Discord between Greece and Turkey over the Extent of Their Continental Shelves in the Aegean

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RÉSUMÉ

Le différend gréco-turc autour de l'étendue de leur plateau continental dans la mer Égée, qui constitue seulement une des plusieurs disputes qui divisent les deux nations, date depuis le début des années 1970. Les deux pays ont échoué d'y trouver une solution. La Grèce insiste pour arriver à un règlement tranché devant un forum international par une troisième partie tandis que la Turquie veut arriver à un accord négocié entre les parties concernées, les deux pays divergeant aussi beaucoup et de manière cruciale sur l'essence du problème. L'argument utilisé par la Grèce, basé principalement sur la loi conventionnelle, est que la délimitation de la mer territoriale devrait être effectuée en utilisant le principe de l'équidistance entre les îles grecques qui se situent le plus à l'est et la côte ouest de la Turquie, ce qui pourrait accroître légèrement l'étendue de sa mer territoriale. La Turquie, quant à elle, argumente sur la base du droit international coutumier que la délimitation devrait être effectuée entre la partie continentale des deux pays en accord avec des principes d'équité, en laissant de côté celles des îles grecques (se trouvant près de la Turquie—sur le plateau continental turc selon la thèse turque), ce qui aurait comme conséquence d'étendre le plateau continental aussi loin que le centre de la mer Égée. Cet article tente d'examiner ces deux arguments à la lumière du droit international, la pratique de l'Etat et des opinions académiques en vue de contribuer à une solution pacifique.

ABSTRACT

The Greek-Turkish controversy over the extent of their continental shelves in the Aegean Sea, only one of many disputes which divide the two nations, dates back to the early 1970s. They have failed to solve it. Greece insists on third party settlement while Turkey gives priority to a settlement by the agreement of the interested parties. They also differ sharply on the substance of the dispute. Greece argues mainly on the basis of conventional law that a delimitation of the continental shelf should be effected by the use of the equidistance principle between the easternmost Greek islands and the west Turkish coast, which would give to Turkey a little more than the seabed of its territorial sea. Turkey, on the other hand, argues on the basis of customary international law that the delimitation should be effected between the mainlands of the two countries in accordance with equitable principles, thus ignoring those Greek islands on the Turkish continental shelf which would extend the Turkish continental shelf as far as to the middle of the Aegean Sea. This article seeks to examine these two arguments in light of international law, state practice and scholarly opinions in order to contribute to a peaceful solution.

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I. Introduction

The Aegean Sea is a semi-closed sea bordered by the coasts of the Greek mainland to the west and to the north and by the coasts of the Turkish mainland to the east and to the north.[1] There is no commonly agreed-upon geographical southern boundary delineating the Aegean from the Mediterranean. The Aegean is dotted with more than 3000 islands, islets and rocks; most of which belong to Greece. Some of these islands are within immediate proximity of the Turkish coasts,[2] and they have been demilitarized by international treaties. For the purposes of this study, however, these islands are of central importance.

Greece and Turkey agree on few things in the Aegean. The two countries have multifaceted problems there which they have failed to solve. Deep rooted mistrust and a state of animosity characterize and, in fact, poison the relations between the two nations.[3] Developments in the law of the sea, with its new institutions, have brought in new areas of dispute. The continental shelf (CS) is one such area upon the limits of which the Greece and Turkey differ widely. The CS dispute started in late 1973 when the Turkish government granted a number of concessions to the Turkish Petroleum Company (TPAO) to explore for oil on the seabed of the Aegean high sea which according to Greece forms part of continental shelf of some of its islands.[4] Greece, basing its claim on international law as codified by Articles 1(b) and 2 of the Geneva Convention on the Continental Shelf (the Geneva Convention), challenged the validity of the Turkish activities and contended that the CS should be delimited between the easternmost Greek islands on one side and the western Turkish coasts on the other side, on the basis of the equidistance method.[5] The Turkish government disagreed and contended on the basis of case law that the Greek islands located east of a median line between the coasts of the mainland of the two countries do not possess a CS of their own because they sit on the geological Turkish CS. The Turkish government also has disputed the applicability of the equidistance method and has expressed its preference for seeking an agreed-upon solution in conformity with international law.[6] Mutual exchanges of views and short negotiations have failed to produce any concrete results. In 1976, when Turkey gave further permits in new areas of a similar nature which were also claimed by Greece, the latter unilaterally took the dispute to the Security Council of the United Nations and the International Court of Justice (ICJ) at the same time. The Turkish government disagreed with the unilateral suhmission of the dispute to the Court and objected to its jurisdiction.

The Security Council recommended that the parties resume negotiations and consider submitting to the ICJ «any remaining legal differences».[7] The Court decided in 1978 that it lacked the necessary jurisdiction to hear the case.

During the Third United Nations Conference on the Law of the Sea (UNCLOS III), which resulted in the adoption of the 1982 United Nations Convention on the Law of the Sea (the 1982 Convention), both Greece and Turkey lobbied hard to have their positions improved.[8] Eventually, the 1982 Convention changed the definition of the CS (Article 76) and rules on its delimitation (Article 83). More importantly, it has a separate article on islands, Article 121. Greece is a party to both the Geneva Convention and to the 1982 Convention. Turkey is not a party to either. Consequently, the Aegean CS dispute must be evaluated in light of customary international law. Considering all these developments, the current Greek position may be summarized as follows:

1. All islands are entitled to CS areas of their own in the same way as mainlands and in a delimitation of CS, they must be treated like mainlands.

2. The Greek mainland and its islands constitute a political and territorial whole with the result that the Greek islands including those facing the Turkish mainland coast are an integral part of the Greek territory. In delimiting CS between Greece and Turkey, the Greek mainland and its islands must be treated as an integral unit. Consequently, the delimitation of the CS in the Aegean should be effected between the easternmost Greek islands (facing the Turkish coast) and the west coast of Turkey according to the equidistance method.

3. The CS dispute should be referred to the ICJ for compulsory judicial settlement.

On the other hand, the Turkish position, inspired by the jurisprudence of the ICJ, in particular its 1969 judgment of the North Sea Continental Shelf Cases, (the North Sea Case)[9] may be summarized as follows, so far as it transpires from available sources:[10]

First, the delimitation of the CS in the Aegean Sea between Greece and Turkey should be effected by agreement, while the possibility of submission of the dispute to the ICJ is not excluded.[11]

Second, in the delimitation of the CS, each country should be given natural prolongation of its land into and under the sea in the physical sense. The natural prolongation of the Turkish land reaches to the middle of the Aegean Sea. The Greek islands facing the Turkish coast sit on the Turkish national prolongation; they do not have their own CS.

Third, considering its proposals in 1974 in the UNCLOS III, Turkey may be seen as alternatively contending that the delimitation should be effected in accordance with equitable principles for two reasons:

1. Greek islands in the Aegean, situated east of the median line (on the Turkish

shelf) constitute special circumstances for the reasons of their location, size and population.

2. The Aegean is a semi-closed sea, in which the maritime spaces of islands ought to be determined jointly by the coastal states.

Fourth, a delimitation of CS in the Aegean ought to take into account the legal and political balances as established by the international treaties.

The essence of this position is that the boundary line of the CS in the Aegean Sea should run down the middle of the two mainlands, leaving the Greek islands east of the line only their territorial sea (TS) areas.

II. Procedural issues

2.1 Nature of the Dispute and Validity of the Turkish Claim

As stated before, Turkey and Greece have made claims to the same submarine areas in the Aegean. In other words, their claims overlap, although they are based on different theses.

In this connection, it is pertinent to know whether the Turkish claim is legally based, as the reverse is claimed by certain Greek writers.[12] It is true that the Turkish government has said from time to time that the Aegean CS dispute is of a political nature.[13] However, this statement does not mean Turkey wants a solution outside international law. Quite the contrary is intended since what Turkey says is that the issue has political aspects, which is perhaps true. In addressing this point in the Aegean Continental Shelf Case, the Court itself said «... but a dispute involving two states in respect of the delimitation of the continental shelf can hardly fail to have some political element....»[14] Again, a chamber of the Court said in the Gulf of the Main Case that the delimitation of the continental shelf was a political-judicial operation.[15] Then, the Aegean CS dispute becomes all the more political, when its link with other Aegean issues is taken into account[16]. It is quite obvious that the tense relations between the two countries further politicize the dispute. What has brought the two nations to the brink of war twice so far was certainly not controversy over the unidentified resources of the Aegean. It is, however, a fact that the issue is politically sensitive. It is also certain that any outcome of the resolution of the CS dispute will have political ramifications for the parties.[17] Yet, this does not mean that the two countries are not in conflict as to their rights in the Aegean.[18]

Having said this, there is nothing unusual in the Turkish claim of CS areas in the Aegean. Although CS rights are inherent to all coastal states, and the latter

have such rights *ipso facto* and *ab initio*, in a concrete delimitation setting, a coastal state needs to lay claim to a given part of the CS so that an area of overlapping claims can be brought about for the purpose of delimitation.[19] It is known that Turkey has CS areas in the Aegean, which Greece acknowledges, but the controversy is over the limits. There is nothing wrong with this. As the ICJ recently said, making overlapping entitlement claims is a feature of the maritime boundary claims:

«But maritime boundary claims have the particular feature that there is an area of overlapping entitlements, *in the sense of overlap between the areas which each state would have been able to claim had it not been for the presence of the other state;* this was the basis of the principle of non-encroachment enunciated in the North Sea Continental Shelf Cases[20][emphasis added].

In this sense, claiming a CS area is necessarily a unilateral act, because only the coastal state is competent to undertake it, although «the validity of (the claim) with regard to the other states depends on international law»[21]. Then, Turkey does nothing wrong when it lays claim to certain seabed areas beneath the high sea off its coast in the Aegean Sea.[22] In fact, there are good reasons for it to do so. Leaving aside all other considerations or principles which may weigh in favor of Turkey, the law of CS as based on the practice of states[23] will indicate that in a semi-closed sea such as the Aegean, the capacity of islands to generate submarine areas is not absolute, to say the least. Islands in such situations are either enclaved or totally disregarded for the purpose of delimitation of the CS. This fact alone would enable Turkey to lay claim to the areas in question. Besides, Turkey has declared that it wants to negotiate the issue with Greece.

2.2 Turkish-Greek Disputes in the Aegean Are so Intertwined that *Ad Hoc* Piecemeal Solutions May Be Counterproductive

Contrary to the Greek contention that the only dispute Greece has with Turkey in the Aegean Sea is the CS dispute, the latter is only one of many Aegean disputes which have divided the two nations for years. It is no secret that Greece and Turkey do not see eye to eye on such issues as the extent of the TS, the extent of the Greek airspace, the demilitarized status of a number of the islands, and the nature of the Flight Information Region (FIR). The case law of the Permanent Court of International Justice (PCIJ) and of the ICJ reveal that when two countries are in conflict as to their respective rights, or when they disagree on a point of law or fact, there is an international dispute.[24] Greece and Turkey thus have fully defined disputes in the Aegean Sea. On the other hand, there are close links among these disputes; consequently, a judicial settlement of the CS dispute alone is likely to affect the future of other differences. It is common knowledge that any further enlargement of TS in the Aegean by one party (Greece) would

considerably diminish the area of CS, which the other party (Turkey) may be legally entitled to claim. A prior solution of the CS dispute may anticipate this if, and only if, it is a just solution.

Needless to say, any delimitation of the CS would have some relevance on the future of the fishery zones or exclusive economic zones (EEZs) of the parties.

On the other hand, drawing a permanent line for one purpose without knowing other lines could become a gamble so far as other uses are concerned.[25] Then, in a legal settlement of the CS, the successful party would have killed two birds with one stone, while the other party would lose doubly.

In conclusion, these considerations combine to suggest that there is an inseparable linkage between the Aegean issues. Hence a package deal approach is needed. Referring the CS dispute to the ICJ without prior negotiation of other issues could settle this problem, but it might aggravate the position of other outstanding differences.[26]

2.3 Greece and Turkey: Under Obligation to Negotiate

Turkey and Greece differ widely not only on the substance of the Aegean CS dispute but also on how to solve it. Turkey insists on serious and meaningful negotiations before any third party settlement is undertaken, while Greece insists on submission of the dispute to the ICJ. In the past, the two countries negotiated the issue intermittently between 1976 and 1981. In 1976 they concluded the Bern Agreement on the details of such negotiations.[27] However, in the same year, Greece unilaterally referred the dispute to the ICJ which decided in 1978 that it did not have jurisdiction. Thus, the negotiations and the Court proceedings continued for a while *pari passu*. In 1981, Greece dramatically stopped the negotiations. Greece has since declared that it has nothing to negotiate with Turkey in the Aegean and that it has no dispute with Turkey except for the CS dispute, which could be solved only through judicial settlement. In fact, Greece considers the whole Aegean Sea a «Greek Lake».[28]

We shall briefly concentrate below on the arguments of both parties and try to shed some light on why Turkey gives priority to negotiations while Greece prefers a judicial settlement.

It is clear that in international law there is an obligation for a state to negotiate its differences or disputes with other states.[29] It is equally clear that resorting to judicial settlement of international disputes is not compulsory.[30] As PCIJ said as far back as 1929, the judicial settlement of a dispute «is simply an alternative to the direct and friendly settlement of such disputes between the parties».[31]

The ICJ, too, has continued the same line of jurisprudence as it stated it in the North Sea Case in the following terms:

«The parties are under an obligation to enter into negotiations with a view to arriving at an agreement and not merely to go through a formal process of negotiations as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under obligation to conduct themselves appropriately so that *negotiations are meaningful*. This will not be the case when either party insists upon its own position without contemplating any modification of it.» [emphasis added]. [32]

The obligation to negotiate derives, on the other hand, from Article 33 of the Charter of United Nations which places negotiation at the head of the methods of peaceful settlement.

In cases of maritime delimitation, the importance of negotiations is more prominent because «The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal state as expressed in its municipal law.»[33]

Regardless of customary law, Article 6 of the Geneva Convention on Law of the Sea, and Articles 74/83 of the 1982 Convention attach considerable significance to the agreement of the parties in formulating rules on delimitation of the seabed or maritime areas. Neither of the Conventions requires compulsory judicial settlement. This situation is said to represent general international law.[34] The international practice also confirms this position. So far, hundreds of such disputes have been solved by agreement of the parties; only few have been referred to a third party settlement.

Thus, when Turkey insists that the Aegean disputes in general, and the CS dispute in particular, ought to be meaningfully negotiated before any third party settlement is undertaken, it speaks from the core of international law.

It may now be useful to briefly examine the factors which may favor a negotiated settlement of the Aegean Sea dispute.

First, an international judicial settlement is risky, in that it is like a zero-sum game in which the winner takes all. Such a result would perpetuate the ongoing tension between the parties and eliminate flexibility and room to maneuver for adjustments.[35]

Second, states resort to a legal settlement only after they have fully negotiated their differences, identifying points on which they agree or disagree. They also agree beforehand on what they are going to ask the Court to do for them. In the Aegean CS dispute, the parties agree on nothing.[36] In the first place, they do not agree on the area of delimitation. Greece insists that the area should be the

maritime space between the easternmost Greek islands and the west coasts of Turkey, while Turkey insists that the delimitation area should be the whole Aegean Sea between the two mainland coasts. Similarly, the southern boundary of the Aegean is not agreed upon. Moreover, it is not clear what the Court would do for the parties even if they were to agree to submit the dispute. Would the Court draw a boundary line or boundary lines for the parties, or would it indicate principles and rules applicable to such delimitation?

Third, because of the obvious linkage between the Aegean disputes, a package deal approach might be more suitable. Through negotiations mutual trade-offs could be made which could minimize or compensate losses of one side in one area or on one issue by providing advantages or gains in another area or on another issue.

Fourth, it is not a coincidence that states which have so far submitted their maritime disputes to the judicial settlement have had friendly relations. Obviously good relations make it easy for the parties to accept the outcome of judicial settlement and sell it to their respective publics.[37] However Turkish-Greek relations are characterized by deep-rooted animosity and mistrust. Therefore, before resorting to judicial settlement, confidence-building measures must be established and promoted. The issues dividing the two nations must also be narrowed down through negotiations.[38]

Fifth, the law of the CS is not only extremely vague but also in a state of flux, to say the least.[39] The existing case law gives hardly any reliable guidance as to how delimitation is to be decided when submitted to a third party.[40] Judgements of the ICJ in maritime disputes indicate that the Court has so far exercised very wide discretion coming close to the exercise of *ex aquo et bono* power or «roll-the dice-discretion» as some would call it.[41] What the Court calls equitable principles which govern the delimitation of seabed areas admittedly derive from factual circumstances of the delimitation itself. In other words, the equity of a delimitation of a given CS is to be achieved by reference to the circumstances which characterize the area.[42] As the Court said in the Tunisia/Libya Case:

«It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances.»[43]

It is the Court which derives and applies such principles. In some cases at least, the subjectivity is visible and further increases the level of unpredictability and the degree of risk and thus discourages the parties from resorting to legal settlement.[44]

The geography of the Aegean Sea is one of the most complex in the world and its circumstances are extremely exceptional. It is not predictable which equitable principles the Court would derive from such complex geography. Therefore, any

outcome may be expected from a third party settlement of the Aegean CS dispute. That unpredictability is perhaps why Turkey insists that the two parties negotiate the issue with a view to solving at least some part of the problem, after which they may mutually refer the remaining part or parts to the Court.

III. Substantive Issues

3.1. General Remarks

Whether the parties seek a negotiated or a judicial settlement of the dispute, we assume that a delimitation of the Aegean Sea CS is to be effected through the application of equitable criteria and the use of practical methods capable of ensuring an equitable result with regard to the relevant circumstances.[45] In light of the jurisprudence of the Court, we further assume that any attempted equitable delimitation of the Aegean CS would require an appraisal of factors such as the geological and geomorphological features of the seabed, geography of the delimitation area (configuration and length of the coasts), presence of unusual elements such as islands in the delimitation area, security considerations, and unity of mineral deposits. This delimitation may also involve some examination of the parties' conduct. Here lack of space prevents us from examining all aspects in detail. We shall therefore focus on the most salient points as they appear.

3.2 Geographical and Geomorphological Features of the Aegean Seabed and Their Relevance to the Delimitation of the Continental Shelf Boundary

One of the Turkish arguments is that the seabed of the Aegean is interrupted by a major depression running down the middle of the Aegean in a general north-south direction.[46] The bottom of this depression displays at some places traces of the oceanic crust while in others the earth crust is extremely thin, reaching almost the ocean surface.[47] This geomorphological feature constitutes, therefore, a natural maritime frontier between natural prolongations of the two mainlands (Greece and Turkey).[48] In this connection, it is also argued that the Greek islands situated east of this natural boundary (median line) sit on the seabed which extends the Turkish land mass into and under the sea.

In support of this argument, it has been said that the maritime space between the islands and the Turkish mainland is so shallow that it is like a flooded part of the latter. Geologically, there is a clear identity between the seabed east of the major depression and the Turkish land territory.

The Turkish government is of the view that a delimitation of the CS in the Aegean should reflect this geological-geomorphological fact.

The Turkish view has the support of the jurisprudence of the ICJ and other international tribunals. Until 1985, the Court had implicitly accepted the view in a series of cases that where a delimitation area between two coastal states is separated by a geophysical feature in such a way that there are two different and distinct shelves (natural prolongations), the geophysical feature dividing them may be considered as the legal delimitation line between the countries to which these distinct natural prolongations appertain.[49] At least two negotiated settlements have put this view into practice.[50]

However, the Court seemed to have changed its thinking on the Libya/Malta Case. In that case, Libya argued that the submarine areas adjacent to Libya and Malta were naturally divided by what it called the «Rift Zone». Thus, there were two distinct and naturally divided continental shelves, which the delimitation process must respect[51].

The Court refused to accept the Libyan Rift Zone argument on the ground that the law concerning the basis of title to CS had changed. Court remarks on this point are summarized in the following lines. According to the law on the EEZ, a coastal state may claim a 200-mile EEZ on the basis of distance from the shore which also subsumes the CS rights. Within this distance, coastal states have CS rights regardless of whether or not their geophysical natural prolongation extends as far as 200 miles. On the other hand, the concept of the EEZ is now part of customary international law, hence the distance principle must now apply to the CS as well as to the EEZ as a principle of customary international law. As a result, a state may claim CS up to the 200-mile limit, whatever the geological characteristics of the corresponding seabed and subsoil.[52]

The Court accordingly concluded that «since the distance between the coasts of the parties is less than 200 miles, so that no geophysical feature can lie more than 200 miles from each coast, the feature referred to as the «Rift Zone» cannot constitute a fundamental discontinuity terminating the southward extension of the Maltese shelf and the natural extension of the Libyan coast as if it were some natural boundary.»[53]

Thus, the Court made a marked departure from its judgment in the Tunisia/Libya Case, because of what it described as a change in the regime of the title itself.[54]

In our opinion, the 1985 judgement suffers from a few deficiencies. It assumes that the distance principle has passed into customary law without qualification. But there is no consensus that this is true.[55] The 1985 judgement overlooks two facts: (1) that the regimes of CS and EEZ are different and distinct, (2) that the regime of CS has arisen out of the recognition of a physical fact and of a link between this fact and the law, without which that institution would never have

existed.[56] What conferred sovereign rights upon coastal states exclusively with respect to CS was the fact that CS areas constituted the undersea extension of their land territory.[57]

Now, the Court says that the law has changed so that the coastal state may claim areas of seabed within 200 miles of coast regardless of their geological and geomorphological characteristics. Therein lies the crux of the matter. Supposing that the law on the basis of title to CS has changed, as the Court claims; what would happen to states which were favoured by the «previous law» if they had not consented to the change? We refer not only to the law based on the concept of natural prolongation but also to the law based on the 200-metre isobath criterion.

The nature of the law of the CS is such that it grants inherent rights. In other words, CS attaches *ipso facto* and *ab initio* to the coastal state. Then, under the «previous law», (including the 200-metre isobath criterion) states to which CS was attached have some sort of acquired rights. How can a new rule deprive them of their rights without their consent?[58]

We are now referring to the position of the «persistent objector». It is obvious from the proceedings of the UNCLOS III that many participating states emphasized the importance of the physical natural prolongation as the basis of title to CS and as a criterion for delimitation. The intention of such states was that the principle of natural prolongation and rights associated with it should be maintained not only beyond the 200-mile line but also within 200 miles of the coast.[59] It is difficult to assume that states which emphasized the geophysical aspects of the submarine areas in their proposals regarding inter-state delimitations intended that within 200 miles of the coast the effects of these aspects would be denied.[60] There is no such intention registered in the records of the Conference. The 200-mile distance criterion was accepted in the interest of states with narrow margins but was not intended to prejudice the interests of states with more favourable margins in comparison with those of their neighbours.[61]

Consequently, the Court's decision may hold good for the delimitation of areas where coastal states border on an ocean, hence it is physically possible to extend the EEZ throughout its full length without encroaching on rights of others. However, it certainly does not hold for areas of less than 400 miles lying between opposite neighbouring states if the geology or geomorphology of the seabed is not continuous.

Then the conclusion is that even if the law on the basis of entitlement to CS has changed, it would not be opposable to states which have persistently objected to its coming into being and its application to them. Since Turkey is as an internationally known champion of the concept of physical natural prolongation, we

submit that, notwithstanding the effect of the Libya/Malta Case in general, the former law continues to apply to it.

It would also appear that this Court proposal has not been followed in subsequent cases. For example, in the Guinea/Guinea Bissau Case, the Chamber of the Court said «the rule of natural prolongation can effectively be invoked for the purpose of delimitation only where there is a separation of continental shelves.»[62]

Based in the above, we may therefore conclude that the capacity, if any, to generate CS areas of the Greek islands situated east of the major Aegean depression should be further weakened because they sit on the Turkish natural prolongation.[63]

3.3. Presence of Islands and the Semi-Closed Nature of the Aegean Sea

At the core of the dispute over the delimitation of the Aegean CS lies the differing views of the parties on the capacity to generate the submarine areas of the Greek Islands on the Turkish CS. In this respect, we would like to make three preliminary observations before proceeding:

1. For the purpose of the delimitation of CS, the location of an island in a delimitation area is of utmost importance. For example, an island situated in the middle of a delimitation area between two opposite states would give three-fourths of the seabed to the state to which it belongs, if the delimitations were to be effected by application of the equidistance method. On the other hand, an island within proximity of the coasts of another state would deprive the latter altogether of the seabed.[64]

2. It is also interesting to note that an island with one kilometer-square-area would command a maritime area 190 times as big as its land mass if it were allowed to have a 12-mile contiguous zone.[65]

3. Perhaps that is why islands in a delimitation area, in particular, those close to another state are considered as special circumstances.[66]

Having said this, we shall now examine the legal position of certain Greek islands by addressing the following preliminary questions:

1. Have Article 1(b) of the Geneva Convention and Article 121 of the 1982 Convention passed into customary international law?

2. Even if it were accepted for the sake of discussion that they had, then does the said customary rule suggest that all islands are entitled to CS in their own right under any circumstances ? How does the rule on entitlement interact with the rule on delimitation ? In other words, do islands in a delimitation setting constitute special circumstances or relevant circumstances, with the result that they may be disregarded or enclaved ?[67]

Starting with the status of Article 1, let us recall the following:

At the Geneva conference, the rule on entitlement of islands to CS was included in Article 1 on the initiative of the Philippines. This rule hardly commanded the support of a big majority of the participating states since 31 states voted for its inclusion, 10 states voted against it and 25 states abstained. Thus 35 states remained non-committed.[68] It is impossible therefore that after the Conference a customary rule giving full title to islands should have emerged among states. It is true that the ICJ stated in the North Sea Case that the first three articles of the Convention should be considered as received or at least emergent rules of customary international law.[69] However, that dictum of the Court should be interpreted as meaning that the general concept of CS had received the assent of nations and not that every part of Article 1 had become customary international law. For example, according to Article 1, CS was defined also by reference to technology (exploitability criterion), but no one has ever argued that the exploitability criterion had become customary international law either before or after the Geneva Convention. It was then and has remained the most controversial aspect of Article 1.[70]

In the Seabed Committee, established shortly after the Convention had come into force, various states made proposals which not only clearly challenged the capacity of all islands to generate submarine areas, but also challenged the definition of CS itself. In the UNCLOS III, a considerable number of states put on the record their opposition to all islands' having a submarine area.[71]

Eventually, the definition of CS in Article 1 was changed and Articles 76 and 121 were adopted; nevertheless, the opposition has continued. It is widely known that Article 121 of the 1982 Convention was adopted without any detailed treatment of the subject due to lack of time.[72] It certainly does not reflect divergent views on islands' capacity to generate CS.

Consequently, no one can say that Article 121 commanded so much support among the participating states in the Conference as to constitute a rule of customary international law. Nor is there any reliable indication that this were the case after the Conference.

Second, even if that there does exist a customary rule to the effect that all islands are entitled to CS in their own right, it does not mean that all islands are entitled to CS areas under all circumstances. On the contrary, the rule contained in Articles 1 and 76/121 gives a general indication of the locality (seaward limit) of CS, it does not tell the amount of seabed to which an island is entitled in a delimitation setting.[73] In areas where two or more states border on the same (continuous) CS, the rule on entitlement does not help.[74] It is the rule on delimitation which is decisive and which gives content to the rule of entitlement

in general. For example, Article 1 of the Geneva Convention is on entitlement in general and Article 6 is on delimitation. Article 6 states that in a delimitation area where special circumstances exist, the median/equidistance line is not applicable. It is not disputed that islands in a delimitation area may constitute special circumstances, which means they may be disregarded altogether or enclaved. Consequently, the power of an island to generate CS in actual cases may range from no effect through half effect to some other effect, depending on island size, locality, population and political status. And this is determined by the application of the rule on delimitation.[75]

In the Channel Islands Case, a group of islands owned by the UK but situated much closer to the French coast than to the UK coast were enclaved by the Arbitral Tribunal and a delimitation line was drawn between the coasts of the two mainlands. Consequently, the islands were given an area of only 12 miles around them, which corresponded to their previously declared fishing waters. Thus, the CS areas given to France extended beyond the British islands. In the Atlantic sector, the Scilly islands were given only half effect.[76]

Of course, the geographic position of the Channel Islands is not the same as that of the Aegean islands. Yet, there are similarities. True, the Channel islands are detached from the British mainland, but so are the Greek islands facing the Turkish territory. True, the Channel islands are embraced by the concave coasts of France, but so are some Greek islands embraced by the Turkish coasts.[77]

More importantly, the underlying idea is certainly applicable. Giving full effect to islands in such a semi-closed area would in effect create inequity in the delimitation of the CS between two states.

In this context, it is also important to recall that the Court of Arbitration rejected the British argument that the delimitation should be effected not between the coasts of the UK and France, but between the Channel Islands and France. The Court concluded that the delimitation had to be effected between the two countries. Furthermore, the Court addressed the question of whether the Channel Islands were a projection of the UK's mainland which constituted the opposite coast vis-à-vis France and refused to accept this boundary. In the Court's view, «if this interpretation of the physical situation were to be accepted by the Court as correct, there would be little more to be discussed».[78]

In our opinion, this part of the judgement should dispose of the Greek claim that the easternmost Greek islands constitute the opposite coast of Greece vis-à-vis Turkey, and a delimitation of the seabed must be accordingly effected. Then, in the words of the Court, there would be little more to be discussed.

In the Tunisia/Libya Case, the status of two Tunisian Islands, namely Jarba,

and the Kerkhennah Islands were in question. They both are sizable islands and are important in demographic and economic terms. The Kerkhennah Islands are eleven miles from the coast and the area between them and the coast is extremely shallow, reaching 4 meters in depth in its deepest place. The Island of Jarba is almost contiguous to the coast. Yet, the Court considered that «...presence of the Island of Jarba and the Kerkhennah Islands and the surrounding low tide elevations is a *special circumstance* which clearly calls for consideration.»[79]

After having recalled a number of examples «in state practice of delimitations in which only partial effect has been given to islands close to the coast»[80], the Court decided to give half effect to the Kerkhennah Islands.

As for the Island of Jarba, although the Court rejected the Libyan view that it should be excluded from consideration, in the actual delimitation the Court disregarded it on the grounds that «there were other considerations which prevail over the effect of its presence.»[81]

It is interesting to note that the islands which were given half effect or disregarded were very close to the coast of the state of which they formed a part. Would it not be logical to assume that islands «on the wrong side of the median line» would be given *a priori* a similar treatment, if not a worse one?

In the Gulf Main Case, the Chamber gave a Canadian island in the delimitation area only half effect.[82]

In the Libya/ Malta Case, Libya and Malta agreed that «entitlement to continental shelf was the same for an island and for mainland», but they differed on the treatment to be given to islands in an actual delimitation. According to Malta, international law has given varying effect to islands politically linked with a mainland (dependent islands) according to their size, geographical position, population and economy, but island states should be treated differently.

In the actual delimitation the Court gave no effect to the Filfa Islet. It gave less than full effect to the Maltese Islands themselves by drawing a boundary line which gave Malta less than what a median line boundary would have provided. More importantly, in the delimitation process, The Court considered not only the coastal relationship of the Maltese islands with their neighbours, but also the overall geographical position of these islands in a much wider framework of the semi-closed Mediterranean sea. The Court also said that had Malta not been an independent state, and had it formed a part of the territory of a neighbouring state (for example, Italy), the sea boundaries in the Mediterranean would be different; the delimitation line between Libya and Malta would have been closer to the Maltese Islands.[83]

In our opinion, this decision has the following three meanings (among others):

1. that in a delimitation between two states, islands cannot be considered self-sufficient and independent units for delimitation purposes against competing claims of mainlands.

2. that the view that Article 1 (b) of the Geneva Convention and Article 121 of the 1982 Convention determine the scope of CS areas which should appertain to respective coasts should be rejected. In fact, this decision shows that it is the rule on delimitation which is determining.

3. that delimitations in a semi-closed sea involve more than treatment of individual geographical features; overall geographical context determines the extent of an island's CS.[84]

The two most recent decisions[85], although they concern the delimitation of CS for islands, are case-specific and do not constitute a precedent for future delimitations. These decisions had specific backgrounds, unique geopolitical positions and varying weight of conventional law applied to them because their focus was on delineating a single boundary for the seabed and fisheries jurisdiction.

As for state practice, caution is advised. First, practice does not demonstrate any uniformity. Second, in many negotiated settlements, it is not clear what methods have been used. They may be open to different interpretations. In particular, literal interpretations of existing negotiated settlements without knowledge of their background may lead to incorrect results.[86] Nevertheless, we can observe that in a good many cases of CS delimitations where islands had the potential to create inequity, they have been treated as special circumstances[87].

Among these settlements, the negotiated delimitation of the maritime area between Papua New Guinea and Australia in the Torres Strait should be given more importance because of the similarities between the geographical positions of the Aegean Sea and the Torres Strait.[88] In the Torres Strait, a number of Australian islands are situated close to the coast of Papua New Guinea, like the location of some Greek islands near the Turkish coast. According to the settlement, the Australian islands on the Guinean side of the median line were given only a 3-mile TS and a seabed area different from fisheries jurisdiction, while taking account of the traditional way of life of the inhabitants of the islands. Burmenster summarizes the situation in the following words:

«It may be argued that Australia could legally have claimed a continental shelf around the islands greater than [the] 3 miles to which it agreed... But just as with the Aegean Sea, the consequences here of a general claim to a 12-mile territorial sea around all islands needs to be kept in mind, such a claim would effectively have turned the Torres Strait into a sea of Australian jurisdiction extending up to within a mile or so of the Papua New Guinea mainland.»[89]

A considerable number of commentators also agree that the presence of islands in a delimitation area between opposite or adjacent states may influence the equity of delimitation and, consequently, constitute special circumstances. In that case, they should not form basic points and the effect to be given to them would depend on various conditions being included in the general equation, ranging from total ignorance to enclave solutions and even to other partial effects which would be determined as equitable given the prevailing circumstances.[90]

In conclusion, the unique nature of the Aegean Sea and the locality of the above-mentioned Greek islands strongly suggests that in light of Court jurisprudence, state practice and scholarly opinion, the Greek islands would constitute special circumstances or relevant factors in any delimitation of the Aegean Seabed.

3.4. The Effect of Geography

Limited space prevents us from presenting a more detailed discussion of the geographical aspect of our subject. Briefly, the current situation may be summarized as follows:

Recently, international courts and tribunals have given special importance to geography in maritime delimitations as a result of the emerging idea that distance has become the basis of title to CS within 200 miles of shore, and that the natural prolongation of a coastal state is now defined by the distance from the coast.[91] Nevertheless the history of the proportionality concept goes back at least to the 1969 North Sea Case.[92] The Court has since applied the proportionality principle in two senses:

1. In the sense of testing the equity of a delimitation effected by application of certain methods. The core of the principle is that seabed areas allocated to coastal states between which the seabed is delimited must be proportional to the length of their relevant coasts.

2. In the sense of helping select a proper method for delimitation in light of the relevant circumstances of the delimitation area.

It is a fact that Turkey abuts (sits) on the seabed of the Aegean throughout the western Turkish coast. We do not have commonly agreed upon figures about the length of the relevant respective coasts of Greece and Turkey in the Aegean Sea.[93] Yet, we can say that they are comparable. It is clear that if the Greek argument were accepted, the CS area to be allocated to Turkey in the Aegean Sea would be little more than the seabed of its TS area and certainly would not be proportional to the length of its relevant coasts. Needless to say, such a decision would go against the whole edifice of international jurisprudence on the subject.

3.5 Status of the Equidistance Principle in Law

The equidistance principle (or method) occupies an important place in the Greek argument of the Aegean CS dispute. However, it is now well established law that «equidistance is not ... either a mandatory legal principle, or a method of having some privileged status in relation to other methods.»[94] This has remained so even after the Court decided in the Libya/ Malta Case that distance was the basis of the title to CS within 200 miles of the coast. In that case, the Court said that it was unable «to accept the argument of Malta... that the new importance of the idea of distance from the coast has at any rate for delimitation between opposite states, in turn, conferred a primacy on the method of equidistance»[95]. It further said that «it was unable to accept that even as a preliminary and provisional step towards the drawing of a delimitation line the equidistance method is one which must be used, or that the Court is required, as a first step, to examine the effects of a delimitation by application of the equidistance method.[96]

Consequently, the Greek insistence on the equidistance method seemingly might not find support in international jurisprudence. In fact, this view is difficult to sustain to the extent that it is accepted that Greek islands within the proximity of the Turkish coasts constitute special circumstances or relevant factors. The acceptance of such a view would also be sharply inconsistent with the now well established principle of proportionality, as mentioned above.

Conclusions

1. The CS dispute is only one of many between Greece and Turkey in the Aegean Sea.

2. Under the current law, Turkey has as much right to lay claim to CS areas in the Aegean Sea as Greece does. In case overlapping claims with Greece, this dispute would be solved through delimitation.

3. A third party solution of the Aegean CS dispute is not legally necessary, and it is highly doubtful whether this type of solution would be politically wise. Nevertheless, serious and meaningful negotiations with a view to effecting a delimitation of the CS by agreement is an obligation in international law and would be politically wise.

4. The prevailing law of delimitation provides little guidance. Yet an examination of the jurisprudence, state practice and scholarly opinions suggest that the Greek argument that the delimitation line should be effected between the Turkish coasts and the easternmost Greek island on the basis of equidistance line can not be sustained in law. It is inconsistent not only with

geological- geomorphological features of the Aegean Sea but also with such basic elements of the most basic norm of delimitation, such as special or relevant circumstances, the principle of proportionality, and overall geographical position (semi-closedness).

5. We are fully aware of the extremely complex nature of the Aegean disputes. Yet, Turkey and Greece can and should solve their differences. They cannot afford to postpone solutions any longer. The two nations deserve peace, and the peace would be more secure when the two sides can talk.

REFERENCES

1. See **Encyclopedia of International Law**, pp. 3 et seq.

2. In its unilateral submission to the International Court of Justice in 1976 Greece listed 21 of these islands. See, **The Aegean Continental Shelf Case, I.C.J., Pleadings**.

3. For a bellicose statement of the situation from the Greek point of view see, Nicholas M. POULANTZAS, «The New International Law of the Sea and the Legal Status of the Aegean Sea», in **Revue hellénique de Droit international**, 1991, p. 251.

4. See Aegean Continental Shelf Case, **I.C.J., Reports**, 1978, p. 9.

5. For various aspects of the dispute from the Greek point of view see, among others, Alexis PHYLACTOPOULOS, «Mediterranean Discord: Conflicting Greek-Turkish Claims on the Aegean Seabed», in **International Lawyer**, vol. 8, No 3, p. 43; Christos L. ROZAKIS, «The Greek-Turkish Dispute over the Aegean Continental Shelf», in **Occasional Papers Series** (Law of the Sea Institute, University of Rhode Island, Kingston, Rhode Island, 1975).

6. **I.C.J., Reports**, 1978, p. 9.

7. **I.C.J., Reports**, 1978, p. 23. For the SC Resolution see, **ILM**, 1976, vol.XV, p 1235

8. In the UNCLOS III Greece made several proposals in 1974:

DOCUMENT A/ CONF. 62/C.2/ L.50, in UNCLOS III Vol. III, at 227; DOCUMENT A/CONF. 62/ C.2/ L.25, id. at 202.; DOCUMENT A /CONF. 62/C.2/ L.32, id., at 211; DOCUMENT A/CONF.62/ C.2/L. 22, id., at 200.

For the Turkish proposals see:

DOCUMENT A/CONF.62/ C.2/ L.23, id., at 201; DOCUMENT A/ CONF. 62/ C.2/ L.34 id at 213; DOCUMENT A/ CONF. 62/C.2/L.55 id at 230; Mr. Tuncel's statement in the First Committee at the 39 th Meeting, UNCLOS III,

Vol. II; at 284, Mr. Yolga's Statement UNCLOS III, vol. 1, p.191; DOCUMENT A/CONF.62/ C.2/ L.56 , UNCLOS III ,vol. III, at 230.

9. Namik K. YOLGA «Ege'deki Baslica Deniz Sorunlar». **Ege Deniz Sorunlari Semineri** (Ankara, 1986) p.30.

10. See among others, Namik K. YOLGA, «Question de la délimitation du plateau continental en mer Égée», in the **Aegean Issues. Problems and Prospects** (Foreign Policy Institute, 1989, Ankara), pp. 133-147; Sevin TOLUNER, **Milletlerarasi Hukuk Dersleri**, (Istanbul 1989) pp. 247-265; H. PAZARCI, «Ege'deki Deniz Sorunlarinda Türk ve Yunan Görüsleri- Hukuki Açidan» in **Ege'de Deniz Sorunlari Semineri** (Ankara 1986) pp.79-94; H. PAZARCI «Kita Sahanligi Kavrami ve Ege Kita Sahanligi Sorunu» in **Prof. Aziz Köklü'nün Avrupa Armagani**, (Ankara, 1964), pp.395,406-412.

11. See Alona E. EVANS, 73 **AJIL**, p.494.

12. See supra notes 3 and 5.

13. **I.C.J. Reports**, 1978, para 31. In this connection some scholars have also emphasized the political nature of the dispute. See KARAOSMANOGLU, «Presentations» in **The Aegean Issues**, p.23 ; J. CHARNEY «Concluding Remarks», id., p.59; B. Bruce GEORGE, id., p.60.

14. I.C.J., **Reports**, 1978, para 31.

15. I.C.J., **Reports**, 1984, para 36.

16. See next paragraph below.

17. C.R. LAGONI, «Overlapping Claims to Continental Shelf», in the **Aegean Issues**, p.170.

18. See infra note 24 and accompanying text.

19. C.R. LAGONI, supra note 17, p 149.

20. Case concerning Maritime Delimation in the Area Between Greenland and Jan Mayen, **I.C.J., Reports**, 1993, para. 59.

21. See Anglo Norwegian Fisheries Case, **I.C.J., Reports**, 1951, p 132.

22. See C.R.LAGONI, supra note 17, pp. 147, 149-152.

23. See below, paragraph III, 3.2.

24. See Mavromatis Jurisdiction Case, 1924, PCIJ, Series A, No.2 , p.10. See also, B. S. MURY, «Settlement of Disputes», in **Manual of Public International Law**, (Sorenson ed. 1968) p.675.

25. See, R.R. CHURCHILL, «Maritime Delimitation in the Jan Mayen area»,

Maritime Policy, vol.9, 1985, p.27.

26. For similar problems in the context of the Gulf of Main Case, see Levi E.CLAIN, «Gulf of Maine- A Disappointing First in the Delimitation of A Single Maritime Boundary», **Virginia Journal of International Law**, 1985, vol.25, no 3, p 521. See also CHURCHILL, supra note 25, p.27.

27. Agreement on Procedures for Negotiation of Aegean Continental Shelf, 1976, in ILM, (1977), p. 13.

28. See a most recent statement of the Greek President, Milliyet, 20 August, 1996.

29. **I.C.J., Reports**,1984, para. 22, 122, 230.

30. Article 298 of the 1982 Convention is evidence of this fact, see KWIATKOWSKA, «Maritime Boundary Delimitation between Opposite and Adjacent States in the New Law of the Sea- Some Implications for the Aegean», in **The Aegean Issues**, pp. 181,196.

31. PCIJ, Series A, no 22, p.13.

32. **I.C.J., Reports**, 1969, para 87.

33. Anglo Norwegian Fisheries case, **I.C.J., Reports**, 1951, p. 132.

34. ROZAKIS, supra note 5, p.2; Jens EVENSEN, «The Delimitation of Exclusive Economic Zones and Continental Shelves as Highlighted by the International Court of Justice», in **The New Law of the Sea**, C.L. ROZAKIS and C.A. STEPHANOU (eds), North Holland, 1983, pp. 107,112.

35. Song-Myon RHEE, «Equitable Solutions to the Maritime Boundary Dispute Between the United Nations and Canada in the Gulf of Main», 75 **AJIL**, 1981, pp598-601. See also KARAOSMANOGLU, «Presentations», in the **Aegean Issues**, p.24.

36. S. BILGE, **id.**, p.12.

37. Cf.: CHARNEY, **id.**, p.14.

38. VAN DYKE, **id.**, p. 15.

39. R. CHUCHILL, supra note 25, p.27.

40. See Malcolm D.EVANS, Maritime Delimitation and Expanding Categories of Relevant Circumstances, **ICLQ**, Vol. 40, 1991, PP. 26-27.

41. See CLAIN, supra note 26, p.592.

42. The Gulf of Main Case, **I.C.J., Reports**, 1984, para. 39,191.

43. **I.C.J., Reports**, 1982, para. 721.

44. Cf.: Gross Dissenting Opinion in the Gulf of Main Case, I.C.J., Reports, 1984, para.38.

45. The Gulf of Main Case, I.C.J., Reports, 1984, para. 113.

46. Cengiz Karaköse, «Ege'de Deniz Sorunlarinda Türk ve Yunan Görüsleri-Jeolojik Açidan» in Ege'de Deniz Sorunlari Semineri, Ankara, 1988, pp. 52-79

47. id., p. 53.

48. Cf.: TOLUNER, supra note 10, p. 263.

49. The North Sea Case, I.C.J., Reports, 1969, para 45; The Tunesia/ Libya Case, I.C.J. Reports, 1982, para. 66, Anglo-French Arbitration, 1977, para. 106; The Gulf of Main Case, I.C.J., Reports, 1984, p. 275.

50. For example, trenches in the Anafura Sea and Timor Sea were given effect in the 1972 Australia-Indonesia agreement. (See, U.N. National Legislation and Treaties Relating to the Law of Sea, 1976) and Japan and Korea gave effect to the Okinawa Trough in 1974 in their delimitation development zone (See, Limits in the Sea, No 75). See also Song Myon RHEE, supra note 35, p 590; H. PAZARCI, La délimitation du plateau continental et les îles, 1982, pp. 273-79.

51. What Libya called the «Rift Zone» is a geomorphological feature which consists of a series of deep troughs reaching 1000 meters in depth, lying to the south and south-west of the Maltese islands, and is much closer to them than the Libyan coasts. See, I.C.J., Reports, 1985, para. 37.

52. id., para. 39.

53. id., para.39.

54. id., para. 40.

55. See among others, D. N. HUTCHINSON, «The Seaward Limit to the Continental Shelf Jurisdiction in Customary International Law», BYIL, vol.56, 1985, pp.113, 167-172.

56. See I.C.J., Reports, 1969, para. 95.

57. id., para 43.

58. Cf.: HUTCHINSON, supra note 55, p.171; TOLUNER, supra note 10, p. 265.

59. Cf: L.H. LEGAULT and Blair HANKERY, «From Sea to Seabed: The Single Maritime Boundary in the Gulf of Main Case», 79 AJIL, 1986, pp. 963,983.

60. Cf: Hundagh CHIU, «Some Problems concerning the Application of Maritime Boundary Provisions of 1982 United Nations Convention on the Law of the Sea» in Chinese Yearbook of International Law and Affairs, vol. 4, 1984, pp.76-77.

61. For further details see, GÜNDÜZ, The Concept of the Continental Shelf in its Historic Evolution (Istanbul, 1990) pp. 238-250. For example, 18 African states made a proposal which explicitly emphasized the unique place of geological and geomorphological factors as well as special circumstances for the purpose of delimitation. See UNCLOS III Official Record, vol. II, at 249-250. A similar proposal was made by Turkey too. See, UNCLOS III Official Record, vol III, at p.213.

62. Award in Guinea/ Guinea Bissau Arbitration, 1985, para.116.

63. But, see KWIATKOWSKI, supra note 30, at 198, note 107.

64. See Ely, N. - PICTROWSKI, R.F. «Boundaries of Seabed Jurisdiction off the Pacific Coast of Asia» 7, Natural Resource Lawyer, 1975, pp.611,619.

65. Ely, N. «Seabed Boundaries between Coastal States: the Effect to be Given Islands as Special Circumstances», 6, International Resource Lawyer, 1972, pp. 218, 234.

66. The ILC accepted in 1953 «the presence of islands» as a possible case of special circumstances. See, 1 YILC (1953) p. 128, para. 37. For the situation in the Geneva Convention 1958, see E.D. Brown, The Legal Regime of Hydrospace, 1971, pp. 64, 65. The Court has recently said in the Greenland- Jan Mayen Case that «general international law as it has developed through the case law of court and arbitral jurisprudence... has employed the concept of the «relevant circumstances». I.C.J., Reports 1993, para 55.

67. « ..... special circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle.» (Greenland- Jan Mayen Case 1993, para. 55).

68. See DOC:A/CONF 13/C 4/L in United Nations Conference on the Law of the Sea; Official Records Committee, (Continental Shelf), p.47.

69. ICJ Reports, 1969, para 63.

70. See, GÜNDÜZ, supra note 61, (Marmara Üniversitesi, 1990), pp. 120-129.

71. See, for example, UNCLOS III, Vol. III, pp. 195, 201, 205, 213, 228, 230, 237, 249-250, 284.

72. VAN DYKE, C. M-BROOKS, R. A. «Uninhabited Islands Ocean development and International: Their Impact on the Ownership of the Ocean Resources», 12 Ocean Development and International Law, 1983, p. 265.

73. Cf.: I.C.J., Reports,1969, para 67.

74. Except for the coastal states which border onto an ocean or whose CS is separated by a major and persistent discontinuity.

75. Cf.: Noegroho WISNOEMOERTI «Delimitation of Maritime Boundaries; Its Problems and Issues» in **The Frontier of the Seas, The Problem of Delimitation**, (The Ocean Association of Japan, 1980), pp.46, 48.

76. France-United Kingdom; Arbitration on the Delimitation of the Continental Shelf, 1977, (hereafter Anglo- French Arbitration).

77. Contra: See Derek Bowett, **The Legal Regimes of Islands in International Law**, 1979, pp. 277-79.

78. See Anglo-French Arbitration, para. 190.

79. See I.C.J., **Reports**, 1982, para 78. See, also paragraphs 127 and 128.

80. See id. para 129.

81. See id. para 79.

82. I.C.J., **Reports**, 1984, para. 218, 221, 222.

83. See I.C.J., **Reports**, 1985, para 69-70.

84. See Donald C. KARL, «The Delimitation of the Aegean Continental Shelf; Equitable Principles and the Problem of Islands» in **The Aegean Issues, Problems and Prospects**, (Foreign Policy Institute) 1989, pp. 155,158.

85. Court of Arbitration for the Delimitation of Maritime Areas Between Canada and France, Decision in case concerning Delimitation of Maritime Area (St. Pierre and Miquelon) 31 ILM 1145 (1992); Case concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway), I.C.J., **Reports**, 1993.

86. For example, O' CONNEL argues that by the Australian-Indonesia agreements of 1972 Ashmor and Cartier islands were given the full effect, and he disregards the cancelling out effect of the Timor island just as opposite Ashmor. He also ignores the geomorphological features of the seabed and the role of the 200 meter isobath criterion. See O'CONNEL D.P., **International Law of the Sea**, vol. II, 1984, pp. 714-724.

87. Italy-Tunusia Agreement, 1971, in **International Boundary States**, Series A, Limits in the Sea (hereafter Limits in the Sea), no. 89 (1980) ; Iran-Saudi Arabia, 1968, in Limits in the Sea, no.24 (1970); Bahrain-Saudi Arabia1958, in **Limits in the Sea**, no.12 (1970); Italy-Yugoslavia Agreement, 1968, in **Limits in the Sea**, no.9 (1970); Iran-Qatar Agreement,1969, in **Limits in the Sea**, no.10 (1970); Papua New Guinea-Australia Agreement, 1978, in ILM vol. XVIII, 291, (1978).

88. For details see BURMESTER, H. «The Torres Strait Treaty: Ocean Boundary Delimitation by Agreement», in 76 **AJIL** 1982; JAGOTA S. P. **Maritime Boundaries**, 90-93 (1988).

89. id., p.343.

90. PAZARCI H., **La délimitation du plateau continental et les îles**, 1982; BOGGS, S.W., «Delimitation of Seaward Areas Under National Jurisdiction», 45 **AJIL**, 240 (1951); PADWA, D.J, «Submarine Boundaries» 9 **ICLQ**, pp.628, 647 (1960); ODA. S., «Boundary of the Continental Shelf» , 12 **The Japanese Annual of International Law**, 265,283 (1968), «The Geneva Convention on the Law of the Sea: Some Suggestions for their Revisions», 1 **Natural Resources Lawyer**, 103 (1968); Proposals for Revising the Convention on the Continental Shelf, 7 **Columbia Journal of Transnational Law**, 1 (1968); Dissenting opinion in the Continental Shelf (Tunisia / Libyan Arab Jamahiriya) Judgement, **I.C.J., Reports**, 1982, p.264; HODGSON, R.D., Island: Normal and Special Circumstances, Research Study, Bureau of Intelligence and Research, US Department of State 1973; GUTTERIDGE, J.A., «The Geneva Convention on the Continental Shelf» 26 **BYIL**, pp.101, 126 (1959), ; ELY. N., «Seabed Boundaries Between Coastal States: The Effect to be Given Islets as "Special Circumstances"», 6 **International Lawyer**, 219 (1979); ELY, N.-Pietrowski, R.F., «Boundaries of Seabed Jutisdiction off the Pacific Coast of Asia», 3 **Natural Resources Lawyer**, 611(1975); WHITEMANN, M.M., «Conference on the Law of the Sea: Convention on the Continental Shelf», 52 **AJIL**, 629 (1958); VAN DYKE, supra note 73, p. 365 (1983); BROWN, E.D., «Rockall and the Limits of National Jurisdiction of UK», **Marine Policy** 181 (1978); **The Legal Regime of Hydrospace**, pp.52-66 (1971), BOWETT, supra note 78; Andrassy, J., **The International Law and The Resources of the Sea**, pp.103-105 (1971); TOLUNER, supra note 10, pp.182- 218 (1984); O' CONNEL, supra note 87, 714-724; MC DOUGAL-BURKE, **The Public Order of the Oceans**, pp. 436-437 (1963); GOLDIE, L.F.E., «The International Court of Justice "Natural Prolongation" and the Continental Shelf Problem of Islands» , 4 **Netherlands Yearbook of International Law**, 237 (1973); VISNOEMOERTI, supra note 76, pp., 46,47.

91. See among others, L.A. WILLIS, «From Precedent to Precedent: The Triumph of Pragmatism in the Law of Maritime Boundaries» in the **Canadian Yearbook of International Law**, vol.24, 1986, pp.37-38.

92. **I.C.J., Reports**, 1969 para.98.

93. According to YOLGA, the relevant coast of the Countries are comparable. See YOLGA, supra note 10, p.134.

94. **I.C.J., Reports**.1969, para.81-87, **I.C.J., Reports**, 1982, para 110, **I.C.J., Reports**, 1984, para 107.

95. **I.C.J., Reports**, 1988, para 42.

96. **I.C.J., Reports**, 1985, para 43.