



Maritime Safety and Security Law Journal

2016

Issue 2

The Maritime Frontier between Italy and France: A Paradigm for the Delimitation of Mediterranean Maritime Spaces

*Fabio CAFFIO*¹

Abstract

A recent agreement (signed on 21 March 2015 but not yet entered into force) between Italy and France on the delimitation of their maritime spaces provides a unique opportunity to discuss the solutions adopted in light of the 'single maritime boundary' practice. The new Agreement, on the basis of the customary rules of international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS), settles the delimitation of both territorial waters and other maritime zones under national jurisdiction; for the former, the principle of equidistance was applied, and in respect of the latter, the Agreement relies on the equitable principle. The following article observes that the trend in the Mediterranean basin is undoubtedly moving towards a fragmentation of the high seas. In this connection, the author references Italy's long-standing interest in preserving the freedom of navigation in the Mediterranean and thus refraining from establishing maritime zones of functional jurisdiction. The author – after having considered the current state of maritime relations between Italy and France, which is inspired by the duty of cooperation established by the UNCLOS in semi-enclosed seas – argues that the result achieved could serve as a template for other Mediterranean maritime delimitations that have yet to be resolved. Reference is thus made, concerning the western and central Mediterranean regions, to the case of unresolved maritime delimitations concerning on one side Spain and France and, on the other side, Malta and Italy.

Keywords

Mediterranean Sea, maritime disputes, boundary delimitations, UNCLOS, EEZ, continental shelf

1. Introduction

On 21 March 2015, Italy and France signed the Agreement on the delimitation of the territorial waters and the other areas under national jurisdiction such as the continental shelf and the exclusive economic zone (EEZ). At the time of writing, the Agreement has not yet entered into force but has

¹ Fabio Caffio is an Italian Navy Officer (ret.) and expert in International Maritime Law. Adm. Caffio previously represented the Italian Ministry of Defence at international meetings concerning the law of the sea, negotiations of maritime agreements and the law applicable to armed conflicts at sea. The author (who can be contacted at facaffio@tin.it) thanks the reviewers of this journal for their patient work.



been published by France.² In a nutshell, the Agreement defines the maritime frontiers of all the maritime spaces of the two countries, namely the French EEZ,³ the Italian environmental protection zone (EPZ),⁴ as well as the continental shelf and territorial waters. The boundary adopted for the water column is the same as the seabed and its subsoil, and the Agreement thus endorses the practice of a 'single maritime boundary' recently employed by Cyprus, Egypt and Israel in delimiting their EEZs in the Eastern Mediterranean.⁵ It is not without significance, however, that the International Court of Justice (ICJ) followed the same criteria in several cases. As matter of fact, the ICJ observed that

the concept of a single maritime boundary does not stem from multilateral treaty law but from state practice, and that it finds its explanation in the wish of states to establish one uninterrupted boundary line delimiting the various – partially coincident – zones of maritime jurisdiction appertaining to them.⁶

2 SHOM Communiqués, 'Un accord délimitant les zones de souveraineté et de juridiction entre la France et l'Italie' <www.shom.fr/le-shom/actualites/les-communiques/actualite-detaillee/article/france-de-nouvelles-frontieres-maritimes/> accessed 30 September 2015. See 'Accord entre le Gouvernement de la République française et le Gouvernement de la République italienne relatif à la délimitation des mers territoriales et des zones sous juridiction nationale entre la France et l'Italie' <http://reglementation-polmer.cherz-alice.fr/Textes/accord_frontiere_maritime_franco_italien.pdf> accessed 30 September 2015.

3 The institution of the French EEZ in the Mediterranean was adopted by Décret n° 2012-1148 du 12 octobre 2012 portant création d'une zone économique exclusive au large des côtes du territoire de la République en Méditerranée <www.legifrance.gouv.fr> accessed 1 December 2015. This Decree replaced the former Décret n°2004-33 du 8 janvier 2004 portant création d'une zone de protection écologique au large des côtes du territoire de la République en Méditerranée, maintaining the same external border lying beyond the hypothetical equidistance line with Italy.

4 The Italian Parliament took into account the French initiative of the EPZ in the Tyrrhenian Sea (see Camera dei Deputati, Disegno di legge n. 5368-2004) in approving the Law n. 61-2006 of the 8 February 2006 on the institution, case-by-case, of specific EPZs; the first EPZ - adopted by Presidential Decree no. 209 of 27 October 2011 - established an ecological protection zone in the north-west Mediterranean, the Ligurian Sea and the Tyrrhenian Sea (for an English language version of the text see <www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ITA_2011_Decree.pdf> accessed 1 December 2015).

5 Cyprus concluded two EEZ delimitation agreements: in 2003 with Egypt and in 2010 with Israel (both texts available at United Nations Oceans & Law of the Sea <www.un.org/Depts/los> accessed 1 December 2015). In 2007, Cyprus also signed an EEZ delimitation agreement with Lebanon (Lebanon did not ratify it claiming an area that overlaps the EEZ delimited by Cyprus and Israel); see Tullio Scovazzi, 'Maritime Boundaries in the Eastern Mediterranean Sea' (*GMF Policy Brief*, June 2012) <www.gmfus.org/publications/maritime-boundaries-eastern-mediterranean-sea> accessed 1 February 2016.

6 *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain)* (Merits) [2001] ICJ Rep 40 [173]. See also Malcom D Evans, 'Maritime Boundary Delimitation' in Donald R Rothwell and others (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 254, where the following cases are quoted: *Gulf of Maine*, *Jan Mayen*, *Nicaragua/Colombia*, *Black Sea*, *Perù/Chile*; as well as Irini Papanicolopulu, *Il confine marino: unità o pluralità* (Giuffrè Editore 2005) whose study deals with both state practice and international case law. It must be noted that the delimitation of the EEZ and continental shelf is regulated by Arts 74 and 83 of the United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397 (UNCLOS) in an identical manner. In theory, the boundaries of the two zones can be different, considering that the legal regime of the water column is quite different from that of the seabed. Furthermore, in many cases, the continental shelf (that belongs to the concerned state *ab initio* and *ipso jure*, not depending on any proclamation) was delimited before the consolidation of the EEZ regime in the UNCLOS. Thus, a state can have a continental shelf without an EEZ, but an EEZ is always interfaced with the underlying seabed and subsoil. In this case, two states with opposite or adjacent coasts can establish a single boundary of the EEZ that, unless otherwise provided for by the parties, refers also to the continental shelf.



The Agreement also expresses the sound maritime neighbourly relations between Italy and France. The two countries have calmed their former divergence of opinions on the method of delimitation to be adopted⁷ – quite the opposite from other neighbouring countries, which continue to maintain rigid or unilateral approaches. On the other side, the Agreement confirms that the progressive maritime delimitation of the Mediterranean Sea and the subjection of vast sections of it to national jurisdiction are eroding the spaces designated as the high seas – that is, the waters beyond the national jurisdiction of any state.

2. Background

2.1 The Mediterranean: *mare liberum v mare clausum*

The Mediterranean Sea is an ancient sea, formerly *mare clausum* during the Roman Empire (the Latin expression *mare nostrum*, which translates to ‘our seas’, refers to the Roman Empire’s exclusive military control of the basin⁸) and later partially controlled by the Byzantine Empire, the Republic of Genova, the Serenissima Republic of Venice, the Spanish Kingdom and the North Africa Barbary Coast States.⁹

The Mediterranean became *mare liberum* during the 19th and 20th centuries as a consequence of British interest in freeing the ‘Route to India’. The basin maintained this character after World War II when the United States assumed the same role as the United Kingdom in the international community,

7 A selection of the diplomatic documents concerning the Franco-Italian talks (1972-1974) on the continental shelf delimitation is in Umberto Leanza, Luigi Sico and Maria Clelia Ciciriello, *Mediterranean Continental Shelf: Delimitations and Regimes, International and National Legal Sources*, vol 2, book IV (Oceana Publications 1988) 1613. See also Gian Piero Francalanci and Paola Presciuttini, *A History of the Treaties and Negotiations for the Delimitation of the Continental Shelf and Territorial Waters between Italy and the Nations of the Mediterranean* (Istituto Idrografico della Marina 2001) 71, which references the problem of the application, to the various segments of the hypothetical boundary, of the principle ‘equidistance-plus special circumstances’ in force under the rules of the 1958 Convention on the Continental Shelf (adopted 29 April 1958, entered into force 10 June 1965) 499 UNTS 311, in relation to different factors, such as the effect on the delimitation of certain Italian islands. Art 6(1) of the Convention stipulates that:

Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

No substantive rule on the delimitation of the continental shelf is provided for by Art 83(1) UNCLOS either, which establishes only the following procedural rule: ‘The delimitation of the exclusive economic zone between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.’

8 See Alfred T Mahan, *The Influence of Sea Power Upon History: 1660–1783* (CUP 1889) 15-21.

9 David Abulafia, *The Mediterranean in History* (Thames & Hudson 2003); Tullio Treves, ‘Historical Development of the Law of the Sea’ in Donald R Rothwell and others (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 3.



carrying out the so-called Freedom of Navigation Programme (FON).¹⁰ Significantly, the US focused their FON in the Mediterranean on certain claims by coastal states - considered excessive and unlawful - such as the straight baselines encompassing previously claimed historic bays. The well-known dispute between the US and Libya concerning the Gulf of Sidra ended in 1973¹¹ by drawing a straight baseline of 306 nm. Yet it is no secret that in 1984, the US also protested the claim to the Gulf of Tarento by Italy pursuant to the framework of the Presidential Decree 816-1977 of 26 April 1977¹² concerning the system of straight baselines. Moreover, it must be recalled that the former Soviet Union tried to oppose this US policy following the Russian Empire's classification of the Black Sea as *mare clausum*, according to which the basin was to be demilitarized and placed under the control of riparian states.¹³

2.2 Italy's stance on maintaining the freedom of navigation on the high seas

Italy openly supported the US efforts to ensure, in the Mediterranean Sea, the freedom of navigation on the high seas and the related maritime mobility of naval forces. The aim of this geo-strategic perspective was to counter the claims of some countries for a legal regime restricting the freedom of navigation in both the territorial waters and the EEZ in various ways, such as the request of prior notification of innocent passage in territorial waters or the restriction on naval manoeuvres in the

10 See J Ashley Roach and Robert W Smith, *Excessive Maritime Claims* (3rd ed, Martinus Nijhoff 2012) 13, and The US Department of State, 'Maritime Security and Navigation' <www.state.gov/e/oes/ocns/opa/maritimesecurity/> accessed 1 December 2015) which so defines the FON:

U.S. policy since 1983 provides that the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Law of the Sea (LOS) Convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses. The FON Program since 1979 has highlighted the navigation provisions of the LOS Convention to further the recognition of the vital national need to protect maritime rights throughout the world. The FON Program operates on a triple track, involving not only diplomatic representations and operational assertions by U.S. military units, but also bilateral and multilateral consultations with other governments in an effort to promote maritime stability and consistency with international law, stressing the need for and obligation of all States to adhere to the customary international law rules and practices reflected in the LOS Convention.

Criticisms to the FON are expressed in Amitai Etzioni, 'Freedom of Navigation Assertions: The United States as the World's Policeman' [2015] *Armed Forces and Society* 1, 17 <<https://icps.gwu.edu/sites/icps.gwu.edu>> accessed 1 December 2015.

11 See Roach and Smith (n 10).

12 For an English version, see Decree of the President of the Republic No. 816 of 26 April 1977 containing regulations concerning the application of Law No. 1658 of 8 December 1961 authorizing accession to the Convention on the Territorial Sea and the Contiguous Zone, adopted at Geneva on 29 April 1958, [516 UNTS 205] and giving effect to that Convention <www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ITA_1977_Decree.pdf> accessed 1 December 2015.

13 Memorandum on the Soviet Doctrine and Practice with Respect to the Regime of the High Seas prepared by the Secretariat, UN Doc A/CN.4/38 (21 November 1950) <http://legal.un.org/ilc/documentation/english/a_cn4_38.pdf> accessed 10 February 2016. See also Natalino Ronzitti, 'Law of the Sea Aspects and Legal policies of Naval Arms Control in the Mediterranean' (*The International Spectator*, IAI Rome, Oct-Dec 1993) 52; Natalino Ronzitti, 'The Law of the Sea and Mediterranean Security' (GMF-IAI, 2010) 20 <www.iai.it/sites/default/files/mediterranean-paper_06.pdf> accessed 1 December 2015.



EEZ with the purpose of protecting the environment and natural resources.¹⁴

According to Professor Budislav Vukas,¹⁵ the position of Italy, which favours naval mobility of the military fleets, discouraged other Mediterranean countries from declaring a full EEZ. Accordingly, this is the reason why in 2003, Croatia chose to create a *sui generis* ecological and fishing protection zone (EFPZ) rather than an EEZ. In any event, Italy, in line with this stance, issued the following declaration when signing and ratifying the United Nations Convention on the Law of the Sea (UNCLOS):

According to the Convention, the coastal state does not enjoy residual rights in the Exclusive Economic Zone. In particular, the rights and jurisdiction of the coastal state in such zones do not include the right to obtain notification on military exercises or manoeuvres or to authorize them ... None of the provisions of the Convention, which corresponds on this matter to customary international law, can be regarded as entitling the coastal state to make innocent passage of particular categories of foreign ships dependent on prior consent or notification.¹⁶

2.3 Italy's commitment in delimiting the continental shelf with neighbouring states

It is common knowledge that the problem of creeping jurisdiction of certain coastal states asserting *ultra vires* functional rights in the water column of their EEZ is related to the '[c]onstructive ambiguities of the LOSC [that] have led to disagreements regarding its interpretation'.¹⁷ The issue mainly concerns the peaceful use by foreign militaries (e.g. military exercises) of the EEZ that some states

14 On the possible Confidence Building Measures (CBM) aimed to solving the problem see 'Guidelines for Navigation and Overflight in the Exclusive Economic Zone, EEZ Group 21' (26 September 2005) <<http://nippon.zaidan.info>> accessed 1 December 2015. On the problem of naval mobility of fleets, see also Fabio Caffio, 'Il problema del transito delle Forze Navali nelle ZEE' [2007] *Glossario del Diritto del Mare*, *Supp Rivista Marittima* 196 <www.marina.difesa.it> accessed 1 December 2015.

15 See Budislav Vukas, 'The extension of jurisdiction of the coastal State in the Adriatic Sea' in Natalino Ronzitti (ed), *I rapporti di vicinato dell'Italia con Croazia, Serbia-Montenegro e Slovenia* (Luiss University Press 2005) 251.

16 Italy ratified the UNCLOS on 13 January 1995 by the Law of 2 December 1994 n.689 (*Gazzetta Ufficiale* n. 295 of 19 December 1994). See Italy's statement at United Nations Division for Ocean Affairs and the Law of the Sea (updated 29 October 2013) <www.un.org/Depts/los/convention_agreements/convention_declarations.htm> accessed 30 September 2015.

17 Sophia Kopela, 'The "territorialisation" of the Exclusive Economic Zone: Implications for maritime jurisdiction' (IBRU Durham 2009) 2 <www.dur.ac.uk/resources/ibru/conferences/sos/s_kopela_paper.pdf> accessed 1 December 2015.

attempt to restrict.¹⁸ The EEZ regime - as affirmed by the ICJ in the 1985 *Libya/Malta Continental Shelf* case¹⁹ - had become part of customary international law in the late 1970s when the UNCLOS was still being negotiated. At that time, Italy negotiated with its neighbouring countries on the delimitation of the continental shelf and concluded agreements with the former Yugoslavia (1968), Tunisia (1971), Greece (1974), Spain (1977) and Albania (1992).²⁰ However, each agreement contains a clause similar to the following: 'The agreement does not affect the legal status of the waters and of the air space superjacent the continental shelf'.²¹

Figure 1: Limits of the Italian continental shelf established by agreement (Source: DOALOS)



18 The question of the military uses of the EEZ is at the core of the *Lexie* case between Italy and India, concerning, *inter alia*, the exclusive jurisdiction on the military unit of Vessel Protection Detachments (VPD) embarked on an Italian flagged vessel engaged in an 'incident of navigation' allegedly happened in the international waters lying inside the Indian Ocean Piracy HRA (see Valeria Eboli and Jean Paul Pierini, "The "Enrica Lexie Case" and the limits of the extraterritorial Jurisdiction of India" (March 2012) 39 <www.lex.unict.it/cde/quadernieuropi/giuridiche/39_2012.pdf> accessed 1 December 2015). It must be remembered that the Italian VPD that fired warning shots against suspected pirates was embarked - in accordance with IMO Recommendations related to the transit in the Indian Ocean Piracy High Risk Area - on an Italian-flagged merchant vessel sailing in the Indian EEZ. In this zone India claims a *sui generis* regime affirming that '[t]he Government of the Republic of India understands that the provisions of the Convention do not authorize other States to carry out in the exclusive economic zone and on the continental shelf military exercises or manoeuvres, in particular those involving the use of weapons or explosives without the consent of the coastal State' (see <www.un.org/depts/los/convention_agreements/convention_declarations.htm> accessed 21 January 2016).

19 Robin Churchill and Vaughan Lowe, *The Law of the Sea* (Manchester University Press 1999) 160.

20 The text of each is available at <www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/ITA.htm> accessed 1 December 2015. On the various solutions of delimitation adopted in these agreement, see Francalanci and Presciuttini (n 7).

21 This principle is established in Art 78(1) UNCLOS, which reads: 'The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters'.



The reasons behind the Italian commitment to delimiting its continental shelf by agreement can be found in a policy aimed at economic growth through the exploration and exploitation of the natural resources of the seabed and subsoil of the Mediterranean Sea – even though, in the 1970s, the available underwater technology only allowed for mining in zones no greater than 200 meters in depth. Not surprisingly, the European Union, taking into account the progress made by offshore oil drilling technology in deep sea waters, recently assumed a similar policy in both of its long-term strategies: Blue Growth²² and Energy Security.²³ Thus, the EU Member States were encouraged to delimit by agreement their maritime zones, since the establishment of such zones is a prerequisite to the exploitation of their natural resources.

The cooperative approach adopted by Italy in negotiating various delimitation agreements on the continental shelf with other Mediterranean coastal states complies with the duties incumbent on states surrounding a closed or semi-enclosed sea, as defined by the UNCLOS.²⁴ Due to its geographical characteristics, the Mediterranean Sea is qualified as a ‘semi-enclosed sea’ – a sea surrounded by two or more states and connected to another sea by a narrow outlet – in which the coastal states, according to Article 123 UNCLOS, should cooperate with each other in the exercise of their respective rights²⁵ and to refrain from unilateral initiatives in various domains. This duty of cooperation can be interpreted broadly, as applicable to coastal states even when they establish their maritime zones, even if not expressly provided for by Article 123. Apart from this legal aspect, the Mediterranean region is characterised by a clear geographical factor (i.e. a distance of less than 400 nm from opposite coasts), which prevents unilateral institution of an EEZ in its maximum extension. Furthermore, Mediterranean countries are interconnected each other through a wide net of cooperative political and economic relations, which should dissuade, if not entirely prevent, unilateral initiatives.

Accordingly, the establishment of an EEZ in the Mediterranean region was, until the 1990s, considered to be inopportune,²⁶ also taking into account the aforementioned military and political concerns associated with the freedom of navigation. Nevertheless, in order to prevent illegal fishing on the high seas, some countries unilaterally proclaimed *sui generis* zones, partially applying the EEZ

22 European Commission, ‘Maritime Affairs’ <http://ec.europa.eu/maritimeaffairs/policy/seabed_mining/index_en.htm> accessed 20 September 2015.

23 European Commission, ‘Energy Security Strategy’ <<https://ec.europa.eu/energy/en/topics/energy-strategy/energy-security-strategy>> accessed 20 September 2015.

24 See Budislav Vukas (ed), *The Legal Regime of Enclosed or Semi-Enclosed Seas: The Particular Case of the Mediterranean* (Faculty of Law, University of Zagreb 1988).

25 Ronzitti, ‘The Law of the Sea and Mediterranean Security’ (n 13).

26 Tullio Scovazzi (ed), *Marine Specially Protected Areas: The General Aspects and the Mediterranean Regional System* (Kluwer Law International 1999) 52, defines the Mediterranean Sea as ‘an old fashioned sea’ characterised by a large area of high seas.



regime regulated by the UNCLOS.²⁷ For instance, Algeria created a 'fishing reserved zone' (FRZ) in 1994,²⁸ Spain adopted a 'fishing protection zone' (FPZ) in 1997,²⁹ followed by Croatia, which unilaterally created the above mentioned EFPZ in 2003, the establishment of which was adamantly objected to by Italy.³⁰

3. Environmental protection of the Mediterranean Sea: a common interest of Italy and France

3.1 Attempts to enter into a maritime dialogue

Since the 1990s, Italy, France and Monaco have adopted perspectives oriented towards environmental protection, establishing the Pelagos Sanctuary for the Conservation of Marine Mammals in

27 On the qualification of FRZs or FPZs as *minoris generis* zones in respect of the EEZs in which the concerned state exercises partially, as regards environmental protection, the functional rights attributed by the UNCLOS in the EEZ, see Gemma Andreone, 'The Exclusive Economic Zones' in Donald R Rothwell and others (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 183; see also Irini Papanicopolu, 'The Mediterranean' in Donald R Rothwell and others (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2015) 610.

28 The Algerian Legislative Decree No. 94-13 of 28 May 1994, establishing the general rules relating to fisheries adopted '[a] reserved fishing zone located beyond and adjacent to the national territorial waters ... The breadth of the zone measured from the baseline shall be 32 nautical miles between the western maritime border and Ras Ténès and 52 nautical miles between Ras Ténès and the eastern maritime border'.

29 Royal Decree 1315/1997 of 1 August 1997 establishing a Fisheries Protection Zone in the Mediterranean Sea; the list of geographical coordinates of points constituting the delimitation, modified in 2000, is contained in the Note Verbale No. 256 of 13 April 2000 of the Permanent Mission of Spain to the United Nations <www.un.org/Depts/los/doalos> accessed 1 December 2015. The French point of view on the legality of this delimitation line is in the Statement of the position of the French Government with respect to the Spanish communication concerning the deposit of a list of geographical coordinates in 'Law of the Sea Information Circular' (November 1998) 25 <www.un.org/Depts/los/LEGISLATIONANDTREATIES/losic/losic8e.pdf> accessed 10 February 2016. Later, Spain changed the EPZ regime into that of the EEZ (see below n 43).

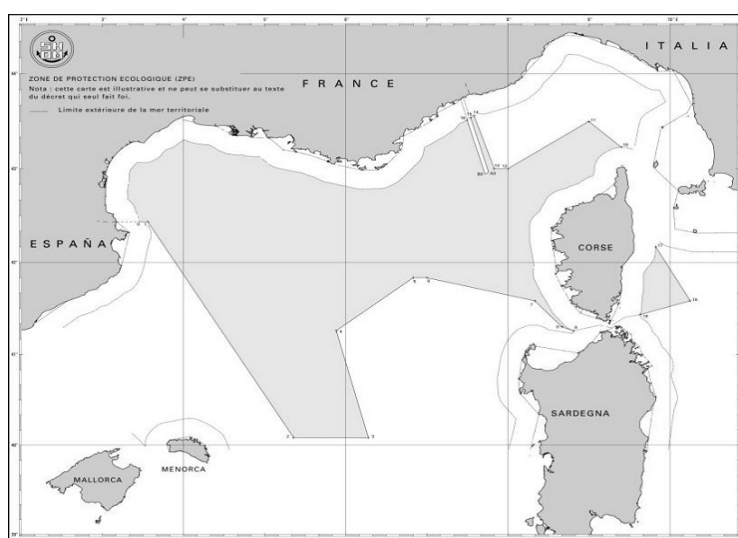
30 Croatia, on 3 October 2003, suddenly and unilaterally created the EFPZ that contains almost all the rights that can be exercised under the EEZ regime. The limit of the Croatian EFPZ temporarily coincides, until otherwise agreed, with the boundary of 1967 Continental Shelf Treaty between Italy and Former Yugoslavia. This unilateral solution is not accepted by Italy assuming that there are no provisions in international law that consider the delimitation line of the continental shelf employable as the boundary of the EEZ. The Croatian initiative (also disputed by Slovenia, which complains about the closure of its free access to international waters) seems to be unlawful due to its unilateralism in violation of the rights of neighbour countries and of the obligations of cooperation in semi-enclosed seas. Italy, in protesting declared, *inter alia*, that:

[T]he constant jurisprudence of the International Court of Justice has consistently recognized that the delimitation of sea areas invokes special circumstances that differ by continental shelf and by superjacent waters—such as, for example, historic fishing rights—which lead to different delimitation methods. Consequently, in this specific case, there is no legal foundation for the automatic extension, however provisional, of the seabed line of delimitation agreed upon in 1968 to superjacent waters, since any delimitation must be considered in close relation to the circumstances of the case that produce it and that change over time. Therefore, international jurisprudence has always considered necessary the consent of the concerned States to the automatic extension of the seabed line of delimitation to superjacent waters. This principle holds especially true in this specific case when one considers that the line of the 1968 Agreement was set during a period in which the notion of the exclusive economic zone was not yet well defined in international law of the sea.

'Law of the Sea Bulletin' (No 60, 2006) <www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin60e.pdf> accessed 25 September 2015).

the Tyrrhenian Sea. The legal regime of this Sanctuary, regulated by the 1999 Tripartite Agreement, is only applicable to State Party-flagged ships, not *erga omnes*.³¹ The western section of the Sanctuary, as a part of the high seas, changed its status after France decided in 2003 to proclaim, beyond its territorial waters, the EPZ³² shown in Figure 2 partially coinciding with the Sanctuary. However, the outer limit of this EPZ facing the Italian coast did not exceed the hypothetical median line. On the Spanish side, the French EPZ partially overlapped with the FPZ previously declared by Spain.³³

Figure 2: The French EEZ (former EPZ); on the western side there is the overlapping area with Spain's EEZ (former FPZ)³⁴



31 Giuseppe Notarbartolo-di-Sciara and others, 'The Pelagos Sanctuary for Mediterranean Marine Mammals' (2008) 18 *Aquatic Conserv Mar Freshw Ecosyst* 367 <www.cetaceanalliance.org/download/literature/NotarbartolodiSciara_etal_2008.pdf> accessed 25 September 2015.

32 Décret n° 2012-1148 (n 3).

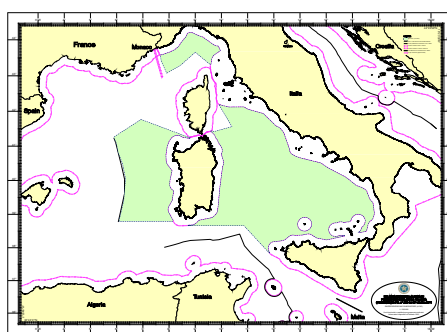
33 In this regard, France expressed its disagreement which is deemed to apply principles penalizing concavity of the French coasts: see Juan Luis Suárez de Vivero, 'Jurisdictional Waters in the Mediterranean and Black Seas' (European Parliament 2009) 47 <www.eurocean.org/np4/file/2063/download.do.pdf> accessed 21 September 2015. On the dispute between France and Spain on the matter of delimitation in the Gulf of Lion see below (n 41).

34 'Création d'une Zone de Protection Écologique (ZPE) en Méditerranée' <www.afcan.org/dossiers_reglementation/zone_pe.html> accessed 1 February 2016.

3.2 Franco-Italian parallel initiatives

After the oil tanker disasters involving the *Prestige* and the *Erika*³⁵ in the Atlantic Sea, which led France to proclaim its EPZ in the Mediterranean,³⁶ Italy came to share France's concerns surrounding the ecological risks posed to its seas. Thus, as mentioned above, in 2006 the Italian Parliament approved an act containing the legal framework for the establishment of EPZs, even though the institution of specific zones was left to later decisions to be adopted by decree. The first of these EPZs was established by Presidential Decree 209-2011³⁷ and encompasses the area between France and Italy (Figure 3). It is located not far from that of the French EPZ, the two boundary lines are separated by a narrow strip of the high seas. Through the establishment of their EPZs, France and Italy can apply national and European rules dealing with environmental protection to foreign vessels as well as the international provisions to which they are bound, such as the rules of the MARPOL Convention.³⁸

Figure 3: The 2011 Italian EPZ (Source: Maridrografico)



35 Peter Wetterstein, 'Environmental Impairment Liability after the Erika and Prestige Accidents' (SISL, 2010) 230 <www.scandinavianlaw.se/pdf/46-12.pdf> accessed 1 February 2016: '[T]he sinking of the *Erika* outside Brittany (12 Dec. 1999) and the *Prestige* accident off the north-western coast of Spain (13 Nov. 2002). The Maltese tanker *Erika* transported 31,000 tons of heavy fuel oil when it sunk. No less than 19,800 tons of oil leaked into the sea and polluted France's west coast from Quimper to La Rochelle. The accident caused large-scale environmental damage and economic losses for the fishing and tourist sectors.'

36 On the French EPZ see above (n 3).

37 Presidential Decree no. 209 (n 4).

38 The International Convention for the Prevention of Pollution from Ships (MARPOL) is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. The MARPOL Convention was adopted on 2 November 1973 at IMO. The Protocol of 1978 was approved in response to a series of tanker accidents in 1976-1977. As the 1973 MARPOL Convention had not yet entered into force, the 1978 MARPOL Protocol absorbed the parent Convention. The combined instrument entered into force on 2 October 1983. In 1997, a Protocol was adopted to amend the Convention and a new Annex VI was added which entered into force on 19 May 2005. MARPOL has been updated by amendments through the years. The Convention includes regulations aimed at preventing and minimizing pollution from ships - both accidental pollution and that from routine operations - and currently includes six technical Annexes. Special Areas with strict controls on operational discharges are included in most Annexes (IMO <www.imo.org/en/About/Conventions> accessed 1 December 2015).



Furthermore, Italy and France have collaborated over the years on the regime of transit in the Strait of Bonifacio. Within this framework, the two countries adopted the 1986 Agreement on the delimitation of the maritime boundaries in the area of the strait.³⁹ They also agreed to the 'Bonifacio traffic system', a mandatory ship reporting system aimed at controlling maritime traffic in order to avoid incidents in the perilous waters of the strait.⁴⁰ While the two countries were carrying out the mentioned initiatives, they were also negotiating the delimitation of the respective areas of national jurisdiction between their opposite and adjacent coasts. The policy of only declaring an EPZ, common to both states, was disregarded in 2012 when France modified its EPZ into a full EEZ. Italy, on the other hand, has yet to follow France's lead, while Spain, which initially opposed the French initiative as a matter of delimitation in 2012,⁴¹ declared a full-scale EEZ in the Mediterranean through Real Decreto 236/2013.⁴²

39 Agreement between the Government of the French Republic and the Government of the Italian Republic on the delimitation of maritime frontiers in the area of the Strait of Bonifacio <www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-ITA1986MB.PDFA/513> accessed 27 September 2015. On the contents of this agreement see Fabio Caffio, 'L'accordo di delimitazione delle acque tra la Sardegna e la Corsica' (1990) *Rivista Marittima* 7, and Umberto Leanza, 'L'accordo di delimitazione delle acque territoriali nelle Bocche di Bonifacio' in *Lo Stretto di Bonifacio* (Scuola Sottufficiali Marina Militare La Maddalena 2011) 11.

40 Nicolas Mariel, 'La réglementation française' in *Lo Stretto di Bonifacio* (Scuola Sottufficiali Marina Militare La Maddalena 2011) 57.

41 Spain sent the following Note Verbale 'Communication from the Government of Spain dated 23 October 2012' <www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/FRA.htm> accessed 29 September 2015:

The Ministry of Foreign Affairs and Cooperation presents its compliments to the Embassy of the French Republic in Madrid and has the honor to refer to Decree No. 2012-1148 of 12 October 2012, which establishes a French exclusive economic zone in the Mediterranean (Official Gazette of the French Republic of 14 October 2012). The Government of Spain recognizes the right of all States to establish an exclusive economic zone in the Mediterranean, but not when that right is exercised in a unilateral manner. The authorities of Spain wish to stress that, in accordance with article 74 of the United Nations Convention on the Law of the Sea, the delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, in order to achieve an equitable solution. In the view of the Government of Spain, a line that is equidistant from the baselines from which the breadth of the territorial sea is measured would be the most just and equitable solution, and would be subject to modification only in the case of special or particular circumstances.

The authorities of Spain therefore wish to place on record their opposition to the unilateral establishment of the aforementioned exclusive economic zone, which has boundaries that extend far beyond the equidistant border line between the two coasts that was drawn in accordance with international law, and thus contravene article 74 of the United Nations Convention on the Law of the Sea. For this reason, the Government of Spain believes that none of the coordinates set out in the Decree can in any way be considered to constitute a dividing line between the maritime areas of the two States. In addition, the authorities of Spain wish to place on record their surprise at the unilateral establishment of the exclusive economic zone at a time when both countries are involved, on the one hand, in informal talks on maritime delimitation that would affect the Mediterranean, among other areas, and, on the other, in finding ways to improve the environmental protection of the area, within the framework of, for example, the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean to the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) of 1978. Under these circumstances, the Government of Spain reserves the right to carefully consider the practical consequences of the decision of the French Government. ... Madrid 23 October 2012.

42 Real Decreto 236/2013, de 5 de abril, por el que se establece la Zona Económica Exclusiva de España en el Mediterráneo noroccidental (BOE-A-2013-4049) <www.boe.es/diario_boe/txt.php?id=BOE-A-2013-4049> accessed 1 December 2015.



4. A single maritime boundary between Italy and France

4.1 Old and new negotiations on maritime spaces

As far as the continental shelf is concerned, it is necessary to recall that Italy and France negotiated the delimitation of the continental shelf between 1969 and 1975, but they failed to reach an agreement.⁴³ Their differences of opinion at the time were related to the modalities of the application of the equidistance criterion between their opposite coasts, mainly in the areas of the Gulf of Genova and Cape Corso, as well as between Corsica and the islands of the Tuscan Archipelago.⁴⁴ During the negotiations, a French proposal aimed at creating a 'common area of cooperation' – located west of the Strait of Bonifacio, between the maritime zones of Spain, France and Italy – was also discussed. Although it was not the right time for such an agreement, the fruits of the negotiations would later become evident when the two countries met again to solve their respective points of disagreement.

Since the end of the bilateral negotiations in 1975, many things had changed between Italy and France: the UNCLOS entered in force and the concept of the EEZ received widespread acceptance in state practice. Moreover, at that time, the 'equidistance principle' rule, provided by the 1958 Convention on the Continental Shelf,⁴⁵ was no longer the guiding criterion for the delimitation of the continental shelf.⁴⁶ Thus, when Italy and France resumed negotiations at the beginnings of the 21st century, the legal framework to be considered under the UNCLOS had changed when compared to the past. Furthermore, the practice of drawing a 'single maritime boundary'⁴⁷ between the maritime areas of seabed, subsoil and EEZs was gradually affirmed, as demonstrated by the aforementioned EEZ delimitation agreements signed by Cyprus with Egypt, Lebanon and Israel.⁴⁸

While there are no official records of the new round of negotiations between Italy and France, the preamble of the Agreement states that the parties met for four negotiation sessions in Rome (2006),

43 See Francalanci and Presciuttini (n 7) 76.

44 The islands of the Tuscan Archipelago (Gorgona, Capraia, Elba, Pianosa, Montecristo, Scoglio d'Africa, Giglio and Giannutri) became part of the Italian straight baseline system established by Decree 816-1977 (n 12) several years after the conclusion of the negotiations. According with Ronzitti, 'The Law of the Sea and Mediterranean Security' (n 13) 9: 'The United States does not recognize the straight baseline drawn by Italy along the Tuscan Archipelago either a delimitation that has recently (2009) been challenged by France as well, after years of acquiescence'.

45 On the application of the equidistance principle under the Convention on the Continental Shelf see (n 7).

46 In 1969, the ICJ did not recognise the 'equidistance principle' for the delimitation of the continental shelf as an international customary rule (*North Sea Continental Shelf (Federal Republic of Germany/Netherlands)* (Judgment) [1969] ICJ Rep 3 [101]). Indeed, the Court introduced the new doctrine of the 'equitable solution', according to which no criterion of delimitation would prevail over the others (this doctrine was then embodied in the UNCLOS in 1982). The ICJ affirmed, *inter alia*, that 'delimitation [of the continental shelf] is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other'.

47 On the matter of the 'single maritime boundary' see (n 6).

48 On the Cyprus EEZ agreements see (n 5).



Paris (2007), Elba Island (2007) and Rome (2012). The duration of the negotiations⁴⁹ is not surprising since similar negotiations took even more time: for instance, the 40 years of on-again, off-again negotiations⁵⁰ regarding the maritime dispute between Russia and Norway in the Barents Sea, which ended when the Agreement between the Kingdom of Norway and the Russian Federation on Delimitation and Cooperation in the Barents Sea and the Polar Ocean was signed on 15 September 2010. The negotiation between Italy and Malta for the delimitation of the continental shelf also started in 1965 when the two countries agreed on a provisional and spatially limited Modus Vivendi;⁵¹ but it has not yet been concluded, although Articles 83(2) UNCLOS stipulates: 'If no agreement can be reached within a reasonable period of time, the states concerned shall resort to the procedures provided for in Part XV [Settlement of Disputes]'.

Recalling that in the 2006-2015 timeframe, Italy and France proclaimed their respective maritime zones beyond the territorial sea, by the agreement under discussion, the situation of the maritime areas between Italy and France was finally well-defined and clarified. Moreover, the lesson learned from the past demonstrate that a positive conclusion of maritime delimitation negotiations requires a complete overview of all the maritime factors to be considered (the maritime spatial planning policy elaborated by the EU is based on this comprehensive approach⁵²) as well as a general willingness to explore mutual concessions as regards the applicable international law.

4.2 Delimitation of territorial waters under the equidistance method

The preamble of the Agreement clarifies that the two parties applied the equidistance method in delimiting their territorial waters. The chart annexed to the Agreement (Figure 4) shows that there are three concerned zones in which the territorial waters were subject to delimitation. The first lies in

49 Ten years from the first meeting to the signing ceremony in Caen, but 45 years starting from the beginning of the negotiations in 1971: Francalanci and Presciuttini (n 7) 69.

50 Thilo Neumann, 'Norway and Russia Agree on Maritime Boundary in the Barents Sea and the Arctic Ocean' (*ASIL Insights*, 10 November 2010) 14, 34 <www.asil.org/insights/volume/14/issue/34/norway-and-russia-agree-maritime-boundary-barents-sea-and-arctic-ocean> accessed 1 February 2016.

51 The Modus Vivendi was concluded in 1970 when Italy and Malta formalized the change of letters. On this partial and provisional arrangement related to the median line between Malta and Sicily within the isobath of 200 mt - so not beyond this depth limit as instead claimed by Malta - see Francalanci and Presciuttini (n 7) 133, and 'Modus Vivendi on Continental Shelf' (*Times of Malta*, 9 December 2010) <www.timesofmalta.com/articles/view> accessed 1 December 2015. The text of the Modus Vivendi (also named 'Provisional Understanding') is published in Umberto Leanza, Luigi Sico and Maria Clelia Ciciriello, *Mediterranean Continental Shelf: Delimitations and Regimes, International and National Legal Sources*, vol 1, book I (Oceana Publications 1988) 131.

52 Antonia Zervaki, 'Introducing Maritime Spatial Planning Legislation in the EU: Fishing in Troubled Waters?' (2015) 1 *MarSafeLaw Journal* 95 <www.marsafelawjournal.org/wp-content/uploads/2015/09/Issue1_Zervaki_Article.pdf> accessed 1 December 2015. The matter of the MSP is regulated in the framework of the Integrated Maritime Policy (IMP) of the EU by Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning [2014] OJ L 257/135: possible activities and uses and interests such as fishing areas, installations and infrastructures for the exploration, exploitation and extraction of oil, of gas and other energy resources, of minerals and aggregates, and for the production of energy from renewable sources, maritime transport routes and traffic flow, military training areas, nature and species conservation sites and protected areas.



the Menton Bay where a *de facto* delimitation previously existed, under a *projet de convention arrêté en 1892*⁵³ concerning local fishing activities within a limit of three miles. The second zone is in the international Strait of Corsica (also named Canal de Corse), which is 14 miles wide and falls under the regime established by Article 34 UNCLOS. The strait connects the high seas to the territorial sea,⁵⁴ separating Cap Corse from the island of Capraia, and it is where France adopted a regulation prohibiting oil tankers from navigating within five miles off the French coast.⁵⁵ It can be assumed that the parties, when drawing the equidistance line in this area, took into account their straight baselines since Article 15 UNCLOS requires them to do so.⁵⁶ The third zone is in the Strait of Bonifacio,⁵⁷ an international strait wholly covered by the territorial waters of Italy and France. In its preamble the Agreement recalls the 1986 Paris Agreement⁵⁸ confirming its further validity and adopting the same coordinates previously established for both delimiting the territorial waters of the strait and drawing the limits of the 'joint fishing zone' dedicated to the local traditional fishing activities on the western side of the territorial waters of the strait. It is also noteworthy that the confirmed boundary of the 1986 Paris Agreement is inspired by equidistance criterion, even if modified by certain circumstances⁵⁹ related to navigational factors justifying an adjustment of the hypothetical median line under Article 15 UNCLOS.⁶⁰

53 Jean-Pierre Quéneudec 'La France et le droit de la mer' in Tullio Treves and Laura Pineschi (eds), *The Law of the Sea: The European Union and Its Member States* (Martinus Nijhoff 1997) 188.

54 See Fabio Caffio, 'Il regime internazionale degli stretti' in *Lo stretto di Bonifacio* (Scuola Sottufficiali Marina Militare La Maddalena 2011).

55 Umberto Leanza, *Collected Courses of the Hague Academy of International Law: 1992 Académie de Droit International de la Haye* (Martinus Nijhoff 1994) 238.

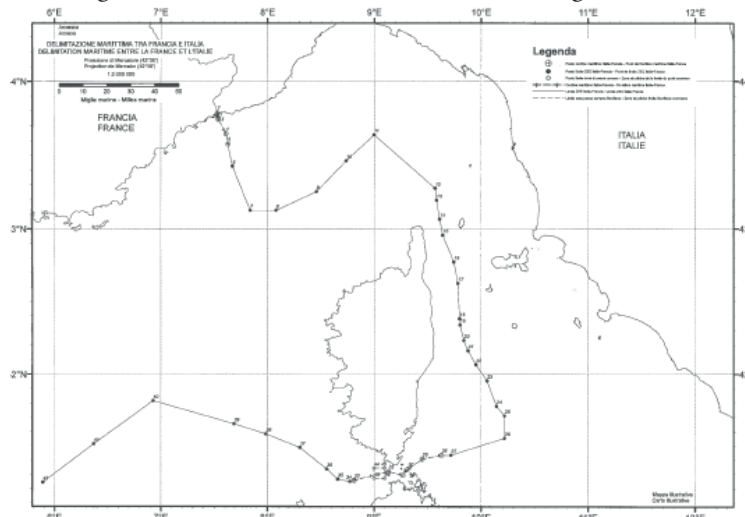
56 Art 15 UNCLOS reads as follows: 'Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial seas of each of the two states is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two states in a way which is at variance therewith.'

57 On the Strait of Bonifacio's transit regime, see Mariel (n 40).

58 Agreement between the Government of the French Republic and the Government of the Italian Republic (n 39).

59 See Leanza, 'L'accordo di delimitazione delle acque territoriali nelle Bocche di Bonifacio' (n 39).

60 See Leanza, *Collected Courses of the Hague Academy of International Law* (n 55).

Figure 4: The chart annexed to the 2015 Caen Agreement⁶¹

4.3 Delimitation of the continental shelf and other spaces under national jurisdiction according to the equitable principles

The preamble of the Agreement clearly states that the parties applied the rules and principles of international law, namely the equitable delimitation principle, in respect to both the delimitation of the continental shelf and the waters under their respective national jurisdiction. The later reference complies with the practice of recent delimitation agreements; accordingly, the term ‘waters under national jurisdiction’ has a wide scope, encompassing both the French EEZ and the Italian EPZ established with different purposes and regimes on the two sides of the boundary.⁶²

The Agreement is nonetheless silent in respect to the methods adopted in order to achieve an equitable result. This is normal practice and permissible when ‘different methods have been used in different sectors, especially if reciprocal concessions in different areas have been made.’⁶³ In any case, the parties appear to have been aware of the delimitation criteria adopted by the ICJ in several cases, such as the 1969 *North Sea* case⁶⁴ and the 1985 *Malta/Libya* case, which delimited the disputed continental shelf zones in the Mediterranean as equitably as possible⁶⁵. On this matter, even though no explicit reference

61 Accord entre le Gouvernement de la République française et le Gouvernement de la République italienne relatif à la délimitation des mers territoriales et des zones sous juridiction nationale entre la France et l’Italie (n 2).

62 David Anderson, ‘Negotiating Maritime Boundary Agreements: A Personal View’ in Rainer Lagoni and Daniel Vignes (eds), *Maritime Delimitation* (Brill 2006) 135.

63 *ibid.*

64 *North Sea Continental Shelf* (n 46).

65 Tullio Scovazzi, ‘The Mediterranean and Black Sea Maritime Boundaries’ in Jonathan I Charney and others (eds), *International Maritime Boundaries*, vol V (Martinus Nijhoff 2005) 3485.



is made to it by the Agreement, the two parties surely resorted to the so-called 'three-step process' in order to assess the equitable result of the negotiations, in accordance with Articles 74 and 83 UNCLOS. Under the three-step process, recently affirmed by the ICJ in its decisions following the rule of 'equitable principle/relevant circumstances',⁶⁶ the parties must first determine a theoretical equidistance line – drawn on the basis of geography and geometry – between the relevant coasts. Second, they have to adjust or shift the said line taking in account relevant circumstances, including the proportionality between the lengths of the relevant coasts. Third, the parties must perform a proportionality test in order to compare the extension of the area attributed to each with the length of its relevant coasts.⁶⁷

It is evident, however, that in any case, concerned states are not obliged to declare the methods they followed in the delimitation process, as international law provides for a certain degree of discretion in the negotiations. Nevertheless, a technical appraisal of the line agreed by Italy and France, whose coordinates are expressed in World Geodetic System 84 (WGS), would allow for the formulation of evaluations on achieving an actual equitable result: to this aim it must be focused the effect attributed to the Italian islands of the Tuscan Archipelago for the delimitation of the zones under national jurisdiction, in terms of adjustment of the equidistance line in favour of France. As a matter of fact, Article 121 UNCLOS⁶⁸ on the regime of islands in international law does not provide for any specific principle of delimitation of the continental shelf and EEZ. The effect of islands is thus not an abstract notion but falls on the general principle of achieving an equitable solution set in Articles 74 and 83 UNCLOS. The ICJ, in cases such as the 2001 *Qatar/Bahrain* case⁶⁹ and the 2009 *Black Sea* case,⁷⁰ recognised no effect to certain islands involved in the delimitation. Such a technical evaluation of the delimitation line of the Agreement is beyond the scope of the present article, but considering the practice of former Italian delimitation agreements of the continental shelf,⁷¹ it may be argued *prima facie* that the parties made reciprocal concessions in various zones. It is nevertheless evident that, animated by a constructive spirit of good neighbourliness and a willingness to successfully conclude their negotiations, they have put aside the reservations which previously hindered an agreement.⁷²

66 See Thomas Cottier, *Equitable Principles of Maritime Boundary Delimitation: The Quest for Distributive Justice in International Law* (CUP 2015) 447, which references the most recent international case law such as the 2012 ITLOS *Bangladesh/Myanmar* judgment or the 2009 ICJ *Black Sea (Romania/Ukraine)* judgment, clarifying that in the 2014 *Chile/Perù* case, the ICJ based instead its decision on existing treaty obligations without considering any relevant circumstances.

67 Laurent Lucchini, 'La Délimitation Des Frontières Maritimes Dans La Jurisprudence Internationale: Vue D'Ensemble' in Rainer Lagoni and Daniel Vignes (eds), *Maritime Delimitation* (Brill 2006) 5.

68 On the state practice and case law on the application of Art 121 in the delimitation the territorial waters as well as the continental shelf and EEZ, see Leonardo Barnard, 'The Role of Islands on Maritime Boundaries Delimitation: A Look at the Recent Decision of ITLOS' (2012) <<http://cil.nus.edu.sg/wp/wp-content/uploads/2012/12/LeoBernard-Effect-of-Islands-in-Maritime-Delimitation-19-Nov-2012.pdf>> accessed 1 December 2015, which focuses mainly on the ITLOS Case No 16 (*Bangladesh/Myanmar*).

69 In (*Qatar v Bahrain*) (n 6) [248] the ICJ did not recognise, *inter alia*, any effect on the Island of Fasht Al Jarim.

70 In *Maritime Delimitation in the Black Sea (Romania v Ukraine)* (Judgment) [2009] ICJ Rep 61 [188] the ICJ concluded that 'Serpents' Island should have no effect on the delimitation in this case, other than that stemming from the role of the 12-nautical-mile arc of its territorial sea.'

71 On these agreements see (n 20).

72 Francalanci and Presciuttini (n 7) 71.



A relevant aspect of the Agreement is the fact that the terminal point of the delimitation line falls north of the initial point 'A' of the 1974 Agreement between Italy and Spain on the delimitation of the continental shelf. Accordingly, the Agreement does not in any way affect the delimitation questions related to the pending dispute between France and Spain.⁷³ This also implies that Italy, as a third party, will respect any settlement between the two countries. Finally, it is worth mentioning the clause contained in Article 4 of the Agreement relating to transboundary oil and gas deposits, which, in accordance with international practice on the matter,⁷⁴ provides for a set procedure to solve cooperatively the issues related to the exploitation of such deposits.

⁷³ On the issue of the maritime dispute between France and Spain see above (n 29 and 41).

⁷⁴ See Ana E Bastida Adaeze Ifesi and others 'Cross-Border Unitization and Joint Development Agreements: An International Law Perspective' (2007) *Houston Journal of International Law* 375.



5. Conclusion

The way in which Italy and France concluded such a complex agreement concerning all their maritime zones is indeed notable. Maritime agreements, especially if related to maritime frontiers, have their own level of solemnity, from which we recall the history and foundation of the principles of international law. This Agreement, in its simplicity and clarity, shares such a character. Moreover, it represents a paradigm for the unresolved cases of delimitation that trouble the waters of the Mediterranean Sea, namely in certain areas off the coasts of both France⁷⁵ and Italy.⁷⁶

⁷⁵ See, on the specular position of Spain against the French EEZ, Note Verbale (n 41). Reference is made to the area of the Gulf of Lion where Spain unilaterally created a Fishing Protection Zone that does not take in account the rights of France. France, in 'Statement of the position of the French Government with respect to the Spanish communication concerning the deposit of a list of geographical coordinates' (n 29), declared that: The French Government wishes to protest against the part of this declaration that relates to the line delimiting the edge of the Spanish fisheries zone facing the French coasts. It protests against this delimitation initiative conducted by Spain. In any event, it considers that the delimitation resulting from the line joining the points specified in the Spanish communication cannot be invoked against it. The French Government recalls on this occasion that under international public law, the delimitation of a boundary must take place by agreement. Moreover, in this specific case of a maritime boundary, such delimitation must result in an equitable solution, thus ruling out in this instance use of the equidistant line employed by the Spanish side.

⁷⁶ Reference is made to the vast area of the Central Mediterranean unilaterally claimed by Malta ignoring the Italian rights beyond the meridian 15°10', which were indirectly recognised by the ICJ in the 1985 *Malta/Libya* case when it affirmed that: 'The limits within which the Court, in order to preserve the rights of third States, will confine its decision in the present case, may thus be defined in terms of the claims of Italy, which are precisely located on the map by means of geographical coordinates. During the proceedings held on its application for permission to intervene, Italy stated that it considered itself to have rights over a geographical zone delimited on the West by the meridian 15°10' E, to the south by the parallel 34° 30' N, to the east by the delimitation line agreed between Italy and Greece ... and its prolongation, and to the north by the Italian coasts of Calabria and Apulia': *Case Concerning The Continental Shelf (Libyan Arab Jamahiriya/Malta)* (Judgment) [1985] ICJ Rep 13 [24]. On the partial and provisional 1970 Modus Vivendi's delimitation between Sicily and Malta see also (n 51). Recently, the two countries, in order to avoid the diplomatic tension related to the offshore activities carried out by Malta in the continental shelf disputed zone, resorted to a Confidence Building Measure like the Oil Drilling Moratorium: see Fabio Caffio, 'Informal Agreement Between Italy, Malta on Moratorium Offshore Sicily' (*Natural Gas Europe Newsletter*, 19 November 2015) <www.naturalgaseurope.com/informal-agreement-between-italy-malta-drilling-moratorium-south-east-off-sicily-26434> accessed 1 December 2015.