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THE ROLE OF ISLANDS  
IN DELIMITING MARITIME ZONES:  
THE CASE OF THE AEGEAN SEA<sup>(1)</sup>

*Introduction*

The problem of delimiting the continental shelf and exclusive economic zone between Turkey and Greece is one of the many issues that currently dominate the international relations between the two countries. Although legal principles can be identified that apply to this dispute, the drawing of boundary lines is intrinsically a political process and is usually accomplished by direct negotiations between the states<sup>(2)</sup>. Increasingly in recent years, however, states have turned to arbitral or judicial tribunals to resolve disputes involving maritime boundaries, and the decisions of these tribunals have identified and developed legal principles than can now be drawn upon to resolve difficult boundary controversies<sup>(3)</sup>.

The disputes that have been submitted for decision have usual-

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<sup>(2)</sup> *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (New York: United Nations, 1983), Sales No. E. 83. V. 5. (hereafter cited as the Law of the Sea Convention), Arts. 74 and 83.

<sup>(3)</sup> See nn. 58-123 below and the accompanying text.

ly been those in areas with unusual geographical configurations, frequently involving islands. Many of the decisions that have been issued, as will be discussed in detail below<sup>(4)</sup>, have given islands less stature in generating extended maritime zones than the continental land masses that they are opposite or adjacent to. Article 121 (2) of the 1982 Law of the Sea Convention states that islands generate continental shelves and Exclusive Economic Zones in the same manner as «other land territory» except for «rocks which cannot sustain human habitation or economic life of their own», which do not generate these zones at all. The decisions rendered in recent years do not, however, take this all – or – nothing approach and instead have given islands that are within 200 nm of the continental land mass of another nation «half effect» in generating extended maritime zones or – in some cases – no effect at all. The status of islands in generating such zones is thus currently unresolved in international law, and each geographic configuration must be examined individually to determine what effect the islands should have in relation to their continental neighbors. After examining the controversy between Turkey and Greece, this article will analyze the recent arbitral and judicial decisions and explore how the principles used in these decisions might apply to the delimitation of the maritime boundary between Turkey and Greece in the Aegean Sea.

### *Background*

The 1923 Lausanne Peace Treaty awarded Turkey the entire Anatolian mainland but awarded Greece sovereignty over almost all islands of the Aegean, which were populated by Greeks<sup>(5)</sup>. At the time of the negotiation of that treaty, Turkey sought to re-

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(4) See *ibid.*

(5) DEREK BOWETT, *The Legal Regime of Islands in International Law* (Dobbs Ferry, N.Y.: Oceana Publications, 1979), p. 252; the Convention regarding the Regime of the Straits (Lausanne Convention), July 24, 1923, *League of Nations Treaty Series* (L.N.T.S.), 93:115, reprinted in J. GRENVILLE, *The Major International Treaties, 1914-45* (New York: Methuen, 1987), p. 80.

tain Turkish sovereignty over Imbros (Gokceada), Tenedos (Bozcaada), and Samothrace (Samothraki) and demilitarization of Limnos (Lemnos), Lesvos (Lesbos), Chios, Samos, and Icaria<sup>(6)</sup>. Turkey was awarded Imbros (Gokceada) and Tenedos plus the Rabbit Islands because of their proximity to the strategically important Dardanelles<sup>(7)</sup>. Samothrace and Limnos were demilitarized but awarded to Greece<sup>(8)</sup>. The Dodecanese group of islands<sup>(9)</sup>, long under Turkish control, was ceded to Greece in 1947, following decades of Italian occupation<sup>(10)</sup>.

The islands around which the current marine resource boundary delimitation controversy centers are the Greek islands in the eastern Aegean close to the Turkish land mass. The islands specified in the 1976 Greek application to the International Court of Justice (ICJ) (see discussion below) were Samothrace, Limnos, Aghios Eustratios, Lesvos, Chios, Psara, Antipsara, Samos, Icaria, and the Dodecanese group (Patmos, Leros, Kalymnos, Kos, Astypalaea, Nisyros, Tilos, Symi, Khalki, Rhodes, Karpathos, etc.)<sup>(11)</sup>. See table 1 for area and population of the islands and figure 1 for a map of the region.

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<sup>(6)</sup> BOWETT, p. 250.

<sup>(7)</sup> Ibid., p. 249.

<sup>(8)</sup> Ibid.

<sup>(9)</sup> *Columbia Lippincott Gazetteer of the World*, 1962 ed., s.v. «Dodecanese». The Dodecanese group consists of 14 main islands and about 40 islets and rocks. The main islands are Astypalea, Khalke, Kalymnos, Karpathos, Kasos, Kos, Leros, Lipsi (Leipso), Nisyros, Patmos, Rhodes, Symi, and Tilos in the southeastern Aegean, and Megisti (Kastellorizo), the easternmost island separated from the rest. Between A.D. 1523 and 1912, the Dodecanese group was controlled by the Turks. The group (except for Kastellorizo) was occupied by Italy after the Italo-Turkish war of 1911-12 and awarded to Italy in 1920. Following the Second World War, the islands were awarded to Greece because of their Greek population.

<sup>(10)</sup> BOWETT, p. 255; GERALD BLAKE, «Marine Policy Issues for Turkey, *Marine Policy Reports* 7, no. 4 (1985): 1.

<sup>(11)</sup> Aegean Sea Continental shelf Case, International Court of Justice (ICJ), Interim Measures of Protection, Order of September 11, 1976, *International Court of Justice Reports* (hereafter cited as the I.C.J. Rep.) 1976, p. 3, Par. 15, reprinted in *International Legal Materials* (hereafter cited as I.L.M.) 15 (1976): 988-89, citing Greece's request for interim measures of protection dated August 10, 1976 (hereafter cited as the «1976 Interim Protection Order»).

In 1936, Greece claimed a 6-mile territorial sea; in 1964 Turkey claimed a 12-mile territorial sea in the Black Sea and a 6-mile territorial sea in the Aegean<sup>(12)</sup>. The 1958 Convention on the Territorial Sea and Contiguous Zone<sup>(13)</sup> did not define the breadth of the territorial sea, but the 1982 Law of the Sea Convention allows nations to establish the breadth of the territorial sea to a limit of 12 nm<sup>(14)</sup>. Turkey signed neither the 1958 nor 1982 Conventions; Greece signed both<sup>(15)</sup>. Greece would like to extend to 12 miles the territorial seas around each Greek island, expanding its territorial sea from 43.7% to 71.5% of the Aegean<sup>(16)</sup>. If Turkey were to extend its territorial sea claim from 6 to 12 miles, Turkey's gain in share of Aegean territory would be much smaller: from 7.5% to 8.8%<sup>(17)</sup>. Turkey has declared that a Greek attempt to enforce such an extension would be a *causis belli*<sup>(18)</sup>.

In 1973, Turkey granted 27 permits to the Turkish Petroleum Company, an oil exploration company<sup>(19)</sup>, to explore for petro-

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<sup>(12)</sup> BLAKE, pp. 2-3. Turkey and Greece also claim different airspace limits. Greece claims a 10-mile airspace and Turkey claims 6 miles. During the 1974 Cyprus crisis, however, Turkey extended its flight information region to the Aegean median line.

<sup>(13)</sup> Geneva Convention of the Territorial Sea and the Contiguous Zone (done April 29, 1958) (in force September 10, 1964), *United States Treaty Series (U.S.T.)* 15: 1606, *United States Treaties and Other International Agreements (T.I.A.S.)*, No. 5639, *United Nations Treaty Series (U.N.T.S.)*, 516:205.

<sup>(14)</sup> Law of the Sea Convention (n. 2 above). Art. 3.

<sup>(15)</sup> Greece signed the 1982 Convention on the first day it was opened for signature. See Blake, p. 3.

<sup>(16)</sup> ALAN COWELL, «Greece and Turkey Alert Forces as Tension Builds on Oil Search», *New York Times* (March 28, 1987), p. 1 and p. 4.

<sup>(17)</sup> *Ibid.*

<sup>(18)</sup> *Ibid.*; CLIVE R. SYMMONS, *The Maritime Zones of Islands in International Law* (The Hague: Martinus Nijhoff, 1979), p. 91; and BOWETT (n. 5 above), p. 252.

<sup>(19)</sup> On November 1, 1973, Turkey acknowledged it had issued concessions for a part of the northern Aegean seabed to the Turkish Petroleum Company (TRAO) and in July 1974 made a second concession to TRAO, expanding the western boundary of the November 1973 concession and creating a

TABLE 1. -- AREA AND POPULATION OF ISLANDS (Listed in Roughly North-to-South Order)

Island	Area		Population		
	Square Miles	km <sup>2</sup>	1951 Census	1971 Census	1981 Census
Samothrace (Samothraki)	71	178	3,993 <sup>a</sup>	3,012	2,871
Limnos (Lemnos)	186	476	23,842	17,367	15,721
Aghios Eustratios	16.1	43	1,131	N.A.	296
Lesvos (Lesbos)	632	1,630	134,054	114,797	88,601
Chios (Khios)	321	842	72,777	52,487	48,700
Psara	16.4	40	751	N.A.	460
Antipsara <sup>b</sup>	1.5	4	...	...	...
Samos	194	476	56,273	32,664	31,629
Ikaria (Nikaria)	99	255	11,614	7,702	7,559
Patmos	13	34	2,428	2,432	2,534
Leros	21.2	53	6,131	N.A.	8,127
Kalymnos (Kalimnos)	41	111	11,864	N.A.	14,295
Kos	111.4	290	18,545	16,650	20,350
Astypalea (Astypalaia)	37	97	1,791	N.A.	1,030
Nisyros (Nisiros)	16	41	2,605	N.A.	916
Tilos (Telos)	24.3	63	1,085	N.A.	301
Symi (Simi)	22	58	4,083	2,489	2,273
Khalki (Chalki)	11.2	28	702	N.A.	334
Rhodes	542	1,398	55,181	66,606	87,831
Karpathos	111	301	7,396	5,420	4,645
Kasos	25	66	1,322	N.A.	1,184
Lipsi (Leipsos)	6	16	873	N.A.	574
Megisti (Kastellorizo)	3.5	9	800	N.A.	222

SOURCES — L. Seltzer, ed., *Columbia Lippincott Gazetteer of the World* (1961); F. de Mello Vianna, ed., *International Geographic Encyclopedia and Atlas* (1979); National Statistical Service of Greece, ed., *Statistical Yearbook of Greece* (1984).

NOTE — N.A. = not available.

<sup>a</sup> In 1940.

<sup>b</sup> Uninhabited.

leum on the continental shelf westward of several Greek islands<sup>(20)</sup>. Greece claims that these areas are part of Greece's continental shelf<sup>(21)</sup> and that Turkey's concessions overlapped areas where in 1972 Greece had granted oil exploration concessions<sup>(22)</sup>. Turkey's action was apparently based on its view that the continental shelf delimitation should be drawn midway between the Greek and Turkish continental land masses, with no adjustment whatsoever for the Greek islands in the Aegean<sup>(23)</sup>.

Table 1 lists, in roughly north to south order, the disputed Greek islands in the Aegean near the Turkish coast<sup>(24)</sup>. This list, which shows the area in square miles and the population as of 1981<sup>(25)</sup>, indicates that the islands in question range in size and population from the 1.5-square-mile (4-km<sup>2</sup>) uninhabited Antipsara to the 632-square-mile (1,630-km<sup>2</sup>) Lesvos (Lesbos) with a (1981) population of 88,601.

The contentious issue is the extent to which the Greek islands very near Turkey's coast entitle Greece to exploit the resources

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second one in the southeastern Aegean. See Christos L. ROZAKIS, *The Greek-Turkish Dispute over the Aegean Continental Shelf*, Occasional Paper No. 27 (Honolulu: Law of the Sea Institute, 1975), p. 1.

<sup>(20)</sup> SYMMONS p. 145. The granting of permits or concessions was made known in the November 1, 1973, issue of the *Official Turkish Gazette*; see Rozakis.

<sup>(21)</sup> The Turkish claim conflicted with Greek territorial sea claims around the Greek islands of Samothrace, Lemnos (Limnos), Aghios Eustratios (Ayios Evstratios), Lesbos, Chios, Psara, and Antipsara. See Rozakis, p. 3.

<sup>(22)</sup> BLAKE (n. 10 above), p. 3.

<sup>(23)</sup> For a map of the disputed areas showing the November 1973 and July 1974 concessions, see Rozakis.

<sup>(24)</sup> This list contains the islands that are named in the 1976 Greek application to the International Court of Justice and are analyzed in Donald Karl, «Islands and the Delimitation of the Continental Shelf: A Framework for Analysis», *American Journal of International Law* 71 (1977): 642, discussion at 669-72.

<sup>(25)</sup> *Columbia Lippincott Gazetteer of the World* (n. 9 above), various pages.

of the continental shelf. Turkey and Greece exchanged *notes verbales* over this question in 1974<sup>(26)</sup>. Greece claimed that in continental shelf delimitations «islands, as any other part of the coast, are entitled to have *full seabed area*»<sup>(27)</sup>. Turkey rejected this claim and argued that «geographical study of the Aegean Sea... does in fact prove the existence of vast submarine spaces of little depth all along and off the Turkish coast, which constitute the *natural prolongation of the Anatolian Peninsula, and thus of its continental shelf, whereas the Greek islands* situated very close to the Turkish coast *do not possess a shelf of their own*»<sup>(28)</sup>. Turkey's president reiterated the belief that the Anatolian Shelf, which extends midway into the Aegean, belongs to Turkey in his 1976 statement that the Aegean is «an extension of Asia Minor, and we will never allow it to be turned into an internal sea of another country»<sup>(29)</sup>. During the 1974 exchange, Turkey stated that it wanted to settle the dispute through direct negotiation, but the Greek government stated that it preferred to submit the dispute to the International Court of Justice<sup>(30)</sup>.

In July 1976, Turkey announced plans to begin exploration for oil in Turkish waters and on the high seas<sup>(31)</sup>. Turkey's *Sismic I* began conducting seismological exploration on August 6, 1976,

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(<sup>26</sup>) ALONA EVANS, «Judicial Decisions», *American Journal of International Law* 73 (1979): 493-94. For a discussion of the exchange of notes, see Symmons, pp. 145-47.

(<sup>27</sup>) *Note verbale* from Turkey to Greece, February 7, 1974, cited by Symmons, p. 146 (emphasis added).

(<sup>28</sup>) *Note verbale* from Turkey to Greece, February 27, 1974, quoted by Symmons (n. 18 above), p. 137 (emphasis added). See also the letter from the permanent representative of Turkey to the Secretary General of the United Nations, August 18, 1976 (UN document 5/12182 [1976], quoted in Leo Gross, «The Dispute between Greece and Turkey concerning the Continental Shelf in the Aegean», *American Journal of International Law* 71 (1977): 31.

(<sup>29</sup>) «The Aegean: Acts of Piracy», *Time* (August 23, 1976), p. 33, quoting Turkish President Fahri Koroturk.

(<sup>30</sup>) EVANS, p. 493.

(<sup>31</sup>) *Ibid.*, p. 495.

in Aegean waters claimed by Greece<sup>(32)</sup>, concentrating research efforts on the waters adjacent to the islands of Limnos, Lesbos, Chios, and Rhodes, all of which are within 20 miles of the Turkish coastline<sup>(33)</sup>. On August 10, 1976, Greece simultaneously protested to the UN Security Council<sup>(34)</sup> and instituted proceedings in the ICJ<sup>(35)</sup>, requesting interim measures of protection pending judgement on the merits<sup>(36)</sup> and ultimately seeking a declaration delimiting the continental shelf in the Aegean<sup>(37)</sup>.

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<sup>(32)</sup> GROSS, p. 34.

<sup>(33)</sup> «The Aegean: Acts of Piracy».

<sup>(34)</sup> For a discussion of the appeal to the Security Council, see GROSS, pp. 34-39. The Security Council passed Resolution 395 on August 25, 1976. This resolution suggested that Greece and Turkey should resume direct negotiations but should consider submitting to the International Court of Justice any legal differences that remained. See EVANS, p. 495.

<sup>(35)</sup> Application Instituting Proceedings, August 10, 1976, cited in SYMONS, p. 147.

<sup>(36)</sup> For a discussion of the interim measures of protection requested by Greece, see GROSS, p. 40. For a discussion of interim measures in general, see Rainer Lagoni, «Interim Measures Pending Maritime Delimitation Agreements», *American Journal of International Law* 78 (1984): 345. In its application Greece asked the Court to direct that the governments of both Greece and Turkey,

(1) unless with consent of each other and pending the final judgment of the Court in this case, refrain from all exploration activity of any scientific research, with respect to the continental shelf areas within which Turkey has granted such licenses or permits or adjacent to the islands, or otherwise in dispute in the present case,

(2) refrain from taking further military measures or actions which may endanger their peaceful relations.  
See 1976 Interim Protection Order (n. 11 above), p. 987.

<sup>(37)</sup> Because the court held that it lacked jurisdiction over the matter, this case did not reach the merits; Aegean Continental Shelf Case (Greece v. Turkey) (Jurisdiction), *I.C.J. Rep.* 1978, p. 1 See EVANS (n. 26 above), p. 493. The Greek government had requested that court to adjudge and declare.

(1) that the Greek islands [specified in the Application] as part of the territory of Greece, are entitled to the portion of the continental shelf which appertains to them according to the applicable principles and rules of international law;

(11) what is the course of the boundary (or boundaries) between the por-

The International Court of Justice denied Greece's request for interim protection<sup>(38)</sup>. Interpreting Article 41 of the ICJ Statute<sup>(39)</sup>, the court reasoned that its powers to grant interim protection are limited to cases where an injured party would suffer «irreparable prejudice»<sup>(40)</sup> and that in this case Greece's alleged injury from Turkey's seismic exploration would be «capable of reparation by appropriate means»<sup>(41)</sup>.

In November of 1976, Turkey and Greece signed an agreement in Bern stating that neither country would explore for oil in the continental shelf of the Aegean until the issue of delimitation of the continental shelf was settled<sup>(42)</sup>. The agreement re-

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tions of the continental shelf appertaining to Greece and Turkey in the Aegean Sea in accordance with the principles and rules of international law which the Court shall determine to be applicable to the delimitation of the continental shelf in the aforesaid areas of the Aegean Sea;

(<sup>iii</sup>) that Greece is entitled to exercise over its continental shelf sovereign and exclusive rights for the purpose of researching and exploring it and exploiting its natural resources;

(<sup>iv</sup>) that Turkey is not entitled to undertake any activities on the Greek continental shelf, whether by exploration, exploitation, research or otherwise, without the consent of Greece;

(<sup>v</sup>) that the activities of Turkey described [in the Application] constitute infringements of the sovereign and exclusive rights of Greece to explore and exploit its continental shelf or to authorize scientific research respecting the continental shelf;

(<sup>vi</sup>) that Turkey shall not continue any further activities as described above in subparagraph (<sup>iv</sup>) within the areas of the continental shelf which the Court shall adjudge appertain to Greece.

1976 Interim Protection Order p. 986.

<sup>(38)</sup> For a discussion of this decision, see GROSS (n. 28 above) pp. 40-48.

<sup>(39)</sup> Article 41(1) of the Statute of the International Court of Justice provides: «The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party».

<sup>(40)</sup> *I.C.J. Rep.* 1976, p. 8, Par. 33, as quoted by GROSS, p. 41.

<sup>(41)</sup> GROSS, p. 41.

<sup>(42)</sup> Bern Agreement on Procedures for Negotiations of the Aegean Continental Shelf Issue, November 11, 1976, *I.L.M.* 16 (1977); 13 cited in BOWETT (n. 5 above), p. 260.

quires the two countries to hold talks to resolve their differences on the Aegean, but Greece now claims the Bern accord no longer has effect because talks broke down in 1981<sup>(43)</sup>.

In the meantime, Greece continued to press its claim at the International Court of Justice, but the court decided in 1978 that it lacked jurisdiction over Greece's application for a declaration of rights of the parties in the continental shelf<sup>(44)</sup>. One basis for rejecting Greek claims to ICJ jurisdiction was that, in becoming a party to the 1928 General Act for Pacific Settlement of Disputes, Greece had made a reservation excluding disputes relating to «territorial status». The court interpreted this phrase to include sea boundary delimitations<sup>(45)</sup>. The court also rejected Greece's argument that a communiqué issued to the press jointly by Greece and Turkey was a binding international agreement that required Turkey to submit to the jurisdiction of the ICJ<sup>(46)</sup>. Years of deliberation on procedural matters at the international court thus left the substantive issues of the delimitation of the Aegean continental shelf undecided.

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<sup>(43)</sup> COWELL (n. 16 above), p. 4.

<sup>(44)</sup> Aegean Sea Continental Shelf Case (Greece v. Turkey) (Jurisdiction), *I.C.J. Rep.* 1978, p. 1. For a discussion of the proceedings, see, generally, K. Jayaramen, *Legal Regime of Islands* (New Delhi: Marwah Publications, 1982), pp. 77-85.

<sup>(45)</sup> EVANS, p. 489. See General Act for the Pacific Settlement of International Disputes (done September 26, 1928), *L.N.T.S.* 93:343. The Act provided for conciliation, arbitration, and judicial proceedings for the resolution of international disputes. The Act was subsequently amended in the revised 1928 General Pacific Settlement Act for the Pacific Settlement of International Disputes (done April 28, 1949; in force September 20, 1950). The amended Act replaced references to the Permanent Court of International Justice and the League of Nations by incorporating references to corresponding organs of the United Nations. For discussion of the current status of the Act, see, J. MERRILLS, «The International Court of Justice and the General Act of 1928», *Cambridge Law Journal* 39 (1980): 137.

<sup>(46)</sup> EVANS, pp. 502-3. The joint communiqué stated in pertinent part: «[The Prime Ministers of Turkey and Greece decided that the problems] should be resolved peacefully by means of negotiations and as regards the continental shelf of the Aegean Sea by the International Court at the Hague».

This dispute heated up again in the spring of 1987 when both nations put their armies on alert after Turkey's oceanographic research vessel, the *Piri Reis*, ventured around the Greek islands of Limnos, Samothrace, and Thasos (northwest of Samothrace), where hydrocarbon deposits are located<sup>(47)</sup>. The prime minister of Greece warned of «huge dangers» if a second Turkish research vessel, the *Sismic I*, were to enter disputed waters of the Aegean Sea where Greece claims exclusive rights to explore the seabed for oil<sup>(48)</sup>. Tensions subsided once Turkey's prime minister announced that Turkey would honor the 1976 Bern accord and refrain from oil exploration unless Greece made the first move<sup>(49)</sup>.

Greece has argued that the issues of delimitation of the continental shelf should be decided by the International Court of Justice as an isolated legal question<sup>(50)</sup>, an approach some Turks have called «Greek salami tactics»<sup>(51)</sup>. Turkey's position is that, because the rights to exploit the natural resources of the seabed of the Aegean affect economic interests and national security interests of both countries, political and legal issues should not be considered separately<sup>(52)</sup>. Turkey wants a dialogue with Greece and has agreed to accept Greece's demand to take the issue to the ICJ, but only if Greece will also talk about the political aspects of the problem<sup>(53)</sup>. Turkey has felt that the issues should be resolved

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<sup>(47)</sup> *Turkish Daily News* (April 27, 1987), p. 1: «Greek-Turkish Sea Dispute Defused», *Honolulu Star Bulletin and Advertiser* (March 29, 1987), sec. A, p. 9; and ALAN COWELL, «Aegean Dispute Worsens Turkish-Greek Ties», *New York Times* (March 24, 1987), p. 5.

<sup>(48)</sup> See. *ibid.* The *Sismic I* had also sparked international tension in 1976 when its explorations led Greece to protest Turkish action to the UN Security Council and appeal to the International Court of Justice (see text accompanying nn. 32 and 33 above).

<sup>(49)</sup> *Honolulu Star Bulletin and Advertiser*, quoting Costil Stefanopoulos, leader of Greece's Democratic Party.

<sup>(50)</sup> *Turkish Daily News*.

<sup>(51)</sup> Personal communication from JOEL MARSH, Fulbright Scholar at the Department of International Relations, Faculty of Political Science, University of Ankara, Turkey, April 28, 1987.

<sup>(52)</sup> *Turkish Daily News*.

<sup>(53)</sup> *Ibid.*

through bilateral negotiation<sup>(54)</sup> to permit trade-offs among the many key issues dividing Greece and Turkey, such as the militarization of Greek and Turkish islands in the Aegean<sup>(55)</sup> and the division of Cyprus<sup>(56)</sup>.

The prime ministers of Greece and Turkey agreed in January 1988 at Davos, Switzerland, to improve relations between the two countries by establishing several bilateral committees to define problem areas between the two nations and identify potential solutions. They also agreed that they would meet at least once a year to discuss mutual problems<sup>(57)</sup>. The prime ministers met again at Brussels in March 1988 and reached an agreement on the Greek property seized by the Turkish government in Istanbul, and Greece agreed to drop its objection to Turkey's becoming a member of the European Economic Community<sup>(58)</sup>. In June 1988, Turkey's prime minister went to Greece for 3 days, the first time in 36 years that a Turkish prime minister had visited Greece. The joint communiqué issued at the conclusion of the meeting made no mention of the disputes in the Aegean Sea<sup>(59)</sup>. A further meeting was

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<sup>(54)</sup> Marsh.

<sup>(55)</sup> A military junta governing Greece in 1974 backed a coup in Cyprus. In response to the coup, Turkey sent an invasion to Cyprus. An estimated 20,000 Turkish troops remain on the island. In 1983, Turkish Cypriots unilaterally declared independence, but Greece does not recognize their government and refuses to negotiate on any subject until the troops are withdrawn. See COWELL (n. 16 above), p. 4.

<sup>(56)</sup> After Turkey invaded Cyprus in 1974, Greece began to fortify islands in the eastern Aegean, and Turkey fortified Gokceada (Imbros) and Bozcaada (Tenedos), two strategically important islands guarding the approach to the Dardanelles. Turkey's army of 550,000 and U.S. military aid (U.S. \$ 775 million in 1984) indicate Turkey's capacity to invade Greek islands near the Turkish coast, a possibility Greeks fear. See Blake (n. 10 above); p. 4. In 1975 Turkey formed an army with amphibious landing capacity called the «Army of the Aegean». See *ibid.*

<sup>(57)</sup> STEVEN GREENHOUSE, «Chiefs Reach a Greek-Turkish Accord», *New York Times* (February 1, 1988), p. A12, col. 1.

<sup>(58)</sup> «Progress at Greek-Turkish Talks», *New York Times* (March 5, 1988), p. A3, col. 1.

<sup>(59)</sup> ROBERT SURO, «Few Gains Seen as Greek-Turkish Talks End», *New York Times* (June 16, 1988), p. A15, col. 1.

held in September in Turkey between the two leaders, but again the talks did not deal with the substantive issues regarding territorial claims in the Aegean. Greece again offered to submit the Aegean continental shelf dispute to the International Court of Justice for resolution, but Turkey rejected the offer because of its position that all of the Aegean disputes should be examined together<sup>(60)</sup>.

*Treaty provisions and judicial/arbitral decisions involving islands*

The 1958 Convention on the Continental Shelf stated that the boundary between continental shelves of opposite and adjacent states should be the median line unless special circumstances dictate another line<sup>(61)</sup>, but even under this regime an island in the midst of another nation's geologic continental shelf was considered to be a classic special circumstance<sup>(62)</sup>. Under the 1982 Convention, the median line/equidistance principle is no longer necessarily even the starting point for boundary delimitations, and nations with opposite or adjacent coasts are instructed simply to negotiate pursuant to the principles of «international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution»<sup>(63)</sup>.

The language in the 1982 Convention referring to «Article 38 of the Statute of the International Court of Justice» is widely thought of as a shorthand reference to the 1969 *North Sea Continental Shelf Case*<sup>(64)</sup>, where the ICJ applied equitable principles

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<sup>(60)</sup> «Negotiations Unable to Agree», Associated Press-wire service, September 6, 1988, at 13 hours, 42 minutes, 15 seconds.

<sup>(61)</sup> Geneva Convention on the Continental Shelf, April 29, 1958 (in force June 6, 1984), Art. 3; *U.S.T.*, 15:471; *T.I.A.S.* 5578; *U.N.T.S.*, 499:311 (1958).

<sup>(62)</sup> KARL (n. 24 above), p. 648.

<sup>(63)</sup> Law of the Sea Convention (n. 2 above), Arts. 74 and 83.

<sup>(64)</sup> *North Sea Continental Shelf Case* (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. The Netherlands), *I.C.J. Rep.* 1969, p. 3.

to delimit the continental shelf of the Netherlands, Denmark, and the Federal Republic of Germany. Strict application of the equidistance principle would have denied Germany all but a small share of the shelf because Germany's coastline is concave. The Court held that «relevant circumstances» to consider in achieving an equitable solution include the configuration of the coastline and the proportionality between the length of a nation's coastline and the area of that nation's continental shelf<sup>(65)</sup>.

The *North Sea Continental Shelf Case* is probably best known for its reliance on the principle of the «natural prolongation» of the continental shelf, a view that sees the undersea shelf as an extension of the continent, which leads to the conclusion that the islands projecting up from this underlying shelf do not have the same capacity to generate zones as does the continental landmass itself. Indeed, the court said in this opinion that «the presence of islets, rocks and minor coastal projections, the disproportionality distorting effect of which can be eliminated by other means», should be ignored in continental shelf delimitation<sup>(66)</sup>. It is significant that this early boundary decision thus rejected the notion that all islands should generate equal zones, even though the only provision defining the role of islands in the 1958 Conventions did not differentiate among islands<sup>(67)</sup>.

When the negotiations that led to the 1982 Law of the Sea Convention began in earnest in the early 1970s, the question of the role of islands in generating ocean space was a central issue,

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<sup>(65)</sup> North Sea Continental Shelf Case, Par. 101(d).

<sup>(66)</sup> Ibid.

<sup>(67)</sup> Geneva Convention of the Territorial Sea and the Contiguous Zone (n. 13 above), Art. 10, defines an «island» as «a naturally-formed area of land, surrounded by water, which is above water at high tide» and then says that the territorial sea of all islands is determined in the same manner as the territorial sea of any other land areas. Article 1(b) of the 1958 Continental Shelf Convention uses the term «island» without defining it further. It could have been argued, therefore, that these two conventions taken together recognized that *all* islands generated continental shelves. The language quoted in the text accompanying n. 66 indicates that the International Court of Justice rejected this possible interpretation.

and a number of countries proposed how this matter should be resolved. The Pacific island states and Greece both introduced draft articles stating that island maritime spaces should be determined by the same rules governing other land territory<sup>(68)</sup>. The Greek draft and Part A of the Pacific islands draft were substantially identical, and both declared that the provisions should apply to all islands.

Romania, Turkey, and a number of African states submitted draft proposals that would have limited maritime spaces of islands according to various criteria. The Romanian proposal defined «islets» as naturally formed high tide elevations less than 1 km<sup>2</sup> in area<sup>(69)</sup>. This proposal also used the words «islands similar to

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(68) The Greek proposal was as follows:

Article 1

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. An island forms an integral part of the territory of the State to which it belongs.
3. The foregoing provisions have application to all islands, including those comprised in an island State.

Article 2

1. The sovereignty and jurisdiction of a State extends to the maritime zones of its islands determined and delimited in accordance with the provisions of this Convention applicable to its land territory.
2. The sovereignty over the islands extends to its territorial sea, to the air space over the island and its territorial sea, to its sea-bed and the subsoil thereof and to the continental shelf for the purpose of exploring it and exploiting its natural resources.
3. The island has a contiguous zone and an economic zone on the same basis as the continental territory, in accordance with the provisions of this Convention.

See United Nations document A/Conf. 62/C.2/L.50, 1974. For the text of the Pacific Islands proposal, see Jon Van Dyke and ROBERT BROOKS, «Uninhabited Islands: Their Impact on the Ownership of the Ocean's Resources», *Ocean Development and International Law* 12 (1983): 294-95, n. 3, quoting UN document A/Conf. 62/C.2/L.30, 1974.

(69) For the text of the Romanian proposal, see Van Dyke and Brooks, p. 296, n. 64, quoting UN document A/Conf. 62/C.2/L.53, 1974.

islets», which were defined as «naturally formed elevations of land» larger than islets that cannot be permanently inhabited or have their own economic life. Both categories would have been allowed in some circumstances to generate security areas and territorial seas as long as they did not prejudice the maritime zones of another nation. «Islets» or «islands similar to islets» in the international zone of the seabed would have been allowed to have such marine spaces as agreed on with an international authority that would be established to monitor maritime boundary delimitation.

The Turkish proposal would not have allowed economic zones for islands under foreign domination or for islands situated on the continental shelf of another state if the island's land area was not at least one-tenth of the total land area of the nation to which it belonged<sup>(70)</sup>. The Turkish proposal stated that «islands without economic life and situated outside of the territorial sea

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(70) Turkey's draft articles on the regime of islands were as follows:

Article 1

[Definitions]

Article 2

Except where otherwise provided in this chapter the marine spaces of islands are determined in accordance with the provisions of this Convention.

Article 3

1. No economic zone shall be established by any State which had dominion over or controls a foreign island in waters contiguous to that island.

The inhabitants of such islands shall be entitled to create their economic zone at any time prior to or after attaining independence or self-rule. The right to the resources of such economic zone and to the resources of the continental shelf are vested in the inhabitants of that island to be exercised by them for their benefit and in accordance with their needs or requirements.

In case the inhabitants of such islands do not create an economic zone, the Authority shall be entitled to explore and exploit such areas, bearing in mind the interests of inhabitants.

2. An island situated in the economic zone or the continental shelf of other States shall have no economic zone or continental shelf of its own if it does not contain at least one tenth of the land area and population of the State to which it belongs.

3. Islands without economic life and situated outside the territorial sea of a State shall have no marine space of their own.

of a State shall have no marine space of their own»<sup>(71)</sup>. «Rocks» and «low-tide elevations» would also have been denied marine spaces.

The draft articles introduced by the African states divided the world of land areas surrounded by water into four categories – «islands», «islets», «rocks», and «low-tide elevations» – with the final three being denied jurisdiction over marine space<sup>(72)</sup>. The definitions offered, however, would have needed additional refinement. An «island» was defined as «a vast naturally formed area of land, surrounded by water, which is above water at high tide», and an «islet» was distinguished simply by substituting the word «smaller» for «vast». A «rock» was defined as «a naturally formed rocky elevation of ground, surrounded by water, which is above water at high tide». The marine spaces of these categories of land protrusions were to be determined by considering equi-

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4. Rocks and low-tide elevations shall have no marine space of their own.

#### Article 4

A coastal State cannot claim rights based on the concept of the archipelago or archipelagic waters over a group of islands situated off its coast.

#### Article 5

In areas of semi-enclosed seas, having special geographic characteristic, the maritime spaces of islands shall be determined jointly by the States of that area.

#### Article 6

The provisions of this chapter shall be applied without prejudice to the articles of this Convention relating to delimitation of marine spaces between countries with adjacent and/or opposite coasts.

#### Article 7

For the purposes of this chapter the term «marine space» implies either the territorial sea and/or continental shelf and/or the economic zone according to the context in which the term has been used.

See Un document A/Conf.62/C.2/L.55, 1974.

<sup>(71)</sup> See *ibid.*, Art. 3.3.

<sup>(72)</sup> For the text of the African proposal, see Van Dyke and Brooks, pp. 297-99, quoting UN document A/Conf.62/C.2/L.62/Rev.1, 1974.

table criteria such as size, geographical configurations, «the needs and interests of the population living thereon», any conditions that «prevent a permanent settlement of population», and whether it is located near a coast.

These views were controversial and did not command a consensus among the delegates to the Third UN Conference on the Law of the Sea. When the president of the Conference and the chairmen of the three committees prepared the Single Negotiating Text (SNT) in April 1975<sup>(73)</sup>, they attempted to formulate articles that would represent consensus without prejudicing the position of any delegation. The language on the regime of islands was therefore brief and was designed to be inoffensive to all. Unfortunately, the ambiguity from the 1958 Geneva Conventions was carried forward<sup>(74)</sup>. Paragraphs (1) and (2) of Article 132 of the SNT<sup>(75)</sup> were taken directly from Article 10 of the 1958 Territorial Sea Convention<sup>(76)</sup>. Paragraph (3) of Article 132 was new, however. This paragraph denied exclusive economic zones and continental shelves to «rocks which cannot sustain human habitation or economic life of their own» and thus added a new ambiguity.

The article on the regime of islands is now numbered Article 121 in the 1982 Convention; its language and ambiguities remained unchanged through the Revised Single Negotiating Text of May 1976<sup>(77)</sup>, the Informal Composite Negotiating Text (ICNT) of 1977<sup>(78)</sup>, the Revised ICNT of April 1979, and the Draft Treaty

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<sup>(73)</sup> UN document A/Conf.62/WP.8/Rev.Pts. 1, II, and III, 1975.

<sup>(74)</sup> See n. 67 above; and Van Dyke and Brooks, pp. 274-76.

<sup>(75)</sup> Article 132 of Single Negotiations Text, n. 73 above:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

<sup>(76)</sup> See n. 67 above.

<sup>(77)</sup> UN document A/Conf.62/WP.8/Rev.1/Pts. I, II, III, and IV, 1976.

<sup>(78)</sup> UN document A/Conf.62/WP.10, 1977.

of August 1980<sup>(79)</sup>. Indeed, no formal substantive discussion of the topic occurred after the 1974 Caracas session. S. H. Amerasinghe, then president of the Conference, noted in his explanatory memorandum to the 1979 Revised ICNT that the regime of islands «had not yet received adequate consideration and should form the subject of further negotiation during the resumed session»<sup>(80)</sup>.

Further consideration of the regime of islands did not take place, however, because of the pressure applied to complete the treaty during the 1980 and later negotiating sessions because of the limited negotiations after the 1981 U.S. announcement regarding its reassessment of the Convention and because many of the major nations saw benefits from Article 121 as it was worded. Consequently, Article 121 remains in its somewhat ambiguous form, and scholars and diplomats have been struggling to give precise meaning to its language.

The 1977 *Anglo-French Arbitration*<sup>(81)</sup> was the first instance in which a tribunal addressed the effect of islands on delimitation of a continental shelf boundary<sup>(82)</sup>. This dispute required the tribunal to determine whether the British Channel Islands were entitled to a continental shelf as separate islands and what influence these islands should have on the delimitation of the continental shelf between England and France<sup>(83)</sup>.

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<sup>(79)</sup> The Revised Informal Composite Negotiating Text of April 1979 is UN document A/Conf.62/WP.10/Rev.1, 1979, and the Draft Treaty of August 1980 is A/Conf.62/WP.10/Rev.3/add.1

<sup>(80)</sup> UN document A/Conf.62/WP.10/Rev.1, 1979, p. 19.

<sup>(81)</sup> Case concerning the Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic, *United Nations Reports of International Arbitral-Awards* (R.I.A.A.) 18 (1977): 74; reprinted in *I.L.M.* 18 (1979): 397 (hereafter referred to as «the Anglo-French Arbitration»).

<sup>(82)</sup> See, generally, BOWETT (n. 5 above), pp. 193-247.

<sup>(83)</sup> «Whether, and if so, in what manner, the presence of the British Channel Islands close to the coast of Normandy and Brittany affects the legal framework of a median line delimitation in mid-channel which would otherwise be indicated by the opposite and equal coastlines of the mainlands of the two countries». See the Anglo-French Arbitration, Par. 189; and reprinted in *I.L.M.* 18 (1979): 442.

The Channel Islands archipelago consists of four groups of islands, including the main islands of Jersey, Guernsey, Alderney, Sark, Herm, and Jethou, as well as a large number of rocks and islets, some of which are inhabited<sup>(84)</sup>. The islands are under British sovereignty but are located as close as 6.6 km from the French Normandy coastline<sup>(85)</sup>, that is, «on the wrong side of the median line»<sup>(86)</sup>. Geological evidence indicates that the Channel Islands are part of the physical land mass of Brittany and Normandy<sup>(87)</sup>. These islands have a total land area of 195 km<sup>2</sup> and a population of 130,000<sup>(88)</sup>. Politically, the Channel Islands are British dependencies, not constitutionally part of the United Kingdom<sup>(89)</sup>.

The tribunal awarded Britain 12-nm enclaves around the Channel Islands<sup>(90)</sup> but ruled that otherwise they would not affect the delimitation of boundary and thus that the area around these enclaves would belong to France. As to the median line, the tribunal rejected the British proposal that the median line should «automatically deviate southwards in a long loop around the Channel Islands»<sup>(91)</sup>. The tribunal also explained that the juridical con-

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<sup>(84)</sup> The Anglo-French Arbitration, Par. 6; and reprinted in *I.L.M.* 18 (1979); 408. Editor's note. — For further comments on the Anglo-French Arbitration and for a map of the Anglo-French maritime boundary, see John Briscoe, «Islands on Maritime Boundary Delimitation», *Ocean Yearbook* 7, ed. Elisabeth Mann Borgese, Norton Ginsburg, and Joseph R. Morgan (Chicago: University of Chicago Press, 1988), pp. 14-41, and fig. 2, p. 34.

<sup>(85)</sup> Anglo-French Arbitration.

<sup>(86)</sup> *Ibid.*, Par. 173; and reprinted in *I.L.M.* 18 (1979): 440.

<sup>(87)</sup> SYMONS (n. 18 above), p. 138: «Scientific evidence showed clearly the [Channel Islands are] an *integral part* of the american area and are included in the French hercynien shelf, [and] truly thus formed a part of the physical mass of Brittany and Normandy» (emphasis added in original).

<sup>(88)</sup> BOWETT, p. 195.

<sup>(89)</sup> Anglo-French Arbitration, Par. 184.

<sup>(90)</sup> This solution created the first true total enclave of a continental shelf in state practice. See BOWETT, p. 206.

<sup>(91)</sup> Anglo-French Arbitration (n. 81 above), Par. 189; and reprinted in *I.L.M.* 18 (1979): 442. «In the opinion of the Court... such an interpretation

cept of natural prolongation requires consideration of geographical circumstances to be viewed in light of «any relevant consideration of law and equity»<sup>(92)</sup>.

Another portion of the *Anglo-French Arbitration* concerned the relative weight to be given to the Scilly Isles off the British Coast near Land's End, compared with Ushant off the northwest coast of France. The Scilly Isles, lying some 21 miles (34 km) from the mainland, are «a group of 48 islands of which six are inhabited»<sup>(93)</sup>. France argued that they should be essentially ignored. The tribunal resolved the dispute by splitting the difference. It constructed one set of baselines and equidistance lines using the Scilly Isles and another set that ignored them. The triangle that was hereby created was then divided in half to create the «half-effect» line<sup>(94)</sup>. The tribunal justified its use of this «half-effect» approach in part because the Scillies are twice as far from Land's

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of the situation in the Channel Islands region would be as extravagant legally as it manifestly is geographically»; *Anglo-French Arbitration*, Par. 190; and *I.L.M.* 18 (1970): 442.

<sup>(92)</sup> *Anglo-French Arbitration*, Par. 194; and *I.L.M.* 18 (1979): 443.

The principle of natural prolongation of territory is neither to be set aside nor treated as absolute in a case where islands belonging to one State are situated on continental shelf which would otherwise constitute a natural prolongation of the territory of another State. The application of that principle in such a case, as in other cases concerning the delimitation of the continental shelf, has to be appreciated in the light of all the relevant geographical and other circumstances. When the question is whether areas of continental shelf, which geologically may be considered a natural prolongation of the territories of two States, appertain to one State rather than to the other, the legal rules constituting the juridical concept of the continental shelf take over and determine the question. Consequently, in these cases the effect to be given to the principle of natural prolongation of the coastal State's land territory is always dependent not only on the particular geographical and other circumstances but also on any relevant considerations of law and equity.

Significantly, the tribunal ignored altogether the small rocks and islands in the Channel Islands that are not inhabited. See *ibid.*, P. 184.

<sup>(93)</sup> *Anglo-French Arbitration*, Par. 227, and *I.L.M.* 18 (1979): 450-51.

<sup>(94)</sup> *Anglo-French Arbitration*, Par. 249, and *I.L.M.* 18 (1979): 455.

End as Ushant is from Finistère<sup>(95)</sup>, and in part because of the economic and political conditions on the islands<sup>(96)</sup>.

This «half-effect» idea was apparently taken from other situations where similar results were reached through negotiations. Italy and Yugoslavia, for instance, had a number of very small islands lying between them in the Adriatic Sea that were given partial effect in delimitation<sup>(97)</sup>. Similarly in the delimitation between Iran and Saudi Arabia, the island of Kharg was given a half effect<sup>(98)</sup>.

A year after the *Anglo-French Arbitration*, in 1978, Australia and Papua New Guinea negotiated an «imaginative»<sup>(99)</sup> solution to the problem created by the presence of Australian islands just south of the main island of Papua New Guinea<sup>(100)</sup>, which are also on the «wrong» side of the median line. It was agreed by both states that these small Australian islands would produce an «inequitable boundary if given full effect»<sup>(101)</sup>, and so they decided that these small islands would generate fishing zones, but that they would have no effect on the continental shelf boundary and thus that the Australian islands would sit atop the Papua New Guinea

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<sup>(95)</sup> BOWETT (n. 5 above), p. 215, citing the Anglo-French Arbitration, Par. 251, and *I.L.M.* 18 (1979): 455.

<sup>(96)</sup> BOWETT, pp. 223-24.

<sup>(97)</sup> N. ELY, «Seabed Boundaries between Coastal States: The Effect to Be Given Islets as "Special Circumstances"», *International Law* 6 (1971): 227-28.

<sup>(98)</sup> ELY, p. 229; and BOWETT, p. 215, citing U.S. State Department Office of the Geographer, «Continental Shelf Boundary: Iran-Saudi Arabia», *Limits of the Sea*, Ser. A. No. 24 (July 6, 1970).

<sup>(99)</sup> J.R. V. PRESCOTT, *The Maritime Political Boundaries of the World* (New York: Methuen, 1985), p. 191.

<sup>(100)</sup> Australia-Papua New Guinea: Treaty on Sovereignty and Maritime Boundaries in the Ara between the Countries, done at Sydney, December 18, 1978, reprinted in *I.L.M.* 23 (1984): 291. Editors' note. — For further comments and map of the region, see Briscoe (n. 84 above), text and fig. 3, pp. 35-36.

<sup>(101)</sup> PRESCOTT, p. 191.

continental shelf<sup>(102)</sup>. The treaty also creates a protected zone to preserve the traditional way of life for the inhabitants of the islands<sup>(103)</sup>.

In three ICJ maritime boundary decisions handed down since 1982, the court has held in each case that islands should be given only a partial effect in delimiting the boundaries. The first of these decisions was the 1982 *Tunisia-Libya Continental Shelf Case*, where the ICJ relied on the *Anglo-French Arbitration* decision and gave only half effect to Tunisia's Kerkennah Islands in delimiting the continental shelf between the two nations<sup>(104)</sup>. The main island of Kerkennah is 180 km<sup>2</sup> (69 square miles) and has a population of 15,000. In drawing a line to represent the general direction of the coast, the court disregarded large areas of low-tide elevation on the islands. The court drew a delimitation line between Tunisia and Libya in two sectors to adjust for a change in the general direction of the Tunisian coastline. The first sector extended seaward from the land boundary between Tunisia and Libya at Ras Ajdir, roughly perpendicular to the coast at an angle approximately 26 degrees east of north<sup>(105)</sup>. Instead of continuing

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<sup>(102)</sup> *Ibid.*, *fig. 7.5*, «Maritime Boundaries in Torres Strait», pp. 194-95. Editors' note. — This figure is reproduced in Briscoe, *fig. 3*, «Maritime Boundaries in Torres Straits», p. 36.

<sup>(103)</sup> PRESCOTT, p. 191.

<sup>(104)</sup> Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), *I.C.J. Rep. 1982*, p. 89, Par. 129. Editors' note. — For the text and a discussion of the ICJ judgment on the continental shelf boundary between Tunisia and the Libyan Arab Jamahiriya see NICHOLAS P. DUNNING, «International Court of Justice Judgment of February 24, 1982: Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)», *Ocean Yearbook 4*, ed. Elisabeth Mann Borgese and Norton Ginsburg (Chicago: University of Chicago Press, 1983), pp. 515-32; and for discussion and map of the maritime boundary between the countries, see BRISCOE, pp. 14-41, and *fig. 5*, p. 38, which is a reproduction of PRESCOTT, *fig. 12.1*, «The Maritime Boundary between Libya and Tunisia», p. 301.

<sup>(105)</sup> For a map of the area, see D. CHRISTIE, «From the Shoals of Ras Kaboudia to the Shores of Tripoli: The Tunisia/Libya Continental Shelf Boundary Delimitation», *Georgia Journal of International and Comparative Law 13* (1983): 19.

the line at that angle to the edge of the shelf, the court deflected the line eastward in a second sector to give Tunisia more continental shelf area because of the change in Tunisia's coastline<sup>(106)</sup>. The angle of deflection, however, was less than it would have been had the seaward boundary of the Kerkennah Islands been used to represent the direction of the coast. The Kerkennah boundary line angle was averaged together with a hypothetical coastline angle that would properly have represented the coast were no islands present<sup>(107)</sup>.

Similarly, Canada's Seal Island and Mud Island and other adjacent islets in the vicinity of Cape Sable in Nova Scotia were given only partial effect in a 1984 determination by a chamber of the ICJ of the maritime boundary between Canada and the United States in the *Gulf of Maine Case*<sup>(108)</sup>. As in the *Libya/Tunisia*

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<sup>(106)</sup> Ibid., p. 20.

<sup>(107)</sup> Ibid., p. 21:

The Court represented the general direction of the coast as a line of an approximate 42 degree bearing drawn from the most westerly point of the Gulf of Gabes to Ras Kaboudia... This depiction of the coastline, however, did not give effect to the Kerkennah Islands... The Court described a line along the seaward side of the islands as having an approximate 62 degree bearing... In spite of the fact that the 62 degree line disregarded large areas of low tide elevations to the east of the Kerkennah Islands, the Court considered that a delimitation running parallel to the seaward side of the islands would give excessive weight to the Kerkennahs.

Following the example of other delimitations which have given only partial effect to islands, the Court determined that... the islands should be given, «half effect». By bisecting the angle formed by the 42 degree and 62 degree lines, the Court effectively gave halfweight to the islands in the delimitation by drawing the line in the second sector at an angle of 52 degrees from the meridian.

<sup>(108)</sup> Judgment of the International Court of Justice on the Delimitation of the Maritime Boundary in the Gulf of Maine (Canada v. United States of America), October 12, 1984, *I.C.J. Rep. 1984*, pp. 336-37, Par. 222; and reprinted in *I.L.M.* 23 (1984): 1242-43. Editors' note. — For further information on this case, see «Analysis of the Judgment of the International Court of Justice on the Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), 12 October 1984», *Ocean Yearbook* 6, ed. ELISABETH MANN BORGESSE and NORTON GINSBURG (Chicago: University

delimitation, the chamber used a two-sector line, with the first segment roughly following an equidistance formula. The second sector allocated ocean space between the United States and Canada in a ratio proportional to the relative lengths of their coastlines in the Gulf<sup>(109)</sup>. Had Seal Island and its neighboring islets been given no effect, the ratio of ocean area belonging to the United States compared to that of Canada would have been 1.38 to 1<sup>(110)</sup>. The court decided that although Seal Island and its neighbors «cannot be disregarded» because of their dimensions and geographical position<sup>(111)</sup>, it would be «excessive» to give them full effect<sup>(112)</sup>. Thus the court decided it was appropriate to give the islands half effect, and, as a result, the U.S./Canada ocean space ratio became 1.32 to 1<sup>(113)</sup>.

In its most recent decision involving islands, the 1985 *Libya/Malta Continental Shelf Case*<sup>(114)</sup>, the ICJ ruled that equitable

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of Chicago Press, 1986), app. B, pp. 516-26; and NICHOLAS P. DUNNING, «Boundary Delimitation in the Gulf of Maine: Implications for the Future of a Resource Area», *Ocean Yearbook* 6, pp. 390-98, and fig. 1, p. 391.

<sup>(109)</sup> See n. 108 above, *I.C.J. Rep.* 1984, p. 336, Par. 221; *I.L.M.* 23 (1984): 1242.

<sup>(110)</sup> «The ratio between the coastal fronts of the United States and Canada on the Gulf of Maine... 1.38 to 1... should be reflected in the location of the second segment of the delimitation line» *I.C.J. Rep.* 1984 p. 336, Par. 222; *I.L.M.* 23 (1984): 1242.

<sup>(111)</sup> The Court stated:

The Chamber considers that Seal Island (together with its smaller neighbour, Mud Island), by reason both of its dimensions and, more particularly, of its geographical position, cannot be disregarded for the present purpose. According to the information available to the Chamber it is some two-and-a-half miles long, rises to height of some 50 feet above sea level, and is inhabited all the year round. It is still more pertinent to observe that as a result of its situation off Cape Sable, only some nine miles inside the closing line of the Gulf, the island occupies a commanding position in the entry to the Gulf. See *I.C.J. Rep.* 1984, pp. 336-37, Par. 222; *I.L.M.* 23 (1984): 1242-43.

<sup>(112)</sup> No explanation was given for the determination that «it would be excessive». See n. 111 above.

<sup>(113)</sup> See n. 111 above.

<sup>(114)</sup> Judgment of the International Court of Justice on the Continental Shelf (Libyan Arab Jamahirya/Malta), June 3, 1985, *I.C.J. Rep.* 1985, p. 13.

principles required that the tiny uninhabited island of Filfla (belonging to Malta – 3 miles (5 km) south of the main island) *should not be taken into account at all* in determining the boundary between the two countries<sup>(115)</sup>.

Another dispute regarding offshore islands has concerned Argentina and Chile, both of which declared 200-nm territorial seas around all of their mainland and insular coasts<sup>(116)</sup>. These countries recently settled a century-old dispute concerning islands lying off the coast of Tierra del Fuego in the Beagle Channel based on the proposal of a papal mediator<sup>(117)</sup>. The larger, inhabited islands in the channel are fringed by many smaller uninhabited rocks and islets. The resolution of the dispute limited the Chilean

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Editors' note. – For further information on this case, see «Analysis of the "Judgment of the International Court of Justice on the Continental Shelf (Libyan Arab Jamahiriya/Malta), 3 June 1985"», *Ocean Yearbook* 6, app. B, pp. 504-15, which was excerpted from UN Office of the Special Representative of the Secretary-General for the Law of the Sea, *Law of the Sea Bulletin*, no. 6 (October 1985); and BRISCOE (n. 84 above).

<sup>(115)</sup> Judgment of the International Court of Justice on the Continental Shelf (Libyan Arab Jamahiriya/Malta), p. 48, Par. 64. After referring to the statement in the North Sea Continental Shelf Cases (see n. 64 above), quoted in the text accompanying n. 66 above, the court stated: «The Court thus finds it equitable not to take account of Filfla in the calculation of the provisional median line between Malta and Lybia».

<sup>(116)</sup> See Presidential Declaration concerning the Continental Shelf, Article 1, June 23, 1947, reprinted in A. SZEKELY, *Latin America and the Development of the Law fo the Sea, Chile* (Dobbs Ferry, N.Y.: Oceana Publications, 1980), 2:13; and Law No. 17,094-M24 of December 29, 1966, Art. 1, *ibid.*, s.v. «Argentina», 2:20.

<sup>(117)</sup> Treaty of Peace and Friendship (Chile/Argentina) (November 29, 1984), reprinted in *I.L.M.* 24 (1985): 10-28; Papal Proposal n the Beagle Channel Dispute: Proposal of the President, December 12, 1980, reprinted in *I.L.M.* 24 (1985): 7. Editors' note. – The Treaty of Peace and Friendship was published in «Selected documents», *Ocean Yearbook* 6, pp. 606-20. For a discussion of the regional implications of the treaty and a map showing the Chilean and Argentine maritime zones, see MICHAEL A. MORRIS, «EEZ Policy in South America's Southern Cone», *Ocean Yearbook* 6, pp. 417-37. See also MICHAEL A. MORRIS, «South American Antarctic Policies», *Ocean Yearbook* 7, (n. 84 above), pp. 356-71.

maritime claim by giving less than full effect to the smaller Chilean islets in the Atlantic waters off the Argentine coast of Tierra del Fuego<sup>(118)</sup>.

In summary, recent arbitrations, judicial decisions, and negotiations have been relatively consistent in refusing to give full effect to islands in delimiting maritime boundaries<sup>(119)</sup>. The *Anglo-French Arbitration*<sup>(120)</sup>, this resolution of the long-standing dispute between Argentina and Chile, and the four opinions of the International Court of Justice described above<sup>(121)</sup> all stand for the proposition that islands do *not* generate extended maritime jurisdiction in the same way that other land masses do. Even inhabited islands (such as Jersey and Guernsey in the English Channel, Kerkennah Island near Tunisia, and Seal Island in the Gulf of Maine)<sup>(122)</sup> do not generate full extended maritime zones if the im-

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<sup>(118)</sup> Treaty of Peace and Friendship (Chile/Argentina), Art. 7. The uninhabited islands of Evout, Barnevelt, and Horn generate only 12-mile zones. See Papal Proposal in the Beagle Channel Dispute, Art. 4 (a)(b) (4).

<sup>(119)</sup> A significant exception would be the recent negotiations carried out by the United States with Venezuela and Mexico in which full effect was given to small islands. See Maritime Boundary Treaty between the United States of America and the Republic of Venezuela, done March 28, 1978, entered in force November 24, 1980, *T.I.A.S.* 9890; Treaty on Maritime Boundaries between the United States and the United Mexican States, S. Exec. Doc. F, 96th Cong., 1st Sess. (1979); MARK FELDMAN and DAVID COLSON, «The Maritime Boundaries of the United States», *American Journal of International Law* 75 (1981): 729, 735, 740. The United States accepted the Venezuelan and Mexican claims, not out of altruism, but because it felt that it had much to gain in other maritime boundary disputes if all small islands were allowed to generate 200-mile zones without limitation. See, generally, JON M. VAN DYKE, JOSEPH R. MORGAN, and JONATHAN GURISH, «The Exclusive Economic Zone of the Northwestern Hawaiian Islands: When Do Uninhabited Islands Generate an EEZ?» *San Diego Law Review* 25 (1988): 425-94. For examples of other agreements that have used tiny insular formations as base point for determining equidistance lines in resolving boundary disputes, see SYMMONS (n. 18 above), pp. 190-91.

<sup>(120)</sup> See text accompanying nn. 81-96 above.

<sup>(121)</sup> See text accompanying nn. 64-67 and 104-15 above.

<sup>(122)</sup> See text accompanying nn. 84-92 and 104-13 above.

pact of such an extension is to interfere with the claim of another nation based on a continental land mass<sup>(123)</sup>.

*How these principles apply  
to the Aegean Sea situation*

As the preceding section explains, the practice of tribunals examining maritime boundaries – and of most nations negotiating boundary disputes – has been to give islands less than full effect in generating extended maritime zones. The «power» of the island to generate an Exclusive Economic Zone or continental shelf has been determined by the size of the island, its population, and its location. The closer the island is to the mainland of its country, the greater its power is to generate a full zone; indeed, if it is close enough to the mainland, a baseline can be drawn directly connecting the island to the mainland. If the island is far from the mainland, however, and especially if it is on the «wrong» side of the median line dividing the state's continental land mass from that of its opposite or adjacent state, then the island is likely to be viewed as a «special circumstance» which can generate its own territorial sea but may have little or no effect on the location of the primary maritime boundary between the two nations. In both the Anglo-French dispute<sup>(124)</sup> and the Papua New Guinea-Australia agreement<sup>(125)</sup>, for instance, the islands of the United Kingdom and Australia adjacent to the coasts of France and Papua New Guinea, respectively, were viewed as sitting on the continental shelf of the other nation and thus were not allowed to generate any continental shelf of their own. These examples provide support for Turkey's position that it is entitled to the continental shelf extending to the median line between the mainlands of the two

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<sup>(123)</sup> One recent commentator said that the decision failing to give full effect to the Channel Islands was unjust because it failed to recognize the rights of the sizable population that lives there; see CHARLES BRAND, «The Legal Relevance of South African Insular Formations Off the SWA/Namibian Coast», *Sea Changes* 4 (1986): 101.

<sup>(124)</sup> See nn. 81-96 above and accompanying text.

<sup>(125)</sup> See nn. 99-103 above and accompanying text.

countries, save for the territorial seas that surround the Greek islands on the «wrong» side of that median line<sup>(126)</sup>. The «natural prolongation» theory has not been followed in the geographical sense in which it was first used in the 1969 *North Sea Continental Shelf Cases*<sup>(127)</sup>, but it has not been abandoned yet as a depiction of the general concept that continental land masses generate continental shelves.

As originally developed in the *North Sea* case, the natural prolongation theory appeared to require a close examination of sea-floor configuration to determine where the continental slope extending from one land mass ends and that of another begins. In its more recent decisions<sup>(128)</sup>, however, the ICJ has stated that this approach was rejected by the world community at the negotiations leading to the 1982 Convention when the negotiators decided that the principles used to resolve boundary disputes involving continental shelves should be the same as those used to resolve disputes involving Exclusive Economic Zones (EEZ)<sup>(129)</sup>. Because these principles appear to exclude the possibility of using a geological or geomorphological approach to resolving EEZ disputes, the court has felt that they should not now be applied to continental shelf disputes<sup>(130)</sup>.

This shift need not, however, be viewed as a rejection of the

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<sup>(126)</sup> See text at nn. 28 and 29 above; see also A. WILSON, *The Aegean Dispute*, Adelphi Papers, No. 155 (London: International Institute for Strategic Studies, 1979).

<sup>(127)</sup> *I.C.J. Rep. 1969*, p. 3; see text accompanying nn. 64-67 above; and see, generally, KEITH HIGHET, «Whatever Happened to Natural Prolongation?» in *Rights to Oceanic Resources: Deciding and Drawing Maritime Boundaries*, ed. Dorinda Dallmeyer and Louis De Vorse, Jr. (Dordrecht: Kluwer, 1989), pp. 87-100.

<sup>(128)</sup> See esp. Case concerning the Continental Shelf (Libya Arab Jamahiriya v. Malta) (n. 114 above), p. 33, Par. 34; p. 35, Par. 39; and p. 36, Par. 40.

<sup>(129)</sup> Compare the virtually identical Art. 74 and 83 of the Law of the Sea Convention (n. 2 above).

<sup>(130)</sup> Case concerning the Continental Shelf (Libya Arab Jamahiriya v. Malta), p. 13, Par. 40.

more general idea that each continental land mass generates a continental shelf. Solutions to boundary disputes should therefore recognize that each continental land area should be entitled to its fair share of the adjacent continental shelf, and, indeed, Article 83 of the 1982 Convention maintains that approach by stressing that the nations with opposite or adjacent coasts should endeavor to reach an «*equitable* solution»<sup>(131)</sup>.

Among the relevant factors that must be considered when focusing on the islands in the Aegean, as mentioned above<sup>(132)</sup>, is their size, population, and location. Table 1 lists their size and population and indicates that some of these islands are substantial in size with thriving communities while others are small in size with declining populations. The island that appears to be least deserving of generating an extended maritime zone is Megisti (Kastellorizo), a tiny island (3.5 square miles/9 km<sup>2</sup>) with only 222 inhabitants. If allowed to generate an extended maritime zone, Megisti would effectively cut off Turkey's access to the resources of a large part of the Mediterranean because of its location close to Turkey's coast but far from the other Greek islands<sup>(133)</sup>.

Limnos (Lemnos), Lesbos (Lesbos), Chios, Samos, Kalymnos, Kos, and Rhodes each have more than 10,000 inhabitants and thus – except for their awkward location – meet the usual criteria for being legitimate islands entitled to generate maritime zones<sup>(134)</sup>. If they are entitled to generate full zones, however, Turkey would be almost completely excluded from access to the resources of the Aegean, a solution that hardly seems «*equitable*», particularly since the Turkish population along its Aegean coast is many times larger than the population of these adjacent Greek islands.

Another relevant factor might be the historical linkages between the communities involved in this dispute and the disputed ocean area and its resources. Because the islands creating this problem have changed hands so frequently in recent years, however,

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<sup>(131)</sup> Law of the Sea Convention, Art. 83(1).

<sup>(132)</sup> See text preceding n. 124 above.

<sup>(133)</sup> PRESCOTT (n. 99 above), pp. 308-9.

<sup>(134)</sup> See text accompanying nn. 68-80 above.

this factor does not point toward a clear solution. Limnos (Lemnos), Lesbos (Lesbos), Chios, Samos, and their near neighbor islands were governed by the Turkish Empire from the late fifteenth or mid-sixteenth century until the end of the Balkan Wars in the 1913-14 period, when they were transferred to Greece<sup>(135)</sup>. The Dodecanese Islands in the southeastern Aegean became part of the Turkish Empire in 1522-23, came under Italian control in the Italo-Turkish War of 1911-12, and then were awarded to Greece because of their Greek population in the Allied peace treaty with Italy in 1947<sup>(136)</sup>. The residents of these islands have been primarily Greeks during all these periods, and they have had a maritime orientation, but the Turks and other occupying powers have participated in the development of the ocean resources during their periods of dominance. It appears difficult, therefore, to sustain any particular claim that the waters surrounding or connecting these islands are akin to «historic waters»<sup>(137)</sup>.

The factor that was quite important in the decision of the ICJ chamber in the *Gulf of Maine Case*<sup>(138)</sup> was the length of the coastlines of the two countries adjoining the disputed ocean area<sup>(139)</sup>. The ratio of Greek to Turkish coastlines bordering on the Aegean has been estimated at about two to one in favor of Greece<sup>(140)</sup>. Decision makers seeking an equitable solution to this dispute might

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<sup>(135)</sup> *Columbia Lippincott Gazetteer of the World* (n. 9 above), pp. 399, 1039, 1044, and 1658; see generally C.M. WOODHOUSE, *A Short History of Modern Greece* (London: Faber, 1968); and J.P.C. CAREY and A.G. CAREY, *The Web of Modern Greek Politics* (New York: Columbia University Press, 1968).

<sup>(136)</sup> *Columbia Lippincott Gazetteer of the World*, p. 521.

<sup>(137)</sup> The concept of historic waters is acknowledged in Art. 10(b) of the 1982 Law of the Sea Convention, but it is difficult to meet the standards required by international law to achieve this status. See, generally, UN General Assembly, *Official Records*, vol. 14, document A/CN.4/143; Sherry Broder and JON VAN DYKE, «Ocean Boundaries in the South Pacific», *University of Hawaii Law Review* 4 (1982): 12-23.

<sup>(138)</sup> *Gulf of Maine Case* (n. 108 above).

<sup>(139)</sup> *Ibid.*, pp. 335-37, Pars. 218-22; reprinted in *I.L.M.* 23 (1984): 1242-43.

<sup>(140)</sup> KARL (n. 24 above), p. 672.

well follow the lead of the ICJ chamber in the *Gulf of Maine Case* and divide jurisdiction over the Aegean waters by giving Greece jurisdiction over two-thirds, with Turkey given jurisdiction over the remaining one-third.

The concept of «equity» relevant to the solution to this dispute has been developed in other papers<sup>(141)</sup> and thus will not be explored in detail here. This concept clearly should be kept uppermost in the minds of all those addressing this problem because the unique geography of this area requires innovative and creative solutions to this dispute. Among the alternative solutions that have been suggested are the following:

A. *The «enclave» approach* would involve drawing territorial seas around each of the populated Greek islands but would otherwise deny them the power to generate extended maritime zones. The division of the area would then be determined by drawing the median line between the opposite and adjacent continental land masses of the two countries, thus giving Turkey significant areas of the continental shelf in the eastern half of the Aegean, reduced only by the territorial seas enclaves generated by the Greek islands. The amount of ocean jurisdiction Turkey would gain under this approach depends on whether the territorial sea around the Greek islands is 6 or 12 nm<sup>(142)</sup>. As discussed above<sup>(143)</sup>, this enclave approach should almost certainly be used for Megisti (Kastellorizo) – the easternmost island – no matter what other decisions are reached regarding the other islands.

B. *The «finger» approach* would give Turkey four finger-shaped projections into the eastern Aegean between the islands of Samothrace and Limnos (Lemnos), Limnos (Lemnos) and Lesvos (Lesbos),

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<sup>(141)</sup> For example, see BARBARA KWIATKOWSKA, «Maritime Boundary Delimitation between Opposite and Adjacent States in the New Law of the Sea: Some Implications for the Aegean» (paper presented at the International Symposium on Aegean Issues, Çeşme, Turkey, October 15-17, 1997), in press.

<sup>(142)</sup> For maps illustrating this approach, see WILSON (n. 126 above), pp. 36-37. Note that the caption of Map 1, p. 36, apparently should read, «6 nautical miles» instead of «16 nautical miles».

<sup>(143)</sup> See text accompanying n. 133 above.

Lesvos (Lesbos) and Chios, and Chios and Samos<sup>(144)</sup>. This approach has the advantage of maintaining contiguity among the ocean zones, but it would give Turkey less ocean resource jurisdiction than would the enclave approach (assuming that Greece's territorial sea is 6 nm).

C. *Fishing rights could be separated from continental shelf rights*, as was done in the Torres Strait Treaty between Australia and Papua New Guinea<sup>(145)</sup>. Territorial sea enclaves would again be drawn around the Greek islands; Turkey would then be given jurisdiction over the resources of the remaining continental shelf in the Aegean Sea east of the median line between the continental land masses, with Greece having rights to the fish in most of the water above. This approach is therefore similar to the «enclave» approach discussed above except that Turkey's access to fishing resources would be greatly reduced. Again, the jurisdiction granted to Turkey would vary greatly depending on whether the territorial sea enclaves had 6- or 12-nm radii.

D. *Joint development* is perhaps the most logical solution to this dispute because it would allow the two countries to postpone the ultimate decision of how to draw the boundary but nonetheless allow them to endeavor to exploit the resources for the benefit of the populations of both countries. Joint-development zones have been created between Saudi Arabia and Kuwait, Saudi Arabia and Sudan, Japan and Korea, Malaysia and Thailand, Norway and Iceland, and most recently Australia and Indonesia<sup>(146)</sup>, and other nations are actively considering this possibility.

A joint-development approach usually involves an agency managed by persons nominated by the two countries which supervises development of the area with some degree of autonomy. The resources are then explored and exploited through concessions granted by the joint-development agency with the revenues shared

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<sup>(144)</sup> For a map illustrating this approach, see WILSON, p. 38; and KARL, pp. 671-72.

<sup>(145)</sup> See text accompanying nn. 99-103 above.

<sup>(146)</sup> See, generally, MARK VALENCIA, ed., *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development* (New York: Pergamon, 1981).

by the two countries according to an agreed-upon formula. Each of the existing schemes has differences in approach, and some difficult questions are always raised regarding the legal regime that should govern both the commercial aspects of the activity and the labor-management and environmental aspects.

Nonetheless, if the political will exists, these problems can be resolved, and a difficult dispute can be set aside for the mutual benefit of all concerned. If successful, a joint-development project will not only expedite the development of the offshore resources but may also promote mutual cooperation and trust between the nations which can enable them to address other problems as well. Because of these advantages, and because none of the other solutions to the maritime boundary in the Aegean seem satisfactory, the joint-development approach deserves additional study by Turkey and Greece.