

**DISPUTES, CLAIMS AND SETTLEMENT PROPOSALS RELATED TO
THE TERRITORIAL SEA ISSUE IN GREEK-TURKISH RELATIONS**

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July 2005

To my mother Berrin Gözen
and
In memory of my father Turgut Gözen

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master of International Relations.

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ABSTRACT

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This master's thesis aims to analyze, in detail, the issue of the extension of Greek territorial waters more than six nautical miles in the Aegean Sea, which can be accepted as an issue that constitutes the basis for other maritime disputes between Greece and Turkey. There are undoubtedly numerous studies on this topic. Thus, this research, while analyzing both the extent of the Greek territorial waters dispute and the problem related to the delimitation of the maritime boundaries between Greece and Turkey, aims to provide settlement proposals, and in this respect presents new approaches to the said conflicts.

Keywords: Baseline, bilateral disputes, delimitation, territorial sea, UNCLOS

ÖZET

TÜRK-YUNAN İLİŞKİLERİNDE KARASULARI MESELESİNE DAİR ANLAŞMAZLIKLAR, İDDİALAR VE ÇÖZÜM ÖNERİLERİ

Gözen, Mine Pınar

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Tez Yöneticisi: Prof. Dr. Yüksel İnan

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Bu yüksek lisans tez çalışması Türk-Yunan ilişkilerinde önemli bir yer işgal eden ve Türkiye ile Yunanistan arasında mevcut olan diğer Ege Denizi anlaşmazlıklarına temel oluşturduğu söylenebilecek olan Yunanistan'ın karasularının genişliği konusunda iki ülke arasında ortaya çıkan anlaşmazlığı ele almaktadır. Adı geçen konu üzerinde şüphesiz bugüne kadar bir çok çalışma yapılmıştır. Bu nedenle, bu çalışmada hem karasuları sınırlarının genişliği hem de karasularının sınırlandırılması konuları detaylı bir biçimde incelenmeye çalışılmış ve bu anlaşmazlıklara çözüm önerileri de sunularak soruna yeni yaklaşımların getirilmesi amaçlanmıştır.

Anahtar Kelimeler: BMDHS, esas çizgi, ikili anlaşmazlıklar, karasuları, sınırlandırma

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TABLE OF CONTENTS

ABSTRACT.....	iii
ÖZET.....	iv
ACKNOWLEDGEMENTS.....	v
TABLE OF CONTENTS.....	vi
LIST OF ABBREVIATIONS.....	viii
LIST OF TABLES.....	ix
CHAPTER I. INTRODUCTION.....	1
CHAPTER II. Historical background on the Greek-Turkish relations.....	4
2.1. The beginnings of a new era: Lausanne Peace Treaty.....	5
2.2. Post-Lausanne Relations: 1928-1939.....	9
2.3. Greek-Turkish Relations in an Era of another Major War.....	13
2.4. The Emergence of the Cyprus Issue and Its Aftermath.....	18
2.5. Greek-Turkish Relations and the Role of the BSEC.....	21
2.6. Greece, Turkey and the European Union.....	22
2.7. Conclusion of the Historical Background.....	33
CHAPTER III. The Territorial Sea Issue.....	35
3.1. Claims and Legal Bases of the Parties on the Dispute.....	37
3.1.1. Claims of the Parties.....	37
3.1.2. Legal Basis of the Arguments of Greece and Turkey.....	39
3.1.3. A “Double” Arrangement of the Territorial Sea – The Greek Airspace Issue.....	44
3.2. Special Circumstances in the Aegean Sea.....	47
3.3. Codification Activities and Bilateral Efforts of the Parties.....	53
3.3.1. The Vacillation of Greek Stance throughout the Development of the UNCLOS.....	55
3.3.2. Reasons of Turkey for Not Signing the UNCLOS.....	59
3.3.3. Bilateral Efforts of Greece and Turkey on the Territorial Sea Dispute.....	62

CHAPTER IV. Delimitation of the Territorial Sea between Greece and Turkey and Proposals for the Settlement of the Territorial Sea Issues.....	69
4.1. Delimitation of the Territorial Sea Issue.....	69
4.1.1. Why Is Delimitation of the Territorial Sea Necessary?.....	71
4.1.2. Delimitation Methods and Different Kinds of Baselines.....	73
4.2. Proposals to Achieve Delimitation.....	75
4.3. Proposals for the settlement of the Territorial Sea Dispute.....	77
CHAPTER V. CONCLUSION.....	83
SELECT BIBILIOGRAPHY.....	87
APPENDICES.....	92
<i>Appendix A</i>	93
<i>Appendix B</i>	100
<i>Appendix C</i>	106
<i>Appendix D</i>	109
<i>Appendix E</i>	110
<i>Appendix F</i>	111
<i>Appendix G</i>	112
<i>Appendix H</i>	113
<i>Appendix I</i>	114
<i>Appendix J</i>	115
<i>Appendix K</i>	116

LIST OF ABBREVIATIONS

AAP-6	Allied Administrative Publications - 6
Art.	Article
BSEC	Black Sea Economic Cooperation
CINA	Commission Internationale de Navigation Aerienne
CoE	Council of Europe
EC	European Community
EU	European Union
FIR	Flight Information Region
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
Km	Kilometer
LOSC	Law of the Sea Convention
n.m.	nautical miles
NATINAD	NATO's Integrated Air Defence
NATO	North Atlantic Treaty Organization
TGNA	Turkish Grand National Assembly
TRNC	Turkish Republic of Northern Cyprus
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
vol.	Volume

LIST OF TABLES

TABLE 1. Changes in the percentages of territorial sea in the Aegean in accordance with the width of Greek territorial waters.....	40
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CHAPTER I

INTRODUCTION

Greece and Turkey, although neighbors sharing the same sea, namely the Aegean, generally have had a quarrelsome relationship, especially till 1999, and the conflicts between the two related either to the Aegean Sea or the Cyprus issue have always been a source of tension in the Eastern Mediterranean since the mid-1950s, and no permanent solution to any of the disputes is yet reached. In this respect, when the maritime disputes between the two States are taken into consideration solely, it can be claimed that the unstable and tense relationship concerning the Aegean Sea creates an unpleasant situation not only for Greece and Turkey but also for third flag states since the Aegean is an international route for navigation as well.

In this context, the purpose of this study is to analyze, in detail, the issue of the extension of Greek territorial waters to twelve nautical miles in the Aegean Sea, which is an issue that constitutes the basis for other maritime disputes, and the problem related to the delimitation of the maritime boundaries between Greece and Turkey. However, different from the previous studies in the International Relations literature, this study aims to provide potential solutions for the settlement of the said disputes, and thus argues that Greek-Turkish maritime disputes are solvable if the parties mutually agree and desire to display and support frank efforts to this end.

Given the above thesis statement, first all the history of Greek-Turkish relations since 1923 to the present will be studied in order to provide the necessary background to understand the quarrelsome nature of the relationship between the two

countries, and to be able to understand the underlying reasons for the absence of a solution to these disputes. To this end, Chapter II studies the Greek-Turkish relations within two different contexts. Firstly, the bilateral relations will be explored in two main parts; relations before the emergence of the Cyprus issue, and relations in the aftermath of 1974. The basic reason to opt for a differentiation between the two periods is to underline the determination of the political leaders of both sides especially in the 1930s to establish peace, and good neighborly relations despite past hostilities, while outlining the factors which caused a complete change in the perception of the two states towards each other after the 1950s. Following this, Greek-Turkish relations will be explored within the framework of the Black Sea Economic Cooperation (BSEC) and the European Union (EU), which will help the reader to understand the role of third parties in bilateral relations between Greece and Turkey. Finally, factors that negatively affected the pursuit of a solution to the Aegean disputes will also be enumerated.

In the following chapter, the main issue of this study, the territorial sea issue, is studied in detail. To this end, first the claims and legal bases of the parties on the dispute will be taken into consideration. This will be followed by a description of the special circumstances in the Aegean. The last section of Chapter III discusses the impact of the United Nations Conferences on the Law of the Sea on the Aegean disputes as well as bilateral attempts of Greece and Turkey. The first section of Chapter IV will mainly focus on the delimitation of the territorial sea issue. Then, proposals to achieve delimitation and proposals for the settlement of the territorial sea dispute are explored. Throughout these chapters, differences in the perceptions of the parties, bilateral attempts to resolve the law of the sea issues, international codification attempts related to the law of the sea, evolution of the territorial sea

dispute between the two states, and vitality of delimitation of the territorial sea is studied. Finally, in the last chapter, the contributions of the ongoing confidential bilateral “exploratory talks” between Greece and Turkey, and the impact of the efforts by the European Union on establishing mutual understanding between the two states as well as on the settlement of the dispute(s) are discussed and an overall evaluation is provided.

CHAPTER II

HISTORICAL BACKGROUND

Conflicts between Greece and Turkey have been a persistent threat to the security in the Eastern Mediterranean since the mid-1950s. To be able to understand the underlying reasons for the absence of a solution to the disputes between Greece and Turkey reference should be made to the history of the Greek-Turkish relations since the establishment of the Republic of Turkey. In this context, it is possible to evaluate Greek-Turkish relations up to now in two main parts; relations before the emergence of the Cyprus issue, and relations in the aftermath of 1974.

The historical roots of the conflicts between Greece and Turkey date from Byzantine and Ottoman times. Scholars have two different views on the beginnings of the conflict. Some trace this rivalry to 1071, to the defeat of the Byzantine Empire by the Selçuk Sultan Alparslan, whereas others claim that the capture of Constantinople by the Ottoman Turks in 1453 set a turning point for the relations. The latter argument is the commonly accepted one, and the assumption is that these conflicts emerge from issues of national identity. The birth of the Modern Greek state is an outcome of the national Greek struggle against Ottoman rule. The *Megali Idea* — the desire to unite Greeks under a common Greek state — is considered to be an influential force for the policies of Greece until the mid-1920s. In this respect, independence of Greece and its process of state building seem to be closely related to struggle against Turkey.

Correspondingly, the birth of the Turkish Republic resulted from the Turkish War of National Liberation, and in this proxy war against the Great Powers of Europe (mainly Great Britain) Turkey had to fight with Greece to end the occupation of central and western Anatolia by the Greek forces from May 1919 to September 1922. In this context, the establishment of the modern Turkish state comprised the end of a neo-imperialistic ideology for Greece, which is the revival of the Byzantine Empire, and thus an important portion of the state building and formation of national identity of both Greece and Turkey to a certain extent depended on the events that had detrimental impact on the other state.¹ While this state of affairs might have been embedded in the national consciousness respectively, there was a fresh start in relations under the leadership Eleftherios Venizelos and Mustafa Kemal Atatürk.

2.1. The Beginnings of a New Era: Lausanne Peace Treaty

Following the Turkish War of National Liberation, peace between Greece and Turkey came with the signing of the Lausanne Peace Treaty. Thus, this was an agreement which put an end to the hostile behaviors of Greece and Turkey towards each other. Distinguished Greek diplomat Panayotis Pipinelis in his article “The Greco-Turkish Feud Revived” states that

The Treaty of Lausanne did not represent just another truce in the long struggle against the Turks [but] meant a *final arrangement*, implying the wholehearted acceptance of the new status quo and the willingness to abandon forever all aspirations to revive the Byzantine Empire.²

¹ Heinz Kramer, “Turkey’s Relations with Greece: Motives and Interests” in *The Greek-Turkish Conflict in the 1990s*, Dimitri Constan (ed.), (Great Britain: St. Martin’s Press, 1991), p. 58.

² Pierre Oberling. *The Road to Bellapais*, (New York: Columbia University Press, 1982), pp. 27-28.

There were various issues of discussion in this agreement. One main task of this treaty related to the Greek-Turkish relations was determination of sovereign control over disputed territories.³ In this context a major issue was the sovereignty over certain islands and Article 6/2 of the Treaty indicated that “In the absence of provisions to the contrary, in the present Treaty, islands and islets lying within three miles of the coast are included within the frontier of the coastal State”.⁴ This term was expressed in detail in Article 12 as well, and in Article 15, the names of the islands over which Turkey has renounced all rights in favor of Italy were enumerated.⁵ With regard to the islands, articles 4 and 6 of the Lausanne Straits Convention also dealt with the demilitarized status of the Strait region islands, and provided regulations concerning those.⁶

Building on the statements “islands and islets lying within three miles of the coast” (Art. 6) and “the islands situated at less than three miles from the Asiatic

³ Article 2, paragraph 2 of the Political Clauses section, determined the territory of Turkey with Greece as follows: “Thence to the confluence of the Arda and the Maritza: the course of the Maritza; then upstream along the Arda, up to a point on that river to be determined on the spot in the immediate neighbourhood of the village of Tchorek-Keuy: the course of the Arda; thence in a south-easterly direction up to a point on the Maritza, 1 kilom. Below Bosna-Keuy: a roughly straight line leaving in Turkish territory the village of Bosna-Keuy. The village of Tchorek-Keuy shall be assigned to Greece or to Turkey according as the majority of the population shall be found to be Greek or Turkish by the Commission for which provision is made in Article 5, the population which has migrated into this village after the 11th October, 1922, not being taken into account; thence to the Aegean Sea: the course of the Maritza”.

⁴ For the text of the Lausanne Peace Treaty, see *Düstur [Compilation of Turkish Legal Rules]* III, 5, 16, (7) and 28 *League of Nations Treaty Series (LoNTS)*, 11. Reg. No. 701.

⁵ “The decision taken on the 13th February, 1914, by the Conference of London, in virtue of Articles 5 of the Treaty of London of the 17th-30th May, 1913, and 15 of the Treaty of Athens of the 1st-14th November, 1913, which decision was communicated to the Greek Government on the 13th February, 1914, regarding the sovereignty of Greece over the islands of the Eastern Mediterranean, other than the islands of Imbros, Tenedos and Rabbit Islands, particularly the islands of Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria, is confirmed, subject to the provisions of the present Treaty respecting the islands placed under the sovereignty of Italy which form the subject of Article 15. Except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty”. (Article 12)

“Turkey renounces in favour of Italy all rights and title over the following islands: Stampalia (Astrapalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), and Cos (Kos), which are now occupied by Italy, and the islets dependent thereon, and also over the island of Castellorizzo”. (Article 15)

⁶ For the text of the Agreement, see *Düstur [Compilation of Turkish Legal Rules]* III, 5, 259, (106) or 28 *League of Nations Treaty Series (LoNTS)*, 115. Reg. No. 702.

coast” (Art. 12), some scholars claim that the Lausanne Peace Treaty has established a breadth of territorial sea of 3 nautical miles (n.m.) in the Aegean. However, it should be noted that there was no explicit reference to the extent of the territorial sea in the said agreement. Thus, it seems that the Treaty did not explicitly regulate the extent of the territorial sea.

Another important issue that the provisions of the Lausanne Peace Treaty attempted to solve was the rights of the minorities and the compulsory exchange of Greek and Turkish populations. In this respect, on 30 January 1923 the “Convention Concerning the Exchange of Greek and Turkish Populations” was signed between Greece and Turkey. According to the terms of the convention, beginning from 1 May 1923, there would be “a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory” (Art. 1)⁷. This clause excluded the Greek inhabitants of Constantinople and the Moslem inhabitants of Western Thrace. Accordingly it was stated that,

All Greeks who were already established before the 30th October, 1918, within the areas under the Prefecture of the City of Constantinople, as defined by the law of 1912, shall be considered as Greek inhabitants of Constantinople. Moslems established in the region to the east of the frontier line laid down in 1918 by the Treaty of Bucharest shall be considered as Moslem inhabitants of Western Thrace.⁸

In this respect, according to Article 7 of the Convention emigrants would automatically obtain the nationality of the country that they were moving to, and thus lose the nationality of the country of their former residence. During departure emigrants were free to take with them moveable property, and they would be

⁷ Taken from the text of Lausanne Peace Treaty, (www.mfa.gov.tr/grupe/ed/eda/edaa/default.6.html). For the complete text of the Treaty, see Appendix A.

⁸ Taken from the text of Lausanne Peace Treaty, (www.mfa.gov.tr/grupe/ed/eda/edaa/default.6.html).

exempted from any tax or export duty. Moreover, the immovable property of the emigrants would be liquidated in accordance with the provisions determined by the Mixed Commission which was to be established. This Commission would consist of

four members representing each of the High Contracting Parties, and of Nations from among nationals of Powers which did not take part in the war of 1914-1918, [and] the Presidency of the Commission shall be exercised in turn by each of these three neutral members (Article 11)⁹.

This Commission completed its duties in a period of one and a half year. However, this was not a completely problem-free process. The different interpretations of the word “inhabitant”, which was “établis” in the original text in French, led to serious discussions among the contracting parties.¹⁰ The issue was first taken to the League of Nations by Greece in October 1924 and later, on 13 December, the Council of the League requested from the Permanent Court of International Justice for an advisory opinion on the issue.¹¹ A conflict between Greece and Turkey arose, and this problem was addressed with the signing of the Ankara Agreement in 1925, which did not come into force in any manner. Further efforts to resolve the conflict became necessary and to this end in 1926 the Athens Agreement was signed between the two contracting parties. However, this agreement also could not provide a permanent solution to the dispute, and thus relations remained quite tense till the coming back of Eleftherios Venizelos to power.

⁹ For further information on the duties and powers of the Commission, see articles 12 and 13 in Appendix A.

¹⁰ Turks interpreted the word “établis” as an equivalent of “domicile” which would refer to the Greeks registered as citizens of Istanbul under the 1914 Domicile Law of the Ottoman Empire. On the other hand, Greek understanding, which would comprise a larger number of Greek origin people, was that any Greek inhabitants who registered before 1918 should be considered as “établis”. (Alexander Alexis. *The Greek Minority of Istanbul and Greek-Turkish Relations*, (Athens: Centre for Asia Minor Studies, 1992), pp. 113-114). For a Turkish academic view, see Baskın Oran, (ed.). *Türk Dış Politikası (1919-1980)*, vol. I, 5th ed., (İstanbul: İletişim Yayınları, 2001), pp. 329-334.

¹¹ Alexander Alexis. (1992), pp. 115-116.

Another issue debated during the Lausanne Peace Conference, which was a subject of disagreement, was related to the institution of Patriarchate. The Allies (except for Italy) were in favor of the idea that Patriarchate should remain in Istanbul. To this end, “Venizelos tried to win Turkish consent by offering help to retire Patriarch Meletios IV, whose anti-Turkish activities had been a source of great aggravation for Turkey’s leadership”.¹² In the end, the Turkish Republic agreed for the continuation of the presence of the Patriarch in Istanbul with the caveat that the Patriarch would not intervene in Turkey’s domestic and political matters and he would confine himself only to purely religious matters. Moreover, it was indicated that if the Patriarch would remain within bounds of its powers, then it would be the obligation of the Turkish Republic to protect the interests and the legal personality of the Patriarch and the Patriarchate.

2.2. Post-Lausanne Relations: 1928-1939

The process of reconciliation had started by the efforts of Atatürk and Venizelos. Turkey after the First World War started to pursue an anti-revisionist and a status-quo oriented foreign policy. However, major changes were taking place on the part of Greece. Venizelos’ return to power as the prime minister in August 1928 had a very positive and important impact on Greek-Turkish relations. Venizelos was to make changes in the foreign policy of Greece, and this would also be reflected in its alliance policies. The new Venizelos government abandoned the former irredentist policies and started to pursue a pro-status quo and security oriented foreign policy. Following this, there started a period of rapprochement between Greece and Turkey.

¹² Tozun Bahcheli. *Greek-Turkish Relations since 1955*, (San Francisco: Westview Press, 1990), p. 12.

Italy also supported such behavior and offered to be the arbiter if an agreement would be concluded between the two parties. The first positive attempt for the betterment of relations came from Greece on 30 August 1928 when Greek Prime Minister Venizelos sent an official letter to Turkish Prime Minister İsmet İnönü. In the letter, Venizelos wrote that Greece believed that Turkey has no territorial claims over Greek territory, and indicated that, in the same manner, Greece did not have any territorial claims over Turkey. In this respect, he also underlined that Greece was sincerely willing to seek solutions for the existing problems between the two countries.¹³ The reply from İnönü, which came on 27 September, indicated that the letter of the Greek Prime Minister constituted the beginning of a new and sincere friendship period in Greek-Turkish relations.¹⁴ Here, it should be underlined that there is the willingness of the two sides to come to a mutual understanding and their threat perceptions are effective in such behavior. Greece saw the revisionist Bulgaria as a threat to its security, therefore security in the Balkans was very important for Athens and alliance with Turkey would be favorable in that respect.

Following these developments, talks between Greek and Turkish governments started in December 1928. Both countries were conducting similar foreign policies as they pursued peaceful and friendly relationships with neighboring countries. Both states had concerns about developments taking place in Italy and revisionist Bulgaria. Thus, both countries came closer not only for the resolution of bilateral disputes, but also for political consequences such disputes may entail.

Following bilateral talks, Greece and Turkey signed a contract on 10 June 1930 in Ankara to solve all the problems emanating from the population exchange issue. Following this, Greek Prime Minister Venizelos was invited to Turkey by

¹³ Baskın Oran, (ed.). Vol. I, 5th ed., (2001), p. 345.

¹⁴ Baskın Oran, (ed.). Vol. I, 5th ed., (2001), p. 345.

Turkish Prime Minister İsmet İnönü. At the end of Venizelos' visit, on 30 October 1930, the Treaty of Friendship, Neutrality, Conciliation and Arbitration was concluded, and a protocol on limiting naval arms was also added to the main agreement. This treaty aimed at establishing peaceful and friendly relations between Greece and Turkey and it is important because it is the first treaty aiming at such a goal.

The most important clauses of the treaty can be summarized as follows: The treaty brought with it the obligation of neutrality (articles 1 and 2). Secondly, it stated that if a dispute arises between the contracting parties, they should try to solve the issue through diplomatic channels. If this method fails to solve the dispute, then legal settlement or arbitration should be sought (articles 3 to 27).

As indicated previously, in the annexed protocol of the 1930 Treaty of Friendship, Neutrality, Conciliation and Arbitration an important issue, limiting of naval arms races, was taken into consideration. According to this protocol none of the parties would build or buy new naval war vessels without informing the other party six months beforehand. Thus, in a sense the naval arms races that started in 1929 between the two countries due to their perception of each other as a threat had come to an end with the ratification of this protocol.

The 1930 Treaty was followed by the 1933 Turkish-Greek Cordial Agreement which can be considered as the second stage of the improvement of Greek-Turkish relations. Moreover, this pact provided a background for the Balkan Entente which was hoped to be concluded in the near future. With this treaty Greece and Turkey mutually guaranteed inviolability of their common territories (Article 1).

Therefore, this provided a semblance of an alliance between Greece and Turkey against any revisionist power.¹⁵

Greece and Turkey signed the Balkan Pact with Yugoslavia and Rumania on 9 February 1934. This agreement was quite similar to the Cordial Agreement of Greece and Turkey but this time four countries were party to it. Moreover, it was open to all Balkan countries. The idea of Balkan unity was first proposed by Greek Prime Minister Papanastasio in 1929. As indicated previously, the revisionist tendencies of Bulgaria was perceived as a threat to Greek security. To this end, Greece wanted to secure its position and sought for security in the Balkans. Corresponding to the efforts of Greece, there had been several conferences held between Balkan countries. Then, in 1934 came the official agreement, which became void after the German invasion of some the signatory Balkan countries.

The Entente consisted of three important articles, which are as follows:

Yugoslavia, Greece, Romania and Turkey shall mutually guarantee the security of their Balkan borders. (Article 1)

The High Contracting Parties undertake to reach agreement on measures which must be taken if cases should arise that could affect their interests as defined by the present Agreement. They assume the obligation not to take any political action towards any other Balkan country which is not a signatory to this Agreement, without a prior mutual notification and not to assume any political obligation towards any other Balkan country without the consent of the other Contracting Parties. (Article 2)

The present Agreement shall come into force upon its signing by all the Contracting Powers and shall be ratified within the shortest possible time. The Agreement shall be open to any Balkan country for accession which shall be taken into favorable consideration by the Contracting Parties and shall come into effect as soon as the other signatory countries notify their consent. (Article 3)¹⁶

¹⁵ “In an effusive statement made during a brief visit to Athens in November 1933, Turkish Foreign Minister Aras declared that Greece and Turkey have almost become one country. During the following year, the two countries took another step in collaboration when they joined the Balkan Entente in 1934 with Yugoslavia and Rumania.” (Tozun Bahcheli. (1990), p. 14).

¹⁶ Taken from http://www.mfa.gov.yu/History/pbs_e.html.

According to these articles, first of all the Balkan borders of the said countries would be protected by each other. Secondly, the agreement aimed at achieving diplomatic cooperation between the signatory states. In the light of these, it is possible to conclude that Greece and Turkey were taking part in the formation of a block of status-quo states against revisionist ones and also trying to protect themselves from potential aggression from any revisionist power.

Although the ongoing peaceful and friendly relationship between Greece and Turkey (as when Greece supported Turkey to become a part of the League of Nations in 1932) was to get stronger with the conclusion of the Balkan Pact, there were also other developments taking place in world politics which would later on strain the relations between the two countries. In 1936, due to the developments taking place in international conjuncture, Turkey sent a note to the parties of the 1923 Straits Convention indicating Ankara's concerns about the security of the Straits and its will to revise the Straits regime. Greece interpreted this request of Turkey in a positive manner. Later on, in July 1936 Montreux Straits Convention was signed between the related parties, excepting Italy until a year.

2.3. Greek-Turkish Relations in an Era of another Major War

In general terms, there was a consensus between Greece and Turkey both on bilateral issues and on issues related to the Balkan Pact. With respect to the changes in international politics and developments taking place in the Balkans, in 1938 Greece and Turkey concluded the Additional Treaty to the 1930 Turkish-Greek Friendship, Conciliation and Arbitration Agreement, and to the 1933 Turkish-Greek Cordial Agreement. This new agreement mainly aimed to strengthen the 1930 and

1933 treaties as well extending their period of validity for ten more years. However, the outbreak of World War II would change all the balances and bring about new challenges to the international milieu. Greece and Turkey aimed to preclude foreseen coercion of Italy and Germany by joining the Balkan Entente. Neither this alliance nor the bilateral Greek-Turkish agreements made a difference in terms of deterring Italy and Germany from seeking their ambitions and designs in the Balkans. Under given circumstances neither Greece nor Turkey was ready to face the challenges posed by a potential war against a great power. In this respect, Turkey remained neutral when Greece was occupied by German troops, which came after the failed Italian attempt to invade Greece.¹⁷ It should be noted that according to the clauses of the agreements mentioned in the previous paragraphs, neither Turkey nor Greece was obliged to enter into war in support of the other contracting party since neither Germany nor Italy was a Balkan country. Thus, in a sense, Turkey was using its right to remain neutral during these invasions. Nonetheless, this comprised a source of frustration on the part of Greece and of the Greek public since Greece was not assisted by its ally against Hitler and Mussolini.

Another issue that strained Greek- Turkish relations in the same period was the imposition of an emergency capital levy, called *varlık vergisi* (asset tax), on both Greek and other minorities living in Turkey in November 1942 by the Turkish Government. Upon this installment of higher levels of tax, the Greek government lodged protests to Ankara, and the emergency capital levy was removed by the Turkish government a year after its imposition.¹⁸ It should also be noted that another source of aggravation for Greece was the fact that Turkey did not appoint an ambassador to the Greek government in exile which was established in Crete.

¹⁷ Tozun Bahcheli. (1990), p. 14.

¹⁸ Tozun Bahcheli. (1990), p. 15.

However, during the Second World War Turkey recognized the Greek government was in exile, and continued its diplomatic correspondence. As indicated in the above quotation, “the Greek government [that] lodged protests to Ankara” was the Greek government in exile. Therefore, it is not possible to claim that Turkey cut its all diplomatic relations with Greece during the war.

In the course of World War II, Greece was also anxious about a possible Turkish occupation of the Dodecanese Islands and it also claimed that Turkey bargained with Germany on the fate of these islands. In fact, there is the claim that the Dodecanese islands were offered as a reward to Turkey first by the British, and later by the Germans for entering the war on their side. However, whether the said claim is valid or not throughout the war, Turkey was determined to remain non-belligerent and apparently did not accept any of the offers. Moreover, although Turkey did not join the war on the side of the Greeks, it gave support to the defense of Greece through various means.¹⁹

Following the end of the Second World War, there were changes in the international arena which would affect the relationship between Greece and Turkey that had become tense during the war. In this new period, Greece and Turkey shared the same concerns and benefits at the same time. Since both countries perceived the Soviet Union as a threat to their security, they decided to ally themselves with the Western countries. To this end, they became a part of the Truman Doctrine in 1947 as well as the Marshall Plan. In August 1949, upon invitation, Greece and Turkey

¹⁹ “When Greece was attacked by Italy in 1940, hundreds of volunteers were organized among the Greek community of Istanbul and sent to fight in Greece’s defense, with the approval of the Turkish authorities. During 1941-1942, when Greece was under German occupation and experienced widespread starvation, Turkey dispatched food across the Aegean, earning the gratitude of the Greek public. Furthermore, the Turkish Government allowed Allied support of Greek guerillas from her territory, and permitted escapees from Greece, including military personnel, to pass through Turkish territory and reach the Allied forces in Egypt”. (Tozun Bahcheli. (1990), p. 16).

became a member of the Council of Europe (CoE) in the first meeting of the Council of Ministers and the same year as the first admitted members.

However, it should be underlined that this transition was not the same for Greece and Turkey. Turkey preferred to take part on the Western block due to its threat perceptions as well as economic concerns. Yet, Greeks went through important challenges throughout this process and a civil war took place in Greece as a result of the struggle for governance between different groups within the country. Even before the Second World War ended, more precisely in 1943, a civil war began in Greece between the Communist guerrilla group (EAM-ELAS) and the royalist group (EDES). This war continued till 1949 and also had an impact on the foreign policy of Turkey. In general terms, the Greek Civil War can be considered as the last phase of the communist control throughout the Balkans, thus Turkey was following the developments that were taking place in the territory of its neighbor with anxiety as it was left alone between communist countries. In this context, it is possible to claim that the Greek civil war started to have an international character after the intervention of the northern neighbors of Greece in this war.

It should be noted that the British troops that were sent to Greece in 1944 remained in Greek territory after the end of the Second World War. The purpose was to give support to the Greek state in its fight against communism. However, as a result of the devastation caused by the long lasting war, Britain had to cut its military and economic support towards Greece. The economic support that was provided to Turkey by the British also came to an end because of the same reason. Following this, in 1947, the U.S. President Harry Truman declared the “Truman Doctrine”. Under this framework, advisory groups of officers were sent to Greece and in addition to military aid, economic aid was also provided. Along with Greece, Turkey

also benefited from this aid. Again, in 1947, Yugoslavia closed its borders to the support that was going to the communist groups in Greece since Belgrade had decided to leave the Soviet block in 1948.

Following American military and economic aid and with the end of the support received from Yugoslavia, the end of the Greek Civil War came in 1949. After the end of the civil war in Greece, both Greece and Turkey voluntarily came under cover of the western block. Following the international events taking place, both Greece and Turkey participated in the Korean War. Subsequently, in 1952 they were admitted as members to the North Atlantic Treaty Organization (NATO). Thus, in a sense, the Greek-Turkish political and military cooperation was institutionalized under the framework of NATO.

Collaboration between the two countries continued with another regional political organization to which Yugoslavia was also a party, one however was not destined to last long. After Yugoslavia closed its borders to aid going to the Greek communists in the north, there started a rapprochement between Greece and Yugoslavia. On the other hand, Turkey did not have any problems with Yugoslavia in particular, and it was content about Yugoslavia's defection from the Soviet block. Following these events, talks between Greece, Turkey and Yugoslavia started in 1952, and the foreign ministers signed a "Friendship and Cooperation Treaty" on 28 February 1953, in Ankara. This treaty was the first phase towards a tripartite pact. According to articles 1, 2 and 3 of the treaty, the contracting states would consult each other on issues related to their common interests, and correspondingly foreign ministers of the member states would convene at least once a year.

As a result of the regular meetings that took place between the Foreign Ministers, these three states signed the Treaty of Bled on 9 August 1954. According

to this treaty, an attack against any of the contracting parties would be considered as an attack against the three of the states together, and thus all the necessary measures, (including use of military force) would be taken. In April of 1955 the tripartite pact, which was also supported by the US as it was a part of US' containment policy, was put into force. However, it did not last long. Changes in Soviet foreign policy after the death of Stalin changed the attitude of the Yugoslav leader Tito towards the Soviet Union, when the Soviet Premier Nikita Khrushchev made a visit of reconciliation to Belgrade. Disputes related to the Cyprus issue contributed to this, and the positive relationship provided and encouraged by the pact between the parties started to diminish.

2.4. The Emergence of the Cyprus Issue and Its Aftermath

In this respect, the beginnings of the movement of “enosis” on the island of Cyprus in the mid-1950s increased tension between Greece and Turkey. “The Cyprus problem rekindled the flames of a smoldering fire (chosen traumas and chosen glories) that had been hidden under the ashes of the time”²⁰. With reference to the facts that were studied previously, it is possible to conclude that Greece and Turkey did not have major bilateral disputes in times when Greece had internal or external problems (e.g. during Greek Civil War or Second World War). Also, when the perceived threat from the Balkans faded away for Greece, Greek need for the Turkish alliance also lost its priority. In this respect, the willingness of the two sides to come to a mutual understanding and their threat perceptions had (and still has) a prominent role in determining the relations between them.

²⁰ Vamik Volkan and Norman Itzkowitz. *Turks and Greeks: Neighbors in Conflict*, (England: The Eothen Press, 1994), p. 126.

Thus, the period between 1950 and 1955 comprised the final years of the friendly relations between Greece and Turkey for a long time to come. The outbreak of the Cyprus issue revived the past negative memories of the two parties towards each other, and consisted the beginning of long lasting disputes between Athens and Ankara. Consequently, in a sense, the peaceful relations between the parties that were established in the aftermath of the Lausanne Peace Treaty came to an end in the mid-1950s.

The positive relationship provided and encouraged by bilateral talks and pacts between the two parties started to disappear with the emergence of the Cyprus dispute, especially after the Turkish “Peace Operation” to the island of Cyprus in 1974, which is named by the Greeks as the Turkish “invasion” of the island. Apart from the Cyprus issue, and the conflict over the status and the rights of Western Thracian Turks as minorities, Greece and Turkey currently have several other conflicts related to their respective sovereign rights over the use of the Aegean Sea and its airspace. It is possible to list these disputes concerning the Aegean as follows²¹:

- The extent and the delimitation of the territorial sea areas,
- The extent of Greek air space and issues related to air traffic services,
- The delimitation of the continental shelf,
- The demilitarized status of the Eastern Aegean Islands,
- Sovereignty over certain islands, islets and rocks.

Following the Cyprus issue other events took place that strained Greek-Turkish relations. There was the tension between Greece and Turkey related to the

²¹ For a detailed analysis of the disputes refer to Yüksel İnan and Yücel Acer, “The Aegean Disputes” in *The Europeanization of Turkey’s Security Policy: Prospects and Pitfalls*, Karaosmanoğlu & Taşhan (eds.), (Ankara: Foreign Policy Institute, 2004), pp. 125-146.

Greek militarization of the Eastern Aegean Islands. Then, came the Greek practice of ten n.m. of airspace in the Aegean, which started in 1931 and was opposed to by Turkey in 1975 due to the changing circumstances resulting from the NATO practices and documents such as AAP-6 and NATINAD²². Thus, this also led to other disputes related to the Aegean airspace, (e.g. the FIR issue).

In 1974, Turkey also began research activities on the Aegean continental shelf, however opposition to this research came from Greece as it claimed that the areas of exploration were in the Greek continental shelf. This dispute later on was brought before the International Court of Justice (ICJ) by Greece based upon the UN Security Council Resolution No. 395, dated 25 August 1976.²³ However, the ICJ on 19 December 1978 decided that it lacked jurisdiction to deal with the case.

In addition to these problems, Greece ratified the UN Convention on the Law of the Sea (UNCLOS) in 1995 and repeatedly announced its intention to extend its territorial sea to twelve n.m.. Thus, the extension of the Greek territorial sea more than six n.m. added one more dispute that remains to be resolved between Greece and Turkey. Also, in 1996 the crisis on Kardak (Imia) Rocks took place, which was an event that escalated the tension.

Attempts of solving the disputes, mainly on the continental shelf, officially started with the 11 November 1976 Bern Agreement²⁴ first and continued with bilateral talks, and no solution is yet provided. However, the bilateral relationship between the two states continued and still continues on different international platforms as well as the exploratory talks which are conducted by high ranking bureaucrats since February 2002.

²² Y. Acer and Y. Inan. (2004), p. 138.

²³ For the text of the Resolution No. 395, see Appendix D.

²⁴ For the text of the Agreement, see Keesing's Contemporary Archives, (1976), p. 2936, and Appendix E.

2.5. Greek-Turkish Relations and the Role of the BSEC

There were several unsuccessful efforts for the betterment of relations between the two countries. In this context, Turkey's invitation to Greece to join the Black Sea Economic Cooperation in 1992 is considered to be a goodwill gesture by some scholars, in political terms simply because Greece is not a Black Sea littoral sea. However, the consequences of this decision had important implications, which later had and still have a straining impact on the two countries. When the evolution of the relations between Greece and Turkey is examined, it can be realized that the two countries mainly had agreements on military and security issues in the years which correspond to the period between the conclusion of the Lausanne Peace Treaty and the emergence of the Cyprus issue (the main economic relationship between Greece and Turkey depended on receiving Marshall Aid from the US at that time). Later on, the relations and talks between the two countries were determined by the conflicts that existed and still exist between the two.

Therefore, in general terms relations depended on political and military issues. In this respect, the Black Sea Economic Cooperation could provide a platform of economic cooperation between Greece and Turkey, which hopefully would be followed by political cooperation.

Today, the Turks believe that the Black Sea Economic Cooperation Region (BSEC) has proved itself a successful organization in which "the participating states have put aside their differences and undertook joint economic projects for their mutual benefit." At the same time, the BSEC clearly showed that the Islamic and the Christian states would cooperate smoothly in a regional organization without any religious or cultural friction. According to a senior Turkish foreign policy elite, "...since its inception the BSEC has asserted itself to be an important confidence building measure and, as such, an essential element of peace and stability in the region." The varying national interests, differing political assessments and diverse stages of development of the participating states have not prevented them from seeking common solutions to their

problems through dialogue, economic cooperation, and creating an environment conducive to regional stability.²⁵

However, actual experiences proved the opposite. The BSEC does not really operate efficiently. Moreover, in terms of bilateral relations, there are various problems that can be enumerated. In this respect, Greece's admission to the Organization as a member did not help to ease relations between Greece and Turkey. When Greek opportunism was coupled with Turkey's lack of interest on the operation of the Organization, Greece maintained a leading role for itself in the BSEC which is ironically an organization initiated by Turkey. Thus, Greece's membership became more disadvantageous for Turkey as time passed. BSEC as a purely economic organization in the region only provided more political conflicts or frictions rather than economic cooperation for Greece and Turkey.

2.6. Greece, Turkey and the European Union

Apart from the BSEC, Greece and Turkey mainly have relations within the framework of the European Union (EU). In this context, the relationship between Greece, Turkey and the EU also has a prominent role in the shape of Greek-Turkish relations. It should be reminded that Greece applied for full membership in 1975 but Turkey did not make an application due to domestic political reasons. On April 14, 1987 Turkey applied for full membership whereas Greece was accepted to the Union in 1981 as a full member that is equipped with a veto power, and this constituted a turning point in Greek-Turkish and Turkish-EU relations. Following Greece's

²⁵ M. Fatih Tayfur, "Turkish Foreign Policy towards the Euro-Mediterranean Partnership and the Black Sea Economic Cooperation: A Comparative Analysis", in *Foreign Policy, A Quarterly of the Foreign Policy Institute*, Vol. XXIII, Nos. 1-2-3-4, 1999, p. 59.

accession to the EU, the Union also and inevitably became an *ipso facto* third party to the Greek-Turkish disputes.

Greece started to make use of its full membership against Turkey within the EU in the late 1980s and this continued also in 1990s. At the early years of Greece's accession to the EU, Turkish-EU relations were at a point of suspension due to the 1980 military coup (coup d'état) that took place in Turkey. The promised financial aid of the Fourth Financial Protocol was postponed by the EC as a response to this event. In line with these developments the Greek government started to bring its bilateral disputes before the EU. Following the 1980 Turkish military coup, Greece took a stand against Turkey in its correspondence with the EU. The first example is the 1986 Greek objection to the EC Commission decision for the continuation of the financial aid to Turkey, which was formerly suspended due to the military coup in Turkey.

With the Turkish application for full membership to the EC on 16 April 1987, Greece this time brought about the Cyprus dispute to the attention of the Community. This was followed by a resolution on Cyprus by the European Parliament dated 20 May 1988.²⁶ In this context, an issue which was never supposed to be a criterion for Turkish accession to the EC/EU was to become an obstacle for Turkey. Thus, this led to deterioration in Turkish-EU relations, and in the long-term it became a considerable handicap for Ankara, which still has implications.²⁷

²⁶ 'This resolution strongly condemned Turkey because of its Cyprus policy; the Strasbourg Chamber noted *inter alia* that: "...the unlawful occupation of part of the territory of a country associated with the Community (i.e. the Republic of Cyprus) by the military forces of another country, also associated with the Community (i.e. Turkey), presents a major stumbling block to the normalization of relations with the latter, viz. Turkey".' (Behice Özlem Gökakın. (2001), p. 68).

²⁷ In mid 1988, Greece became a *de jure* party to the Association Agreement between Turkey and the European Community, upon a domestic *unilateral* legal ratification procedure by Turkey. (*Turkish Official Gazette*, no. 19857, 29 June 1988). The provisions of article 5 of the Protocol signed between Turkey and the European Union Council on 20 April 1988 indicated that this Protocol ought to be ratified by the 15 members of the Union in accordance with their constitutional procedures, and an exchange of notes related to ratification ought to be realized.

This problem was coupled with the Greek Cypriot application for the EU membership on 3 July 1990, and this led to the immediate reaction of the Turkish Republic of North Cyprus (TRNC) as well as of the Turkish Government on the basis of the 1960 Guarantee Agreement. Article 1 of this treaty reads as follows: “[The Republic of Cyprus is bound] not to participate, in whole or in part, in any political or economic union with any state whatsoever”. In general, Turks argue on the basis of article 1 of the Guarantee Treaty as a legal footing for objection to the accession of the Republic of Cyprus. However, the document entitled “Basic Structure of the Republic of Cyprus” also provides evidence and articles supporting this idea. The first reference is Article 8, which indicates that

The President and the Vice-President, separately and conjointly, shall have the right of final veto on any law or decision concerning foreign affairs, except the participation of the Republic of Cyprus in international organizations and pacts of alliance in which Greece and Turkey both participate or concerning defence and security as defined in Annex I.

Another article that constitutes a standpoint is Article 22, and it reads as follows: “it shall be recognized that the total or partial union of Cyprus with any other State, or a separatist independence of Cyprus (i.e. the partition of Cyprus into two independent States), shall be excluded”. Thus, this provision prohibits the union of the State with another state as well as prohibiting a separation for independence. Similarly, Article 50 of the Constitution of the Republic of Cyprus indicates that

The President and the Vice-President of the Republic, separately or conjointly, shall have the right of final veto on any law or decision of the House of the Representatives or any part thereof concerning – (a) foreign affairs, except the participation of the Republic in international organizations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate.

In light of this, accession of the Republic of Cyprus to the EU was unacceptable for Turkey, and with this development, tension between Greece and Turkey, as well as Turkey and the EU increased once again.

Following this, in 1994 Greek efforts to include the Republic of Cyprus in the enlargement agenda of the EU turned out to be successful. So, the Cyprus issue, which Turkey has always considered as a separate problem, was officially placed on the EU agenda. It should be indicated that this was not an explicitly expressed criterion at the time since the only political criteria for membership was and still is the Copenhagen criteria²⁸. Thus, it can be observed that the Cyprus issue obtained the status of a criterion for Turkey as it can be inferred from the Copenhagen criteria, which seems to constitute a must for Turkey for its accession to the Union as a full member since the Republic of Cyprus, as an EU member, has the legal right to veto a state's membership.²⁹

Following the Helsinki Presidential Conclusions, in the 2000 Regular Report from the Commission on Turkey's progress towards accession, a special section was

²⁸ The Copenhagen membership criteria require the achievement of the following points by the candidate country: "(1) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; (2) the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; (3) the ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union".

²⁹ Accordingly, in the 1999 Helsinki Presidential Summit Conclusions, there were direct references to the issue in paragraph 9 which reads as follows: "(a) The European Council welcomes the launch of the talks aiming at a comprehensive settlement of the Cyprus problem on 3 December in New York and expresses its strong support for the UN Secretary-General's efforts to bring the process to a successful conclusion.

(b) The European Council underlines that a political settlement will facilitate the accession of Cyprus to the European Union. If no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition. In this the Council will take account of all relevant factors."

There is also an indirect reference in paragraph 4 of the document which underlines the importance of the peaceful settlement of disputes as well as the resolution of any outstanding border disputes and other related issues. Since compliance with the Copenhagen criteria is indicated to be a prerequisite in this article, it can be inferred from the statement that Turkey is bound to solve the dispute if it wants its application for EU membership to be seriously considered for accession negotiations. Finally, the content of paragraph 12, which is solely on Turkey, emphasizes the importance of the fulfillment of the criteria while making a precise reference to the issues indicated in paragraphs 4 and 9/a. The text of the Summit Conclusion is available on the Delegation of the European Commission to Turkey website: www.deltur.cec.eu.int

reserved for the Cyprus Issue. This report stated the positive step achieved on the Cyprus dispute, which was direct negotiations of the Greek and Turkish Cypriot leaders for a comprehensive settlement of the Cyprus problem. It was also indicated that Turkey violated the judgments of the European Court of Human Rights by committing a continuing violation of the rights of a Greek Cypriot and also by refusing to execute the judgment of the Court.³⁰

The Accession Partnership Document for Turkey dated 8 November 2000 also made reference to the Cyprus issue by stating that “the European Union encourages Turkey, together with all parties, to continue to support the UN Secretary General’s efforts to bring the process, aiming at a comprehensive settlement of the Cyprus problem, to a successful conclusion.” Similar views were also raised in the 2001 and 2002 reports. The 2003 Accession Partnership document for Turkey also indicated the same point under the priorities (2003/2004) section.³¹

In line with the statements/recommendations of the European Union, Turkey continued its correspondence regarding the Cyprus issue, in this context the Fifth and the final Annan Plan comprised a decisive turning point in the history of the conflict. According to the European perception Turkey was the side which always caused problems in the dispute. Although the primary predictions as an outcome of the referenda held in Cyprus was “yes” from the South and “no” from the North, results of the referenda this time revealed the opposite since the answer of the Turkish north was “yes” whereas the Greek Cypriots voted for “no”. No matter what the result of the referenda was, the Republic of Cyprus acceded to the Union alone on 1 May

³⁰ The statement is in section 1.3 titled “Cyprus Issue”, paragraph 4, p. 20 of the 2000 Regular Report for Turkey. The text is available on

http://www.europa.eu.int/comm/enlargement/report_11_00/pdf/en/tu_en.pdf

³¹ The statement was: “In accordance with the Helsinki Conclusions, in the context of the political dialogue, strongly support efforts to find a comprehensive settlement of the Cyprus problem through the continuation of the United Nations Secretary General's mission of good offices and of negotiations on the basis of his proposals”.

2004 due to the Summit Decisions of 2003,³² and those decisions prove that the EU has been insistent on the accession of Cyprus to the Union as it was implicitly underlined by the December 1999 Helsinki Summit³³.

Apart from the Cyprus criteria, Greece made use of its bilateral disputes in the Aegean against Turkey within the framework of the EU. The Kardak crisis that broke out right after Turkey's signing of the Customs Union Agreement constituted a new phase in Turkish-EU relations. On 15 July 1996, with a declaration, the EU indicated that Turkey should agree to an international legal arbitration of the ICJ concerning the Aegean dispute.³⁴ In the meantime, Greece also vetoed the financial aid that was to be extended to Turkey as a compensation for the losses to be incurred by the Customs Union. Greece kept its firm stance against Turkey in the 1997 Luxembourg Summit as well.³⁵

However, the Greek stance against Turkey, which definitely had a deteriorating impact on Turkish-EU relations was to change in 1999. Just before the

³² "The European Council reaffirms its decisions taken at Copenhagen with regard to Cyprus's accession to the EU". (Presidency Conclusions - Brussels, 20 and 21 March 2003, par. 85). "Cyprus' accession to our Union is already creating favourable conditions for the two communities to reach a comprehensive settlement of the Cyprus problem". (Presidency Conclusions – Thessaloniki, 19 and 20 June 2003, par. 39). "In line with its relevant conclusions, the European Council reiterates its preference for a reunited Cyprus to join the Union on 1 May 2004, in order to allow all Cypriots to enjoy a secure and prosperous future and the benefits of EU accession. It considers that there is a good prospect of reaching a just, viable and functional settlement by 1 May 2004, consistent with the relevant UN Security Council resolutions. The European Council therefore again urges all parties concerned, and in particular Turkey and the Turkish Cypriot leadership, to support the UN Secretary General's efforts strongly and, in this context, calls for an immediate resumption of the talks on the basis of his proposals. The Union reiterates its willingness to accommodate the terms of a settlement in line with the principles on which the EU is founded. In this context, the European Council welcomes the Commission's willingness to offer assistance for a speedy solution within the framework of the *acquis*. Following a settlement, the Union is ready to provide financial assistance for the development of the northern part of Cyprus and the Commission would be called upon to prepare all necessary steps for lifting the suspension of the *acquis*, in accordance with Protocol 10 to the Act of Accession". (Presidency Conclusions – Brussels, 12/13 December 2003, par. 42).

³³ "The European Council underlines that a political settlement will facilitate the accession of Cyprus to the European Union. If no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition. In this the Council will take account of all relevant factors". (par. 9/b) The text of the Summit is available on www.deltur.cec.eu.int.

³⁴ For the text of the Declaration, see Appendix F.

³⁵ The outcomes of this were indicated in the chronology section.

1999 EU Summit, the Greek Foreign Minister George Papandreou told in a Greek radio that “I believe a positive message to Turkey must be sent from [the EU summit in] Copenhagen”.³⁶ In line with this statement, Greece lifted its veto on Turkey’s EU candidacy. It should also be noted that with regard to the change in Greek stance, Turkey also changed its path and started to pursue a different foreign policy in the sense that it started to develop close relationships with Greece and Italy which became supporters of Turkish membership to the EU. Despite the positive change in the Greek attitude towards Turkey’s EU membership, the Cyprus issue which was added to the agenda of the EU by Greece also became a main determinant of Turkey’s prolonged accession process.

The Greek Cypriot application for EU membership on 3 July 1990, also had a straining impact on Greek-Turkish and Turkey-EU relations. The immediate reaction of the Turkish government was expressed on the basis of the 1960 Guarantee Agreement.³⁷ With this development, tension between Greece and Turkey, as well as Turkey and the EU increased once again. Therefore, it can be argued that by abandoning its veto on Turkey, Greece no longer had to carry the burdens of being a persistent objector regarding the Turkish case. Since this had important political costs for Greece, the change in Greek stance can be considered as a strategic move. In this context, a complementary argument is that the change in Greek position may also have a domestic aspect since the tensions between Greece and Turkey had and has an increasing impact on the military expenditures of Greece. The Simitis government seemed to prefer to allocate some of the military expenditures to the social welfare of its citizens, since the Greek people started to benefit from the rate

³⁶ Taken from <http://news.bbc.co.uk/1/hi/world/europe/2315791.stm>.

³⁷ Article 1 of this treaty reads as follows: “[The Republic of Cyprus is bound] not to participate, in whole or in part, in any political or economic union with any state whatsoever”.

of economic growth and prosperity in a positive manner, which can obviously be observed from their way of life not only in Greece but also abroad.

As noted previously whether Greece raises a veto or not, issues of concern for Greece such as outstanding border disputes³⁸ and the Cyprus question are already on the agenda of the EU. Moreover, previous experiences of the EU countries, which are getting involved in the Greek-Turkish bilateral disputes, currently comprises a concern on the part of the Union members as they do not want to be involved in Turkey's other problems with its neighbors in the Middle East and the Caucasus. Thus, this also constitutes an obstacle for Turkey in its effort to become a full member of the EU.

In this respect, it is possible to argue that Greece had nothing to lose when it changed its stance against Turkey since the necessary measures were to be taken by the EU itself automatically. A basic example is the issue of bilateral relations between Greece and Turkey, which is also noted in the 2000 and 2003 Accession Partnership documents for Turkey.³⁹ The related paragraph reads as follows:

In accordance with the Helsinki Conclusions, in the context of the political dialogue, under the principle of peaceful settlement of disputes in accordance with the UN Charter, [candidate states, including Turkey are to] make every effort to resolve any outstanding border disputes and other related issues, as referred to in point 4 of the Helsinki conclusions.

Here, it should be noted that Turkey is not the sole party to make efforts to solve border disputes related to the Aegean. Moreover, contrary to the Greek claims that Turkey has an expansionist policy towards Greece, Turkey only tries to protect the

³⁸ An evaluation of peaceful settlement of the disputes issue is studied in section 1.5 of the 2004 Regular Report on Turkey. In the general evaluation section (1.6) a brief assessment, which reads as follows, is provided. "As regards the enhanced political dialogue, relations with Greece developed positively. A series of bilateral agreements were signed and several confidence building measures adopted. A process of exploratory talks has continued".

³⁹ For the texts of the Accession Partnership Documents, see www.deltur.cec.eu.int.

existing *status quo*, and it does not try to obtain new territories in the Aegean Sea.⁴⁰

Nonetheless, 17 December 2004 EU Summit once again, in its provision number 20,

reaffirmed its view that unresolved disputes having repercussions on the accession process, should if necessary be brought to the International Court of Justice for settlement. The European Council will be kept informed of progress achieved which it will review as appropriate.⁴¹

With this provision, the constant supervision of the EU over Greek-Turkish bilateral disputes was also granted.⁴²

Nonetheless, Greece's abandonment of its veto policy towards Turkey in 1999 has brought about a quest for better relations between the two countries and this continuing improvement of relations between Greece and Turkey since 1999 is also expressed in the 2004 Regular Report on Turkey under section 1.5 entitled "Peaceful settlement of border disputes." However, it is quite obvious that there is lack of confidence in both countries towards each other. 'He [Karamanlis] predicted that relations with Turkey would improve as it carried out the terms imposed by the EU but also noted that "a country's behavior does not change in a month."⁴³ As it is well stated by Karamanlis, countries' behavior does not change quickly and Greece's attitude towards Turkey has not changed much either. The current Greek attitude is more like a silent opposition to Turkey since Greece naturally continues to consider

⁴⁰ It should be reminded that Greece claims and intends to declare 12 nautical miles of territorial sea in the Aegean based on the provisions of the UN Convention on the Law of the Sea, and this is where the bilateral disputes between Greece and Turkey emanate from. In that respect, it cannot be argued that Turkey has territorial claims over Greece. The issue of sovereignty over certain islands, islets and rocks remains to be negotiated by the two parties since no unchallengeable official document, which is in force, expressly states the status of these territories.

⁴¹ For the complete text, see www.deltur.cec.eu.int.

⁴² "In accordance with its previous conclusions, notably those of Helsinki on this matter, the European Council reviewed the situation relating to outstanding disputes and welcomed the exploratory contacts to this end. In this connection it reaffirmed its view that unresolved disputes having repercussions on the accession process, should if necessary be brought to the International Court of Justice for settlement. The European Council will be kept informed of progress achieved which it will review as appropriate". (Presidency Conclusions – Brussels, 16/17 December 2004).

⁴³ Athens News Agency article titled "EU summit conclusions on Turkey improve on those at Helsinki, PM says", (21 December 2004). Taken from <http://www.greekembassy.org/Embassy/>.

its national interest. It should also be noted that Greek statesmen do not really try to change the negative public opinion towards Turkey whereas Turkey hopes to become a part of a larger society, namely the European community.

In this context, although the Cyprus question was considered to be an insolvable problem for Turkey on its way towards EU membership, political developments prior to 17 December proved that Turkey was ready to make every effort to solve the problem. The 17 December 2004 EU Summit that convened in Brussels constituted a milestone for Turkish-EU relations as Turkey was given the date of 3 October 2005 for the commencement of accession negotiations as well as bringing about an issue which Turkey tended to disregard up to date. As a result of the Summit decisions, Turkey will have to extend the customs union to the Republic of Cyprus before 3 October 2005.⁴⁴ Ankara has been hesitant about signing the protocol as this would mean the recognition of the Republic of Cyprus but now this stands as an obligation on the part of Turkey for the commencement of accession negotiations.⁴⁵

⁴⁴ Two direct references from 2004 Presidency Conclusions can be enumerated as follows:

‘31. The European Council invites Turkey to conclude negotiations with the Commission on behalf of the Community and its 25 Member States on the adaptation of the Ankara Agreement to take account of the accession of the new Member States.’ (Presidency Conclusions – Brussels, 17 and 18 June 2004).

‘19. The European Council welcomed Turkey's decision to sign the Protocol regarding the adaptation of the Ankara Agreement, taking account of the accession of the ten new Member States.

In this light, it welcomed the declaration of Turkey that "the Turkish Government confirms that it is ready to sign the Protocol on the adaptation of the Ankara Agreement prior to the actual start of accession negotiations and after reaching agreement on and finalising the adaptations which are necessary in view of the current membership of the European Union".’ (Presidency Conclusions – Brussels, 16/17 and 18 December 2004).

⁴⁵ ‘Cypriot President Tassos Papadopoulos has said he is satisfied with the outcome of the EU summit in Brussels, which decided to give Turkey a date to commence accession negotiations. “We put forward our demands and I think today's decision satisfies our demands to a great extent,” he told [at] a press conference in Brussels on Friday. The Cypriot president added that the decision grants the Republic of Cyprus the right to veto Turkey's EU course, in the event that Ankara does not fulfill its commitment to sign the customs union protocol. “The protocol covered many of the demands we had put forward,” the president added’. Athens News Agency article titled “*Cyprus president satisfied with EU summit decision on Turkey*”, (18 December, 2004). Taken from www.greekembassy.org.

This Summit once again proved the validity of the considerable Greek impact in Turkey's accession process. The statement of Greek Prime Minister Costas Karamanlis, which is quoted below, constitutes a prominent example to this:

"We did really well. We achieved all our goals," Prime Minister Costas Karamanlis stressed, summing up his views on the outcome of the two-day EU Summit which [was] concluded in Brussels on Friday, after long and intense negotiations. Karamanlis outlined the five goals the government had set and which have been achieved fully. They are:

1. Shaping of a European context which will include Turkey's behavior towards Greece;
2. A mechanism of continuous observation and control of Turkey's behavior;
3. Inclusion of a safeguard that will limit free movement of people;
4. Assurance that Turkey will respect human and religious rights;
5. Linking Turkey's EU progress with a commitment to improve its relations with the Republic of Cyprus.

The Greek premier also emphasized that Greece was able to achieve the above goals thanks to close cooperation with Cyprus and President Tassos Papadopoulos.⁴⁶

In this context, Greece seems to have abandoned its veto policy towards Turkey. However, one cannot guarantee a positive vote from the Republic of Cyprus as it can be inferred from the statements of the Greek Cypriot leader Tassos Papadopoulos. Furthermore, there is a new concern, which is openly expressed by European countries without any hesitation, the cultural differences issue. In the recommendation of the European Commission on Turkey's progress towards accession dated 6 October 2004, prepared by the Commission of the European Communities, it is indicated that the accession of Turkey to the European Union constitutes a challenge for both the EU and Turkey. It is also stated that "Turkey's accession would be different from previous enlargements because of the combined impact of Turkey's population, size, geographical location, economic, security and

⁴⁶ Athens News Agency article titled *"We achieved all our goals," Karamanlis says of EU Summit outcome*, (18 December, 2004). Taken from www.greekembassy.org/Embassy/.

military potential, as well as cultural and religious characteristics”.⁴⁷ Likewise, officials of the European Union countries each time express that their populations are concerned about the major cultural differences between the EU countries and Turkey, and that they have hesitations about the accession of Turkey to the EU. A new obstacle on the part of Turkey seems to be added to the issues that Turkey has to cope with to become a member of the EU. In the article entitled *Stephanopoulos criticism of EU* dated 20 December 2004 it is stated that

A day earlier, Greek President Stephanopoulos sharply criticized the European Union's policy vis-a-vis Turkey's long-coveted goal of beginning EU accession negotiations, in the aftermath of the Union's decision to give the predominately Muslim country a conditional "green light" to begin entry talks in early October 2005.⁴⁸

From this statement it can be inferred that Greece is still not very sincerely supportive of Turkey's accession to the Union, but it would no more have a direct hampering impact on Turkey's accession process as it did until 1999, which has implications that still seem inherent.

2.7. Conclusion of the Historical Background

All in all, with respect to the periods analyzed in the previous sections it can be concluded that the beginnings of the “enosis” movement on the island of Cyprus in the mid-1950s increased the tension between Greece and Turkey as well as reviving the past negative memories of the two parties towards each other. Therefore, the period between 1950 and 1955 comprised the final years of friendly relations

⁴⁷ Section 3: Assessing The Issues Arising From Turkey's Membership Perspective, paragraph 1 and bullet point number 1.

⁴⁸ Taken from <http://www.greekembassy.org/Embassy/content/en/>.

between Greece and Turkey for a long time to come since the outbreak of the Cyprus issue consisted the beginning of long lasting disputes.

Despite the ongoing conflicts between Greece and Turkey on various subjects, currently there are efforts to achieve a solution to the disputes related to the Aegean Sea. The rapprochement process between Greece and Turkey is going on since 1999, moreover in March 2002 exploratory talks started between the two countries. There had been 29 meetings till the end of 2004, and the most recent meeting took place on 23 February 2005 in Ankara. Currently the exploratory talks are continuing and solutions to the Aegean disputes are being sought.

CHAPTER III

THE TERRITORIAL SEA ISSUE

As indicated in the previous chapter, the Lausanne Peace Treaty marked the beginning of a peaceful era in Greek-Turkish relations, and established a so-called and accepted equilibrium between Greece and Turkey in the Aegean Sea by harmonizing vital interests, in which the existent practice of the width of the territorial seas of both countries were set at three n.m.. However, in 1936, Greece extended its territorial waters to six n.m. and upset the *status quo* in the Aegean to its own advantage. Turkey, on the other hand, declared the same breadth in 1964, since in the 1930s it did not perceive Greek extension, and the intention behind it, as a challenge to itself. Although Turkey did not object to the extension of Greek territorial waters then, not all states were content about this Greek decision. An objector in 1936, in this respect, was the UK, which favored a limit of three n.m. until the 1958 Geneva Law of the Sea Conference.⁴⁹

The first dispute between Greece and Turkey related to the width of the territorial sea in the Aegean emerged in 1964 as Turkey decided to extend its territorial sea to six n.m.. Although it was practicing the same width in the Aegean Sea, Greece objected to the Turkish decision with the claim that six n.m. of Turkish territorial waters would impede fishing rights of Greece in the Aegean Sea.⁵⁰ By the

⁴⁹ Yücel Acer. *The Aegean Maritime Disputes and International Law*, (Wiltshire: Ashgate, 2003), p. 30.

⁵⁰ Yücel Acer. (2003), p. 30. It should also be noted that Turkey, while extending its territorial waters, in the commentary of the related territorial waters law of 1964, emphasized that if third states have acquired rights related to fishing, then this sort of a dispute will be settled between Turkey and the related state. (Yüksel İnan. *Devletler Hukuku Bakımından Kıyı Suları Balıkçılığı ve Sorunları*, (Ankara: Ankara İktisadi ve Ticari İlimler Akademisi Yayınları No.96, 1976), p. 20).

early 1970s, Greece changed its stance and started to pronounce the possibility of further extension of Greek territorial sea.

Greece, after it signed the Law of the Sea Convention in 1982, to which Turkey is still not a signatory, claimed that it has the right to extend its territorial waters up to twelve n.m.. It is also important to note that following the Greek ratification of the Law of the Sea Convention in 1995 and Greece's declaration of its intention to extend its territorial waters up to twelve n.m. once again, Turkish Grand National Assembly (TGNA) on 8 June 1995 enacted a resolution related to this possible extension of Greek territorial waters, which indicated that such an act would be perceived as *casus belli* (reason for war). This decision stated that:

While hoping that the Greek Government shall not decide to extend its territorial sea in the Aegean beyond the present six miles limit, which in turn would ruin the equilibrium established by the Lausanne Peace Treaty, the Turkish Grand National Assembly, has decided to grant the Turkish Government all powers, including those that may be deemed necessary in the military field, for safeguarding and defending the vital interests of Turkey in such eventuality. The Grand National Assembly of Turkey has also decided to announce this to the Greek and world public opinion in a spirit of friendship.⁵¹

This TGNA resolution is an indication of the firm objection of the Turkish State against any other attempt to change the so-called equilibrium in the Aegean Sea.⁵² Consequently, Greece did not change the width of its territorial sea but indicated that it reserved the right to do so in the future. So, with this specific statement, Greece made sure that it did not renounce its rights anyhow, and emphasized that in

⁵¹ Taken from the unofficial translation of TGNA Declaration, 121st Session, 8 June 1995. For the complete text of the unofficial translation, see Appendix G.

⁵² However, it should also be reminded that the so-called *status quo* in the Aegean had already been changed in 1936 when Greece extended the breadth of its territorial sea to six n.m., which Turkey did not oppose at the time. For further details, see İnan and Acer, (2004), pp. 132-136.

accordance with its national strategy, Greece shall be the only party to decide when and how it shall exercise these rights.⁵³

Since these arguments lay out the very basis of the dispute, in the coming section, first the claims of the parties on the Aegean case and their legal positions regarding the dispute will be clarified, and following this, further Greek and Turkish arguments on the issue and practices of the two states related to the dispute as well as codification attempts will be explored.

3.1. Claims and Legal Bases of the Parties on the Dispute⁵⁴

3.1.1. Claims of the Parties

The key divergence between Greece and Turkey in their evaluation of the Aegean case(s) is that Greece does not officially accept any of the issues enumerated by Turkey, except the delimitation of the continental shelf, as a genuine and legitimate dispute. Therefore, Greece considers the other issues as “unilateral Turkish claims in the Aegean”, and this constitutes the very basis of the absence of a solution regarding the Aegean problems. According to the Greek approach,

The only legitimate dispute that needs to be settled between Greece and Turkey in the Aegean is the delimitation of the Aegean continental shelf. On this topic, Greece has repeatedly invited Turkey to the negotiation table in order for the two sides to agree to a “compromis”⁵⁵

⁵³ Tullio Treves, (ed.). *The Law of the Sea: The European Union and Its Member States*, (The Hague: Martinus Nijhoff Publishers, 1997), p. 565.

⁵⁴ All the claims in this section that is considered to be the official view of the parties are taken from the foreign ministry websites of Greece and Turkey; www.mfa.gr and www.mfa.gov.tr.

⁵⁵ The reason for Greece in inviting Turkey for negotiating to agree on a compromise agreement for the referral of the continental shelf dispute to the ICJ is to create the legal basis of the jurisdiction of the ICJ. As can be remembered from the judgement of the ICJ on 19 December 1976, related to the Aegean Continental Shelf Case, the Court found that it lacked jurisdiction to deal with the case, based on positive legal norms that are binding between Greece and Turkey. Greece, in its application, based its claim on the 1928 Geneva Final Act but it had reservations, and the case failed due to these reservations. In addition, during the oral proceedings the Court challenged why Greece did not base its claim of jurisdiction on the 30 October 1930 Treaty of Friendship, Neutrality, Conciliation and

for the referral of the dispute to the International Court of Justice. Turkey has repeatedly turned down Greece's invitation. Beyond this, all other matters at times termed "Aegean disputes" by Turkey consist exclusively of arbitrary claims against Greek sovereignty put forth by Turkey in defiance of international law and agreements.⁵⁶

On the other hand, Turkish officials argue that the challenges posed by Greece to change the *status quo* in the Aegean that was established by the 1923 Lausanne Peace Treaty and the Greek perception of the Aegean as a Greek sea constitutes the primary source of tension between Greece and Turkey within the said area. In this context, according to the Turkish perception, the actual source of Greek–Turkish conflicts is the unilateral acts of Greece such as its efforts to extend the Greek territorial waters beyond the present width of six n.m., the re-militarization of the Eastern Aegean islands, and Greece's practice of ten n.m. of "national air space" over its territorial waters of six n.m..

Thus, in general terms, the Greek approach is that there is no issue between Greece and Turkey other than the continental shelf dispute, whereas for Turkey the main issue is the one related to the extension of the territorial sea. In this context, to be able to come to an agreement on "the" Aegean dispute, Greece suggests that the continental shelf dispute should be brought before the ICJ. Dissenting from the Greek proposal, Turkish officials argue that the issues, first of all, should be solved by applying methods of pacific settlement of disputes, which are enumerated in

Arbitration regarding peaceful settlement of the disputes, including legal arbitration and referral of the disputes to the PCIJ. Greece as a defense raised the argument that the procedure described in the agreement was too long and complex. However, in reality, Article 4 of the said agreement can be considered as the main obstacle before Greece, which underlines that disputes related to the domestic jurisdiction and sovereignty disputes were excluded in the case of differences of opinion related to those that the PCIJ would be the organ to decide upon the issue. For the texts of the agreement in Turkish and English, see *Düstur [Compilation of Turkish Legal Rules] III, vol. 12, p. 73 or 125 League of Nations Treaty Series (LoNTS), 9.*

⁵⁶ Taken from: www.mfa.gr/english/foreign_policy/europe_southeastern/turkey.

Article 33/1 of the UN Charter under the scope of Chapter VI titled “Pacific Settlement of Disputes,”⁵⁷ since issues are more than one.⁵⁸

Turkish officials underline that unless the conditions related to the disputes such as the delimitation issues or the extent of the Greek territorial sea are clarified, it is not really possible to bring any of the disputes before the ICJ. For instance, without knowing the extent of the Greek territorial waters it will not be possible to define the areas of continental shelf pertaining to that state, since depending on the breadth of the territorial waters the amount of the areas that will be subject to delimitation will also change. For this reason, Turkey prefers to seek a solution to the disputes by means of bilateral talks built on mutual consent. In this respect, Çağatay Erciyes emphasizes the known Turkish official policy that Turkey does not refrain from going to the ICJ, if the said means fail to provide a settlement despite efforts displayed in good faith. Nonetheless, according to the Turkish official view, for Greece and Turkey to be able to bring the case before the Court, first of all certain means related to settlement of these issues have to be clarified.⁵⁹

3.1.2. Legal Basis of the Arguments of Greece and Turkey

While making the arguments indicated in the previous section (3.1.1.), both states refer to the same document, namely to the United Nations Convention on the

⁵⁷ Article 33, paragraph one of the UN Charter states that “The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”

⁵⁸ With regard to the application of methods of pacific settlement of disputes, Turkey has several note verbales, some of which are as follows: Memorandum of Understanding between Greece and Turkey, dated 27 May 1988, Athens; Statement by Prime Minister Mesut Yılmaz on Turkish-Greek Relations, dated 24 March 1996. Two other note verbales for similar purposes are dated 12 February 1998, 11 March 1998, and there are references to the ICJ as a means of settlement, in these notes as well, (especially in the latter). For details on the enumerated note verbales, see Section 3.3.

⁵⁹ Interview with the Director of the Maritime Affairs of the Turkish Foreign Ministry, by the author, 29 December 2003, Ankara.

Law of the Sea (UNCLOS), for their claims. Greece claims that it has a right to extend its territorial sea to twelve n.m. based on Article 3 of the 1982 Convention,⁶⁰ which states that “Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding twelve n.m., measured from baselines determined in accordance with this Convention”.⁶¹ On the other hand, while objecting to a possible extension of Greek territorial waters more than six n.m., Turkey refers to Article 300 of the Convention, which states that “States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.”⁶² In this respect, Turkey argues that since there exist special circumstances⁶³ in the Aegean Sea, a possible Greek extension of its territorial waters more than six n.m. would be an abuse of rights as outlined by Article 300 of the Convention. In this context, when results of the possible Greek exercise of twelve n.m. territorial waters in the Aegean are studied, the table below emerges:

TABLE 1. Changes in the percentages of territorial sea in the Aegean in accordance with the width of Greek territorial waters ⁶⁴

Territorial Waters	6 n.m. Greek territorial waters	12 n.m. Greek territorial waters
Turkish territorial waters	7,5 %	8,7 %
Greek territorial waters	43,5 %	71,5 %
International waters (High seas)	49 %	19,7 %

⁶⁰ For further information, see Article 3 (Breadth of the territorial sea), Article 33 (Contiguous zone), Article 121 (Regime of islands), Article 122 (Definition), Article 123 (Co-operation of States bordering enclosed or semi-enclosed seas), and Article 300 (Good faith and abuse of rights) of the Convention in Appendix C.

⁶¹ Taken from www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

⁶² Taken from www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

⁶³ Turkey from the very first conference of the UNCLOS had reservations on certain general expressions of the Convention. This is why Turkey throughout the conferences underlined the vitality of the special circumstances. In this context, special circumstances of the Aegean Sea and the Turkish attitude during the meetings of the UNCLOS as well as its reservations on the 1982 Convention will be studied in detail in the coming sections.

⁶⁴ The figures are taken from www.mfa.gov.tr.

In the current situation, Turkey has an exit area of 121 km long from its coastline, and it can have access to the high seas of the Aegean from five different points. However, if the limit of Greek territorial waters is extended to twelve n.m. then the Turkish area of exit will decrease to 19 km and access to the high seas will be from three different spots.⁶⁵ In the light of these findings, Turkish officials argue that a practice of twelve n.m. of Greek territorial waters in the Aegean Sea will be an abuse of rights, which will have highly disadvantageous consequences for Turkey. Thus, Turkey asserts that such an exercise is unacceptable, and that it can even be considered illegal. In this respect, Turkish officials emphasize that the settlement of this dispute, on the basis of non-extension of Greek territorial waters beyond its present limits, is a *sine qua non* (essential condition) clause for the resolution of all Aegean disputes.⁶⁶

In this context, if the legal positions of the two states are evaluated, it can be stated that Greece claims that it has an absolute right to establish the breadth of its territorial sea to a limit not exceeding twelve n.m. depending on the rule provided in Article 3 of the UNCLOS. Moreover, the Greeks point out the fact that this rule of the UNCLOS does not necessarily make a reference to areas with special circumstances where states should keep the breadth of their territorial waters at an equitable level. In this respect, no area, including the Aegean Sea is considered to be an exception for Greece. Besides, another Greek argument is that since the right to determine the width of the territorial sea is a sovereign and unilateral right vested with the coastal state, Greece does not necessarily have to discuss this issue with Turkey. “Therefore, [according to Greece] any objection on the part of a third State

⁶⁵ The information is provided from Çağatay Erciyes during the interview.

⁶⁶ Interview with Çağatay Erciyes, by the author. For further details, also see, Yüksel İnan and Sertaç Başeren, “The Troubled Situation of the Aegean Territorial Waters” in *Hellenic Studies*, Vol. 4, No. 2, 1996, pp. 55-68.

to the choice of the coastal State in this respect - provided, of course, that the breadth adopted does not exceed the 12-mile limit - would be unsubstantiated.”⁶⁷

With respect to Greek claims, Turkey accepts that the declaration of the width of the territorial sea is a unilateral action. Nevertheless, Turkey is the other coastal state of the Aegean and consequently it has vital interests in this area. For this reason, Turkish officials outline the set of principles that should be adopted in bilateral correspondence with Greece as follows:

- a. The Aegean is a common sea between Turkey and Greece.
- b. Both countries should respect each other’s legitimate rights and vital interests.
- c. These freedoms at the high seas and the air space above it, which at present both coastal states as well as third countries enjoy, should not be impaired.
- d. Any acquisition of new maritime areas should be based on mutual consent and should be fair and equitable.⁶⁸

Moreover, Turkey objects to the Greek claim that the right to extend territorial waters to a limit of twelve n.m. is an absolute one, especially in an area like the Aegean Sea. Thus, Turkey argues that the validity of a unilateral declaration on the limit of the territorial sea must be in conformity with the relevant norms of international law. In this respect, Turkey claims that special circumstances in the Aegean Sea should be taken into consideration while determining the breadth of the territorial sea in this area so as not to cause an abuse of rights.

Prior to making references to the judgments of the international courts regarding special circumstances, current general applications of the two states should be studied. When reference is made to the practices of the two states related to the breadth of the territorial sea in the Aegean, it can be observed that Turkish application is six n.m. whereas it is twelve n.m. in the Mediterranean Sea and in the

⁶⁷ Taken from www.mfa.gr/english/foreign_policy/europe_southeastern/turkey/.

⁶⁸ Taken from www.mfa.gov.tr/MFA/ForeignPolicy/Regions/EuropeanCountries/EUCountries/Greece.

Black Sea. Thus, Turkey practices different width of territorial waters on different seas.

In 1964, Turkey's territorial waters were declared as six nautical miles (Art. 1/1) by the <<Territorial Waters Law>> (Law No: 476). Yet, Turkey also reserved the right on the basis of reciprocity, to apply broader territorial sea limits to those countries that accept and apply broader limits (Art. 2). [...] Given the changes in the law of the sea, the various views of the states and also some of Turkey's draft article resolutions Ankara submitted to the Third UN Conference on the Law of the Sea, denounced this law (No. 476) and accepted on 20 May 1982 a new <<Territorial Waters Law>> (Law No: 2674).

Since May 1982, Turkey has applied this law, which also accepts a territorial sea of six nautical miles (Art. 1/1). The same law also gave the government the power to declare broader territorial waters in particular seas, where all circumstances justified such an act and where the principles of equity are not compromised (Art. 1/3).

The Turkish Government, taking into consideration this particular provision of the law, declared by a decree (Decree No: 8/4747 dated May 29, 1982) that it would continue to apply a territorial sea of twelve nautical miles in the Black Sea and also in the Mediterranean.⁶⁹

Greece, on the other hand, practices the same breadth of territorial waters in all its seas, including the Ionian Sea. Since Greece does not want to practice different breadths of territorial sea it cannot yet extend its territorial sea to twelve n.m. even in the Mediterranean. Although it was in favor of three n.m. as the width of territorial sea during the proceedings of the La Haye Codification Conference, on 17 September 1936 by Law No. 230 Greece extended its territorial waters to six n.m.. It should also be noted that during the La Haye Conference Turkey was in favor of a limit of six n.m..⁷⁰

According to the Turkish official perspective since there are almost a total number of 3000 islands and islets in the Aegean Sea⁷¹, and since some of these islands and islets are too close to the Turkish coasts, whereas such circumstances are

⁶⁹ İnan and Başeren. (1996), pp. 57-58.

⁷⁰ İnan and Başeren. (1996), p. 59.

⁷¹ Aside from the general tendency, Yüksel İnan and Yücel Acer refer to the number of islands and islets as around 1800 in their article entitled *The Aegean Disputes*.

present neither in the Black Sea nor in the Mediterranean Sea, the Turkish application of different limits of territorial sea is not an inconsistent one. However, an application which is considered to be an inconsistent one, according to the Turkish point of view is the Greek practice of ten n.m. of airspace.

3.1.3. A “Double” Arrangement of the Territorial Sea – The Greek Airspace Issue

In this context, a brief reference should be made to this issue since part of this subject falls under the scope of this study, and helps to clarify the underlying reasons for the absence of a peaceful solution to the bilateral disputes between Greece and Turkey. Despite applying the same breadth in all its seas, currently, Greece applies two different breadths of territorial waters in the Aegean Sea; for general purposes it has six n.m. territorial waters, and for the regulation of aviation and air policing, a ten mile territorial sea established by a decree in 1931.⁷² Thus, Greece has two different limits of territorial sea, which is also the contemporary practice that constitutes a point of disagreement between Greece and Turkey.

Since 1975, Turkey argues against this practice of ten n.m. of Greek airspace and as a display of its objection, it started to penetrate the Greek national airspace within the limits of 6 to 10 n.m.. This, at times, causes considerable tension between the two states and “dogfights” take place. An important point that is raised by the Greek officials regarding this very case is that prior to 1975, Turkey had not made any reservation regarding the double arrangement of Greek territorial waters. Thus,

⁷² Taken from www.mfa.gr, as stated in the Greek Foreign Ministry website: “For the time being, Greece has fixed the lateral limits of its territorial sea in two different ways: a 6-mile territorial sea, for general purposes, established by Law in 1936, with a 10-mile territorial sea, established by Decree in 1931 for aviation and air policing purposes. Following this arrangement, the lateral limits of Greece's national airspace were legally defined at 10 n.m., with reference to the delimitation of a special zone of territorial sea of 10 n.m., serving the requirements of aviation and air police.”

this “double” arrangement of Greece in its territorial waters did not face any opposition at the beginning.

After the coming into force of Annex 4 of the Chicago Convention concerning Aeronautical Charts, the first aeronautical charts of ICAO, published in 1949, were based on the CINA charts. Included in their second publication, in 1955, were new aeronautical charts that Greece published with a clear description of its national airspace boundaries as extending to 10 n.m.. It must be noted that the corresponding Turkish aeronautical charts also include the boundaries of the Hellenic national airspace in 10 n.m.. The limits of the Athinai FIR were determined, and the relevant Air Navigation European Plan Chart was approved, during the Regional Air Navigation Meetings of Paris (1952) and Geneva (1958), based on the external limits of the territorial waters and boundaries of the adjacent FIR's of the neighbouring States. Turkey participated in these Regional Meetings without reserve, concerning the 10 n.m. lateral limits of the Hellenic national airspace.⁷³

In this context, references made to Greek aeronautical charts in the 1958 Regional Meeting and the notification of these to ICAO in 1955 did not face any Turkish objection. Thus, Greece argues against the current negative Turkish position towards the Greek practice continuing since 1970s, as Turkey had long accepted the double arrangement of Greek territorial sea practice. It is valid that Turkey prior 1975 did not oppose to that practice either due to lack of interest on the issue and its perception of Greece at the time or due to its past foreign policy objectives.⁷⁴

However, whether Turkey had objected to this prior to 1975 or not, Greece's application of the double limits of territorial sea does not really follow international law. As Greece indicates (in its Ministry of Foreign Affairs website while explaining the case of the “Greek Territorial Waters and national airspace” from its point of view), “In accordance with International Law (Articles 1 and 2 of the Chicago

⁷³ Taken from www.mfa.gr/english/foreign_policy/europe_southeastern/turkey/.

⁷⁴ It should be reminded that in the 1930s, especially till mid-1950s Greek-Turkish relations were considerably well, peaceful and friendly. The period between 1930 and 1950s, can be considered as the best times of Greek-Turkish neighborly relations of the modern, Republican Turkish state. However, with the outbreak of the Cyprus issue the peaceful and friendly atmosphere between the two states started to turn into a tense one, and the Turkish operation on the island of Cyprus constituted the final crossroads. Thus, from this day on, also the perception of the two states towards each other had also changed in an exceptionally negative way.

Convention of 1944 on Civil Aviation) the sovereign airspace of a state is the airspace above its territory and its territorial waters.”⁷⁵ Since Greece exercises a limit 4 n.m. wider than its territorial sea, it does not follow the definition of Articles 1 and 2 of the Chicago Convention, and contradicts with its very own reference. Greek officials indicate that

The reason for this "double" arrangement was Greece's policy of facilitating the freedom of navigation at that time. Indeed, in 1931, quite in conformity with international law, Greece could have created a 10-nautical mile territorial zone of general application. However, Greece refrained from doing so out of liberalism towards maritime navigation.⁷⁶

In light of this, two evaluations of the Greek statement above seem necessary. First, it should be reminded that in 1931 the extension of territorial sea up to twelve n.m. was not yet accepted and this was not a general principle practiced by states. In this context, the phrase “quite in conformity with international law” does not really reflect the actual situation. Moreover, Greece, when it declared 10 n.m. of airspace, was practicing only three n.m. of territorial sea, and it was not until 1936 that Greece extended its territorial sea to six n.m..⁷⁷ Secondly, it should be underlined that conditions in the Aegean Sea, which made Greece practice two different arrangements, have not changed since 1931. Moreover, either as a means of justification or as a solid reason, Greece, with this very statement highlighted that there are circumstances which led Athens to practice a different width of territorial

⁷⁵ Taken from www.mfa.gr/english/foreign_policy/europe_southeastern/turkey/.

⁷⁶ Taken from www.mfa.gr. In line with the quotation, it can be presumed that this is a confession related to the decrease of the Aegean airspace contrary to the interests of third state vessels, particularly to military, state and even to civil vessels, since aircrafts are permitted to fly in those zones (areas) with special permission of the related sovereign state. As it is well-known, international law does not *ipso-facto* recognise the right of innocent passage from the airspaces of states.

⁷⁷ As it can be observed from the records of the First Committee of the UN Conference of the Law of the Sea (24 February to 27 April 1958), the Greek state had no intention, whatsoever, to extend its territorial sea to twelve n.m. in the Aegean Sea. This attitude was expressed by the Greek delegate Kripsis during the meetings, and it was not until the Third UN Conference on the Law of the Sea that Greece started to advocate a general limit of 12 n.m. to exercise as the breadth of the territorial sea. For the exact statement of the Greek delegate Kripsis, see p. 48, paragraph 2.

waters and the airspace above it in the Aegean Sea, so as not to cause a hampering impact on the freedom of navigation. From this point, it seems appropriate to continue with focusing on special circumstances in the Aegean. Therefore, in the coming section the geography of the Aegean Sea and its primary characteristics will be outlined.

3.2. Special Circumstances in the Aegean Sea

The Aegean is a common sea between Greece and Turkey, in which both states have vital interests, and thus, the unique characteristics of the Aegean constitute the basic source of bilateral disputes between the two states. In this respect, it is highly important to focus on the elements that make the Aegean Sea an area where geographic features require utmost attention. With regard to the special characteristics of the Aegean, Feldman states that:

The political geography of the Aegean Sea is unique. This body of water has been described as a semi enclosed sea measuring approximately 400 miles long by 100 miles wide and bordered by the coasts of two states – Greece and Turkey. This small space includes approximately 3000 different islands and islets, mostly under Greek sovereignty. A few islands are large. Many are small. Most important, a number of Greek islands of various sizes lie in close proximity to the coast of Turkey. The situation of these islands has long been recognized by scholars and governments as the prototypical “special circumstance” for purposes of maritime boundary delimitation.⁷⁸

In this context, the coasts of Greece and Turkey surround the Aegean, and no other state has direct access to this sea. However, due to its geographic location, the Aegean constitutes a maritime link between the littoral states of the Mediterranean

⁷⁸ Mark B. Feldman, “International Maritime Boundary Delimitation: Law and Practice from the Gulf of Maine to the Aegean Sea” in *Aegean Issues: Problems-Legal and Political Matrix*, Seyfi Taşhan, (ed.), (Ankara: Foreign Policy Institute, 1995), p. 14.

Sea and the littorals of the Black Sea.⁷⁹ Based on this fact, it can be claimed that the Aegean is a vital area for international navigation, especially for the coastal states of the Black Sea, and this reality, inevitably, draws the attention of these states as well as other states⁸⁰ that do use the Turkish Straits for international transportation to this issue and thus to the extent of territorial waters in the area.

The importance of the Aegean with regard to international navigation is referred to, at times, both by Greece and Turkey. For instance, during the First Committee meetings of the UN Conference of the Law of the Sea, which took place between 24 February and 27 April 1958, the Greek delegate Kripsis indicated that “If Greece extends its territorial sea to twelve nautical miles, which, according to Article 3 of the Commission’s draft, would not be contrary to international law, it would be closing the whole of the Aegean Sea to the international community”.⁸¹ In this statement, the Greek admission is quite clear that a further extension of the territorial waters in the Aegean would highly impede international maritime navigation,⁸² and this would mean, without doubt, abuse of a right. For that reason, the distinctiveness of the Aegean Sea in terms of international navigation is a criterion that should be taken into consideration when deciding on the breadth of the territorial sea in the region.

Another characteristic of the Aegean that Turkey is highly concerned with is the number and location of islands, islets and rocks in the area despite the relatively

⁷⁹ Yücel Acer. (2003), p. 4.

⁸⁰ Some of the states that use the Straits most can be listed, according to the number of passage from the Straits of Istanbul and Çanakkale from 2000 to 2003, as follows: Malta (43,878), Russian Federation (33,848), Ukraine (27,143), Cambodia (19,485), Syria (14,557), Panama (12,576), Greece (10431), Saint Vincent (9031), Republic of Cyprus (8058), Antigua and Barbuda (6741), Liberia (6396), Bulgaria (6280), etc. In addition to the listed third flag states, Turkey due to being the riparian to the Straits obviously is the one that uses this route the highest, which as a figure corresponds to 87,978 times in four years. The figures are a compilation of the data provided in *Rapport Annuel sur le Mouvement des Navires a Travers les Detroits Turcs* for years 2000, 2001, 2002 and 2003.

⁸¹ İnan and Acer. (2004), end note 46, p. 151. For further details, see İnan 1976, pp. 43-44.

⁸² This fact was also expressed in another Greek statement that was referred to as a direct quotation on page 46 and footnote 77.

narrow size of the sea. Most of these islands belong to Greece and some of them are too close to the vicinity of the Turkish coasts. In this respect, the distinct geographical characteristics⁸³ of these islands constitute the core of Aegean maritime disputes.⁸⁴

First of all, due to their large number, the Greek islands constitute a very significant portion of the total coastal length of Greece. They have around 7,500 km coastal length in total. On the other hand, Turkey's Aegean islands have a mere 679 km coastal length. [...] A considerable number of the Aegean islands are very small islets and rocks with no human habitation. Some of them such as Crete, Evvia, Rhodes, Lesvos, Chios, Limnos and Samos are, however, quite sizeable and have a significant population. The rest of the Aegean islands are again different in terms of size, ranging from 10 km² to 400km².⁸⁵

Due to the above stated complicated geographic structure inherent in the area, Turkey has certain and vital concerns about the breadth of the territorial sea. Thus, it is not, in any way, in favor of any further extension of the Greek territorial waters in the Aegean Sea.

Specific Turkish concerns related to a limit of twelve n.m. in the Aegean arise from expected consequences which can be enumerated as follows.⁸⁶ First of all, “such an action will turn the Aegean into a Greek Sea to the detriment of Turkey's vital and legitimate interests”. In this context, if extension is realized, Turkey will be practically locked up to its own territorial waters in the Aegean. This, also, will highly reduce the proportion of the high seas and thus, preclude other states from

⁸³ The length of the coasts of the coastal states, the nature of the sea such as being too shallow, and/or the presence of rocks, islets and islands highly close to the shore, (which will raise claims for applying straight baselines), the configurated nature of the coasts and possibilities to apply straight baselines from the outer edges of those configurations, etc. are accepted as special circumstances according to international practice, international law and also according to the practice of the ICJ.

⁸⁴ Yücel Acer. (2003), p. 4.

⁸⁵ Yücel Acer. (2003), p. 5.

⁸⁶ All the points raised within this paragraph, including the interpretation of the possible consequences, are taken from www.mfa.gov.tr/MFA/ForeignPolicy/Regions/EuropeanCountries/EUCountries/Greece/GreeceLinks/Territorial_Waters.htm.

benefiting in terms of economic, military, navigational or other purposes. Secondly, “Turkey's access to the high seas will be blocked and its Aegean coast will be encircled by Greek territorial waters [and] Turkey's access from its west shores to the international waters (high seas) of the Aegean and similarly from the Aegean to the Mediterranean will almost be curtailed.” Thirdly, “Turkey's military, economic and scientific interests will be seriously jeopardized”, and Turkey will no more be able to conduct military trainings in the Aegean Sea. Moreover, Turkish naval units will be obliged to use the Greek territorial waters for passage from the Aegean to the Mediterranean or from the Mediterranean to the Aegean. This will also affect the military aircraft and “Aegean bound flights will not be possible and Mediterranean flights will be subject to Greek permission”. If Greece starts to practice twelve n.m. limit of territorial waters, this will also hamper Turkey’s activities in the Aegean Sea such as scientific research, fishing and sponge-diving in areas beyond the Turkish territorial sea, and Turkey will have to get the approval of Greece since it will have no legal right to carry out such activities without Greek consent. Finally, according to the Turkish point of view, “Greece will gain unjustified advantage in delimitation of other maritime jurisdiction areas”, which will, in return, affect the settlement of the other related Aegean disputes such as the delimitation of the continental shelf, the exclusive economic zone and the contiguous zone. Thus, the overall Turkish argument is that a further extension of the Greek territorial sea is not only destined to have results regarding the rights of international navigation, but also will have other unpredictable outcomes.

Due to reasons above, the extension of the Greek territorial waters more than six n.m. is highly unacceptable for Turkey although Greece has a right to do so emanating from Article 3 of the UNCLOS. Moreover, as far as Turkey is concerned

the special circumstances cannot be disregarded if settlement of the Aegean disputes is to be achieved, and the rights of the states established by international law should be practiced in good faith in order not to cause an abuse of rights, which is based on Article 300 of the UNCLOS.⁸⁷ Since the clauses of the UNCLOS are not clear enough about special circumstances, and interpretation of the parties vary, a direct reference to the practice of the ICJ seems viable. In this context, an overview of the Anglo-Norwegian Fisheries Case will be provided to refer to an actual practice of states where the ICJ came to a judgment by taking into account the special circumstances that exist.

The ICJ in its judgment dated 18 December 1951, which dealt with the Anglo-Norwegian Fisheries Case⁸⁸, emphasized that it is necessary to consider the special characteristics of the concerned area while determining the extent of territorial waters. As a response to British claims, Norway argued that the coast of the mainland is of a very distinctive configuration and that it does not constitute a clear dividing line between the land and sea. This constitutes special circumstances when evaluated within the scope of international law and its practice. Also, it is quite similar to the situation in the Aegean and thus comprises a supporting case for the Turkish stand.

Throughout its proceedings, the Court noted that the principle of straight base-line will apply in the case of the Norwegian coast, and added that it has been in practice without any objections from other states.⁸⁹ The Court also emphasized that unilateral practices of a state do not constitute acceptable legal norms of international

⁸⁷ See the Greek claims regarding Article 3 of the UNCLOS and the Turkish counter arguments on this with reference to Article 300, on p. 40, paragraph 1.

⁸⁸ The case questions the legality of the Royal Norwegian Decree of 1935 upon the commencement of procedures by the UK Government on 28 September 1949. The case, in general terms, deals with the fisheries zone, territorial sea, special characteristics of the Norwegian coast and baselines for the determination of the points for territorial waters, as well as internal waters.

⁸⁹ This method consists of selecting the appropriate points on the low-water mark and drawing straight base-lines between them.

law. “In this connection, [according to the Court], the practice of states does not justify the formulation of any general rule of law.”⁹⁰ This can also be accepted as an important legal point of view supporting the Turkish argument, especially regarding the airspace issue. The Court further observed that the system of delimitation was consistently applied by Norway and this system did not face any objection by other states. Thus, it can be deduced that when a state practice is consistent, it not only creates acquired rights but also acquiescence of a norm by third parties.⁹¹

In line with previous statements, the Court also expressed that “the application of the system of delimitation by the Norwegian authorities was consistent and uninterrupted since 1869 until the dispute arose [in 1933]”.⁹² This stance of the Court might affect the Greek-Turkish case related to the airspace issue, which might have negative consequences for Turkey, since Turkey had neither challenged nor opposed the 10 n.m. of Greek airspace from 1931 to 1975.⁹³ State practice is accepted by international courts as legal evidence, which is in principle reflected in Article 31 of the Vienna Convention on the Law of the Treaties.⁹⁴ However, with regard to the extension of the Greek territorial waters to more than six n.m., Turkey has been a persistent objector of further extension. Thus, unlike the case in the airspace issue, Turkey has long been advocating the preservation of the present six

⁹⁰ Judgment of the Court, *Fisheries Case (United Kingdom v. Norway)*, p. 19.

⁹¹ It should also be noted that there are cases where international tribunals, for certain disputes, had to take into account state practice and ruled in favor of the state that displayed consistent and unopposed state practice. A few examples are the legal status of Eastern Greenland between Denmark and Norway (5 April 1933), the case related to the sovereignty over certain frontier land between Belgium and the Netherlands (20 June 1959) and the dispute over sovereignty on Pulau Litigan and Pulau Sitigan between Indonesia and Malaysia (17 December 2002).

⁹² Yücel Acer. (2003), p. 26.

⁹³ One of the main causes of this might be that the two states are members of the NATO since 1952, and all the NATO documents limit the airspace of member states to their territorial waters. For further information, see İnan and Acer. (2004), pp. 125-157.

⁹⁴ For Article 31 of the Vienna Convention on the Law of the Treaties which deals with the general rule of interpretation, see Appendix I.

n.m. limit since there exist special circumstances, which make things quite complicated in the Aegean Sea.

In this respect, from the Turkish point of view, an extension of Greek territorial waters to more than six n.m. in the Aegean Sea will obviously be disregarding the special circumstances inherent in the area. Thus, such an act would cause inequity, and this will bring about an abuse of rights for the states that have rights in the said area. Article 15 of the UNCLOS also makes references to the historic title and special circumstances when “delimitation of the territorial sea between States with opposite or adjacent coasts” is in consideration.⁹⁵

Since both Greece and Turkey refer to the same document, namely to the UNCLOS, as a legal source for their claims on the Aegean Sea, a reference to the formation of this Convention and to the prior codification activities seem beneficial to understand the evolution of the views of the parties with regard to the extent of the territorial sea.

3.3. Codification Activities and Bilateral Efforts of the Parties

The first attempt to achieve codified rules of international law took place in 1920, with the consideration of the Committee preparing the statute of the Permanent Court of International Justice that codification of international law would be beneficial for the international community. To this end, in 1924, the General

⁹⁵ The article 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 points 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.” According to the Turkish official view, this article reflects the principles for delimitation in the Aegean.

Assembly of the League of Nations formed a sub-commission to decide on the subjects that were ready to be codified. Some of these subjects were related to international law of the sea such as the territorial sea, the legal status of commercial ships, management of sea sources and piracy. Therefore, the La Haye Conference can be accepted as the first attempt to codify rules of international law of the sea as well. This was a conference composed of 47 participant states that convened between 13 March 1930 and 12 April 1930 in La Haye. However, this conference failed to achieve its objective, especially concerning the codification of rules of the international law of the sea, due to absence of agreement between the parties.

In this conference, mainly the breadth of the territorial sea was tried to be determined, however when it was understood that this issue could not be settled, the participant states were asked to state their opinions on the territorial sea and contiguous zone issues. While answering this question, most states preferred to explain their own practices. In this respect, Turkey indicated that it was in favor of a contiguous zone outside the territorial sea whereas Greece did not raise any points. With respect to the breadth of the territorial sea, Greece expressed that it was in favor of three n.m. as a limit. On the other hand, Turkey favored a width of six n.m..⁹⁶

As indicated previously, the 1930 La Haye Codification Conference failed to achieve concrete rules of law with regard to the international law of the sea. Attempts to codify the rules of international law of the sea continued with the First and the Second UN Conferences on the International Law of the Sea, and were finalized with the conclusion of the UNCLOS. In this context, the next two sections will focus on

⁹⁶ It should also be noted that the Soviet Union was the only state that claimed 12 n.m. of territorial sea as a limit at that time.

approaches of Greece and Turkey during these Conferences as well as outlining changes in the stance of Greece concerning the extent of territorial waters.⁹⁷

3.3.1. The Vacillation of Greek Stance throughout the Development of the UNCLOS

The positions of Greece and Turkey during the UN Conferences on the Law of the Sea constitute an important context in defining differences of perceptions between the two parties. In this context, firstly, the Greek change of attitude during these conferences will be studied while providing a background on the Turkish stance. To this end, the initial reference should be made to the first conference of the UN for the codification of a law of the sea, which convened between 24 February and 27 April 1958.

Turkey, during this first conference, indicated that it would accept three n.m. as the breadth of the territorial sea, however, it also pronounced that if another state practiced a wider territorial sea in any of the seas to which Turkey is a riparian, then Turkey would also act in the same manner in the concerned area on the basis of reciprocity. Similarly, Greece also indicated that it was ready to accept three n.m. of territorial waters, although it was practicing a six n.m. limit.⁹⁸ In this respect, Greece was proclaiming that if three n.m. was accepted as the breadth of the territorial sea in the Conference, it would also decrease the extent of its territorial sea to three n.m., despite the fact that Greece's food resources are mostly dependent on the sea. While explaining its viewpoint, Greece made reference to the Aegean Sea by outlining potential outcomes of the extension of the Greek territorial waters to twelve n.m.,

⁹⁷ For further details, see Yüksel İnan. (1976), pp. 34-36.

⁹⁸ Yüksel İnan. (1976), p. 43.

and underlined that such an act would hamper freedom of international navigation in the area in terms of closing the Aegean Sea to the international community.⁹⁹

In conformity with its proclamation, Greece presented its proposal (A/CONF. 13/C. 1/L. 136), which suggested a width of three n.m. for the territorial sea.¹⁰⁰ Later on, Greece withdrew its proposal to support the Italian proposal, which said that the coastal states should have the jurisdiction to decide the limit of the territorial sea to an extent up to six n.m., however, the territorial sea should not be wider than six n.m.¹⁰¹ Turkey, on the other hand, preferred to support Canada's proposal, which also offered a limit up to six n.m. for the territorial sea. In line with this, Turkey cast in favor of the Canadian proposal, whereas it cast a negative vote to the common proposal of India of Mexico, as well as the proposal of the Soviet Union, which offered a limit of territorial waters up to twelve n.m. on different bases.¹⁰² Moreover, both Greece and Turkey voted in favor of the proposal of the US since the given extent of the territorial sea was six n.m..

In the course of the conference, none of the proposals achieved the required number of positive votes. Therefore, no result concerning the extent of the territorial sea and the fisheries zone could be achieved at the end of the conference. This set up the basis for the second conference. However, the outcome did not change in this one either. The second conference was held between 17 March and 26 April 1960. In general terms, neither Greece's nor Turkey's positions had changed during the conference. For instance, Turkey voted in favor of the proposal of Iceland, the joint proposal of Brazil, Cuba and Uruguay, and another joint proposal by the US and

⁹⁹ For the exact statement, see p. 45, and for further details, see İnan. (1976), p. 44.

¹⁰⁰ Yüksel İnan. (1976), p. 47.

¹⁰¹ Italy, later on, withdrew its proposal to support the proposal of the US. For further information, see Yüksel İnan. (1976), pp. 45-48.

¹⁰² Here, it should be noted that Greece voted against the Canadian proposal since it did not favor 12 n.m. of exclusive economic zone (EEZ). For further information, see Yüksel İnan. (1976), p. 55.

Canada.¹⁰³ The official stance of Greece was presented in the speech of Mr. Vlachos who said that

his country's position was the same as it had been at the time of the First Conference. His delegation was more convinced than ever that it would not be in the interests of the international community to adopt a solution which, though it might extend the national territory of each State, would increase the responsibilities of coastal States, constitute a permanent source of dispute, and check the expansion of world trade.

About 30 percent of his country's territory consisted of islands, and it had a very long coastline-14.000 nautical miles. *It might therefore be tempted to advocate an extension of the territorial sea to twelve nautical miles, which would enable it to join all its islands by strips of territorial sea and so secure control of the Aegean Sea.* General considerations, however, had strengthened its conviction that the *six nautical miles limit was a golden rule* which should apply both to the territorial sea and to the fishing zone, which should coincide with it.¹⁰⁴

Following the Second Conference, the quest for determining the extent of the territorial waters continued also with the Third UN Conference on the Law of the Sea. The final stage of the conference brought about changes in the positions of the states and in line with such change, Greece started to pronounce a fixed and uniform limit of twelve n.m. as the breadth of the territorial sea for every state.¹⁰⁵ In this context the Greek claim was that a general and uniform application of the twelve n.m. limit would bring about an indivisible understanding of sovereignty and an equal treatment among states, which would also, in return, avoid the practice of plural regimes within a system.¹⁰⁶ Turkey, on the other hand, indicated that it would accept a limit of territorial waters up to twelve n.m. with some reservations.¹⁰⁷ The renewed Greek position also claimed that the mainland Greece and the Greek islands should be considered as an archipelago. In line with this, "Greece asserted the

¹⁰³ Yüksel İnan. (1976), pp. 67-70.

¹⁰⁴ Deniz Bölükbaşı. *Turkey and Greece: The Aegean Disputes, A Unique Case in International Law*, (London: Cavendish Publishing Limited, 2004), pp. 129-130.

¹⁰⁵ Greece also proclaimed that it was in favor of an EEZ of up to 200 n.m. outside the territorial waters. For further information, see Yüksel İnan. (1976). pp. 149-151.

¹⁰⁶ Yücel Acer. (2003), p. 100.

¹⁰⁷ These reservations will be studied in the coming section.

territorial and political unity of the continental and insular parts of the Greek state”.¹⁰⁸ However, the Greek proposal was rejected on the basis of the meaning of the “archipelagic State” which is defined as “a State constituted wholly by one or more archipelagos and may include other islands”.¹⁰⁹ Nonetheless, on 10 December 1982, Greece signed the UNCLOS and made a declaration upon ratification. In this declaration, Greece first of all indicated that it reserved its rights stemming from the terms of the UNCLOS, so it would not be bound by its current application of six n.m. of territorial waters. Moreover, Greece indicated its choice of the International Tribunal for the Law of the Sea as the organ for settlement of disputes that may emanate from the interpretation or application of the UNCLOS.¹¹⁰ Thus, Greece once again pronounced that it would prefer the judicial settlement of this Court instead of an arbitral or a special arbitral tribunal.¹¹¹

Given the overview of the changing position of Greece throughout the Conferences, it can be concluded that in the Third UN Conference on the Law of the Sea, the Greek officials changed their classical attitude in favor of a twelve n.m. limit as the width of the territorial sea. Some argue that this shift was related to the Aegean tensions over petroleum issues as well as the Turkish operation to the island of Cyprus that took place in the same period, in 1973-1974.¹¹² However, it should also

¹⁰⁸ Deniz Bölükbaşı. (2004), p. 130.

¹⁰⁹ Article 46 of the UNCLOS. For further details see PART IV of the UNCLOS. Similarly, in the “Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain”, “the Court disregarded Bahrain’s argument that it was entitled to archipelagic state treatment, with archipelagic baselines.” For further details, see Jonathan Charney, (ed.). *International Maritime Boundaries*, vol. IV, (Netherlands: Martinus Nijhoff Publishers, 1996), p. 2849.

¹¹⁰ For the complete text of the declaration, see Tulio Treves, (ed.) (1997), pp. 565-566 or www.un.org/Depts/los/convention_agreements/convention_declarations.htm.

¹¹¹ Article 3 of the Greek declaration states that “Pursuant to article 287 of the United Nations Convention on the Law of the Sea, the Government of Hellenic Republic hereby chooses the International Tribunal for the Law of the Sea established in accordance with Annex VI to the Convention as the means for the settlement of disputes concerning the interpretation or application of the Convention.” (Tulio Treves, (ed.). (1997), p. 565). It should also be noted that despite the Greek preference of the International Tribunal for the Law of the Sea, Greece officially pronounces to submit its dispute with Turkey to the ICJ.

¹¹² Deniz Bölükbaşı. (2004), p. 137.

not be overlooked that within the practice of twelve n.m. limit, the vast amount of territory that would be included within the Greek territorial waters due to the number of Greek islands in the Aegean is rather more favorable to Greece than having larger high seas portions within the then Greek practice of a six n.m. limit. Whatever the nature of the changing Greek position was, this shift constituted a turning point in Greek-Turkish relations, since twelve n.m. of territorial waters in the Aegean Sea is considered to be an unacceptable option on the part of Turkey. In this respect, in the coming section, the reasons as to why Turkey did not sign the UNCLOS will be explored for the purpose of underlining the differences in view of the two states.

3.3.2. Reasons of Turkey for Not Signing the UNCLOS

As indicated previously, Turkey has participated in each and every stage of the UN Law of the Sea Conferences. However, it did not sign the Convention since it had some reservations stemming from national concerns. These concerns were mainly related to the distinct geographical characteristics of certain regions, namely of the Aegean Sea. These views were also reflected in the overall evaluation of the Third Conference by Turkish officials:

During the deliberations of the Conference, Turkey always stressed that the diversity of geographical circumstances was one of the most important factors to be taken into consideration in the attainment of this objective. On every occasion Turkey expressed the need to establish a proper balance between different groups of interests stemming from different geographical situations. In our view the final outcome of the Conference, as reflected in the text of the United Nations Convention on the Law of the Sea, failed to achieve such a balance.¹¹³

Thus, this constituted one reason for Turkey to abstain from signing the Convention.

¹¹³ Deniz Bölükbaşı. (2004), p. 178.

Furthermore, Turkey presented a number of proposals for amending some of the articles of the Convention's draft during the meetings of the Second Committee of the Third Conference, in which Turkey held Vice Presidential Post of the Committee, for the purpose of becoming able to be a part to the Convention. In this respect, Turkey had also proposed an amendment permitting reservations on the Convention but this proposal was rejected. Upon this, Turkey's dissatisfaction was expressed within the overall evaluation, which is as follows:

The fact that 45 States either voted in favor of that proposal or abstained indicated that a considerable number of States had difficulties with the Convention. However, in view of the rejection of this amendment and in the absence of necessary safeguards for Turkey's vital and legitimate rights and interests, Turkey was compelled to vote against the Convention, although it agreed with provisions contained in Part XI, on the international area. Consequently Turkey finds itself unable to sign the Convention.¹¹⁴

Another obstacle on the part of Turkey, which was underlined in the comprehensive statement, presented during the Final Session of the Third UN Conference on the Law of the Sea was related to the language of the Convention. Turkey argued that certain expressions in this document prejudiced the position of Turkey with regard to the Convention. Therefore Turkish officials indicated that

The sentence added to paragraph 41, which reads "Throughout the preceding eight years of its work the Conference had taken all decisions by consensus..." (A/CONF. 62/121), not only creates a misleading impression of the proceedings of the Conference but also presents serious difficulties for us. It is a well-known fact that at both the formal and informal meetings of the Conference the Turkish delegations expressly raised objections to a number of articles and submitted amendments thereto, and never gave their consent to those which did not accommodate the Turkish views. Consequently, Turkey regrets that in view of the prejudicial wording contained in paragraph 41, it will not be able to sign the Final Act.¹¹⁵

¹¹⁴ Deniz Bölükbaşı. (2004), p. 178.

¹¹⁵ Deniz Bölükbaşı. (2004), p. 178.

It should be noted that Turkey has preserved its status of a “persistent objector” for the adoption of a limit of twelve n.m. for the territorial sea in semi-enclosed areas.

As far as the semi-enclosed areas are concerned, the amendments submitted and the statements made by the Turkish delegations manifest *Turkey’s consistent and unequivocal refusal to accept the 12-nautical miles limit on such seas*. In view of the foregoing considerations, *the 12-nautical miles limit cannot be claimed vis à vis Turkey*.¹¹⁶

Since the specific Turkish concerns stemmed from the special characteristics of the Aegean, Turkey mainly had and still has abstentions on articles 3, 33 and 121 of the Convention.¹¹⁷ In this context, with reference to Article 3, Turkey claimed that “the 12-nautical miles limit for territorial waters has not acquired the character of customary international law¹¹⁸ in cases where the application of such a rule constitutes an abuse of right”.¹¹⁹ Thus, according to Turkey, Article 3 is a maximum width which should be practiced in line with the principle laid out in Article 300 of the UNCLOS related to the “good faith and abuse of rights”. Article 121 of the Convention, regulating the regime of islands also was a matter of concern for Turkey since it perceived this article as a general one that does not determine the areas to be left to the islands during delimitation. Thus, Turkey proposed that the presence of islands in an area should be taken into consideration as an element while trying to reach a solution within the principle of equity.

In light of the reasons presented above, Turkey neither signed nor ratified the UNCLOS up to date. However, since Turkey had no intention to wholly disregard

¹¹⁶ Deniz Bölükbaşı. (2004), p. 179.

¹¹⁷ Since Article 33 does not fall under the scope of this study, it will not be evaluated in this section. For the text of the above listed articles, see Appendix C.

¹¹⁸ For a treaty to be valid and legally active between states, all concerned sides have to be party to it according to the general principles of international law. Thus, in case a state is not a party of the concerned treaty, then that state would not be bound by the treaty itself. However, the provisions of the treaty that fall under the scope of norms of customary international law will be applied and will be valid between both party states and non-party states. (İnan and Başeren. (1996), p. 57). This is why Turkey emphasizes that the limit of 12 n.m. of territorial waters does not bear the character of customary international law.

¹¹⁹ Deniz Bölükbaşı. (2004), p. 179.

the terms of the Convention, it started to practice some principles laid out in this document (e.g. declaration of EEZ in the Black Sea). Since Greece and Turkey have major differences in their interpretation of the terms of the UNCLOS, bilateral agreements and efforts of the two states become of vital importance for solution of disputes. In this respect, it seems viable to continue with the bilateral codification activities of Greece and Turkey in the following section, since an international codification effort, namely the UNCLOS could not provide, in principle, an efficient basis for the resolution of the Aegean disputes.

3.3.3. Bilateral Efforts of Greece and Turkey on the Territorial Sea Dispute

The Lausanne Peace Treaty was a document that settled some of the bilateral issues between Greece and Turkey. However, the changing international conjuncture brought about different issues to the relations of the two countries. As aforementioned in the section devoted to the historical background, the outbreak of the Cyprus issue affected the future of Greek-Turkish relations negatively. The confidence built between the two states in the aftermath of the conclusion of the Lausanne Peace Treaty eroded as time passed, especially after the 1970s, and both states began to blame each other of hostile acts. Given the circumstances, Greece and Turkey displayed efforts to solve their disputes at times. Nevertheless, no solid solution could be achieved up to date. In this context, this section will outline these failed attempts and provide examples of bilateral efforts.

Despite the fact that the Lausanne Peace Treaty dealt with vital questions concerning Greek-Turkish relations, not all issues were resolved within this treaty. Therefore, the two parties continued their efforts at the bilateral level in the

following years. In this respect, an agreement related to the territorial sea was signed on 13 November 1926, to delimit the seaward part of the Meritsa River. However, in the said year both states were practicing three n.m. of territorial waters and this limit was changed to six n.m. in 1936 by Greece and in 1964 by Turkey. Thus, there is need for a revision of the limit or a new adjacent delimitation should be sought by the parties.¹²⁰ The 4 January 1932 agreement between Italy and Turkey, governing the sovereignty over the islands and islets between the island of Castellorizo and the Turkish coasts, to which Greece became a party due to succession according to the terms of Article 14 of the 1947 Treaty, can be accepted as another agreement on the delimitation of territorial waters in the Aegean and Mediterranean.¹²¹

In general terms, these are the only two agreements on the delimitation of the territorial sea between the parties. After the Turkish Peace Operation on Cyprus and Turkey's commencement of research activities in the Aegean continental shelf same year, tension between Greece and Turkey reached a peak. These developments were followed by the talks of the Foreign Ministers of the two states, Dimitrios Bitsios and İhsan Sabri Çağlayangil, in May 1975 in Rome. At the end of May, the Prime Ministers of Greece and Turkey came together for bilateral talks. In December 1975, the Foreign Ministers met in Brussels especially to discuss the Cyprus issue.¹²² In a statement dated 17 April 1976, the Greek Prime Minister Constantine Karamanlis stated that

Greece has never claimed that the Aegean constitutes a closed Greek lake. Greece accepts, as it is natural to accept, that in the Aegean there are also international waters as well as certain rights for Turkey. [...] I would therefore propose to Turkey: first by means of an agreement, we should put an end to the armaments race taking place at the expense

¹²⁰ İnan and Başeren. (1996), p. 59.

¹²¹ İnan and Başeren. (1996), p. 59.

¹²² Hulusi Kılıç, (ed.). *Bilateral Agreements, Essential Documents and Declarations between Turkey and Greece since the Proclamation of the Turkish Republic*, (Ankara: Ministry of Foreign Affairs of the Republic of Turkey, 2000), pp. 263-264.

of prosperity of our peoples. And second, to conclude a non-aggression agreement and to endeavor to settle our disputes through peaceful procedures.¹²³

Then Turkish Prime Minister Süleyman Demirel in his explanatory reply dated 17 April 1976 stated that Turkey repeats its readiness “to spend all necessary efforts to dispel the atmosphere of distrust prevailing in the relations between Turkey and Greece and to bring these relations to a level that should exist between two allied and neighboring countries”. Correspondence continued with the exchange of letters between Prime Ministers Demirel and Karamanlis, in which both statesmen openly laid out their concerns. Karamanlis in his reply indicated that “On the air-space, our reasonable proposals are still valid and they are open for further refinement” as well as stating that the continental shelf dispute should be brought before the ICJ¹²⁴.

This was followed by the “Complaint by Greece against Turkey to the United Nations Security Council on the Aegean Sea” on 10 August 1976. Resolution 395 of the UN Security Council¹²⁵ advised the parties to seek solutions within the provisions of Chapter VI of the Charter. In line with this, it called upon the continuation of direct negotiations, while inviting both governments to a judicial settlement by the ICJ. Following this, on the very day, Greece registered to the Court instituting proceedings against the Republic of Turkey. Afterwards, on 11 November 1976, the Bern Agreement, which is fully devoted to the solution of the dispute on the continental shelf, was concluded between Greece and Turkey. It should be underlined that the terms of this agreement were never realized.

¹²³ Hulusi Kılıç, (ed.). (2000), pp. 257-258.

¹²⁴ Hulusi Kılıç, (ed.). (2000), pp. 270-271.

¹²⁵ Keesing's Contemporary Archives, (1976), p. 2936. For the text of the Resolution, see Appendix D.

Another significant meeting took place on 30-31 January 1988 in Davos. During these meetings Prime Ministers Andreas Papandreu and Turgut Özal decided to meet for reciprocal visits at least once a year. Also,

The prime ministers agreed to establish two committees: One to explore the areas of cooperation such as economic cooperation, joint venture trade, tourism, communications, cultural exchanges and one to define the problem areas, exploring the possibilities of closing the gap and move towards lasting solutions, the progress of which will be reviewed by the two prime ministers, in this regard, they agreed to initiate, encourage and increase contacts among civilian and military officials, members of the press and businessmen and to establish a business council or a joint chamber of commerce and industry.¹²⁶

The Prime Ministers of Greece and Turkey, Papandreu and Özal, also met in Brussels on 3 and 4 March 1988. In the joint press release it was stated that “The two sides exchanged views on problems related to national military exercises and military highs in the Aegean area.” Moreover it was indicated that “In this spirit, the two sides held a constructive exchange of views on the possibility of adopting certain practical measures with a view to contributing to the development of mutual confidence and understanding”.¹²⁷

In the Memorandum of Understanding between Greece and Turkey signed by the Minister for Foreign Affairs of the two states, Karolos Papoulias and Mesut Yılmaz, dated 27 May 1988, which took place in Athens, it was stated that “[...] without prejudice to the existing international regulations and procedures, the two sides will proceed, when required, to due communication through diplomatic channels”.¹²⁸ This document was followed by the Guidelines for the Prevention of Accidents and Incidents on the High Seas and International Airspace signed by the

¹²⁶ Hulusi Kılıç, (ed.). (2000), p. 309.

¹²⁷ Hulusi Kılıç, (ed.). (2000), p. 313.

¹²⁸ Hulusi Kılıç, (ed.). (2000), p. 322.

Foreign Ministers Papoulias and Yılmaz in İstanbul on 8 September 1988, which aimed to contribute to the confidence building process between the two sides.¹²⁹

In the aftermath of 1988, Greek-Turkish relations were once again in a stalemate in terms of efforts for the settlement of the Aegean disputes. This situation was to change once again with the outbreak of the Kardak/Imia Rocks Crisis in January 1996. In this respect, with regard to the application of methods of pacific settlement of disputes, Turkey has several *note verbales*, some of which are as follows: In a statement on Greek-Turkish Relations, dated 24 March 1996, Prime Minister Mesut Yılmaz stated that:

I am therefore calling on Greece to enter into negotiations without preconditions **with a view to settle all the Aegean questions as a whole**. The search for a comprehensive and lasting solution will be conducted on the basis of respect for international law and the international agreements establishing the *status quo* in the Aegean. [...] **When it comes to peaceful means of settlement which would be appropriate to the special nature of the Aegean questions, Turkey does not rule out from the outset any method based on mutual acceptance**. We have no prejudices in this respect. Accordingly, **we are prepared to discuss with goodwill appropriate third party methods of settlement**. The form, conditions and legal requirements of such methods can be taken up in detail in the course of the talks.¹³⁰

On 29 April 1997, Greece and Turkey agreed on the mandate of the wisemen group, and asked “the Netherlands Presidency to continue its facilitating role in this process”.¹³¹ An important development took place in Madrid during the NATO Summit where the US Secretary Madeleine Albright hosted a meeting between the Greek and Turkish foreign ministers Theodoros Pangalos and İsmail Cem. During this meeting the two sides mutually committed themselves to “refrain from unilateral acts on the basis of mutual respect and willingness to avoid conflicts arising from

¹²⁹ Hulusi Kılıç, (ed.). (2000), p. 338.

¹³⁰ Hulusi Kılıç, (ed.). (2000), p. 347.

¹³¹ Hulusi Kılıç, (ed.). (2000), p. 351.

misunderstanding; and [...] to settle disputes by peaceful means based on mutual consent and without use of force or threat of force”.¹³² The Madrid Declaration did not achieve the desired goal either, and it was followed by two *note verbales* of Turkey dated 12 February 1998 and 11 March 1998, which underlined that “the two Governments should formalize the Madrid Declaration of 8 July 1997”. There were references to the methods of peaceful settlement of disputes. The latter *note verbale* made reference to the ICJ as a means of settlement.¹³³

In general terms, when an overview of the verbal notes, exchange of letters and statements between Greece and Turkey is studied, it can be observed that the general trend in Greek-Turkish bilateral correspondence is to blame the other party for the absence of a solution. The involvement of a third party, as it was in the presence of the US in the conclusion of the Madrid Declaration, did not help change this reality either. This general overview seems to have been the case especially after the 1970s, although both states agree that confidence has to be rebuilt between Greece and Turkey, and more importantly that a peaceful and friendly relationship is more favorable for both states than ongoing quarrels.

It should also be noted that Greek-Turkish relations entered into a positive phase especially after the 1999 earthquakes in Turkey and Greece. The year 1999 also corresponds to the time when Greece abandoned its veto policy towards Turkey with regard to its candidacy in the EU. In general terms, since 1999, agreements on various fields for building confidence are being concluded between the two sides. In terms of seeking solutions to the Aegean disputes, currently, exploratory talks are

¹³² Hulusi Kılıç, (ed.). (2000), p. 353. For the complete text, see Appendix J.

¹³³ “Turkey would like to offer the following comments in relation to the arguments raised in the Greek reply of 20 February 1998 concerning acceptance by Turkey of the compulsory jurisdiction of the ICJ by a unilateral declaration under article 36 (2) of the Statute of the Court. It will be recalled that in 1993, Greece for the first time recognized the Court’s jurisdiction in this sense, but with a reservation. This reservation is unique in its kind since it explicitly aims to exclude certain breaches of contractual obligations, deriving from the provisions of the international agreements, from the jurisdiction of the Court.” (Hulusi Kılıç, (ed.). (2000), p. 362).

continuing between Greece and Turkey, and the 30th session of these talks took place on 6 May 2005 in Athens. Since these meetings are strictly confidential, developments taking place are not known to the public. However, when it is taken into consideration that the 30th meeting was realized recently, it can be hoped that the two sides have a more realistic and reasonable approach towards each other and that positive steps are taken in the quest for the settlement of the Aegean disputes. Given the outline of the bilateral attempts of the parties on achieving solutions, in the next chapter, the issue of delimitation of the territorial sea boundaries in the Aegean and proposals for the settlement of the territorial sea dispute will be studied.

CHAPTER IV

DELIMITATION OF THE TERRITORIAL SEA BETWEEN GREECE AND TURKEY AND PROPOSALS FOR THE SETTLEMENT OF THE TERRITORIAL SEA ISSUES

4.1. Delimitation of the Territorial Sea Issue

The width of the territorial sea is a hot issue of the Aegean disputes. The delimitation of the territorial sea boundary, on the other hand, is a less-known but an important component of the territorial sea issue, which requires special attention. To this end, this very first section of Chapter IV will study aspects of the delimitation issue. In this context, currently, Greece and Turkey do not have a renewed delimited “maritime boundary” regulating the territorial waters of the two sides in the Aegean. This reality is expressed openly at times, and an example is the opinions delivered by General Çevik Bir, the Second Head of General Staff of the Turkish Army in 1997, who indicated that “There is no boundary delimited in the Aegean Sea between Greece and Turkey. The Aegean Sea is a sea without any limits.”¹³⁴

As aforementioned, the Lausanne Peace Treaty did not determine a territorial sea boundary between Greece and Turkey. However, between 1925 and 1926, the Official International Boundary Commission, established by Article 5 of the Lausanne Peace Treaty for the purpose of the demarcation of the land boundary

¹³⁴ İnan and Acer. (2004), endnote 71, p. 152. (Translated by the authors).

between the two States, on the map prepared by the Commission and agreed by the parties with the Protocol of 3 November 1926, set up

inter alia, an unconnected ‘international boundary line’ which starts at the mouth of the Maritsa River and runs seaward in a south-south-easterly direction, thus ignoring the general direction of the Greek-Turkish adjacent coasts.¹³⁵

This line seems to have delimited the territorial sea between adjacent coasts of Greece and Turkey in the northern Aegean Sea. In fact, the Commission’s line aimed at showing the ‘Greek-Turkish frontier’ rather than specifically intending to establish a line to separate the respective territorial waters of the two countries.¹³⁶ Although this can be accepted as a delimitation of the territorial sea in the said region, due to the extension of this line further seaward by the Commission, it can also be argued that the boundary line has already lost its effect since it was established at a time when both States were practicing three n.m. of territorial waters.¹³⁷

The sole agreement that regulates the territorial sea boundary between Greece and Turkey, which is in fact concluded between Italy and Turkey but to which Greece later became a party by means of succession, is, without doubt, the 4 January 1932 Agreement. This agreement aims to determine

the sovereignty over the islands lying between the island of Castellorizo, located at the Mediterranean, and the Anatolian coast. [... While doing so] The agreement also delimited the territorial sea between the coast of Anatolia and the island of Castellorizo together with its adjacent islets by Article 5.¹³⁸

The boundary line determined by this agreement constitutes the delimitation line between the two states around the island of Castellorizo. It should also be noted that

¹³⁵ Faraj Abdullah Ahnish. *The International Law of the Maritime Boundaries and the Practice of States in the Mediterranean Sea*, (Oxford: Clarendon Press, 1993), p. 266.

¹³⁶ F.A. Ahnish. (1993), p. 267.

¹³⁷ İnan and Acer. (2004), p.137.

¹³⁸ İnan and Acer. (2004), p.137.

the said delimitation line was further extended northwards on 28 December 1932 with the signing of a document between Italy and Turkey.

This document established a “frontier line” (*la ligne frontière*) between the Dodecanese Islands and the Turkish coast and provided that up to a distance of 12 nautical miles between the territories of the contracting States, the line established would both separate sovereignty areas in the sea (*déterminera la souveraineté des deux Pays sur les eaux de la mer*), and constitute a line which would divide the areas in which the islands would belong to the Party nearby. Beyond 12 nautical miles distance, the line would only regulate the sovereignty over islands, islets and rocks in the area.¹³⁹

The validity of the 28 December 1932 document is highly questionable, basically from the point of Turkey since it claims that the agreement was neither negotiated nor ratified by the TGNA according to Article 26 of the 1924 Turkish Constitution. Similarly, the Italian constitutional authorities also did not ratify the document. Moreover, related to the issue of sovereignty over some Aegean islands, the agreement has also a disputed status between Greece and Turkey.

4.1.1. Why Is Delimitation of the Territorial Sea in the Aegean Necessary?

Given the status of the prior agreements regarding the delimitation of the territorial sea boundary between Greece and Turkey, an agreement for this purpose seems vital between the two states on their respective territorial waters where the coasts are adjacent or opposite to each other. Hence, Greece and Turkey should agree on certain delimitation before the issue becomes one that creates tension between the two sides.

Although the Greek claim is that “The delimitation of the territorial sea between the Turkish coast and the Dodecanese islands took place according to the

¹³⁹ İnan and Acer. (2004), p.137.

method of the median line in a treaty concluded in 1932 between Italy and Turkey,”¹⁴⁰ for reasons explained in the previous section, this agreement falls short of regulating the territorial sea boundary between the two states. In this respect, differences in the perception of the two states in terms of methods of delimitation within their domestic laws are worth mentioning. Turkey, in Article 2 of its Law No. 2674 enacted in 20 May 1982, states that

Where the coasts are opposite or adjacent to the Turkish coasts, the boundary shall be determined by an agreement with the concerned state. This agreement should take into account all the factors of that region and should be in conformity with the principle of equity.¹⁴¹

In this respect, Turkish preference in terms of achieving delimitation seeks a bilateral agreement, and emphasis is once more made on the principle of equity, whereas Greek Law No. 230 does not specify any precise method(s) of delimitation within its provisions.

However, since the Aegean Sea constitutes a crucial region for international maritime navigation, the delimitation of the territorial sea boundary in the said area also has an international aspect. As it is indicated in the Judgement of the Court on the Anglo-Norwegian Fisheries Case;

The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.¹⁴²

In this respect, the delimitation of the territorial sea boundary between Greece and Turkey constitutes an important matter not only for the bilateral relations of the two

¹⁴⁰ Tulio Treves, (ed.). (1997), p. 255.

¹⁴¹ For the official text, see *Turkish Official Gazette*, No: 17780, 29 May 1982.

¹⁴² Judgment of the Court, *Fisheries Case (United Kingdom v. Norway)*, p. 20.

states but also for international maritime navigation. In light of this situation, the next section will study different kinds of baselines in order to provide an outline of the methods applicable in the Aegean Sea during the delimitation of territorial sea boundaries between Greece and Turkey.

4.1.2. Delimitation Methods and Different Kinds of Baselines

Since the delimitation of territorial waters also has an international aspect, two basic components that should be taken into consideration during delimitation should be international navigation and fisheries¹⁴³ in the concerned area.¹⁴⁴ In this context, with regard to the delimitation of territorial waters, there are different kinds of baselines that can be adopted during this process. These different types of baselines are provided within the provisions of the UNCLOS. Accordingly, one type is the normal baseline. Article 5 of the UNCLOS indicates that “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State”. The low-water line,¹⁴⁵ generally serves the purpose of defining basepoints that constitute the basis to measure the equidistance while establishing boundaries between states, and it is applicable both in areas where two states have opposite and/or adjacent coasts.¹⁴⁶

¹⁴³ Here, the term fisheries should mean to refer to and thus be perceived as historic fisheries rights.

¹⁴⁴ Mehmet Gönlübol. (1959), p. 87.

¹⁴⁵ Since the low-water line, to which an equivalent expression is ‘low-water mark’, is accepted to be the ordinary procedure, it is not explicitly mentioned in documents except in a few cases. For instance, the “Treaty Concerning the Establishment of the Republic of Cyprus”, signed between Cyprus and the United Kingdom at Nicosia, on 16 August 1960 and the “Agreement between the Government of the Italian Republic and the Government of the Tunisian Republic Relating to the Delimitation of the Continental Shelf between the Two Countries”, signed on 20 August 1971 make direct references to the system of normal baseline and low-water mark. For further details, see Jonathan Charney, (ed.). Vol. I, pp. 154-155, vol. II pp. 1559-1569, 1611-1625.

¹⁴⁶ Louis B. Sohn. “Baseline Considerations” in *International Maritime Boundaries*, Jonathan Charney, (ed.), vol. I, (Netherlands: Martinus Nijhoff Publishers, 1996), p. 154.

Exceptions to the practice of normal baseline/low-water line are indicated in Article 7 where the system of straight baseline is defined. In this respect,

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

The use of straight baselines proves to be functional while drawing an equidistant line where states want to overcome the complexities caused by sinuous coasts.¹⁴⁷

This method can also be applied in cases where deeply intended coasts are absent since the parties agree to apply this certain type of baselines.¹⁴⁸

The final concept that will be studied under this heading is equidistance/median line. In this respect, reference should be made to Article 15 of the UNCLOS, which sets the general rule for the “delimitation of the territorial sea between States with opposite or adjacent coasts”. The article 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 points 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

¹⁴⁷ For instance, in the “Treaty between Australia and the Independent State of Papua New Guinea Concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, Including the Area Known as Torres Strait, and Related Matters”, and in the “Agreement between the Government of Brazil and the Government France Relating to the Maritime Delimitation between Brazil and French Guiana”, there are references to the use of straight baselines. Moreover, “Agreement between the Kingdom of Belgium and the Kingdom of the Netherlands relating to the delimitation of the Territorial Sea” signed on 18 December 1996 constitutes an example to the use of both normal baselines and equidistance within an agreement. For further details, see Jonathan Charney, (ed.). vol. I, (1996), pp. 929-975, 777-783, and vol. IV, pp. 2921-39. It should also be noted that straight baselines were used to be applied by Turkey “in certain bays such as Saros (Xeros), Edremit (Adramiyti), Izmir, Mandalya (Medflia) and Kos from 24 May 1965 until July 1973. Since July 1973, however, given the very special circumstances of the Aegean Sea and also the wish not to create any basis for counter-practices and any sort of abuse of rights by its neighbor, Turkey denounced this practice and abolished the chart that applied straight baselines in the mentioned areas.”(İnan and Başeren. (1996), p. 58).

¹⁴⁸ Louis B. Sohn. “Baseline Considerations”, in Charney (ed.), vol. I, (1996), p. 156-157.

necessary by reason of historic title or other special circumstances¹⁴⁹ to delimit the territorial seas of the two States in a way which is at variance therewith.

As indicated in Article 15, there is an exception to the general application of median line in cases when historic title or special circumstances are considered. In this respect, according to Article 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, median line is a method adopted in the absence of a delimitation agreement. In line with this, the 1982 Convention has also accepted this principle, with the above exceptions.

4.2. Proposals to Achieve Delimitation

In areas where the territorial seas of two states overlap, there should be delimitation for the location of the territorial sea boundary. This fact is valid also for the case of Greece and Turkey. Building on data provided in the paragraph above of the previous section, it should also be noted that the principle of equidistance/median line may sometimes result in a way contrary to the principle of equity. In such cases, in order to create equity, this reality or the median line principle will lead the parties or in case of a third party settlement, the application of a modified median line.¹⁵⁰

This results in a more equitable and a just settlement which is achieved through

¹⁴⁹ The expression “other special circumstances” can be regarded as deeply intended coasts, islands and islets in the immediate vicinity of the coast and as the size of the sea, etc.

¹⁵⁰ Similarly, in the “Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain”, with regard to the delimitation of the overlapping territorial waters where the equidistance/special circumstances rule would be applied, the Court stated that “The most logical and widely practiced approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances. [Within such an understanding, the Court] decided to employ the normal baseline as the place on natural features from which to construct the equidistant line, *e.g.* the low-water line, but noted that it still had to be decided whether the equidistant line should be adjusted because a feature might have a disproportionate effect on the equidistant line.” The Court also concluded “that Bahrain is not entitled to apply the method of straight baselines”. This is a point that seems to be to the disadvantage of Greece when delimitation in the Aegean Sea is concerned. For further details, see Jonathan Charney, (ed.). Vol. IV, (1996), pp. 2850-2851.

bilateral agreement. Accordingly, whether the general rules outlined in the UNCLOS will be applied during delimitation in the Aegean Sea or not, first of all the parties should seek to determine the basics of the delimitation as well as methods and baselines to be applied by an agreement.¹⁵¹ During the delimitation process, the provisions of articles 122 and 123 of the UNCLOS should also be taken into account by the parties for an equitable settlement.

In this respect, the application of normal baselines in the delimitation of the Aegean Sea seems to be an option which would provide equity under the given circumstances. However, while delimiting the territorial sea boundaries between the Turkish mainland and Greek islands, the method that should be applied, in principle, is the median line (equidistance).¹⁵² It should also be noted that the islets lying in close proximity of the Greek islands, when taken into consideration during delimitation, create disproportionality as in the case of Oinoussa Islands situated off the shores of Chios. Thus, these should be disregarded during delimitation.¹⁵³ For the maritime boundary between Greece and Turkey, concerning the outer edge of the

¹⁵¹ While delimiting the adjacent coasts, the delimitation protocol between Turkey and the Union of Soviet Socialist Republics, which after the dissolution of the Soviet Union became the “Protocol between the Government of the Republic of Turkey and the Government of Georgia on the Confirmation of the Maritime Boundaries between Them in the Black Sea” can provide an example. The “Agreement between the Republic of Turkey and the Republic of Bulgaria on the Determination of the Boundary in the Mouth Area of the Mutludere/Rezovska River and Delimitation of the Maritime Areas between the Two States in the Black Sea” also can be accepted as a guideline in the delimitation of the adjacent coasts and the application of the principle of equidistance. For further details, see Jonathan Charney, (ed.). Vol. IV, (1996), pp. 2865-2886.

¹⁵² The Koyun (Oinoussa) Islands which lie in the north-east of the Sakız (Khios) Island in the Aegean, could be disregarded in calculations since these are within the three n.m. of the Greek territorial sea. In this context, the median line should be calculated between the Greek mainland from the point of Kardhamila and the Turkish mainland from the point of Karaburun. This sort of a practice will eliminate the probability of the application of “creeping jurisdiction”. This view of ours seems to be supported by the “United Nations: Letter from the Secretary General Transmitting to the Security Council the Final Report of the Demarcation of the International Boundary between Iraq and Kuwait”, signed on 21 May 1993, which states that “islands, rocks and reefs did not figure into the final delimitation”. Moreover, “the delimitation report guarantees a non-suspendible right of navigation in the waterways through which the boundary passes”, and this can be considered as a repeated guarantee of a legal principle. For further details, see Jonathan Charney, (ed.). Vol. III, (1996), pp. 2387, 2391.

¹⁵³ See, footnote 149.

boundary line that starts at the point where the River Meritsa meets the Aegean Sea, an equidistant line can be taken into account for delimitation.¹⁵⁴

If judicial settlement will be sought in the case of Greece and Turkey, the Tribunal should be asked about the rules to be adopted while delimiting territorial sea boundary between Greece and Turkey in the Aegean. In this respect, within the framework of the rules outlined by the Court, parties could negotiate details of delimitation in bilateral talks and practice rules laid out in the judgement of the Court.¹⁵⁵

4.3. Proposals for the Settlement of the Territorial Sea Dispute

In general terms, to be able to achieve a solution to the Aegean disputes, first of all the issues to be settled by the two sides should be identified within the terms of mutual understanding. Afterwards, parties will be able to seek solutions through negotiations conducted in good faith, and throughout these negotiations, past agreements and talks should be taken into consideration to be able to make progress. In this context, when settlement of the breadth of territorial sea dispute is studied

¹⁵⁴ A similar application is present in the “Maritime Boundary Agreement between the Government of the State of Israel and the Government of the Hashemite Kingdom of Jordan”, signed on 18 January 1996. For further details, see Jonathan Charney, (ed.). Vol. III, (1996), pp. 2457-2461.

¹⁵⁵ In the Award of 17 December 1999 regarding the “Delimitation of maritime areas between the State of Eritrea and the Republic of Yemen”, the tribunal found “that the international boundary shall be a single all-purpose boundary which is a median line and that it should, as far as practicable, be a median line between the opposite coastlines”. For further details, see Jonathan Charney, (ed.). Vol. IV, (1996), pp. 2744-2745. This principle of single maritime boundary which is stated by the Tribunal in its judgement also constitutes a principle that should be taken into consideration in all delimitation related issues between Greece and Turkey. Also the “Agreement between the Republic of Latvia and the Republic of Lithuania on the Delimitation of the Territorial Sea, Exclusive Economic Zone and Continental Shelf in the Baltic Sea” and the “Agreement between the Government of the Republic of Estonia and the Government of the Republic of Latvia on the Maritime Delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea” express the establishment of a single maritime boundary. In addition, the latter agreement also refers to a continuing adjacent maritime boundary as it is applied in the agreement between Bulgaria and Turkey. For further details, see Jonathan Charney, (ed.). Vol. IV, (1996), pp. 2995-3017.

separately, which is definitely not considered to be an issue on the part of Greece, it becomes possible to make a few proposals from the general to specific.

One proposal may be that, since Greece has not yet extended its territorial waters to twelve n.m., Greece and Turkey may conclude an agreement on the width of the territorial sea, fixing the current limit of six n.m. for a certain period of time (like 5 years or 10 years) just as a display of good faith and a positive step for the rebuilding of confidence between the two countries.¹⁵⁶ Building upon this agreement, an agreement for the delimitation of the territorial sea boundary could also be achieved, which would be revised if the width of the territorial sea is changed after the former agreement becomes invalid. Hitherto, both states seem to have an “all or none” approach and neither of the two was willing to make any compromises, thereby such an agreement has not been achievable at least in the short term.¹⁵⁷

A second option is the inclusion of the territorial sea disputes within negotiations, which would probably be objected to by the Greek side since it does not want to legitimize an acceptance of the presence of such an issue. However, the width of the territorial sea issue constitutes the very basis for the solution of some other vital Aegean maritime disputes because depending on practiced limit, the areas to be delimited will change, (this includes the areas to be delimited in the continental shelf and in the territorial sea boundary). The set breadth will also affect the limit of Greek air space. In this context, it is highly important for both countries

¹⁵⁶ An example is the “Agreement between the Government of the Union of Soviet Socialist Republics and Government of the Democratic People’s Republic of Korea concerning the Regime of the Soviet-Korean State Frontier”, signed on 3 September 1990, where the parties were given the right to terminate the agreement after the end of the initial period, which is ten years from the date of the entry into force of the agreement. If neither of the parties expresses its desire to terminate the agreement within six months before the expiry date, the validity of agreement would automatically be considered as extended for 10 more successive years. For further details, see Jonathan Charney, (ed.). Vol. III, (1996), pp. 2299-2321.

¹⁵⁷ The formalization of the Madrid Declaration might constitute a positive step in this manner.

to discuss this very issue during bilateral talks and negotiations. In this context, the framework of the talks on this specific issue should include subheadings such as;

- Who is/are to determine the application of the maximum width of territorial waters permitted by the UNCLOS in an area like the Aegean Sea? If the decision is solely left to the sovereign state, which factors does the sovereign state should take into account?
- Are there any special circumstances in the Aegean Sea stemming from the distinct geography of the region? Can states raise other special circumstances apart from geography?
- How to eliminate violations of claimed air space?
- Whether international law requires the breadth of the territorial sea and the air space to be coterminous and identical or not?
- Relevance of precedents of the exercise of different widths of territorial sea within the same region, and the reasons as to why such a practice is opted.

In light of the guideline presented above, first of all, the rule laid out in Article 3 of the UNCLOS should be clarified between parties, since it is the starting point of the territorial waters issue. It should be underlined that Article 3 indicates that States may extend their territorial waters *up to* a limit which does not exceed twelve n.m.. Therefore, this rule does not oblige states to practice a uniform limit of twelve n.m. of territorial waters in their seas.¹⁵⁸ In this respect, Article 3 enables states to claim different limits of territorial waters not exceeding twelve n.m.. However, since it wants to practice a uniform width of twelve n.m., Greece came up with a proposal to address Turkey's concerns which might arise from a possible Greek practice of wider territorial sea in the Aegean, which stated that

¹⁵⁸ It should be reminded that Greece proposed a uniform limit of twelve n.m. during the Third Conference of the UN Law of the Sea Conferences, however, this proposal was not accepted.

Any possible concern of Turkey (and other nations) about freedom of navigation can be accommodated either through the regime of straits and transit passage or, at most, by Greece's not going to the full twelve miles but leaving designated channels as open sea for free passage where needed to connect the Turkish mainland to the open sea.¹⁵⁹

Nonetheless, this does not seem to be an acceptable option for Turkey as it believes that the exercise of twelve n.m. of territorial sea in the Aegean by Greece constitutes an abuse of rights which falls contrary to the principle of equity and one which cuts off the Turkish territorial sea in the area from the high seas.¹⁶⁰ In addition to those claims, it can be argued that acquisition of territory through extension of territorial waters in the Aegean, especially in certain areas, will be illegal and thus unjustifiable not only for Turkey but also for the international community.

Given conflicting views of the parties, an alternative solution lies within the fact that the twelve n.m. limit is not a rule that has to be applied uniformly.¹⁶¹ Therefore, acceptance of the rule in this way constitutes one solution and there are several examples of states which do not claim a uniform territorial sea.¹⁶² For instance, although Finland extended its territorial waters to twelve n.m. in general practice, when the midline with Estonia was concerned, it limited the width of its

¹⁵⁹ Phaedon John Kozyris. "The Legal Dimension of the Current Greek-Turkish Conflict: A Greek Viewpoint" in *Greek-Turkish Relations in the Era of Globalization*, Dimitris Keridis and Dimitrios Triantaphyllon, (eds.), (Massachusetts, Brassey's Inc., 2001), p. 106.

¹⁶⁰ Within transit passage, jurisdiction of the coastal state is limited to the advantage of the passing vessel, however, the high seas corridors provide complete freedom of passage within the concerned area. In this context, if Turkey accepts, in the Aegean, the Greek proposal to apply the regime of transit passage for straits used in international navigation as stated in the UNCLOS (Articles 34-44), this will have the meaning that Turkey accepts the extension of sovereign areas on the part of Greece in the concerned area. Moreover, although the regime of transit passage provides freedom of navigation and freedom of over flight, these freedoms do not diminish the sovereignty of Greece in areas concerned.

¹⁶¹ Moreover, the twelve n.m. limit for territorial waters is not a *sine quo non* application for states. Currently there are many areas where states practice territorial waters less than twelve n.m. some of which can be listed as follows: Anguilla (3 n.m.), Bouvet Island (4 n.m.), British Indian Ocean Territory (3 n.m.), British Virgin Islands (3 n.m.), Coral Sea Islands (3 n.m.), Dominican Republic (6 n.m.), Faroe Islands (3 n.m.), Gibraltar (3 n.m.), Greenland (3 n.m.), Guernsey (3 n.m.), Hong Kong (3 n.m.), Jan Mayen (4 n.m.), Jersey (3 n.m.), Jordan (3 n.m.), Montserrat (3 n.m.), Palau (3 n.m.), Pitcairn Islands (3 n.m.), Singapore (3 n.m.), Svalbard (4 n.m.).

¹⁶² See the "Maritime Claims" section of the CIA World Fact Book located at www.odci.gov/cia/publications/factbook/fields/2106.html.

territorial waters to no more than 3 miles in the said point in the Gulf of Finland, for the purpose of enabling a high seas corridor to and for Russian or third flag states' access to the Baltic.¹⁶³ Another example is the case of Japan, which practices twelve n.m. as a limit in general. Japan, however, in certain bays such as the Eastern and Western Channels of Tsushima, Osumi, Soya and Tsugaru, limits its territorial waters to three n.m. for the preservation of high seas corridors. This regulation is quite similar to the South Korean practice in the Korea Strait where the limit of the sea is only three n.m. for the purpose of maintaining a high seas corridor.

The practice of Turkey, on the other hand, constitutes an alternative to a uniform practice of twelve n.m. of territorial waters also, since Turkey exercises twelve n.m. of territorial waters in the Black Sea and Mediterranean whereas it keeps the limit of its territorial waters at six n.m. in the Aegean due to the special circumstances inherent in the geography of the area. In this context, the practice of Belize, which was adopted within terms of good faith for easing of its relations with Guatemala, can well set an example for the Greek-Turkish case. Belize exercises three n.m. of territorial waters in a precise section of the Gulf of Honduras to enable a high seas corridor to Guatemala in the western Caribbean, although it claims a limit of twelve n.m. in its general practice.

Given the examples above, one proposal is that Greece and Turkey may limit their territorial waters in certain areas to a width less than six n.m. to enable high seas corridors.¹⁶⁴ In return, Greece would give up its claim to exercise a uniform

¹⁶³ The parties mutually agreed through exchange of notes to establish a 3 n.m. high seas corridor within the Gulf of Finland, in order to enable third party states, especially the Russian Federation to have free access through the high seas corridor to the Baltic Sea. For further details, see Jonathan Charney, (ed.). Vol. IV, (1996), pp. 3026-3027.

¹⁶⁴ For an unimpeded navigation for all vessels, traversing from the Aegean to the Mediterranean or the other seas, Greece might decrease its present six n.m. practice to create two high seas corridors. One can be between the islands of Evvoia and Andros going south through the islands of Kithnos and Serifos, and the second can be between the mainland and the island of Kea (Keos) or between the

limit of twelve n.m. of territorial waters (whereas it would be able to extend its territorial waters to twelve n.m. in the Ionian Sea and the Mediterranean), and Turkey could accept, in certain areas where security of Turkey is not threatened and the freedom of navigation will not be impeded, twelve n.m. as the width of the territorial sea of Greece.¹⁶⁵ In sum, this would be an extension of the territorial sea which does not constitute a uniform practice along the coasts and which leaves areas for high seas corridors. In this respect, access to the high seas will be enabled without passage through the territorial sea or the air space of either Greece or Turkey, or any area that any of the two States consider as its strategic national territory.

Finally, if judicial settlement is decided to be sought by the consent of the parties, the tribunal should be asked about the rules to be applied while determining the width of the territorial sea in the Aegean. The second question should be related to the limit of the airspace, more precisely whether it must be identical with the limit of the territorial sea or not. However, it should also be noted that for a case like this, judicial settlement by the mutual consent of the parties does not seem to be a possible option, given the past and the present attitudes of Greece and Turkey, and given the inability of the parties to agree on a compromise heretofore.

islands of Kea and Kithnos by traversing to the Mediterranean through the Straits of Kithira and Andikithira.

At present, there is a high seas corridor between the islands of Ikaria and Mikonos, Kos and Astipalaia (Stampalia), Rhodes and Karpathos that traverses to the Mediterranean through the Strait of Karpathos or through the Strait of Kasos between the islands of Crete and Kasos.

¹⁶⁵ Greece, at present, applies the straight baseline method in the Gulfs of Toronaios, Singitikos, Strimonikos. Since this practice of Greece does not violate international law, Turkey raises no objections to this Greek practice.

CHAPTER V

CONCLUSION

The nature of Aegean disputes as to whether they are legal or political is a major question for scholars. Both states base their arguments on principles of international law, and in this sense even the territorial sea issue itself can be considered as a legal one. However, terms of international law, more precisely the UNCLOS does not provide an efficient basis to reach a settlement. Moreover, since the breadth of the territorial sea and the delimitation of territorial sea boundary are related to sovereign rights of states, it also assumes a political nature. It should also be noted that tensions between Greece and Turkey, which increase at times, escalate the Aegean disputes as well. For instance, the declaration of the TGNA in June 1995 that Turkey would consider a further extension of Greek territorial waters in the Aegean as *casus belli* could cause a deadlock in bilateral relations. The attitude of both States towards each other constitutes the political aspect of disputes. The Aegean disputes can be accepted as legal issues embellished and complicated with political factors that require political will, thus they are a mixture of both.

As provided in the examples studied in Section 3.3.3 of Chapter III, psychological aspects of the disputes should not be disregarded either. In this respect the note verbales exchanged between Greece and Turkey, where both States underline that they would like to maintain a peaceful and friendly relationship with each other but never refrain from constantly blaming the other party, constitute the exact illustration of the psychological element in Greek-Turkish relations, which is

also inherent in the public opinion of both countries. This is why statesmen of both Greece and Turkey should try to make a positive change in the public opinion in their countries concerning perceptions of the other party. It is a fact that politicians of both states tried to obtain more votes by escalating tensions or by blaming the other state, and this has to be changed for good. Moreover, within the effort of changing public opinion in a positive way, the mass media of the two countries has a role as well, thus the events that take place should not be presented in a manner that would escalate the tensions between Greece and Turkey.

Within the context of bilateral relations and official efforts, the genuine objective in negotiations should be frank efforts to solve the disputes. This is another reason as to why the disputes have a political nature as well as its legal aspects. Therefore, rebuilding of confidence has a major role. The past achievements of the two States in the early 1930s should not be disregarded, and can easily be taken as a good precedent between Greece and Turkey. If confidence could be built by the efforts of the two leaders, namely Atatürk and Venizelos, following an era of a devastating war for both sides, it may be questioned why it is not possible now to recreate a new milieu like that in this century where interdependence between countries is very high and communication between states is supported by and enhanced through international organizations.

All in all, disputes related to the Aegean Sea could not be resolved hitherto since mutual will to solve these disputes do not yet fully exist in the relationship between Greece and Turkey. Although the extent of the territorial waters dispute is not very well known by the public, it is plausibly the major issue between the two parties, since solution of other problems depends on a mutual agreement related to this very issue. In this respect, this dispute, which is not even considered to be a

matter of conflict by Greece, is the one that should be settled first among other issues. Without bilateral talks and a mutual agreement on this issue, no solution can be sought through legal channels. The best examples to this are the UN Security Council Resolution 395 (1976)¹⁶⁶ and the 1978 decision of the ICJ¹⁶⁷. The Council in its judgement dated 25 August 1976 underlined that direct negotiations between Greece and Turkey is necessary to resolve their differences, and invited the parties to take into account judicial means. Following this decision, Greece applied to the ICJ in August 1976 but the Court declared in its judgement of December 1978 that it lacked jurisdiction over this issue, due to the Greek reservation on the 1928 General Act for Pacific Settlement of International Disputes.

In light of these findings, it is possible to conclude as to whether the Aegean problems are of legal or political nature. It is plausible to settle these disputes through legal means with the mutual consent of Greece and Turkey in case the parties fail to settle them through political means, since both states base their arguments on the norms of international law. However, what the two countries need most is political will to solve these disputes and to pursue diplomacy, not populist politics.¹⁶⁸ First of all some kind of mutual understanding and confidence has to be built, and then, parties should aim at an equitable settlement for the disputes. Settlement proposals presented in the previous chapter, such as the conclusion of a temporary agreement for confidence building purposes, establishment of high seas corridors in certain areas in the Aegean Sea, and an agreement establishing a single maritime boundary between Greece and Turkey, may constitute a basis for negotiations. If any unresolved issue still remains, the rest of the disputes can be

¹⁶⁶ For further information, see the UN resolution number 395 in reply to the complaint by Greece against Turkey dated 25 August 1976.

¹⁶⁷ For further information, see Aegean Sea Continental Shelf Case (Greece v. Turkey), Judgement of the Court, dated 19 December 1978.

¹⁶⁸ These disputes are used as a tool of politics by the politicians of the two countries.

submitted to the ICJ. Nevertheless, if bilateral talks have positive consequences, then probably there will be no need to apply to the ICJ for this very dispute (as well as the other ones referred by title within this study).

Despite the ongoing conflicts between Greece and Turkey on various subjects, currently there are positive efforts towards resolving disputes related to the Aegean. The rapprochement process between Greece and Turkey is going on since 1999. Moreover, in March 2002 exploratory talks started between the two countries, these bilateral efforts are still continuing on a reciprocal basis. In light of these developments, it can once more be underlined that:

Now, there is hope that Turkey and Greece have opened a new phase in their relations. Two natural disasters – earthquakes – in Turkey and Greece paved the way for bringing together the representatives of the two nations. Greece lifted its veto of Turkish membership in the European Union. Reciprocal high-level visits have taken place. Many agreements on cooperation in the field of soft issues have been concluded. Exchanges of journalists, businessmen, and artists are contributing to the improvement of relations between the countries.¹⁶⁹

Moreover, Turkey's quest for a full membership in the EU continues and the Union is urging the states to settle their outstanding border disputes to be eligible for membership of the EU. In this context, positive steps can also be taken within the framework of the EU since Greece expresses that it supports Turkey's candidacy. In this respect, it can be concluded that the two States have the potential to solve bilateral disputes if they genuinely continue to display efforts to this end.¹⁷⁰

¹⁶⁹ Aslan Gündüz. "Greek-Turkish Disputes" in *Greek-Turkish Relations in the Era of Globalization*, Dimitris Keridis and Dimitrios Triantaphyllon, (eds.), (Massachusetts, Brassey's Inc., 2001), p. 82.

¹⁷⁰ Indeed, this will and the efforts displayed by the parties to this end are appreciated in the annual progress reports for Turkey (2004), prepared by the EU Commission. Moreover, the provisions of the December 1999 Helsinki Presidential Summit Conclusions (Article 4) and December 2004 Brussels Presidential Summit Conclusions (Article 20), which ask the parties to display efforts for a peaceful settlement should not be disregarded. For further details, see Appendix K.

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APPENDICES

APPENDIX A

LAUSANNE PEACE TREATY ***VI. CONVENTION CONCERNING THE EXCHANGE OF GREEK AND*** ***TURKISH POPULATIONS***

Signed at Lausanne, January 30, 1923.

The Government of the Grand National Assembly of Turkey and the Greek Government have agreed upon the following provisions:

Article 1

As from the 1st May, 1923, there shall take place a compulsory exchange of Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory.

These persons shall not return to live in Turkey or Greece respectively without the authorization of the Turkish Government or of the Greek Government respectively.

Article 2

The following persons shall not be included in the exchange provided for in Article 1:

- a) The Greek inhabitants of Constantinople.
- b) The Moslem inhabitants of Western Thrace.

All Greeks who were already established before the 30th October, 1918, within the areas under the Prefecture of the City of Constantinople, as defined by the law of 1912, shall be considered as Greek inhabitants of Constantinople.

Moslems established in the region to the east of the frontier line laid down in 1918 by the Treaty of Bucharest shall be considered as Moslem inhabitants of Western Thrace.

Article 3

Those Greeks and Moslems who have already, and since the 18th October, 1912, left the territories the Greek and Turkish inhabitants of which are to be respectively exchanged, shall be considered as included in the exchange provided for in Article 1.

The expression "emigrant" in the present Convention includes all physical and juridical persons who have been obliged to emigrate or have emigrated since the 18th October, 1912.

Article 4

All able-bodied men belonging to the Greek population, whose families have already left Turkish territory, and who are now detained in Turkey, shall constitute the first installment of Greeks sent to Greece in accordance with the present Convention.

Article 5

Subject to the provisions of Articles 9 and 10 of the present Convention, the rights of property and monetary assets of Greeks in Turkey or Moslems in Greece shall not be prejudiced in consequence of the exchange to be carried out under the present Convention.

Article 6

No obstacle may be placed for any reason whatever in the way of the departure of a person belonging to the populations which are to be exchanged. In the event of an emigrant having received a definite sentence of imprisonment, or a sentence which is not yet definitive, or of his being the object of criminal proceedings, he shall be handed over by the authorities of the prosecuting country to the authorities of the country whither he is going, in order that he may serve his sentence or be brought to trial.

Article 7

The emigrants will lose the nationality of the country which they are leaving, and will acquire the nationality of the country of their destination, upon their arrival in the territory of the latter country.

Such emigrants as have already left one or other of the two countries and have not yet acquired their new nationality, shall acquire that nationality on the date of the signature of the present Convention.

Article 8

Emigrants shall be free to take away with them or to arrange for the transport of their movable property of every kind, without being liable on this account to the payment of any export duty or any other tax.

Similarly, the members of each community (including the personnel of mosques, tekkes, meddresses, churches, convents, schools, hospitals, societies, associations and juridical persons, or other foundations of any nature whatever) which is to leave the territory of one of the Contracting States under the present Convention, shall have the right to take away freely or to arrange for the transport of the movable property belonging to their communities.

The fullest facilities for transport shall be provided by the authorities of the two countries, upon the recommendation of the Mixed Commission provided for in Article 11.

Emigrants who may not be able to take away all or part of their movable property can leave it behind. In that event, the local authorities shall be required to draw up, the emigrant in question being given an opportunity to be heard, an inventory and valuation of the property left by him. Procès-verbaux containing the inventory and the valuation of the movable property left by the emigrant shall be drawn up in four copies, one of which shall be kept by the local authorities, the second transmitted to the Mixed Commission provided for in Article 11 to serve as the basis for the liquidation provided for by Article 9, the third shall be handed to the Government of the country to which the emigrant is going, and the fourth to the emigrant himself.

Article 9

Immovable property, whether rural or urban, belonging to emigrants, or to the communities mentioned in Article 8, and the movable property left by these emigrants or communities, shall be liquidated in accordance with the following provisions by the Mixed Commission provided for in Article 11.

Property situated in the districts to which the compulsory exchange applies and belonging to religious or benevolent institutions of the communities established in a district to which the exchange does not apply, shall likewise be liquidated under the same conditions.

Article 10

The movable and immovable property belonging to persons who have already left the territory of the High Contracting Parties and are considered, in accordance with Article 3 of the present Convention, as being included in the exchange of populations, shall be liquidated in accordance with Article 9. This liquidation shall take place independently of all measures of any kind whatever, which, under the laws passed and the regulations of any kind made in Greece and in Turkey since the 18th October, 1912, or in any other way, have resulted in any restriction on rights of ownership over the property in question, such as confiscation, forced sale, &c. In the event of the property mentioned in this Article or in Article 9 having been submitted to a measure of this kind, its value shall be fixed by the Commission provided for in Article 11, as if the measures in question had not been applied.

As regards expropriated property, the Mixed Commission shall undertake a fresh valuation of such property, if it has been expropriated since the 18th October, 1912, having previously belonged to persons liable to the exchange of populations in the two countries, and is situated in territories to which the exchange applies. The Commission shall fix for the benefit of the owners such compensation as will repair the injury which the Commission has ascertained. The total amount of this compensation shall be carried to the credit of these owners and to the debit of the Government on whose territory the expropriated property is situated.

In the event of any persons mentioned in Articles 8 and 9 not having received the income from property, the enjoyment of which they have lost in one way or another, the restoration of the amount of this income shall be guaranteed to them on the basis of the average yield of the property before the war, and in accordance with the methods to be laid down by the Mixed Commission.

The Mixed Commission provided for in Article 11 when proceeding to the liquidation of Wakf property in Greece and of the rights and interests connected therewith, and to the liquidation of similar foundations belonging to Greeks in Turkey, shall follow the principles laid down in previous Treaties with a view to fully safeguarding the rights and interests of these foundations and of the individuals interested in them.

The Mixed Commission provided for in Article 11 shall be entrusted with the duty of executing these provisions.

Article 11

Within one month from the coming into force of the present Convention a Mixed Commission shall be set up in Turkey or in Greece consisting of four members representing each of the High Contracting Parties, and of Nations from among nationals of Powers which did not take part in the war of 1914-1918. The Presidency of the Commission shall be exercised in turn by each of these three neutral members.

The Mixed Commission shall have the right to set up, in such places as it may appear to them necessary, Sub-Commissions working under its order. Each such Sub-Commission shall consist of a Turkish member, a Greek member and a neutral President to be designated by the Mixed Commission. The Mixed Commission shall decide the powers to be delegated to the Sub-Commission.

Article 12

The duties of the Mixed Commission shall be to supervise and facilitate the emigration provided for in the present Convention, and to carry out the liquidation of the movable and immovable property for which provision is made in Articles 9 and 10.

The Commission shall settle the methods to be followed as regards the emigration and liquidation mentioned above.

In a general way the Mixed Commission shall have full power to take the measures necessitated by the execution of the present Convention and to decide all questions to which this Convention may give rise.

The decisions of the Mixed Commission shall be taken by a majority.

All disputes relating to property, rights and interests which are to be liquidated shall be settled definitely by the Commission.

Article 13

The Mixed Commission shall have full power to cause the valuation to be made of the movable and immovable property which is to be liquidated under the present Convention, the interested parties being given a hearing or being duly summoned so that they may be heard.

The basis for the valuation of the property to be liquidated shall be the value of the property in gold currency.

Article 14

The Commission shall transmit to the owner concerned a declaration stating the sum due to him in respect of the property of which he has been dispossessed, and such property shall remain at the disposal of the Government on whose territory it is situated.

The total sums due on the basis of these declarations shall constitute a Government debt from the country where the liquidation takes place to the Government of the country to which the emigrant belongs. The emigrant shall in principle be entitled to receive in the country to which he emigrates, as representing the sums due to him, property of a value equal to and of the same nature as that which he has left behind.

Once every six months an account shall be drawn up of the sums due by the respective Governments on the basis of the declarations as above.

When the liquidation is completed, if the sums of money due to both sides correspond, the accounts relating thereto shall be balanced. If a sum remains due from one of the Governments to the other Government after a balance has been struck, the debit balance shall be paid in cash. If the debtor Governments requests a postponement in making this payment, the Commission may (.....) such postponement, provided that the sum due be paid in three annuities at most. The Commission shall fix the interest to be paid during the period of postponement.

If the sum to be paid is fairly large and requires longer postponement, the debtor Government shall pay in cash a sum to be fixed by the Mixed Commission, up to a maximum of 20 per cent. of the total due, and shall issue in respect of the balance loan certificates bearing such interest as the Mixed Commission may fix, to be said off within 20 years at most. The debtor Government shall assign to the service of these loans pledges approved by the Commission, which shall be administered and of which the revenues shall be encashed by the International Commission in Greece and by the Council of the Public Debt at Constantinople. In the absence of agreement in regard to these pledges, they shall be selected by the Council of the League of Nations.

Article 15

With a view to facilitating emigration, funds shall be advanced to the Mixed Commission by the States concerned, under conditions laid down by the said Commission.

Article 16

The Turkish and Greek Governments shall come to an agreement with the Mixed Commission provided for in Article 11 in regard to all questions concerning the notification to be made to persons who are to leave the territory of Turkey and Greece under the present Convention, and concerning the ports to which these

persons are to go for the purpose of being transported to the country of their destination.

High Contracting Parties undertake mutually that no pressure direct or indirect shall be exercised on the populations which are to be exchanged with a view to making them leave their homes or abandon their property before the date fixed for their departure. They likewise undertake to impose on the emigrants who have left or who are to leave the country no special taxes or dues. No obstacle shall be placed in the way of the inhabitants of the districts excepted from the exchange under Article 2 exercising freely their right to remain in or return to those districts and to enjoy to the full their liberties and rights of property in Turkey and in Greece. This provision shall not be invoked as a motive for preventing the free alienation of property belonging to inhabitants of the said regions which are excepted from the exchange, or the voluntary departure of those among these inhabitants who wish to leave Turkey or Greece.

Article 17

The expenses entailed by the maintenance and working of the Mixed Commission and of the organisations dependent on it shall be borne by the Governments concerned in proportions to be fixed by the Commission.

Article 18

The High Contracting Parties undertakes to introduce in their respective laws such modifications as may be necessary with a view to ensuring the execution of the present Convention.

Article 19

The present Convention shall have the same force and effect as between the High Contracting Parties as if it formed part of the Treaty of Peace to be concluded with Turkey. It shall come into force immediately after the ratification of the said Turkey by the two High Contracting Parties.

In faith whereof, the undersigned Plenipotentiaries, whose respective full Powers have been found in good and due form, have signed the present Convention.

Done at Lausanne, the 30th January, 1923, in three copies, one of which shall be transmitted to the Greek Government, one to the Government of the Grand National Assembly of Turkey, and the third shall be deposited in the archives of the Government of the French Republic, which shall deliver certified copies to the other Powers signatory of the Treaty of Peace with Turkey.

(L.S.) E.K.Venizelos

(L.S.) D.Cacclamanos

(L.S.) Ismet

(L.S.) Dr.Ryza Nour

(L.S.) Hassan

Protocol

The undersigned Turkish Plenipotentiaries, duly authorised to that effect, declare that, without waiting for the coming into force of the Convention with Greece of even date, relating to the exchange of the Greek and Turkish populations, and by way to exception to Article 1 of that Convention the Turkish Government, on the signature of the Treaty of Peace, will release the able-bodied men referred to in Article 4 of the said Convention, and will provide for their departure.

Done at Lausanne, the 30th January, 1923.

Source: www.mfa.gov.tr/grupe/ed/eda/edaa/default.6.html

APPENDIX B

AEGEAN SEA CONTINENTAL SHELF CASE

(JURISDICTION OF THE COURT)

Judgment of 19 December 1978

Summary

In its judgment on the question of its jurisdiction in the case concerning the Aegean Sea Continental Shelf (Greece v. Turkey), the Court, by 12 votes to 2, found that it is without jurisdiction to entertain the Application filed by the Government of Greece.

The Court was composed as follows: President Jiménez de Aréchaga; Vice-President Nagendra Singh; Judges Forster, Gros, Lachs, Dillard, de Castro, Morozov, Sir Humphrey Waldock, Ruda, Mosler, Elias and Tarazi; Judge *ad hoc* Stassinopoulos.

Of the 12 Members of the Court who voted for the decision, Vice-President Nagendra Singh and Judges Gros, Lachs, Morozov and Tarazi have appended separate opinions or declarations.

Dissenting opinions have been appended to the Judgment by Judge de Castro and Judge *ad hoc* Stassinopoulos.

Procedure, and Summary of Negotiations (paras. 1-31)

In its Judgment, the Court recalls that on 10 August 1976 Greece instituted proceedings against Turkey in respect of a dispute concerning the delimitation of the continental shelf appertaining to each of the two States in the Aegean Sea and their rights thereover. In a letter of 26 August 1976 Turkey expressed the view that the Court had no jurisdiction to entertain the Application.

Greece requested the Court to indicate interim measures of protection, but in an Order of 11 September 1976 the Court found that the circumstances were not such as to require them and decided that the written proceedings should first be addressed to the question of its jurisdiction to entertain the dispute. Greece subsequently filed a Memorial and presented oral arguments at public sittings, formally submitting that the Court had such jurisdiction. Turkey did not file any Counter-Memorial and was not represented at the hearings. Its attitude was, however, defined in the above-mentioned letter and in communications addressed to the Court on 24 April and 10 October 1978. (Paras. 1-14.)

While regretting that Turkey did not appear in order to put forward its arguments, the Court points out that it nevertheless had to examine *proprio motu* the question of its own jurisdiction, a duty reinforced by the terms of Article 53 of its Statute, according to which the Court, whenever a party does not appear, must, before finding upon the merits, satisfy itself that it has jurisdiction. (Para. 15.)

After giving a brief account of the negotiations which have taken place between Greece and Turkey since 1973 on the question of delimiting the continental shelf, the

Court finds contrary to suggestions by Turkey, that the active pursuit of negotiations concurrently with the proceedings is not, legally, any obstacle to its exercise of its judicial function, and that a legal dispute exists between Greece and Turkey in respect of the continental shelf in the Aegean Sea. (Paras. 16-31.)

First Basis of Jurisdiction Relied Upon: Article 17 of the General Act of 1928 (paras. 32-93)

In its Application the Greek Government specified two bases on which it claimed to found the jurisdiction of the Court in the dispute. The first was Article 17 of the General Act of 1928 for the Pacific Settlement of International Disputes, read with Article 36, paragraph 1, and Article 37 of the Statute of the Court.

Article 17 of the General Act reads as follows:

"All disputes with regard to which the parties are in conflict as to their respective Rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice."

This Article thus provided for the reference of disputes to the Permanent Court of International Justice. That body was the predecessor of the present Court, which, by the effect of Article 37 of its own Statute, is substituted for it in any treaty or convention in force which provides for reference of a matter to the Permanent Court. Hence, if the General Act is to be considered a convention in force between Greece and Turkey, it may, when read with Article 37 and Article 36, paragraph 1, of the present Court's Statute, suffice to establish the latter's jurisdiction. (Paras. 32-34.)

The question of the status of the General Act of 1928 as a convention in force for the purposes of Article 37 of the Statute was raised, though not decided, in previous cases before the Court. In the present case the Greek Government contended that the Act must be presumed to be still in force as between Greece and Turkey; the Turkish Government, on the contrary, took the position that the Act was no longer in force. (Paras. 35-38.)

The Court notes that Greece drew attention to the fact that both the Greek and the Turkish instruments of accession to the Act were accompanied by reservations. Greece affirmed that these were irrelevant to the case. Turkey, on the other hand, took the position that, whether or not the General Act was assumed to be in force, Greece's instrument of accession, dated 14 September 1931, was subject to a clause, reservation (*b*), which would exclude the Court's competence with respect to the dispute. (Para. 39.)

The text of this reservation (*b*) is as follows:

"The following disputes are excluded from the procedures described in the General Act . . .

"(b) disputes concerning questions which by international law are solely within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece, including disputes relating to its Rights of sovereignty over its ports and lines of communication."

The Court considers that, if Turkey's view of the effect of reservation (b) on the applicability of the Act as between Greece and Turkey with respect to the subject-matter of the dispute is justified, a finding on the question whether the Act is or is not in force would cease to be essential for the decision regarding the Court's jurisdiction. (Para. 40.)

According to Greece, the Court should leave reservation (b) out of account because the question of its effect on the applicability of the General Act was not raised regularly by Turkey in accordance with the Rules of Court, so that Turkey could not be regarded as having "enforced" the reservation as required by Article 39, paragraph 3, of the General Act, whereby: "If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party." In the Court's view, Turkey's invocation of reservation (b) in a formal statement made in response to a communication from the Court must be considered as constituting an "enforcement" of the reservation within the meaning of Article 39, paragraph 3, of the Act. The Court was therefore unable to leave out of its consideration a reservation the invocation of which had been properly brought to its notice earlier in the proceedings. (Paras. 41-47.)

Greece maintained that reservation (b) could not be considered as covering the dispute regarding the continental shelf of the Aegean Sea and therefore did not exclude the normal operation of Article 17 of the Act. It contended in particular that the reservation did not cover all disputes relating to the territorial status of Greece but only such as *both* related to its territorial status *and at the same time* concerned "questions which by international law are solely within the domestic jurisdiction of States". (Paras. 48 and 49.)

This contention depended on an essentially grammatical interpretation which hinged on the meaning to be ascribed to the expression "and in particular" (*"et, notamment,"* in the original French of the reservation). After considering this argument, the Court finds that the question whether that expression has the meaning attributed to it by Greece depends on the context in which it was used in the instrument of accession and is not a matter simply of the preponderant linguistic usage. The Court recalls that it cannot base itself on a purely grammatical interpretation of the text and observes that a number of substantive considerations point decisively to the conclusion that reservation (b) contained two separate and autonomous reservations. (Paras. 50-56.)

One such consideration was that in framing its declaration accepting the compulsory jurisdiction of the Permanent Court under the optional clause of the latter's Statute - a declaration made on 12 September 1929, only two years before the Greek accession to the General Act - Greece included a provision which, indisputably, was an autonomous reservation of "disputes relating to the territorial status of Greece". It can hardly be supposed that Greece, in its instrument of accession to the General Act, should have intended to give to its reservation of "disputes relating to the territorial status of Greece" a scope which differed fundamentally from that given to it in that

declaration. That Greece had had such an intention was not borne out by the contemporary evidence placed before the Court relating to the making of the declaration and the deposit of the instrument of accession.

That being so, the Court finds that reservation (b) comprises two distinct and autonomous reservations, one affecting disputes concerning questions of domestic jurisdiction and the other reserving "disputes relating to the territorial status of Greece". (Paras. 57-68.)

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* *

The Court then goes on to consider what "disputes relating to the territorial status of Greece" must be taken to mean.

Greece maintained that a restrictive view of the meaning must be taken, by reason of the historical context, and that those words related to territorial questions bound up with the territorial settlements established by the peace treaties after the first World War. In the Court's opinion, the historical evidence relied on by Greece seems rather to confirm that in reservation (b) the expression "territorial status" was used in its ordinary, generic sense of any matters properly to be considered as belonging to the concept of territorial status in public international law. The expression therefore included not only the particular legal régime but the territorial integrity and the boundaries of a State. (Paras. 69-76.)

Greece argued that the very idea of the continental shelf was wholly unknown in 1928 when the General Act was concluded, and in 1931 when Greece acceded to the Act. But, in the Court's view, since the expression "territorial status" was used in the Greek reservation as a generic term, the presumption necessarily arises that its meaning, as also that of the word "rights" in Article 17 of the General Act, was to follow the evolution of the law and to correspond with the meaning attached to it by the law in force at any given time. The Court therefore finds that the expression "disputes relating to the territorial status of Greece" must be interpreted in accordance with the rules of international law as they exist today and not as they existed in 1931. (Paras. 77-80.)

The Court then proceeds to examine whether, taking into account the developments in international law regarding the continental shelf, the expression "disputes relating to the territorial status of Greece" should or should not be understood as comprising disputes relating to the geographical extent of Greece's rights over the continental shelf in the Aegean Sea. Greece contended that the dispute concerned the delimitation of the continental shelf, said to be entirely extraneous to the notion of territorial status, and that the continental shelf, not being part of the territory, could not be considered as connected with territorial status. The Court observes that it would be difficult to accept the proposition that delimitation is entirely extraneous to the notion of territorial status and points out that a dispute regarding delimitation of a continental shelf tends by its very nature to be one relating to territorial status, inasmuch as a coastal State's rights over the continental shelf derive from its sovereignty over the adjoining land. It follows that the territorial status of the coastal State comprises, *ipso jure*, the rights of exploration and exploitation over the continental shelf to which it is entitled under international law. (Paras. 80-89.)

Having regard to those considerations, the Court is of the opinion that the dispute is one which relates to the territorial status of Greece within the meaning of reservation (b) and that Turkey's invocation of the reservation had the effect of excluding the dispute from the application of Article 17 of the General Act. The General Act is therefore not a valid basis for the Court's jurisdiction. (Para. 90.)

*
* *

The Court also takes into consideration a suggestion that the General Act had never been applicable as between Turkey and Greece, by reason of the existence of the Greco-Turkish Treaty of Friendship, Neutrality, Conciliation and Arbitration signed on 30 October 1930. It finds that it is dispensed from any need to enter into the question of the effect of the 1930 treaty on the applicability of the General Act, because it has established that, by the effect of reservation (b), the Act is not applicable to the dispute, and because the 1930 treaty was not invoked as a basis for its jurisdiction. (Paras. 91-93.)

Second Basis of Jurisdiction Relied Upon: the Brussels Joint Communiqué of 31 May 1975 (paras. 94-108)

The second basis of jurisdiction relied upon by Greece was the Brussels Joint Communiqué of 31 May 1975. This was a communiqué issued directly to the press by the Prime Ministers of Greece and Turkey following a meeting between them on that date. It contained the following passage:

"They [the two Prime Ministers] decided that those problems [between the two countries] should be resolved peacefully by means of negotiations and as regards the continental shelf of the Aegean Sea by the International Court at The Hague."

Greece maintained that this passage directly conferred jurisdiction on the Court, committed the parties to concluding any implementing agreement needed and, in the event of refusal by one of them to conclude such an agreement, permitted the other to refer the dispute unilaterally to the Court. Turkey, for its part, maintained that the communiqué did not "amount to an agreement under international law", and that in any event it did not comprise any undertaking to resort to the Court without a special agreement (*compromis*) or amount to an agreement by one State to submit to the jurisdiction of the Court upon the unilateral application of the other. (Paras. 94-99.)

In view of these divergent interpretations, the Court considers what light is thrown on the meaning of the communiqué by the context in which the meeting of 31 May 1975 took place and the document was drawn up. It finds nothing to justify the conclusion that Turkey was prepared to envisage any other reference to the Court than a joint submission of the dispute. In the information before it on what followed the Brussels communiqué the Court finds confirmation that the two Prime Ministers did not undertake any unconditional commitment to refer their continental shelf dispute to the Court. (Paras. 100-106.)

Hence the Brussels communiqué did not constitute an immediate and unqualified commitment on the part of the Prime Ministers of Greece and Turkey to accept the submission of the dispute to the Court unilaterally by Application. It follows that it

does not furnish a valid basis for establishing the Court's jurisdiction. The Court adds that nothing it has said may be understood as precluding the dispute from being brought before the Court if and when the conditions for establishing its jurisdiction are satisfied. (Paras. 107 and 108.)

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* *

For these reasons, the Court finds that it is without jurisdiction to entertain the Application filed by the Government of Greece on 10 August 1976. (Para. 109.)

Source: http://www.icj-cij.org/icjwww/icses/igt/igt_isummaries/igt_isummary_19781219.htm

APPENDIX C

SELECTED ARTICLES FROM the UN LAW of the SEA CONVENTION (UNCLOS)

Article 3 Breadth of the territorial sea

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 4 Outer limit of the territorial sea

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 5 Normal baseline

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Article 7 Straight baselines

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.
2. Where because of the presence of a delta and other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, the straight baselines shall remain effective until changed by the coastal State in accordance with this Convention.
3. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters.
4. Straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or except in instances where the drawing of baselines to and from such elevations has received general international recognition.
5. Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

6. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.

Article 33
Contiguous zone

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 74
Delimitation of the exclusive economic zone between States with opposite or adjacent coasts

1. 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.
2. 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.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

Article 83
Delimitation of the continental shelf between States with opposite or adjacent coasts

1. The delimitation of the continental shelf 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.
2. 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.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

Article 121

Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Article 122

Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123

Co-operation of States bordering enclosed or semi-enclosed seas

States bordering an enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization:

- (a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to co-operate with them in furtherance of the provisions of this article.

Article 300

Good faith and abuse of rights

States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

Source:

http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

APPENDIX D

SECURITY COUNCIL RESOLUTION No. 395

D. COMPLAINT BY GREECE AGAINST TURKEY

Decision

At its 1949th meeting, on 12 August 1976, the Council decided to invite the representatives of Greece and Turkey to participate, without vote, in the discussion of the item entitled "Complaint by Greece against Turkey: letter dated 10 August 1976 from the Permanent Representative of Greece to the United Nations addressed to the President of the Security Council (S/12167)".⁵³

⁵³ See *Official Records of the Security Council, Thirty-first Year, Supplement for July, August and September 1976*.

Resolution 395 (1976)

of 25 August 1976

The Security Council,
Taking note of the letter of the Permanent Representative of Greece dated 10 August 1976,⁵⁴
Having heard and noted the various points made in the statements by the Ministers for Foreign Affairs of Greece⁵⁵ and Turkey,⁵⁶

⁵⁴ *Ibid.*, document S/12167.

⁵⁵ *Ibid.*, *Thirty-first Year*, 1949th meeting.

⁵⁶ *Ibid.*, 1950th meeting.

Expressing its concern over the present tensions between Greece and Turkey in relation to the Aegean Sea,

Bearing in mind the principles of the Charter of the United Nations concerning the peaceful settlement of disputes, as well as the various provisions of Chapter VI of the Charter concerning procedures and methods for the peaceful settlement of disputes,

Noting the importance of the resumption and continuance of direct negotiations between Greece and Turkey to resolve their differences,

Conscious of the need for the parties both to respect each other's international rights and obligations and to avoid any incident which might lead to the aggravation of the situation and which, consequently, might compromise their efforts towards a peaceful solution,

1. *Appeals* to the Governments of Greece and Turkey to exercise the utmost restraint in the present situation;

2. *Urges* the Governments of Greece and Turkey to do everything in their power to reduce the present tensions in the area so that the negotiating process may be facilitated;

3. *Calls upon* the Governments of Greece and Turkey to resume direct negotiations over their differences and appeals to them to do everything within their power to ensure that these negotiations will result in mutually acceptable solutions;

4. *Invites* the Governments of Greece and Turkey in this respect to continue to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, are qualified to make to the settlement of any remaining legal differences which they may identify in connexion with their present dispute.

Adopted at the 1953rd meeting by consensus.

Source: <http://www.un.org/documents/sc/res/1976/scres76.htm>

APPENDIX E

BERN AGREEMENT BETWEEN TURKEY AND GREECE (11 November 1976)

1. The two parties agree that negotiations shall be frank, throughgoing and pursued in good faith, with a view to reaching an agreement based on their mutual consent with regard to the delimitation of the continental shelf as between themselves.
2. The two parties agree that these negotiations shall by their very nature be strictly confidential.
3. The two parties reserve their respective positions with regard to the delimitation of the continental shelf.
4. The two parties undertake not in any circumstances to make use of the provisions of this document, or such proposals as may be made by either side during these negotiations, outside the context of the negotiations themselves.
5. The two parties agree that there shall be no statements or leaks to the press on the contents of the negotiations, unless they decide otherwise by common accord.
6. The two parties undertake to refrain from any initiative or act concerning the Aegean Continental Shelf that might trouble the negotiations.
7. The two parties each undertake, so far as their bilateral relations are concerned to refrain from any initiative or act likely to throw discredit on the other.
8. The two parties have agreed to study the practice of States and the international rules on the subject, with a view to eliciting such principles and practical criteria as might be of use in the case of the delimitation of the continental shelf between the two countries.
9. To that end, a mixed commission will be set up to be composed of national representatives.
10. The two parties agree to adopt a gradual rhythm in the negotiating process to be followed, after mutual consultation.

Done in Berne, in two copies, in the French language, 11 November 1976

Jean TZOUNIS,
Head of the Hellenic
delegation

Ali Suat BİLGE,
Head of the Turkish
delegation

Source: Keesing's Contemporary Archives, (1976), p. 2936

APPENDIX F

DECLARATION ADOPTED BY THE 15 MINISTERS OF FOREIGN AFFAIRS OF THE E.U. AT THE LAST GENERAL AFFAIRS COUNCIL

Brussels, 15 July 1996
SN 3543/96

MEDA FINANCIAL REGULATION : DECLARATIONS TO BE ENTERED IN THE MINUTES OF THE COUNCIL

i. Council Declaration

The European Union has followed with serious concern the situation that has emerged as a consequence of the issue raised by Turkey concerning the Imia Islets.

The resulting frictions involve, on the one hand, a Member State with which a natural solidarity exists and, on the other hand, a neighbouring country with which the European Community wishes to develop further a relationship of dialogue and cooperation in all the fields resulting from the Customs Union.

The Council recalls its attachment to the development of good neighbourly relations among all countries of the region. In this context, the Council recalls that relations between Turkey and the European Union have to be based on a clear commitment to the principle of respect for international law and agreements, the relevant international practice, and the sovereignty and the territorial integrity of the Member States and of Turkey.

The Council considers that disputes should be settled solely on the basis of international law. Therefore, the Council calls for restraint and avoidance of any action liable to increase tensions, and specifically the use or threat of force, and considers appropriate that dialogue should be pursued along the lines which have emerged in previous contacts between the interested parties which may contribute to the improvement of bilateral relations as well as to the establishment of a crisis prevention mechanism.

The Council further underlines that the cases of disputes created by territorial claims, such as the Imia Islet issue, should be submitted to the International Court of Justice.

The Council requests the Presidency to invite Turkey to indicate whether she commits herself to the aforementioned principles.

ii. Commission Declaration

The Commission declares that the adoption of the MEDA Regulation opens the way for the practical implementation once the Regulation has been published in the Official Journal.

It is however not to be expected that any formal financing decisions will be adopted before the second week of September.

Source: www.hri.org/MFA/foreign/bilateral/declaration.htm

APPENDIX G

UNOFFICIAL TRANSLATION OF TGNA DECLARATION, 121ST SESSION, 8 JUNE 1995 *

The Grand National Assembly of Turkey, at its 121st session held on 8 June 1995, having considered the situation that has emerged as a result of the ratification of the UN Law of the Sea Convention by the Greek Parliament, and thus setting the ground for its implementation, unanimously adopted the following declaration.

The Lausanne Peace Treaty of 24 July 1923 established an equilibrium in the Aegean, which is a common sea between Turkey and Greece. The breadth of the territorial sea of both countries at that time has been determined as 3 nautical miles. The maritime areas beyond national sovereignty have thus constituted over 70 percent of the Aegean.

Greece by extending the breadth of its territorial sea to six nautical miles in 1936, acquired sovereignty over 43.68 percent, which is almost half of the Aegean. The territorial sea of Turkey, which was extended to six nautical miles lately in 1964, currently comprises approximately 7 percent of the Aegean. At present, almost half of the Aegean has the status of high seas.

Greece has lately made known its desire to extend its territorial sea to twelve nautical miles, making use of certain provisions of the Law of the Sea Convention that have essentially been designed for open seas and ocean areas. In the case this aspiration is realized, Greece would acquire sovereignty over almost 72 percent of the Aegean Sea.

It is inconceivable to expect that Turkey, a peninsula, would by any means go along with such an eventuality that would result in Turkey's access to high seas and oceans of the world by passing through Greek territorial sea. Turkey has vital interests in the Aegean.

While hoping that the Greek Government shall not decide to extend its territorial sea in the Aegean beyond the present six miles limit, which in turn would ruin the equilibrium established by the Lausanne Peace Treaty, the Turkish Grand National Assembly, has decided to grant the Turkish Government all powers, including those that may be deemed necessary in the military field, for safeguarding and defending the vital interests of Turkey in such eventuality. The Grand National Assembly of Turkey has also decided to announce this to the Greek and world public opinion in a spirit of friendship

* Translated by the author

APPENDIX H

TURKISH TERRITORIAL WATERS LAW - LAW NO. 2674, 20 MAY 1982

Art. 1. Turkish territorial waters are a part of the Turkish territory. The breadth of the Turkish territorial waters is 6 miles. *The Council of Ministers is authorized to extend the breadth of the Turkish territorial waters beyond 6 miles, in certain seas, taking into consideration all the features of that sea in conformity with the principles of equity.*

Art. 2. Where the coasts are opposite or adjacent to the Turkish coasts, the boundary shall be determined by an agreement with the concerned state. This agreement should take into account all the factors of that region and should be in conformity with the principle of equity.

APPENDIX I

ARTICLE 31 OF THE VIENNA CONVENTION ON THE LAW OF THE TREATIES

General Rule of Interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Source: <http://www.un.org/law/ilc/texts/treaties.htm>

APPENDIX J

U.S. STATEMENT TO FOLLOW BILATERAL MEETING (Madrid Declaration)

Madrid, July 08, 1997

Secretary Albright hosted a meeting at the NATO summit in Madrid between Greece Foreign Minister Pangelos and Turkish Foreign Minister Cem. During their meeting the Turkish and Greece Ministers reached a convergence of views on a basis for promoting better relations on the following lines:

A mutual commitment to peace, security and the continuing development of good neighborly relations;

Respect for each other's sovereignty;

Respect for the principles of international law and international agreements;

Respect for each other's legitimate, vital interests and concerns in the Aegean which are of great importance for their security and national sovereignty;

Commitment refrain from unilateral acts on the basis of mutual respect and willingness to avoid conflicts arising from misunderstanding; and

Commitment to settle disputes by peaceful means based on mutual consent and without use of force or threat of force.

APPENDIX K

PRESIDENCY CONCLUSIONS OF THE EUROPEAN UNION

HELSINKI EUROPEAN COUNCIL – 10/11 DECEMBER 1999

Article 4

The European Council reaffirms the inclusive nature of the accession process, which now comprises 13 candidate States within a single framework. The candidate States are participating in the accession process on an equal footing. They must share the values and objectives of the European Union as set out in the Treaties. In this respect the European Council stresses the principle of peaceful settlement of disputes in accordance with the United Nations Charter and urges candidate States to make every effort to resolve any outstanding border disputes and other related issues. Failing this they should within a reasonable time bring the dispute to the International Court of Justice. The European Council will review the situation relating to any outstanding disputes, in particular concerning the repercussions on the accession process and in order to promote their settlement through the International Court of Justice, at the latest by the end of 2004. Moreover, the European Council recalls that compliance with the political criteria laid down at the Copenhagen European Council is a prerequisite for the opening of accession negotiations and that compliance with all the Copenhagen criteria is the basis for accession to the Union.

BRUSSELS EUROPEAN COUNCIL – 16/17 DECEMBER 2004

Article 20

The European Council, while underlining the need for unequivocal commitment to good neighbourly relations welcomed the improvement in Turkey's relations with its neighbours and its readiness to continue to work with the concerned Member States towards resolution of outstanding border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter. In accordance with its previous conclusions, notably those of Helsinki on this matter, the European Council reviewed the situation relating to outstanding disputes and welcomed the exploratory contacts to this end. In this connection it reaffirmed its view that unresolved disputes having repercussions on the accession process, should if necessary be brought to the International Court of Justice for settlement. The European Council will be kept informed of progress achieved which it will review as appropriate.