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## Cutting the Aegean Gordian Knot: A Pathway to Harness the Petroleum Resources Lying Within the Aegean Seabed

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## CUTTING THE AEGEAN GORDIAN KNOT: A PATHWAY TO HARNESS THE PETROLEUM RESOURCES LYING WITHIN THE AEGEAN SEABED

COSTAS S. MICHAIL\*

### *Abstract*

The Aegean dispute on delimitation of maritime zones is perpetuating. Thus, petroleum reserves remain stranded in the Aegean seabed and subsoil. Here, the Aegean Gordian knot is unveiled, starting from laying out a depiction of the Aegean Sea, the overlapping claims of the States, their “deep historic bond,” and rising tensions.

The Maritime Law framework and principles, as enunciated in International Court of Justice and arbitral tribunal, are expounded, revealing that any “safe” prediction is hard to make on the Aegean delimitation. In this respect, the Joint Development may offer a practical solution for avoiding the enduring stalemate by putting aside, without jeopardising, sovereign rights and focusing predominantly on the economic aspect.

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| ABBREVIATIONS  |   |
|----------------|---|
| <b>UNCLOS</b>  | United Nations Convention of Law of Sea |
| <b>E&amp;P</b> | Exploration and Production              |
| <b>IOCs</b>    | International Oil Company               |
| <b>EEZ</b>     | Exclusive Economic Zone                 |
| <b>GC</b>      | 1958 Geneva Convention                  |
| <b>JDA</b>     | Joint Development Agreements            |
| <b>ILA</b>     | International Law Association           |
| <b>ICJ</b>     | International Court of Justice          |
| <b>NM</b>      | Nautical Miles                          |
|                |   |

### 1. Introduction

The creation of maritime zones through the 1958 Geneva Convention (“GV”) and United Nations Convention of Law of Sea (“UNCLOS”) significantly diminished the purview and application of the principle of Freedom of Sea. As a result, States saw their sovereign rights on offshore petroleum reserves expand over the Territorial Sea up to 12 nautical miles (“nm”), Continental Shelf, and a 200- mile Exclusive Economic Zone (“EEZ”).<sup>1</sup> Inevitably, the genesis of sovereign rights over the EEZ and Continental Shelf, combined with the advent of the technological development enabling the offshore petroleum exploration and exploitation, prompted numerous maritime claims by different coastal States.

The geographical location of the States unveiled overlapping claims for maritime zones, which occasionally transformed into sovereign confrontations, demanding delimitation of the sea boundaries. The Aegean Sea uncovers a deadlocked “delimitation battlefield” as sustained by the “unfriendly” NATO allies, Greece and Turkey, for the last 50 years (or more).

The Aegean Sea is said to host vast quantities of petroleum reserves lying within its seabed and subsoil,<sup>2</sup> which, if finally confirmed and extracted, should release a myriad of benefits to the two States. However, the perpetuating Aegean delimitation is at an impasse, laden with sovereignty, territoriality, security, navigation, airspace issues, and is haunted by the spectre of the historic division. The impasse restrains the two States from reaping the underlying benefits by barring the International Oil Companies (IOCs) from pouring their risk capital in the absence of certainty and political will in the Aegean Sea. As a result, projected petroleum reserves remain stranded. Ultimately, the two States self-harm their interests by persisting with a stagnant course of action.

The following three sections aim to unlock an expanded portrayal of the key ingredients composing the subject matter. First, we unveil a portrayal of the Aegean battlefield, and the battlelines of the two opposite “camps,” as well as their “intrinsic” historic bond, which inevitably plagues the “delimitation.” In the next section, we delineate the International Maritime Law in this area by unfolding key concepts codified and expounded through the Conventional Law. These concepts seemingly embed growing flavor of

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1. United Nations, *United Nations Convention on the Law of the Sea*, Article 57 (Dec. 10, 1982), [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).

2. U.S Energy Information Administration, *Turkey* (last updated Feb. 2, 2017), <https://www.eia.gov/international/analysis/country/TUR>.

customary international law (167 states are signatories),<sup>3</sup> and lay out the principles and approach developed and employed by International Court of Justice (ICJ) and arbitral tribunal.

Finally, we introduce and deconstruct the “joint development” concept. The joint development concept may be recruited for unlocking the Aegean “Gordian knot” by enabling the economic exploitation of the “hidden” petroleum reserves while in parallel alleviating tensions, thus contributing to the final delimitation of the maritime boundaries.

At the time of writing this paper, the Aegean dispute is gaining traction as the two States have resumed talks following an escalating situation in the second 6-month period of 2020.

## 2. *Setting the ‘overlapping claim’ scenery*

The Aegean Sea divides the Greek mainland from Turkish mainland. The Aegean unveils a persisting impasse between the two states despite the ongoing delimitation endeavours, myriad stumbling blocks pervade the endeavour including inter alia islands, airspace, demilitarisation of Greek islands.

The following map depicts the Aegean Sea:



Figure 1<sup>4</sup>

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3. Kent W. Patterson, *The Crescent and the Cross: Defining the Maritime Boundaries of Turkey and Greece in the Aegean Sea*, 17 *Loy. Mar. L.J.* (2018), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/loymarlj17&div=8&id=&page=>.

### 2.1 *Unlocking the Aegean Geographic zones*

The Aegean Sea is surrounded by the Greek and Turkish land mass expanding north and westward and eastward, with Evros demarcating the land boundary between the two States. The Treaty of Lausanne, signed in 1923, played a dominant role for bringing an end to several territorial disputes between the two States.<sup>5</sup> The Paris Treaty, signed in 1947<sup>6</sup>, ceded jurisdiction to several Greek islands (eg Rhodos) from Italy to Greece.<sup>7</sup>

Aegean Sea is particularly narrow, with its width is ranging from 150nm (mid- section) to 200nm<sup>8</sup>. Greek islands, rocks, low tide elevations and islets that pervade the Aegean Sea compose a mosaic of maritime features which complicates the Aegean delimitation.

Exacerbating the noteworthy complications, some of the Eastern Greek islands are located remarkably near the Turkish Coastline, eg Samos's distance from the Turkish coast is approximate 1nm.<sup>9</sup>

It was cited that the Greek territorial sea covers 43.68 % of the Aegean as opposed to 7.4% under Turkey, with the remaining enjoying the status of high seas<sup>10</sup>.

### 2.2 *Delineation of the 'opposite' maritime claims posited by the 'unfriendly allies'*

The 'suis generis'<sup>11</sup> portrayal of the Aegean Sea sustains the perpetuating controversy between the two 'NATO' allies, fortifying their battlelines using ammunition from International Law, either conventional or customary, while the 'hidden petroleum reserves' remain stranded under the seabed.

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4. Maritime disputes and international law, Constantinos Yiallourides, <https://www.taylorfrancis.com/books/mono/10.4324/9781351240536/maritime-disputes-international-law-constantinos-yiallourides>.

5. An Analysis of the Aegean Disputes under International Law, Jon M. Van Dyke <https://www.tandfonline.com/doi/abs/10.1080/00908320590909088>.

6. [https://en.wikipedia.org/wiki/Treaty\\_of\\_Peace\\_with\\_Italy,\\_1947](https://en.wikipedia.org/wiki/Treaty_of_Peace_with_Italy,_1947).

7. Id.

8. Maritime disputes and international law, Constantinos Yiallourides, <https://www.taylorfrancis.com/books/mono/10.4324/9781351240536/maritime-disputes-international-law-constantinos-yiallourides>.

9. <https://www.ocearetreat.com/the-geography-and-climate-of-samos-island/>.

10. Maritime disputes and international law, Constantinos Yiallourides, <https://www.taylorfrancis.com/books/mono/10.4324/9781351240536/maritime-disputes-international-law-constantinos-yiallourides>.

11. An Analysis of the Aegean Disputes under International Law, Jon M. Van Dyke <https://www.tandfonline.com/doi/abs/10.1080/00908320590909088>.

Starting with Greece, the signatory of the UN Convention of Law of Sea (“UNCLOS”) asserts its Conventional rights for application of the widely implemented median line/equidistance giving full effect to its islands, for Aegean delimitation. Greece currently asserts 6nm territorial sea<sup>12</sup> but reserve its right to expand it to 12nm. It is noteworthy that Turkey proclaimed a ‘casus belli’<sup>13</sup> in the event of expansion to 12nm (reportedly Turkey’s proclamation is especially bold for Greek islands near its coastline).<sup>14</sup>

In contrast, Turkey, non a signatory of UNCLOS, and ‘reportedly’ ‘persistent objector’ of customary international Law, on certain maritime aspects, postulates that the delimitation in the Aegean Sea should embrace ‘equitable principles’ because of the ‘unique’ features of the Aegean Sea, thus ascribing weight to relevant or special circumstances under International Law.<sup>15</sup> In this respect, it pursues ‘degrading’ the widely palatable median line and favors the ‘discarding’<sup>16</sup> of Greek Islands in the delimitation process. Equally, Turkey invokes the principle of ‘non-encroachment’<sup>17</sup> for opposing the expansion of the territorial claim of the Greek islands to 12nms or for the delimitation of the continental boundary.<sup>18</sup>

The Aegean Sea needs delicate handling, thus averting destabilizing the East Mediterranean region.

### *2.3 Historic divisions underpinning the delimitation zone.*

In examining the perpetuating deadlock, it seems that ‘historic ingredients’ plague the Aegean dispute. Perhaps, the starting point may be the fall of Constantinople in 1453, moving to the rebellion and establishment of the new Greek State in 1832 (rebellion burst out in 1821).

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12. Albeit in 2020, has expanded its nm to 12 to the Ionian Sea, <https://www.aa.com.tr/en/europe/greece-oks-doubling-territorial-waters-in-ionic-sea/2117310>.

13. The casus belli proclaimed in 1995, <https://www.mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/territorial-sea-casus-belli.html>.

14. Maritime disputes and international law, Constantinios Yiallourides, <https://www.taylorfrancis.com/books/mono/10.4324/9781351240536/maritime-disputes-international-law-constantinios-yiallourides>.

15. <https://www.eliamep.gr/wp-content/uploads/2020/07/Policy-paper-36-Papastavridis-final-10.07.pdf>.

16. Kent W. Patterson, *The Crescent and the Cross: Defining the Maritime Boundaries of Turkey and Greece in the Aegean Sea*, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/loymarlj17&div=8&id=&page=> .

17. Id.

18. Id.

Another starting point may be the war involving the two States at the beginning of the 20th century, including the devastation of Smyrna in 1922 and the Greek wave of refugees from ‘Mikra Asia’ flooding Greece.<sup>19</sup>

The foregoing historic trip unveils the long warring history between the two opposing States embedding deep rooted division sentiments which seem to impede the delimitation process which interacts with ‘delicate’ issues such as security, airspace, demilitarisation. Equally, the Cyprus invasion of 1974 accentuates the division between the States.

Perhaps if the ‘hidden’ petroleum reserves decoupled from the ‘mix’, it may alleviate tensions.

#### *2.4 Inflaming and escalating situations*

On many occasions, The Aegean Sea witnessed the two NATO allies deploying their naval and air force ‘battalions’ commonly for Greece to defend its asserted rights and Turkey to pursue advancing its claims. Occasionally, the two unfriendly allies were brought to the brink of war.

In 2020, tensions escalated when Turkey issued navigational warnings committing part of the ‘disputed’ area for exploration activities. The Oruc Reis<sup>20</sup> sailed into disputed areas to conduct seismic surveys under the escort of Turkish warships, with Greece sending its warships at a close distance.

#### *2.5 Historic attempts to delimit the boundaries and current efforts*

It may be suggested that the Aegean maritime saga is a perpetuating ‘maritime delimitation battled field’ with the two States fortifying their “battled lines”, rather than focusing on how to exercise their sovereignty in developing and promoting the economic interests of their citizens.

The two States conducted protracted negotiations and discussions lacking any noteworthy breakthrough. The 1970s appear to be the departure point of this endless maritime delimitation dispute, with Turkey issuing exploration licenses for exploring several Aegean areas,<sup>21</sup> thus ignoring Greece’s claims. The two States entered protracted discussions ending with Greece instituting legal proceedings against the ICJ. However, the ICJ declined jurisdiction by indicating that the ‘unilateral exploration steps’ as instigated by Turkey did not justify the issue of interim measures, as they

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19. Nick Kampouris, *Smyrna Catastrophe: Genocide of Greeks in Asia Minor Remembered*, Greek Reporter (Sept. 13, 2021), <https://greekreporter.com/2021/09/13/the-catastrophe-of-smyrna-genocide-of-greeks-in-asia-minor-remembered/>.

20. FT, Tensions rise as Turkish vessel resumes exploration in eastern. Med., <https://www.ft.com/content/76395aea-a3f2-452e-8c6a-21e5118da159>.

21. Constaninos Yiallourides, *Maritime disputes and international law*, ch. 3.



should not constitute irreparable actions impeding the final delimitation of the boundaries.<sup>22</sup>

At the time of this paper, discussions have resumed. The prospects should not be high as the States resume discussions with disagreement on the contours and content of the dispute. Turkey pursues an all-inclusive scope, ranging from maritime zones to demilitarization, whereas Greece contends that the only ‘open’ matter should be the delimitation of the continental shelf.<sup>23</sup>

The winds of change are blowing, uncovering renewable energy, which is increasingly gaining currency. As such, it may be high time for the Aegean ‘gladiators’ to reconfigure their strategy by prioritizing the economic prospects.

### *3. International Conventional Maritime Law and principles and approach enunciated by International Court of Justice and arbitral Tribunal*

This section is dedicated to unveiling the conventional law and concepts of Territorial, Continental Shelf, and EEZ zones as well as islands (which admittedly find themselves at the forefront of the Aegean maritime delimitation saga). Reportedly, conventional law largely codifies State practice.<sup>24</sup> These concepts were the subject matter of Court and arbitration cases with a flavor of ‘customary international law’ as expounded in section 3.2 below.

#### *3.1 UN Conventional Law of Sea*

##### *3.1.1 Territorial Sea*

UNCLOS envisages the right to the Coastal States to exercise and expand their sovereignty over 12 nm over its territorial seas as well as its seabed, subsoil, and airspace, under article 2 and 3.<sup>25</sup>

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22. International Court of Justice, *Aegean Sea Continental Shelf (Greece v Turkey)* (1976), <https://www.icj-cij.org/en/case/62>. <https://www.icj-cij.org/en/case/62>

23. Maria Gavouneli, *Whose Sea? A Greek International law Perspective on the Greek-Turkish Disputes*, Institut Montaigne (Oct. 16, 2020), <https://www.institutmontaigne.org/en/blog/whose-sea-greek-international-law-perspective-greek-turkish-disputes>.

24. Kent W. Patterson, *The Crescent and the Cross: Defining the Maritime Boundaries of Turkey and Greece in the Aegean Sea*, HeinOnline (2018), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/loymarlj17&div=8&id=&page=> .

25. UNCLOS.

### 3.1.2 Continental Shelf

The point of departure in the genesis of this concept is generally considered to be the presidential proclamation of U.S. President Truman in 1945, pronouncing that the USA's intrinsic sovereign rights extended over the 'all-natural resources located within the Seabed and subsoil'<sup>26</sup> of the (USA's) Continental Shelf.

Later ICJ's cases<sup>27</sup> embraced the new legal order, articulating that the Coastal States had inherent sovereign rights over the Continental Shelf. It was also cited that such rights apply *ipso facto and ab initio*.<sup>28</sup> UNCLOS and GC codified the principle and envisage that the continental shelf of a coastal state consists of the seabed and submarine area, which surpasses the territorial sea.<sup>29</sup>

UNCLOS accords exclusive sovereign rights to coastal States over their Continental Shelf (which may extend beyond 200 miles under conditions)<sup>30</sup> for exploring and exploiting petroleum reserves.<sup>31</sup> The 'exclusive' rights denote that no other State may undertake E&P operations, thus exploring and exploiting the Continental Shelf.

### 3.1.3 EEZ

UNCLOS introduced the concept of EEZ which constitutes a maritime area extending up to 200nm. It is postulated that the concept is enunciated from State practice.<sup>32</sup> EEZ exists *ipso jure*<sup>33</sup> (after the Coastal State promulgates the EEZ) and confers sovereign rights to the Coastal States (and Islands) to explore, exploit and manage petroleum reserves (the rights

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26. Nico Schrijver, *Sovereignty over Natural Resources*, ch. 7, Cambridge University Press (Oct. 2009), <https://www.cambridge.org/core/books/sovereignty-over-natural-resources/3B26C20F3AA0D64D70103F759B7652A0>.

27. International Court of Justice, *North Sea Continental Shelf Cases* (1969), <https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf>.

28. *Id.*

29. UNCLOS, article 76, [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).

30. Jon M. Van Dyke, *An Analysis of the Aegean Disputes under International Law*, Jon M. Ocean Development & International Law (Feb. 24, 2007), <https://www.tandfonline.com/doi/abs/10.1080/00908320590909088>.

31. UNCLOS, article 77.

32. Jargen Basedow, *Joint Development of Hyrdocarbon Deposits in the Law of the Sea* ch. 3, 2014.

33. *Id.*

accorded expand to living and non-living natural resources of the water column, seabed, and subsoil of the area).<sup>34</sup>

#### *3.1.4 Islands*

UNCLOS confers equal sovereign rights to the foregoing maritime zones to Islands under article 121. The Law of Sea explicitly denies EEZ or continental shelf to rocks. Rocks are explicitly defined as not supporting human life or economic life of their own. The Convention dictates no other qualification or condition or a measurable bar for a sea feature for laying a claim to the foreign maritime zones.

Presumably, the islands unveil a key barrier in the Aegean dispute. On the one hand, Turkey (non-signatory to UNCLOS) favors an equitable delimitation which effectively ignores them, whereas Greece persists in asserting Conventional rights (with a customary law flavour)<sup>35</sup> on its islands.

#### *3.1.5 Opposing or adjacent Coastal States*

UNCLOS stipulates in article 83 (identical wording is used in article 74) that the Coastal States should pursue agreement for the delimitation of their boundaries according to international law, Article 38 of the Statute of the ICJ, to achieve an equitable solution.<sup>36</sup> Failing to reach such an agreement, the States should resort to procedures under Part XV.<sup>37</sup>

Prima facie the narrow width in the Aegean Sea creates overlapping claims of Greece and Turkey. As a result, the Aegean maritime delimitation sustains an enduring deadlock.

UNCLOS introduces a provisional arrangement that may aid to escape a stalemate in the process of reaching an equitable delimitation. In more detail, UNCLOS envisage through articles 83(3),74(3), that Coastal States “should make effort to enter provisional arrangement of a practical nature and, during this”<sup>38</sup> in the absence of a final delimitation agreement between them.

Such provisional arrangements are typically the Joint Developments which will be analyzed in detail below. It was stipulated that boundary

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34. U.N. Convention on the Law of the Sea, art. 56, Dec. 10, 1982.

35. Constaninos Yiallourides, *Maritime Disputes and International Law*, ch. 3 (2019).

36. *Id.*

37. *Id.*

38. U.N. Convention on the Law of the Sea, art. 83(3), 74(3), Dec. 10, 1982.

delimitation is not necessary a panacea.<sup>39</sup> It may not be ‘panacea’ in Aegean either for attaining the economic exploitation of the offshore ‘hidden petroleum treasure’.

### *3.2 Elaborating on principles and approach developed by ICJ and arbitral tribunal*

In this section, we reveal the composite approach of the ICJ and arbitral tribunals in demarcating maritime boundaries. The ICJ and arbitral tribunals have been increasingly employed in this area, thus contributing to the enunciation and formulation of principles and methodology in international delimitation cases. Notwithstanding, the formulations and the methodology, as developed by ICJ and arbitral tribunal, continue to embed a high level of generality due to the intrinsic nature of the maritime delimitation, and the different cases which reveal different geographic features and peculiarities.

The equidistance/special (which is equal to ‘relevant’)<sup>40</sup> circumstances approach admittedly dominates the delimitation. It appears from a series of delimitation cases, that the favored approach entails a three-prong test,<sup>41</sup> starting with drawing a provisional equidistance/median line that divides the ‘disputed’ region and adjusting this by considering special circumstances such as islands and navigational and security considerations. The third component involves evaluating if the emerging outcome is ‘disproportionate’.

In the past, ICJ inclined more on an equitable approach which commanded the balancing of the relevant circumstances,<sup>42</sup> thus diminishing the status of the equidistance/median line. Nevertheless, the need for importing more certainty and predictability in the process led to the advent of the equidistance/median line,<sup>43</sup> which culminated into the three-prong test.<sup>44</sup>

Moving to the islands, they constitute a key barrier for delimiting the Aegean Sea, as the two States have different perceptions. To shed light on

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39. David Ong, Joint Development of Common Offshore Oil and Gas Deposits: “Mere” State Practice or Customary International Law, 93 Am. J. Int’l L. 771 (1999).

40. Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain), Judgement, 1994 I.C.J. 112 (July 1).

41. The ‘predominant’ interest Concept in Maritime boundary Delimitation

42. North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgement, 1969 I.C.J. 3 (Feb. 20).

43. Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway), Judgement, 1993 I.C.J. 38 (June 14).

44. *Maritime Delimitation in the Black Sea case*, Wikipedia (Jan. 26, 2022, 6:04 PM), [https://en.wikipedia.org/wiki/Maritime\\_Delimitation\\_in\\_the\\_Black\\_Sea\\_case](https://en.wikipedia.org/wiki/Maritime_Delimitation_in_the_Black_Sea_case).

this, the starting point should be the conventional law which confers maritime rights to islands in a like manner as for coastal States and jurisprudence of ICJ,<sup>45</sup> which affirms the maritime rights of islands and postulates the legal force of article 121 ((see above section 3.1.4) as customary law.

Despite the foregoing, the ICJ and arbitral tribunal appear to alleviate the possible distorting effect<sup>46</sup> of maritime features in demarcating the maritime boundaries between opposing states. In cases involving unimportant or uninhabited islets may be ignored<sup>47</sup> for demarcating maritime boundaries. In other cases, involving habituated islands, they may be granted reduced effect if the outcome may result in a substantial diminution of maritime zones.<sup>48</sup> On the other hand, full force may be accorded if they are not isolated from the mainland and host human life and sustain economic life.<sup>49</sup>

It may be deduced from the foregoing that ICJ's recourse settling the Aegean dispute will be a time-consuming process prohibiting any safe predictions on an outcome. On one hand, Greece fortifies its standing using the generally palatable median line and the maritime rights of islands, whereas Turkey appears shielding behind the equitable approach and relevant circumstances. As previously noted, the situation is exacerbated by the intrinsic historic division and other essential matters surrounding the dispute.

#### *4. Can Joint Development work until formal delimitation for Greece and Turkey*

##### *4.1 Joint Development*

##### *4.1.1 Illustration of Joint Development*

The purpose of this section is to explain and analyze the joint development concept and how it can work in the Aegean situation. Starting with deconstructing this concept, it entails the establishment of a joint

45. *Nicaragua v Colombia*, 2012

46. *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK, France)*, Rep. of International Arbitral Awards, XVIII R.I.A.A. 271 (Mar. 14, 1978).

47. Nuno Sérgio Marques Antunes, *The 1999 Eritrea-Yemen Maritime Delimitation Award and the Development of International Law*, 50 *Int'l & Comp. L.Q.* 299 (2001).

48. *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK, France)*, Rep. of International Arbitral Awards, XVIII R.I.A.A. 271 (Mar. 14, 1978).

49. Nuno Sérgio Marques Antunes, *The 1999 Eritrea-Yemen Maritime Delimitation Award and the Development of International Law*, 50 *Int'l & Comp. L.Q.* 299 (2001).

development area (“JDA”) governed by an interstate treaty between opposing States having overlapping claims (the claim is presumed to be legally correct)<sup>50</sup> in “disputed” areas. Risking oversimplification, joint development is commonly used as an ‘alternative to maritime boundary delimitation’<sup>51</sup> by giving a pragmatic and functional solution without curtailing or renouncing the sovereign rights of the States.

Joint development typically envisages the sharing of costs and revenues. In addition, it addresses the applicable Law to govern the JDA, the dispute resolution mechanisms, and safeguards the sovereign rights or claims. It also introduces a style of management. This may be the formation and empowerment of a joint committee (joint authority management). Alternatively, a single operator may be nominated to represent the joint venture (Joint Venture Management). Conversely, one of the Coastal States may undertake the task (Single State Management)).

#### 4.1.2 Legal Basis

Joint development offers a vehicle for the opposing State to jointly exploit the ‘hidden petroleum reserves’ in the disputed area without infringing or hampering other States’ sovereign rights.

UNCLOS introduces the concept of ‘provisional arrangement’ (see above section 3.1.5) pending delimitation. Although it does not explicitly<sup>52</sup> stipulate that joint development is a provisional arrangement, State practice, international Jurisprudence, and scholars suggest that it is.<sup>53</sup> It can be discerned that the General principles of Cooperation and neighborliness are inflicting a procedural duty (not of result)<sup>54</sup> for the States to negotiate in good faith to reach a ‘provisional arrangement.’ However, it appears that the duty does not stretch to ‘commanding’ that a Joint Development should apply.

Noteworthy are the dictums of several Judges of ICJ who favored ‘joint development’ and *a priori* ascribe an ‘elevated’ role to this. In the North

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50. Maritime disputes and international law, ch. 3, Constaninos Yiallourides.

51. An Analysis of the Aegean Disputes under International Law, Ch. 6, Jon M. Van Dyke <https://www.tandfonline.com/doi/abs/10.1080/00908320590909088>.

52. *North Sea Continental Shelf case*, 1969, <https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf>.

53. Maritime disputes and international law, ch. 3, Constaninos Yiallourides.

54. *Id.*

Sea case,<sup>55</sup> the Court inter alia propounded that a ‘Joint jurisdiction regime’ may be devised for governing overlapping areas. Additionally, in the case of Tunisia and Libya, the minority opinion of the ICJ held that the Joint development constituted an alternative solution.<sup>56</sup>

#### *4.2 Can Joint Development work in the Aegean dispute*

It may be suggested that the joint development concept (or broadly a cooperative agreement) may apply in the Aegean Sea, thus aiding to escape a stalemate and possibly expediting the economic exploitation of the ‘hidden petroleum reserves’ without the prior delimitation of the zones or intertwined issues.

As already amply expounded above, a myriad of issues and factors impede the Aegean ‘Gordian’ knot thus aggravating its delimitation. In this respect, it is in the interest of both States to disentangle the offshore petroleum exploitation from the mix.

Why shall such arrangement be easier to attain? It may be posited that this arrangement may be easier to attain because neither State relinquishes or loses sovereign rights or shows that it retreats. Instead, they signal that they simply agree to jointly develop designated areas in the Aegean Sea by adopting an international practice that is increasingly employed in similar situations for the benefit of each States citizens. Why should they now consider this alternative path? Fossil fuels are under siege by renewables which are gaining currency. Soon, it may be the case that it will not be economical or even an option for the fossil fuels to be extracted and consumed. If so, both states will lose if they wait for formal delimitation before commencing exploration and extraction.

The arrangement may envisage ‘division’ of the Aegean Sea into sections. The Joint Development should start using the section that contains the lower number of islands hence, a priori, cause the less disagreements. The share need not be 50:50; it may be a compromise between the two ‘opposing’ views. In any case, they should first concentrate their joint efforts on a sector of the Aegean Sea having the least amount of islands. Regarding the management, it is likely to be conducted through setting up a joint authority committee with wide powers and discretion over the joint

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55. Maritime disputes and international law, Constantinos Yiallourides, <https://www.taylorfrancis.com/books/mono/10.4324/9781351240536/maritime-disputes-international-law-constantinos-yiallourides>.

56. Kent W. Patterson, *The Crescent and the Cross: Defining the Maritime Boundaries of Turkey and Greece in the Aegean Sea*, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/loymarlj17&div=8&id=&page=> .

development area or the appointment of a single operator for controlling the Joint Venture. Attention should be given to dispute resolution mechanisms aiming for the quick resolution of any dispute.

Supporting the position that this joint path may work in the Aegean Sea, we embarked on a brief tour of practical cases where the joint development was implemented.

Starting with the Northern and Southern China Sea region which unveils a ‘complex scenery’ composing a mosaic of islands, common borders with multiple overlapping claims asserted by Countries including China’s nine-dash line claim. Joint development is taking place thus allowing practical solutions in the area. For example, the 1974 JDA between Japan and Korea concerning the southern part of the continental shelf adjacent to the two states. The JDA was divided into segments that were explored and exploited by concessionaires under operating agreement.<sup>57</sup> A joint committee was formed for consultation.

The 1979 JDA between Malaysia and Thailand<sup>58</sup> captures 7.2 square-kilometers in the Gulf of Thailand and employs a Joint Authority endowed with sufficient power to manage the area while gains are equally shared. In contrast, the 2001 East Timor-Australia JDA<sup>59</sup> envisaged sharing of 90:10 in favor of East Timor.

The JDAs outlined above enabled the covered States to escape a gridlock and exploit the hidden resources achieving a practical solution. The Aegean dispute may be gradually unraveling by first divorcing the offshore petroleum reserves through joint development. Such action should not prejudice the asserted rights of Greece or Turkey over the Aegean Sea, and it may not cause high political cost. It will simply precipitate the economic exploitation of offshore petroleum resources for the benefit of both States. In parallel, it may alleviate rising tension in the region and procure an amicable resolution of the other matters.

### *5. Conclusion*

In sum, we have unfolded the Aegean Sea dispute by going through the geographic scenery, the claims and position of Turkey and Greece, and the historic bond which occasionally fosters mistrust and impedes the

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57. Yu Hui, *Joint Development of Mineral Resources – An Asian Solution?*, 2 Asian Y.B. of Int’l L. 87, 93 (1992).

58. Constantinos Yiallourides, *Maritime Disputes and International Law* 58 (Routledge ed., 2019). D IL

59. *Id.* at 200.



delimitation process. It appears that the Aegean Gordian knot composes various matters which exacerbate the task of delimitation.

We have also elaborated on the key maritime concepts that have a bearing in the Aegean Sea dispute, as well as examine the principles and approach as evolved by the ICJ and arbitral tribunal—hinting that the Aegean delimitation cannot offer a safe prediction for the outcome.

As such, we posited that the joint development potentially offers an alternative path that may expedite the economic exploitation of the hidden offshore petroleum reserves without prejudicing the asserted rights of the States. In this respect, it may be a recipe for escaping the enduring stalemate in the Aegean Sea dispute and may alleviate tensions.