

THE AEGEAN DISPUTES

Yüksel İnan*-Yücel Acer**

Introduction

The Aegean Sea is a semi-enclosed sea, which is unique not only because of its coastlines are mostly intended but also a place for about 1800 islands, islets and rocks scattered all around the sea.¹ Despite the fact that they are dispersed all around the Aegean Sea, they still lie closer to each other in certain places and can thus be grouped according to their location as the North Sporades, the Cyclades, the Strait Region Islands, the Saruhan Islands and the Menteşe (Dodacanese) Islands.

Moreover, the last three groups of islands can be taken together and named as the “Eastern Aegean Islands” which all lie closer to the shores of Anatolia rather than to the coasts of the Greek mainland. In addition, excluding the Menteşe Islands, the Strait Region and Saruhan Islands both lie on the natural prolongation of Anatolia. Moreover, the location of those islands within the Aegean Sea is such that their actual and possible maritime areas have a potential to decrease the areas that constitute the high seas of the Aegean Sea. Thus, they have a direct effect on the considerations related to the free navigation, over flight, and the security matters in the Aegean Sea.

* Dr. Yüksel İnan is a Professor of International Law at the Department of International Relations, Bilkent University, Ankara.

** Dr. Yücel Acer is an Assistant Professor of International Law at the Department of International Relations, Onsekiz Mart University, Çanakkale.

The Aegean Sea as a whole covers an area of around 196,000 km² including the surfaces of all islands, islets and rocks except for the island of Crete,² and has narrow passages to its surrounding seas, namely the Black Sea and the Mediterranean. The Aegean Sea is connected to the Black Sea, which is again an enclosed sea, through the Turkish Straits namely the straits of Çanakkale and İstanbul and to the Eastern Mediterranean through the Karpathos and Kasos straits. It is also connected to the Western Mediterranean through the Kithira and Antikithira straits.

Turkey and Greece are the only two countries whose coasts are washed by the Aegean waters and thus have respective vital economic, social, political and security interests in the Aegean Sea. For that reason they have to somehow harmonise their rights and interests in the Aegean Sea and have to live together in good neighbourhood.³ Despite such a concrete reality, they have numerous undeniable disputes concerning their respective sovereign rights over the use of the Aegean Sea in many respects such as the maritime areas, aerial spaces, and certain islands, islets and rocks of the Aegean Sea. These are, in addition to the Cyprus case, is the status and the minority rights of Western Thrace Turks. The Aegean disputes between the two countries can be enumerated as follows:

- The demilitarised status of the Eastern Aegean Islands;
- The extent and the delimitation of the territorial sea areas, and the delimitation of the continental shelf;
- Sovereignty over certain islands, islets and rocks;
- The extent of Greek air space;
- Air traffic services;
- Command and control within NATO.

For many decades, especially since 1974, the “Aegean disputes” have been one of the most controversial aspects of the relations between Greece and Turkey. These disputes and the effect they play on the relations between these two states have however never been static. They sometimes increased the tension and sometimes went almost forgotten by the two sides, depending on the situation in both international relations in general and the relations between the two countries in particular. Recently, the earthquakes in Turkey and in Greece in 1999 and Turkey’s admittance to the European Union (EU) as a candidate state by the Helsinki European Council in 1999 created a positive atmosphere for the settlement of the differences between the parties through amicable means.

The present study aims at evaluating, in their present situation, the Aegean disputes by reflecting particularly the Turkish views of the issues in an objective manner without a particular effort to judge who is right and who is wrong. The review excludes the disputes over the air traffic service (ATS) and the related ones to that and also over the military conducts within NATO, due to both space limitations and the need to focus on the other issues that draw the attention of the public.

I- Sovereignty Disputes

A. Disputed Sovereignty over Some Aegean Islands

Greece was established as an independent State from the Ottoman Empire in 1829. The situation at that time was as such that the western Aegean islands, namely the Northern Sporades, the Cyclades and the island of Crete were under the Greek control. However, the eastern Aegean islands, namely the Straits Region Islands, [Samothrace, Gökçeada (Imbros), Bozcaada (Tenedos) Lemnos, Tavşan (Rabbit) Islands], the Saruhan Islands [Mytilene, Chios, Samos and Nikaria] and the Menteşe Islands [Stampalia (Astropalia), Rhodes (Rhodos), Calki

(Charki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi) and Cos (Kos)] remained under the Ottoman sovereignty until the end of World War I.

During the Tripolitania-Benghazi War that took place between Italy and the Ottoman Empire in 1911-12, Italy occupied all the Menteşe Islands. The two States concluded after the War a treaty, named as the 1912 Treaty of Ushi, according to Article 2 of which Italy had to return these islands to the Ottoman Empire.⁴

It seems however that the Ottomans did not really press on Italy for the return of the islands as the Ottoman Empire went into another trauma, namely the Balkan Wars. These islands remained under Italy's occupation, and continued to remain as such after the Balkan wars as late as the signing of the Lausanne Peace Treaty in 1923.

During the Balkan Wars of 1912-13, the Strait Region Islands and the Saruhan Islands were occupied by Greece excluding the Koyun (Ionussio) Islands, Antiipsara (Antipsara), and Hurşit (Fourni) while the Menteşe Islands still remained under the Italian occupation.⁵ As a result of the Wars, the Ottomans were forced to conclude an agreement with Bulgaria, Greece and Serbia in London on 30 May 1913,⁶ with which the Ottomans not only ceded the sovereignty of Crete to Greece by Article 4, but also conferred by Article 5 the power to the Great Powers, namely Austria-Hungary, France, Germany, Great Britain, Italy and Russia, to determine the sovereignty over the Aegean islands occupied by Greece during the War. Following the London Agreement, the Ottomans also concluded separate agreements with the other belligerent powers. Among them, the Athens Agreement with Greece, signed on 14 November 1913,⁷ explicitly confirmed once more the Article 5 of the London Agreement in its Article 15.

The States named in the London Agreement came together in February 1914 at a conference, which is called the London Ambassadors Summit. They eventually determined the fate of the Aegean islands, which were under the Greek occupation. The decisions taken at the Summit were communicated to Greece on 13 February 1914 and to the Ottomans in the following day.⁸ According to the decisions, the islands of Gökçeada, Bozcaada, and Castellorizo would remain under the sovereignty of the Ottomans, and all the other Aegean islands under the occupation of Greece would be ceded to Greece

After the World War I, the Lausanne Peace Treaty⁹ regulated the sovereignty issue over the Aegean islands and explicitly ceded sovereignty over the islands of Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria to Greece, while the islands of Gökçeada, Bozacaada, and Tavşan Islands were left under the Turkish sovereignty. Moreover, the Lausanne Peace Treaty attributed officially the sovereignty over the Menteşe islands and the adjacent islets to Italy in its Article 15. The Agreement in Article 15 left even the island of Meis (Castellerizo) to Italy, which is in fact situated outside the Aegean Sea.

The sovereignty over the Aegean islands, this time concerning the Menteşe Islands, took another turn after the World War II. During the War, all the Aegean islands came under the German occupation in 1941.¹⁰ Later during the War, the Allies captured the Aegean islands. After the War, the 1947 Paris Peace Treaty returned all the islands that were under the Greek sovereignty before the War to Greece.¹¹ More significantly, the Menteşe islands that were under the Italian sovereignty before the War, were ceded to Greece.¹²

As a result of all these events and regulations, Greece now has sovereignty over almost all the Aegean islands including the Eastern Aegean Islands namely the Strait Region Islands (except for the islands of Bozcaada, Gökçeada, and Tavşan Islands), the Saruhan islands and the Menteşe islands, some of which are situated

just a few miles off the Turkish mainland. On the other hand, Turkey possesses only a few sizable islands, namely the islands of Gökçeada, Bozcaada and Tavşan Islands which are situated in the mouth of the Çanakkale Strait. Other Turkish islands are relatively very small in size and situated in principle within the distance of 3 n.m. from the Turkish coast.

It seems however that the above regulations have not yet fully settled, beyond any doubt, the sovereignty issue in the Aegean Sea. Turkey and Greece now disagree on the interpretation of some provisions of the above-mentioned international treaties.

The major disagreement arises over the interpretation of some of the articles of the Lausanne Peace Treaty, namely Articles 6/2, 12/2 and 16, which regulate the sovereignty over certain islands in the Aegean Sea. Article 12 of the Agreement provides that the Strait Region Islands and the Saruhan Islands, except for the islands of Gökçeada, Bozcaada and Tavşan Islands and those that were put under Italy's sovereignty by Article 15 of the Lausanne Peace Treaty, would belong to Greece. Article 12, paragraph 3 provides moreover that "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 of the Lausanne Peace Treaty is interpreted by Greece to mean that all the islands beyond 3 miles distance were to be left to Greece. According to the argument, the Article is quite clear that all the Aegean islands, except for Bozcaada, Gökçeada and Tavşan Islands and those within the distance of 3 miles to Turkish mainland were left to Greece.¹³

The same article is however interpreted by Turkey quite differently. Turkey accepts that the Agreement and other related documents clearly leave the islands of Gökçeada, Bozcaada, and Tavşan Islands and those within 3 miles distance

from the Turkish mainland to Turkey. However, it refuses the Greek interpretation that all the islands beyond 3 miles, except Gökçeada, Bozcaada and Tavşan Islands were left to Greece. According to Turkey, only those that are beyond 3 miles and are also clearly named by the Agreement and the related documents as Greek islands are deemed to be left to Greece. All the others that are beyond 3 miles distance but not mentioned in their names should be regarded as inherited by Turkey as the successor of the Ottoman Empire which had previously possessed all the Aegean islands.¹⁴ Turkey argues that, even if it is not the case, sovereignty over the islands beyond 3 miles and were not explicitly left to Greece should be determined by Greece and Turkey together.¹⁵ The number of such islands, islets and rocks is said to be around 150.¹⁶

On the other hand, it seems that the two States are also in disagreement over interpreting some other international agreements related to the Aegean islands. This has clearly emerged when a Turkish registered ship run aground on 25 December 1995 on rocks named as Kardak (Imia) rocks. The crew of the ship refused to receive help from the Greek rescuers on the basis that these rocks belonged to Turkey.¹⁷ Turkey backed this stance by giving a note verbale to Greece, which provided that the Kardak rocks were part of the Turkish territory, and recorded as such in the property lists of the Turkish administrative province of Muğla.¹⁸ Greece on the other hand argued that these rocks had been and were under the Greek sovereignty. This dispute caused a high tension and almost led to a conflict between the two countries.¹⁹

Kardak rocks are situated off the shores of Bodrum on the Anatolian coast. The Eastern Kardak, which has an area of 19.730 m,² is situated 3.6 miles off and the Western Kardak, which has an area of 16.680 m,² is situated 3.9 miles off the Turkish shores. They are about 5.5 miles off the nearest Greek major island of Kalymnos but just 2.2 miles off a Turkish island, namely the island of Çavuş.²⁰

The Lausanne Peace Treaty confirms the Italian sovereignty over the Menteşe islands, specifically by their names, but it does not mention in name all the islands in the region and especially those that are relatively small islands, islets and rocks. Italy and Turkey signed an agreement on 4 January 1932²¹ to settle the sovereignty issues over the small islands, islets and rocks around the island of Castellorizo that were not addressed in names by the Lausanne Peace Treaty in the relevant Article 15. This agreement between Turkey and Italy determined the sovereignty over the islands and islets adjacent to the island of Castellorizo by enumerating the islands and islets by their names.

The experts of Turkey and Italy later agreed on a document on 28 December 1932.²² This document mentioned the Kardak rocks as in the west of the delimitation line and thus belonging to Italy.²³

Turkey argues that Greece accepted as early as 1952 that there was vagueness over the validity of the referred document of 28 December 1932.²⁴ According to Turkey, the document of 28 December 1932 did not legally acquire the status of a binding agreement for both Turkey and Italy, since it was neither discussed nor ratified by the Turkish General National Assembly, which is a procedural and an essential requirement for an international instrument to bind Turkey, according to Article 26 of its Constitution of 1924.²⁵ Therefore, there is no legally binding document to which Greece could be a successor.²⁶

Moreover, Turkey also points out to a fact that this document was not registered by the League of Nations as an international agreement, and thus lacked the essential requirement of Article 18 of the Covenant of the League of Nation. According to the Article, a treaty can only be binding if registered with the Secretariat of the League. The jurisprudence of the PCIJ and the ICJ dealing with the disputes over the validity of the treaties concluded during the League of Nations' era shows that such unregistered documents are considered as null.²⁷

Greece, on the other hand, repeatedly expressed during the crises over the Kardak rocks, that the agreements signed between Italy and Turkey on 4 January and 28 December were both succeeded to by Greece and are in force thus binding on Turkey.²⁸ Greek officials emphasize the link between the two documents signed by Turkey and Italy in 1932 and argue that, since the first agreement, which was signed on 4 January 1932, was ratified and validated by the Turkish Parliament, it was not necessary to ratify the latter document which is only a supplementary to the former.²⁹ Therefore, Greece concludes that the Kardak rocks were left by this agreement to Greece, as the successor state. However, it is a matter of fact that no reference was made by Italy to this supplementary document during the exchange of notes between Turkey and Italy on 25 April 1933 to put the 4 January 1932 Agreement into force on 10 May 1933.

The second legal basis of the Greek contention related to the dispute is that since the Lausanne Peace Treaty left Turkey only the islands that are within 3-mile limit, Kardak rocks belong to Greece simply because they are 3.5 miles off the Turkish coast.³⁰

In the final account, sovereignty over some islands in the Aegean Sea is no doubt a disputed issue. Settlement of the sovereignty problem over islands, islets and rocks not explicitly addressed by the Lausanne Peace Treaty in Article 15 is a necessary step that should be taken not only to ease the tension between the two sides but also to settle the Aegean maritime disputes. A just and an equitable boundary delimitation cannot be established if the sovereignty over all the Aegean islands, islets and rocks remains unsettled.

B. Demilitarised Status of the Eastern Aegean Islands

As far as the demilitarized status of the Eastern Aegean Islands is concerned, they could be classified, according to both their geographical location and the

international documents determining their demilitarized status, within three separate groups as follows:

- The Strait Region Islands;
- The Saruhan Islands;
- The Menteşe (Dodecanese) Islands

1. The Demilitarised Status as provided by the Related Documents

a. The Strait Region Islands

As we have already noted that as a result of the Balkan Wars, the Ottomans were forced to conclude an agreement with Bulgaria, Greece and Serbia in London on 30 May 1913, with which the Ottomans not only ceded the sovereignty of Crete to Greece in Article 4, but also conferred the power in Article 5 to the Great Powers to determine the sovereignty over the Aegean islands occupied by Greece during the Wars. Accordingly the Great Powers came together at the London Ambassadors Summit of 1914 and decided that the islands of Gökçeada, Bozcaada, and Meis (Castellorizo) would remain under the sovereignty of the Ottomans, and all the other Aegean islands under the occupation of Greece would be ceded to Greece.

What is also significant about the decisions taken at the London Summit is that the Great Powers also decided that the islands ceded to Greece would not be fortified and not be used for military purposes, except for the purpose of combating against smuggling. According to the decisions, the necessary guarantee would be sought from Greece and be given to the allied countries and the Ottomans in this regard. It was decided at the same time that the Allied Powers would pressure on Greece for the full and effective implementation of these provisions.³¹

Greece accepted the stated note verbale, but the Ottoman rejected the decisions on ground that they were not just and fair. The Ottomans also claimed that ceding the islands to Greece threatens the security of Anatolia and of the Çanakkale Strait. They noted that the attention of the Allied Powers had in fact been previously drawn to this particular fact.³² When the World War I broke out, this issue was still an unsettled matter from the Ottomans point of view.

As we have noted above concerning the status of the Aegean islands, they were once more discussed during the Lausanne Peace Conference, and settled finally by the Lausanne Peace Treaty in its articles 12 and 13 and in an annexed document, named as the Convention Relating to the Regime of the Straits, in its Articles 4 and 6.³³

Article 12 of the Lausanne Peace Treaty deals with the sovereignty issue in explicit terms and with the demilitarized status of the Strait Region Islands in implicit terms by approving the the decision taken on the 13th February, 1914, by the Conference of London, and Article 15 of the Treaty of Athens of the 1st-14th November, 1913.

The Lausanne Straits Convention in its Articles 4 and 6 explicitly regulates the demilitarized status of those islands. Article 4 provided for the demilitarization of certain areas around the Çanakkale Strait, the Strait of İstanbul, the Sea of Marmara, all the islands in the Sea of Marmara, with the exception of the island of Emir Ali and, in the Aegean Sea, the islands of Samothrace, Lemnos, Imbros, Tenedos and Rabbit Islands. Article 6 clarifies the term ‘demilitarised status’ by explaining in details what sort of military units should not be present in such islands and areas.

b. The Saruhan Islands

The Saruhan Islands include, as already noted the islands of Mytilene, Chios,

Samos and Nikaria. These islands were occupied by Greece during the Balkan War I. As noted in the preceding section, they were later ceded to Greece by the decisions taken at the London Ambassadors Summit in February 1914. Turkey approved these decisions in the Lausanne Peace Treaty.

The Lausanne Peace Treaty moreover put these islands under a demilitarised status in Articles 12 and 13 in order to specifically safeguard the security interests of Turkey and to ensure the maintenance of peace in the region. Article 13 clearly provides for a demilitarised status of the islands of Mytilene, Chios, Samos and Nikaria.³⁴

The nature and extent of the demilitarised status are also clarified in Articles 12 and 13 of the Lausanne Peace Treaty to presumably avoid any misinterpretations and to call the third States to respect this status.

c. The Menteşe Islands

As it has been explained in the preceding section, the status of the Menteşe Islands have been settled finally at the Paris Peace Conference held in 1947 after the World War II. Before the Conference, the United States proposed at the Council of Foreign Ministers meeting in London on 14 September 1945 the demilitarization of the Menteşe Islands to which none of the other participating States opposed.³⁵ During the Conference, the United States proposed on 29 April 1946 that the islands should be demilitarized in a manner as provided for by the Lausanne Peace Treaty.³⁶ The United States drafted an annex to the Treaty that concerned the definition and scope of the terms “demilitarization” and “demilitarized”.³⁷ All these efforts, according to the minutes, aim to prevent a military threat to Turkey and safeguard the security of Turkey.

Accordingly, the Treaty explicitly provided in its Article 14 for the demilitarization of these islands when it ceded them to Greece. The condition

emphasized in this article “to be and to remain demilitarized” aims solely to protect the security interests of Turkey by creating a demilitarized zone along its coasts in the southern Aegean Sea, as apparent from the minutes of the Peace Conference.

2. The Nature of the Dispute over the Demilitarized Status of the Eastern Aegean Islands

The demilitarized status of the Eastern Aegean Islands was not contested between Turkey and Greece until April 1968, simply because Greece respected to the above mentioned international regulations. However, the Turkish Government felt necessary to draw the attention of the Greek Government to the demilitarized status of those islands including the Saruhan and Menteşe groups during the bilateral talks between the two countries held respectively in Athens in April 1968 and in Vienna in May 1968.

A year later, the Turkish Government submitted a note verbale to the Greek Government on 2 April 1969, calling for respect to the demilitarized status of all the Eastern Aegean Islands. The Greek Government in its counter note verbale, dated 10 May 1969, informed that its government was acting in conformity with its international commitments and respecting the demilitarized status of the islands concerned.³⁸

Despite the Greek denial of militarizing these islands in these early years, Turkey seemed to have had some proofs showing the Greek militarisation of some eastern Aegean islands and continued to make protests over such acts. In later years however, especially since 1974, Greece admits militarizing the said islands and claims to be justified by some political-legal reasons. Therefore, Greece and Turkey eventually have a dispute over the demilitarized status of the Eastern Aegean Islands.

Greece argues firstly that the Montreux Straits Convention which was established in 1936 to change and re-regulate the regime of passage through the Turkish Straits which had previously been regulated by the Lausanne Straits Convention, changed also the demilitarized status of the Aegean islands together with the demilitarized status of the Turkish Straits. This is to say that the Montreux Straits Convention totally replaced altogether the Lausanne Straits Convention, which had provided for the demilitarization of the Strait Region Islands.

Another Greek argument as to the militarisation of the Eastern Aegean Islands is that Greece is legally entitled to militarize these islands to prepare itself for its right to self defense according to Article 51 of the UN Charter against the “ever increasing Turkish threat” to occupy the Eastern Aegean Islands of Greece. Greece particularly points to the establishment of the Fourth Army at the Aegean region by Turkey as an indication of “Turkey’s intention to occupy” the Eastern Aegean Islands.

As to the 1947 Paris Peace Treaty, Greece argues that Turkey has no right to claim the demilitarization of the Menteşe Islands simply because it is not a party to the 1947 Paris Peace Agreement.

Turkey, on the other hand argues that although the regime of the Turkish Straits have been changed by the Montreux Straits Convention, Articles 4 and 6 of the Lausanne Straits Convention which provide for the demilitarization of the Strait Region Islands remain unchanged and are still in force. Turkey points out that since the Montreux Straits Convention only relates to the regime of passage through the Turkish Straits, the provisions of the Lausanne Straits Convention which are related to the demilitarization of the islands are still in force. Thus, even Turkey can remilitarize only the Marmara Sea and the shores of the Straits, but not the islands in the mouth of the Çanakkale Strait, according to the provisions of the Protocol annexed to the Montreux Straits Convention, which constitutes an

integral part of the Convention and was signed by all the party States including Greece.

Turkey states specifically that the reference made in the Protocol is only to “the zone of the Straits as defined in the Preamble” of the Montreux Convention, which covers the Sea of Marmara, the Straits of Istanbul (Bosphorus) and the Çanakkale Strait (Dardanelles), and explicitly excludes the Strait Region Islands. Turkey states moreover that since the Montreux Straits Convention was concluded to safeguard Turkey’s security interests, as mentioned in the Preamble of the Convention, it should be obvious that the islands at that region are excluded from remilitarization. On the other hand, the preparatory work of the Montreux Convention does not contradict the above stated views of Turkey.³⁹

Turkey moreover argues that the Fourth Army that is established at the Aegean region in the late 1970s is for only training purposes, which is not equipped to launch an attack any other country. Turkey emphasizes that it does not in any account have an intention to attack any country including Greece.

Turkey concludes that for the above reasons, Turkey should have a right to demand that the said islands remain as demilitarized, as these islands have been put under the demilitarized status by the still truly valid international documents which are creating an “objective” and an *erga omnes* status.

It is clear that certain international regulations, namely the decisions taken at the London Ambassadors Summit in February 1914, the Lausanne Peace Treaty, the Lausanne Straits Convention and the 1947 Paris Peace Treaty have established a “demilitarized status” of the eastern Aegean islands, which should be regarded as a situation *erga omnes* and could only be changed by the consent of all the participating States, according to the well-established principles of international law. Moreover, it is not significant in this respect whether Turkey is a party to the

1947 Paris Peace Treaty to argue that the Menteşe islands are still under a demilitarized status.

It just seems that the overall aim of especially the Lausanne Peace Treaty was to create a delicate balance between the vital interests of Turkey and Greece to provide eventually justice and ensure a durable peace in the region simply because the provisions were designed to prevent one side from undertaking acts to create a situation to the disadvantage of the vital interests of the other side.⁴⁰ This fact is also evidenced by the fact that none of the parties including Greece expressed a desire or intention to amend the Lausanne Peace Treaty. The Agreement recognized Italian sovereignty over the Menteşe Islands but did not provide for a demilitarized status to them. This further evidences that the States which participated in the Lausanne Peace Conference and in the end signed the Lausanne Peace Treaty had an obvious intention of creating a delicate balance between especially Turkey and Greece in the Aegean.

Greece however now continues openly to militarize the Eastern Aegean islands so that the dispute between Greece and Turkey concerning the demilitarized status of the Eastern Aegean Islands continues. Greece accepted on 20 December 1993 the compulsory jurisdiction of the ICJ according to Article 36/2 of the Statute of the Court as a result of the Western European Union (WEU) Agreement Article X.⁴¹ But, it put a reservation according to which it excludes any dispute relating to defensive military action taken by its Government for reasons of national defense from the competence of the ICJ⁴². Thus, by this reservation, the dispute concerning the demilitarized status of the Eastern Aegean Islands this time became arguable also from an other point too, that is whether this case falls outside the jurisdiction of the ICJ or not.

II- Delimitation Disputes in the Aegean Sea

A. The Territorial Sea Dispute

1. The Turkish and Greek Internal Regulations as to the Territorial Sea Limits and the Baselines

Inspired mostly from both the negotiations at the Lausanne Peace Conference and some resulting provisions, namely Articles 6/2 and 12/2 of the Lausanne Peace Treaty⁴³ which, as should be clear so far, regulates *inter alia* the status of the Aegean Sea in many respects, Turkey applied a territorial sea of 3 nautical miles (n.m.) until 1964 in the Aegean Sea. This was despite the fact that the Agreement did not in fact explicitly regulate the extent of the territorial sea in its internal law.⁴⁴

Turkey did not clearly regulate the breadth of its territorial sea until as late as 1964. In that year, the Territorial Waters Law No. 476 was enacted to clarify the situation,⁴⁵ which introduced a general principle that the extent of the Turkish territorial sea was 6 n.m.. Article 2, however, introduced an exception by providing that wider limits could be declared on the basis of reciprocity as against the States claiming wider territorial sea limit. In accordance with that law, the limits of the Turkish territorial waters in the Black Sea and in the Mediterranean were fixed at 12 n.m. on the basis of reciprocity. The limits in the Aegean Sea were declared to be 6 n.m. due to the said principle of the territorial waters law.⁴⁶

In measuring the breath of the territorial sea, Turkey reserved in Article 4 of the 1964 Law the right to apply either the normal or the straight baseline system, where there existed the circumstances approved by international law. Moreover, Article 5 of the Law also referred to the closing lines for gulfs with entrances not extending 24 n.m.

Turkey applied until July 1973 the straight baselines system in certain bays.

Straight lines have closed about six juridical bays.⁴⁷ However Turkey, in July 1973 abolished the straight baseline system in these areas in order to prevent any similar practice and any abuse by Greece in the Aegean Sea.⁴⁸

Turkey deemed the principle of reciprocity in determining the breadth of the territorial waters to be inappropriate in the sense that it could give the initiative to other States in the future for any extension of the territorial sea limit.⁴⁹ In order to change the situation, a new law enacted to replace the Law No. 476 in 1982. This new law, the Territorial Sea Law No. 2674,⁵⁰ provides that the breadth of the territorial sea is 6 n.m. The law, however, authorized the Council of Ministers “to accept limits other than 6 n.m. for certain seas according to the equitable principles by taking into account of all the relevant circumstances and conditions of the seas concerned.”⁵¹

On the basis of the authorization, the Council of Ministers, “by taking into account of the circumstances of the seas surrounding Turkey and equitable principles”, approved the pre-existing limit of 12 n.m. in the Black Sea and the Mediterranean.⁵² It seems that the Aegean Sea is wholly excluded from any extension beyond 6 n.m., given the fact that the special circumstances of the coast and sea do not justify on the basis of the principle of equity any extension of the territorial waters beyond the present 6 n.m. in the Aegean Sea.⁵³

On the other hand, Article 3 of the Law provides that baselines from which the breadth of the territorial sea is to be measured would be determined by the Council of Ministers. Shortly after, the Council of Ministers declared that “taking into account the peculiar characteristics of the seas which surround Turkey and of the principle of equity, [it] has decided that the situation obtained before the proclamation of this law will be continued.”⁵⁴ It seems at present that Turkey applies normal baselines system since 1973,⁵⁵ as the map attached to the decree issued by the Council of Minister in 1987 by which exploration licenses were

granted to the *Türkiye Petrolleri Anonim Ortaklığı* (TPOA), did not seem to have adopted the system of straight baselines.⁵⁶

While Turkey was applying 3 n.m. territorial sea in the Aegean and in its surrounding seas, Greece, by Law 230 of September 1936 settled the issue in a quite specific way. Article 1 of Law No. 230 provided that “The extent of the territorial sea is fixed at six nautical miles from the coast, without prejudice to provisions in force concerning special matters, with respect to which the territorial zone shall be delimited at a distance either larger or smaller than six miles.”⁵⁷

Law 230 moreover provided that the territorial sea of Greece was measured from the coast. Greece thus adopted what is called the system of normal or low water baseline,⁵⁸ which is more favourable to wider high sea areas free to all international navigation. The fact that Greece had interests in preservation of free international navigation was an element that seemed to have played the major role in its preference on different baseline systems.

The Law 230 thus puts a general limit to the Greek territorial sea as 6 n.m. However, it did not repeal the pre-existing limits that were put in place for special purposes. What is significant about these regulations is that the Presidential Decree of 1931 had already put in place a 10 n.m. limit pursuant to Law 5017 of June 13, 1931, “for the purposes of aviation and air police.” It was a wider limit than 6 miles. Accordingly, Greece at present observes a 6 n.m. territorial sea but still keeps its national airspace at a distance of 10 n.m. in the Aegean Sea.⁵⁹

On the other hand, the system of normal baseline was again confirmed for the Greek coasts when Greece became a party in 1972 to the Geneva Convention on the Continental Shelf. Greece then made a reservation according to which it would, in the absence of international agreement, “apply the normal baseline for the measurement of the territorial sea to delimit shelf boundaries.”⁶⁰ Since then,

there has been no deviation in the Greek choice from the normal baseline system.⁶¹

2. The Disputed Aspects of the Territorial Waters

a. Dispute over the Proposed Extension of the Greek Territorial Waters

Although the territorial sea limit seems to have settled at 6 n.m. in the Aegean Sea for both sides, it does not however mean that the issue of the territorial waters has been settled beyond any doubt. Greece is considering making further changes to the present extent of its territorial sea in the Aegean Sea. It emerges that Greece intends to extend its territorial waters from 6 to 12 n.m. in the Aegean Sea. However, this is something that Turkey rigorously argues to be illegal and unacceptable, and also as a *sine quo non* clause for the settlement of all the Aegean disputes.

The extent of the territorial waters in the Aegean Sea was a matter of controversy as early as 1936. The extension of the territorial sea from 3 to 6 n.m. by Greece attracted objections from the major maritime nations of that time, which were understandably in favor of narrow territorial seas like 3 n.m. in extent.⁶² Although Turkey would also inevitably suffer from the shrinking sea areas available for free navigation and for its other activities in the Aegean Sea, it did not raise any objection to the Greek 6 n.m. claim probably due to the good relations that existed during that period between the two countries.⁶³

The initial dispute between Greece and Turkey as to the territorial sea extent in the Aegean emerged in 1964 when Turkey decided to extend its territorial sea to 6 n.m. by Law No. 476. Although it had already claimed the same limit in the Aegean, Greece objected to this Turkish move on the basis that 6 n.m. Turkish territorial waters would interfere with Greece's fishing rights in the Aegean Sea.⁶⁴

As already noted, Greece at the 1958 UN Conference on the Law of the Sea emphasized that any extension of the territorial waters in the Aegean Sea would be inequitable as an act that would harm the rights of other States using the Aegean Sea for navigational purposes.⁶⁵

However, the actual territorial sea dispute between the two countries was initiated later in the early years of 1970s, when Greece started to express its choice in favor of 12 miles limit for the territorial waters. The 1960 UN Conference on the Law of the Sea constituted an arena for Greece to raise its arguments. It became clear throughout the Conference that the objectives of the two countries as to prospective conventional rule on the breadth of the territorial sea differed fundamentally as a result of their preferences over the mutual territorial sea limits in the Aegean Sea.

Generally speaking, Greece favored a general and uniform limit of 12 n.m. This is to mean that any coastal State could declare a territorial sea of 12 n.m. in any area without any specific condition. As the Aegean Sea would not be an exception, Greece would be able to declare 12 n.m. territorial sea in the Aegean Sea.

Turkey on the other hand sought a rule that would put a maximum limit of 12 n.m. but prevent the declaration of a limit within this distance which would be 'inequitable' within the special circumstances of the area concerned such as enclosed or semi-enclosed seas. This is to say that coastal States should not be able to declare 12 n.m. territorial waters in areas where such a limit would be inequitable on the basis of the peculiar circumstances of the area. Thus, the prospective conventional rule would not allow any wider limit than 6 n.m. in the Aegean Sea on the basis that they would cause inequity considering the circumstances that exist in the Aegean Sea.

UNCLOS eventually accepted that "Every State has the right to establish the

breadth of its territorial sea up to a limit not exceeding 12 nautical miles". An initial impression is that the rule puts a maximum limit of 12 n.m. but does not oblige States to declare a limit of 12 n.m. as apparent from the expression 'up to'. The rule however does not contain any explicit condition that in areas with special circumstances such as enclosed and semi-enclosed seas, States should keep their territorial waters at the appropriate or 'equitable' level. However, when the Convention is considered as a whole especially with Article 300 which prevents the use of rights in a manner to be regarded as abusive or inequitable, it could be said that the Convention still pays regard to areas like the Aegean Sea, which have peculiar circumstances. Indeed, the ICJ in its judgement in the Anglo-Norwegian Fisheries Case and also in the Anglo-Icelandic Fisheries Case emphasized the necessity to take into account the geographical location of the sea and the interests of the third states in determining the extent of the territorial waters.⁶⁶

It is a matter of fact that if Greece extends its territorial waters to 12 n.m., it would put the Greek territorial waters at about 71.53 percent of whole the Aegean Sea and reduces the Aegean high seas to 19.71 percent from the actual 48.85 percent. In such a case Turkey, which actually has around 7.47 percent under the 6 miles limit would only have 8.76 percent of the water areas.⁶⁷ Surely that would effect considerably the interests of Turkey in the Aegean Sea in terms of security, navigational and all other related matters. It is also a matter of fact that the Greek territorial waters would cut the connection of the Turkish territorial waters to both the other parts of the Turkish territorial waters and the Aegean high seas, if the Greek territorial waters were extended to 12 n.m.⁶⁸ Moreover, the continental shelf areas in the Aegean Sea, which are now yet to be delimited between the two States will be reduced significantly as a result.

It is due to such facts that Turkey just after the UNCLOS was concluded declared that it would be a reason for a war (*casus belli*) if Greece extended its territorial

waters beyond the 6 miles limit. As the UNCLOS came into force on 14 November 1994, the Aegean territorial sea dispute has entered into a new stage.⁶⁹ Greece has not yet extended its territorial waters to 12 n.m. It does not however mean that Greece has abandoned its intention altogether. As Greece reiterated its already known position that it had the right to extend its territorial sea to 12 n.m. in the Aegean, Turkey continued to make strong statements to show its objection and to prevent any actual extension.⁷⁰

Beyond mere statements, the Greek Parliament ratified the Convention on 1 June 1995, and permitted the Government to implement it at its discretion.⁷¹ Following the Parliament's ratification, statements made by the Greek Government reiterated that Greece would extend its territorial waters to 12 n.m. when Greece deemed it "expedient and nationally beneficial."⁷² Therefore, there is still no indication at all that Greece has abandoned its intention to declare 12 n.m. territorial sea in the Aegean Sea.⁷³

It seems that Greece bases its stance on an argument that a uniform and absolute right to 12 n.m. territorial waters is now both a conventional and customary rule for all the coastal States. In this sense, no area including the Aegean Sea could be an exception. Therefore, Greece is now legally entitled to extend its territorial waters to 12 n.m. in the Aegean Sea.⁷⁴ Moreover Greece argues that the right to set the limit of the territorial sea is a sovereign right vested with coastal State. Thus Greece does not even have to discuss this matter with Turkey.⁷⁵

Turkey emphasizes that the extension of the territorial sea in the Aegean Sea would never be acceptable to Turkey.⁷⁶ The Turkish Grand National Assembly (TGNA) on 8 July 1995 discussed the situation arising from Greece's ratification of the UNCLOS and its possible implementation by the Greek Government and gave the Government to take all the necessary measures including those in the military field for safeguarding and defending the vital interests of Turkey and

decided to announce this to the Greek and world public opinion in a spirit of friendship.⁷⁷

Turkey seems to base its stance on certain legal principles. Firstly, Turkey accepts that the declaration of territorial sea is a unilateral action. However, it dismisses the claim that right to a 12 n.m. territorial sea is an inalienable and non-negotiable right. Turkey rather argues that the validity of the limit declared unilaterally must still depend on the relevant rules of international law and jurisprudence. Secondly, Turkey points out that a uniform and absolute 12 n.m. rule has not become a customary rule.⁷⁸

It is clear that, according to Turkey, if a certain limit would cause ‘inequity’ or could be considered as ‘abusive’ on the basis of the respective rights and interests of the States concerned, the declaration of such a limit would be contrary to international law.⁷⁹ Turkey emphasizes that such a situation would clearly exist to the disadvantage of Turkey in the Aegean Sea if Greece extends its territorial waters beyond the present limit of 6 n.m.

Although there is not yet an actual extension in the Aegean Sea by Greece, its intention to do so, as has been seen, causes enormous tension between the two States. On the other hand, assuming that the mouth of the Çanakkale Strait is also closed by straight lines that pass on the foremost points of the Turkish islands of Gökçeada, Bozcaada, and Tavşan Islands in the mouth of the strait, Greece would dispute this system of baselines as ‘contrary to international law’.⁸⁰ It therefore seems that the two States need to settle these matters to get rid of a major source of tension.

b. The Dispute over the Territorial Sea Delimitation

The territorial sea dispute in the Aegean Sea has another but a less-known aspect by the public. At present, where the distance between the Turkish mainland and

the Greek islands close to Turkish coasts is less than the total of Greek and Turkish territorial waters, i.e. 12 n.m. a median line is applied between Greece and Turkey. But this is not considered as a 'maritime boundary'. In the face of both history and the actual Turkish arguments,⁸¹ there is a need to establish a line that is to separate the territorial waters of the two countries in the Aegean Sea.⁸²

There is no previous agreement between Greece and Turkey that would establish a territorial sea boundary in the Aegean Sea. The Lausanne Peace Treaty that regulates the rights and interests of the two countries to a great extent in the Aegean Sea did not however establish any territorial sea boundary.⁸³

In the years following the Lausanne Peace Treaty, the Official International Boundary Commission of 1925-26 which was established according to Article 5 of the Agreement to demarcate the land boundary between Turkey and Greece, established a line which seems to have delimited the territorial waters between the adjacent coasts of the two countries in the northern Aegean Sea from the point at the mouth of the river Maritza, where the land frontier between the two countries terminates.⁸⁴ As a matter of fact the Commission did not specifically intend to establish a line to separate the respective territorial waters of the two countries. It rather tried to establish a line to determine the 'Greek-Turkish land frontier' but extended this line further seaward.⁸⁵ Even if it is perceived as delimiting the respective territorial waters in the area concerned, the line seems to be insufficient even for the this restricted area simply because the Commission established the line when the territorial sea limits of the both countries were 3 n.m. But as has been seen, the territorial waters of the two countries are now 6 n.m..

The only agreement that clearly established a delimitation line is the agreement of 4 January 1932.⁸⁶ This agreement was concluded between Turkey and Italy to determine, by means of interpreting Article 15 and especially 16 of the Lausanne Peace Treaty, the sovereignty over the islands lying between the island of

Castellorizo, located at the Mediterranean, and the Anotolian coast. This agreement moreover settled the sovereignty dispute over the island of Karaada, located in the Aegean and off the coast of the Turkish province of Bodrum. This agreement, while determining these sovereignty matters also delimited the territorial sea between the coast of Anatolia and the island of Castellorizo together with its adjacent islets by Article 5.

The Agreement of 4 January 1932 is still in force and continues to govern the limits of territorial waters between the island of Castellorizo and the adjacent islets on the one hand and the coasts of Turkey on the other. Accordingly, the sovereignty over this group, together with the rest of the Menteşe islands was ceded to Greece in accordance with Article 14 of the 1947 Paris Peace Treaty with Italy. Therefore the line drawn by the 4 January 1932 agreement is the delimitation line between Greece and Turkey in that specific region of the Mediterranean, in other word around the island of Castellorizo.

Another significant point as to the delimitation line is that this line was further extended to northward by a document that was signed between Turkey and Italy on 28 December 1932, which as already examined above under the heading “Disputed Sovereignty over some Aegean Islands”. The document established a “frontier line” (*la ligne frontiere*) between the Menteşe islands and the Turkish coast and provided that up to distance of 12 n.m. between the territories of the contracting States, the line established would both separate sovereignty areas in the sea (*déterminera la souveranité 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 n.m. distance, the line would only regulate the sovereignty over islands, islets and rocks in the area.

However, the validity of the 28 December 1932 document is seriously doubtful and constitutes at present a dispute between Greece and Turkey, as explained in

details above as regards the disputed sovereignty over some Aegean islands.

Despite the fact that the territorial sea delimitation in the Aegean Sea creates relatively very little tension between the two countries, it is apparent that there is no line delimiting the territorial seas of Greece and Turkey at the Aegean Sea.

It should be noted here that Turkey seems to emphasize as regard to the delimitation of the territorial waters that it should be done by taking into account of all the relevant circumstances of the Aegean Sea in order to achieve an equitable delimitation.⁸⁷ Turkey's new law enacted in 1982 to replace Law 476 provides a principle in Article 2 for delimiting the respective territorial waters with other countries. Accordingly, delimitation will be done with an agreement, which ought to take into account all the relevant circumstances of the area in question in order to achieve in the final account an equitable solution. However, the above mentioned Greek Law 230 which regulates the extent of the Greek territorial waters does not provide any special provision on methods of delimitation, and the effects of islands and islets within such a delimitation process.

B. The Dispute over the Extent of the Greece's National Air Space

Greece since 1931 observes a 10 n.m. national airspace for aviation and for the purpose of air police, while it has 6 n.m. territorial sea in the Aegean Sea. Therefore it has a national airspace which is 4 n.m. wider than its territorial sea. The 10 n.m. Greek national airspace has attracted since 1975 and still attracts strong Turkish opposition. The basic reason why Turkey did not oppose to the 10 n.m. Greek airspace prior to 1975 is explained by the fact that it was not using the 6-10 n.m. area of the Greek air territory for military purposes and for that reason never faced any Greek opposition till then.

This issue now causes tension and sometimes-even confrontation between the two

countries in the Aegean skies. To demonstrate its non-recognition practically, Turkey, without of course any prior Greek permission, uses areas beyond the 6 n.m. territorial sea of Greece for military flights as it considered the area as part of the international air space not only due to the rules of international law but also relying on some NATO documents, such as AAP-6 and NATINAD (SACEUR SUPPLAN 1000 ID).⁸⁸ Also according to NATO documents, NATO airspace covers the land territory and the territorial waters of the member states. Greece, despite this legal reality, regularly launches protests over these “violations” of its “national airspace” by the Turkish aircraft’s.

Why Turkey regards the extra 4 n.m. of Greek national airspace as invalid is explained on the basis that it is contrary to international law and practice. Turkey argues that international law does restrict the national airspace to the area over the territorial sea, as there is no rule or practice to the contrary in international law. The 1919 Paris Convention, Articles 1 and 2 of the Chicago Conventions of 1944 on Civil Aviation,⁸⁹ the 1958 Territorial Sea and Contiguous Zone Convention and UNCLOS are the international documents mentioned by Turkey to prove that the breadth of national airspace has to correspond to the breadth of territorial sea.⁹⁰ Turkey also puts forward the lack of any precedent in the State practice as another fact proving invalidity of the 10 n.m. Greek national airspace.⁹¹

Greece seems to depend on some historic reasons to defend its practice. It argues that it has a right to 10 n.m. national air space on the basis of a local custom or a historic right which, according to Greece, was founded by long-standing practice in the absence of objection from other States including Turkey.⁹² The tacit acceptance by States, according to Greece, established a right, which is, as it appears from the argument, in the nature of historic rights or a local custom between the States concerned. Greece emphasizes that, since Turkey did not object to that practice for a long time after the practice started,⁹³ it cannot, as a

result, legally object to such an “established right”.⁹⁴ It is therefore a dispute, which waits to be settled somehow.

C. The Dispute over the Continental Shelf Delimitation

The geological concept of the continental shelf was introduced into international law as a legal concept in the late 1940s and became a rule of customary international law by the 1958 Geneva Conference on the Law of the Sea. Now the UNCLOS attributes to the coastal state over its continental shelf extensive exclusive rights over the living and non-living resources on and under the seabed up to a distance of 200 miles from the shore or beyond that limit on certain conditions.⁹⁵

A fundamentally similar concept, namely the exclusive economic zone (EEZ) has emerged during the discussions at the UNCLOS, and was considered shortly after as part of customary international law. The EEZ attributes identical rights as the continental shelf to coastal states but moreover covers the natural resources in the water column superjacent to the seabed up to a distance of 200 miles from the baselines. Both concepts attribute moreover jurisdiction over the structures erected to explore and exploit such natural resources.⁹⁶

With the introduction of continental shelf into international law, Greece started geophysical explorations to search for oil in the Aegean in the early years of 1960s and eventually discovered oil reserves near the Greek island of Thassos. The Greek search for more oil reserves continued between 1968 and 1972 by way of granting exploration licenses to multinational companies,⁹⁷ which also covered the areas beyond the territorial waters of Turkey and Greece despite the fact that these areas were yet to be delimited between the two States.

On 10 November 1973, Turkey, on the other hand, granted 27 petroleum concessions to the *Türkiye Petrolleri Anonim Ortaklığı* (TPOA)⁹⁸ covering both

the Aegean and the Marmara Sea. The concessions explicitly referred to the “continental shelf areas outside the Turkish territorial waters in the Aegean Sea”.⁹⁹ The concessions granted by Greece and Turkey coincided in some areas. The map attached to Turkey’s declaration indicated no continental shelf areas appertaining to the Greek islands situated at the east of the imaginary median line running across the Aegean Sea from north to south.

Upon the Greek objection to the Turkish petroleum concessions as inadmissible¹⁰⁰ Turkey defended its position and argued that it was the “equitable” delimitation line according to international law. Turkey moreover invited Greece for negotiation in order to find a solution according to international law that would be “in the interests of both countries”.¹⁰¹ Greece, in response, noted that it would not oppose to “a delimitation of the continental shelf between the two countries based on the provisions of present day positive international law, as codified by the 1958 Geneva Convention on the Continental Shelf.”¹⁰²

While such proposals were in progress, the TPAO started to carry out the concessions by sending the research vessel *Çandarlı* to the licensed areas protected by some Turkish naval vessels. Greece protested those activities of the Turkish seismic research vessel and Turkey responded that *Çandarlı* was carrying out research “*dans le plateau continental Turc conformement aux regles du droit international*”. Although the government leaders of both countries met for the first time on 27 June 1974 to scale down the tension, they could not manage to reach any result.¹⁰³

Upon further exploration licenses given by Turkey to the TPOA on 2 July 1974¹⁰⁴ and more meetings that did not produce any agreement even on the disagreement whether the dispute should be referred to the International Court of Justice (ICJ) or be negotiated,¹⁰⁵ Greece, considering these Turkish researches as “flagrant violations of Greek sovereign rights in contradiction with international law”,¹⁰⁶

asked for an emergency meeting of the UN Security Council. At the same time, it submitted a unilateral application to the ICJ on 10 August 1976 for the settlement of the dispute, and also requesting interim measures of protection that Turkey has to give an end to the exploration activities over the Aegean sea-bed.

The Security Council called on the Parties “to resume direct negotiations” and “to take into account the contribution that appropriate judicial means, in particular the ICJ, are qualified to make to the settlement.”¹⁰⁷ The ICJ at the first instance on 11 September 1976 rejected the Greek request for the indication of interim measures of protection¹⁰⁸, and later on 19 December 1978 rejected the substantive Greek request, as it decided by 12 votes to 2, that it was “without jurisdiction to entertain the Application” filed by Greece¹⁰⁹ in the face of the Turkey’s objection to the jurisdiction of the ICJ.¹¹⁰

Although Greece and Turkey eventually concluded the so-called Bern Agreement on 11 November 1976, the Court could not eventually solve the dispute. The parties however managed to identify some safeguards against creation of further tension in the Aegean. The most important among them was to prevent any party from conducting exploration or exploitation activities in “the continental shelf of the Aegean” until the solution is found.¹¹¹

However, they face another crisis in mid-1980 with a move by the PASOK to take control of the multinational consortium, the North Aegean Petroleum Company (NAPC) which exploited the Prinos oil field off the Greek island of Thassos. This caused what was called the ‘March crisis’ as Turkey saw the take-over as an indication of a new Greek intension to proceed with oil exploration,¹¹² and decided to give more permits to the TPAO for oil explorations outside the Turkish territorial waters and off the Greek islands of Lesbos, Limnos and Samothrace.¹¹³ The diffusion of the crises led to the start of new negotiations between the two countries but, again, no result reached was reached.¹¹⁴

What separates Turkey and Greece on the delimitation of the Aegean continental shelf areas relates to extensive legal arguments as a reflection of efforts to protect their respective rights in the Aegean waters.

The Greek legal arguments first of all relate to Article 1, paragraph (b) of the 1958 Convention on the Continental Shelf, which provides in part that “For the purpose of these Articles, the term ‘continental shelf’ is used as referring a)...; b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.” Greece argues that as this rule is not only a conventional, but also a customary rule of international law,¹¹⁵ it should accordingly bind Turkey although it was not a party to the Convention.

As far as the conventional rules of delimitation is concerned, Greece again refers to the 1958 Convention and argues that the Convention provides that if parties fail to agree on any other boundary, delimitation line for the continental shelf should follow the median line in between the States whose coasts are opposite, whether territory concerned was continental or insular, as developed by the relevant international practice and by the judgment of the ICJ in the *North Sea Continental Shelf Cases* (1969).¹¹⁶ Greece states furthermore that the islands are not special circumstances that could necessitate another delimitation line. Only some low-tide elevations such as small islets and rocks could be ignored as special circumstances in the course of delimitation.

Greece emphasizes that there is logic behind such a rule of conventional and customary law which necessitated that since the islands formed “an intrinsic geographic unit” of the continental territory whether it is a archipelagic State or a State which have continental territory, their weight in a delimitation process should be the same as that of continental territories.¹¹⁷

Accordingly, Greece argues that the boundary line between the continental shelf of Greece and Turkey should follow the median line between the Greek islands and the Turkish mainland.¹¹⁸ The Greek islands, even those that are in the vicinity of the Turkish mainland would be entitled to their own continental shelf like the Turkish mainland.¹¹⁹ According to Greece, the median line in the Aegean Sea would thus preserve the political and geographical unity between the Greek mainland and its islands.¹²⁰

It is clear that Greece does not make any reference to the ‘equitable principles’ which have beyond any doubt firmly been accepted as the principles regulating the delimitation of the maritime areas both in the international jurisprudence and in the State practice.¹²¹

There seemed, in principle, that no disagreement between Greece and Turkey on the view that islands are entitled to their own continental shelf areas.¹²² The division of views emerges when it comes to the issue of delimitation rather than to the entitlement. It was the initial opinion of Turkey that in the course of delimitation, what was dominant was the concept of natural prolongation.¹²³ In this sense, equidistance line which was argued by Greece as the delimitation line in the Aegean between the Greek islands and Turkish mainland would not be used as it would cut off the natural prolongation of the other State, Turkey.¹²⁴

However, it would be misleading to take such an initial statement as what Turkey understood from the customary rule of delimitation. The Turkish approach seems to be more sophisticated. As it was expressed at the UNCLOS, Turkey takes the view that for both adjacent and opposite coasts, failing an agreement on a delimitation line, two or more States should delimit their respective continental shelf area “in accordance with equitable principles by taking into account of all the relevant factors, including, *inter alia*, the geomorphological and geological structure of the shelf up to the outer limit of the continental margin, and special

circumstances such as the general configuration of the respective coasts, the existence of islands, islets or rocks of one State on the continental shelf of the other.”¹²⁵

This is, according to Turkey, the rule that in fact reflects the customary law on the delimitation of the continental shelf. Turkey expresses specifically that for the equity of delimitation, the circumstances of the area to be delimited should be taken into account through the application of ‘equitable principles’.¹²⁶ Turkey sees in this context no difference between Article 6 of 1958 Convention on the Continental Shelf and the delimitation rule of customary international law.¹²⁷ According to Turkey no method, including the equidistance, could be mandatory.¹²⁸

Moreover, the circumstances to be taken into account are not limited to those expressed in the previous paragraph. What Turkey understood from the term ‘relevant circumstances’ seemed to be even a wider list of factors, as it used the phrase ‘*inter alia*’.¹²⁹

The reflection of Turkey’s opinions as to the continental shelf delimitation in the Aegean Sea has been that it would not be equitable to give continental shelf areas to many Greek islands in the Aegean Sea. The line indicated on the maps published to show concession areas seems to be regarded by Turkey as the equitable delimitation line for the Aegean continental shelf delimitation. This is a median line between the mainlands rather than between the Greek islands and the Turkish mainland.

In order to justify such a delimitation line as equitable, Turkey argues that the Aegean Sea is a semi-enclosed sea with many Greek islands located all around such a small area, many of them being located very near to the Turkish mainland - some just 3 miles off. It is apparent that attributing them continental shelf areas

would, according to Turkey, create an inequitable result as it would deprive the Turkish mainland almost altogether of generating continental shelf areas of its own.

Turkish officials have raised many other factors as further justifications. It was argued that the balance of interests which was established between Turkey and Greece in the Aegean Sea by the Lausanne Peace Treaty¹³⁰ should not be disturbed by granting the continental shelf areas to the said Greek islands. In fact, the term 'balance of interests' implies a comprehensive list of relevant circumstances such as security, navigational and commercial interests.¹³¹ Moreover, the geomorphologic factors, as referred in the previous paragraphs, are still considered by Turkey as another justification for its proposed delimitation line.

Since the Davos meeting mentioned above, no serious negotiations have been held between the two countries to address specifically the delimitation of the continental shelf. Although they actually refrain from any act of exploitation in the Aegean Sea,¹³² the dispute is still yet to be settled. It is a matter of fact that today, the dispute over the delimitation of the continental shelf in the Aegean Sea stays without a settlement.

Quite contrarily, it may in fact be right to expect the Aegean delimitation dispute get even more complicated considering the fact that at least Greece may declare EEZ in the Aegean Sea. A reference to the EEZ has already been made in the recent Greek law relating to the 'Exploration, Research and Exploitation of Hydrocarbons and Related Issues'.¹³³ On the other hand, the European Community has proposed the establishment of 200 n.m. fisheries zone in the Mediterranean for the conservation and management of fishing resources that fall within the exclusive competence of the Community.¹³⁴ Greece is a full member of the EU and it means that it may to declare the EEZ as a result of the EU move.

Moreover, Greece is under a pressure from its own public, especially from some Greek academics that it should declare the EEZ in the Aegean Sea to take the initiative in this issue.¹³⁵

Similarly, Turkey has not so far declared EEZ in the Aegean, although it has already done so in the Black Sea. However, unlike Greece, Turkey does not seem to have an immediate plan or desire to establish an EEZ area in the Aegean Sea. It rather seems that Turkey is against the declaration of an EEZ by any party, before the settlement of the continental shelf dispute. This is an understandable attitude from the Turkish perspective since the delimitation of the existing maritime areas in the Aegean is already and will remain very sensitive issues for both Turkey and Greece.

As noted, the continental shelf and EEZ attributes, in legal terms, identical rights and jurisdiction to coastal States,¹³⁶ in the same area and their outer limits coincide. Accordingly many international judgments have established a single delimitation line for both areas in cases where these two areas were to be delimited within the same process, even when the parties to the cases did not specifically request such a single delimitation line.¹³⁷ Assuming that one or both sides declare respective EEZ areas in the Aegean Sea, the dispute over the continental shelf delimitation will be changed in its nature, and get more complicated as the possible delimitation process in the Aegean Sea would involve more relevant factors and thus higher interests.¹³⁸

Concluding Remarks

The good-neighborly relations which existed previously between Turkey and Greece was given an end by the Cyprus dispute, especially with the Turkey's "peace operation" to the island in the summer of 1974 relying both on the Treaty of Guarantee which was formulated specifically for "re-establishing the state of

affairs created by the Treaty” (Article IV) in case of deviation and on the Basic Articles of the Constitution of Cyprus which is an annex to and integral part of the Treaty.¹³⁹

However, even before the Cyprus dispute flared up in 1974, Greece had already started to militarize all the Eastern Aegean Islands. Turkey drew the attention of Greece to this fact as early as in 1968 and made its first official protest, by a note verbale, in April 1969. Greece, while recognizing the compulsory jurisdiction of the ICJ according to Article 36/2 of the Statute of the Court in December 1993, as a result of the WEU Agreement Article X, made a reservation with an aim to exclude this dispute. By this way, Greece tries to exclude, if possible according to the terms of international law, this obvious case from the competence of the Court, which according to its own opinion is not even a dispute between the two states.

Turkish military crafts were prohibited in May 1975, almost one year after the Cyprus events in 1974, from carrying military exercises within the 6-10 n.m. zone of the so called Greek airspace, which exceeds beyond the 6 n.m. territorial waters of Greece. This practice of Greece is unique in the world, but Greece still denies even the existence of the dispute between the two countries. This dispute also led to the emergence of some other disputes related to the Aegean airspaces, namely the ATS, FIR etc. and also to the command and control within NATO.

Turkey in 1974 by using its *ab initio* rights, started to make research activities on its continental shelf, based on Government decrees promulgated in November 1973 and in June and July 1974. But the research activities of Turkey were opposed by Greece on grounds that the areas explored by the Turkish seismic vessel are Greek continental shelf areas.

Greece brought this dispute to the attention of the Security Council that called the parties to direct negotiations over their differences and invited them to settle their remaining legal differences by appropriate judicial means, in particular through the ICJ. Greece at the same time applied to the ICJ for the settlement of the Aegean Continental Shelf dispute, and requested from the Court for the indication of interim measures of protection. But the Court rejected this Greek appeal on 10 September 1976.¹⁴⁰ In addition, the ICJ on 19 December 1978 decided that it lacked jurisdiction to deal with the case, due the Greek reservation to the 1928 General Act.¹⁴¹

The two states just after the order of the Court on 11 September 1976 concluded the Bern Agreement on 11 November 1976. The agreement aimed frank negotiations pursued in good faith between the parties with a view to reaching an agreement based on their mutual consent with regard to the delimitation of their respective continental shelf areas. Unfortunately this meaningful effort failed. Now, according to Greece, the continental shelf dispute is the only dispute between Turkey and Greece and should be settled through the ICJ.

While those disputes remained unresolved, Greece when ratifying the UNCLOS in 1995 once more repeated its claim and intention to extend its territorial sea to 12 n.m., as it repeatedly did since the 1980s, depending on the referred Convention. Turkey persistently objected to this Greek claim. The Turkish Grand National Assembly adopted a declaration on 8 June 1995, empowering the Government -when deemed necessary- to take the necessary steps, including the necessary military ones, for the protection of Turkey's vital interests in the Aegean. As can be realized from the spirit of the declaration, the present and maximum 6 n.m. territorial sea of Greece is a *sine quo non* principle for Turkey due to the absence of any agreement between Turkey and Greece related to delimitation of maritime areas, including the territorial sea.

From the Bern Agreement of 1976 till 1988, no progress was achieved towards the settlement of the Aegean disputes. The first positive steps were taken at the Davos meeting in January 1988 and was followed by both the “Memorandum of Understanding” signed in Athens on 27 May 1988 and the “Guidelines for the Prevention of Accidents and Incidents on the High Seas and International Airspace” signed in İstanbul on 8 September 1988. Those two documents aimed to regulate, to an extent, the national military exercises at the high seas and international airspace of the Aegean. The two sides since then try to comply, in principle, with the principles of those documents.

From 1988 till the outbreak of the Kardak (Imia) crisis in January 1996, almost no progress was achieved related to Greek-Turkish relations. Turkey, immediately after the Kardak crisis, offered negotiations to Greece for the settlement of all disputes similar to the Kardak rocks, but Greece rejected this offer. Another positive initiative was Primer Yılmaz’s offer to Greece, on 24 March 1996, for the settlement of all disputes and which included every method of settlement, even a third party settlement, based on international law, that will mutually be agreed on. This appeal of Turkey also failed, without a positive response.

Upon the initiative of the Netherlands, wisemen groups were founded by the two states in April 1997. But, this initiative also failed in quite a short time, after only a round of communications. In the same year, during the NATO summit in Madrid and upon the initiative of the US Foreign Secretary Albright, the Greek Foreign Minister Mr. Pangalos and the Turkish Foreign Minister Mr. Cem agreed on the “Madrid Declaration” dated 8 July 1997. With this document they aimed to promote better relations and to settle their disputes by peaceful means based on mutual consent and without use of force or threat of force. Turkey, on 24 September 1997 during the UN General Assembly sessions in New York also

offered Greece the improvement of the Madrid Declaration with the contributions of the US. This effort also failed.

Turkey, with enthusiasm, on 12 February 1998 gave a note verbale to Greece for the improvement of Turkish-Greek relations and emphasized once more the importance of the clarification of the disputes and peaceful settlement of all the Aegean problems. In addition Turkey also called for the formalization of the Madrid Declaration of 8 July 1997, the development of confidence building measures in collaboration with the NATO Secretary General, to reactivate the wisemen initiatives, and to convene a high level meeting between the two Foreign Ministers as early as possible either in Ankara or in Athens. The Greek counter note verbale dated 20 February 1998 was as expected. Greece still insisted in claiming the existence of a single dispute between the parties and this was the continental shelf dispute that should be settled through the ICJ by a joint application. Turkey, despite the Greek insistence, once more renewed its initiative on 11 March 1998 and once more learned the well-known Greek stance on 19 March 1998.

The earthquakes in the summer of 1999 in Turkey and in Greece created a new era between the two states. Moreover, Turkey's acceptance as a candidate state to the EU by the Helsinki European Council decisions of 10-11 December 1999 was also a turning point for the relations of the two states. The decisions of the Helsinki European Council and Agenda 2000 impose political and legal obligations to both sides for the settlement of their outstanding border disputes and other related issues through peaceful means. Failing this, they are asked to bring them before the ICJ, within a reasonable time, for settlement. Since then, the Foreign Ministers of the two States, Mr. Papandreou and Mr. Cem, by their determinedness had endeavored their best to re-establish good-neighborly relations between the two countries. The same approach was also and sincerely displayed during the 12-13

December 2002 European Council meeting at Copenhagen between Mr. Papandreou and Mr. Yakis, the Foreign Ministers of the two related countries.

Since the beginning of 2000, the two states concluded several bilateral agreements to achieve this end. Those agreements are in the fields of combating with terrorism and organized crimes, tourism, environment, protection of investments, economic co-operation, maritime transport, co-operation for customs, and co-operation in the fields of culture, science and technology. In addition, some progress is also achieved in the field of confidence building measures in collaboration with the NATO Secretary General. Since February 2002, the high level bureaucrats of the two states are holding “exploratory talks” with the aim to understand each others actual stands as an initial step for the settlement of their substantial disputes, namely the Aegean disputes. We hope that those efforts will be fruitful and highly contribute not only to mutual understanding but also to the settlement of the major disputes.

Turkey favors the settlement of all the Aegean disputes by means of a dialogue and through peaceful means, including third party settlement which will also include the ICJ for the remaining unresolved disputes. Turkey believes that a just, equitable, and a lasting settlement can only be achieved if the settlement will rely on the mutual consent of the parties.

We believe that the fundamental interests of Turkey and Greece lie in peace and co-operation, not in confrontation. The parties should isolate themselves from the emotions stemming from history in order to establish a lasting peace between the two nations and enduring solutions to the disputes. The time is ripe enough for the Foreign Ministers of the two states to take the necessary steps for the settlement of the Aegean problems. They owe this not only to the future generations but also to the present generations as well. We are of the belief that

history does not forgive the statesmen that shrink from their responsibilities towards their states and their people.

¹ About only a hundred of the islands are inhabited. The rest are uninhabited as most of them are small islets and rocks and thus unsuitable for inhabitation.

² *Meydan –Larousse Encyclopaedia*, 1978, vol. IV, 93.

³ Y. İnan and S.H. Başeren, “The Troubled Situation of the Aegean Territorial Waters”, *Hellenic Studies*, 4:2 (1996) 56.

⁴ For the text of this agreement (in Turkish) refer to, N. Erim, *Devletlerarası Hukuk ve Siyasi Tarih Metinleri (International Law and Diplomatic History Documents)*, vol. I (*Osmanlı İmparatorluğu Andlaşmaları -Agreements of the Ottoman Empire-*). (Ankara: Ankara Üniversitesi Hukuk Fakültesi Yayınları, 1953): 451-455.

⁵ B.N. Şimşir, ed., *Aegean Question, Documents*, vol. I (1912-1913), (Ankara: Türk Tarih Kurumu Yayınları, 1976) : LIV.

⁶ For the text of this agreement (in French) refer to, B.N. Şimşir, *Aegean Question...*, op. cit., vol. I, pp. 651-654.

⁷ For the text of this agreement (in Turkish) refer to, N. Erim, *Devletlerarası...*, op. cit., pp. 477-488.

⁸ For the text of those note verbale’s (in French) refer to, B.N. Şimşir, *Aegean Question, Documents*, vol. II (1913-1914), (Ankara: Türk Tarih Kurumu Yayınları, 1989): 392-395.

⁹ For the text of the Lausanne Peace Treaty, see, 28 *UNTS* 11; *UKTS* 91(1923), *Cmd.* 1929; reprinted in, 18 *AJIL*: (Supp. 1924) 4 .

¹⁰ Some historians sometimes argue that Germany offered to Turkey some of the Aegean islands for its support to her for its actions in Iraq. See, N. Hayta, “İkinci Dünya Savaşı Yıllarında Ege Adaları Sorunu (The Problem of the Aegean Islands During the Second World War)”, *Atatürk Araştırma Merkezi Dergisi* 36: (1996) 820-823.

¹¹ The Treaty of Peace with Italy, signed on 10 February 1947 at Paris. The treaty came into force on 15 September 1947. For the text of the treaty, see, 49 *UNTS* 126; *UKTS* 50 (1948), *Cmd.* 7481.

¹² Article 14: “Italy hereby cedes to Greece in full sovereignty the Dodecanese Islads indicated hereafter, namely *Stampalia (Astropalia)*, *Rhodes (Rhodos)*, *Calki (Kharki)*, *Scarpanto*, *Casos (Casso)*, *Piscopis (Tilos)*, *Misoros (Nisyros)*, *Calimnos (Kalymnos)*, *Leros*, *Patmos*, *Lipsos (Lipso)*, *Simi (Symi)*, *Cos (Kos)* and *Castellorizo*, as well as the adjacent islets.” For the negotiations during the Paris Peace Conference, see, *Foreign Relations of the United States, Diplomatic Papers*, 1945, vol. II (General: Political and Economic Matters), (Washington: United States Government Printing Office, 1967): 137, 162-163, 204-209, 462, 466, 470; *Foreign Relations of the United States*, 1946, vol. II, (Council of Foreign Ministers), (Washington: United States Government Printing Office, 1970): 163-165, 333, 563, 625, 628, 661, 664; *Foreign Relations of the United States*, 1946, vol. III (Paris Peace Conference: Proceedings), (Washington: United States Printing Office, 1970): 21-23, 502, 706; *Foreign Relations of the United States*, 1946, vol. IV (Paris Peace Conference: Documents), (Washington: United States Government Printing Office, 1970): 7-8, 15, 139-140, 310, 418-419, 420-422, 894, 913-914; N. Hayta, “İkinci Dünya..., op. cit., p. 853-846.

¹³ The then Greek Foreign Minster *Pangalos* stated that all these islands are part of Greece by virtue of Lausanne Peace Treaty, and the 1947 Paris Peace Treaty. The statement of Greek Foreign Minister Mr. *Pangalos*, 28 April 1998 as given in a main bulletin of a Greek television.

¹⁴ The Turkish Foreign Minister Mr. Cem said in a roughly translation that “We believe that the islands whose sovereignty has not been determined should be taken as left to Turkey. But we believe that the issue can be solved by negotiation”. The statement of Turkish Foreign Minister Mr. İ. Cem, *The Milliyet* daily paper, 3 June 1999

¹⁵ The spokesman of the Turkish Foreign Ministry Mr. Atacanlı said “We are against any *fait accompli* about the islands, islets and rocks whose sovereignty was not determined by international agreements.” (*Translated to English by the authors*). The statement of the Turkish Foreign Ministry Spokesman Mr. Atacanlı in the Weekly Press Conference, 16 July 1998; See also, the interview given by the then State Minister of Turkey, Mr. Ş. Gürel, to the *Eleftheros Tipos* daily paper, 7 October 1997.

¹⁶ Turkish President Mr. Demirel was reported to have said that “There are some 150 rocks or islets in the Aegean we refer them as ‘grey areas’ ”. Namely, it has not been defined through agreements to which they belong. We have said: “They do not belong to Greece”. Quoted in, *Relations Between Turkey and European Union*, submitted by the then Greek Foreign Minister Theodoros Pangalos to the General Affairs Council of the EU in Luxembourg, 26.10.1998. . For more details, see, A. Kurumahmut, *Ege’de Temel Sorun, Egemenliği Tartışmalı Adalar (The Basic Dispute in the Aegean, the Islands Whose Sovereignty is Disputed)*, (Ankara: Türk Tarih Kurumu, 1998): 6-19. Some have reported that Turkey questioned sovereignty over 152 islets in the Aegean Sea. *The Milliyet* daily paper, 3 June 1999.

¹⁷ *Keesing’s Contemporary Archives*, (1996) 40923. (Hereinafter, *Keesing’s*). See also, the Greek note verbale to Turkey dated 26 December 1995.

¹⁸ See, the Turkish note verbale dated 29 December 1995. See also, *The Report on the ‘Limnia-Imia’ Islets*, second edition. (Athens: Institute of Neohellenic Research of the National Research Foundation, 1996): 5.

¹⁹ It seems that the crisis was over in January 1996 when Greece and Turkey decided to withdraw the forces they had sent to the region. See, the Weekly Press Conference of Turkish Foreign Ministry Spokesman, Mr. Ö. Akbel, 31 January 1996. However, Kardak Rocks sometimes cause tension between the two countries. A Greek military exercise, for instance, which would also cover the area around these rocks, will attract strong Turkish reaction. See, the Statement of the Turkish Foreign Ministry explained on the *TRT-TV*, Ankara, 25 September 1998, quoted in, British Broadcasting Corporation, Summary of World Broadcasts, EE/3343 B/8 28, September 1998, EE/3343 B/8. (Hereinafter, *BBC World Broadcasts*).

²⁰ Y. Inan and S.H. Başeren, *Status of Kardak Rocks* (Ankara, 1997): 15.

²¹ For the text of the Agreement, see, 138 *LNTS* 234.

²² For the text of the document (in French) signed between Italy and Turkey on 28 December 1932, refer to, <http://www.mfa.gr/foreign/bilateral/italtunc.htm>.

²³ According to the document, up to a distance of 12 miles between the territories of the contracting States, the line to be determined would be separating both sovereignty in the sea (*déterminera la souveraineté des deux Pays sur les eaux de la mer*), and the respective areas in which the islets would belong to the Party nearby. For a detailed discussion on the documents of 1932 between Italy and Turkey, see, H. Pazarıcı, “Differend Greco-Turc Sur le Statut de Certains Îlots et Rochers dans la Mer Egee: Response A M^r C.P. Economides”, *R.G.D.I.P.* 102:2 (1997) 353-378.

²⁴ “In the years between 1952-1953, Greece wanted to discuss the issue of succession with Turkey. It shows that Greece accepted that there was vagueness over the validity of these documents. Although Turkey wanted to discuss the issue with Greece at that time, Greece did not eventually want to discuss the matter later.” The statement of the spokesman of the Turkish Foreign Ministry, Mr. Akbel, 29 January 1996.

²⁵ Turkey officially stated that “the agreement signed on 28.12.1932 between Italy and Turkey does not amount to a treaty as such, since the subject of the treaty was neither discussed nor validated by the Turkish National Parliament. It rather amounts to an act resulting from a meeting of low-level officials from the both sides, is not legally binding for Turkey.” Official Statement of Turkey, 5.2.1996. Quoted in, *The Report on the ‘Limnia-Imia’ Islets*, second edition. (Athens: Institute of Neohellenic Research of the National Research Foundation, 1996): 5.

²⁶ Turkish Foreign Ministry announced that “Since the 1932 document is not legally in force, there is nothing to which Greece can be successor.” The statement of the spokesman of the Turkish Foreign Ministry, Mr. Akbel, 29 January 1996.

²⁷ Case Concerning Sovereignty over Certain Frontier Land (Belgium /Netherlands), *International Court of Justice*, Judgement of 20 June 1959, par. 24; Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), *International Court of Justice*, Judgement of 3 February 1994, par. 33, 40; Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), *International Court of Justice*, Judgement of 22 December 1986, par. 147-148.

²⁸ The Greek note verbale to Turkey, dated 10 January 1996. For the summary, see, <http://www.mfa.gr/foreign/bilateral/imiaen.htm>.

²⁹ According to Greece, the letters exchanged between the Turkish Foreign Minister Mr. *Aras* and the Italian Ambassador to Ankara, Mr. Aloisi envisaged the need for such a document and thus established the legal link between these two documents. Y. İnan and S.H. Başeren, *Status of ...*, op. cit., p. 4. For the text of the letters, see, *ibid.*, p. 14.

³⁰ Greece also shows some international maps which indicate the Kardak Rocks as belonged to Greece or using their Greek names. *The Report on the ‘Limnia-Imia’...*, op. cit., pp. 9-27. For such Greek opinions, see also, *The International Legal Status of the Aegean Sea*, edited by C. Arvanitopoulos and A. Syrigos, (Athens: Ministry of Press and Mass Media, Secretariat General of Information, 1988): 52-53. But there are maps also drawn by third States which show those areas belong to Turkey. See, Y. İnan and S.H. Başeren, *Status of...*, op. cit., p. 20-32.

³¹ See, footnote 8.

³² B. Şimşir, op. cit., vol. II, p. 402.

³³ For the text of the Convention, see, 28 *LNTS* 115, reprinted in, 18 *AJIL* : (Supp. 1924) 108.

³⁴ Article 13 provides that: “With a view to ensuring the maintenance of peace, the Greek Government undertakes to observe the following restrictions in the islands of Mytilene, Chios, Samos and Nikaria: (1) No naval base and no fortification will be established in the said islands. (2) Greek military aircraft will be forbidden to fly over the territory of the Anatolian coast. Reciprocally, the Turkish Government will forbid their military aircraft to fly over the said islands. (3) The Greek military forces in the said islands will be limited to the normal contingent called up for military service, which can be trained on the spot, as well as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory.”

³⁵ *Foreign Relations of the United States, Diplomatic Papers*, 1945, vol. II (General: Political and Economic Matters), (Washington: United States Government Printing Office, 1967): 162-163, 204-209, 256-257.

³⁶ *Ibid.*, 1946, vol. II (Council of Ministers), (Washington: United States Government Printing Office, 1970): 163-165, 333, 625, 661.

³⁷ *Ibid.*, 1946, vol. IV (Paris Peace Conference: Documents), (Washington: United States Government Printing Office, 1970): 418-419, 913-914.

³⁸ For the text of the note verbale’s of the governments concerned, see, H. Pazarıcı, *Doğu Ege Adalarının Askerden Arındırılmış Statüsü (The Demilitarized Status of the Eastern Aegean*

Islands), (Ankara: Turhan Publications, 1992) : 87-90. For a detailed analysis of Article 12 of the Lausanne Agreement, see, *ibid.*, p. 55-59.

³⁹ See, Y. İnan, *Türk Boğazlarının Siyasal ve Hukuksal Rejimi (The Political and Legal Regime of the Turkish Straits)*, (Ankara: Turhan Publications, 1995): 36-37; Yüksel İnan, “The Aegean Islands and Their Legal Status”, *Turkish Daily News*, 30 July 1998, A5. See also, S. Toluner, *The Pretended Right to Remilitarize the Island of Lemnos Does Not Exist*. (İstanbul: İstanbul University Law Faculty Publications, 1987): 53-85.

⁴⁰ Y. İnan, “The Aegean Islands...”, *op. cit.*, p. A5.

⁴¹ This article requires the settlement of all disputes among the High Contracting Parties falling within the scope of Article 36/2 of the Statute of the International Court of Justice, by referring them to the Court. See the text of the Modified Brussels Treaty on October 23, 1954. www.weu.int/eng/docu/d541023a.htm.

⁴² See, <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasicdeclarations.htm>

⁴³ Article 12/2 provides that “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.”

⁴⁴ Some authors however consider that the Lausanne Peace Treaty provides 3 miles territorial sea in the Aegean Sea for the two countries. They arrive at such a conclusion by inference from certain elements such as the attitudes during the Lausanne Peace Conference. H. Pazarıcı, *Uluslararası Hukuk (International Law)*, vol. II. (Ankara: Turhan Kitabevi, 1998): 360; M.A. Özman, “Ege’de Karasuları Sorunu (The Territorial Sea Dispute in the Aegean)”, a paper presented in *Seminar on the International Status of the Aegean Sea: Rights and Interests of Turkey*, published in, *AÜSBF Dergisi* 43:2 (1988): 166-167; Y. İnan and S.H. Başeren, “The Troubled Situation... *op. cit.*, p. 57, 59.

⁴⁵ *Turkish Official Gazette*, 24.5.1964, No: 11711; *LIS*, No. 36, 149.

⁴⁶ Y. İnan and S.H. Başeren, “The Troubled Situation...”, *op. cit.*, p. 57.

⁴⁷ According to chart 8003, dated 24 May 1965, these were the bays of Gökova, Mandalaya (14 miles), İzmir (13 miles), Çandarlı (13 miles), Edremit (11 miles) and Saros.

⁴⁸ Y. İnan and S.H. Başeren “The Troubled Situation...”, *op. cit.*, p. 58.

⁴⁹ H. Pazarıcı, *Uluslararası...*, *op. cit.*, p. 340.

⁵⁰ *Turkish Official Gazette*, 20.5.1982; *LIS*, No. 36, 149.

⁵¹ An unofficial translation of Article 1.

⁵² The Council of Ministers decided regarding the extent of the territorial waters in the Black Sea and the Mediterranean Sea that the situation obtained before the promulgation of this law would be continued by taking into account the peculiar characteristics of the seas which surrounded Turkey on the basis of the ‘principle of equity’. Decision No. 8/4742 dated 29. 05. 1982. Published in the *Turkish Official Gazette*, No: 17708, 29.5.1982.

⁵³ The Greek delegate Mr. Kripsis declared this fact. He said that “If Greece extends its territorial sea to twelve 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.” *United Nations Conference on the Law of the Sea, Official Records*, vol. III, First Committee (Territorial Sea and Contiguous Zone), Summary Records of Meetings and Annexes, UN Doc. A/CONF. 13/39, Geneva, 24 February-27 April 1958, 21-22.

⁵⁴ Decision No 8/4742 concerning the Territorial Sea Act, No. 2674, 20 May 1982, in, the *Turkish Official Gazette*, No: 17780, (29 May 1982).

⁵⁵ T. Scovazzi, “Maritime Limits and Boundaries in the Aegean: Some Maps with Legal Commentaries”, in *Aegean Issues: Problems-Legal and Political Matrix, Conference Papers*, S.

Taşhan, ed. (Ankara: Foreign Policy Institute, 1995): 82; Y. İnan, and S.H. Başeren, “The Troubled Situation...”, op. cit., p. 58.

⁵⁶ Ahnish argues that since the map attached to the Council of Ministers’ licenses to the TPOA did not adopt the straight baselines system, “the low-water line seems therefore still to represent the national coastline of Turkey.” F.A. Ahnish, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*. (Oxford: Clarendon Press, 1993): 183.

⁵⁷ Text in *Western Europe and the Development of the Law of the Sea*, vol. II. F. Durante and W. Rodino, eds. (Oceana Publications, 1983): 15; *LIS*, No. 36, 61. See also, International Court of Justice, Pleadings, Oral Arguments, Documents, *Aegean Sea Continental Shelf* case (Greece v. Turkey): 151. (Hereinafter, *Pleadings*)

⁵⁸ The systems of baselines are twofold in contemporary international law. Baselines could be normal baselines that are drawn at low tide long the coast. They could secondly be straight baselines which are drawn to join appropriate points along the coastlines which are deeply indented and cut into, or where there is a fringe of islands along the coast in its immediate vicinity. See, Articles 3 and 4 of the 1958 Territorial Sea and the Contiguous Zone Convention and Articles 5 and 7 of the UNCLOS.

⁵⁹ The most recent legislation concerning the territorial sea of Greece is the Law 2321/1995, which ratified the UNCLOS. The legislation however did not change the pre-existing six miles territorial sea practice of Greece.

⁶⁰ Article 2 of the Law 1182 of July, June/ 8 July 1972, in, Official Gazette of the Government of Greece, A’111/1972.; See also, *LIS*, No. 36, 41.

⁶¹ However, it should be noted that there are many criticisms of Greece adopting normal rather than straight baselines in the face of the fact that Greece might have applied the latter as a party to the UNCLOS. See, K.M. Ioannau, “The Greek Territorial Sea”, in *Greece and the Law of the Sea*. T.C. Kariotis, ed., (The Hague: Kluwer Law International, 1997): 138. See also, F.A. Ahnish, op. cit., p. 163.

⁶² The UK, for instance, objected to Greece. The UK was in favor of 3 miles limit until the 1958 Geneva Law of the Sea Conference. *Official Rec.*, vol. III, p. 130. During that Conference the UK eventually proposed a “maximum six mile territorial sea”. *Ibid.*, p. 253; J.M. Van Dyke, “The Aegean Sea Dispute: Options and Avenues”, *Marine Policy* 20: (1996): 401; A.V. Lowe, “The Development of the Concept of the Contiguous Zone”, *British Yearbook of International Law* 52: (1981): 111-133, 149.

⁶³ M.A. Özman, “Lozan Andlaşmasında Ege Adalarının Hukuki Statüsü (The Legal Status of the Aegean Islands According to the Lausanne Agreement)”, in “1923 Lozan ve 1947 Paris Andlaşmaları Işığında Yunanistan’ın Ege Adalarını Silahlandırması Sorunu Semineri (Seminar on the Militarization of the Aegean Islands by Greece in the Light of the 1923 Lausanne and 1947 Paris Treaties)”, 8 October 1985, published in *AÜSBF Dergisi* 41: 2 (1986): 177; A. Wilson, “The Aegean Dispute”, *Adelphi Paper* 155: (1979-80): 5.

⁶⁴ J.M. Van Dyke, “The Aegean Sea...”, op. cit., p. 401; Y. İnan, *Devletler Hukuku Bakımından Kıyı Suları Balıkçılığı ve Sorunları (Coastal Sea Fisheries According to International Law and Related Issues)*, (Ankara: Publications of the Ankara Academy of Economics and Administrative Sciences, 1976): 20.

⁶⁵ Refer to footnote 53.

⁶⁶ Anglo-Norwegian Fisheries Case, Judgement of 18 December 1951, ICJ Reports, 1951, 132; Anglo-Icelandic Fisheries Jurisdiction Case, Judgement of 25 July 1974, ICJ Reports, 1974, 22.

⁶⁷ Y. İnan and S.H. Başeren, “The Troubled Situation...”, op. cit., p. 63.

⁶⁸ For an analysis of those factors, see, *ibid.*, p. 61-64.

⁶⁹ Turkey had already started, from May 1994 until the date the Convention was due to come into force, to make strong warnings over the possibility of extension of territorial waters by Greece. See, for instance, the statement of the Turkish Foreign Ministry spokesman Ataman, World Broadcasts, EE/1997 B/4, 14 May 1994.

⁷⁰ *Keesing's*, (1994): 40244.

⁷¹ The Convention was ratified by the Greek Parliament unanimously. *ER* Radio, Athens, 1 June 95, in, *BBC World Broadcasts*, EE/2320 B/3 3 June 1995.

⁷² The statement of Alternate Foreign Minister Yeorgios-Alexandra Mangakis where he said Greece "will extend its territorial waters to 12 nautical miles when Greece deems it expedient and nationally beneficial". *Ibid.*

⁷³ See, for instance, the statements of Minister of Press and Mass Media, Mr. Venizelos. *Ibid.* See, also, the statement of the Government's spokesman Mr. Reppas, in, Press Release from the Greek Foreign Ministry, 15. 03. 98.

⁷⁴ Karolas Populias, the Greek Foreign Minister, for instance, made it clear when he said: "The issue of the 12 miles territorial sea limit is Greece's inalienable right and exercising it is up to the discretion and power of the Greek Government." The *ER* Radio, Athens, 31 Oct 94, in, *BBC World Broadcasts*, EE/2142 B/3, 2 Nov. 94.

⁷⁵ See for instance, the Announcement of the Ministry of Foreign Affairs of Greece on 22 January 1998. Directorate of Information, 15. 03. 98.

⁷⁶ See, the remarks of the former Turkish Foreign Minister, Mr. İnönü during his office where he said "the Greek Parliament's recent ratification of a bill allowing Greece to extend its territorial waters in the Aegean from six miles to twelve miles had not help to improve relations. We have repeatedly said the move was unacceptable." *Anatolian News Agency*, Ankara, 20 Sept. 95, in, *BBC World Broadcasts*, EE/2415 B/7 22 September 1995.

⁷⁷ The TGNA unanimously approved a declaration in its June the 8th, 1995 session. The *TRT* TV, Ankara, 8 June 95, *BBC World Broadcasts*, EE/2326 B/7, 10 June 1995.

⁷⁸ See, the statement made by the spokesman of the Foreign Ministry, Mr. Utkan, in answering a question in a press conference on 28 October 1997. The Full text is available from the Turkish Foreign Ministry Information Department. For similar views, see, Y. İnan and S.H. Başeren, "The Troubled Situation...", *op. cit.*, p. 61-64.

⁷⁹ See, the statement of Turkish delegate at the UNCLOS, Mr. Kırca. UNCLOS, *Official Rec.*, vol. XVII, 76.

⁸⁰ Greece objected to the Turkish straight baselines in this specific region in its submissions during the Aegean Sea Continental Shelf case. See, ICJ Reports, 1978, par. 89. In reality such a practice did not exist at that time.

⁸¹ The lack of a delimitation line for the territorial sea of the two States is sometimes pronounced openly by the Turkish authorities. See for instance, the opinions expressed by the Second Head of General Staff of the Turkish Army, General Mr. Ç. Bir who said in a roughly translation that "There is no boundary delimited in the Aegean Sea between Greece and Turkey. The Aegean Sea is a sea without any limits." The *Sabah* daily paper, 3 March 1997. *Yeni Yüzyıl* daily paper, 3 March 1997.

⁸² See, generally, Y. İnan and S.H. Başeren, "The Troubled Situation...", *op. cit.*, p. 58-59; A. Karamahmut, *op. cit.*, p. 109, 113; S. Güneş, "12 Mil Sorunu ve Ege'nin Yarı-Kapalı Statüsü (The Dispute of 12 Miles and the Status of the Aegean as a Semi-Enclosed Sea)", *Dış Politika Dergisi* 4: 1 (1995): 81-82.

⁸³ The Map attached to the Lausanne Peace Treaty does not provide for an *ad hoc* maritime boundary delimitation between the ceded islands and the Turkish mainland coast. See moreover, K.M. Ioannau, "The Greek...", *op. cit.*, p. 136.

⁸⁴ The line was shown on a map by the Commission. *LNTS*, No. 16 (1923) Cmdnd. 1929.

⁸⁵ F.A. Ahnish, op. cit., p. 266-67.

⁸⁶ For the text of the agreement, see, 138 *LNTS* 243.

⁸⁷ For the official views of Turkey reflected during the sessions of the UNCLOS, see, UN Doc. A/CONF.62/C.2/L.8; UN Doc. A/CONF.62/C.2/L.9; UN Doc. A/CONF.62/C.2/L.55; UN Doc. A/CONF.62/C.2/L.56.

⁸⁸ The position was stated as follows: "We would like to remind again that the flights of the Turkish military aircrafts flown inside the international airspace and in the area **beyond** the six mile Greek territorial waters are in accordance with international law." Press Release from the Turkish Foreign Ministry, 14 Jan 1998. (Emphasis added.)

⁸⁹ International Air Transport Agreement of 7 December 1944, Chicago, 171 *UNTS*, 387.

⁹⁰ See, Press Release from the Turkish Foreign Ministry, 27 January 1998; A Background Note on the Aegean Sea Dispute by Turkish Foreign Ministry, 19.11.1997; Press Release from the Turkish Foreign Ministry, January 12, 1998.

⁹¹ It is summarized in this regard as follows: "Greece is the only country in the world which has a wider national airspace than its territorial sea by violating the rule that the breadth of the national airspace has to be the same as the that of the territorial sea." Press Release from the Turkish Foreign Ministry, 27 January 1998. For a similar argument from the Turkish Foreign Ministry, see the Press Statement, 14 January 1998.

⁹² The Greek Prime Minister Papandreou said: "It has been historically established that we have a 10 miles airspace and not six miles, as our territorial waters are. This is that is not going to change." *ER Radio, Athens*, 16 June 1994, in, *BBC World Broadcasts*, EE/2025 B/4 18 June 94.

⁹³ It has been stated that "Turkey would appear to have forgotten that for decades now it has respected the existing legal status in the Aegean, which includes air-space of 10 nautical miles." An announcement from the Hellenic Republic, Ministry of Foreign Affairs, Directorate of Information, Athens, 14 January 1998.

⁹⁴ Some authors clearly explained the Greek position to refute any Turkish objection. Ioannou, for example, said: "The question remains whether this domestic settlement of the jurisdictional maritime zones of Greece can be opposed *vis-à-vis* Turkey. The long period of time during which the hybrid regime of the Greek territorial sea (six miles for the surface, ten miles for the airspace) has been unopposed and even acknowledged by Turkey may have created a local custom. It may as well have created the legal prerequisites for Greece to claim estoppel against any Turkish challenge in this respect." K.M. Ioannau, op. cit., p. 134.

⁹⁵ See, Article 76/1 of UNCLOS.

⁹⁶ See, Articles 77 to 81 of UNCLOS.

⁹⁷ For all these activities of oil exploration and exploitation in the Aegean Sea by Greece, see generally, A.M. Syrigos, *The Status of the Aegean Sea According to International Law*. (Athens: Sakkoulas Publication, 1998): 70; F. Köymen, "The Aegean Sea Continental Shelf Problem: Presentation of the Turkish Case", *International Business Lawyer* 6 : (1978) 503.

⁹⁸ The *TPOA* is the public oil company of Turkey.

⁹⁹ The concessions were given under the authorization of Petroleum Law Article 38/1, paragraph h, by the Turkish General Management of the Petroleum Affairs Decision No. 7/7217. The administrative decision of General Management of Petroleum Affairs, published in, the *Turkish Official Gazette*, 1 November 1973. For text and the attached map concerning the authorized areas of the concessions in Aegean Sea, see also, *Pleadings*, 15.

¹⁰⁰ See, Greek note verbale dated 7 February 1974, in, *ibid.*, p. 21-22.

¹⁰¹ Turkish note verbale dated 27 February 1974, in, *ibid.*, p.22-23.

¹⁰² Greek note verbale dated 24 May 1974, in, *ibid.*, p. 25.

¹⁰³ See generally, *Keesing's*, (1974) 26667.

¹⁰⁴ Decision no. 7/8594. The decision and an accompanying map were published in the *Turkish Official Gazette*, 18 July 1974. See also, *Pleadings*, 18,19. In the following days in July, 1976, Turkey started to conduct exploration activities, by a seismic research vessel called MTA Sismic I, in the Aegean beyond the territorial sea including the disputed areas of the continental shelf. *Keesing's*, (1976) 27987.

¹⁰⁵ The view to settle the disputes through negotiations and to refer the unresolved ones to the ICJ by a compromise agreement is still valid in Turkey's present day policy, in seeking a settlement to the Aegean disputes.

¹⁰⁶ Greek note verbale dated 7 August 1976, in, *Pleadings*, 54.

¹⁰⁷ See, the UN Security Council Resolution, 395 (1976).

¹⁰⁸ The judgement of the Court, 11 September 1976, ICJ Reports, 1976, 14.

¹⁰⁹ The judgement of the Court, 19 December 1978, ICJ Reports, 1978, 45. Greece depended on two separate documents to allege the consent of Turkey to the jurisdiction of the Court to entertain the case. The first was Article 17 of the General Act for the Pacific Settlement of International Disputes of 1928. The second was the joint communiqué issued at Brussels on 31 May 1975, following an exchange of notes between the Prime Ministers of Greece and Turkey.

¹¹⁰ See for instance, the communication dated 25 August 1976 from the Ministry of Foreign Affairs of Turkey to the Court. In, *Pleadings*, 143.

¹¹¹ See, *Keesing's* (1976) 27988.

¹¹² Turkey stated that such exploration would be a breach of the 1976 Bern agreement and Turkey would do whatever is necessary if the NAPC began searching for oil in international waters of the Aegean. See, *ibid.*, (1987) 35129. In fact, Mr. Papandreou's under-secretary Mr. Kapsis informed the Turkish Ambassador to Athens that drilling would go ahead.

¹¹³ It was Sismic I, a research ship, which set sail to conduct searches in these areas. *Ibid.*

¹¹⁴ Following the exchanges of notes between the two leaders in the last months of 1987, they finally met in Davos, Switzerland on 30 and 31 January 1988. In fact, the meeting took place on the occasion of the World Economic Forum at Davos while the two prime ministers were attending at that meeting. They held talks for two days. See generally, S. Gürel, *Tarihsel Boyutları İçinde Türk-Yunan İlişkileri, 1821-1993 (The Turko-Greek Relations in their Historical Perspective, 1821-1993)*, (Ankara: Ümit Yayınları, 1993): 94-98.

¹¹⁵ See, the Statement of the Greek Delegation at the Meeting of Experts of the Governments of Greece and Turkey in Bern on 19 and 20 June 1976. The Greek delegate stated that "one of the rules in the Continental Shelf Convention is the rule that islands have continental shelves as well as continents. The International Court in the *North Sea Continental Shelf Cases* said that this Article was customary law." See also Greece's note verbale dated 7 February 1974, in, *Pleadings*, 21.

¹¹⁶ Article 6/1 of the 1958 Geneva Convention on the Continental Shelf provides that: "... In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured". Greece argued that "The delimitation of the continental shelf is based both in theory and practice of international law on the principle of equidistance as provided in Article 6, paragraph 1, of the Geneva Convention." Greece's note verbale dated 7 February 1974, in, *Pleadings*, 21.

¹¹⁷ Statement of the Greece representative, Mr. Theodoropoulos, at the UNCLOS III, *Official Rec.*, vol. I, 128-129.

¹¹⁸ At the Bern Meeting, for instance, Greek Delegation emphasized three fundamental legal points, one of them was that "the application of the rule of the median line between opposite

coasts, as the line of delimitation of the seabed between the Greek islands and the Turkish territory” Application Instituting Proceedings Submitted by the Government of Greece, in, *Pleadings*, 3, 6.

¹¹⁹ See, the Greek note verbale dated 14 June 1974, *ibid.*, p. 26-27.

¹²⁰ “Greece was both a continental and an insular state and it was interested in preserving the unity imposed by the fact that its islands were closely linked geographically in a relatively small sea area...” Statement of the Greek Delegation at UNCLOS III, *Official Rec.*, vol. I, 129.

¹²¹ See, for instance, J.I. Charney, ‘Progress in International Maritime Boundary Delimitation Law’, *AJIL*, 88: (1994) 227-256; B. Kwiatkowska, “Equitable Maritime Boundary Delimitation”, in *Fifty Years of the International Court of Justice; Essays in Honour of Sir Robert Jennings*, A.V. Lowe and G. Fitzmaurice, eds. (Cambridge: Cambridge University Press, 1996): 264-292.

¹²² This seems to be a certain point since it is not possible to find any contrary view in the expressed official views of Turkey on this matter. Moreover, during the UNCLOS III, Turkey tried to secure a provision in the forthcoming convention to the effect that islands with certain location and geographical and sociological characteristics should be excluded from generating a continental shelf areas of their own. See, Doc. A/CONF.62/C.2/L.55, *Official Rec.*, vol. III, 230.

¹²³ “Our position is based on the view that the continental shelf in international law is the natural prolongation of the land territory of the coastal state into and under the sea...” Statement of Turkish Position by Ambassador *Bilge*, Bern, 31 January 1976, in, *Pleadings*, 167, 168. Turkey based its argument on to the judgment of the ICJ in the *North Sea Continental Shelf Cases* (par. 44 and 85) by taking that natural prolongation in a geomorphologic sense establishes the source of the rights over the continental shelf and plays a prominent role in the delimitation process. See, the statement of Turkish representative Mr. *Yolga* at the UNCLOS III, *Official Rec.*, vol. I, 168-170.

¹²⁴ Turkey considered that the continental shelf of the Turkish mainland -the Anatolia extended under the Aegean Sea in geomorphologic terms up to the discontinuity around midway between the mainlands. See, Section of Geological Data of Turkish Position during the Bern Meeting as Dictated by Professor Arpat. 2 February 1976, in, *Pleadings*, 169.

¹²⁵ For the proposal of Turkey, see, UN Doc. A/CONF.62/C.2/L.23. *Official Rec.*, vol. III, 201. Turkey also took the decision of the ICJ in the *North Sea Continental Shelf Cases* by noting that “the general configuration of coasts and the presence of any special circumstances should be taken into account during the negotiations to delimit the continental shelf.” UNCLOS III, *Official Rec.*, vol. II, 158, par. 39.

¹²⁶ “The ‘equitable principles’ referred to in paragraph 1 of the draft article are the hallmarks of the entire method of delimitation, since any rule or procedure which do not produce equitable results should be considered as failing to fulfill its purpose.”, *ibid.*, p. 158, par. 37. The judgment of the ICJ in the *North Sea Continental Shelf Cases* which basically provided that delimitation should be equitable. This certainly initiated the Turkish view that customary rule of delimitation is the ‘equitable principles’. See, paragraphs 88-92 of the Judgment.

¹²⁷ See, the statements by Turkey at UNCLOS, *Official Rec.*, vol. I, 159 par. 38; *ibid.*, vol. II, 158, par. 38.

¹²⁸ See, UNCLOS III, *Official Rec.*, vol. II, 158, par. 40.

¹²⁹ It was noted at the UNCLOS that “In the interest of brevity, paragraph 2 of the draft article made mention of only those special circumstances which seem most important. The list contained therein is therefore not exhaustive”. *Ibid.*, 158 par. 39.

¹³⁰ It was stated that “The balance established by the Lausanne Peace Treaty in 1923, still continues to be the basis of the relations between Turkey and Greece.” Statement of the Turkish position by Ambassador *Bilge*, Bern, 31 January 1976, in, *Pleadings*, 167-168; “The search for a comprehensive and lasting solution will be conducted on the basis of respect for international law

and the international agreements which determine the *status quo* in the Aegean.” Statement of then the Prime Minister Yılmaz, the *TRT TV*, Ankara, 24 March 1996, quoted in, *BBC World Broadcasts*, EE/2570 B/9, 26 March 1996.

¹³¹ In many statements, the term ‘interests’ has been referred to by Turkish officials. e.g. “The solutions to be found to these problems within the time span which we propose should be able to meet the just and legitimate concerns and considerations of both Turkey and Greece.” The then Turkish Prime Minister Yılmaz, the *TRT TV*, Ankara, 24 March 1996, *ibid*.

¹³² The Turkish Foreign Ministry Acting Spokesman, *Ataman* said: “We have described the regions of the Aegean continental shelf which remain outside the six-mile territorial waters as a disputed area that has not been delineated between the two countries. We have also issued a reminder that both Turkey and Greece undertook not to conduct any oil exploration outside their own territorial waters after the signing of the Bern Agreement this subject in 1976.” The *TRT TV* Ankara, 19 January 1994, quoted in, *BBC World Broadcasts*, EE/1902 B/5, 22 January 1994.

¹³³ See, Law 2288/1995, the Law Relating to the Exploration, Research and Exploitation of Hydrocarbons and Related Issues. In, A. Strati, “The Ratification by Greece of the UN Convention on the Law of the Sea”, *Leiden Journal of International Law* 9: (1996) 110.

¹³⁴ Commission of the European Communities, Outline of a Common Fisheries System in the Mediterranean, Discussion Paper 1136 (1990). See also, T.C. Kariotis, “Greek Fisheries and the Role of the Exclusive Economic Zone”, in T.C. Kariotis (ed), *Greece and... op. cit.*, p. 195-198.

¹³⁵ See, for instance, T.C. Kariotis, “The Case for a Greek Exclusive Economic Zone in the Aegean Sea”, *Marine Policy* 14: (1990) 3-14; T.C. Kariotis, “Greek Fisheries...”, *op. cit.*, p. 206-212.

¹³⁶ According to international law, EEZ covers all the continental shelf rights over the seabed as well as all the rights of the same kind in the superjacent waters. The relevant articles of the UNCLOS, namely Articles 56, 57, 76, 77 and 78, are widely accepted as reflecting the customary law on the subject indicates that the two sea areas are incorporated in the legal meaning.

¹³⁷ See, for instance, the *Gulf of Maine Case*, ICJ Reports, 1984, 246; the *Guinea-Guinea-Bissau* arbitration, *ILR*, 77, (1988) 636; the *Denmark-Norway (Jan Mayen) Case*, ICJ Reports, 1993, 38; the *Canada-France (St Pierre and Miquelon)* arbitration, 10 June 1992, *ILM*, 31, (1992), 1145; the *Eritrea-Yemen* arbitration, (the text of the award at: <http://www.pca-cpa.or/ER-YEMain.htm> (16.05.00).) See moreover, M. Evans, “Delimitation and the Common Maritime Boundary”. *BYIL* 64: (1993) 297-298.

¹³⁸ Due to the relative narrowness of the Aegean Sea, -no wider than 400 miles even in its widest section, the existence of many islands which makes the Aegean even narrower in terms of water areas to be delimited and the rules regulating the extent of these two maritime areas, the delimitation lines for the EEZ and the continental shelf in the Aegean Sea would eventually coincide. See, Y. Acer, *Settlement of the Aegean Maritime Disputes on the Basis of International Law*. (Unpublished doctoral thesis, the University of Bristol, May, 2000): 262-264. Ashgate will publish this work at the end of 2002.

¹³⁹ See, 382 *UNTS* 3.

¹⁴⁰ The *Aegean Sea Continental Shelf* case (Greece v. Turkey), ICJ, Reports of Judgments, Advisory Opinions and Orders, Order of 11 September 1976, par. 47.

¹⁴¹ The *Aegean Sea Continental Shelf* case (Greece v. Turkey), ICJ, Reports of Judgments, Advisory Opinions and Orders, Judgment of 19 December 1978, par. 90, 93, 109.