Energy at sea:
New challenges over troubled waters in the Eastern Mediterranean

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The Eastern Mediterranean area has always been to the forefront of history. Great civilizations thrived in its shores, the impact of which is still felt today and informs our understanding of the world. Throughout the centuries to the present date it remains the preferred avenue for massive movements of people, either as vast numbers of illegal immigrants seeking the wonders of Fortress Europe and beyond or as tourists craving the sun and the sea and the glories that were. It remains one of the busiest crossroads for navigation, strategic strongholds available here and there to ensure dominance or at least oversight over both the carriage of goods by sea and the deployment of naval forces. Ancient feuds have survived and been vested with present-day rivalries, the certainty of tension and often open war the only constant available in a perennially uncertain political environment. New sources of energy add their powerful tug in this potent brew of security concerns and the concern for security. And all this in one of the most densely populated neighbourhoods of the planet, most diverse in nature, most resplendent in areas of natural beauty and cultural importance, most steeped in history and still open to the ever-developing challenges of every-day life.
In this paper I will attempt to identify and explore the challenges created by the multiplicity of legal rules and regimes applicable in the Eastern Mediterranean area (under I), keeping always in mind the jurisdictional problems arising in the compact environment of the region where everyone and its neighbour are too close for comfort (under II).

I. A multitude of challenges

The extreme diversity of the region, with almost 20 States of very different social and economic features at widely opposite stages of development and political (in)stability, is further accentuated by the diversity of the relevant legal regimes and the multiplicity of the applicable legal rules and regulations in each particular case. The multiple uses of the maritime areas in the region, with navigation, fishing and recreation claiming equal precedence, are simply a fact of life that needs to be taken into account in the quest for an optimum regulatory balance; for there is no doubt that the overall regulatory framework applicable in the Eastern Mediterranean cannot be but the result of a very complicated balancing exercise between conflicting uses and overlapping jurisdictional claims. In fact, the map of the area would soon look like a patchwork, with distinct yet amor-

phous sectors where one particular use may take precedence over another. The originality of the matter lies in two characteristics, one as part of a global trend but the other specific to the area. First, whereas in the past the prevalent uses of the seas, i.e. navigation and fishing, run in parallel, there is an increasing tendency to fence off particular areas dedicated to a specific single use, i.e. specially protected areas or safety zones around energy installations, be they oil and gas platforms or windmills. Second, the trend towards exclusivity of use in specific areas may prove to be especially problematic in the Eastern Mediterranean as there is a severe dearth of available places that would allow for the full expansion of all maritime zones, especially a 200-mile Exclusive Economic Zone:[1] indeed, there is a point off the west coast of the Peloponnese where maritime zones from all neighbouring States come together in an elaborate *millefeuille* construction.

1. A multitude of sources

The multiplicity of regulatory systems is particularly evident in the energy sector, originating in a multitude of sources. Oil and gas exploration and exploitation necessitates the construction and use of both offshore installations, subject to one legal regime,[2] and pipelines, subject to a different, older in provenance but state-of-the–art in its contemporary implementation, legal regime.[3]

Alternative sources of energy at sea may be found mostly in windmills and less conspicuously in the deployment of contraptions that utilize wave power, sea currents or the difference in the salinity of coastal waters to produce electrical power. A common characteristic in this sector remains the need for extensive spatial requirements as the technology available today relies on the presence of a great number of such installations in a wider marine area for the investment to be commercially effective. In addition, the presence of wind-farms or other power-generation facilities at sea raises safety concerns for other users of the oceans and inevitably leads to the cordoning-off of such areas. Such exclusivity of use interferes very significantly with the enjoyment of other uses of the seas and thus further aggravates the balancing of interests in the marine area with 'due regard' to the rights of other users to have access in the same areas with a view to exercise their rights. A necessary concomitant of such installations is the presence of

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[1] Faraj Abdullah Ahnish, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*, Oxford 1993; Tullio Treves, The high seas as potential Exclusive Economic Zones in the Mediterranean, *in* Marcelo Cohen, Robert Kolb, Djacoba Liva Tehindrazanarivelo (eds.), *Perspectives of International law in the 21st Century*. Liber Amicorum Professor Christian Dominicé in honour of his 80th birthday, Martinus Nijhoff, 2012, pp. 175-189.

[2] Articles 60 and 80 of the Law of the Sea Convention (LOSC). See also Maria Gavouneli, *Pollution from offshore installations*, Martinus Nijhoff 1995; Seline Trevisanut, L'enlèvement et la gestion des plates-formes et installations offshore abandonnées ou désaffectées, *in* Gemma Andreone, Andrea Caliguri & Giuseppe Cataldi (éds.), *Droit de la mer et émergences environnementales = Law of the Sea and environmental emergencies*, Editoriale Scientifica, 2012, pp. 193-217.

[3] Articles 79 and 112 LOSC.

cables that would transfer the energy produced to the on-shore grid and make it commercially available.[4]

Indeed, it is often not immediately understood that the expansion of the offshore energy-generation industry would have a very significant impact on the presence of pipelines and cables in the high seas and in areas within national jurisdiction. The popular assumption remains that this essential network would remain unobtrusive and somehow hidden in the sands, perhaps because the original regulation of such activities goes back to the 1884 Paris Convention for the Protection of Submarine Telegraph Cables.[5] However, the present-day pipelines are huge structures, occasionally several stories high, with multiple chambers that would allow for the transfer of gas, electricity and telecommunications cables in a single massive multi-lane highway situated at the bottom of the seas. Their presence gives rise to important safety concerns[6] and presents new environmental challenges that remain to be addressed in practice.[7]

2. A multitude of concerns

The crux of the matter then becomes the definition of 'due regard' to other uses of the seas, as set out in articles 58 paragraph 3 LOSC on the Exclusive Economic Shelf (EEZ) and article 87 paragraph 2 LOSC on the high seas. Although the recipients of the obligation are in the EEZ the coastal States and in the high seas the flag State, the essence of the obligation remains the same in the Eastern Mediterranean as in other areas of the world.

The realities of the area are indeed multiple. Major trade routes pass through the Mediterranean and consequently freedom of navigation remains a primary concern; incidentally, not only for peaceful uses of the seas but also for military purposes. The regulation of fisheries (or better: the overfishing) in one of the oldest fishing grounds in the world is a perennial problem: The European Union is making a sustained effort to contain illegal, unregulated and unreported (IUU) fishing but its occasionally very heavy-handed intervention in the context of the Common Fishing Policy[8] does not always bear fruit and there is a very high possibil-

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[4] Wayne F. Nielsen & Tara Davenport, Submarine cables and offshore energy, *in* Douglas R. Burnett, Robert C. Beckman & Tara M. Davenport (eds.), *Submarine Cables: The Handbook of Law and Policy*, Martinus Nijhoff Publishers, 2014, pp. 351-373.

[5] Signed on 14 March 1884 and entered into force on 1 May 1888, USTS 380. See also Louis Savadogo, Le régime international des câbles sous-marins, 140 *Journal de droit international* 2013, pp. 45-82.

[6] Stuart Kaye, International measures to protect oil platforms, pipelines and submarine cables from attack, 31 *Tulane Maritime Law Journal* 2007, pp. 377-423.

[7] Scott Coffen-Smout & Glen J. Herbert, Submarine cables: A challenge for ocean management, 24 *Marine Policy* 2000, pp. 441-448; Tara Davenport, Submarine communications cables and the Law of the Sea, 43 *Ocean Development and International Law* 2012, pp. 201-242.

[8] The latest, widely acclaimed, edition is set out in Regulation (EU) No. 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, Official

ity that types of fish that are mentioned in Homer may not be around for my grandchildren to taste. The European fisheries policy is particularly important because it reverberates well beyond European waters encompassing both close and faraway neighbours in the seas.[9] However, it has not managed to resolve the jurisdictional conundrum of high seas fisheries,[10] where the tension between regional fisheries arrangements[11] on the one hand and the conventional limits of *pacta tertiis* remains pending.[12]

Tourism is *the* heavy industry of the area. Its marine manifestations entail a massive seasonal movement of people, holiday-makers and service-providers alike, and put an excessive burden on amenities and infrastructure. These parameters necessitate a novel approach to sea-side amusements, going beyond the seashore to include the coastal area as a whole, in a tool known as 'integrated coastal zone management'.[13] In the Mediterranean are we have one of the first comprehensive such instruments: The Protocol on Integrated Coastal Zone Management (ICZM Protocol)[14] is moving beyond the traditional allocation of State jurisdiction at sea and extends its coverage both seawards towards the high seas and landwards, towards the coast, up to the limit designated by each State party.

To counterbalance the constant burden of navigation, fishing and tourism on the Mediterranean environment, the protection system of the Barcelona Convention

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Journal of the European Union L 354/22, 28 December 2013. It is worth remembering that fisheries jurisdiction is an exclusive jurisdiction of the European Union, completely taken out of the hands of the constituent member-States; article 3 of the Treaty on the Functioning of the European Union, *Official Journal of the European Union* C 326, pp. 47-390, 26 October 2012.

[9] Nienke van der Burgt, The contribution of international fisheries law to human development: An analysis of multilateral and ACP-EU fisheries instruments, Martinus Nijhoff, 2013; Alice M.M. Miller, Simon R. Bush & Arthur P.J. Mol, Power Europe: EU and the Illegal, Unreported and Unregulated Tuna Fisheries Regulation in the West and Central Pacific Ocean, 45 *Marine Policy* 2014, pp. 138-145.

[10] Martin Tsamenyi & Quentin Hanich, Fisheries jurisdiction under the Law of the Sea Convention: Rights and obligations in maritime zones under the sovereignty of coastal States, *in* David Freestone (ed.), *The 1982 Law of the Sea Convention at 30: Successes, challenges and new agendas*, Martinus Nijhoff, 2013, pp. 109-119.

[11] Kim Hyun Jung, The return to *mare clausum* through Regional Fisheries Management Organizations?, 44 *Ocean Development and International Law* 2013, pp. 205-218. See also the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) to the International Tribunal on the Law of the Sea (ITLOS), case list no. 21, 2013, currently pending; for the latest information see www.itlos.org (last visited: 15 June 2014).

[12] Erik Franckx, *Pacta tertiis* and the Agreement for the Implementation of the Straddling and Highly Migratory Fish Stocks Provisions of the United Nations Convention on the Law of the Sea, 8 *Tulane Journal of International and Comparative Law* 2000, pp. 49-81; Rosemary Rayfuse, *Non-flag State enforcement in high seas fisheries*, Martinus Nijhoff, 2004.

[13] Defined as a "dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts" in article 2(f) of the ICZM Protocol, below.

[14] The ICZM Protocol was signed in Madrid on 21 January 2008 by the State parties to the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and entered into force on 24 March 2011; text available on www.unepmap.org (last visited: 15 June 2014); see also Maria Gavouneli, Mediterranean Challenges: Between old problems and new solutions, 23 *The International Journal of Marine & Coastal Law* 2008, pp. 477-497.

has also developed one of the first mechanisms for the creation and management of marine protected areas. The 1995 Barcelona Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean[15] was further evidence of the seawards expansion of the coastal States as it allowed for the creation of Specially Protected Areas of Mediterranean Importance (SPAMI) even in the high seas. Such an application is to be made jointly by the neighbouring States parties concerned when the proposed area is wholly or partially on the high seas or where "the limits of national sovereignty or jurisdiction have not yet been defined".[16] In the specific circumstances of the Mediterranean, were the neighbouring States of a cooperating mind they would have resolved the delimitation issue to begin with: the forced cooperation required in the submission process is too bland an instrument for the finesse required in this troublesome area of the world. As a result, the possibility of high-seas SPAMIs remains elusive, the only example being the Pelagos Sanctuary for Mediterranean Marine Mammals created in 1999 by a treaty between France, Italy and Monaco and then registered in the SPAMI list.[17]

Recently, the Barcelona Protocol Secretariat has undertaken a preliminary study with a view to identify 'priority conservation areas on the open seas, including the deep sea, that could contain sites that could be candidates for the SPAMI list' in an attempt to kick-start a rather dormant procedure.[18] Inspiration for a breakthrough may perhaps be sought in the very complicated but ultimately very successful procedure undertaken by Portugal within the context of the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic, whereby the Altair Sea Mount was recognised as a high seas protected area first and then as a protected area within national jurisdiction on the basis of the Portuguese claim on an extended continental shelf before the UN Commission on the Limits of the Continental Shelf (CLCS).[19] Such a multi-prong approach, in effect separating protective regimes over the waters and the underlying continental

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[15] The SPA & Biodiversity Protocol was adopted on 10 June 1995 and entered into force on 12 December 1999. It was a new distinct instrument and not an amendment of the previous 1982 Geneva SPA Protocol, which continues in force; for the text and more see www.unepmap.org (last visited: 15 June 2014).

[16] Article 9 paragraph 2(b) and (c) of the SPA & Biodiversity Protocol. For an overview see Tullio Scovazzi, Marine protected areas on the high seas. Some legal and policy considerations, 19 *TIJMCL* 2004, pp. 1-17; Nilufer Oral, Protection of vulnerable marine ecosystems in areas beyond national jurisdiction: Can international law meet the challenge?, Anastasia Strati, Maria Gavouneli Gavouneli & Nikolaos Skourtos (eds.), *Unresolved Issues and New Challenges to the Law of the Sea: Time before and Time after*, Martinus Nijhoff 2006, pp. 85-108.

[17] For the background see Tullio Scovazzi, The Mediterranean Marine Mammals Sanctuary: The signature of an amendment establishing a sanctuary for marine mammals, 16 *TIJMCL* 2001, pp. 132-141.

[18] UNEP, *Identification of potential sites in open seas including the deep sea that may satisfy SPAMI criteria*, UNEP(DEPI)/MED WG.348/3 rev.1, 20 May 2010; *Draft approach to facilitate the preparation of joint proposals for inclusion in the SPAMI List in accordance with Article 9 of the SPA/BD Protocol*, UNEP(DEPI)MED WG.359/CRP.2, 20 April 2011.

[19] Marta Chantal Ribeiro, The 'Rainbow': The first national marine protected area proposed under the high seas, 25 *TIJMCL* 2010, pp. 183-207.

shelf, may be a way forward for the Mediterranean as well[20] – especially when energy projects are concerned.[21]

Closely related to environmental protection concerns but with an important commercial parameter of their own is the presence of resources, such as the microorganisms living in and around mud volcanoes and gas hydrates in some of the deepest recesses of the Eastern Mediterranean, around the many volcanic fields in the area, and harbouring an immense variety of biodiversity.[22] These basins, not fully explored and certainly not exploited to this day, are mostly straddling the boundary lines of the existing jurisdictional zones and their future role adds another layer of uncertainty in the already convoluted make-up of the area.

It becomes evident that the multiplicity of the concerns cannot easily be managed on the basis of a 'due regard' test, mostly on a bilateral balance of interests. Wider considerations need to be taken aboard, especially with a view to achieve a stable, long-term result that would ensure the sustainability of the solution thus reached. The notion of 'sustainability' is not present in the Law of the Sea Convention but it cannot be absent from the law of the sea today. The conservation and management of marine resources, a State obligation enshrined in the Law of the Sea Convention, cannot be construed without the precepts of the Convention on Biological Diversity in mind, even though there is a decade in time and a generation in environmental conventional arrangements between them.[23] The same is true with climate change considerations: The Mediterranean is not expected to suffer any major coastal change but there is no question that important changes in weather patterns and an aggravated risk of desertification could very well have a major impact on its delicate natural, bio-political and even economic balance. As a result, the legal principles relating to climate change[24] would necessarily educate our understanding and practical implementation of the law of the sea in the area.[25]

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[20] The argument being further developed in Anastasia Strati, *Ελληνικές θαλάσσιες ζώνες και οριοθέτηση με γειτονικά κράτη* [=Greek maritime zones and delimitation with neighbouring States], Nomiki Vivliothiki, Athens 2012, pp. 61-63 [in Greek].

[21] Alexander Proelss, Pipelines and protected sea areas, *in* Richard Caddell & D. Rhidian Thomas (eds.), *Shipping Law and the Marine Environment in the 21st century: Emerging challenges for the Law of the Sea – Legal implications and liabilities*, Lawtext Publishing, 2013, pp. 276-292.

[22] V. Lykousis *et al.*, Mud volcanoes and gas hydrates in the Anaximander mountains, 26 *Marine & Petroleum Geology* 2009, pp. 854-872.

[23] Alan Boyle, Further development in the 1982 Convention on the Law of the Sea: Mechanisms for change, *in* David Freestone, Richard Barnes & David M. Ong (eds.), *The Law of the Sea: Progress and Prospects*, Oxford 2006, pp. 40-62; Andrew Long, Developing linkages to preserve biodiversity, 21 *Yearbook of International Environmental Law* 2012, pp. 41-80; Rosemary Rayfuse, Precaution and the protection of marine biodiversity in areas beyond national jurisdiction, *in* Freestone (ed.), *supra* note 10, pp. 99-107.

[24] For the most recent attempt at codification see International Law Association, Declaration of Legal Principles relating to Climate Change, Report of the 76th Conference, Washington, DC, 2014, available at www.ila-hq.org (last visited: 15 June 2014).

[25] Alan Boyle, Law of the Sea perspectives on climate change, *in* Freestone (ed.), *supra* note 10, pp. 157-164; Rosemary Rayfuse, Climate change and the law of the sea, *in* Rosemary Rayfuse &

3. A multitude of legal regimes

The necessity to integrate climate change concerns in the implementation of the law of the sea in order to ensure its continued effectiveness and even relevance is simply an example of the synergies required in today's complex legal environment. This is particularly true in the energy field, where in addition to the law of the sea provisions applicable on energy facilities at sea, there is a host of other legal regimes equally and indeed concurrently relevant.

The most important among them is international investment law. Almost all energy projects at sea are transboundary cooperative projects, spanning different jurisdictions and creating different challenges for different categories of stakeholders. Any such investment project necessitates specific arrangements in at least three major areas: protection of investors in all eventualities both during the physiology and the pathology of the contract; dispute avoidance techniques so as to diffuse as early as possible any problem arising in the life of the project; and expedited settlement of dispute settlements, so that the parties may not be bogged down in long legal battles before domestic courts, where the investors are not familiar with the process and the courts are not conversant with the particularly acute problems of major technical projects.

The most prominent tool to this end is currently the Energy Charter Treaty (ECT).[26] Based on effectively the first international instrument concluded after the end of the Cold War: the European Energy Charter,[27] it brings together all the major players in the energy field and covers all stages of an energy project, from the early days of investment negotiations to non-discriminatory conditions for trade in energy material, products and energy-related equipment; to reliable transboundary energy transit flows through grids and pipelines; to the promotion of energy efficiency, thus minimizing the environmental impact of energy production and use; to, finally, the resolution of disputes between inter-State and between investor and the State.

Shirley V. Scott (eds.), *International Law in the era of climate change*, Edward Elgar Publishing, 2012, pp. 147-174.

[26] Concluded in December 1994, it entered into force in April 1998; text available at www.encharter.org (last visited: 15 June 2014); Matthew Happold & Thomas Roe, The Energy Charter Treaty, *in* Tarcisio Gazzini & Eric De Brabandere (eds.), *International Investment Law: The sources of rights and obligations*, Martinus Nijhoff, 2012, pp. 69-97. Its provisional application to signatories before it came into force for all parties gave rise to significant doctrinal discussion and served as a basis for the adjudication of numerous cases; Mahnoush Arsajani & W. Michael Reisman, Provisional application of treaties in international law: The Energy Charter Treaty awards, *in* Enzo Canizzaro (ed.), *The Law of Treaties beyond the Vienna Convention*, Oxford 2011, pp. 86-102.

[27] Concluding Document of The Hague Conference on the European Energy Charter, concluded in 1991; 62 signatories to date, including the United States, Canada and the European Communities; text available at www.encharter.org (last visited: 15 June 2014).

The ECT applies to all and any areas under the jurisdiction of the States party to it,[28] and thus onto offshore energy-production facilities as well. In a lengthy Article 18 the ECT attempts to reassure the parties that the treaty would cover the trade and investment aspects but not questions relating to sovereignty over natural resources: the States maintain the sole power "to decide the geographical areas … to be made available for exploration and development of its energy resources, the optimalization of their recovery and the rate at which they may be depleted or otherwise exploited"[29] although they do "undertake to facilitate access to energy resources, *inter alia*, by allocating in a non-discriminatory manner on the basis of published criteria authorizations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources".[30]

Reflecting the scope of application of the treaty, which covers the whole life cycle of the energy sector,[31] the ECT provides for different types of dispute resolution, according to the nature of the problem arising. As expected, the most popular among them is the mechanism available for investor-host State disputes, which are to be resolved by arbitration in one of three possible fora: in the context of the International Centre for the Settlement of Investment Disputes (ICSID), under the rules of the UN Commission on International Trade Law (UNCITRAL), or an application to the Arbitration Institute of the Stockholm Chamber of Commerce.[32] Although it is quite clear that the original thinking at the time of the conclusion of the ECT reflected questions of oil and gas exploration and exploitation with their concomitant pipelines, it is evident that the treaty applies on all energy-related investments, including renewable sources of energy. It is very significant in this respect that out of the 53 investment arbitrations listed to date in the Energy Charter Secretariat website, 18 cases –all commenced since 2011– refer to disputes arising from changes affecting the renewable energy sector.

The traditional method of State-to-State arbitration is also available as the general method of settlement for "disputes concerning the application or interpretation of [the] Treaty", with the exception of competition and environmental issues.[33] It is entirely possible that sovereign questions pertaining to the allocation of oil and gas exploration areas or the licensing of offshore renewable energy facilities may be premised on an underlying dispute over the particular maritime

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[28] Article 1 paragraph 10(a)-(b) reads: "'Area' means with respect to a State that is a Contracting Party: (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and (b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction".

[29] Article 18 paragraph 3 ECT.

[30] Article 18 paragraph 4 ECT.

[31] Yulia Selivanova, The Energy Charter and the international energy governance, 18 *European Yearbook of International Economic Law* 2012, pp. 307-342.

[32] Article 26 ECT; Thomas Roe, Matthew Happold & James Dingemans (eds.), *Settlement of disputes under the Energy Charter Treaty*, Cambridge 2011; Kaj Hobér, Investment arbitration and the Energy Charter Treaty, 1 *Journal of International Dispute Settlement* 2010, pp. 153-190.

[33] Article 27 ECT.

area. Would Article 27 ECT arbitration with its specific characteristics (ad hoc arbitration under the UNCITRAL arbitration rules with the Permanent Court of Arbitration serving as seat and secretariat) provide an additional venue for the resolution of delimitation disputes, especially when there is no consent forthcoming for an application to the International Court of Justice, the International Tribunal on the Law of the Sea or other ad hoc adjudication?[34] In fact, the inter-State dispute settlement mechanism appears to have been invoked only once to date and the case was settled amicably at an early stage.

Indeed, it remains a rare occasion when the parties to a major project rely on a generic treaty, even such a dedicated one as the Energy Charter Treaty. In the vast majority of cases, investments are carried out within the context of a specific Bilateral Investment Treat (BIT).[35] The veritable plethora of manifestations of the species does not necessarily correspond to an equal number of solutions offered: all BITs apply one or the other paradigm with adjustments according to the specifications of the parties concerned.[36] In the Eastern Mediterranean area, BITs would cover energy investments, especially on the southern coastal States that are not parties to the ECT, thus providing the necessary security of law.[37]

Alternatively, a major energy project with both land and offshore parts would usually constitute the subject-matter of a specific agreement, which would involve the States concerned, private investors, State-owned enterprises, international banks and international development banking institutions (such as the European Bank for Reconstruction and Development – EBRD), even domestic construction companies. The typical example of this approach is the Nord Stream, a pipeline with both land and underwater elements transporting gas from Russia to Germany and States beyond, crossing the territorial waters and EEZ of Russia, Denmark and Germany as well as the EEZ of Sweden, all administered by a commercial company headquartered in Zug, Switzerland.[38] The problems encountered during its construction[39] and operation,[40] not least in the maritime area,

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[34] Thus Anastasios Gourgourinis, Delimitation of maritime zones and inter-State dispute settlement under the ECT, 2014 (on file with the author). See also Youri van Logchem, Submarine telecommunication cables in disputed maritime areas, 45 *ODIL* 2014, pp. 107-122.

[35] Michele Potestà, State-to-State dispute settlement pursuant to bilateral investment treaties: Is there potential?, *in* Nerina Boschiero *et al.* (eds.), *International Courts and the Development of International Law: Essays in honour of Tullio Treves*, Asser Press, 2013, pp. 753-768; Tarcisio Gazzini, Bilateral Investment Treaties, *in* Gazzini & De Brabandere (eds.), *supra* note 26, pp. 99-132.

[36] Kenneth J. Vandevelde, *Bilateral investment treaties: History, policy and interpretation*, Oxford 2010.

[37] Pieter Bekker & Akiko Ogawa, The impact of Bilateral Investment Treaty (BIT) proliferation on demand for investment insurance: Reassessing political risk insurance after the BIT, 28 *ICSID Review – Foreign Investment Law Journal* 2013, pp. 314-350; Santiago Montt, *State liability in investment treaty arbitration: Global constitutional and administrative law in the BIT generation*, Hart, 2012; Mathias Audit & Mathias Forteau, Investment arbitration without BIT: Toward a foreign investment customary-based arbitration?, 29 *Journal of International Arbitration* 2012, pp. 581-604.

[38] For an overview of the project see www.nord-stream.com (last visited: 15 June 2014).

[39] Sergei Vinogradov, Challenges of Nord Stream: Streamlining international legal frameworks and regimes in submarine pipelines, 52 *German YBIL* 2010, pp. 241-292.

serve as a blueprint for major such projects currently carried out in the Eastern Mediterranean, such as the Trans-Adriatic Pipeline (TAP), which would eventually get Azeri gas transferred through Trans-Anatolian Pipeline (TANAP) across Turkey through Greece and Albania, across the Adriatic Sea to land on southern Italy.[41]

Complicated though the interface between law of the sea and investment law might be, the confluence between environmental obligations and the possible uses of the maritime space remains much more comprehensive and interlinked.[42] All energy projects placed and operated in the marine environment are subject to the same procedural obligations applicable on all infrastructure works. Although the environmental impact obligation set out in article 206 in the Law of the Sea Convention is at best timid, the obligation to conduct an environmental impact assessment (EIA) before any such activity is undertaken appears in all environmental conventions and is now considered a customary obligation.[43] The specific content of such an EIA is best set out in the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context[44] as well as the newly revamped Directive 2014/52/EU,[45] which significantly updates the pioneer Directive 85/337/EC, linking it directly with the placement and safety requirements of offshore platforms and their environmental impact.[46] The obligation to consult all affected parties is also deeply entrenched in environmental law culture[47] as well as the right of access to environmental infor-

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[40] Anna Marhold, In too deep: Russia, the Energy Charter Treaty and Nord Stream Gas Pipeline, 12 *Baltic YBIL* 2012, pp. 305-315; Richard Happ, The Nord Stream Pipeline: Settlement of disputes under the Energy Charter Treaty?, 52 *German YBIL* 2010, pp. 341-354.

[41] For an overview of the project see www.trans-adriatic-pipeline.com (last visited: 15 June 2014).

[42] Seline Trevisanut, Foreign investments in the offshore energy industry: Investment protection v. energy security v. protection of the marine environment, *in* Tullio Treves, Francesco Seatzu & Seline Trevisanut (eds.), *Foreign investment, international law and common concerns*, Routledge, 2014, pp. 247-264.

[43] ICJ, *Case concerning Pulp Mills on the River Uruguay*, (Argentina v. Uruguay), ICJ Reports 2010, paragraph 204; Ilias Plakokefalos, The *Pulp Mills* case, 26 *TIJMCL* 2011, pp. 169-183.

[44] The Espoo Convention was adopted in February 1991 and came into force on 10 September 1997; text available at www.unece.org/env/eia (last visited: 15 June 2014). N. Craik, *The International Law of Environmental Impact Assessment: Process, substance and integration*, Cambridge 2008; K. Bastmeijer & T. Koivurova, *Theory and Practice of Transboundary Environmental Impact Assessment*, Martinus Nijhoff, 2008; E. Olufemi, Environmental Impact Assessment, *in* M. Fitzmaurice, D. Ong & P. Merkouris (eds.), *Research Handbook on International Environmental Law*, Edward Elgar, 2010, pp. 227-242.

[45] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L. 124, pp. 1-18, 25 April 2014, text available at www.eur-lex.europa.eu (last visited on 15 June 2014). Directive 200/92/EU was the codification of all the amendments brought onto the venerable Directive 85/33/EC after the adoption of the Espoo Convention (Directive 97/11/EC), the public participation provisions of the Aarhus Convention (Directive 2003/35/EC) and provisions made for projects related to the transport, capture and storage of carbon dioxide (CO_2) (Directive 2009/31/EC).

[46] Preambular paragraph 12 of Directive 2014/52/EU.

[47] Michelle Portman, Involving the public in the impact assessment of offshore renewable energy facilities, 13 *Marine Policy* 2009, pp. 332-338.

mation and justice, as best set out in the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.[48]

It is certainly true that most of these instruments constitute an every-day occurrence in the domestic administrative reality of European Mediterranean States but they do not bind most of the non-European neighbours in the Eastern Mediterranean. Once again, the reality in the field is more complicated. Almost all these States have preferential treatment agreements with the European Union, which effectively guarantee that all such procedures would be exported for projects with any EU financial contribution. Moreover, the Mediterranean ICZM Protocol provides for a State obligation to involve all stakeholders, including the wider public in the decision-making and decision-implementing process,[49] coupled with the duty to provide information in an adequate, timely and effective manner[50] and an express right to administrative or legal (sic) resource available.[51] The tripartite formation corresponds to the three pillars of the Aarhus Convention: indeed, for the citizens of some of the countries in this area, this half-baked access to an administrative authority and not necessarily to a court of law may be their only chance to seek redress and its impact is not to be underestimated.[52]

Important though this preventive aspect of procedural obligations may be, it does not cover the whole aspect of environmental protection related to the energy sector. Environmental concerns are also present in instruments as diverse in nature as technical specifications for the building of pipelines[53] or a new comprehensive regime on the operation of offshore platforms: Directive 2013/30/EU on safety of offshore oil and gas operations offers the first ever attempt at an international instrument that would cover the complete life-cycle of offshore platforms from placement and the licensing of operations to decommissioning.[54] The common characteristic of these sets of rules, of a different regulatory nature, is that they purport to address global concerns through norm-creation at the regional level. Almost all the instruments adopted within the context of the UN

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[48] Adopted on 25 June 1998, it came into force on 30 October 2001; for the text and the story so far see www.unece.org/env/pp (last visited: 15 June 2014)

[49] Article 14 paragraph 1 of the ICZM Protocol; see *supra* note 13.

[50] Article 14 paragraph 2 of the ICZM Protocol.

[51] Article 14 paragraph 3 of the ICZM Protocol.

[52] Gavouneli, *supra* note 13, at pp. 484-485.

[53] UN Economic Commission for Europe, *Safety guidelines and good practices for pipelines*. Convention on the transboundary effects of industrial accidents, Convention on the protection and use of transboundary watercourses and international lakes, 2008; available at www.unece.org/environmental-policy/treaties/industrial-accidents/publications/official-publications/2008/safety-guidelines-and-good-practices-for-pipelines/envteiapubspipelines.html (last visited: 15 June 2014).

[54] Directive 2013/30 EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC, OJ L. 178, pp. 66-106, 28 June 2013; available at www.eur-lex.europa.eu (last visited on 15 June 2014).

Economic Commission for Europe contain an open clause, which allows for participation by all UN members, thus effectively rendering a regional convention into a global instrument. This is a political choice made by the States parties, for instance, to the Espoo EIA Convention as complimented by its 2003 Kyiv Protocol on Strategic Environmental Assessment,[55] and remains true for EU instruments as well. Indeed, part of the negotiations in turning the originally proposed Regulation on safety of offshore oil and gas prospection, exploration and production activities into a Directive, thus allowing significantly more leeway to EU member-States, was a commitment by the admittedly limited number of international players to expand the common standards applicable in EU waters to all their operations worldwide.[56] Added to the very significant geographical scope of the Directive, which affects also offshore operations in Norway, Iceland and Lichtenstein, members of the European Economic Area (EEA), as well as in the parties to the Energy Community of South-East Europe,[57] the end-result offers the definite international regulation in the field to date.

Such instruments complement the traditional marine pollution conventions, which remain applicable in the Mediterranean, to the extent that they cover energy-generating operations – typically, when the platform is sea-going rather than when it is stationary. It is worth recalling that there is no comprehensive global instrument on pollution from offshore installations and assorted facilities. The only effective international instrument is once again a regional one: The Madrid Protocol for the protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil came into force recently after a long gestation[58] and only when the European Union decided to legislate in the field.

A final note: It is evident that the multitude of regimes applicable on energy installations at sea is further aggravated by the multitude of applicable laws. The traditional dichotomy between domestic regulations and international legal obligations is leveraged with the addition of the European Union law, which plays a very active role in all relevant areas. Such interference does not only refer to the

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[55] The SEA Protocol was adopted in May 2003 and entered into force on 11 July 2010; text available at www.unece.org/env/eia/sea_protocol (last visited: 15 June 2014). It was preceded by Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, pp. 30-37, 21 July 2001; available at www.eur-lex.europa.eu (last visited on 15 June 2014).

[56] Maria Gavouneli, Offshore installations: A comprehensive regime?, *MEPIELAN e-bulletin*, 4 April 2013, available at www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=137&Article=Offshore-Installations-A-Compehensive-Regime (last visited: 15 June 2014).

[57] Created by the Treaty establishing the Energy Community, concluded in Athens on 25 October 2005 and entered into force on 1 July 2006, it brings together the European Commission with Albania, Croatia, the Former Yugoslav Republic of Macedonia, Kosovo, Moldova and Ukraine with Turkey and Armenia as observers; for the story so far see www.energy-community.org (last visited: 15 June 2014). Carsten Nowak, The Energy Community of South East Europe, *European Yearbook of International Economic Law* 2012, pp. 405-441.

[58] Concluded on 14 October 1995, it entered into force on 24 March 2011; text available at www.unepmap.org (last visited: 15 June 2014).

allocation of competences between the member States and the European Union, which is often unclear and always complicated. In a typical example, decisions on fisheries and marine biological resources have been wholly transferred to the EU level; energy production regulation, however, remains in principle in the hands of the domestic legal order to the extent that the European Commission does not regulate the energy *market* and through it all activities related to the provision of services therein.

Although this is the most obvious competence interplay, there is a much more interesting cross-fertilization at play between international law on the one hand and European Union instruments on the other: Solutions first attempted at the Union level find themselves exported through regional instruments to the rest of the continent and the world whereas innovative but rather soft approaches occasionally found in international conventions acquire a formidable machinery of implementation by their inclusion or conversion in(to) EU documents. The continued give-and-take between these two legal orders reinforces an understanding of the international community –and consequently: international regulation– as part of a living whole, which applies seamlessly to human endeavours without artificial boundaries but in full respect of the technicalities of each system of law. There is no hierarchical order in this common universe; rather the member States are confronted with a fairly typical case of conflicting obligations.[59] Thus, in the most recent example, a number of EU members and associated States, which had concluded with the Russian Federation intergovernmental agreements for the construction and operation of South Stream, a major pipeline project running under the Black Sea to Bulgaria, Serbia (whence it would branch out to Bosnia-Herzegovina and Croatia), Slovenia, and then Hungary and Italy, were ordered in no uncertain terms by the European Commission to redraft their already concluded agreements[60] so as to conform with the European energy legislation or face a non-compliance procedure before the European Court of Justice.[61] For further episodes, stay tuned!

II. A multitude of solutions

The complexity of the regulatory regime allows for the existence and concurrent application of a multitude of available tools to address the necessary prerequisites for any possible solution. The fundamental question to be answered relates

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[59] Emmanuel Roucounas, Engagements parallèles et contradictoires, 206 *RCADI* 1987-VI, pp. 9-288.

[60] Intergovernmental Agreements (IGAs) were concluded with Bulgaria on 18 January 2008, with Serbia on 25 January 2008, with Hungary on 28 February 2008, with Greece on 29 April 2008, with Slovenia on 14 November 2009, with Croatia on 2 March 2010 and with Austria on 24 April 2010. For the story so far see EurActiv.com, www.euractiv.com/sections/global-europe/renzi-leads-belated-effort-support-south-stream-302684, 10 June 2014 (last visited: 15 June 2014).

[61] Cf. Nikos Lavranos, Member States' Bilateral Investment Treaties (BITs): Lost in transition?, 24 *Hague YBIL* 2011, pp. 281-311.

to the allocation of State jurisdiction in the areas where energy projects are to be constructed and operated and the concomitant apportionment of responsibility and liability for any possible mishap.[62] A number of supplementary questions arise within this broad framework. As all energy projects have a spatial element, the delimitation of the marine area, effectively the continental shelf, constitutes the minimum first step. This is especially true in the restrained basins of Eastern Mediterranean, where the dearth of sea space prevents the coastal States from enjoying the full extent of their jurisdictional claims under the Law of the Sea Convention and customary law.[63] Is the proclamation of an EEZ a necessary component of the solution offered in this context? There is no doubt that the existence of the sovereign rights of the coastal State on the continental shelf would suffice as a jurisdictional basis for energy projects; sovereign rights acquired as part of the EEZ jurisdiction reinforce the powers of the coastal State but, strictly speaking, they are not necessary for energy purposes. There is equally no doubt, however, that the jurisdictional powers of the coastal State to protect and preserve the marine environment further enhance the comprehensiveness of the final package and significantly facilitate the obligation to have due regard to the rights and duties of other States in the same area. This understanding is reflected in the reality at the field, as most Mediterranean States have attempted at one time of another a delimitation exercise, to be complemented with the full armour of a (functional) EEZ once the prospect of tangible returns on the investment made becomes real.

1. A multitude of good practices

It is perhaps inevitable in view of the history of the Eastern Mediterranean that the first delimitation exercises were carried out on the western side of the basin. One of the oldest such agreements is the 1977 Agreement between Greece and Italy on the delimitation of the continental shelf in the Ionian Sea. Broadly based on the principle of equidistance, the delimitation line makes certain adjustments in order to take into consideration the presence of small groups of islands on the Greek side and the existence of straight baselines on the Italian side – although, strictly speaking, the Italian legislation on straight baselines came into force after the conclusion of the delimitation agreement. The final demarcation line has not been influenced by the existence of a 12-mile territorial zone on the Italian side as opposed to 6 miles on the Greek side.[64] It is widely expected that a possible

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[62] Enrico Milano & Irini Papanicolopulu, State responsibility in disputed areas on land and at sea, 71 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 2011, pp. 587-640.

[63] Andrew Filis & Rafael Leal-Arcas, Legal aspects of Inter-State maritime delimitation in the Eastern Mediterranean Basin, *Oil, Gas & Energy Law* 2013, available at ww.ogel.org (last visited: 16 June 2014).

[64] Tullio Scovazzi & G. Francalanci, Report: Greece-Italy, *in* J.I. Charney & L.M. Alexander (eds.), *International Maritime Boundaries*, vol. ii, ASIL, 1993, pp. 1591-1600; and Addendum, *in* D.A. Colson & R.W. Smith (eds.), *International Maritime Boundaries*, vol. vi, ASIL 2011, pp. 4431-4432;

EEZ delimitation line would follow along the same lines although, as a matter of principle, which probably relates to problems in respect of the demarcation line with Tunisia, Italy does not consider automatic the extension of continental shelf boundary onto an EEZ delimitation line. It is notable, moreover, that although Italy has declared a 24-miles ecological zone,[65] this does not apply in the Adriatic and the Ionian Seas.

An excellent example of delimitation arrangements may be found in the Cyprus-Egypt Agreement on the delimitation of the Exclusive Economic Zone.[66] The Agreement is based roughly on the equidistance principle with minor adjustments[67] and it stopped just short of the tri-point where a possible Greek EEZ would meet overlapping claims by a Turkish EEZ. It also contains an arbitration clause for the settlement of disputes arising therefrom, effectively following the provisions of article 287 of the Law of the Sea Convention, which binds both parties. Its coming into force necessitated the retroactive declaration of the EEZ of the Republic of Cyprus;[68] interestingly enough, neither the delimitation Agreement nor any other instrument refers to the delimitation of the continental shelf, which remains forgotten and neglected by the side. It came as no surprise that the Agreement provoked the vociferous objections of Turkey.[69] In spite of that reaction, the parties further complemented their accord with the conclusion on 4 May 2006 of a joint utilization agreement, in application of the cooperation obligation set out in article 2 of the Delimitation Agreement.

Theodore Katsoufros, Η ελληνο-ιταλική συμφωνία της 24ης Μαϊου 1977 γα την οριοθέτηση τηε υφαλοκρηπίδας του Ιονίου και οι ενδεχόμενες επιπτώσεις της στο Αιγαίο [=The Hellenic-Italian Agreement of 24 May 1977 on the delimitation of the continental shelf of the Ionian Sea and its possible repercussions for the Aegean], *Armenopoulos* 1980, pp. 135-152 [in Greek].

[65] Legge no. 61 di febbraio 2006, Istituzione di zone di protezione ecologica oltre il limite esterno del mare territorial, Gazzetta Ufficiale no. 52 del 3 marzo 2006; available at www.parlamento.it/parlam/leggi/06061l.htm (last visited: 16 June 2014). Tullio Scovazzi, La zone de protection écologique italienne dans le contexte confus des zones côtières méditerranéennes, 10 *Annuaire de droit de la mer* 2005, pp. 209-222; Giuseppe Cataldi, L'Italia e la delimitazione degli spazi marini. Osservazioni sulla prassi recente di estensione della giuristizione costiera nel Mediterraneo, *Rivista di diritto internationale* 2004, pp. 621-642.

[66] Concluded in Cairo on17 February 2003, it entered into force on 7 March 2004; text available at www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf (last visited: 15 June 2014). Emmanouella Doussis, L'Accord du 17 février 2003 entre Chypre et l'Égypte sur la délimitation de leurs zones économiques exclusives: Bref commentaire, 9 *Annuaire de droit de la mer* 2004, pp. 143-155; Irini Papanicolopulu, *Il confine marino. Unità o pluralità?*, Giuffré, Milano 2005, at pp. 255-257.

[67] Tullio Scovazzi, Maritime Delimitations in the Mediterranean Sea, *in* Jorge Cardona Lloréns, Amparo Sanjosé Gil & Ruth Abril Stoffels (eds), *Cursos Euromediterráneos Bancaja de Derecho Internacional*, vols VIII/IX, Tirant lo Blanch, 2009, pp. 349-504.

[68] Promulgated by Law 64(I)/2004, Official Gazette of the Republic Annex I, no. 3831 of 5 April 2004; text available at www.cygazette.com (last visited: 15 June 2014).

[69] Note No. 2004/Turkuno DT/4739, 2 March 2004, from the Permanent Mission of Turkey to the United Nations, 54 *Law of the Sea Bulletin* 127; Statement dated 28 December 2004 of the Position of the Government of the Republic of Cyprus with respect to the Information Note by Turkey concerning the latter's objection to the Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the delimitation of the Exclusive Economic Zone of 17 February 2003, 57 *Law of the Sea Bulletin* 124.

The same pattern was followed in the 2010 Cyprus-Israel Agreement on the delimitation of the Exclusive Economic Zone,[70] which was the third agreement whereby Cyprus attempted to tidy-up its maritime borders with one very significant difference: There is an express reference made to the Law of the Sea Convention in the preambular paragraphs in spite of the fact that Israel is not a party to the LOSC. The demarcation line is again based on the equidistance principle but the final tri-points are to be amended with the consent of all the parties concerned; a natural reflection of the fact that, as the third in the series, this agreement covers the intervening space between the Lebanese and the Egyptian border, a point nevertheless acutely refuted by Lebanon. In contrast to the previous ones, there is no arbitration clause but rather a reference to the settlement of arising disputes by diplomatic means in a spirit of understanding and cooperation. Provision is also being made for a subsequent joint exploitation agreement, in a direct affirmation of an obligation to cooperate.

The Turkish objections to this Agreement were further accentuated by the intervening difficulties in the relationship between Turkey and Israel. Amid a long list of objections,[71] the main argument seems to concentrate on the continued power of the Republic of Cyprus to represent the whole of the country and consequently decide on the delimitation of its maritime zones and the allocation of its natural resources. That reaction was further complemented with an attempt to conclude a delimitation agreement of the continental shelf with the 'Turkish Republic of Northern Cyprus' (TRNC) and register the geographical coordinates of the Turkish continental shelf with the Secretary-General of the United Nations. The 'agreement' was signed on 21 September 2011 and ratified by Turkey on 29 June 2012 by Law 6344/2012. Although the coordinates were not finally published in the *Law of the Sea Bulletin*, through the strong objections of Greece and Cyprus, the attempt nevertheless indicates an acceptance by Turkey, a non party to the Law of the Sea Convention, of the procedures established therein and in particular the obligation under article 84 paragraph 2 LOSC to give due publicity to charts or lists of geographical coordinates regarding continental shelf delimitation.[72]

2. A multitude of recalcitrant cases

The best practices indicated simply reinforce the importance in the right time and set of circumstances for an agreement to become truly viable in the toxic

[70] Adopted on 17 December 2010, it entered into force on 25 February 2011; 75 *Law of the Sea Bulletin* 27.

[71] Erik Franckx & Marco Benatar, Turkish objections to Exclusive Economic Zone Agreements concluded by Cyprus, paper presented in the 2013 ILA Regional Conference, *Imperium Juris: Governance, Trade, Resources*, Cape Sounion, 29-31 August 2013 (on file with the author).

[72] Nikolaos Ioannidis, The Continental Shelf Delimitation Agreement between Turkey and 'TRNC', *EJIL Talk!*, 26 May 2014, available at www.ejiltalk.org/the-continental-shelf-delimitation-agreement-between-turkey-and-trnc (last visited: 16 June 2014).

Eastern Mediterranean political environment. The second of the Cyprus delimitation treaties, the Agreement between the Government of the Republic of Lebanon and the Government of the Cypriot Republic delimiting the Exclusive Economic Zone, is but a copy of the Cyprus-Egypt Agreement.[73] And yet, whereas the latter has already matured into a joint exploitation accord, complete with a confidentiality agreement as to its specifics, the former continues to navigate the rough waters of internal politics. The Lebanon Delimitation Agreement was concluded on 17 January 2007 and ratified by Cyprus in November 2007. With broad agreement on the principle of equidistance firmly in place, the bone of contention lies especially with the starting point of the demarcation line. The 2007 Agreement has purposefully stopped just short of the tri-partite points[74] with Cyprus, Lebanon and Syria in the north and with Cyprus, Lebanon and Israel in the south. The gap intended to set aside any possibility of mutual recognition between Lebanon and Israel, even through an agreement on a technical point with a third party.

In July and October 2010 Lebanon deposited with the UN General-Secretary charts and lists of coordinates of the southern boundary, which differed significantly from those set out in the Agreement and effectively overlapped with the area claimed by Israel. Lebanon claimed that the point indicated in the Cyprus Agreement was a temporary solution, valid until such time as a final starting point was to be decided. When the Cyprus-Israel Agreement was concluded in December 2010, Lebanon objected forcefully with much saber-rattling. In July 2011 Israel submitted to the UN its own set of coordinates on the basis of the Cyprus Agreement[75] and the situation went downhill from there; by late 2011, however, an attempt was made to put together an Expert Commission to inquire into the issue.[76]

This is not the only case gone awry in the Mediterranean context. The archetypal unfinished business must necessarily be the 2009 delimitation agreement con-

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[73] Tullio Scovazzi, Irini Papanicolopulu & Giampiero Francalanci, Cyprus-Lebanon: Agreement between the Government of the Republic of Lebanon and the Government of the Cypriot Republic delimiting the Exclusive Economic Zone, *in* D.A. Colson & R.W. Smith, *International Maritime Boundaries*, vol. vi, ASIL, 2011, pp. 4445-4454.

[74] Coalter G. Lathrop, Tripoint issues in maritime boundary delimitation, *in* D.A. Colson & R.W. Smith (eds.), *International Maritime Boundaries*, vol. v, ASIL, 2005, pp. 3305-3375.

[75] List of geographical coordinates for the delimitation of the northern limit of the Territorial Sea and Exclusive Economic Zone of the State of Israel in WGS84, communication from the Permanent Mission of Israel to the United nations dated 12 July 2011 to the Secretariat of the United Nations, available at www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/isr_eez_northenlimit2011.pdf (last visited: 16 July 2014).

[76] Martin Wählisch, Israel-Lebanon Offshore Oil & Gas Dispute – Rule of international Maritime Law, 15 *ASIL Insights*, 5 December 2011, available at www.asil.org/insights/volume/15/issue/31/israel-lebanon-offshore-oil-gas-dispute-–-rules-international-maritime; E.S. Abu Gosh & Rafael Leal-Arcas, Gas and oil explorations in the Levant Basin: The case of Lebanon and Israel, *OGEL* 2013, both last visited: 16 June 2014; Strati, *supra* note 20, pp. 109-118.

cluded between Greece and Albania.[77] Signed with pomp and circumstance on 27 April 2009 at Tirana, it constitutes essentially a continental shelf delimitation agreement; with explicit provisions, however, made to the possibility of its automatic extension so as to delimit any future maritime zones that might be proclaimed in the future. In terms of content, it remains true to the principle of equidistance with slight adjustments being made due to the presence of islands on either side. Albania has a territorial sea of 12 nautical miles as compared to the 6nm of the Greek side; as a result, the median line delineates on the one hand the Albanian territorial waters and on the other the Greek continental shelf (and potential territorial waters).[78]

And then on 15 April 2010 the Albanian Constitutional Court held unanimously, upon an application by the Socialist Party then in opposition, that the Prime Minister, the Minister of Foreign Affairs and the chief negotiator of the latter lacked the relevant authorisation to negotiate and bind their country and thus the Agreement was unconstitutional. Whatever the constitutional argument, it is quite clear under international law that domestic-law deficiencies (even assuming that they do exist) cannot impact upon the validity of a duly signed international convention. Moreover, lack of full negotiating powers is not among the conditions the Vienna Convention on the Law of Treaties (VCLT) would recognise as capable of having an effect on the validity of any concluded agreement. A number of comments as to the content of the treaty were simply used to buttress the original erroneous assumption of nullity.[79] Be that as it may, both parties continue to be bound by the obligation under article 18 VCLT to respect the object and purpose of the treaty pending its ratification and entry into force.

In both instances, the negotiated agreements fell victim to hard-core problems that relate to the essence of national politics rather than irregularities or deficiencies inherent in their content. The difficulties may be easily addressed on the expert level but the policy reversal required for them to come to fruition remains a political gamble of the highest order, depending on circumstances going well beyond energy considerations. Any provision for the future is as difficult as the change will be when it eventually materialises – as indeed it will.

3. A multitude of loose ends

The final tally of the delimitation efforts in the Eastern Mediterranean, as it stands today, is particularly significant of the difficulties encountered in the area. Cyprus has undertaken a consistent effort to clarify its boundaries – and came up

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[77] Agreement between the Hellenic Republic and the Republic of Albania on the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under international law, *in* Colson & Smith, *supra* note 73, pp. 4470-4476.

[78] Strati, *supra* note 20, 135-144.

[79] For a complete run-down see Kyriaki Noussia, The decision of the Albanian Supreme Court annulling the 2009 Maritime Delimitation Agreement between Albania and Greece, 25 *TIJMCL* 2010, pp. 601-608.

with two important, functioning agreements: with Egypt and Israel; one moribund one: with Lebanon, the resolution of which depends mostly on the ups and downs of the Lebanese-Israeli relationship; an open wound in its relationship with Turkey, which threatens its core existence; and a void along the Syrian coast, which is devoured by its own civil war and the dissolution of the State as was known for a century and more.

Greece has its own share of difficulties. With only one delimitation agreement of long-standing in place with Italy, it faces challenges to enforce an existing agreement with Albania and conclude an agreement with Turkey. Both are directly linked to the general political atmosphere prevailing in and between the States concerned and as such they would suffer the same fate as the convoluted neighbourhood relations. Once again the western front would be easier to negotiate than the eastern one. The greatest stumbling block in the Eastern basin is the impact Kastellorizo and its small ring of islands would have on the demarcation line: this is a point that influences not only the Greek-Turkish negotiations but also informs any agreement between Greece and Cyprus as well as between Greece and Egypt. The practical aspect of the delimitation exercise that needs to be carried out there is further accentuated by the proposed East Med Pipeline, scheduled to carry natural gas from the deposits found in the EEZ of Cyprus and Israel through Crete and mainland Greece to Italy and the rest of Europe through the IGI-Poseidon pipeline. Although already included in the Project of Common Interest (PCI) list, compiled by the European Commission, the project remains at a very early stage: an international tender for a study on the technical and financial feasibility of the project has just been announced.[80]

The western front, however, is not without its problems. Croatia and Slovenia have long-standing disputes in the Adriatic, which although long buried under the common front of Yugoslavia flared into existence once the countries became independent in 1991. The two States agreed to submit their dispute to arbitration in 2007 but Slovenia had second thoughts about the project. Eventually, the settlement of the dispute was linked to the accession of Croatia to the European Union and thus the parties were urged to conclude on 4 November 2009 an arbitration agreement under the watchful eye of the European Commission. With the procedure on-going,[81] the parties continued their bickering as Croatia launched in April 2014 its own offshore licensing round[82] to loud protests by Slovenia: The European Commission intervened to draw attention to the stand-still clause of article 10 of the Arbitration Agreement, which stipulates that the "Parties must

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[80] See www.neurope.eu/article/eu-eyes-east-med-gas-south-stream-alternative, 11 March 2014 (last visited: 16 June 2014).

[81] *Territorial and Maritime Arbitration between Croatia and Slovenia*, www.pca-cpa.org (last visited: 16 June 2014). Giuseppe Cataldi, Prospects for the judicial settlement of the dispute between Croatia and Slovenia over Piran Bay, *in* Boschiero *et al.* (eds.), *International Courts and the Development of International Law: Essays in honour of Tullio Treves*, *supra* note 20, pp. 257-268.

[82] See www.naturalgaseurope.com/croatia-international-tender-in-adriatic-sea, 2 April 2014 (last visited: 16 June 2014).

refrain from any action or statement, which might intensify the dispute or jeopardise the work of the Arbitral Tribunal"[83].
Croatia and Montenegro has also open issues on the Bay of Kotor and the Prevlaka Peninsula. It is understood that the two parties agreed in March 2008 to submit their dispute to the International Court of Justice but no compromise is forthcoming as yet.[84]

There is no doubt that the energy boom in the Eastern Mediterranean has caused both intense interest in the area and a major flare-up in all the simmering and underlying historical disputes in the neighbourhood. The shifting of political tectonic plates through a not always uniform change in regimes, the eruption of vile civil wars and the eventual rearrangement of long-established borders in the area aggravate an already highly unstable and indeed volatile situation. All the more reason to strengthen the rule of law, clarify the confluence of international law rules applicable on the many layers of the problem and achieve sustainable solutions. It is one of those rare cases where the settlement of disputes presents tangible advantages across the board and prevarication works against the direct interests of all concerned. The stakes are high but the outcome would be of historical importance.

[83] Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia, concluded in Stockholm on 4 November 2009; text available at www.esiweb.org/pdf/croatia_slovenia_arbitration-agreement_2009.pdf (last visited: 16 June 2014).
[84] Strati, *supra* note 20, p. 89.