

INSTITUTING AN EEZ IS ANYTHING BUT EASY: EVOLUTION OF MARITIME DISPUTES AS A CONSEQUENCE OF THE ALGERIAN EXCLUSIVE ECONOMIC ZONE

- Ahan Gadkari*

ABSTRACT

Algeria's exclusive economic zone (EEZ), which was established in 2018 via presidential decree 18-96, has been met with a lot of opposition. Such a situation would lead to delimitation conflicts and disputes from other states, primarily over the issue of freedom of navigation. In the last twenty years, especially, the possibility of exploring and exploiting renewable energy resources offshore and the discovery of large deposits of offshore hydrocarbons has resulted in States taking relatively aggressive policy measures to secure their EEZs. The new economic and environmental pressures on the Mediterranean States will cause them to seek to expand their sovereign rights over ever-expanding maritime areas. This article, therefore, discusses in depth the practical rationale behind Algeria creating an EEZ and the delay associated with the same. It also explores the notion of Mediterranean Specificity. Furthermore, this article lays down the importance of strategizing optimal energy security. In the last section, the article discusses the repercussions of Algeria's exclusive economic zone – especially the reactions from Spain and Italy. The paper also discusses the possibility of dispute resolution amongst the States, before discussing the way forward.

Keywords: EEZ, Mediterranean Specificity, Optimal Energy Security, UNCLOS, Dispute Resolution

INTRODUCTION

On March 20, 2018, through presidential decree 18-96,¹ Algeria finally instituted, dare we say it, like other Mediterranean countries, an exclusive economic zone (EEZ), “*the most spectacular*

* Student, Jindal Global Law School, Sonipat.

creation of the new law of the sea.”² Indeed, the vast majority of states bordering the northwestern part of the Mediterranean Sea had already established such spaces, after a long reluctance, sometimes described as a “*Symptom of EEZ-phobia*”³ and a “*Mediterranean exception*.”⁴ For example, Morocco established an EEZ in 1981,⁵ Tunisia in 2005,⁶ Libya in 2009,⁷ France in 2012,⁸ and Spain in 2013.⁹ The reasons for this reluctance to establish such zones are multiple and relate as much to the legal, geographical, and economical as to the politico-geostrategic order.

First, because it is a semi-enclosed sea,¹⁰ a basin dotted with islands and peninsulas, the distance between the opposite coasts of which nowhere exceeds 400 nautical miles,¹¹ so if two States were to proclaim their EEZs with an extent of 200 nautical miles, as permitted by the United Nations Convention on the Law of the Sea (UNCLOS),¹² any portion of the high seas in the Mediterranean would disappear. This would lead to disputes by third States mainly regarding the question of freedom of navigation and would undoubtedly generate conflicts of delimitation.

¹ United Nations, ‘Official Gazette of the Republic of Algeria No 18, Presidential Decree No 18-96 of 2 Rajab AH 1439’ (20 March 2018) <www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DZA_2018_Decree_1896_en.pdf> accessed 9 September 2022.

² *The Palgrave Encyclopedia of Global Security Studies* (1st edn, 2023).

³ Budislav Vukas, ‘State Practice in the Aftermath of the UN Convention on the Law of the Sea: The Exclusive Economic Zone and the Mediterranean Sea’ in Anastasia Strati, Maria Gavouneli and Nikos Skourtos (eds), *Unresolved Issues and New Challenges to the Law of the Sea: Time Before and Time After* (Martinus Nijhoff Publishers 2006).

⁴ *ibid.*

⁵ William Pulido Pulido, ‘Morocco, the Canary Islands and the Exclusive Economic Zones (ZEE)’ *Revistaejercitos*, 27 December 2019) <<https://revistaejercitos.com/en/2019/12/27/marruecos-canarias-y-las-zonas-economicas-exclusivas-zee/>> accessed 9 September 2022; Yahia Hatim, ‘Morocco Officializes Laws Delimiting Maritime Borders with Spain’ (*Morocco World News*), 31 March 2020) <<https://moroccoworldnews.com/2020/03/298217/morocco-officializes-new-laws-delimiting-maritime-borders>> accessed 9 September 2022; Andrea Gioia, ‘Tunisia’s Claims over Adjacent Seas and the Doctrine of “Historic Rights”’ (1984) 11 *Syracuse Journal of International Law and Commerce* 327.

⁶ Official Journal of the Republic of Tunisia, Loi 2005-50 (2005).

⁷ General People’s Committee, *General People’s Committee Decision No. 260 OF AJ 1377 (AD 2009) concerning the Declaration of the Exclusive Economic Zone of the Great Socialist People’s Libyan Arab Jamahiriya* (2009).

⁸ République Française, ‘Decree No 2012-1148 of October 12, 2012 creating an exclusive economic zone off the coast of the territory of the Republic in the Mediterranean’ (3 August 2018) <<https://legifrance.gouv.fr/loda/id/JORFTEXT000026483528>> accessed 10 September 2022.

⁹ Act No 15/1978 on the Economic Zone 20 February 1978; Royal Decree No 236/2013 of 5 April 2013.

¹⁰ Budislav Vukas, ‘The Mediterranean: An Enclosed or Semi-Enclosed Sea?’ in William T Vukowich, *The Law of The Sea: Selected Writings* (Martinus Nijhoff Publishers 2006); Mitja Grbec, *Extension of Coastal State Jurisdiction in Enclosed and Semi-Enclosed Seas: A Mediterranean and Adriatic Perspective* (Routledge 2014); Rainer Lagoni and Daniel Vignes (eds), *Maritime Delimitation* (Martinus Nijhoff Publishers 2006).

¹¹ *ibid.*

¹² *ibid.*

Then, because the institution of such zones would have, in the long term, harmful consequences as well on the biological resources because of their overexploitation as on the marine environment; the latter, which is already undergoing severe degradation due to numerous pollutions, will certainly be even more exposed in the event of exploration and exploitation of the mineral resources of these areas. Finally, because it is precisely a semi-enclosed sea, there is an alleged duty of cooperation between its riparian states as per Article 123 of the UNCLOS, which would be seriously affected by unilateral management of these new areas that are the EEZs.

However, this “*EEZ-phobia*” is gradually switching to an “*EEZ-mania*”,¹³ particularly in the last twenty years following the discovery of large deposits of offshore hydrocarbons and the possibility of exploring and exploiting renewable energy resources (mainly wind power). These new economic but also environmental challenges will push the Mediterranean States to seek to exercise their sovereign rights over increasingly large maritime areas, as allowed by UNCLOS with the concept of the EEZ.¹⁴

Coastal state par excellence with a coastline of more than 1280 km bordering the Mediterranean Sea,¹⁵ Algeria will also be part of the dynamics of “*jurisdictionalisation/nationalization*”¹⁶ of the said sea. Faced with this situation, it is legitimate to wonder about the real reasons for the recent creation of the EEZ, especially after so many years of reluctance, and about the consequences that could be generated by this act solemnly. By establishing its EEZ, Algeria decides, on the one hand, to operationalize its right recognized by the international law of the sea in general and by UNCLOS in particular (**Section II**),¹⁷ but at the same time takes the risk, long avoided, of triggering maritime delimitation disputes with States whose coasts are adjacent to its own or face it (**Section III**).

¹³ Béatrice Bonafé and Marco Pertile, ‘From EEZ-Phobia to EEZ-Mania? The Algerian Exclusive Economic Zone and Its Consequences’ (*Questions of International Law* 2022) <<http://qil-qdi.org/from-eez-phobia-to-eez-mania-the-algerian-exclusive-economic-zone-and-its-consequences/>> accessed 23 September 2022.

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ United Nations, ‘Official Gazette of the Republic of Algeria No 18, Presidential Decree No 18-96 of 2 Rajab AH 1439’ (20 March 2018) <www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DZA_2018_Decree_1896_en.pdf> accessed 9 September 2022.

THE ALGERIAN EEZ: A LEGAL INSTITUTION, LEGITIMIZED BY ECONOMIC AND ECOLOGICAL INTERESTS

After having hesitated for a long time to establish its EEZ so as not to be “*the first*” State to do so in the Mediterranean, Algeria finally found itself “*the last*” country of the Maghreb and the Western Mediterranean to have proclaimed this zone (*Section A*). However, the UNCLOS, Constitution of the Seas and the Oceans, does not establish any distinction between the States or for the maritime spaces in the creation of such zones, the only condition being the respect of the rights and obligations envisaged by its provisions. If the reasons for such a delay have never been officially communicated, the same goes for the process that led to the proclamation of the Algerian EEZ, even if the most plausible reason seems to relate to economic, environmental but, above all, energy (*Section B*).

A. ALGERIAN EEZ: A LATE PROCLAMATION DUE TO THE MEDITERRANEAN SPECIFICITY

Actively participating in the elaboration of the concept of EEZ during the 3rd United Nations Conference on the Law of the Sea,¹⁸ then constitutionalizing it from 1976,¹⁹ even before its consecration by UNCLOS,²⁰ Algeria did not establish its EEZ, however, until March 20, 2018, decades after certain Mediterranean states proclaimed theirs.

Such a delay can be explained essentially by the fact that the effective proclamation of this zone would undoubtedly have resulted in inevitable conflicts, particularly of maritime delimitation, especially with Italy and Spain, whose coasts are very close to the coasts States bordering the Mediterranean have long hesitated to establish EEZs in this sea or to delimit their continental shelves,²¹ contenting themselves with fragmented or limited zones,²²*sui generis*²³ – including the

¹⁸Harry N Scheiber, Nilufer Oral and Moon Sang Kwon (eds), *Ocean Law Debates: The 50-Year Legacy and Emerging Issues for the Years Ahead* (Brill 2018).

¹⁹Boukabene Larbi, ‘The Algerian Exclusive Economic Zone and the Question of Maritime Boundaries with Neighboring States’ (2021) 8 *Revue droit des transports et des activitésportuaires* 6.

²⁰ *ibid.*

²¹Budislav Vukas, ‘The Mediterranean: An Enclosed or Semi-Enclosed Sea?’ in William T Vukowich, *The Law of The Sea: Selected Writings* (Martinus Nijhoff Publishers 2006).

²²Tullio Scovazzi, ‘International Law of the Sea as Applied to the Mediterranean’ (1994) 24 *Ocean & Coastal Management* 71.

question of the compatibility with the 1982 Convention has been widely debated by international doctrine²⁴ – so that most of the Mediterranean obeyed the statute of the high seas and was governed by the principle of freedom.²⁵ On the motivations of this attitude, Professor Umberto Leanza could write that the establishment of such zones would entail serious dangers of territorialization of the Mediterranean Sea, thus hindering its vocation as a very important international waterway.²⁶ For his part, Professor Tullio Scovazzi considered that this reluctance could arise from the difficult problems of delimitation of the maritime borders still open between several States, or even from the priority given to certain interests such as the freedom of navigation, the mobility of military fleets or access to living resources.²⁷ In the same vein, Professor Nathalie Ros believes that if until recently the Mediterranean States have for the most part refrained from establishing an EEZ, it is effectively in order not to open Pandora's Box of delimitation conflicts,²⁸ but also in order not to deprive this sea of passage, of parts of the high seas whose existence is a condition linked to the freedom of navigation.²⁹

However, from a strictly legal point of view, nothing prevents Mediterranean States from declaring EEZs if there is a political will to do so. Neither the provisions of UNCLOS nor general international law prevent States bordering closed or semi-closed seas from establishing such zones,³⁰ the only condition being to respect the obligation of cooperation established by Article 123 of the said convention in exercise of their rights and performance of their obligations,³¹ the establishment of such zones in no way contravening the principle of freedom or its corollaries.

²³Constantinos Yiallourides, 'Maritime Boundary Delimitation in the Eastern Mediterranean Sea: Progress and Outstanding Legal Issues' [2021] Eastern Mediterranean Affairs 29.

²⁴ *ibid.*

²⁵Tullio Scovazzi, 'International Law of the Sea as Applied to the Mediterranean' (1994) 24 Ocean & Coastal Management 71.

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ Ros N, 'La Mer Méditerranée : Cas Particulier et Modèle Avancé de Gestion de La Haute Mer' (2011) 15 Annuaire du droit de la mer 33.

²⁹ *ibid.*

³⁰Boukabene Larbi, 'The Algerian Exclusive Economic Zone and the Question of Maritime Boundaries with Neighboring States' (2021) 8 Revue droit des transports et des activités portuaires 6.

³¹ *ibid.*

Despite the length of its coast, Algeria has always considered itself a geographically disadvantaged state,³² firstly because it borders a semi-enclosed sea, but above all because of two other facts: place, the fact that the often narrow and steeply sloping continental shelf in the Mediterranean is practically non-existent all along the Algerian coast; then, the existence opposite its coast of the Balearic Islands and Sardinia will have repercussions on the determination of its EEZ and deprive it of a large area at sea. This is why Algeria, instead of establishing its EEZ, instead opted for a “*reserved fishing zone*” (RFZ), which it created by legislative decree No 94-13 setting the rules relating to fishing,³³ and maintained law via 01-11.³⁴ Extending up to 32 nautical miles from the border with Morocco at Ras Ténès, and up to 52 nautical miles from Ras Ténès to the border with Tunisia, Algeria will exercise in this zone sovereign rights in terms of exploration and exploitation of fishery resources.³⁵ And if this zone seems entirely compatible with the provisions of UNCLOS,³⁶ the fact remains that its institution has not managed to fill the existing legal void in terms of the protection of the marine environment, the conduct of marine scientific research, or even the installation of works in this zone in the absence of an EEZ.³⁷

B. ALGERIAN EEZ: FISHERIES MANAGEMENT, ENVIRONMENTAL PROTECTION OR OFFSHORE STRATEGY FOR OPTIMAL ENERGY SECURITY?

The search for hydrocarbons and gas in the Mediterranean was relatively disappointing until the 1990s,³⁸ the discovery in the early 2000s of large quantities of hydrocarbon deposits, mainly in the eastern Mediterranean,³⁹ but also in Western Mediterranean⁴⁰ – revealing new energy and environmental issues – have pushed the States of this region to take measures for their

³²UNTC, ‘Convention Des Nations Unies Sur Le Droit de La Mer’ (*Un.org* 2019) <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_fr> accessed 23 September 2022.

³³ Journal Officiel De La Republique Algerienne Democratique Et Populaire, Mercendi (1994) 12 Moharram 1415.

³⁴ Journal Officiel De La Republique Algerienne Democratique Et Populaire, Dimanche (2001) 16 Rabie Ethani 1422.

³⁵ *ibid.*

³⁶Boukabene Larbi, ‘The Algerian Exclusive Economic Zone and the Question of Maritime Boundaries with Neighboring States’ (2021) 8 *Revue droit des transports et des activités portuaires* 6.

³⁷ *ibid.*

³⁸ James Stocker, ‘No EEZ Solution: The Politics of Oil and Gas in the Eastern Mediterranean’ (2012) 66 *Middle East Journal* 579.

³⁹ *ibid.*

⁴⁰ *ibid.*

exploration and exploitation in their continental shelves, but also and above all, to claim more and more sovereign rights by the institution of EEZ.

The real reasons for the proclamation of the Algerian EEZ have not been made public by the Algerian Government - at least officially - and even Presidential Decree No 18-96 remains very laconic and does not mention any of them, contrary to certain foreign documents establishing such zones.⁴¹ The wording used in Article 3 is very vague and refers directly to the provisions of UNCLOS on the subject: *“In its EEZ, the People’s Democratic Republic of Algeria exercises its sovereign rights and jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982, in particular Part V thereof.”* This part provides that the coastal state, has in this area, a range of sovereign rights and jurisdiction relating both to the exploration, exploitation and conservation of the biological and non-biological natural resources of the superjacent waters and the soil and subsoil of this area, as well as with regard to other activities for economic purposes, marine scientific research, the protection and preservation of the marine environment, or the establishment and use of artificial islands, installations and works (Article 55).

However, the analysis of the general context in which the Algerian EEZ was established can provide certain elements of response capable of founding the Algerian approach. According to the National Agency for the Valorization of Hydrocarbon Resources (ALNAFT),⁴² Algeria has an offshore hydrocarbon mining area extending over approximately 106,626.34 km² (140,000 km² according to recent data).⁴³ This area is divided into four vast exploration blocks, which are N° 143, 144a, 144b and 145.⁴⁴ It corresponds to the basins of Alboran in the West and Algerian-Provençal in its central and eastern parts.

⁴¹République Française, ‘Decree No 2012-1148 of October 12, 2012 creating an exclusive economic zone off the coast of the territory of the Republic in the Mediterranean (3 August 2018)
<<https://legifrance.gouv.fr/loda/id/JORFTEXT000026483528>>accessed 10 September 2022.

⁴² Journal Officiel De La Republique Algerienne Democratique Et Populaire, 12 Joumada Ethania 1426 (2005).

⁴³ Oil and Gas Journal, ‘Total, Sonatrach Expand Algerian Gas, Petrochemicals Development’ (2018)
<<https://ogj.com/refining-processing/article/17297035/total-sonatrach-expand-algerian-gas-petrochemicals-development>> accessed 10 September 2022.

⁴⁴ Mourad Medaouri and others, ‘The Transition from Alboran to Algerian Basins (Western Mediterranean Sea): Chronostratigraphy, Deep Crustal Structure and Tectonic Evolution at the Rear of a Narrow Slab Rollback System’ (2014) 77 Journal of Geodynamics 186.

Unfortunately, the absence (or the difficulty of accessing) of precise and updated maps does not make it possible to locate these prospecting and exploration zones exactly and at the same time to determine whether they do not encroach on other zones. Maritime states adjacent to or facing Algeria. On the geological level, the extent of the continental shelf of the Algerian offshore seems to be very limited and therefore unfavourable to the existence of large hydrocarbon deposits. However, some experts still believe that these mineral deposits in the Mediterranean could come to the rescue of the volumes discovered in onshore, increasingly diminished.⁴⁵ Thus, in 2004 already, the Algerian Ministry of Energy and Mines granted prospecting authorizations to the national hydrocarbon company SONATRACH on the perimeter called “*Western Offshore*” (blocks 143 and 144b),⁴⁶ and “*Eastern Offshore*” (block 144a and 145).⁴⁷

Following the significant discoveries of offshore hydrocarbons in the eastern Mediterranean, and after the establishment of the Algerian EEZ, SONATRACH signed, on October 29, 2018, two agreements for the exploration and evaluation of the offshore oil potential of the Algerian basin in its eastern parts and Western with the ENI group (Italy) and Total (France). The eastern part of the Algerian offshore will be operated with ENI over an area of around 14,965 km², while the western part will be operated with Total over an area of around 9,336 km². The operations will focus on the acquisition of 3D seismic data, seismic processing and their interpretation, as well as the drilling of an exploration well in each of the two zones.⁴⁸ According to the 2020 Annual Report of the national company SONATRACH, significant work has been carried out under these agreements.⁴⁹ It should also be noted that Total has abandoned the prospecting contract for offshore hydrocarbons off the Algerian west coast.⁵⁰

In addition, Executive Decree No 19-73, granting ALNAFT a mining title for the exploration and exploitation of hydrocarbons provides in its first article that “*it is awarded to the national agency*

⁴⁵ *ibid.*

⁴⁶ Journal Officiel De La Republique Algerienne Democratique Et Populaire, Dimanche 20 Rajab 1425 (2004).

⁴⁷ *ibid.*

⁴⁸ Oil and Gas Journal, ‘Total, Sonatrach expand Algerian gas, petrochemicals development’ (2018) <<https://ogj.com/refining-processing/article/17297035/total-sonatrach-expand-algerian-gas-petrochemicals-development>> accessed 10 September 2022.

⁴⁹ Sonatrach, ‘Annual Report 2020’ (2020) <https://sonatrach.com/wp-content/uploads/2021/12/RAPPORT-ANNUEL-2020_EN.pdf> accessed 10 September 2022.

⁵⁰ Adedapo O Adeola and others, ‘Crude Oil Exploration in Africa: Socio-Economic Implications, Environmental Impacts, and Mitigation Strategies’ (2021) 42 Environment Systems and Decisions 26.

for the development of hydrocarbon resources ALNAFT, a mining title for research activities and/or exploitation of hydrocarbons on the perimeter called 'OFFSHORE ALGERIA' with an area of 131,165, 44 km² and adjacent to the territories of the wilayas of El Tarf, Annaba, Skikda, Jijel, Béjaïa, Tizi-Ouzou, Boumerdès, Algiers, Tipaza, Chlef, Mostaganem, Oran, of Ain Temouchent and Tlemcen."

THE SPANISH AND ITALIAN REACTIONS FOLLOWING THE ESTABLISHMENT OF THE ALGERIAN EEZ: TOWARDS MARITIME DELIMITATION CONFLICTS?

Given the enormous economic and environmental stakes, but above all the new prospects for exploration and exploitation of the offshore of the north-western Mediterranean, having led to a veritable "*nationalization*" of this sea, the numerous proclamations of EEZs will lead certainly, without a real political will to overcome them, to maritime delimitation conflicts, as is the case in the eastern part of the Mediterranean.⁵¹ The recent Spanish and Italian protests following the establishment of the Algerian EEZ are an instructive example of this (*Section A*). These disputes, even if they have not yet crystallized, will require a peaceful settlement which could be achieved by various means (*Section B*), and result in maritime delimitation agreements such as the Convention relating to the delimitation of the maritime boundary between the People's Democratic Republic of Algeria and the Republic of Tunisia, signed in Algiers on July 11, 2011.⁵²

A. REACTIONS AGAINST THE UNILATERAL CREATION OF THE ALGERIAN EEZ

By a *Note Verbale* dated 27 July 2018 addressed to the Secretary-General of the United Nations (UNSG) by the Permanent Mission of Spain,⁵³ concerning Presidential Decree No 18-96, the Spanish Government wanted to make it known that it rejected the list of geographical coordinates of points fixing the outer limits of Algeria's EEZ, as contained in the annex to the

⁵¹ Josep Lloret and others, 'Impacts of Recreational Boating on the Marine Environment of Cap de Creus (Mediterranean Sea)' (2008) 51 *Ocean & Coastal Management* 749.

⁵² Journal Officiel De La Republique Algerienne Democratique Et Populaire, Dimanche 16 Dhou El Kaada 1434 (2013).

⁵³ United Nations, 'Convention Des Nations Unies Sur Le Droit de La Mer' (2020) 2019 *Droit de la mer Bulletin* 1.

said decree, filed on April 4, 2018, and that the Division of Maritime Affairs and the Law of the sea of the UN Secretariat circulated on April 17, 2018.⁵⁴ Indeed, the presidential decree of 2018 is silent on the method used to calculate the coordinates and does not specify the way used to consider the different islands facing the Algerian coast.

The geographical coordinates also seem to show that the Algerian claim encroaches on the EEZ claimed by Spain. Thus, the Spanish Government decided not to recognize the delimitation of the maritime spaces of Algeria and Spain according to these excessive coordinates in relation to the median line of equidistance between the Algerian coasts and the Spanish coasts. It considers that the said delimitation encroaches on the Spanish EEZ in the north-western Mediterranean,⁵⁵ as established by Royal Decree 236/2013 of April 5, 2013. It thus considers that the equidistance line between the lines bases for measuring the breadth of the territorial sea is the most equitable solution for delimiting the EEZs by agreement between States whose coasts are adjacent or opposite each other, and declares that it is fully prepared to enter into negotiations with the Government of Algeria in order to reach a mutually satisfactory agreement on the outer limits of their respective EEZs, in accordance with Article 74 of UNCLOS, and as provided for in Articles 2 of Royal Decree 236/2013 and Article 2 of Algerian presidential decree 18-96.

By a *Note Verbale* of November 25, 2018,⁵⁶ and referring to the deposit by Spain, on August 31, 2018, of a list of geographical coordinates of points concerning the outer limits of the Spanish EEZ,⁵⁷ the Government of Algeria wanted to emphasize that the unilateral delimitation carried out by Spain did not comply with the letter of UNCLOS and did not take into consideration the configuration, the particular specificities and the special circumstances of the Mediterranean, as well as the rules and relevant principles of international law that should govern the equitable delimitation of maritime spaces between Algeria and Spain, in accordance with Article 74 of UNCLOS. Furthermore, the Algerian Government expressed its opposition to the drawing of the outer limits of the Spanish EEZ, some parts of which are largely excessive and create an area of

⁵⁴ United Nations, 'Circular Communications from the Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, MZN (Maritime Zone Notifications)' (2018) MZN 135 2018 LOS.

⁵⁵ Boukabene Larbi, 'The Algerian Exclusive Economic Zone and the Question of Maritime Boundaries with Neighboring States' (2021) 8 *Revue droit des transports et des activités portuaires* 6.

⁵⁶ People's Democratic Republic of Algeria, *Note Verbale* (25 November 2018).

⁵⁷ United Nations, 'Circular Communications from the Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, MZN (Maritime Zone Notifications)' (2018) MZN 135 2018 LOS.

overlap with the Algerian EEZ, and that it, therefore, does not recognize the coordinates appearing in Royal Decree 236/2013. It appears from the analysis of these declarations that the essence of the problem between the two riparian States resides in the fact that Spain claims the application of the principle of equidistance, expressly provided for in its internal legislation,⁵⁸ whereas Algeria, given the configuration of its coast and the presence of islands in front of it, is a supporter of equity and equitable principles.⁵⁹ Nevertheless, bearing in mind the ties of friendship and the relations of cooperation that bind it to Spain, the Algerian Government has expressed its readiness to work, through dialogue and bilateral negotiations, towards an equitable solution on the outer limits of the two EEZs, in accordance with UNCLOS. Pending a definitive delimitation, the Algerian Minister of Foreign Affairs, by a *Note Verbale* No 15/422/MAE/DAJ/2019, dated June 20, 2019, wished to underline, in general, and rather vague terms, that “*the case law and state practice require that Algeria and Spain refrain, at this stage, from engaging in activities in the disputed overlapping area, linked to their sovereign rights, in particular exploration and exploitation, conservation and management of natural resources, biological or non-biological, as provided for in Article 56 of UNCLOS.*”⁶⁰ This Algerian position is described by some authors as “*important from the point of view of the law of the sea*” because it seems to represent an acknowledgement of an obligation against the coastal State not to engage in unilateral activities arising from sovereign rights in the disputed area.⁶¹

On the other hand, by a *Note Verbale* of November 28, 2018 addressed to the UNSG by the Permanent Mission of Italy,⁶² concerning the Algerian presidential decree No 18-96, the Italian Government objected to the delimitation of the EEZ Algerian, insofar as it encroaches on certain areas of exclusively legitimate Italian interest.⁶³ It recalls that pursuant to Article 74 of UNCLOS, the delimitation of the EEZ is carried out by agreement in order to achieve an equitable solution. While waiting for this agreement, the States will have to do their best to conclude provisional arrangements. To this end, the Italian Government has expressed its readiness to undertake negotiations under Article 74 of UNCLOS to reach a mutually

⁵⁸ Enrico Broggin, ‘Law of the Sea: Maritime Delimitation in the Central Mediterranean Sea and Algeria’s Proclamation of an Exclusive Economic Zone’ (2021) 30 The Italian Yearbook of International Law Online 506.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ People’s Democratic Republic of Algeria, *Note Verbale* (20 June 2019).

⁶² Permanent Mission of Italy to the United Nations, *Note Verbale* (28 November 2018).

⁶³ *ibid.*

satisfactory agreement in this matter. In reaction to the Italian position, the Algerian Government replied on June 20, 2019,⁶⁴ that the establishment of its EEZ falls within the framework of its national legislation and the exercise by Algeria of its rights. sovereigns recognized in this area by UNCLOS more particularly and international law more generally. The Algerian Government also emphasizes that the delimitation of its EEZ was determined taking into consideration the relevant rules and principles of international law guaranteeing a fair and equitable delimitation of the maritime areas between Algeria and Italy, in accordance with the Article 74 of UNCLOS. And contrary to the response to the Spanish objections, with regard to the Italian objections, Algeria, in its response, makes no reference to a “*disputed overlapping area*”, the Algerian Government simply recalls its attachment to the bonds of friendship and to the existing cooperation relations between the two countries, and reassures Italy of its full readiness to work to reach a fair and mutually acceptable solution on the outer limits of the Algerian EEZ and the Italian maritime space.

There are therefore indeed, in the author’s view, premises for maritime disputes between Algeria on the one hand, and Spain and Italy on the other - notwithstanding the official declarations⁶⁵ - which will have to, sooner or later be settled.

B. PROSPECTS FOR DISPUTE RESOLUTION

Article 74 of UNCLOS, to which the Algerian, Spanish and Italian declarations refer, provides that the delimitation of the EEZ between States whose coasts are adjacent or opposite each other is carried out by agreement in accordance with international law, in order to reach a fair solution. This is also confirmed by Article 2 of the presidential decree establishing the Algerian EEZ which stipulates that “*the outer limits of the exclusive economic zone may, if necessary, be modified within the framework of bilateral agreements with the States whose coasts are adjacent to or facing the Algerian coasts, in accordance with the provisions of Article 74 of the United Nations Convention on the Law of the Sea of 1982.*” But if they do not reach an agreement within a reasonable time, the States have recourse to the procedures provided for in Part XV of the Convention, relating to the settlement of disputes (art. 279-299). The latter begins by laying

⁶⁴ People’s Democratic Republic of Algeria, *Note Verbale* (20 June 2019).

⁶⁵ People’s Democratic Republic of Algeria, ‘Press Release’ <<https://aps.dz/en/>> accessed 23 September 2022.

down the obligation of States to settle their disputes by peaceful means. Then, it proposes a set of ways that can lead to the resolution of the conflict: non-jurisdictional (mediation, conciliation, etc.), contractual, provisional arrangements,⁶⁶ jurisdictional, with a general tribunal like the International Court of Justice (ICJ), a specialized tribunal like the International Tribunal for the Law of the Sea (ITLOS), an arbitral tribunal constituted in accordance with Annex VII to the Convention, or special arbitral tribunal constituted in accordance with Annex VIII. Regarding possible disputes between Algeria, Spain, and Italy, several scenarios can be envisaged for their settlement, including the legal route, even if it seems difficult to envisage. Indeed, Spain made a declaration of acceptance of the compulsory jurisdiction of the ICJ – under Article 36(2) of the Statute of the Court – in 1990,⁶⁷ then declared itself also in favour both at the ICJ and at the ITLOS for the settlement of maritime disputes.⁶⁸ Italy also declared itself in favour of the compulsory jurisdiction of the ICJ in 2014⁶⁹ and also of ITLOS.⁷⁰ Conversely, Algeria has still not accepted the compulsory jurisdiction of the ICJ⁷¹ – which excludes the jurisdiction of the said conflict for the settlement of any dispute between Algeria and Spain or Algeria and Spain. Italy – and declared, upon its ratification of UNCLOS in 1996, that it does not consider itself bound by the provisions of Article 287(1)(b) of the Convention as to the submission of disputes to the ICJ, and that it considers the prior agreement of all the parties involved necessary in each case to submit a dispute to this Court.⁷² Nevertheless, Algeria, by a declaration of May 22, 2018, under Article 287(1) of UNCLOS, affirms its choice for ITLOS for the settlement of disputes relating to the interpretation or application of the Convention.⁷³

⁶⁶ Alan E Boyle, 'Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction' (1997) 46 International and Comparative Law Quarterly 37.

⁶⁷ ICJ, 'Declarations Recognizing the Jurisdiction of the Court as Compulsory' <<https://icj-cij.org/en/declarations>>accessed 23 September 2022.

⁶⁸ International Tribunal for the Law of the Sea, 'States Parties' <<https://itlos.org/en/main/the-tribunal/states-parties/>> accessed 23 September 2022.

⁶⁹ ICJ, 'Declarations Recognizing the Jurisdiction of the Court as Compulsory' <<https://icj-cij.org/en/declarations>>accessed 23 September 2022.

⁷⁰ International Tribunal for the Law of the Sea, 'States Parties' <<https://itlos.org/en/main/the-tribunal/states-parties/>> accessed 23 September 2022.

⁷¹ ICJ, 'Declarations Recognizing the Jurisdiction of the Court as Compulsory' <<https://icj-cij.org/en/declarations>>accessed 23 September 2022.

⁷² Stanimir A Alexandrov, 'The Compulsory Jurisdiction of the International Court of Justice: How Compulsory Is It?' (2006) 5 Chinese Journal of International Law 29.

⁷³ International Tribunal for the Law of the Sea, 'States Parties' <<https://itlos.org/en/main/the-tribunal/states-parties/>> accessed 23 September 2022.

It should be emphasized, however, that the provisions of Article 298 of UNCLOS allow States Parties not to accept one or more of the dispute settlement procedures provided for in Section II with regard to certain categories of disputes, including those concerning the application or interpretation of Articles 74 and 83 relating to the delimitation of maritime zones. Algeria,⁷⁴ Spain,⁷⁵ and Italy⁷⁶ have made declarations to this effect in order to exclude court proceedings. Thus, unless the said declarations are withdrawn (Article 298(2) UNCLOS), the means of settling any maritime disputes between these States would rather be agreement by negotiation within a reasonable time or conciliation within the meaning of Article 298(a)(i) of UNCLOS. And it is precisely with this in mind that Algeria, from 2019, in its letters addressed to both Italy and Spain, wished to recall that it “*renews its full availability, to work through dialogue, with a view to reach an equitable solution within the framework of a maritime delimitation agreement, in accordance with Article 74 of the United Nations Convention on the Law of the Sea.*”⁷⁷

Also, the Algerian and Italian authorities proceeded in September 2020, to the official installation of the Algerian-Italian Joint Technical Committee, responsible for the delimitation of the maritime borders between the two States.⁷⁸ With regards to Spain, during a joint press conference following a meeting between the Algerian and Spanish Ministers of Foreign Affairs in March 2020, the two parties expressed their common desire to negotiate for any problem of overlapping maritime zones, avoiding however, any clarification as to the timeframe or terms of the negotiations.⁷⁹

CONCLUSION

It appears at the end of this analysis that the “*late*” proclamation by Algeria of its EEZ in 2018 will certainly have advantages but also disadvantages. Such a zone will allow the Algerian State

⁷⁴ ICJ, ‘Declarations Recognizing the Jurisdiction of the Court as Compulsory’ <<https://icj-cij.org/en/declarations>> accessed 23 September 2022.

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ People’s Democratic Republic of Algeria, *Note Verbale* (20 June 2019).

⁷⁸ Algeria Press Service, ‘Algeria-Italy: Official Installation of Technical Committee in Charge of Delimitation of Maritime Borders’ (23 September 2020) <<https://aps.dz/en/algeria/35850-algeria-italy-official-installation-of-technical-committee-in-charge-of-delimitation-of-maritime-borders>> accessed 10 September 2022.

⁷⁹ Inti Landauro, ‘Spain Confident Algeria Will Respect Gas Supply Contracts despite Diplomatic Spat’ (*Reuters*, 9 June 2022) <<https://reuters.com/markets/europe/spain-confident-algeria-will-respect-gas-supply-contracts-despite-diplomatic-2022-06-09/>> accessed 10 September 2022.

on the one hand to exercise sovereign rights in terms of fishing over a larger area than that allocated by the RFZ – whose fate remains uncertain today – but also in terms of environmental protection, skills which it did not have before beyond 12 nautical miles. But the biggest advantage of this new institution will certainly be the economic profits derived from the offshore exploitation of hydrocarbons from the soil and subsoil of the Algerian EEZ, with all the risks for the marine environment and marine biodiversity that this may entail, especially in a semi-enclosed sea such as the Mediterranean, the balance between exploitation and protection is very difficult to achieve.

Moreover, this increasingly rampant trend of nationalization of the Mediterranean, in which Algerian policy fits like that of other States, will probably lead to a gradual abolition of the high seas in this geopolitically and strategically very important, and with it the “*international regime*” of this sea, responsible and balanced governance of this sea, with real and effective international cooperation, as advocated by Article 123 of UNCLOS.