence of numerous cases related to the principle of equity, they describe the claims of Turkey<sup>180</sup> as a vague and unfounded, both in law and in practice.<sup>181</sup> Secondly, they further argue that the result of applying the equitable principles could lead to deprivation of maritime zones for the GCASC.<sup>182</sup> Lastly, they accuse Turkey of using the statement of “equitable solution”, is included in both Articles 74 and 83 of UNCLOS, intentionally to bypass the requirement that the delimitation shall be effected by agreement on the basis of international law.<sup>183</sup> In conclusion, despite the objections of Turkey and TRNC, GCASC has signed three delimitation agreements so far with Egypt<sup>184</sup>, Lebanon (signed but not ratified by Lebanese assembly)<sup>185</sup> and Israel<sup>186</sup> by implementing the median line principle.

In 2007, GCASC divided its assumed EEZ into 13 exploration blocks covering roughly 19500 square miles.<sup>187</sup> After that, they finalized three successful offshore licensing rounds, officially awarded most of the offshore blocks to some of the best international oil companies in the world such as Italian ENI, French Total, American Noble Energy and Royal Dutch Shell.<sup>188</sup> Accordingly, in late 2011, the Aphrodite field was discovered by U.S. firm Noble Energy in Block 12, which estimated to hold between 5 and 8 TCFG.<sup>189</sup>

On the other hand, certain blocks in question intersect the zones which subject to multiple EEZ claims. In particular, the blocks of 1, 4, 5, 6 and 7 are part of the assumed EEZ of Turkey, and also, the blocks of 2, 9, 10, 12 are partially and 3, 13 are entirely part of the assumed EEZ of TRNC.<sup>190</sup> As counteractions, in 2014 and 2019, Turkey sent its seismic and drilling vessels to the assumed EEZ of TRNC in order to protect the rights of TRNC as a guarantor State. Moreover, in early 2018, Italian ENI's drilling vessel Saipem 12000 was obstructed by Turkish military forces in the overlapping area located southwest of

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<sup>180</sup> “Turkish claims will be explained in section 7.2.”

<sup>181</sup> Ibid (n 179) 125.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> 'Agreement between the Republic of Cyprus and Egypt on the Delimitation of the EEZ' (*Un.org*, 2003) <<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf>> accessed 15 July 2019.

<sup>185</sup> Martin Wählisch, 'Israel-Lebanon Offshore Oil & Gas Dispute: Rules of International Maritime Law' (2011) 15 ASIL Insights 1, 2.

<sup>186</sup> 'Agreement between Israel and the Republic Of Cyprus on the Delimitation of the EEZ' (*Un.org*, 2010) <[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp\\_isr\\_eez\\_2010.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf)> accessed 15 July 2019.

<sup>187</sup> Fatma Taşdemir, 'Kıbrıs Adası Açıklarında Petrol ve Doğalgaz Arama Faaliyetleri Kapsamında Ortaya Çıkan Krizin Hukuki, Ekonomik ve Siyasi Boyutları' (Ankara Strateji Enstitüsü Publishing 2012) <<https://docplayer.biz.tr/2838459-Kibris-adasi-aciklarinda-petrol-ve-dogalgaz-arama-faaliyetleri-kapsaminda-ortaya-cikan-krizin-hukuki-ekonomik-ve-siyasi-boyutlari.html>> accessed 19 July 2019.

<sup>188</sup> 'Energy: Oil & Gas: Exploration Race, Major Players' (*Cyprus Profile*, 2019) <<https://www.cyprusprofile.com/en/sectors/energy-and-environment/>> accessed 20 July 2019.

<sup>189</sup> Michael Ratner, 'Natural Gas Discoveries in the Eastern Mediterranean' 1, 5. (Congressional Research Service 2016) <<https://fas.org/sgp/crs/mideast/R44591.pdf>> accessed 20 July 2019.

<sup>190</sup> Ibid (n 187).

the island.<sup>191</sup> Subsequently, in 2019, Turkey has sent its drill vessel "Fatih", sixth-generation ultra-deep-water drillship, to the overlapping area for conducting exploration activities under the protection of warships and armed unmanned aerial vehicles.<sup>192</sup> In return GCASC has issued European arrest warrants for the crew of a Turkish drill ship.<sup>193</sup> As a result, it can be said that the tension will continue to grow day by day in the Eastern Mediterranean unless the unilateral actions are prevented.

## 6.2 Greece

Greece is one of the member States of the EU. It is a party to both CSC<sup>194</sup> and UNCLOS<sup>195</sup>. Greek administration determines its territorial waters as 6 nm.<sup>196</sup> Moreover, they have a regulation that recognises exclusive rights within or outside of its territorial waters up to a depth of 200 meters or an operable depth for exploration and exploitation beyond a depth of 200 meters.<sup>197</sup>

Unlike other coastal states of the Eastern Mediterranean except for Cyprus Island, Greece does not have mainland coasts in the area in question. Although Greece has sovereignty claims over a significant proportion of the relevant maritime zones due to the location of its certain islands. Accordingly, the Kastellorizo (Meis) island, located in the closer proximity to coasts of Turkey, composes the core of Greek strategy. With the help of island at stake, and by using other Greek islands such as Crete, Kashot, Karpathos and Rhodes, Greece wishes to form a boundary line between Turkey in order to utter extended claims over relevant maritime areas.<sup>198</sup> Furthermore, if Greece succeeds its strategy and the line in question recognises as a coastline of Greece, Turkey will be out of the equation of distribution of the Eastern Mediterranean region and Turkey's maritime zones will be limited with the gulf of Antalya.<sup>199</sup> In other words, despite having the longest coastline (569 miles) in the Eastern Mediterranean area, Turkey might acquire at around 106.189

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<sup>191</sup> 'Turkish Blockade of Ship off Cyprus is out of Eni's Control: CEO' (*www.reuters.com*, 2018) <<https://www.reuters.com/article/us-cyprus-natgas-turkey-eni/turkish-blockade-of-ship-off-cyprus-is-out-of-eni-control-ceo-idUSKCN1G01K0>> accessed 20 July 2019.

<sup>192</sup> 'Barbaros ve Fatih'e SİHA Koruması' (*Milliyet*, 2019) <<http://www.milliyet.com.tr/gundem/barbaros-ve-fatih-e-siha-korumasi-2901305>> accessed 20 July 2019.

<sup>193</sup> 'Cyprus Issues Arrest Warrants for Turkey Drill Ship Crew' (*uk.reuters.com*, 2019) <<https://uk.reuters.com/article/uk-cyprus-turkey/cyprus-issues-arrest-warrants-for-turkey-drill-ship-crew-idUKKCN1TE2FM>> accessed 15 July 2019.

<sup>194</sup> 'The ratification date of Geneva Convention on the Continental Shelf: November 6, 1972'

<sup>195</sup> 'The ratification date of UNCLOS: July 21, 1995'

<sup>196</sup> 'Law No. 230' (*Un.org*, 1936)

<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GRC\\_1936\\_Law.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GRC_1936_Law.pdf)> accessed 17 July 2019.

<sup>197</sup> 'Decree-Law no. 142/1969'.

<sup>198</sup> Mehmet Akif Kütükçü and İslam Safa Kaya, 'Uluslararası Deniz Hukuku Kapsamında Doğu Akdeniz' deki Petrol ve Doğalgaz Kaynakları ile Türkiye'nin Hukuki Durumu' [2016] 6 *Journal of Life Sciences* 81, 89.

<<https://dergipark.org.tr/download/article-file/313283>> accessed 18 July 2019.

<sup>199</sup> *Ibid* (n 167) 20.

square miles instead of 375.548 square miles.<sup>200</sup> In this regard, Greece reiterates its position also diplomatically by submitting notes to UN Secretary-General which points out “according to a well-established principle of the law of the sea, islands, regardless of their size, have full entitlement to maritime zones (continental shelf/EEZ), as other land territory [...] the delimitation of maritime zones between States with opposite coasts (both continental and insular) should take place [...] on the basis of the equidistance/median line principle”.<sup>201</sup> As a result, after having incarcerated Turkey into the Gulf of Antalya, the mentioned strategy might pave the way for forming maritime boundaries between Cyprus, Egypt and Greece.<sup>202</sup> In this sense, it can be said that the following days will bring more confrontation upon considering the ongoing trilateral summits between the parties concerned.<sup>203</sup>

On the other hand, Greece is one of the three guarantor countries of <sup>204</sup> the Republic of Cyprus.<sup>205</sup> Besides their guarantor relationship, Greece and GCASC are allies that have strong cultural, historical, and economic ties. Accordingly, it supports the maritime claims of GCASC as well as advocates that they should have common maritime boundaries with GCASC that administer 200 miles of EEZ in the Eastern Mediterranean. Moreover, Greek authorities have conducting lobbying activities in the presence of both EU and UN, and Greek press also plays a significant role in propagating Greek and GCASC claims as well as consistently repudiating claims of Turkey and TRNC.<sup>206</sup> As a result, it can be said that Greece has a pivotal role in resolving the maritime dispute in the Eastern Mediterranean.

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<sup>200</sup> Tasos Kokkinidis, 'Greece, Egypt Aim to 'Strangulate' Turkey in East Med, Turkish Daily Claims' (*Greece.greekreporter.com*, 2018) <<https://greece.greekreporter.com/2018/10/12/greece-egypt-aim-to-strangulate-turkey-in-east-med-turkish-daily-claims/>> accessed 18 July 2019.

<sup>201</sup> 'Letter from the Chargé D'Affaires A.I. of the Permanent Mission of Greece to the United Nations Addressed to the Secretary-General' (*Undocs.org*, 2019) <<https://undocs.org/en/a/73/850>> accessed 18 July 2019.

<sup>202</sup> Sertaç Hami Başeren, *Dispute Over Eastern Mediterranean Maritime Jurisdiction Areas* (Turkish Maritime Research Foundation 2010), 1, 52.

<sup>203</sup> 'Broader Cooperation Seen Growing from Egypt-Greece-Cyprus Summits' (*Ekathimerini.com*, 2018) <<http://www.ekathimerini.com/233538/article/ekathimerini/business/broader-cooperation-seen-growing-from-egypt-greece-cyprus-summits>> accessed 18 July 2019.

<sup>204</sup> 'When the agreement was signed, the Republic of Cyprus was composed of Turkish and Greek Cypriot communities, therefore, the Republic of Cyprus does not refer to GCASC'.

<sup>205</sup> 'Treaty of Guarantee, United Nations, Treaty Series, Vol. 382 (1960), No. 5476' (*Peacemaker.un.org*, 1960) <[https://peacemaker.un.org/sites/peacemaker.un.org/files/CY\\_600816\\_TreatyNicosia.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/CY_600816_TreatyNicosia.pdf)> accessed 18 July 2019.

<sup>206</sup> Serhat S Çubukçuoğlu, 'Cyprus and Turkey: The EEZ Delimitation Dispute in the Eastern Mediterranean - Part I' (The Fletcher School/University of Tufts 2014), 1, 6. <[https://www.academia.edu/9532415/Cyprus\\_and\\_Turkey\\_The\\_EEZ\\_Delimitation\\_Dispute\\_in\\_the\\_Eastern\\_Mediterranean\\_-\\_Part\\_I](https://www.academia.edu/9532415/Cyprus_and_Turkey_The_EEZ_Delimitation_Dispute_in_the_Eastern_Mediterranean_-_Part_I)> accessed 18 July 2019.

### 6.3 Egypt

With a coastline of 522 miles, The Arab Republic of Egypt has the second largest coastline in the Eastern Mediterranean and is a party to UNCLOS.<sup>207</sup> The Egyptian administration determines its territorial waters as 12 nm<sup>208</sup> and defines its sovereignty rights on the continental shelf up to a depth of 200 meters, or deeper depending on the exploitability of natural resources of the bottom.<sup>209</sup> Moreover, starting in 1990, they have adopted a straight baseline method and submitted the relevant coordinates to the UN.<sup>210</sup>

Egyptian offshore areas are known as considerably productive in terms of natural resources. In 2003, the first notable natural gas discovery was made in the Nile Delta region and the following year the exploration director of SHELL declared that the region at stake had a rich hydrocarbon potential. Furthermore, today's natural gas estimation is approximately 1.5 TCFG for this area.<sup>211</sup> Subsequently, in 2015, Italian Energy Company ENI announced that it had made a world-class supergiant gas discovery at its Zohr field and the potential of this area is at around 30 TCFG.<sup>212</sup> In addition, these fields are located in undisputed areas that are not subject to delimitation process between neighbour States. Lastly, apart from these discoveries, the process of exploration continues in different areas.

In 2003, a delimitation agreement signed between the GCASC and Egypt on the basis of median line principle.<sup>213</sup> However, it cannot be said that the consequences of this agreement were beneficial for Egypt as its share is less than it deserves considering the notion of equity.<sup>214</sup> Because, if Egyptian administration had assessed the relevant circumstances correctly, they would have gained additional 4,633 square miles by

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<sup>207</sup> 'Declarations Upon Ratification: Egypt' (*Treaties.un.org*, 1982)  
<[https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec)> accessed 16 July 2019.

<sup>208</sup> 'The Territorial Waters of the Arab Republic of Egypt' (*Un.org*, 1958)  
<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/EGY\\_1958\\_Decree.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/EGY_1958_Decree.pdf)> accessed 16 July 2019.

<sup>209</sup> 'No. 1051 Of 1958 Concerning the Continental Shelf' (*Un.org*, 1958)  
<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/EGY\\_1958\\_Decision.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/EGY_1958_Decision.pdf)> accessed 16 July 2019.

<sup>210</sup> 'Decree of the Egypt No. 27 (1990) Concerning the Baselines of the Maritime Areas of Egypt, 9 January 1990' (*Un.org*, 1990)  
<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/EGY\\_1990\\_Decree.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/EGY_1990_Decree.pdf)> accessed 16 July 2019.

<sup>211</sup> Ayla Gürel, Fiona Mullen and Harry Tzimitras, 'The Cyprus Hydrocarbons Issue: Context, Positions and Future Scenarios' (Peace Research Institute Oslo 2013)1, 1. <<https://sapientaeconomics.com/wp-content/uploads/2014/02/The-Cyprus-hydrocarbons-issue-ENG-WEB.pdf>> accessed 16 July 2019.

<sup>212</sup> Mostefa Ouki, 'Egypt - A Return to a Balanced Gas Market?' (The Oxford Institute for Energy Studies 2018) 1, 9. <<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2018/06/Egypt-a-return-to-a-balanced-gas-market-NG-131.pdf>> accessed 16 July 2019.

<sup>213</sup> *Ibid* (n 184).

<sup>214</sup> *Ibid* (n 202) 71.

concluding an agreement with Turkey.<sup>215</sup> Nonetheless, the agreement in question is not binding for Turkey; therefore, it does not have any effect on the sovereignty rights of Turkey. That is to say, with this agreement, GCASC cannot gain any legitimate rights over overlapping maritime zones. Furthermore, in March 2013, Egypt's first democratically elected president Mohamed Morsi annulled the delimitation agreement between Egypt and GCASC considering the interests of Egypt.<sup>216</sup> However, after nullification of the agreement, Minister of Defence Abdel Fattah el-Sisi took over the administration of the State unlawfully by making a military coup in July 2013 and signed an agreement with GCASC to restore its previous EEZ in December 2013.<sup>217</sup> In light of chronology of the events, it can be observed that the relationship between the military coup and delimitation agreement seems to be more than a coincidence in terms of dates.

On the other hand, upon considering the consensus between Egypt, Cyprus and Greece<sup>218</sup>, there is another risk which threatens the interests of Egypt. It can be said that, if Egypt makes another mistake by concluding delimitation agreement with Greece instead of Turkey, on the basis of recognising Greek Islands' full entitlement to maritime zone regardless of their location, size and relevant case law decisions, their future loss will be at around 2,857 square miles and it will be against the Egyptian interests.<sup>219</sup>

#### 6.4 Lebanon

Lebanon is another coastal State in the Eastern Mediterranean region with a coastline of 107 miles and is a party to UNCLOS<sup>220</sup>. Its territorial waters are determined as 12 nm.<sup>221</sup>

Lebanon and GCASC initiated negotiations regarding the demarcation of maritime areas as early as 2002.<sup>222</sup> Then, an agreement was reached and signed between parties in 2007; however, it was not ratified simultaneously.<sup>223</sup> After the agreement revealed, the Turkish government started to put full pressure on the Lebanese government to not to ratify the agreement, and at the same time, TRNC President Mehmet Ali

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<sup>215</sup> Ibid.

<sup>216</sup> Islam Safa Kaya, 'Turkey's Legal Position in the Eastern Mediterranean' (*The New Turkey*, 2019) <<https://thenewturkey.org/turkeys-legal-position-in-the-eastern-mediterranean>> accessed 16 July 2019.

<sup>217</sup> 'Eastern Mediterranean Gas: The View from Egypt' (*C Small Solutions*, 2015)

<<http://www.csmall.co.uk/2015/05/01/eastern-mediterranean-oil-gas-view-egypt/>> accessed 16 July 2019.

<sup>218</sup> 'Joint Declaration At the 6th Cyprus- Egypt-Greece Trilateral Summit' (*Independent Balkan News Agency*, 2018) <<https://balkan.eu.com/joint-declaration-at-the-6th-cyprus-egypt-greece-trilateral-summit/>> accessed 16 July 2019.

<sup>219</sup> Ibid (n 202) 71.

<sup>220</sup> 'UNTC' (*Treaties.un.org*, 1995)

<[https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en)> accessed 15 July 2019.

<sup>221</sup> 'LEBANON' (*Un.org*, 1983)

<<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/LBN.htm>> accessed 13 July 2019.

<sup>222</sup> James Stocker, 'No EEZ Solution: The Politics of Oil and Gas in the Eastern Mediterranean' (2012) 66 *The Middle East Journal*, 579, 584.

<sup>223</sup> Ibid (n 185).

TALAT took in action<sup>224</sup> in the presence of UN.<sup>225</sup> As a result, the agreement was not ratified by the Lebanese assembly.<sup>226</sup>

On the other hand, Lebanon has held its interest in exploring hydrocarbon fields and declaring EEZ. In this regard, in 2011, Lebanese assembly enacted the legislation concerning offshore petroleum resources, and then submitted a note to the UN Secretary-General, illustrating its maritime jurisdictional areas.<sup>227</sup> Accordingly, this note contained the coordinates of the agreement concluded with the GCASC in 2007. That is to say, the veto of the Lebanese assembly over the agreement of 2007 lost its significance, and they automatically accepted GCASC as a representative of the entire island.<sup>228</sup>

After the note was submitted to the UN, a brand new delimitation dispute emerged with Israel regarding overlapping areas due to the inconsistency of southernmost coordinates in comparison with the unratified agreement with the GCASC in 2007 because GCASC and Israel concluded an agreement delimiting their maritime boundaries in 2010 by referencing the agreed points in the 2007 Lebanon-Cyprus agreement.<sup>229</sup> Nevertheless, Lebanon claimed that the agreed points in 2007 did not further meaning except for a temporary solution, subject to a future agreement between Lebanon and Israel.<sup>230</sup> Moreover, they also emphasized that the agreement in question signed just approximately six months after the Israel-Lebanon war in order to avoid another conflict against Israel.<sup>231</sup> In addition, the overlapping area in question is highly important as it is situated close to the Aphrodite and Leviathan gas fields and Lebanon believes that the closer proximity strengthens the possibility of having a considerable amount of resources in overlapping areas.<sup>232</sup> As a result, despite the attempts by the UN and US diplomats to resolve the issue<sup>233</sup>, no agreement has yet been attained between the parties.

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<sup>224</sup> "Letter signed by Mr. Talat UN Doc. A/61/727-S/2007/54"

<sup>225</sup> Hayriye KAHVECİ ÖZGÜR, 'Eastern Mediterranean Hydrocarbons: Regional Potential, Challenges Ahead, and the 'Hydrocarbon-ization' of the Cyprus Problem' [2017] 22 PERCEPTIONS, 31, 40. <<http://sam.gov.tr/wp-content/uploads/2018/02/31-56.pdf>> accessed 13 July 2019.

<sup>226</sup> Ibid (n 185).

<sup>227</sup> 'Decree No. 6433 - Delineation of the Boundaries of the EEZ of Lebanon' (*Un.org*, 2011) <[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/lbn\\_2011decree6433.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/lbn_2011decree6433.pdf)> accessed 16 July 2019.

<sup>228</sup> Ibid (n 167) 29.

<sup>229</sup> Andrew Shibley, 'Blessing and Curses: Israel and Lebanon's Maritime Boundary Dispute in the Eastern Mediterranean Sea' (2016) 5 GLOBAL BUS L REV 50, 75.

<sup>230</sup> Ibid (n 185).

<sup>231</sup> Ibid 3.

<sup>232</sup> Ehud Eiran, Gabriel Mitchell, 'The Gas Effect: Assessing Hydrocarbon Development's Impact upon Eastern Mediterranean Politics' (*Euromesco.net*, 2018), 1, 43. <[https://www.euromesco.net/wp-content/uploads/2018/03/Joint-Policy-Study\\_The-Eastern-Med\\_New-Dynamics-and-Potential-for-Cooperation-1.pdf](https://www.euromesco.net/wp-content/uploads/2018/03/Joint-Policy-Study_The-Eastern-Med_New-Dynamics-and-Potential-for-Cooperation-1.pdf)> accessed 13 July 2019.

## 6.5 Syria

With a coastline of 95 miles, Syria is a strategically important State located in the middle of energy corridors and surrounded by Caspian, Mediterranean and the Red Sea<sup>234</sup> and is not a party to UNCLOS. Its territorial waters, contiguous zone and EEZ, are determined as 12 nm, 24 nm and 200 nm, respectively.<sup>235</sup>

In the subject of delimitating the maritime zones of Syria, there was a diplomatic effort between GCASC and Syria, and at the end of 2001 they declared that expected to reach an agreement on the delimitation of continental shelf and EEZ; however, no steps have been taken in this direction so far.<sup>236</sup> In 2011, Syrian administration called three separate maritime zones for tender, in order to exploration and extraction of oil reserves, however, the northern part of the area in question (30 nm) were in the jurisdiction of Turkey.<sup>237</sup> Consequently, the attempt of exploration in the overlapping maritime zone was fruitless due to the outbreak of the Syrian civil war in 2011 and the collapse of the country's political stability.

Nine years have passed since the beginning of the civil war, and nowadays the battlefield resembles a chessboard that hosts two superpowers, namely, the US and Russia. On the one hand, the United States supports the Syrian Democratic Forces ("SDF") comprised of mostly YPG militants that are Syrian offshoot of Kurdistan Workers' Party ("PKK") against the Assad Regime, which it – Turkey and like most Western countries – considers a terrorist organisation. On the other hand, Russia supports the Assad Regime and some minor part of the SDG concerning its interests.<sup>238</sup> After considering the ongoing situation, it can be said that the future delimitation of Syrian maritime zones might not depend on only the judgement of Syrian people. In addition, upon revisiting the GCASC's previous border diplomacy with Syria by introducing itself as a representative of the whole island for conducting delimitation negotiations, it can be readily assumed that another future attempt would drag the issue to the dead-end due to Turkey and TRNC's opposition.

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<sup>233</sup> 'The Maritime Border Dispute between Lebanon and Israel Explained' (*Middle East Strategic Perspectives*, 2018) <<https://www.mesp.me/2018/03/05/maritime-border-dispute-lebanon-israel-explained/>> accessed 14 July 2019.

<sup>234</sup> 'The Importance of Syria (Suriye'nin Önemi) (*Topraksuenerji.com*, 2012) <<http://www.topraksuenerji.com/2012/07/page/4>> accessed 12 July 2019.

<sup>235</sup> 'Law No. 28' - "Internal Waters and Territorial Sea Limits of the Syria" (*Un.org*, 2003) <[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/syr\\_2003e.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/syr_2003e.pdf)> accessed 12 July 2019.

<sup>236</sup> *Ibid* (n 175) 26.

<sup>237</sup> *Ibid* (n 167) 25-26.

<sup>238</sup> Muriel Asseburg, 'Eastern Mediterranean Dynamics and the Evolving War in Syria: The Risk of Military Spill-Over and Policy Options for the Eu' (*Euromesco.net*, 2018), 1, 65. <[https://www.euromesco.net/wp-content/uploads/2018/03/Joint-Policy-Study\\_The-Eastern-Med\\_New-Dynamics-and-Potential-for-Cooperation-1.pdf](https://www.euromesco.net/wp-content/uploads/2018/03/Joint-Policy-Study_The-Eastern-Med_New-Dynamics-and-Potential-for-Cooperation-1.pdf)> accessed 13 July 2019.

## 6.6 Israel

The State of Israel is another coastal State in the Eastern Mediterranean region with a coastline of 128 miles and is not a party to UNCLOS. Its territorial waters are determined as 12 nm.<sup>239</sup>

In the subject of maritime delimitation, Israel concluded an agreement with the GCASC to demarcate the northern limits of its maritime areas in 2010<sup>240</sup> and later presented a note to the UN Secretary-General which included the coordinates of the signed agreement in 2011.<sup>241</sup> As aforementioned in the Lebanon section, the agreement in question has caused an overlapping problem between Israel and Lebanon that has been waiting to tackle. In addition, Turkey and TRNC have not pleased with the agreement since the GCASC has addressed as a true representative of the entire island.

Israel's exploration journey of offshore natural resources was initiated in the Eastern Mediterranean in the late 1960s and early 1970s with a series of drilling<sup>242</sup> and resulted in success by discovering fruitful gas fields such as Tamar (2009) and Leviathan (2010). Moreover, including fields at stake, Israel's estimated natural gas reserves are approximately 30 trillion cubic feet of gas (TCFG).<sup>243</sup> Upon considering the timing of Israel-GCASC agreement, it can be seen that the agreement was signed right after the discovery of the major gas fields.

In this region, there has been a well-known conflict still going on between Israel and Palestine; however, this conflict mostly evaluated on the basis of land borders and in particular the status of Jerusalem. On the other hand, the delimitation of Palestine maritime zones also deserves necessary attention due to the existence of Gaza strip which has a 1 TCFG of estimated gas reserves. Furthermore, while making proper delimitation, the Noa, Mari-B and Shimshon natural gas fields may cause future conflicts between Palestine and Israel since these areas located in right behind the assumed delimitation line established by Israel.<sup>244</sup> In addition, it is evident that Palestinian government has also right to declare EEZ, and it may bring a new

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<sup>239</sup> 'Territorial Waters Law, 5717/1956, as Amended by the Territorial Waters (Amendment) Law, 5750-1990, of 5 February 1990' (*Un.org*, 1990)  
<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ISR\\_1990\\_AmendedLaw.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ISR_1990_AmendedLaw.pdf)> accessed 15 July 2019.

<sup>240</sup> *Ibid* (n 186).

<sup>241</sup> 'List of Geographical Coordinates for the Delimitation of the Northern Limit of the State of Israel' (*Un.org*, 2011)<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/isr\\_eez\\_northernlimit2011.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/isr_eez_northernlimit2011.pdf)> accessed 15 July 2019.

<sup>242</sup> The Geophysical Institute of Israel, 'The Levant Basin Offshore Israel: Stratigraphy, Structure, Tectonic Evolution and Implications for Hydrocarbon Exploration' (GSI 2008), 1, 5.  
<[http://www.gsi.gov.il/\\_uploads/ftp/GsiReport/2008/Gardosh-Michael-GSI-4-2008.pdf](http://www.gsi.gov.il/_uploads/ftp/GsiReport/2008/Gardosh-Michael-GSI-4-2008.pdf)> accessed 15 July 2019.

<sup>243</sup> *Ibid* (n 225) 33.

<sup>244</sup> 'Overview of Oil and Natural Gas in the Eastern Mediterranean Region' (*Eia.gov*, 2013)  
<[https://www.eia.gov/beta/international/analysis\\_includes/regions\\_of\\_interest/Eastern\\_Mediterranean/eastern-mediterranean.pdf](https://www.eia.gov/beta/international/analysis_includes/regions_of_interest/Eastern_Mediterranean/eastern-mediterranean.pdf)> accessed 15 July 2019.

conflict between Palestine and Egypt<sup>245</sup>, and most probably this future demand may affect the GCASC since Palestine was not a part of current EEZ delimitation agreement signed by Israel and GCASC.<sup>246</sup> As a result, there are lots of problems to deal with in order to reach a successful delimitation.

### 6.7 Turkish Republic of Northern Cyprus (“TRNC”)

TRNC is another coastal State in the Eastern Mediterranean region with a coastline of 205 miles. Its territorial waters are determined as 12 nm,<sup>247</sup> and its contiguous zone, continental shelf and EEZ have regulated in accordance with international law. According to its regulation while concluding delimitation agreements, the principle of equity has to be taken into account.<sup>248</sup>

Unlike GCASC, TRNC has not been recognized yet by the international community, except for Turkey. Therefore, it has a limited radius of action while defending its rights in the international arena. In this regard, Turkey plays a vital role in representing TRNC internationally by being the voice of Turkish Cypriots. Nevertheless, regardless of international recognition, they emphasize persistently on all occasions that the island has to be represented by both TRNC and GCASC and the natural resources of the island have to be distributed equally.<sup>249</sup> In order to tackle the problem of dichotomy and reunify the island, a comprehensive solution plan was prepared by the UN, known as the Annan Plan, Greek and Turkish Cypriots agreed to hold referenda on 24 April 2004. According to referenda, while 65 per cent of Turkish Cypriots voted in favour of the plan, on the other hand, 76 per cent of Greek Cypriots voted against the plan.<sup>250</sup> In conclusion, the result of the referenda is highly remarkable in terms of demonstrating the views of both sides to the issue.

As it has been mentioned in previous sections, GCASC signed delimitation agreements with Egypt, Lebanon and Israel in 2003, 2007 and 2010,<sup>251</sup> respectively without taking into consideration the rights of TRNC. Moreover, after 2007 it concluded exploration contracts with multinational oil and gas companies for

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<sup>245</sup> Rick Gladstone, 'Palestinians Enter Talks with Egypt to Stake Mediterranean Claims' (*Nytimes.com*, 2016) <<https://www.nytimes.com/2016/06/18/world/middleeast/palestinians-enter-talks-with-egypt-to-stake-mediterranean-claims.html>> accessed 15 July 2019.

<sup>246</sup> 'Palestinians Begin Sea Border Talks with Egypt' (*Al-Monitor*, 2016) <<https://www.al-monitor.com/pulse/afp/2016/06/un-palestinians-gaza-israel-sea.html>> accessed 15 July 2019.

<sup>247</sup> 'The Law of Territorial Waters: TRNC' (*Evrak.cm.gov.nc.tr*, 2002) <<http://evrak.cm.gov.nc.tr/siteler/belgeler/Yasalar/Shared Documents/2002/42-2002.doc>> accessed 18 July 2019.

<sup>248</sup> 'The Law of Maritime Jurisdiction Areas' (*Evrak.cm.gov.nc.tr*, 2005) <<http://evrak.cm.gov.nc.tr/siteler/belgeler/Yasalar/Shared Documents/2005/63-2005.doc>> accessed 18 July 2019.

<sup>249</sup> *Ibid* (n 202) 88.

<sup>250</sup> Ahmet Sözen and Kudret Özersay, 'The Annan Plan: State Succession Or Continuity' (2007) 43 *Middle Eastern Studies*, 125, 125. <[https://www.researchgate.net/publication/237436031\\_The\\_Annan\\_Plan\\_State\\_succession\\_or\\_continuity](https://www.researchgate.net/publication/237436031_The_Annan_Plan_State_succession_or_continuity)> accessed 19 July 2019.

<sup>251</sup> *Ibid* (n 184); (n 185); (n 186).

its licenced fields. However, TRNC have also some rights partially or fully over the areas in question. In this regard, Turkey and TRNC signed a delimitation agreement in 2011 in order to protect the rights of TRNC,<sup>252</sup> and in 2014, Turkish Petroleum Corporation (“TPAO”) sent Barbaros Hayrettin Pasha Seismic Research Ship to start its exploration in the south of Cyprus.<sup>253</sup> Furthermore, nowadays, TPAO has sent a vessel named Yavuz to the northeast of Cyprus, but this time instead of seismic research, the mission of the ship will be a deep-water drilling exploration.<sup>254</sup> Lastly, due to the tension in the Eastern Mediterranean both vessels have been guarded by Turkish warships, which is dubbed as a gunboat diplomacy.<sup>255</sup>

## **7. The Case of Turkey: International Law, Claims and Assessment of the Claims of Turkey**

Under subsequent subheadings, firstly the position of Turkey will be identified regarding the maritime zones applications and their delimitation in terms of the Geneva Conventions and UNCLOS. Secondly, claims of Turkey regarding the way of delimitation will be explained, and lastly, the applicability of its claims will be assessed.

### **7.1 The Approach of Turkey Towards to Maritime Zones under International Law**

The codified international law is based on the Geneva Convention and UNCLOS. Even though Turkey participates in the meetings of both of them, due to specific reasons, neither the Geneva Convention nor UNCLOS is ratified by Turkey. Nevertheless, Turkey has regulated some types of maritime zones in its waters and also made some modifications on outer limits to meet the needs of geographical circumstances. Moreover, it should not be forgotten that, despite not being a party to said conventions, Turkey will be able to propound its claims by considering internationally accepted rules.<sup>256</sup> Turkey has domestic legislation that rules the territorial waters<sup>257</sup>; however, the contiguous zone has not been regulated, yet.<sup>258</sup>

Turkey is surrounded by sea on three sides, and because of this, the outer limits of its territorial waters have been differentiated. Accordingly, while implementing 6 nm in the Aegean Sea, 12 nm is applied

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<sup>252</sup> 'T.C. The Ministry Of Foreign Affairs Turkish Embassy in Washington, D.C.' (*Vashington.be.mfa.gov.tr*, 2011) <<http://vasington.be.mfa.gov.tr/Mission/ShowAnnouncement/131804>> accessed 19 July 2019.

<sup>253</sup> Volkan Ş Ediger, 'Turkey's First Drilling Vessel Heads to Mediterranean' (*Energy Reporters*, 2018) <<https://www.energy-reporters.com/opinion/turkeys-first-drilling-vessel-heads-to-mediterranean/>> accessed 19 July 2019.

<sup>254</sup> Helena Smith, 'Turkey Rejects Claims It Is Drilling Illegally for Gas off Cyprus' (*the Guardian*, 2019) <<https://www.theguardian.com/world/2019/jul/11/turkey-rejects-claims-drilling-illegally-gas-off-cyprus>> accessed 19 July 2019.

<sup>255</sup> Vasileios P. Karakasis, 'Deciphering Turkey's Strategy in the Eastern Mediterranean - Sen Foundation' (*Sen-foundation.org*, 2019) <<http://www.sen-foundation.org/making-sense-international-developments-5/>> accessed 6 August 2019.

<sup>256</sup> Selami Kuran, *Uluslararası Deniz Hukuku* (Türkmen 2009), 1, 123.

<sup>257</sup> 'The Law Of Territorial Waters: Turkey' (*Mevzuat.gov.tr*, 1982) <<http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2674.pdf>> accessed 22 July 2019.

<sup>258</sup> *Ibid* (n 256) 192.

in both Black and Mediterranean Seas.<sup>259</sup> In the conference of Geneva, Turkey suggested to add specific conditions expressly as an exception; however, it was not accepted.<sup>260</sup> Moreover, in the meetings of UNCLOS, Turkey stated that 12 nm could not be applied as an outer limit of territorial waters in each and every sea due to certain specific geographical differences of the seas.<sup>261</sup> In conclusion, it can be said that the reason behind the objections of Turkey is the complex structure of its coasts, in particular, the Aegean Sea and if accepting 12 nm means that its sovereignty rights over the area will be jeopardised.<sup>262</sup>

As it has been stated in the continental shelf section, there is no need to proclaim in order to have an entitlement of continental shelf. That is to say; every coastal State acquires this right automatically. In this regard, Turkey concluded agreements with the Soviet Union<sup>263</sup> in 1978<sup>264</sup> and with Bulgaria in 1997<sup>265</sup> in the region of the Black Sea since the geographical circumstances enable to make successful delimitation. However, yet there has been no agreement signed neither in the Aegean nor the Mediterranean Sea regarding the issue.

After the declaration of EEZs is started to make consistently, the right to declare EEZ gains a precedent character. Therefore, whether the ratification of the UNCLOS cannot be considered as a prerequisite stage for declaring EEZ.<sup>266</sup> In this regard, after the EEZ declarations of Soviet Union and Romania, Turkey also proclaimed 200 miles EEZ in the Black Sea in 1986.<sup>267</sup> As in mentioned maritime zones, the EEZ also has not implemented in both the Aegean and the Mediterranean Sea.<sup>268</sup>

In addition to the reasons for Turkey's objections regarding the articles of territorial waters, there is a need to identify the reasons broadly in terms of other maritime zones and its delimitation methods. As it has been mentioned before, Turkey has deemed its geographical circumstances as a top priority. Therefore, while negotiating the provisions of UNCLOS, Turkey actively proposes texts included in the principle of equity to form the final regime of enclosed and semi-enclosed seas, the breadth of the territorial

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<sup>259</sup> Ibid 115.

<sup>260</sup> Ibid 71.

<sup>261</sup> Ibid 80.

<sup>262</sup> 'The Outstanding Aegean Issues: Territorial Waters' (*Republic of Turkey Ministry of Foreign Affairs*, 2011) <<http://www.mfa.gov.tr/maritime-issues---aegean-sea---the-outstanding-aegean-issues.en.mfa>> accessed 22 July 2019.

<sup>263</sup> 'The Russian Federation, Georgia and Ukraine are parties to this agreement'.

<sup>264</sup> 'Official Gazette: USSR v Turkey' (*Resmigazete.gov.tr*, 1981) <<http://www.resmigazete.gov.tr/arsiv/17226.pdf>> accessed 22 July 2019.

<sup>265</sup> 'Official Gazette: Bulgaria v Turkey' (*Resmigazete.gov.tr*, 1997) <<http://www.resmigazete.gov.tr/arsiv/23409.pdf>> accessed 22 July 2019.

<sup>266</sup> Ibid (n 33) 337.

<sup>267</sup> 'Official Gazette: EEZ: Turkey' (*Resmigazete.gov.tr*, 1986) <<http://www.resmigazete.gov.tr/arsiv/19314.pdf>> accessed 22 July 2019.

<sup>268</sup> Ibid (n 266).

sea, delimitation of the continental shelf, and the EEZ between opposite or adjacent coastal States. Besides, Turkey is rigorously opposed to the implementation of giving equal status to the islands due to the multitude of islands located in closer proximity to its coasts.<sup>269</sup> Furthermore, Turkey is also opposed to the way of using the term of equitable solution in the wording of Articles 74 and 83 of UNCLOS as the meaning is left to the mutual understanding and in case of not reaching consensus, said articles directly points out the compulsory dispute resolution provisions of Part XV of the Convention.<sup>270</sup> Lastly, the subject of abuse of rights included in Article 300 is a vague concept for Turkey, and the outer limit decisions of Turkey in the Aegean Sea might be considered as abuse of rights in terms of Greece since Turkey has taken necessary precautions to keep the limits in question.<sup>271</sup> As a result, it can be evaluated that the perspective of Turkey as a rational approach which enables a radius of action while taking decisions instead of restraining itself with incompatible rules might be applied to the issue at stake.

## **7.2 The Claims of Turkey in the Eastern Mediterranean and Counter Criticisms**

In the previous sections, the actions of Turkey were broadly discussed. In this regard, it can be assessed that the policies of Turkey in the Eastern Mediterranean have composed of five assertions. The first is the implementation of the principle of equity in the maritime delimitation agreements due to the unique nature of the Eastern Mediterranean, the second is to refuse the representative function of GCASC for the entire island, and in this sense to protect the rights of TRNC in the area at stake, third is to assert the licensed assumed zones of GCASC violates the international law as well as the maritime rights of Turkey in the area, fourth is related to the Greek islands that are not eligible to have any EEZ rights, and last but not least any concluded agreements without considering the overlapping areas before reaching consensus with Turkey and TRNC are deemed to be invalid. Therefore, there is no need to reiterate specific actions of Turkey on the basis causality-chronology. Instead, in order to create an objective test ground for the following section, Turkish claims will be summarised and analysed by using the views of authors who are not the proponents of the Turkish claims.

Firstly, Ioannides states that there is an inconsistency in Turkey's argument regarding the notion of equity.<sup>272</sup> Because, while Turkey does prefer the method of equidistance/median line principle for maritime

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<sup>269</sup> Nilüfer Oral, 'Non-Ratification of the 1982 Law of the Sea Convention: An Aegean Dilemma of Environmental and Global Consequence' [2009] 1 PUBLICIST 53, 59.

<sup>270</sup> Ibid 61–62.

<sup>271</sup> Ibid.

<sup>272</sup> Nicholas A. Ioannides, 'Turkish Maritime Claims Offshore Cyprus' (Cyprus Center for European and International Relations (CCEIA) 2017) 1, 2. <[https://cceaia.unic.ac.cy/wp-content/uploads/EMP\\_N\\_18.pdf](https://cceaia.unic.ac.cy/wp-content/uploads/EMP_N_18.pdf)> accessed 24 July 2019.

delimitation with Egypt, on the other hand when it comes to delimitation with Greece and GCASC, the adopted approach shifts from equidistance method to equitable principles.<sup>273</sup> Moreover, Kariotis also points out that the same inconsistency by referring to the concluded agreements of Turkey with the Soviet Union and Bulgaria in the Black Sea on the basis of the principle of the median line without referencing to the special circumstances.<sup>274</sup> Besides, these agreements are dubbed as a fatal mistake and an Achilles heel of Turkey in its dispute with Greece.<sup>275</sup>

Secondly, Ioannides argues that the continental shelf limits of Turkey is putative and defines blocks 1, 4, 5, 6 and 7, overlapping areas according to Turkey, as a legitimate maritime zones of GCASC.<sup>276</sup> With the same logic, the author describes the other overlapping areas as a part of the Greek continental shelf, and accuses the Turkey of encroachment.<sup>277</sup>

Thirdly, the attempts of the Turkish government regarding the protection of the rights of Turkish Cypriots are illustrated as contradictory and ostensible.<sup>278</sup> Because, if Turkey procures these blocks in question, it will affect not only the rights of Greek Cypriots but also Turkish Cypriots negatively due to reducing the common natural wealth of the island.<sup>279</sup> That is to say, according to Ioannides, the actions of the Turkish government does not reflect its real intentions. Apart from that, the significance of the maritime delimitation agreement between GCASC and Egypt is underlined since the south-western part of the Cyprus Island is commented as the primary concern of Turkey.<sup>280</sup> In this regard, if Turkey takes any action within the scope of said area, it may violate the rights of the parties of the agreement under both customary and conventional law.<sup>281</sup> Moreover, Ioannides also emphasises that the result of any attempts to nullify the said agreement will be fruitless due to the doctrine of executed treaty provisions.<sup>282</sup> In other words, after having established the boundary line, the legally binding function of the agreement gains an independent character apart from the existence of the treaty or its provisions.

Fourthly, Charalambous states that Turkey's assertion regarding the Greek island of Kastellorizo is contrary to Article 121 of UNCLOS which provides rights to acquire maritime zones to the islands just as

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<sup>273</sup> Ibid.

<sup>274</sup> Theodore C. Kariotis, 'Hydrocarbons and the Law of the Sea in the Eastern Mediterranean: Implications for Cyprus, Greece, and Turkey' (2011) 22 *Mediterranean Quarterly* 45, 55.

<sup>275</sup> Ibid.

<sup>276</sup> Ibid (n 272).

<sup>277</sup> Ibid.

<sup>278</sup> Ibid 3.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid 4.

<sup>281</sup> Ibid.

<sup>282</sup> Ibid.

other land territories.<sup>283</sup> Moreover, the author emphasises that the inhabitable feature of Kastellorizo that distinguishes the island in question from the uninhabited islet of Filfla<sup>284</sup> in the *Libya/Malta Case*<sup>285</sup>.<sup>286</sup> On this matter, Kariotis states that the Greek government should define its own EEZ by taking Kastellorizo into account, and the inhabited character of the island is a crucial point to prevent possible discussions whether it has an EEZ.<sup>287</sup> In conclusion, Greek island Kastellorizo is considered to be entitled to maritime zones beyond the territorial sea,<sup>288</sup> which means that the Dodecanesian small island of Kastellorizo, as its influence, if recognized, can unite the Hellenic EEZ and Greek Cypriot EEZ.<sup>289</sup>

Lastly, the position of Turkey is reiterated by Charalambous that Turkey is neither a party to UNCLOS nor submits itself to the jurisdiction of ICJ.<sup>290</sup> Then, the Turkish stance is described as a major impediment to the settlement of the maritime boundaries because of the non-acceptance of any delimitation agreements in the Eastern Mediterranean in general.<sup>291</sup> In order to criticise the non-recognition policy of Turkey, GCASC is presented as a legitimate representative of the Cyprus Island, member of EU and UN. However, the role of Turkey over the island is determined as an intruder, and in this regard, TRNC is regarded as the result of an invasion of Cyprus in 1974.<sup>292</sup> That is to say, according to the author, Turkey's non-recognition stance is stemmed from its previous unlawful action and with the help of implemented strategy, the legitimatised ground is tried to be established by Turkey. In this regard, it can be said that with the mentioned interpretation, the base of non-acceptance and non-recognition policies of Turkey is tried to be collapsed.

### **7.3 Assessment of the Claims of Turkey**

After examining the adopted policies and the actions of Turkey in the Eastern Mediterranean, in this section, the question of whether there is a room for grounds for Turkey to carry out these policies in question will be scrutinised. Whilst conducting said assessment, firstly the delimitation problem between Turkey-

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<sup>283</sup> Marianna Charalambous, 'The Settling Of Maritime Boundaries In The Mediterranean: You May Not Want To Play But You Have To Share' [2013] 3 EEJ 64, 77.

<sup>284</sup> Ibid (n 95) para 64 'The Court finds it equitable not to take account of Filfla in the calculation of the provisional median line between Malta and Libya'.

<sup>285</sup> Ibid (n 95).

<sup>286</sup> Ibid (n 283).

<sup>287</sup> Ibid (n 274) 54.

<sup>288</sup> Ibid (n 272) 5.

<sup>289</sup> Petros Siousiouras and Georgios Chrysochou, 'The Aegean Dispute in the Context of Contemporary Judicial Decisions on Maritime Delimitation' (2014) 3 Laws 12, 17.

<sup>290</sup> Ibid (n 283) 65.

<sup>291</sup> Ibid 67.

<sup>292</sup> Ibid 78.

Greece and Turkey-GCASC will be focused and questioned, respectively, and lastly, the strength of criticised policies of Turkey will be assessed.

### 7.3.1 Assessment of the Applicability of Turkish Assertions against Greece

As it has been mentioned before, Greece wishes to establish maritime boundaries by using the location of its islands as basepoints instead of making maritime delimitation between the Greek and Turkish mainland. Because, Greece asserts that the two groups of Greek islands, the Cyclades and the Dodecanese, are in archipelago formation, and in this sense, it should be considered as a continuation of the Greek mainland,<sup>293</sup> apart from that Greece also asserts that the Greek islands are eligible to have EEZ under Article 121 of UNCLOS.

On the other hand, Turkey has formulated its defence in light of relevant decisions made by ICJ and arbitral tribunals, and also with the well-known international principles. The core of Turkish claims is based on the supremacy of geography, and the reverse side rule, the principle of non-encroachment (non-cutting off).<sup>294</sup>

First, there is a need to underline the fact that the coast of each of the Parties constitutes the starting line<sup>295</sup> and in this regard, courts generally start the delimitation process with a provisional line (median line), and after that geographical circumstances will take place such as islands to shifting the line at stake. In addition, the islands can indeed be regarded as basepoints only if the location of the islands is close to its mainland, namely that coastal islands.<sup>296</sup> However, the Greek islands Kashot, Karpathos, Rhodes and Kastellorizo are located far from its mainland to be considered as basepoints. Thus, Greece cannot constitute new relevant coastline by using said islands.<sup>297</sup>

Secondly, the decision of *the Channel Islands*<sup>298</sup> introduces a new principle into the literature which identifies the location of the island in order to determine the effect of the islands on the provisional line. Accordingly, the location of the Channel Islands is accepted as "on the wrong side of the median line"<sup>299</sup>, and except for granting them territorial waters toward the median line, the maritime boundary is drawn without

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<sup>293</sup>Phaedon John Kozyris, 'Equity, Equidistance, Proportionality at Sea: The Status of Island Coastal Fronts and a Coda for the Aegean', in Theodore C Kariotis (ed), *Greece and the Law of the Sea* (Kluwer Law International 1997), 48.

<sup>294</sup> *Ibid* (n 167) 24.

<sup>295</sup> *Ibid* (n 95) 31, para 47.

<sup>296</sup> *Ibid* (n 148) 144.

<sup>297</sup> *Ibid* (n 202) 95.

<sup>298</sup> *Ibid* (n 155).

<sup>299</sup> *Ibid* para 199.

taking into account the Channel Islands.<sup>300</sup> Moreover, the decision of *Black Sea Case*<sup>301</sup> also adopts the logic of *the Channel Islands* award. The court ignores Serpents Island of Ukraine where is closer proximity to Romanian coastline while determining the basepoints to form the equidistance line and states that if island at stake counts as a relevant part of the Ukrainian coast, the result would be judicial refashioning of geography.<sup>302</sup> Besides, even though the said island does have neither the inhabitable environment nor economy, the court does not mention these facts for the reasoning of disregard. That is to say, in particular, the position of the island is considered to be the only fact for justification. Therefore, it can be said that Greek Islands Kashot, Karpathos, Rhodes and Kastellorizo are on the opposite side of the median line and for this reason, they do not have any rights for claiming more than territorial waters<sup>303</sup>and their economic conditions or inhabitable features do not cause an effect on the matter.<sup>304</sup>

Lastly, according to mentioned decisions in Non-Encroachment (Non-Cutting Off) section, maritime delimitation has to be performed without encroachment on the natural prolongation of the land territory of the other party.<sup>305</sup>Furthermore, some decisions mainly focus on the cutting off effect stemmed from the islands.<sup>306</sup>Accordingly, the relevant coasts of Turkey are affected both the concave configuration of the Gulf of Antalya and the location of the Greek islands in terms of non-encroachment. Therefore, in order to prevent such a detrimental effect of Greek islands over Turkish maritime zones as well as main ports, the maritime rights of the islands should be limited to territorial waters.<sup>307</sup>

In conclusion, it is not possible to evaluate the current actions have been performed by Turkey as unlawful or as an infraction of the sovereignty rights of Greece. Instead, it can be considered as enjoying its maritime zones with respect to the findings as mentioned earlier.

### **7.3.2 Assessment of the Applicability of Turkish Assertions against GCASC**

Turkey and GCASC have two notable problems regarding the delimitations of maritime zones and the problems in question affect the entire Eastern Mediterranean. The first one is the issue of overlapping areas between them, and the second one is the representation of the Cyprus Island and the protection of the TRNC's rights. In this section, the first problem will be examined in terms of Turkey's perspective.

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<sup>300</sup> Ibid (n 50) 278.

<sup>301</sup> Ibid (n 134).

<sup>302</sup> Ibid 109-10, para 149.

<sup>303</sup> Ibid (n 148) 153.

<sup>304</sup> Ibid (n 202) 97.

<sup>305</sup> Ibid (n 113); (n 117).

<sup>306</sup> Ibid (n 119); (n 121).

<sup>307</sup> Ibid (n 167) 24.

As it has been expounded before, GCASC concluded bilateral agreements with Egypt, Lebanon and Israel, respectively.<sup>308</sup> Whilst GCASC made said agreements, unlike Turkey, a diagonal method was implemented instead of the vertical method. That is to say, with this method they increased the numbers of neighbour countries to be made agreements as well as the maritime jurisdiction areas.<sup>309</sup> After that, hypothetical EEZ's of GCASC was divided into 13 blocks; however, the sovereignty rights over certain parts of the blocks 1, 4, 5, 6 and 7 has been claimed by Turkey as well.

When determining maritime boundaries, the starting point of the process is to identify the relevant coasts of the States. The relevant coasts of Turkey for the delimitation area at stake extend from Muğla Deveboynu Cap. to Antalya Gazipaşa. Between these two points, the actual coast length of Turkey is 656 miles and said coasts' frontal length is 294 miles. On the other hand, the relevant actual coast length of GCASC is 32 miles, and the frontal length is 28 miles.<sup>310</sup> Accordingly, it can be observed that there is a relatively ten times length disparity between the Anatolia coasts and western coasts of GCASC. At this point, the principle of proportionality gains importance in terms of the delimitation process. As it has been mentioned in the principle of proportionality section, such disparities have been interpreted in favour of the State which has a longer coastline. In particular, *Libya/Malta Case*<sup>311</sup> has a significant feature for solving the issue. In the mentioned case, the coastal length ratio between the States was determined to of 8: 1 in favour of Libya<sup>312</sup> and the median line was withdrawn 18 miles towards north against Malta.<sup>313</sup> Moreover, *St. Pierre and Miquelon*<sup>314</sup> and *Nicaragua/Colombia*<sup>315</sup> decisions emphasise the necessity of preventing the island's cut off effect over a parallel frontal projection of relevant coasts of mainland.<sup>316</sup> Besides, *Guinea/Guinea-Bissau*<sup>317</sup> decision underlines the importance of the openings of the ports.<sup>318</sup>

When considering the 10: 1 coastal length ratio, and the openings of Antalya and Mersin ports which are the most important ports of the area,<sup>319</sup> it can be argued that the maritime boundaries between Turkey and GCASC have to be determined by taking special circumstances into account and making an agreement based on the principles of equity, instead of implementing the median line approach solely in order to reach

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<sup>308</sup> Ibid (n 184); (n 185); (n 186).

<sup>309</sup> Ibid (n 167) 44.

<sup>310</sup> Ibid (n 168).

<sup>311</sup> Ibid (n 95).

<sup>312</sup> Ibid 41, para 68.

<sup>313</sup> Ibid 43-4, para 73.

<sup>314</sup> Ibid (n 118).

<sup>315</sup> Ibid (n 120).

<sup>316</sup> Ibid (n 306).

<sup>317</sup> Ibid (n 82).

<sup>318</sup> Ibid (n 202) 93.

<sup>319</sup> Ibid.

an equitable solution. Therefore, Turkey claims that the maritime boundary has to be formed towards the east at 032° 16' 18" E longitude which is closer to the western coasts of GCASC and it will follow said longitude towards the south until the median line between the relevant coasts of Egypt and Turkey. Also, the border in question shall be modified in favour of GCASC while intersecting the external territorial waters border of GCASC.<sup>320</sup>

Despite the reasonable grounds of Turkey, at first sight, it seems as GCASC is incarcerated into its western territorial waters with this argument. Nevertheless, upon revisiting the vertical delimitation approach of Turkey and the diagonal approach of GCASC. It can be observed that Turkey has already narrowed down its claims by taking the said approach. In other words, if Turkey pursues a policy like GCASC, Turkey will have a chance to increase the numbers of neighbour countries to be made delimitation agreements such as Israel and Lebanon in addition to current ones (Greece, Syria, GCASC and TRNC). Indeed, Turkey may expand its EEZ claims with the help of this perspective from 55.985 to 69.535 square miles.<sup>321</sup>In conclusion, Turkey's plan can be interpreted as relatively more than fair.

### **7.3.3 The General Policy of Turkey and its Applicability**

The summary of Turkish claims and its criticisms were expounded in previous sections, and in this section, the other criticisms in question will be tried to be responded.

After examining the issues related to Turkey-Greece and Turkey-GCASC, it can be said that there is no obstacle for making maritime delimitation agreement between the opposite coasts of Turkey and Egypt. Indeed, despite the Greek assertions regarding overlapping areas and the prevention of establishing delimitation agreement between Turkey and Egypt, it can be argued that even Greece does not believe in its assertions.<sup>322</sup> Because during the bilateral maritime delimitation talks were made by Egyptian-Greek sides in Cairo on 20 June 2009, Egypt informed the Greek committee about initiating the similar talks with Turkey; however, the Greek side did not show any sign of protest regarding the issue and two days later Turkish and Egyptian sides discussed the same issues in Cairo<sup>323</sup>. That is to say; the mentioned occasion can be evaluated as a tacit acceptance of Greece for Turkish claims.

According to Turkey, a possible Turkish-Egyptian maritime border shall be determined by solely adopting the median line method. Because both countries have similar coastlines 569 and 522 miles,

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<sup>320</sup> Ibid 94.

<sup>321</sup> Ibid (n 167) 46-9.

<sup>322</sup> Ibid (n 274) 53.

<sup>323</sup> Ibid.

respectively, and there are no special circumstances to modify the median line.<sup>324</sup> However, this approach is criticized as inconsistency by certain authors due to contrary to pursued policies of Turkey in the Eastern Mediterranean. In order to analyse Turkish behaviour, the dynamic character of maritime delimitation should be remembered, and in this sense, case law has frequently underlined that there is no particular recipe to implement every single case beginning from the decision of *North Sea Case*<sup>325</sup>. Furthermore, before the matter of Turkey-Egypt maritime delimitation, Turkey has already applied this method for the maritime delimitations with its neighbours in the Black Sea since there are no special circumstances to alter the median line. In conclusion, there is no international law that requires that after applying any delimitation method, a State is bound to this method in all circumstances, regardless of the specific characteristics of each case. That is to say, thinking the opposite way and making one-sided criticisms means that the denial of entire case law.

Turkish policy regarding the overlapping areas between Turkey and GCASC is also criticised as a contradictive matter since it will cause to reduce the wealth of the entire island. In other words, if taking the equal right demands of TRNC over the island into consideration, possible consequences will not be beneficial for TRNC. Moreover, the argument in question is based on the assumption that Turkey has to sacrifice its rights in return for TRNC's good in every case. However, according to Turkey, TRNC is an independent State and status of Turkey is limited to be guarantor State. In this regard, Turkey is responsible for defending logical and lawful assertions of TRNC as a guarantor State and for this reason, Turkey will be able to free to protect its lawful rights against any State whether its allies or not. In addition, there is also another argument about mentioned criticism. Accordingly, it argued that the Turkish endeavours will not result in success since Egypt and GCASC have already concluded a delimitation agreement that set the boundaries of the area at stake, and there is no chance to nullify the agreement due to the doctrine of executed treaty provisions. This time, an argument at stake is based on the well-known doctrine, however, in order to refer to said doctrine, parties have to constitute a valid agreement by fulfilling the essential elements of the contract. In this regard, the parties do not have authority over the subject of the agreement, which means that the said agreement can be considered as not being born from the beginning.

Lastly, Turkey's non-acceptance and non-recognition approaches are criticised as a major impediment to the settlement of the maritime boundaries. At first glance, Turkey seems to be a bully who will always create problems until its desires are fulfilled. However, the other side of the coin tells an entirely

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<sup>324</sup> Ibid (n 202) 94.

<sup>325</sup> Ibid (n 72).

different story. In this sense, Turkish actions can be explained as an effort to prevent possible future delimitation-based conflicts. Accordingly, Turkey has been a strong advocate of not concluding any bilateral agreements before resolving the conflicts and claims. If the goal is to achieve a sustainable and fair solution, the foundation of the structure must be concrete, which can be possible by avoiding problems from the beginning. In conclusion, it can be said that being a wise man or a bully is only a matter of perspective. That is to say; accusing Turkey being a bully or an obstacle can be considered as a continuation of one-sided and biased perspective.

## **8. Conclusion**

In this study, the structure of the content was divided into two chapters. In Chapter I, the basic concepts, general rules and the principles/methods of maritime delimitation were explained to establish the base of the argument of this study. Afterwards, in Chapter II, the region of the Eastern Mediterranean was scrutinised in particular considering the policies of all participants in order to familiarize each States' agendas and to observe the position of Turkey in the Eastern Mediterranean clearly. Finally, the applicability of Turkish claims and the strength of its grounds were assessed in light of counter criticisms.

After assessing the justifications of Turkish claims and the relevant criticisms against them by taking into account the case law, it can be said that the grounds are solid and the criticisms are shallow. Nevertheless, most of the States apart from Turkey and TRNC continue to take actions without considering the rights of other States with respect to concluded unlawful bilateral delimitation agreements, instead of having followed the famous proverb "a fault confessed is half redressed" and making necessary adjustments to form their policies by recognising the legitimate demands of Turkey and the existence of TRNC. The remarkable point is that before starting the exploration and drilling activities of Turkey with its owned vessels, the other States did ignore the previous reactions of Turkey by underestimating the Turkish capability of taking necessary precautions. Indeed, Turkey has a significant military power and adequate resources to be a part of the equation. Accordingly, after Turkey starts to play others' game under the reciprocity principle, Turkey is accused of conducting gunboat diplomacy<sup>326</sup> and violating international law.

In other respects, the EU<sup>327</sup> and the US<sup>328</sup> consistently make unfortunate statements about their disturbances related to violation of assumed EEZ of GCASC and try to put pressure on Turkey to stop its

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<sup>326</sup> Kostis Geropoulos, 'Cyprus Brings up Turkey's 'Gunboat Diplomacy' To EU' (*New Europe*, 2018) <<https://www.neweurope.eu/article/cyprus-brings-turkeys-gunboat-diplomacy-eu/>> accessed 6 August 2019.

<sup>327</sup> 'EU Warns Turkey against Drilling off Cyprus' (*France 24*, 2019) <<https://www.france24.com/en/20190504-eu-warns-turkey-against-drilling-off-cyprus>> accessed 6 August 2019.

activities. At this point, there is a need to underline the subject once again that all of the demands over the area have to be considered as claims not facts, and treated to be equally, in this sense neither EU nor US is authorities to decide the boundaries of the Eastern Mediterranean. Most probably, these statements are stemmed from the energy needs of the EU and protecting the interests of US energy companies. That is to say; at this point, overlapping areas belong to no one, and the issue has to be assessed objectively in the light of universal rules and case law regardless of thoughts of external elements. In this regard, said statements could be considered as hypocritical and interest-oriented.

The recognition of TRNC is also a significant issue in order to tackle the delimitation problem. Indeed, TRNC is the constituent element of the RoC according to the agreement concluded in 1960. Although the international community has recognised GCASC as RoC, there is no chance to talk about RoC without TRNC due to the said agreement (*ipso iure*) and sovereignty of TRNC over the northern part of Cyprus (*ipso facto*). In this regard, the actions of Turkey for protecting the rights of TRNC can be considered as reasonable. In addition, unlike the common perception, Turkey and TRNC have always demonstrated cooperative attitudes and left the dialogue channels openly for contributing the solution.<sup>329</sup>

As a result, although Turkey is neither a party to international conventions nor submits itself to the jurisdiction of ICJ, it can be said that the grounds of Turkey are well-organised and contemplated in light of case law as well as international principles. In this regard, from what has been discussed above so far, we may conclude that the policies of Turkey pursued in the Eastern Mediterranean have a high degree of applicability, and unless reaching the mutual consensus between all parties, there will be no chance for the area at stake to be delimited successfully.

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<sup>328</sup> 'U.S. Says Deeply Concerned by Turkey's Intent to Drill off Cyprus' (*Uk Reuters*, 2019) <<https://uk.reuters.com/article/turkey-cyprus-drilling/u-s-says-deeply-concerned-by-turkeys-intent-to-drill-off-cyprus-idUSL5N2210EL>> accessed 6 August 2019.

<sup>329</sup> 'Turkey Says All Parties Should Cooperate in Eastern Mediterranean' (*Reuters*, 2019) <<https://www.reuters.com/article/us-cyprus-turkey/turkey-says-all-parties-should-cooperate-in-eastern-mediterranean-idUSKCN1UV0QO>> accessed 6 August 2019.

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