

Multidisciplinary
SCIENTIFIC JOURNAL
OF MARITIME RESEARCH



University of Rijeka
FACULTY OF MARITIME STUDIES

Multidisciplinarni
znanstveni časopis
POMORSTVO

<https://doi.org/10.31217/p.37.2.5>

New Challenges on the Maritime Boundaries Delimitation Dispute Between Greece and Albania in the Corfu Channel

Kristofor Lapa, Ermal Xhelilaj

University of Vlora "Ismail Qemali", L. Pavaresia, Rr. Kosova, Vlore 9401, Albania, e-mail: kristofor.lapa@univlora.edu.al; ermal.xhelilaj@univlora.edu.al

ABSTRACT

The Albanian-Greek maritime border in the Straits of Corfu region and the Ionian Sea reflects a complicated geographical, historical, and political reality, which constitutes a special characteristic of the Balkan Peninsula coastal region as a whole. For many centuries, the navigational routes of the Strait of Otranto and the Corfu Channel were characterized as important strategic, military, and commercial seaways for the ancient peoples of the region. In this respect, even though the Albanian-Greek southern border region has been at the center of conflicts and disagreements between these countries for many years, the problem is not thought to be completely related to the specific delimitation of the maritime borderline. The interstate maritime boundary is official and internationally recognized and is shown on all official political maps as an international borderline. The Albanian-Greek borderline is a product that came as a result of the Balkan Wars and the First World War, in which there was a great involvement and influence of the Great Powers' diplomacy. Nowadays, the possibility of Albania-Greece interstate conflicts over the southern border area and maritime borders exists. In this context, ethnographic complexity is considered problematic due to the existence of the Greek minority in Albania, as well as Albanian immigrants living in Greece. On the other hand, the natural resources that possess the maritime regions of the Corfu Channel and the Ionian Sea are another reason for the dispute over the maritime border. However, according to US security institutions, these cross-border disputes between these states may only remain at the political level and not degrade further.

ARTICLE INFO

Review article

Received 18 April 2023

Accepted 14 September 2023

Key words:

Maritime boundaries
Corfu Channel
Greece-Albania maritime dispute
Dispute settlement
Maritime zones
Delimitation of territorial waters

1 Introduction

The agreement in principle regarding the definition of Albania's borders was reached by the London Conference during the summer of 1913. The International Commission on the Determination of the Southern Borders of Albania completed its mission regarding the delimitation of the Albanian-Greek border in December 1913¹. The final determination and legal sanctioning of the Albanian-Greek borders were delayed as a result of the outbreak of the First World War. The Conference of Ambassadors of November 9, 1921, under the jurisdiction of the Paris Peace Conference, confirmed with some minor changes the Albanian-Greek bor-

derline previously determined by the London Conference (1913)². An International Commission on the Delimitation of Boundaries consisting of France, Great Britain, and Italy, which began the demarcation of the concrete border, which also included the maritime boundary line along the Corfu Channel and the Ionian Sea, completed its work in 1925³. The final international legal act regarding the definition of Albanian-Greek borders was signed by Great Britain, France, Italy, Greece, and Yugoslavia on July 30, 1926, in Paris⁴. The

² Andriç, I. (2001). Konflikti Ballkanik dhe Shqipëria. in *Rruga Shqiptare e Modernizimit: Ngjarje, Klasa Politike, Njerëz dhe Marrëdhënie Ndërkombëtare*, Bajraba, Kosta and Gasparini, Alberto. ISIG. 159-60.

³ Castellan, *Histori e Ballkanit*, 397-98.

⁴ International Boundary Study, No. 113 – August 18, 1971, *Albania – Greece Boundary*, 4.

⁴ Castellan, G. (1991). *Histori e Ballkanit*, Shtëpia Botuese Cabej: Tiranë. 398.

following paragraph is the translation of the official text of the legal act from the French language regarding the maritime boundary line, based on the agreement reached in 1913 in London. According to the description of the International Boundary Commission in 1925, the border of the maritime part, officially accepted by Albania and Greece, is explained below: "*In the maritime segment of Ftelia Bay, the border line follows a line perpendicular to the general direction of the coast to the limits of territorial waters, leaving the small island of Tongo to Albania. The act was formulated in Florence, on January 27, 1925, and was signed by Med'hi Frashëri and Kap. Avramides, official delegates of the respective Governments of Albania and Greece*"⁵. Nevertheless, historically this specific borderline has been challenged by both states due to the importance that reflects the Corfu Channel entire region.

After the 2000s, as a result of the continuous pressure of the Greek state to redefine the maritime borders in the region of the Corfu Channel and in the Ionian Sea, Albania, and Greece, after several intergovernmental meetings, through the respective Ministers of Foreign Affairs, on 27.04.2009, signed the Agreement "*On the delimitation of their respective areas, the continental shelf and other maritime areas that belong to them based on international law*". The interstate agreement was sent to the Assembly of the Republic of Albania for ratification, by Article 121 of the Constitution. According to the report accompanying the interstate agreement sent to the Assembly, the conclusion of this agreement was necessary for the final determination of the maritime borders between the two neighboring states. According to the report, the Albanian government was interested in signing the agreement also because of the economic use of Albanian maritime spaces. The Albanian government was inclined to sign this agreement under conditions where Albanian-Greek relations were characterized by a climate of cooperation and based on the principles of good friendship. Both concrete states are parties to UNCLOS (1982), which, according to the content of the bilateral agreement on maritime boundaries, seems to have served as the legal basis for its formulation.

In the content of the Albanian-Greek agreement, it is emphasized that with the desire to strengthen the ties of good neighborliness and cooperation between the two countries; to develop the existing cooperation based on the Treaty of Friendship, Cooperation, Good Neighborliness and Security between the Republic of Greece and the Republic of Albania, signed on 21.03.1996; and aware of the need to accurately delimit the maritime spaces over which the two countries exercise or will exercise their sovereignty, sovereign rights, or jurisdiction in accordance with international law and, recognizing, in particular, the importance of delimiting the continental shelf for the purpose of the development of both countries, as well as taking into account and implementing the relevant provisions

of UNCLOS (1982), to which both countries are a party, and deciding that the maritime boundaries will be determined based on the principle of equivalence that is expressed from the middle line with the desire to effectively protect the marine environment from demanding and exploitative activities that may cause or are likely to cause its pollution; have agreed that the maritime border between Albania and Greece will be determined in accordance with the principle of equidistance. More specifically, the line of delimitation shall be the median line, each point of which is equidistant from the nearest points of the baseline (both continental and insular) from which the breadth of the territorial sea waters of the respective States is measured⁶.

Taking into consideration the final legal settlement, the Albanian-Greek agreement on the definition of maritime boundaries was defined by Albanian experts as an action that sanctioned the transfer in favor of the Greek state of a maritime space of 354.4 km², which based on international law is part of the territorial integrity of Albania. Furthermore, according to Albanian experts, the interstate agreement reflected a marked deviation from the basic principles of UNCLOS (1982)⁷ as well as from the judicial practice of the International Court of Justice (ICJ). In this context, there was a general opinion that the principle of justice and equity and the legal notion of proportionality regarding the delimitation of maritime borders, among the most important legal concepts in the international law of the sea, had not found application in this agreement.

2 Albanian Maritime Legislation vs. Unclos (1982) in the Context of Practical Implementation

Based on national legislation, Albania has determined a width of 12 nautical miles for its territorial waters. Law No. 8771, dated 19.04.2001 "On the State Border of the RSH" specifies that Albanian territorial waters extend to the middle line between the coastline of Albania, the island of Corfu, and the Greek islands of the Ionian Sea. According to this law, the maritime border of Albania is inviolable and it is indicated using special artificial or natural signs placed on the sea surface. The lines drawn perpendicularly above the boundary line on the land and sea surface constitute, respectively, the boundaries of the airspace, the subsoil, and the seabed of internal waters and Albanian territorial waters⁸. This provision gives Albania the right to exercise its sovereignty over territorial and in-

⁵ International Boundary Study, No. 113 – August 18, 1971, *Albania – Greece Boundary*, 7.

⁶ The Albania-Greece Agreement "On the delimitation of their respective areas, the continental shelf and other maritime areas that belong to them on the basis of international law", Preamble, Ministry of Foreign Affairs, Albania.

⁷ According to Article 122 of the Constitution of the Republic of Albania, the "UN Convention on the Law of the Sea (1982)" is an integral part of Albanian legislation.

⁸ Law No. 8771, dated 19.04.2001 "On the State Border of the Republic of Albania, Article 3.

ternal waters, as well as in airspace. According to the specific law, the Albanian state exercises its sovereignty or sovereign rights over the continental shelf for research and exploitation of its natural resources.

However, one month before the beginning of the Albanian-Greek negotiations for the delimitation of maritime borders, in January 2008, Law No. 8771, which sanctioned the border and baselines of the Albanian coast, was abrogated. Law No. 9861, dated 24.01.2008 "On the Control and Supervision of the State Border", eliminated every trace of the maritime border, including the baselines, bringing a serious problem for Albanian maritime zones. The most interesting fact on this issue is precisely the revision of Law 60/2012 "On amendments to Law No. 9861, dated 24.01.2008, "On Control and Surveillance of the State Border", which replaced the Law of 2001, in which it expressly emphasized that Article 3 of Law No. 8771, dated 19.04.2001 "On the State Border of RSH" came into force again. The amendment of this law three years after the signing of the Albanian-Greek agreement restored the maritime boundary line and the width of 12 nautical miles⁹.

Law No. 8771, dated 19.04.2001, has traditionally been considered by Greek researchers as a problematic legal act in terms of reaching an interstate agreement on the delimitation of maritime boundaries. Greek experts have pointed out that the existing legal situation significantly complicates the issue of the delimitation of maritime boundaries between the two states, especially in maritime areas when their extent or width is smaller than the international legal definition of territorial waters¹⁰. Accordingly, the Albanian government seems to have legally resolved the concern of Greek experts on the delimitation of the maritime boundaries in the Corfu Channel by abrogating Law No. 8871, which was a challenging legal obstacle for Greek interests. Just a few years before the signing of the agreement, the Greek researcher Krateros had expressed the view that the legal discrepancies between the two respective maritime legislations regarding the territorial waters of Albania and Greece may become an obstacle to a future interstate agreement between these states for the delimitation of maritime boundaries in the Corfu Channel region and those of the Ionian Sea¹¹.

From a geographical point of view, the Albanian-Greek coasts are characterized by curvatures, indentations, and capes that can be used as basic points for determining the general direction of the coast. The western part of the Cor-

fu Channel (the eastern coast of the island of Corfu) is characterized by a significant coastal indentation, which forms the bays of Ipsous and Krevatsoulas. The closing of these coastal bays, which according to Greek experts complies with the legal criteria for the definition of legal gulfs according to UNCLOS, in case a closing line of 6.7 nautical miles is drawn, could reduce the real distance between the Albanian coast and the median line of the Corfu Channel, measured from the new closing line of the aforementioned bays at not more than 1.6 nautical miles. The small Greek sea rocks of Vidho, Gouvinon, and Barketa near the coastline of the island of Corfu further complicate the legal situation, because they can be used as basic points of the baseline used to define the boundary line or territorial waters.

According to the agreement, Albania has accepted that straight baselines will be taken into consideration for Greece, starting not only from the base points on the continental coast but also on the coastline of the islands, going to the point of absurdity, such as the consideration as such of the sea rocky Barketa, at a time when only the normal baselines formed by the tide lines along the coast were taken as a basis for Albania. One of the most obvious issues is considered the extension of the baseline to the small Greek sea rock Barketa near the coast of the island of Corfu, as the Greek expert Krateros had predicted several years before the signing of the interstate agreement on the delimitation of maritime borders.¹² The extension of the baseline in the direction of these rocks directly affects the extension of Greek territorial waters in the Corfu Channel, in its narrowest part. In the Agreement, it is emphasized that the legal criteria of UNCLOS have been applied to determine the baseline of the respective coasts of the two states. According to Article 6, in the case of islands located in the headlands or islands with steep coasts, the baseline for measuring the width of the territorial waters shall be the low tide line in the seaward direction of the rock, as indicated by the corresponding symbols on officially recognized maps from the coastal states. On the other hand, based on Article 7 of this Convention, the application of straight baselines, which apply to states with deeply indented coasts, such as the case of the island of Corfu, applies to rocks or fragments of islands in the immediate vicinity of the coast. As a result, it seems that Article 7 on the definition of straight baselines has been used for the Greek coast. Nonetheless, according to the present legal provision, the application of the straight baselines should not be implemented for extreme extensions that are distinct from the general direction of the coast, and the sea areas lying within the baselines should be sufficiently closely linked to the land domain to be subject to the regime of territorial waters¹³.

⁹ Formal Document of the Meeting, dated 16.05.2012, Committee for Legal Affairs, Public Administration and Human Rights, Draft Law "On an amendment to the law no. 9861, dated 24.01.2008 "On the control and supervision of the state border", accessed January 23, 2014, www.parliament.al.

¹⁰ Krateros, M. I. (1997). *The Greek Territorial Sea in Greece and the Law of the Sea*, ed., Theodore Kariotis (Martinus Nijhoff Publishers, Kluwer Law International, USA. 137-38.

¹¹ Ioannou, "The Grek Territorial Sea," 137.

¹² Ioannou, "The Grek Territorial Sea," 137.

¹³ UN. (1982). *United Nations Convention on the Law of the Sea*. UN Publishing, London, UK. Article 7.



Figure 1 Albania-Greece Maritime Dispute in Corfu Channel – Orientation Map

Source: exit.al

In this perspective, the specific provision is considered legally ambiguous and with limitations in interpretation. The Convention fails to legally define what is meant by the proximity of offshore reefs to the coast, i.e. there is no internationally accepted definition of the concrete distance that a sea rock must have to the main coast or land domain to legally constitute a fundamental point for the extension or joining straight baselines. The Greek sea rock Barketa, used in the Albanian-Greek agreement as a basic point for the extension of straight baselines of the Greek coast, as well as other similar Greek rocks such as Vidho, Gouvinon, Peristeres, Psilos that are located near the coastline of Corfu, according to the opinions of various experts, including the author of this study, is not positioned close enough to meet the legal criteria according to the legal provision of Article 7 of UNCLOS. Of course, the Greek experts can interpret these legally ambiguous provisions differently, defending the Greek position, as it managed to implement in the agreement. However, an unwavering legal position could also be maintained by the Albanian side, which could use this probable legal vacuum of international law to support its legal approach regarding the Albanian territorial waters and other maritime zones.

3 The Disagreement over the Equidistance Legal Notion

International treaties are often characterized as products of complicated compromises and agreements, which express diverse interests based on the national policies of different coastal states. Consequently, many treaties or international conventions are deliberately adopted with legal ambiguities, deficiencies, and interpretation issues for certain provisions. This is due to the specific legal provisions which represented important interests for the states, becoming the subject of debates, disputes, and hard negotiations. As a consequence, the legal wording of certain legal provisions has become as acceptable as possible for

the parties, reflecting as a result ambiguities or significant deficiencies of a legal nature. This appears to be the case with Article 7 of UNCLOS, which is thought to have been the product of complicated compromises based on the interests of the UN member states that adopted it. The Albanian experts could utilize this legal ambiguity to prevent the extension of Greek straight baselines towards the aforementioned sea rocks and thus protect national interests by preventing the conceding of the Albanian territorial waters in the Corfu Channel and the Ionian Sea.

One of the main issues that is considered a fundamental factor related to the delimitation of territorial waters according to the Albanian-Greek agreement, is the legal principle of equidistance. Even though the principle of equidistance is considered one of the main principles for delimiting territorial waters in international practice¹⁴, its application can never be absolute due to many complicated issues of a legal nature as well as the geographical position and special circumstances that characterize certain maritime regions. Taking into consideration the state practice, the principles and methods for the delimitation of maritime boundaries are implemented depending on the circumstances and the specific context, mainly of a geographical and historical nature. The general principle and main purpose of UNCLOS, as conceived in its preamble, is the just, equitable, and proportional delimitation of maritime zones. The fourth paragraph of its preamble underlines the importance of UNCLOS for the international community, which promotes the peaceful use of the seas and oceans, and the equitable and efficient utilization of oceans and their natural resources¹⁵. Furthermore, it is emphasized that the codification and development of the law of the sea through the Convention will contribute to the strengthening of peace, security, cooperation, and friendly relations between nations, based on the principle

¹⁴ UN, *United Nations Convention of the Law of the Sea*, Article 15.

¹⁵ UN, *United Nations Convention of the Law of the Sea*, Preamble, Para 4.

of justice and equal rights¹⁶. The main objective of these principles reflected in the preamble of UNCLOS, as it has been observed by experts of international law, generally aims to avoid the mechanical and stringent application of the principle of equidistance, which can often lead to resolutions that favor one party (thus harming the other party), a standard which can be considered unacceptable and problematic based on the requirements of fundamental justice and the principle of justice and equity¹⁷.

In this respect, the strict application of the equidistance principle has been substituted in many cases of interstate disputes on the delimitation of territorial waters by the principle of equidistance under the effect of special circumstances¹⁸. The first legal assessment against the applicability of the principle of equidistance, outlined in the Territorial Waters Convention (1958), was sanctioned by the ICJ in the case of the Continental Shelf of the North Sea, where it declared that "*the method of equidistance had not been converted into a principle of customary international law and the delimitation of maritime boundaries may not be characterized by the application of this method*"¹⁹. The decision of the ICJ essentially reflected the legal principle that special geographical circumstances should be considered fundamental elements in terms of the delimitation of maritime boundaries. The Court in the *North Sea Continental Shelf Proceedings (1969)*, considered the general coastal configuration of the parties involved in the conflict as special circumstances, which were necessary to take into account²⁰. It was further maintained that it is necessary to analyze in detail the geographical configuration of the coasts of the respective states, given that the land domain is the source of legal power or authority through which it is possible to define maritime boundaries according to the international law of the sea. The ICJ emphasized that the coasts of Denmark and the Netherlands were relatively straight, while the coast of Germany was cut into and with numerous indentations²¹. In this case, the application of the strict equidistance principle penalized Germany by leaving it with only an insignificant area of the legally contested maritime zone. As a result, the purpose of the delimitation process to achieve a just and equitable settlement could not be implemented. The general coastal configuration has been assessed as a special geographical circumstance by the ICJ even in the legal process of mari-

time boundary delimitation between Tunisia and Libya in 1982²².

In light of these developments, it is evident that the fundamental issue in the implementation of Article 15 of the UNCLOS on the delimitation of maritime boundaries for the states opposite each other in the Ionian Sea is precisely the special circumstances principle. European experts have pointed out that strict equidistance application in certain regions of the Mediterranean would create practical problems, crises, and interstate conflicts²³. Regarding this issue, several researchers emphasize that coastal states constricted by islands that are under the sovereignty of other states or that are surrounded at a close distance by their neighbor states may strongly oppose the application of the equidistance principle for the delimitation of territorial waters or other maritime areas²⁴. This situation is similarly reflected in the case of the Albanian-Greek coasts in the Ionian Sea, which are completely different from each other since the Albanian coast is a continental coastline, generally regular and straight, while the Greek coastline is a typical coastal islet cut into and deeply indented. Additionally, the island of Corfu generates favorable geographical circumstances for the Greek party as it is characterized by cut-into, protruding capes, minor bays, and deep indentations, which enable Greece to benefit greatly from the legal ambiguities that relevant UNCLOS' legal provisions reflect. At the same time, the island of Mathraki, Othoni, and Erikusa can construct an extreme northern extension of the Greek territorial waters, which may affect the reduction of the Albanian territorial waters. The Gulf of Corfu, on the other hand, as a legally enclosed bay²⁵, narrows the Albanian territorial waters excessively, bringing the equidistant median line in immediate proximity to the Albanian coast. Consequently, these other special circumstances previously discussed would require and compel the modification or correction of the median line derived by the method of strict equidistance between two respective coastlines²⁶.

In the course of its legal practice, the ICJ has argued on a general basis that the conditions, principles, and rules that apply to the delimitation of territorial waters are determined by the method of equidistance under the effect of special circumstances, while for other maritime areas, that of the principle of justice and equity²⁷. According to

¹⁶ UN, *United Nations Convention of the Law of the Sea*, Preamble, Para 7.

¹⁷ Scovazzi, T. (2002). *Elementi di Diritto Internazionale del Mare*, Terza Edizione, (Giuffrè Editore, Milano. 4-5.

¹⁸ According to Article 15 of UNCLOS, the principle of strict equidistance does not apply in cases of territorial waters delimitation when there are special circumstances or for reasons of historical titles.

¹⁹ *North Sea Continental Shelf*, ICJ, 1969, Para 56, 79, 82 "the equidistance principle could not be regarded as being a rule of law..." accessed May 12, 2018, <http://www.icj-cij.org/docket/files/52/5561.pdf>.

²⁰ *North Sea Continental Shelf*, ICJ, 1969, Para 56, 57, 59, 71, 79, 83.

²¹ *North Sea Continental Shelf*, ICJ, 1969, Para 56, 57, 59, 71, 79, 83.

²² ICJ, Case Concerning the Continental Shelf (*Tunisia/Libyan Arab Jamahiriya*), 24 February 1982, accessed May 14, 2013, <http://www.icj-cij.org/docket/index.php?sum=330&p1=3&p2=3&case=63&p3=5>.

²³ Alibali, A. (2009). Marrëveshja Detare dhe Gjykata Kushtetuese."Referat në Universitetin Nju Jorkut [NYU] në Nju Jork, SHBA. 6.

²⁴ Klot, N. (1987). Maritime Boundaries in the Mediterranean: Aspects of Cooperation and Dispute, in *Maritime Boundaries and Ocean Resources*, ed., Gerald Blake, (Coorm Helm, London Sydney. 210.

²⁵ Ioannou, "The Grek Territorial Sea," 137.

²⁶ Alibali, "Marrëveshja Detare dhe Gjykata Kushtetuese," 6.

²⁷ UN, *United Nations Convention of the Law of the Sea*, Article 15, 57 & 76.

the ICJ in *Cameroon v. Nigeria* judgment, these principles and criteria are considered similar and provide for the application of the equidistant principle by proceeding further with the geographical consideration or historical factors, which may impose the modification or adjustment of the boundary line²⁸. Since the Albanian-Greek agreement has fully implemented the principle of equidistance without taking into account the main principle of achieving a just and equitable outcome, it contradicts the very delimiting legal principles of UNCLOS²⁹. The definition of the just and equitable principle for the delimitation of maritime boundaries is related to the concept of special circumstances which means that the geographical features for each case of delimitation of maritime boundaries vary so much that it is difficult, if not impossible, to sanction permanent and undisputable principles. This also applies to the principle of equidistance regarding the delimitation of maritime borders between states. The notion of special circumstances seems to have found relatively strong support in the jurisprudence of the ICJ and arbitral tribunals.

In this context, it should be noted that while the Greek-Albanian agreement has strictly applied the principle of equivalence, the Greek state in the interstate agreement with Italy has instead applied the principle of modified equidistance, thus taking into consideration the special circumstances that characterize the geographical situation or historical factors between the two states. On the other hand, the treaty between Italy and France for the delimitation of territorial waters in the Strait of Boniface amid Corsica and Sardinia has not applied precise geometric criteria due to the complex geographical situation, characterized by a jagged and indented coastline in the presence of many islands and sea rocks³⁰. In the *Romania v. Ukraine* case, the ICJ laid out the methodology applied in the demarcation of maritime boundaries. The court stated that the delimitation methodology generally consists of three stages: 1) Determining the provisional boundary line based on the equidistance principle realized with geometrically objective methods; 2) Examining whether or not there are modifying factors for correcting the transient borderline, and 3) Determining whether the final maritime boundary line reflects a just and equitable outcome based on the principle of proportionality³¹.

4 The Implementation Issues of the Justice and Equity Legal Principle

In light of these considerations, it is evident that the delimitation of maritime zones and boundaries is considered a complex and problematic legal matter. Consequently, the international community and the ICJ, despite their

efforts, find it difficult to generate a universal legal principle for all cases of maritime boundary delimitation processes. UNCLOS solely sets out the purpose of achieving the maritime boundary delimitation process and does not state the principles and methods for achieving a just and equitable outcome. However, customary international law, which exerts a fundamental function towards the delimitation of maritime boundaries, promotes the notion that delimitation should be in accordance with the just and equitable principle, taking into account the particular circumstances prevailing. The legal principle of justice and equitable delimitation does not impose obligations but lays down guidelines for achieving just and equitable delimitation results. A standard delimitation rule or method may not be applicable in all circumstances, regardless of geographic or historical reality or other facts. However, it is generally accepted that a boundary delimitation, to be sustainable and long-term, must be just, proportionate, and equitable, and must take into consideration the special circumstances that characterize the maritime area that is subject to delimitation.

The legal concept of justice and equity exercised especially during the process of defining and delimiting maritime boundaries between different coastal states is thought to reflect the status of general international legal principles. In international legal practice, there are a considerable number of legal cases, which refer to the concept of justice and equity as a moral principle of great legal value in the international system. In the legal case *Holland v. Belgium (1937)*, concerning the river Meuse, the court maintained that the principles of justice and equity between states are traditionally considered an integral part of international law and are consistently applied by international courts³². Furthermore, the court stated that *when two states implement the important principle of justice and equity they normally assume mutual obligations. The state that does not implement these obligations should not be allowed to benefit from the rights of the other state. The reasoning of the Court goes on to emphasize that the principle of equity is based on the moral notion "equity is justice", that is, the party that seeks justice must at the same time offer justice*³³. The principle of justice and equity, which characterizes the decisions of the specific court case, represents legal provision 38 (1c) and is thought to have been applied by the ICJ and other international courts for similar judicial processes, as was indicated on the maritime boundary dispute between Burkina Faso and Mali in 1986³⁴.

²⁸ *Cameroon vs. Nigeria*, 2002 ICJ Rep. 303, 441, para 288.

²⁹ Alibali, "Marrëveshja Detare dhe Gjykata Kushtetuese," 5.

³⁰ Scovazzi, *Elementi di adiritto Internazionale del Mare*, 198-99.

³¹ Alibali, "Marrëveshja Detare dhe Gjykata Kushtetuese," 9-10.

³² *Diversion of Water from the Meuse, (Netherlands vs Belgium) 1937*, P.C.I.J., (Ser A/B), No 70: http://www.worldcourts.com/pcij/eng/decisions/1937.06.28_meuse.htm, Paragraph 23.

³³ *Diversion of Water from Meuse, (Netherlands vs Belgium) 1937*, Paragrafi 323.

³⁴ Dixon, M. (2009). *E Drejta Ndërkombëtare*, Tiranë: Instituti i Studimeve Ndërkombëtare A.I.S. 84.

During the Proceedings on the *Jurisdiction of Fishing Areas (United Kingdom v. Iceland)*, the ICJ aimed at achieving a just and equitable legal solution based on applied legal norms, succeeding in broadly promoting the moral notion of equality. The Court in the case of *United Kingdom v. Iceland (1974)*, held that to achieve a just and equitable settlement between these States Iceland's preferential fishing rights needed to be equated with traditional UK fisheries privileges while also taking into account the rights of other countries and the sustainable use of natural and living resources of the sea³⁵. The fundamental concept promoted by the judicial decisions of the ICJ lies in supporting the argument that the equity and justice notion is considered a source of international law of the sea in the sense of the effect it exerts in terms of the implementation of the relevant legal norms of international law. As a result, the above legal and moral principle reflects an equity and justice norm, which represents a way of interpreting the legal norms in force and one of their specific features³⁶.

The ICJ, during the review of court cases based on provision 38(2) of its Statute, is characterized by a legal balance exercised in respect of the support of the equality (justice) principle on the one hand, and the competence to make rational and fair decisions on the other. During the trial of *India v. Pakistan (1968)*, the court emphasized that equity does not represent an abstract concept, but confirms the application of certain norms of international law in respect of the principle of justice, equity, and impartiality³⁷, hence the legal concept of justice is part of international law, and as a result, the parties should rely on the specific concept when considering their legal issues³⁸. According to the court's judgment, relying on the principle of justice and equity means taking the judicial decision by the international legal norms and not out of their context based on the abstract understanding of the legal concept of justice³⁹.

In the judicial process *Continental Shelf of the North Sea (1969)*, between the Federal Republic of Germany, Denmark, and the Netherlands, the ICJ determined the definitive delimitation of the maritime boundaries precisely based on the principle of equity, justice, and proportionality⁴⁰. In the case *South Africa v. West Africa (1966)*, the ICJ, through the report of Judge Tanaka, characterized the principle of equity and justice as one of the main sources of the human rights' universal concept⁴¹. **The main feature reflect-**

ed during the examination of these legal issues is that the courts have not applied abstract principles of a legal nature, but have implemented the essential notion of the equity and justice principle, which have their roots in the relevant legislation applicable to actual issues. This legal philosophy came to the fore during the judicial process *Malta v. Libya (1985)*, for the continental shelf delimitation, wherein the court stated that the justice from which the equity and justice principle is derived is not just an abstract justice, but a justice established on international legal norms⁴².

5 Historical Legal Considerations Regarding the Boundary Delimitation

Another serious deficiency in terms of the specific agreement has to do with the historical facts that are related to the interstate border between Albania and Greece. The Albanian-Greek border has existed in principle since the establishment of the independent Albanian state and the adoption of international decisions on its status and borders. This state border was indicated by a line perpendicular to the coast, which followed the middle line of the Corfu Strait, being equidistant from the coasts of both countries and was reflected on nautical and geographical maps from each of the two countries. Consequently, the Albanian-Greek agreement should not have made extreme deviations from legal principles, as it happened. As long as the Albanian state has not ratified any cross-border agreement with Greece, the legal instrument that continues to be legally valid is the Florence Protocol of 1926. As a result, the Albanian-Greek border in the specific maritime region is determined through a multilateral international legal treaty⁴³. Annex III of the Florence Protocol (January 27, 1925) defines the maritime boundary line as follows: *In its maritime extension in the bay of Ftelia, the border continues to be directed through a normal line (perpendicular) to the general direction of the coastline up to the limit of territorial waters, leaving the small island of Tongo to Albania*⁴⁴. Based on the document approved by the representatives of France, Great Britain, and Italy and in the presence of the Albanian and Greek representatives, the border pyramid No. III/79 is described, as well as for its implementation, the contents of Annex III emphasized: *"Starting from the border mark No. III/79, the border line runs South-Southwest, descends very steep rocks, and after about 10 meters, meets the sea coast. Then it continues to the limit of territorial waters, following a normal line and the general direction of the sea coast (the small island of Tongo remains to Albania)*⁴⁵. In this way, the

³⁵ Fisheries Jurisdiction Case (United Kingdom vs Island), 1974, Rep. 3.

³⁶ Dixon, *E Drejta Ndërkombëtare*, 85.

³⁷ UN. (2006). *Reports of International Arbitral Award, The Indo-Pakistan Western Boundary (Runn of Kutch) between India and Pakistan*, Vol XVII (pp.1-576). 569-572.

³⁸ Shaw, M. N. (2003). *International Law*, Fifth Edition, Cambridge University Press. 100.

³⁹ UN, *Reports of International Arbitral Award, The Indo-Pakistan Western Boundary...*, pp. 569-572.

⁴⁰ North Sea Continental Shelf, *ICJ Reports*, (1969): 3 and 53.

⁴¹ Shaw, *International Law*, 100-101.

⁴² International Court of Justice, *Continental Shelf (Libya v. Malta)*, 1985.

⁴³ Krisafi, K. (2012). "Integriteti Territorial i Shqipërisë dhe Kufiri Detar me Greqinë", *Academe – Revista e Akademisë Shqiptare të Arteve dhe Shkencave*, Vol 1. 16-17.

⁴⁴ International Boundary Study, Nr.113 – 1971, *Albania – Greece Boundary*, 7.

⁴⁵ International Boundary Study, Nr.113 – 1971, *Albania –Greece Boundary*, 7.

extension of the boundary line in the maritime area between Albania and Greece has been sanctioned in the earliest and most authoritative documents, recognized and accepted by Albania and Greece, as well as by the International Boundary Commission that completed this process in 1925⁴⁶.

The aforementioned definition of Annex III of the Protocol of Florence (1925), provided only the general direction of the boundary line in principle. However, based on this legal Act and concerning the concepts, principles, and legal-national norms of the time, the Albanian and Greek sides had formulated and made known to each other and other countries the state boundary line in the Corfu Channel and the Ionian Sea. According to the Florence Protocol, in the maritime area that extends beyond Pyramid No. III/79, the maritime boundary follows the perpendicular that starts from it and continues in the sea area of the Corfu Channel, in the middle line between the two coasts. Where geographical conditions permit, a latitude of 6 nautical miles applies. With Law 230/1936, of 1936, Greece had set the width of its territorial waters at 6 nautical miles, which it did not change either with the adoption of the Maritime Code in 1973 or with Law 2321/1995, with which it ratified UNCLOS. Based on this logic, Albania has tacitly accepted the width of Greek territorial waters to the extent of 6 miles, just as Greece has also acted, which has accepted the width of 12 nautical miles announced by the Albanian state regarding the maritime boundary delimitation line in the area of the Corfu Channel⁴⁷. During the entire period since the approval of the above-mentioned acts, this boundary line has been respected by both parties and it does not appear that there have been any official contestations by either party. In case there were official disputes, according to international law, the Greek state had the right to request the correction of the maritime boundary line⁴⁸.

A similar situation arose during the US-Canadian disagreement over the status of the Northwest Strait when Canada's delineation of the Strait's baselines in 1986 prompted diplomatic protests from the US, the EU, and ten other states⁴⁹. Consequently, under international law, the legal status of the Northwest Strait remains unresolved. Several navigational maps prove that the maritime border between Albania and Greece was defined even in that period. **The maps are thought to have been used by four British warships, during their navigation in the Corfu Channel, on October 22, 1946, in which the Albanian-Greek maritime border is marked with a broken line, starting from**

Tongo Island, in the direction of the pyramid 79, continuing further into the strait, equidistant from the baselines of the respective Albanian and Greek coasts⁵⁰. The British government submitted these navigation charts to the ICJ to argue its claims against the Albanian side⁵¹. One of these navigation maps was also used by the Greek delegation at the Peace Conference in Paris, in 1946⁵².

Moreover, Albanian state legislation and practice show that maritime boundaries with Greece have been defined earlier. Although there has been no signed agreement between the two states, their historical and factual sovereignty in the respective areas has been recognized and tacitly accepted by the other side. This fact has even been emphasized by officials of the Foreign Ministry of Albania. In this context, it is important to note that after the Corfu Channel incident of 1946, Albania and Greece officially reconfirmed their borders through two protocols, signed respectively in Corfu on February 8, 1958, and in Saranda on February 2, 1958. August of the same year. An integral part of the protocols were also two appendices that contained the coordinates where the exact limits of the territorial waters were fixed, in which each party would carry out the mine clearing of its part. Likewise, the treaty of friendship, cooperation, good neighborliness, and security between the two countries, signed on March 26, 1996, also reaffirms the existing borders on land and sea, as well as in the rivers and lakes that dwell in the respective territories of Albania and Greece. This treaty specifies that both countries recognize and respect each other's territorial integrity⁵³.

6 Conclusions

The Albania-Greece interstate agreement is characterized by a lack of implementation of the basic legal principles of UNCLOS (1982), as well as the judicial practices of the ICJ related to this fundamental legal issue. In this context, it should be emphasized that the legal principle of justice and equity and the concept of proportionality regarding the delimitation of the Albanian-Greek maritime borders, among the most important legal concepts in customary international law and treaty law were not implemented in this agreement questionable from a legal point of view. For these reasons, as well as for other legal issues, the Constitutional Court of Albania unanimously decided the Agreement was incompatible with the fundamental laws and principles of the Constitution of the Republic of Albania.

⁴⁶ Krisafi, "Integriteti Territorial i Shqipërisë dhe Kufiri Detar me Greqinë," 14.

⁴⁷ Krisafi, "Integriteti Territorial i Shqipërisë dhe Kufiri Detar me Greqinë," 18.

⁴⁸ Donat, P. (2007). "The Arctic Waters and the Northwest Passage: A Final Revisit," *Ocean Development and International Law* 38. 3.

⁴⁹ Byers, M. (2009). *Understanding Sovereignty Disputes in the North: Who Owns the Arctic?* (Vancouver/Toronto, D & M Publishers Inc. 56.

⁵⁰ Krisafi, "Integriteti Territorial i Shqipërisë dhe Kufiri Detar me Greqinë," 16.

⁵¹ *The Corfu Channel case, (Merits)*, International Court of Justice, April 9, 1949, General List No.1.

⁵² *Memoranda of the Greek Government concerning Albania and Northern Epirus, 1946*, Public Record Office, në National Archives PRO. FO.371.58480 R 15646.

⁵³ Ministry of Foreign Affairs, Archive, year 1958, File No. 1 and 2, p. 1-2. Protocols "On the works for cleaning the Corfu Channel from floating mines", Corfu February 8, 1958 and Saranda August 2, 1958

This binding legal decision resulted in the interruption of its ratification procedures by the Parliament of Albania. Based on the problems that have characterized the Albanian internal and external political situation after the signing of the agreement, during the last years the Greek state has undertaken a political initiative to find a resolution for Albania to ratify the bilateral agreement. The interstate dispute between Albania and Greece on the delimitation of maritime boundaries in the Corfu Channel and in the southern region of the Ionian Sea, due to the problems and legal issues mentioned above as well as the influence exerted by the political, social, and economic factors in the two states that are involved in this complicated issue continues to exist to this day. In 2021, the two states officially agreed in principle that this dispute over maritime borders be judged before the International Court of Justice (ICJ). Currently, although both parties in this maritime dispute have agreed to adjudicate the conflict in the ICJ, there are no indications that this issue may be brought before this court of law any time soon. There have been political declarations regarding the preparation of the legal files as well as the composition of the working groups with legal and maritime specialists but it seems that no further legal activities have been undertaken by either Albania or Greece toward the resolution of this important matter, including the submission of the aforementioned legal dispute in the ICJ or any other international tribunal.

Funding: The research presented in the manuscript did not receive any external funding.

Author Contributions: Research, Kristofor Lapa & Ermal Xhelilaj; Writing, Kristofor Lapa & Ermal Xhellaj; Verification, Kristofor Lapa; Legal Analysis, Ermal Xhelilaj.

References

- [1] Alibali, A. (2009). Marrëveshja Detare dhe Gjykata Kushtetuese."Referat në Universitetin Nju Jorkut [NYU] në Nju Jork, SHBA.
- [2] Andriç, I. (2001). Konflikti Ballkanik dhe Shqipëria in *Rruga Shqiptare e Modernizimit: Ngjarje, Klasa Politike, Njerëz dhe Marrëdhënie Ndërkombëtare*, Bajraba, Kosta and Gasparini, Alberto. ISIG.
- [3] Byers, M. (2009). *Understanding Sovereignty Disputes in the North: Who Owns the Arctic?* (Vancouver/Toronto, D & M Publishers Inc.
- [4] *Camerun vs. Nigeria*, 2002 ICJ Rep. 303, 441, para 288.
- [5] Castellan, G. (1991). *Histori e Ballkanit*, Shtëpia Botuese Cabej: Tiranë.
- [6] *Diversion of Water from the Meuse, (Netherland vs Belgium) 1937*, P.C.I.J., (Ser A/B), No 70: http://www.worldcourts.com/pcij/eng/decisions/1937.06.28_meuse.htm, para. 23.
- [7] Dixon, M. (2009). *E Drejta Ndërkombëtare*, Tiranë: Instituti i Studimeve Ndërkombëtare AIIIS.
- [8] Donat, P. (2007). "The Arctic Waters and the Northwest Passage: A Final Revisit," *Ocean Development and International Law* 38.
- [9] Fisheries Jurisdiction Case (United Kingdom vs. Island), 1974, Rep. 3.
- [10] **Formal Document of the Meeting**, dated 16.05.2012, Committee for Legal Affairs, Public Administration and Human Rights, Draft Law "On an amendment to the law no. 9861, dated 24.01.2008 "On the control and supervision of the state border", accessed January 23, 2014, www.parlament.al.
- [11] Hart, L. K. (2001). "Një Histori e Marrëdhënieve Greko-Shqiptare." in *Rruga Shqiptare e Modernizimit: Ngjarje, Klasa Politike, Njerëz dhe Marrëdhënie Ndërkombëtare*, edited by Bajraba, Kosta. & Gasparini, Alberto. Shtëpia Botuese Gorizia.
- [12] ICJ, Case Concerning the Continental Shelf (*Tunisia/Libyan Arab Jamahiriya*), 24 February 1982, accessed May 14, 2019, <http://www.icj-cij.org/docket/index.php?sum=330&p1=3&p2=3&case=63&p3=5>.
- [13] International Boundary Study. No. 113 – August 18, 1971, *Albania – Greece Boundary*, The Geographer Office of the Geographer Bureau of Intelligence and Research.
- [14] International Court of Justice, Continental Shelf (Libya v. Malta), 1985.
- [15] Kliot, N. (1987). *Maritime Boundaries in the Mediterranean: Aspects of Cooperation and Dispute*, in *Maritime Boundaries and Ocean Resources*, ed., Gerald Blake, (Coorm Helm, London Sydney.
- [16] Krateros, M. I. (1997). *The Greek Territorial Sea in Greece and the Law of the Sea*, ed., Theodore Kariotis (Martinus Nijhoff Publishers, Kluwer Law International, USA.
- [18] Krisafi, K. (2012). "Integriteti Territorial i Shqipërisë dhe Kufiri Detar me Greqinë", *Academe – Revista e Akademisë Shqiptare të Arteve dhe Shkencave*, Vol. 1.
- [19] Law No. 8771, dated 19.04.2001 "On the State Border of the Republic of Albania.
- [20] *Memoranda of the Greek Government concerning Albania and Northern Epirus*, 1946, Public Record Office, në National Archives PRO.FO.371.58480 R 15646.
- [21] Ministry of Foreign Affairs, Archive, year 1958, File No. 1 and 2, p. 1–2. Protocols "On the works for cleaning the Corfu Channel from floating mines", Corfu February 8, 1958, and Saranda August 2, 1958.
- [22] *North Sea Continental Shelf*, ICJ, 1969, Para 56, 79, 82 "The equidistance principle could not be regarded as being a rule of law..." accessed May 12, 2018, <http://www.icj-cij.org/docket/files/52/5561.pdf>.
- [23] Public Record Office, në National Archives (Londer). Hartat kanë këtë kod reference: PRO.FO.371.72099. doc no.7326 *Corfu Channel Case*.
- [24] *The Corfu Channel case (Merits)*, International Court of Justice, April 9, 1949, General List No. 1.
- [25] The Albania-Greece Agreement "On the delimitation of their respective areas, the continental shelf and other maritime areas that belong to them based on international law". Ministry of Foreign Affairs, Albania.
- [26] Scovazzi, T. (2002). *Elementi di Diritto Internazionale del Mare*, Terza Edizione, Giuffrè Editore, Milano.
- [27] Shaw, M. N. (2003). *International Law*, Fifth Edition, Cambridge University Press.
- [28] UN. (1982). *United Nations Convention on the Law of the Sea*. UN Publishing, London, The UK.
- [29] UN. (2006). *Reports of International Arbitral Award, The Indo-Pakistan Western Boundary (Runn of Kutch) between India and Pakistan*, Vol. XVII (pp. 1–576).