Two Facets of the Aegean Sea Dispute: 'de lege lata' and 'de lege ferenda'(*)

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1 Introductory Remarks

Unique geographical formations of the Aegean Sea have been the source of tension and skirmishes between Turkey and Greece in the last century due to the fact that no other sea in the world has been so unjustly demarcated by the vagaries of diplomatic history as the Aegean Sea.[1] This article looks at, albeit not exhaustively, on the legal background of this conflict in retrospective and prospective fashions. It also partly deals with how justice could be of some avail to offer some alternative ways to do away with the Aegean Sea dispute between Turkey and Greece.

This dispute (problem, crisis, conflict, clash, controversy, confrontation, discord, rumpus or whatever it be named in the relevant literature) is a blend off various intertwined problems regarding the concepts of the law of the sea. To be precise, although the term 'dispute' in the context of the Aegean Sea is mostly pronounced in its singular form, in reality, the term epitomises five different (for Greeks only two)[2]

(*) This essay was written in 2000 and appeared in my collected papers *Turkey and International Law,* Özen Publ., Ankara, 2001. It has not been updated hitherto.

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[1] The Aegean Sea, the semi-closed arm of the Mediterranean, is some 380 miles (611 km) long and 186 miles (299 km) wide, covering an area of some 83.000 square miles (214.000 km^2). The Aegean Sea is an important international route for maritime traffic passing through the Dardanelles and into the Black Sea. It is crammed with over 2.600 islands and islets, -- which, with the exception of Gökçeada (Imbros), Bozcaada (Tenedos), and Tavşan Adaları (the Rabbit Islands) situated at the mouth of the Dardanelles, -- all are under Greek sovereignty. The Encyclopaedia Britannica introduces the Aegean Sea "as the most impoverished large body of water known to science" in terms of its nutrient content (e.g. the amount of phosphates and nitrates in the water), http://www.britannica.com (searched item: 'Aegean Sea').

[2] As far as the Greek Ministry is concerned "the sole outstanding difference concerns the delimitation of the continental shelf. All other issues constitute unilateral Turkish claims, which Ankara baptizes as 'differences'. Greece maintains that issues that have already been settled, either by international law or international treaties, cannot become a subject of negotiation between Athens and Ankara" (http://www.mfa.gr/foreign/bilateral/relations.htm): As far as we are concerned, in the eyes of the Greek side, there is one more problem in the Aegean: the status

disputes: These are, namely (1) the delimitation and breadth of the territorial seas, (2) the demarcation (delimitation or delineation) of the continental shelf, (3) the *status quo* of Kardak (Imia) and other uninhabited islands, (4) the Greek fortification and militarization of the Eastern Aegean islands and (5) the status of air space & air defence identification zones. Within the ambit of this article, the last two rings of the dispute are out of the scope of our concern. In the following sections, the first three disputes will be explained.

There are a number of reasons for the treatment of this dispute in an essay. For instance, for the students of international law, the Aegean Sea dispute is a '*case study*' par excellence: It is a remarkable exemplary issue to illustrate how geography, history, politics, law and philosophy are interconnected with each other. It is also very educational material for lecturers to show how the concepts of the law of treaties (such as *trevaux preparatories*, interpretation of treaty provisions, entry into force of treaties, *rebus sic stantibus*, *ultra vires*, validity of treaties, reservation clauses, deposition of treaties to the UN etc.) could be of pivotal roles in the acquisition rights and undertaking obligations for states.

As we approach to 2005, I wanted to draw attention to the need to find legal solutions to an old political problem. Why is the year 2005 important? Before answering to this, one could say that the history of the Aegean dispute has a four-stage-script[3]: The first stage was put on display between 1913-1947. This period started with the 1913 London Peace Treaty, went on with the Lausanne Peace Treaty of 1923 and with 1932 Turkish-Italian Convention, and ended with the 1947 Paris Peace Treaty.[4]

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of Greek minorities in Imbroz and Tenedos (See e.g. Venizelos, Eleftherios "Imvros the Betrayed Island..." [http://diaspora-net.org/imvros/mainimvr-en.htm] (18.08.2001); The Pan-Imvrian Committee of Athens, (trans. by George Marinides) "Imvros and Tenedos - Violations of the Lausanne Treaty, [http://www.hri.org/docs/inter/93-10-06.doc.html]: For Greeks, there is another problem in the Black Sea: the Pontos issue. They long for the independence of the so-called Black Sea Greeks. See e.g. Fotiadis, Konstantinos, "The Pontian-Greek History" [http://diaspora-net.org/pontos/pontos.htm] (20.08.2001).

[3] For an international relations aspect of the dispute see Zat, Hakan, *Türk-Yunan İlişkilerinde Adalar ve Ege Kıta Sahanlığı Sorununun Geçmişi, Beklentiler ve Çözüm Önerileri*, Yüksek Lisans Tezi, İstanbul Üniversitesi, Gazetecilik Halkla İlişkiler Bölümü, 1991, (Tarihsel Görünüm) pp. 7-51.

[4] Karambelas summarises this period briefly: "The Northern Islands and the Treaty of Lausanne of 1923: Between 1878 and 1913 Greece seized the islands of Limnos, Lesbos, Chios, Samos & Ikaria from the declining Ottoman Empire through a series of military actions premised primarily on the existence of substantial Greek populations on those islands. By 1913, Greece exercised de facto control over these islands. However, Greece did not have legal title to the islands because it had obtained the islands through military conquest. The Treaty of Lausanne of 1923 ended the post-War hostilities between Greece and the then newly-formed Republic of Turkey. Among other items, the Treaty set the present border between Greece and Turkey in Thrace and Turkey formally recognized the sovereignty of Greece over those islands. The Dodecanese and the Treaty of Paris of 1947: Unlike the Northern islands, Greece never had exercised either *de facto* control or sovereignty over the Dodecanese in modern times. Italy took *de facto* control of the Dodecanese from the Ottoman Empire in 1912 following a short armed conflict referred to in history as the Italo-Turkish War. During negotiations for the Treaty of Lausanne, Greece actively sought possession of the Dodecanese based on the existence of a

In this period, most of the Aegean were carved out in favour of Greece. The second stage lasted between 1947-1972, during which the status quo was not challenged. The third was unveiled in 1973 with the discovery of oil by Greece off the coast of a northern Aegean island, Thassos. Turkey, which was betrayed by big powers of the world wars, tried to curb Greek ongoing expansion and militarization in the Aegean. The delimitation of the continental shelf captured the agenda of the two countries in the 1970s. In 1996, the Kardak crises broke out which brought two countries to the brink of war. This period had to come to an end with the recognition of Turkey as a candidate member in Helsinki in December 1999.

The fourth and final stage commenced after the Helsinki European Council's affirmative decision where Greece voted in favour of Turkey's EU candidacy. At the Helsinki European Council, the EU elaborated the principles as well as the procedures and institutional framework for the resolution of Greek-Turkish disputes. The two parties pledged that they would attempt to settle their disputes peacefully in accordance with international law, and to submit their differences before the International Court of Justice by the end of 2004 at the latest. In fact, this was a natural outcome of the Agenda 2000, the well-known Commission document on the terms of accession, to include appropriate procedures for the resolution of bilateral problems existing between the two countries. According to which, "all candidate countries should in any event commit themselves to submitting unconditionally to compulsory jurisdiction before accession negotiations are completed, including advance rulings of the International Court of Justice on any present or future disputes concerning border or maritime frontiers".[5]

In this vein, two weeks prior to the meeting of the Helsinki European Council, Turkey issued a statement stating that it has no territorial claims on Greek islands. Even though Turkey subscribed to the Helsinki European Council decision, meaning, *inter alia,* that pursuant to paragraph 4 of the Helsinki European Council conclusions, it will adhere to the principle of the peaceful settlement of disputes in accordance with the United Nations Charter. According to the decision, the peaceful settlement of disputes forces candidate states to make every effort to resolve all outstanding border disputes and other related issues. At the time of writing, precisely two years passed after such a commitment. No concrete negotiation process has yet started hitherto. The year 2005 is drawing near; but, perennial legal problems persist. Although Turkey is obliged to withdraw the *casus belli* towards Greece if Greek authorities extend its territorial waters to 12 miles, this appears to be highly unlikely as long as the lowest common denominators are not agreed upon.

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substantial Greek majority in the population of those islands. In 1920, the U.S. Senate passed a resolution calling on the peace conference to award the Dodecanese to Greece in 1920. However, Italy rather than Greece was ultimately granted legal title to the Dodecanese in the final version of Treaty of Lausanne of 1923. The Dodecanese remained under Italian sovereignty until they were ceded to Greece by Italy under the Treaty of Paris of 1947, which ended the Second World War between the Allies and Italy", in Karambelas, Nicholas G., "Turkish Challenges to Greek Territorial Sovereignty in the Aegean Sea: the Legal Dimension" [http://www.karambelas.net/crisis.html] (16.02.2001).

[5] Marias, Epaminondas, "Toward a Political Community in the Aegean Area: New Opportunities for Greece and Turkey", (2001) 25 **Fletcher Forum World Affairs** 161-174, p. 164.

Therefore, discussing the Aegean dispute is very much different from the attempts made in the previous stages of this historic confrontation. There is an urgent need that Turkey develop strong legal arguments to defend its position. While doing this, Turkey should bear in mind that the controversy is now a tripartite-facet. As the third party, the European Council has decided to play a quasi-mediator role, which by no means it should be construed as an impartial mediator in approaching to the issue. This is due to the fact that Greek membership to the Union obliges the EU organs to express their solidarity towards Members States.[6] Turkey should come to terms with the fact that the Greek-Turkish dispute is now '*communitarized*'.[7] The European Council actively keeps an eye on the negotiation process very closely and will force Turkey to settle the dispute through the International Court of Justice should an acceptable solution is not found.[8]

In the light of these concerns, there is an urgent need that Turkish standpoint be clarified, made known and entrenched so that Turkey have a flawless candidacy period that will pave the way for full membership. This article, therefore, should be looked on as a modest preliminary attempt to re-open the Pandora's Box to see if there remains any 'hope' that this dispute may be settled perpetually or should be frozen temporarily until the elixir of peace is found.

In searching for a legal prospectus that will ameliorate the decades-old injustice in the demarcation of maritime boundaries between Turkey and Greece, two historic foes, two NATO allies and two members of the European Union, albeit first is an associate, it is pertinent initially to cast light on the *lex lata (or de lege lata)*, that is, the present legal status of the Aegean Sea. After furnishing the issues surrounding the Aegean Sea dispute within the framework of positive international law, I will entertain the *lex ferenda* (*de lege ferenda)* of the dispute where the issue of justice and fairness come to the fore.

For the purpose of clarity, it is apt to re-paraphrase this point briefly. Both Greece and Turkey have contradictory and controversial standpoints on the cause and solutions of the dispute. Therefore, on the way to find an acceptable legal prescription for the settlement of dispute in an amicable way, the past and the present of the conflict should be delved into from a legal perspective. While doing this, I am going to divide the legal analysis into two sections. In the first section, I am to opt for descriptive methodology whereby *de lege lata* of the dispute will be accounted for. Once having done this, *de lege ferenda* aspect of the issue will be cast light on. The second section, therefore, looks at from a prescriptive and analytical spectrum.

The reason why *de lege feranda* approach has been chosen is that the *de lege lata* aspect of the dispute is very well-known. In the last three decades, both Turkey and Greece reiterated their arguments in various platforms. However, no concrete progress has been made. All the same, a concrete solution should be found without further ado should Turkey want to be a EU member within the first decade of the 21st century, this dispute, one way or another, is bound to be solved or stove off for sometime until time is ripe enough for finding a viable way.

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[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

2 Literature Review: An Academic Crusade Against Turkey

In search of an elixir to terminate legal uncertainty on the legal status of the region, international lawyers and academics, on the opposite banks of the Aegean coasts, have been searching for legal arguments that will support their countries' national interest. After a time-consuming Internet search, I yielded to the fact that the Greek side outclass the Turkish colleagues in the size and number of books and articles written to defend so-called 'undisputed national sovereignty of Greece all over the Aegean Sea'. They specifically set up the Aegean Institute of the Law of the Sea to garner support and coordinate academic activities in this vein. In their treatment of the issues, they tend to use so one-sided, aggressive, partial and tautological language that one cannot help thinking that they seem to be a legion of the Greek Army equipped with legal jargons and principles armed-to-teeth that fit their best interest. They pay lip service to the articles of conventions, decisions of the International Court of Justice and state practice to prove that the present *status quo* is in their side. They misrepresent the facts.[9] These legionnaires together with the Greek Diaspora in Europe and in the United States, who have good command of English, make use of every opportunity to indoctrinate others that Greece is the only party in the dispute to be for.

Not surprising though, there are scores of European and American writers, who corollary take Greece's arguments for granted and, just as Lord Byron did in 1821, advocate the Greek viewpoint at international platforms wholeheartedly.[10] As a consequence, it is not an exaggeration to hold that Turkey is an *'academically' disadvantaged nation* (!) in the midst of an 'archipelagic' alliance.

A survey of literature in the e-world revealed[11] that the bulk of English-written articles and books[12] on the subject have been penned and authored by Greek academia, some of whom are employed at UK and US universities and research institutions.[13] As

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[9] For example, Stilides says that "In 1975, Greece and Turkey agreed to submit the delimitation of the Aegean continental shelf for adjudication before the International Court of Justice [ICJ]. Shortly afterward, Ankara decided that a political course relying upon bilateral negotiations was the only fruitful means for resolution and withdrew from the ICJ process." Sitilides, John, "Dividing the Aegean Sea: A Plan in Progress?", [http://www.hri.org/forum/intpol/sitil.html] or [http://www.mjourney.com/news/national/divide01.htm] (written on 19 May 1997) (26 August 2001).

[10] For example Bowett says in his book *The Legal Regime of Islands in International Law* that the judgement of the ICJ in the Anglo-French Continental Shelf case cannot be applied in the Aegean case in that the Aegean is as a matter of fact a more land than sea. (Cited in Toluner, Sevin, Milletlerarası Hukuk Açısından Türkiye'nin Bazı Dış Politika Sorunları, Beta, İstanbul, 2000, p. 44.)

[11] See the bibliography attached to the article.

[12] See e.g. Haralambos Athanasopulos, *Greece, Turkey and the Aegean Sea : A Case Study in International Law*, McFarland & Company, N.C., 2001: Gerolymatos, A, Iatrides; JO & Chircop, A (ed.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000: Angelos M. Syrigos, *The Status of the Aegean Sea According to International Law*, Melissa Media, 1997: Theodore C. Kariotis (Ed.), *Greece and the Law of the Sea*, Aegean Institute of the Law of the Sea, Martinus Nijhoff Publishers, The Hague, 1997.

[13] E.g. George P. **Politakis** (*University of Geneva Law School*), Prof. **Vryonis** (the director of the Speros Basil Vryonis Center for the Study of Hellenism in Sacramento, California and an

a result of the ongoing academic crusade, the Greek standpoint appears to have domineered in the corridors of the EU, the parliaments of Western countries, chambers of international tribunals and at the Internet. At the end of the essay, a number of significant works authored by Greek academics have been listed to show how Turkey has been engulfed in this sense.

The Greek approach to the issue is one-sided. They take for granted that the Aegean Sea dispute is such an issue that by having recourse to the Law of the Sea Convention of 1982 and customary law, every problem could be easily surmounted. Some Greek non-jurist academics venture to comment on very delicate legal questions and drums trumpets for war.[14] Poulantzas pronounces that "Greece should proceed as soon as possible to the extension of its territorial waters to 12 nautical miles… Greece should also continue at a rapid pace the modernization of its armed force…"[15]

After reading Greek academics' well-documented legal arguments against Turkey in order to turn the Aegean into a 'Greek Lake', which is one step forward towards 'Magali Idea', I was compelled to veer from impartiality and objectivity, which, in fact, all academics should be equipped with, to defending the Turkish viewpoint.

In elucidating Turkish approach to the Aegean crisis, there are a good many Turkish academics who are in the vanguard of advocating Turkish national interests and legal position. Among them, alphabetically listing, Başeren, Denk, Gündüz, İnan, Meray, Pazarcı, and most notably Toluner are a few international lawyers to cite. Their meticulously researched publications clearly display how Turkish viewpoints are firm enough. Unfortunately, unlike, Greek view, the international society are uninformed about these views due to the fact that their works have not been compiled in a single-volume book and published in English by influential publishers abroad and distributed world-wide.[16]

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authority on Greek and Byzantine history and has served as director of the Alexander Onassis Center of New York University and a former professor of history at the University of California, Los Angeles), Prof. **Kristosis** (Director of Economics, University of Maryland University College, USA), John **Sitilides** (the executive director of the Western Policy Center, located in Sacramento, CA, formerly served as an Executive Assistant to U.S. Senator Alfonse M. D'Amato), Van **Coufoudakis** (Dean of the College of Arts and Sciences and Professor of Political Science, Indiana University-Purdue University, Fort Wayne), Eugene T. **Rossides** (Special Counselor at the American Hellenic Institute in Washington, DC), Epaminondas **Marias** (A Fellow at the Weatherhead Center For International Affairs, Harvard University, and Adjunct Professor At Hellenic Open University, Greece) and many more…

[14] Vryonis claims that Turkey violates international law and hence "[a] Greco-Turkish War seems inevitable". Vryonis Jr., Speros, "American Foreign Policy in the Ongoing Greco-Turkish Crisis as a Contributing Factor to Destabilization", 1997 2(1) **UCLA Journal of International Law and Foreign Affairs** 69-89, p. 85.

[15] Poulantzas, Nicholas ,"The New International Law of the Sea and the Legal Status of the Aegean Sea" (1991) 44 **Revue Hellenique de Droit International** 251-272, 272.

[16] For example, Greeks convened a conference in Ottowa in November 1996. The collection of papers presented at conference on the 'Sovereignty and the Law of the Sea: Aegean Issues after the Cold War' was published by Macmillan in 2000 as (Gerolymatos, A, Iatrides, J.O. & Chircop, A. (eds.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000.)

There is only one 145-page book published in English by Foreign Policy Institute of Hacettepe University which conducted a seminar in 1988 where the problems and prospects of the Aegean disputes were widely discussed together with academics from abroad. The papers submitted to that seminar and the summary of discussions were published as a book under the title "*Aegean Issues: Problems and Prospects*". Sadly, even at most Turkish libraries, this book is not available. Non-Turkish articles written by academics being authority on this subject have been listed in the selected bibliography at the end of the article. Among them it is worth seeing Prof. Pazarcı's reply to Prof. Économidès (in French), Prof. Toluner's treatise on the legal status of Limnos (in English), and İnan & Başeren's work on the legal status of Kardak/Imia islands (in English) wherein there are 16 maps proving Turkish arguments.

As far as Internet resources are concerned, it is sad to confess that Turkish Ministry of Foreign Affairs' homepage (http://www.mfa.gov.tr) does not include 'the Aegean Issue' among the problems that Turkey is face to face. Although the Ministry's Washington-based homepage (http://www.turkey.org) does poorly touch upon the subject, only 2 out of 9 links in the Kardak dispute have been working when I visited in February and August 2001. It is unfortunate to view that Hellenistic Resources Network (http://www.hri.org), the Greek Diaspora's homepage (http://diaspora-net.org) and more importantly the Greek Ministry of Foreign Affairs (http://www.mfa.gr) represent the Greek standpoint better than their counterparts.

As to theses and dissertations, amounting to around ten, prepared by Turkish postgraduate students, their treatment of the subject, apart from a couple of exceptions, is largely repetitive of previous works of the cited academics. While reading Turkish theses, it becomes apparent that post graduate students do mostly reiterate the respected academics' earlier writings due large to the difficulty in accessing electronic database sources. Therefore, they are by and large not of novel aspects.

3 *De Lege Lata*: "The Disputes in Hindsight"

3.1 The Delimitation of the Territorial Sea

3.1.1 The Background of the Dispute

The delimitation of both countries' the territorial seas is the most acrimonious and potentially destructive dissension over the Aegean.[17] According to the Lausanne Peace Treaty, it was agreed that the territorial seas would not exceed 3 miles. 13 years later, as early as 1936, Greece started claiming a 6 mile territorial sea. It was only after 1964 that Turkey enacted a law extending its territorial sea 6 miles in the Aegean.[18] Until the beginning of the multilateral conferences for the preparation of the Third United

[17] For a detailed treatment of the problem see Cin, Turgay, *Türkiye ve Yunanistan Bakımından Ege'de Kara Suları Sorunu*, Doktora Tezi, Dokuz Eylül Üniversitesi, 1996 (Published by Seçkin Yay., Ankara, 2000.)

[18] Article 1 of the Coastal Act no. 476, 15 May 1964. Article 2 entitles the Council of Ministers to extend this limit beyond 6 miles should Turkey's neighbours extend their territorial seas beyond this limit.

Nations Conference on the Law of the Sea, which coincided with oil exploration activities in the early 1970s, the issue of the breadth of territorial seas in the Aegean had caused little clash.

When the 1982 LOSC was opened for signature, Greece claimed that she would extend her territorial seas to 12 miles. The fact that a number of states had *unilaterally* stretched their lines beyond 6 miles is a part of customary international law is taken as a legal justification for Greece to emulate the same practice in the Aegean.[19] It is known that the extension of the territorial sea limit would effectively turn the Aegean into the "Greek Lake".

3.1.2 The Greek View

To begin with, Greeks assert that international law (viz. LOSC) allows every coastal state to extend its territorial waters to an outer limit of 12 nautical miles including for its islands.[20] It is at the entire disposal of Greece to use this right. In the determination of territorial seas, islands including rocks (Article 121) have the territorial seas. Therefore, 12 miles is applicable to all Greek islands. Greece argues that the extension of the territorial seas was used by the vast majority of coastal states throughout the world, including Turkey herself (after the 1964 Act). As to the Greeks, Greece is entitled to extend her territorial waters up to 12 miles whenever the Greek government deems fit to do so.[21]

The Greek governments favour that the demarcation be based on a median line equidistant from each countries baselines from which all boundaries are drawn. The Greek view does also advocate that islands constitute a part of Greece due to political and security reasons. Therefore, some go as far as claiming that Greece is an archipelagic state. Therefore, the provisions of the LOSC concerning archipelagos (Articles 46-54) should be applied to the Aegean.

3.1.3 The Turkish View

Turkey argues that delimitation should not be built upon a single provision of the LOSC, namely, Article 3, which disregards niceties of each delimitation case. There is not a straightforward and crystal-clear rule applicable to all seas. Rather, as the Aegean is unique, the delimitation should be based on the application of any combination of methodologies consistent with "equitable principles"; other factors such as the general configuration of the respective coasts and the presence of uninhabited islands, islets or rocks are essential criteria to be born in mind. The Aegean is a semi-enclosed sea (Articles 121-122 of the LOSC)[22] between two coastal states with a history of centuries-

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[19] Schmitt, Michael N., "Aegean Angst: A Historical and Legal Analysis of the Greek-Turkish Dispute" (1996) 2(1) **Roger Williams University Law Review** 15- 56 (Earlier version of this article was published in *Naval War College Review,* XLIX: III, Summer 1996. 52 *et seq.*), p. 24.

[20] For both Greek and Turkish views, see Çidem, Okşan, *Devletler Hukuku Açısından Ege Sorunu*, Yüksek Lisans Tezi, Ankara Üniversitesi Sosyal Bilimler Ensititüsü, Ankara, 1999, pp. 51-58.

[21] http://www.mfa.gr/foreign/bilatera, l/#b.

[22] "For the purpose of this Convention, 'enclosed or semi-enclosed sea' means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow

lasting conflict, serves as an important international sea route, and is dominated by Greek islands of varying size and population, many in close proximity to the Turkish coast.[23] This unique nature of the Aegean requires states to cooperate with each other in the exercise of their rights and in the performance of their duties under the LOSC (Article 123). And finally, Article 300 of the Convention invokes states to fulfil their obligations in good faith and exercise the rights, jurisdiction and freedoms in a manner which would not constitute an abuse of right.

What Turkey proposes is a ban on extension of territorial sea limits which would have the effect of cutting off another state's access to the high seas from its own waters. Turkey legal standpoint in this proposal is that the situation in the Aegean is an example of "semi-enclosed seas having special geographical characteristics". The presence of islands creates a special circumstance where the general formulation of the LOSC cannot be applied.

The Turkish Grand National Assembly, on 8 June 1995, shortly after the Greek Parliament's ratification of the LOSC on 31 May 1995, unanimously adopted a resolution that vested the Turkish government in full powers, including military precautions, for the protection of Turkish "national interests" in the event that Greece ever extended its territorial sea beyond six miles. Seen in this light, Greeks see Turkey's *casus belli* argument as a violation of Article 2(4) of the UN Charter (on the use and the threat to use force),[24] which proscribes all UN members to use force in international relations.

Not only in terms of unequal distribution of natural resources, this is unfair, but also the unfair extension of Greek territorial sea stretching from the Greek mainland to the outer limit of Turkish territorial waters would cause security concerns. In other words, ships transiting to or from the eastern coast of Turkey, as well as those approaching or departing the Bosphorus and Dardenelles, would have to traverse Greek territorial waters to access to the Mediterranean. The Turkish navy will not exercise operations and will be subject to arbitrary discretion of the Greek authorities to halt the exercise of innocent passage.[25]

3.2. The Demarcation/Delimitation/Delianation of Continental Shelf

3.2.1 The Background of the Dispute

The Continental Shelf dispute is but one essential element among the outstanding differences. It has a bearing on the overall equilibrium of rights and interests in the

outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States".

[23] Schmitt, *supra*, p.30.

[24] http://www.mfa.gr/foreign/bilateral/relations.htm

[25] Arı, Tayyar, "Ege Sorunu ve Türk Yunan İlişkileri: Son Gelişmeler Işığında Kara Suları ve Hava Sahası Sorunları", (1995) 50/1-2 **AÜSBF Dergisi** 51-68, p. 58.

Aegean. The dispute concerns the areas of continental shelf to be attributed to Turkey and Greece beyond the 6 mile territorial sea in the Aegean.

It was only after oil prices sharply rose as a reverberation of the Arab oil embargo in the early 1970s, the Turkish government, as a repercussion of this, granted, in November 1973, a license on mineral exploration in the seabed of the eastern Aegean to the Turkish State Petroleum Company and promulgated a map showing delimitation of respective continental shelves in the Aegean that did not take into account the presence of the Greek islands. The Greeks were very furious for the display of a map published in the Turkish Official Gazette on the same day, which, they said, it "arbitrarily designated areas of the Aegean -- including Greek areas". The standards set by the map provided Greece with exploration and exploitation rights only in their insular territorial seas.

Turkey stated that their continental shelf claims were justified by "special circumstances" related to the proximity of the Greek islands to the Turkish coast. Turkey also stated that if the Greek claims were to be accepted, almost 97 per cent of the Aegean seabed beyond the Turkish territorial waters would be under Greek sovereignty.

In 1976, Turkey again issued oil exploration licenses in a contested region of the eastern Aegean and sent a research vessel, the state-owned Sismik I (formerly Hora), to prospect for oil. When some of the prospecting took place near the Greek islands of Lemnos and Lesbos, Greece protested and requested UN intervention. The Turkish Oceanographic research vessels "Çandarlı" and "Sismik-1 sailed into the Aegean for the purpose of carrying out research activities on the seabed just outside the territorial waters of the islands, which Greeks claim sovereignty over them.[26]

The UN Security Council in its Resolution 395, adopted in 25 August 1976, called upon Turkey and Greece to do everything in their power to reduce tensions in the Aegean and asked them to resume direct negotiations over their differences and appealed to them to ensure that these negotiations result in mutually acceptable solutions.

The International Court of Justice, in its ruling[27] on 11 September 1976, determined the Aegean continental shelf beyond the territorial waters of the two littoral states as 'areas in dispute' with respect to which both Turkey and Greece claim rights of exploration and exploitation.

Subsequent to the International Court of Justice ruling and the Security Council Resolution, Turkey and Greece signed the 1976 Bern Agreement. This resulted in a sort of '*modus vivendi*' between the two sides. A protocol was signed in Bern on 11 November 1976, fixing a code of conduct to govern future negotiations concerning the delimitation of the Continental Shelf in the Aegean. Under the terms of the Agreement, the two governments have, *inter alia*, assumed the obligation to refrain from any

[26] http://www.mfa.gr/foreign/bilateral/#a

[27] "In its judgment on the question of its jurisdiction in the case concerning the Aegean Sea Continental Shelf (Greece *v.* Turkey), the Court, by 12 votes to 2, found that it is without jurisdiction to entertain the Application filed by the Government of Greece", Aegean Sea Continental Shelf Case (Jurisdiction of the Court) Judgment of 19 December 1978, http://www.icj-cij.org/icjwww/idecisions/isummaries/igtsummary781219.htm.

initiative or act concerning the Aegean continental shelf. This specific obligation was adhered to by both countries over several years and thus it was possible to ward off the dispute concerning the Aegean continental shelf from escalating into tensions and confrontations.

Greece, which terminated the negotiating process with Turkey in 1981, started seismic and related activities and planned drilling operations in the disputed areas of the Aegean continental shelf in 1981. These activities, being open violations of the Bern Agreement have formed the main cause of the March 1987 crisis between Turkey and Greece. In 1987, Greece announced it would take control of the Canadian North Aegean Petroleum Company, which had exploited the Prinos oil field off the Greek island of Thasos. The company had earlier made plans to prospect outside Greece's territorial waters -- an uncontroversial move in Turkey's view as long as the company was under Canadian control.

When Greece announced in 1987 that it planned to begin drilling for oil in the waters off Thassos, Turkey, as a response of which, dispatched Sismik I to prospect for oil. Turkey argued that the Greek activism would be a violation of the 1976 Bern Agreement, which had called for a moratorium on unilateral exploration and exploitation in the contested area until an understanding could be reached on the issue. Greece replied that the agreement had been made inoperative by events.

At that time, the then Greek Prime Minister Papandreou sternly warned that Greek armed forces would "teach the Turks a hard lesson." Turkey solemnly declaring that any Greek attempt to harass a Turkish research vessel would meet with retaliation. The controversy was defused when the late Prime Minister Turgut Özal restricted the research to Turkish territorial waters and Papandreou returned the issue to the International Court of Justice.[28]

This crisis over drilling beyond territorial waters was in fact the culmination of unilateral actions perpetrated by Greece as regards the Aegean. The crisis was averted and the "Davos Process" was initiated. The negotiations yielded no concrete results on the major issues, due mainly to Greek insistence that the Agenda of the negotiations could contain no reference to the Aegean issues. Noncooperation over the continental shelf has continued throughout the 1990s.

3.2.2 The Greek View

The hub of the Greek stance is that islands possess their own continental shelf.[29] They also constitute politically and geographically a part of Greece. Accordingly, they reject Turkish reasoning that the islands of the Aegean are special peculiarities enjoying fewer rights than others, which this is unfounded in international law. Indeed, the fact that the Greek islands of the Aegean number nearly 3.000 and constitute a continuous chain from the Greek mainland to the Turkish coast renders irrational any attempt to ignore their existence in this respect.[30]

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[28] Kurop, Marcia Christoff, "Greece and Turkey" (1998) 77/1 **Foreign Affairs** 7-13.

[29] For Greek views, see Dursun, Erol, *Ege Denizinde Türk-Yunan Kıta Sahanlığı Uyuşmazlığı*, Yüksek Lisans Tezi, 19 Mart Üniversitesi, Çanakkale, 1999, pp. 48-53.

[30] http://www.mfa.gr/foreign/bilateral/#a

To Greece, customary international law, as evidenced by both the 1958 Convention on Continental Shelf and the 1982 LOSC, permits exclusive exploration and exploitation rights over the continental shelf up to two hundred miles from its coastal and island baselines. Under this interpretation, virtually all of the Aegean seabed except for the portion beneath the Turkish territorial sea would be under Greek control.[31] Greek academics hold the view that Turkey should be held accountable under the terms of customary law.[32]

Greece argues the Aegean islands form a continuum with the Greek mainland. They are afraid of Turkey's interference with Greek territorial sea and air communications. They fear that Turkey would justify establishing an exclusive economic zone with installations and naturally a security zone in the seas within the periphery of Greek islands. They argue, therefore, that Greece is an archipelagic state. The Greek archipelago with its 330.000 inhabitants is linked with the mainland both politically and economically.[33]

The Greek response to the Turkish position is that the median line proposed by Turkey would, in effect, enclave Greece's eastern Aegean islands in a Turkish jurisdictional zone.[34] As could be seen, this textual approach gives way to the conclusion that in the eyes of Greece, this dispute is of exclusively of legal dimension. Therefore, resolution of this dispute could be made in accordance with international law and the provisions of the Charter of the United Nations for the resolution of international legal disputes and the 1969 decision of the International Court of Justice concerning the delimitation of the continental shelf of the North Sea.[35]

3.2.3 The Turkish View

Turkey states that the Aegean is a semi-enclosed sea.[36] The Greek islands should not be entitled to continental shelf of their own, as the bulk of the Aegean seabed should be construed as a *natural prolongation* of the Anatolian peninsula.[37] Turkey holds that dividing the entire continental shelf of the Aegean Sea should be made on the basis of equity through an agreement.[38] Turkey also argues that the proclaimed sovereign rights

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[31] Schmitt, *supra*, p. 33.

[32] Clapsis, Antonios "The Aegean Sea Conflict: A Recent Perspective" [http://people.bu.edu/bjournal/aegean.htm] (16.02.2001).

[33] Papacosma, S. Victor, "More than Rocks: The Aegean's Discordant Legacy" (Fall 1996) 7(4) **Mediterranean Quarterly** 75-96, p. 86.

[34] Moustakis, Fotis, "Conflict in the Aegean", (1999) Vol. 274 (Issue: 1596) **Contemporary Review** 8-12.

[35] http://www.mfa.gr/foreign/bilateral/#a.

[36] See Turkish arguments in Çidem, *supra*, pp. 63-67: Dursun, *supra,* pp. 54-63. See also the viability of Both countries's claims in Dursun, *ibid*., pp. 63-95.

[37] The ICJ's decisions on the delimitation of the continental shelf has been explained in the following sections.: For Turkish view, see the following sources, Kuran, Selami, "Ege Kıta Sahanlığı Sınırlandırılması Sorunu", **Hukuk Araştırmaları Dergisi,** *Selahattin Sulhi Tekinay Anısına Armağan*, İstanbul Marmara Üniversitesi, İstanbul, 1999, pp. 419-425: *Ege'de Deniz Sorunları Semineri*, pp. 80-93.

[38] Pazarcı, Hüseyin, *Uluslararası Hukuk Dersleri*, II. Kitap, 3. baskı, Ankara, 1992, pp. 350-52.

for Greece in the continental shelf would make the Aegean a Greek Lake, and that the international principle of 'right of innocent passage' is an inadequate guarantee for the safety of all Turkish ships passing through Greek waters.

Turkey also stresses on principles of equity over equidistance, as a corollary of "*special circumstances*" clause and relies on negotiations for resolution. Turkey insists that an equitable solution necessitates that parties should refrain from unilateral acts and should convene expert meeting as to how a equitable solution could be found. Turkish view towards the LOSC is that it did nothing to resolve the arguments of the contending sides. Turkey's claims for the equitable demarcation of the continental shelf between the Greek and Turkish mainlands intensifies Greek fears that there would be a direct threat to the sovereignty of the islands lying to the east of the line.

3.3 The Status of Kardak (Imia) and other Uninhabited Islands

3.3.1 The Background of the Dispute[39]

The events that led to the advent of 'an add-on issue'[40] to the Aegean Dispute started on the night of Christmas of 1995 when the Turkish Cargo boat Figen Akat ran aground on twin set of barren rocks, situated 2.5 nautical miles (nm) from the Greek island of Kalolimnos, 5.3 nm from the Greek island of Kalymnos, 3.65 nm from the Turkish coast and 2.3 nm from the Turkish island of Çavuş (Kato).

The Turkish captain refused Greek authorities' help, claiming that he was in the Turkish territory, and sought assistance from the Turkish authorities. A compromise was reached, and the Figen Akat was set free by a Greek tugboat and towed back to the Turkish port of Göllük.

On 29th December, the Turkish government addressed a verbal note to the Embassy of Greece in Ankara, claiming sovereignty over the Greek island of Kardak, stating also that the title deed of the rocks are registered on the Karakaya village of Bodrum prefecturate, the province of Muğla. On 10 January 1996, the Greek government responded with its own verbal note, rejecting Turkey's claim to the island on the basis of international law.[41]

The note underlined the fact that Turkey had reaffirmed Kardak as belonging to Italy by virtue of a bilateral agreement signed between the two countries in 1932, and that the islets were subsequently ceded to Greece with the rest of the Dodecanese island chain by the Paris Peace Treaty of 1947. The tension over Imia began to escalate on the 27th January, when Turkish journalists took down the Greek flag from the larger of the two

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[39] Turkish Foreign Policy and Practice As Evidenced by the Recent Turkish Claims to the Imia Rocks, http://www.hri.org/news/greek/misc/96-03-27_2.mgr.html: For an historical background of the dispute see Koyucu, Zafer, *Ege Adaları,* Yüksek Lisans Tezi, Anadolu Üniversitesi, Eskişehir, 1991, pp. 8-66 (prior to World War I), pp. 67-93 (During World War I), pp. 94-118 (During the Lausanne Meetings).

[40] Raftopoulos, Evangelos, "The Crisis over the Imia Rocks and the Aegean Sea Regime: International Law as a Language of Common Interest", (1997) 12(4) **The International Journal of Marine and Coastal Law** 427-446. (An abridged version of this article was published in Gerolymatos, A, Iatrides; J.O. & Chircop, A. (eds.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000, 134-151, p. 143.)

[41] Clapsis, supra, [http://people.bu.edu/bjournal/aegean.htm].

Imia islets and hoisted the Turkish flag. On the 28th January, a Greek navy detachment replaced the Greek flag.

Turkey then addressed a second Verbal Note to Greece on the 29 January 1996, wherein the initial claim was repeated and extended with the request for negotiations concerning the status of all islands, islets and rocks whose status, according to Turkey, is not well determined.

In response, Greece addressed a Verbal Note to Turkey on 16 February 1996. In that Note, Greece presented legal documents and other facts concerning the territorial status of all islands, islets and rocks in the Aegean. Greece emphasised that no country, including Turkey, had ever challenged that status in the past. The Note concluded that, as is only natural, Greece would not negotiate with Turkey matters pertaining to its territorial sovereignty as established by international law and treaties.

Turkish troops landed on the rocks on 30th January. The two rivals faced each other down well into the early morning hours of 31st January. Afterwards, both countries gave their guarantees to the US, promising they would not initiate any additional action in the area.[42] In the end, a major international crisis between the two countries on NATO's southeastern flank was narrowly averted. The situation was restored to the *status quo ante.*

3.3.2 Greek View

There are six grounds on which Greece bases its claims.[43]

1- The 28 December 1932 'Protocol' between Italy and Turkey outlined the line of demarcation between the shores of Eastern Turkey and the island Kastellorizo, which then belonged to Italy and established the territorial waters separation of the Turkish sea between Kastellorizo and the Minor Asia coast.[44] Greece affirms that the Protocol

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[42] *Ibid.*

[43] İnan & Başeren, *infra*, pp. 4-5. Strati, A., "Postscript: Tension in the Aegean—The 'Imia' Incident", (1996) 9 **Leiden Journal of International Law** 122-128, 124-127.

[44] http://gwis2.circ.gwu.edu/~stratos/Imia/greece/Italian-Turkish-agreement.html: **"**Article 15 of the Treaty of Lausanne of 1923, by which Italian sovereignty over the Dodecanese was confirmed, did not set a water boundary by which it could be determined which of the islets of the Dodecanese were under Italian sovereignty and which were under Turkish sovereignty. Unlike Article 12 of the Treaty that confirmed Greek sovereignty over the Northern Islands where the 3-mile water boundary was set, a determination as to which smaller islands or islets would be under Italian and Turkish sovereignty respectively could only be made by interpreting the clause "islets dependent thereon" meaning islets dependent on the Dodecanese that are named in Article 15. Consequently, while Italy and Turkey executed the Treaty, they did not agree, as a practical matter, as to which islets were under Italian and Turkish sovereignty, respectively.

After the Treaty was executed, Italy and Turkey negotiated sporadically over the issue. In 1929, they asked the Permanent Court of International Justice (referred to as PCIJ) to decide which of an enumerated list of islets belonged to Italy and Turkey respectively under the Treaty, list that did not include Imia. While the Court took the case under advisement to decide whether it had jurisdiction to hear the case, Italy and Turkey continued to negotiate. By 1932, they reached an agreement and jointly withdrew the case from the PCIJ. That agreement took the form of a Convention and a Protocol annexed to the Convention. The Convention dated January 4, 1932

attached to the 1932 January Agreement has been prepared under the terms of the exchange of letters between Dr. Tevfik Rüştü Aras, the then Turkish Minister of Foreign Affairs, and Aloisi, the Italian Ambassador to Ankara, on the very day of the Agreement of 4 January.[45] The January Convention was duly ratified by both parties, the instruments of ratification were exchanged and the Convention was submitted to the Secretariat of the League of Nations. The Minutes/Protocol of 28 December 1932 being an annex to the original convention was not submitted to the Secretariat of the League of Nations according to Article 18 of the League of Nations Covenant, since it forms an integral part of the initial agreement, namely, the 4 January 1932 Treaty.[46] Moreover, Constantopoulos adds that "[t]he stipulation of the LoN Covenant does not form part of the general international law, since major states of the time, e.g. the United States …or the Soviet Union, were not members of the League of Nations".[47]

According to "the Supplementary Protocol (or annex)" of the Agreement, signed in Ankara on 28 December 1932, the demarcation line designates to whom the territory belongs, and does not divide the Aegean Sea. As such, the Protocol states, within a distance of 12 miles and a minimal distance of territory between the two countries, the demarcation line will designate the two countries' sea sovereignty. The Protocol also states: "It is clearly understood that in the areas where this distance surpasses the twelve miles, the demarcation line will not affect the extension of territorial waters of both countries".[48]

According to Greece, Section 30 of this Protocol clearly mentions that the Italian-Turkish border line passes between the Imia islands group - which then belonged to

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sets forth an agreement as to the respective sovereignty of the islets enumerated in the list submitted to the PCIJ and a geometric water boundary between the area around the island of Kastellorizion and the coast of Turkey. The Convention was duly registered with the Secretariat of the League of Nations under Article 18 of the League of Nations. At the time that the Convention was executed, Italy and Turkey agreed to resolve the sovereignty of the islets that had not been listed in the Convention by convening a technical committee that would designate a water boundary between the remaining islets of the Dodecanese and Turkey. The activities of that committee culminated in the Protocol dated December 28, 1932 (also referred to as a Proces Verbal) that delineates a geometric water boundary between the remaining islets of the Dodecanese and Turkey and lists by name each such islet and its sovereignty. The Protocol expressly places under the sovereignty of Italy the islets of Imia as well as other islets that would be under Turkish sovereignty if the 6-mile zone argument were accepted. When Greece was granted sovereignty over the Dodecanese in the Treaty of 1947, it succeeded to all right, title and interest that Italy possessed in the Dodecanese. This means that Greece succeeded to the 1932 Convention and Protocol. The water boundary and recognition of sovereignty over the islets set by the 1932 Convention and Protocol have been and continue to be the water boundary and recognized sovereignty today" quoted from Karambelas, Nicholas G., "Turkish Challenges to Greek Territorial Sovereignty in the Aegean Sea: The Legal Dimension" at [http://www.karambelas.net/crisis.html] (16.02.2001).

[45] İnan & Başeren, *infra*, p.4.

[46] Constantopoulos, D.S., "The Greek Imia Rocky Islands and the 1929 Turkish-Italian Case at the Permanent Court of International Justice" (1998) 51(2) **Revue Hellénique de Droit International** 543-548, 546-547.

[47] *Ibid.*

[48] [http://gwis2.circ.gwu.edu/~stratos/Imia/greece/Italian-Turkish-agreement.html]

Italy- and the uninhabited island Kato, which belongs to Turkey.[49] In accordance with this Agreement, the representatives of Italy and Turkey signed in Ankara, on 28 December 1932, a supplementary agreement by which the rest of the maritime frontier between the Dodecanese and the Turkish coast was precisely delimited. The agreement fixes 37 pairs of reference points between which the maritime boundary dividing Turkish and Italian territory (which, at the time, included the Aegean Dodecanese islands) was drawn.

This Agreement is comprised of 37 points attached to each other showing the boundaries. The 30th Point passes through the maritime frontier north of Kalymnos and passes at a median distance between the Imia rocks (on the Italian side) and Kato island (on the Turkish side). Thus, Italian sovereignty over Imia is confirmed by the explicit reference made to them in the text itself.[50]

The third international agreement was the Paris Treaty of 1947, signed between Italy and the Allied Powers after the conclusion of World War II. In that Treaty, Italy ceded the Dodecanese islands and all adjecent islets to Greece. Greeks maintain that the successor state *ipso facto* assumes all the rights and obligations that have been established by international treaty between the initial possessor state and every third party (in this case, between Italy and Turkey).[51]

(2) The 1923 Lausanne Peace Treaty explicitly limits Turkish sovereignty -- with the exception of Imbros, Tenedos and the Rabbit islands -- only over islands lying within a 3-mile limit off the Turkish coast (Article 12). As Imia is 3.65 miles off the Turkish coast, it is not under Turkish sovereignty.

(3) According to Article 16 of the Lausanne Peace Treaty, Turkey "renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognised by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned." By the provisions of the Lausanne Treaty, Turkey has renounced any claims over islands lying beyond three nautical miles from its continental coastline with the exception of Imbros, Tenedos, and the Rabbit islands.[52]

(4) Like the rest of the Dodecanese island chain, Kardak rocks were ceded to Italy by virtue of Article 15 of the Lausanne Treaty. It remains under Greek sovereignty ever since 1947. Turkey cannot claim any right over Kardak rocks on the basis of their independence from the Dodecanese Region.[53]

(5) The Imia rocks have been under Greek sovereignty since the signing of the Paris Peace Treaty with Italy in 1947. For half a century Turkey did not raise any questions concerning the status of the islets and rocks. Unfortunately, the reason she does so now

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[49] http://gwis2.circ.gwu.edu/~stratos/Imia/greece/Italian-Turkish-agreement.html

[50] Écononmidès, *infra*, p. 615.

[51] "The Legal Status of Imia", http://www.hri.org/news/greek/misc/#1-7 (#3)

[52] Stephanopoulos, Constantinos, "An Aegean Peace: International Law and the Greek-Turkish Conflict" (1998) 21(1) **Harvard International Review** 18 *et seq.*

[53] İnan & Başeren, *infra*, p.5.

falls within the well- documented pattern of illegal Turkish intentions and actions over the past twenty years.

(6) Greece does not accept the temporary return to the '*status quo ante'* as it does not constitute any form of solution. Greece represents the crisis as if Turkey denounces the treaties that set down the territorial status of the southeastern Aegean. By setting into doubt the sovereignty of the Imia rocks Turkey seeks to overthrow the territorial status of the entire area.[54]

(7) The Lausanne Peace Treaty does not contain any lacunae. It is complete and flawless. Article 12 of the Treaty entitles Turkey to claim jurisdiction on only the three Islands mentioned. No island has been left untouched.[55]

(8) Greece relies on various Maps of the Imia islets to prove that it is within its sovereignty.[56] Furthermore, not only Greek and Turkish maps, but also official maps of other countries such as the United States, Great Britain, and Italy include the Imia rocks within Greek national territory.

This is further evidenced by other international agreements and maps of the immediate post World-War period, according to which this delimitation is officially recognised by Turkey as her frontier line with Greece. To mention just two, there is the map attached to the 1950 ICAO Regional Agreement adopted by the Council of the Organisation, and also the official Turkish map included in the 1953 edition of the Turkish Ministry of Foreign Affairs on Navigation through the Straits.

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[54] Statement of the Hellenic Ministry of (Foreign Affairs: Talking Points Concerning Unilateral Turkish Claims to the Imia Rocks. [http://gwis2.circ.gwu.edu/~stratos/Imia/greece/mfa.html].

[55] Écononmidès, C. P, "Les Ilots D'Imia Dans La Mer égée: Un Différend Créé Par La Forceé (1997) 2 **Extrait de la Revue Générale de Droit Internattional Public** 323-352. (Göçer, Mahmut (çev.)), "Bir Konu İki Görüş", (1998-1999) 2/2 **Kocaeli Üniversitesi Hukuk Fakültesi Dergisi** 601-632), p. 610.

[56] http://www.hri.org/news/special/imia.html: US Army Map (http://www.hri.org/docs/imia-hri/maps1/usarmy1-lw.jpg) and closeup (http://www.hri.org/docs/imia-hri/maps1/usarmy1.jpg). The Imia islets belong to Greece. Ref: US Army World Series, NJ-36, Hayden Library, MIT.

Turkish Map (the front of the map in 2 parts, the back of the map in 2 parts, and a close-up). The Imia islets belong to Greece. They are called "Kardak inset", in English, while the names of places belonging to Turkey are written in Turkish. Ref: Codex Culture Atlas, 1:300,000, Pusey Library, Harvard. (http://www.hri.org/docs/imia-hri/Tmap.html) Russian Map (the whole map in 4 partly overlapping parts (2x2), and a close-up). The Imia islets belong to Greece. Russian Caption [translation]: "Imia Islands" and under it in brackets, with smaller letters: "[Kardak Rocks]". Ref: Pusey Library, Harvard. (http://www.hri.org/docs/imia-hri/Rmap.html). German Map (the whole map in 12 partly overlapping parts (3x4), and a close-up). The Imia islets belong to Greece (Note: The Zucca islet is erroneously identified as turkish) Ref: Pusey Library, Harvard. (http://www.hri.org/docs/imia-hri/Gmap.html). Greek Map (http://www.hri.org/docs/imia-hri/maps1/gr1-lw.jpg) and closeup. (http://www.hri.org/docs/-imia-hri/maps1/gr1.jpg). The Imia islets belong to Greece. Only the places belonging to Greece are given names in the map. Ref: Pusey Library, Harvard. Another Greek Map (http://www.hri.org/docs/imia-hri/maps1/gr2-lw.jpg) and closeup. (http://www.hri.org/docs/imia-hri/maps1/gr2.jpg). The Imia islets belong to Greece. Only the places belonging to Greece are given names in the map. Ref: Pusey Library, Harvard.

3.3.3 The Turkish View

In reply to the above-cited Greek assertions, Turkey develops counter arguments.[57]

(1) The principal argument on which Turkey bases its claim is the assertion that the legal procedures of the Agreement of 4 December 1932 were not completed and that it was not registered with the Secretariat of the League of Nations (as required under Article 18 of the League of Nations Treaty).[58] The so-called December 'Protocol', as to the Turkish view, is not a treaty in the sense of the Vienna Convention on the Law of Treaties. Turkey sees it rather as a '*Procés Verbal*' which has not been signed by the plenipotentiaries of two countries, did not enter into force.[59]

Even though mutual communications were made to validate the Procés Verbal as a treaty between 4 January 1933 and 8 January 1937, the negotiations doomed to fail. Cession of territory cannot be made through a vague document.

(2) Turkey claims that the Imia rocks fall under Turkish sovereignty because Greece is not a signatory to the 1932 documents. Article 12 of the Lausanne Treaty determines the territorial status of the Aegean Sea, save the Dodecanese islands. It is Article 15 that regulates the status of the Dodecanese islands. The Treaty regimes that govern the Northern Islands and the Dodecanese differ considerably from one another. İnan & Başeren say that

"…the 3 mile principle is concerning the islands situated at the entrance of Çanakkale Strait and Eastern Sporade Islands in the Scope of Art. 12, not the Dodecanese Region arranged by Art. 15. Thus, the 3 mile criterion cannot be applied to the legal arrangement in Art. 15. So Greece cannot claim sovereignty over Kardak Rocks relying on their distance which is more than 3 miles from Anatolia"[60]

(3) Article 14 of the 1947 Paris Peace Treaty enumerates those islands to be transferred to Greek sovereignty one by one.[61] Kardak is not mentioned among these. The Kardak formations are not 'islets' but two rocks. If they had been regarded as

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[57] For a full treatment of the Kardak dispute see Pazarcı, H., "Différend Gréco-Turc Sur Le Statut De Certains Ilots et Rochers Dans La Mer Egéé", (1997) 2 **Extrait de la Revue Générale de Droit International Public** 353-378. [Prof. Pazarcı's reply to Prof. Économidès] (Göçer, Mahmut (trans.), "Bir Konu İki Görüş", (1998-1999) 2(2) **Kocaeli Üniversitesi Hukuk Fakültesi Dergisi** 632-656.]

[58] See for the full text of the 1932 Agreement and its accompanying *Proces Verbal* at [http://www.hol.gr/greece/events/imia/turkit.htm].

[59] İnan & Başeren, *infra,* pp. 5-6. See the accompanying text for further information.: Strati, A., "Postscript: Tension in the Aegean—The 'Imia' Incident", (1996) 9 **Leiden Journal of International Law** 122-128, 123.: See contrary view in Karambelas, *op.cit*.

[60] İnan & Başeren, *infra*, p.7.

[61] "1-Italy hereby cedes to Greece in full sovereignty the Dodacanese Islands indicated hereafter, namely Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Niyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), Cos (Kos) and Castellorizo, as well as the adjacent islets. 2-These islands shall be and shall remain demilitarized."

island, Turkey and Italy would have been in a quandary about their status and would not have concluded the 1932 Treaty.[62]

Any island or islet that is within 6 miles of the Turkish coast and which was not an island that was expressly named in either the Treaty of Lausanne of 1923 (Northern Islands) or the Treaty of Paris of 1947 (Dodecanese Islands) as an island over which Greece was granted sovereignty, remained under the Turkish sovereignty as the successor state to the Ottoman Empire.

Accordingly, only the 13 islands mentioned specifically were ceded to Greece by the 1947 Paris Treaty. The cession should be interpreted strictly. In reality, it was simply impossible to refer by name to every single island, islet, or rock, of which there are thousands in the Aegean. Article 16/1 of the Lausanne Treaty says that

"Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognised by the said Treaty, the future of these territories and islands ***being settled or to be settled*** *by the parties concerned"*. (emphasis added)

İnan & Başeren remark that no agreement has entered into force hitherto regarding the islands 'being settled or to be settled'.[63] Therefore "Turkish sovereignty over the Islands which have not been ceded to Greece or Italy continues to exist. The islands over which Turkey has renounced all rights and titles according to Article 16, were the ones which were ceded to Greece and Italy being explicitly mentioned by name and which were under the Greek occupation on the date 13 February 1914".[64]

Most recently, through a written statement in mid-March 1996, Turkey asserted that, in the case of the Aegean, it abides only by those international agreements that it itself considers valid, and then only by those that both it and Greece have signed.

With regard to the maps supporting Greek claims, there are other maps prepared by a number of states which are attached to İnan & Başeren's book that show that Kardak rocks are displayed under Turkish sovereignty. As Turkish sovereignty has never been questioned nationwide, Turkey needed no impulse to demonstrate its legitimate rights over the Rocks to the international community.[65]

(4) For decades, Turkish fishermen have engaged in fishing activities on and around these rocks without any hindrance and Turkish vessels have navigated freely through the waters surrounding them. This implies that the Greek Coast Guards recognised Turkish sovereignty.

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[62] Pazarcı, H., "Différend Gréco-Turc Sur Le Statut De Certains Ilots et Rochers Dans La Mer Egéé", (1997) 2 **Extrait de la Revue Générale de Droit International Public** 353-378. [Prof. Pazarcı's reply to Prof. Économidès] (Göçer, Mahmut (trans.), "Bir Konu İki Görüş", (1998-1999) 2/2 **Kocaeli Üniversitesi Hukuk Fakültesi Dergisi** 632-656), p. 639. Prof. Pazarcı exhaustively answers Greek claims in the article, see especially pp. 635-642.

[63] For further information, see İnan & Başeren, *infra,* p. 8.

[64] *ibid*.

[65] *ibid*., p. 10.

(5) Turkey has further asserted that Greece allegedly had doubts, at the time of the signing of the Paris Peace Treaty, concerning the validity of the 1932 agreements.

4 "*De Lege Ferenda*": Questing for Justice in the Aegean

In the preceding pages, the history and the legal arguments of two countries have been *briefly* touched upon. In this part, an attempt will be made to cast light on the other side of the dispute. At the rear side of the Aegean Sea dispute lies the question of the nature of international law. Greece quite often urges Turkey to accept the provisions of current international treaties and state practice coupled with *opinio juris;* both of which are in favour of Greece. Therefore, as can be seen from the arguments advanced by both parties, it is highly unlikely that their views will conform to each other in the foreseeable future. The impossibility of the confluence of their arguments lies in the fact that the present rules of international law do not offer definitive solutions in this case.

In search of finding an acceptable formulation, several concepts and issues should be revised. This section is devoted to analysis of six different issues.

4.1 The "Lawless" of the Sea Convention

It is well known that the Greek standpoint concerning the delimitation of territorial waters and continental shelf is based on the rules of international law as enunciated in the 1982 LOSC.[66] In many occasions, they have reiterated that delimitation must be either through agreement, or, in failure of agreement, through LOSC dispute resolution processes and must be made "*on the basis of international law* ... in order to achieve an equitable solution."[67]

However, to what extent is the LOSC a means to achieve equitable solution should be pondered over. Although the preamble of the LOSC states that "the achievement of these goals [e.g. peaceful uses of the seas] will contribute to the realization of a just and equitable international economic order", the rest of the provisions are far from providing for justice and equity.

Two decades passed after the conclusion of the LOSC at preparatory conferences, when one glances at the history of this Convention, one has to admit that it is far from ushering in justice to the oceans. Several examples will account for the fact that the 1982 Convention is a manifestation of a political compromise based on the lowest common denominators.

The creation of several provisions of the LOSC was a compromise between the North and the South. The developing world, most of which are African and Asian coastal states, insisted on the preservation their fish stocks. They therefore backed the exclusive economic zone concept. The US-led developed countries were keen on

[66] Tsilas, Loucas, "Greek-Turkish Relations in the Post-Cold War Era" (1997) 20(5) **Fordham International Law Journal** 1589-1605, p. 1595.

[67] Brilmayer, Lea & Klen, Natalie, "Land And Sea: Two Sovereignty Regimes in Search of or Common Denominator" (2001) 33 **New York Journal of International Law and Policy** 703 *et seq.*

exploiting hydrocarbon and oil resources in the seabed. As to the extension of the territorial seas, big coastal states gathered to advance their national interests. In the end, the LOSC could be seen as a political bargain or a 'package deal' between various blocs and ideologies of world nations. Hence, the outcome was far from satisfying the interests of mankind as a whole and the land-locked and geographically disadvantaged nations. Even though Turkey's the Aegean coasts exceed those of the Black Sea and the Mediterranean, yet Turkey should be categorised as a geographically disadvantaged nation in the Aegean due to poor drafting of the Convention.

For example, Pardo, an eminent figure in the LOSC history, despised the law of the sea as:

"I see nothing sacred in existing legal categories ... They were created haphazardly to meet in some way needs of coastal states that could no longer be adequately satisfied under existing international law – a law that is largely obsolescent and in part obsolete".[68]

In the UNCLOS conferences, there was a real chance that it could be possible to pool seabed resources including oil, an estimated 2,25 trillion barrels, for the service of mankind. Unfortunately, as years passed African, Asian and Latin American countries have joined the developed countries' stampede to divide the best part of the oceans' treasure in a *colonial style.*[69] In the end, the avarice of the some developed countries (mostly from OAU and ASEAN groups) evaporated the aims of the New International Economic Order.

The LOSC, as a whole, contrary to its preamble, was formulated in such a way as to widen the gap between the North and the South as a result of the unfair partition of the seas. Shortly, the present demarcation is 'confusing, irrational, even absurd',[70] and even, to a large extent, indefensible.[71]

While the aim of the new Treaty was to build a more progressive and equitable world order for the oceans, the result is paradoxical by bringing new and greater wealth to the rich nations of the North and very inequitable for the ones behind the NIEO slogans.[72] In the sense that more then 40 per cent of ocean space of the most valuable resources which are economically accessible are under the jurisdiction of coastal states through the proclamation of EEZs. The 200-mile EEZ, therefore, is inflexible and reflects the unstoppable tendency of coastal states whereby they claimed exclusive use over the living resources of the seas and nonliving resources of the continental shelf and margin up to a distance of 200 nautical miles.

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[68] (E. M. Borgese's introduction) Pardo's *Note Verbella* in "First Statement", Pardo, A., *Common Heritage: Selected Papers on Oceans and World Order:* 1967–1974, International Ocean Institute, Occasional Paper No. 3, Malta University Press, Malta (1975), pp. 1–43, p. iii

[69]Eckert, R.D., "U.S. Policy and the Law of the Sea Conference, 1969–1982: A Case Study of Multilateral Negotiations", in Baylis, J. & Renger, N.J., (eds.) *Dilemmas of World Politics*, Clarendon Press, Oxford, 1992, 181–203, p. 187.

[70]Borgese's introduction, *supra*, p. xiii.

[71]Stone, C., "Defending the Global Commons" in, Sands, P. (ed.), *Greening International Law*, Earthscan, London, 1993, 34–49, p. 48.

[72]Koh, T., "The International Seabed and the Third UN Law of the Sea Conference: Some NIEO Issues", in HOSSAIN, K. ed., *Legal Aspects of the New International Economic Order*, Frances Pinter, London,1980, 161–164, p. 160.

All known commercially exploitable hydrocarbon deposits, various minerals and most phosphoric nodule deposits, several manganese deposits, over 90 per cent of commercially exploited living resources of the sea and all known sites suitable for the production of energy from the sea are the exclusive property of coastal states.[73] The coastal states allowing the EEZ to be a part of the LOSC negotiations captured nearly 90 per cent of the oil which is easily accessible in the seabed. There are even recent attempts to control the remaining 10 per cent by way of presential sea claims or of extending exclusive national jurisdiction to the very end of the continental margin.[74]

Alas, some 25 states, according to Article 57 of Part V of the Convention obtained 76 per cent of the overall EEZs. With the establishment of the EEZ, an additional 35 per cent of the high seas went under national control entitling exclusive right of management of natural resources. Today the EEZ became the legal etiquette of irresponsible exploitation, or the theoretical masquerade of the freedom of the high seas threatening depletion of the living resources within the EEZ.[75] Of 25 states, 13 developed countries are entitled to control 46 per cent of the total EEZs and represent less than a quarter of the world population: The rest is comprised of developing countries having 28 per cent of the total area.[76] The present system, therefore, does not effectively protect the rights of some 90 the LLGDSs which are excluded from the areas where they used to enjoy the right of fishing.[77]

Given these facts, the Convention is inequitable and far from satisfying the needs not only of the LLGDSs but also of large numbers of coastal states themselves.[78] Only a few developing countries will make considerable gains of living and non-living resources from the Treaty, (namely the Latin Americans, New Zealand, Kiribati). This was contradictory to the basic philosophy of the NIEO.[79] In short, as Hossain rightly

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[73]Pardo, *supra*, pp. 19–20.

[74]cf. Zacher, M.W., & Mcconnell, J.G, "Down to the Sea with Stakes: The Evolving Law of the Sea and the Future of the Deep Seabed Regime" (1990), 21 **Ocean Development and International Law** 71–103.

[75]See Caminos, H., "Aspects of NIEO in the Third U.N. Conference on the Law of the Sea: Exclusive Economic Zone and the Continental Shelf", in Hossain, K. *supra*, 188–192, p. 188.: See Kolossovskiy, I.K., "Prospects for Universality of the UN Convention on the Law of the Sea" (1993) 17/1 **Marine Policy** 4–10, p. 5.

[76]Pardo, *supra*, p. 20.: i.e. the US, Russia, the UK, Japan, Norway, Canada, Australia.: See also BOCZEK, B.A., "Ideology and the Law of the Sea: The Challenge of the New International Economic Order" (1984) 7/1 **Boston College Int'l & Comp Law** 1–30.

[77]See Menefee, S.P., "The Oar of Odysseus: 'Land-Locked' and the 'Geographically Disadvantaged States' in Historical Perspective" (1992) 23/1 **California Western Int'l Law Journal** 1–66.

[78]The Developing Countries should not be generalized as the South, because the developing coastal nations joined a stampede to carve out mankind's common heritage that is reminiscent of the past's shameless colonialism under the banner of the NIEO but at the expense of the Land Locked and Geographically Disadvantaged States., cf. Zacher & Mcconnell, *supra*, p. 656.

[79]Koh, *supra*, p. 164.: Danzig says "The developing countries have joined a stampede to divide the best part of the ocean treasure *colonial style*... It is all sadly reminiscent of the way Africa was divided up among the European powers at the Berlin Conference of 1885.", , Danzig, A.,

remarks, "[n]ever in the whole history of mankind have such a small number of states gained so much: out of 34 million square miles covered by the EEZ, 13 million is shared by some ten countries".[80] By the early 1980s, the high seas had been reduced by more than 30 per cent as a result of the proclamation of exclusive zones and continental shelves which brought finally about a crack in Third World solidarity.[81]

Representatives of a number of the developing countries criticised the unfair distribution of sea resources soon after the opening to the signature of the Convention, grumbling that "some States [gained] too much and others little or nothing at all", or it is "unfortunate that the area known as the high sea is not included in the common heritage".[82] Even the Swiss delegate could not help saying

> "there was nothing in law or in equity to justify a distinction made between living and non-living resources... The proposed EEZ was designed to protect the national economic interests of all coastal States without distinction. The inequalities that would result from its creation as far as the land-locked and geographically disadvantaged states were concerned should be offset by granting such countries the right to benefit directly or indirectly from the economic zones of the region".[83]

Bulajic summarises the tragedy eloquently,

> "Indeed the international community has lost a golden opportunity to give effect through this Convention to the New International Economic Order… A more equitable sharing of the resources of the exclusive economic zones and continental shelf would have been a more effective means of bringing about the New International Economic Order".[84]

Shortly after the end of the UNCLOS III, Pardo opined meaningfully that Part XI of the Convention regulating "the international seabed area is little short of disaster".[85] Goldie remarks, among others, that "...a basic controversy in UNCLOS III arises from the direct confrontation of selfish mining interests against international distributive

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"A Funny Thing Happened to the Common Heritage on the Way to the Sea" (1975) 12 **San Diego Law Review** 655–664, p. 657.

[80]*ibid.*, The consequences of such partitioning are intolerable. For example, the Pitcairn Islands with 60 dwellers are entitled to claim to control over the resources of a maritime area several larger than the area that Germany with 80 million people can claim. The Republic of Kribati with a population of 55,000 people acquire an EEZ larger than the area which can be claimed by China with a population of 1,3 billion. The US, Canada, Japan, Norway, New Zealand gained enormous amount of EEZs; see Bulajic, M., "General Principles and the Charter of Economic Rights and Duties of States", in Hossain, (ed.), *supra*, 45–67, p. 52.

[81]The creation of the EEZ is a significant reduction in the size of the areas designated as the common heritage of mankind.

[82]Wairoba (Representative of Tanzania at UNCLOS), 26 January 1983, A/CONF. 62/PV.187, 82.

[83]2 *Official Records* (1974), p. 243. (quoted in Attard, D.J., *The Exclusive Economic Zone in International Law*, Clarendon Press, Oxford, 1987, p. 208).

[84]Tan (Representative of Singapore at UNCLOS), 26 January 1983, A/CONF. 62/PV.186, p. 31.

[85]Pardo, A., "The Convention on the Law of the Sea: A Preliminary Appraisal" (1983) 20 **San Diego Law Review** 489–503, p. 499.

justice...".[86] Oxman lucidly elucidates Goldie's remark:

> "When we talk about deep seabed mining, the discussion is about high principle, abstract philosophy, and justice and equity for the poor... When we move to fisheries, we hear no mention of starvation, no mention about environmental protection, no mention of maximum production to feed the world".[87]

In the LOSC, the world community gave away the easiest accessible and the most valuable resources found in the high seas, in the EEZs and the continental shelves, for the sake of hardly accessible and less profitable manganese nodules. *Ergo*, in the light of arbitrarily and politically defined borders, the regime of the oceans should be reconsidered from the beginning. From an international lawyer's perspective, what needs to be done is to re-question the coastal states' jurisdiction over the EEZ and continental shelf.[88] In this analysis, a key point to be born in mind, as the preamble of the LOSC proclaims, is that "the problems of ocean space are closely interrelated and need to be considered as a whole".

After these words, what can be said is that Greece cannot and should not take refuge in gibberish provisions of the LOSC which were devised with the conspiracy of some developing countries who sold out their fellows at the expense of little gain. Hence, politically speaking, Turkey should not subscribe to any resolution entailing that the delimitation of continental shelf should be resolved through the dispute resolution of the LOSC. Unless, "special circumstances" clause is widely accepted, Turkey should not adhere to any solution to be derived from the present provisions of the Convention.

4.2 A New Theory of Justice: Looking behind the Veil of Ignorance

The distribution of islands and natural resources of the Aegean Sea is contrary to justice: When we look at the picture every one would agree so. To put clearly, under the present 6 mile limit, Greek territorial sea comprises approximately 43.68% (81.964 km2) of the Aegean Sea. For Turkey the same percentage is 7.47% (14.017). The remaining 48.85% is the high seas. If the breadth of Greek territorial waters is extended to 12 miles, Greece will control 71.53% (134.224 km2), while Turkey's share would increase to only 8.76% percent. The high seas would diminish to 19.71 percent.

As far as the length of coasts of two countries is concerned, Turkey's coasts are 2.300 km long, whereas Greek coasts are 2.000 km long. The three Turkish islands have 2.800 km length, whereas 2648 islands have 9.900 km. Turkey has 66 million people, whereas Greece has 10 million. Turkey's growth of population rate is far more higher than that of Greece.

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[86]Goldie, L.F.E., "A Selection of Books Reflecting Perspectives in the Sea-Mining Debate II" (1982) 15 **International Lawyer** 445, p. 446.

[87]Oxman, B., Caron, D. & Buduri, C., *Law of the Sea: US Policy Dilemma*, Institute of Contemporary Studies, San Francisco, CA., 1983, p. 394.

[88]See Colson, D. (in Panel Discussion), in Van Dyke, J.M., ed., *Consensus or Cooperation: The US and the Law of the Sea Convention,* University of Hawaii, Honolulu, 1985, p. 389.

Turkey argues that the extension of Greek territorial waters beyond the 6 miles in the Aegean would have inequitable implications. The impact of such a Greek extension of its territorial waters would deprive Turkey from her basic right of access to high seas from her territorial waters.

As far as Greece is concerned, they are happy with this geographical lottery granted by politically-oriented clauses of the LOSC. They have no intention whatsoever to compromise. Their legal argument not only tells us the essence of the rules but also shows the way rules are manipulated in the relations of two countries. There is need to seek new approaches to old problems. The philosophy of international law is often played down in the discussion. However, by having recourse to philosophy, we could find a leeway to find a legal standpoint to hammer out this perennial issue.

The present positive international law offers no clear answer for delimiting maritime boundaries.[89] There comes a need to find a new theory justice. The theory of justice I shall entertain here belongs to John Rawls. He has marked the history of legal though with his seminal treatise: "*A Theory of Justice*".[90] In his shakiest work, Rawls developed several arguments (e.g. the difference principle, the just savings principle) to find true justice. He writes in Justice as Fairness (Chapter 1)

> "Justice is the first virtue of social institutions… laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust".[91]

In search of justice, Rawls develops 'the veil of ignorance argument'. As far as Rawls is concerned:

> "The idea of the original position is to set up a fair procedure so that any principles agreed to will be just…Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations. It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities… More then this I assume that the parties do not know the particular circumstances of their own society… The persons in the original position have no information as to which generation they belong… The parties are assumed to know whatever general facts affect the choice of the principles of justice…"[92]

The details of Rawls' veil of ignorance could be learnt either from his book or many articles written to expose his views. Here, I shall use his methodology in the case of the Aegean Sea. Let us suppose that a homogenous group of lawyers, politicians, geologists and generals are opted for from both sides. And, hypothetically speaking, they are put in a realm in which they do not know which country they belong to, which century they live, which occupation they are specialised in etc. Under the thick veil of ignorance, the

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[89] Charney, Jonathan I. & Alexander, Lewis M. (ed.), *Charting the Law of Maritime Boundaries: International Maritime Boundaries*, Martinus Nijhoff Publishers, Dordrecht, Boston, p. 205.

[90] Rawls, John, *A Theory of Justice*, Oxford University Press, 1973.

[91] Rawls, *ibid*., p. 3.

[92] Rawls, *ibid*., pp.137-138.

parties are made sit in a auditorium; a geographical map of the Aegean is displayed on the screen. They are asked to find a pure 'justice' that is acceptable by all and fair in the delimitation of territorial seas and the continental shelf.

They are said that there are two countries named T and G sharing a semi-closed sea whose populations 66 to 10 respectively. They are explained all the details of the case. They are required to delineate the A. Sea between the two nations. They are also told that after a decision is made, they could be sent to one of these countries to settle down for life-time. They are also said that they do not know their origin, nationality, religion, sect etc. They are supposed to be entirely impartial in delivering their verdict.

Now under these circumstances, not a single wo/man would draw such a demarcation line so as to favour one country so much so that the other will be disadvantaged significantly. They will definitely conclude such a formula that both countries will be in tandem with.

Unfortunately, presently it is impossible to draw Greek academics and politicians behind the veil of ignorance. They will keep speaking for the Greek national interests no matter how they are manifestly contrary to justice. Once they are freed from nationalist overtones, they will definitely see how unjust the position they are in. Yet, the judges of the ICJ are hoped that they will cast their decision by taking into account the arguments developed by Rawls. If they decide within that mentality, there is nothing to be feared of for Turkey to accept the jurisdiction of the Court.

4.3 Preserving the Lausanne Balance: Invoking 'the Rebus Sic Stantibus'?

The Aegean *status quo* formulated by the 1923 Lausanne Peace Treaty established a 'political balance' between Greece and Turkey by harmonising the vital interests of both countries including those in the Aegean.[93] While the plenipotentiaries convened to sign the Treaty in the summer of 1923, the continental shelf concept was not in the minds and sights of politicians. There were no conceptions of, among others, the exclusive economic zone, the archipelagic state, air defence identification zone and potential richness of the deep seabed etc. The Dodecanese Islands were never foreseen that one day they would belong to Greece. The parties never visualised that one day the avarice of coastal states would give way to the extension of territorial seas beyond six miles.

Hypothetically speaking, if the fathers of the Lausanne Treaty had been alive today, the Turkish delegate would have never and ever accepted delimitation just as done 80 years ago. Therefore, here the concept of *rebus sic stantibus* comes to the fore. According to Article 62(1) of the Vienna Convention on the Law of Treaties, "A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may be invoked as a ground for terminating or withdrawing from the treaty if the existence of those circumstances constituted an essential basis of the consent of the parties.

[93]Güvenç, Serhat, *Turkish-Greek Dispute and the Reflections on the EC: An Analysis in the Cold War Context, 1959-1990*, Marmara University, European Commission Institute, MA Thesis, İstanbul, 1995, pp. 13-38. Between pp. 15-26 Güvenç dwells upon the territorial balance established at the Lausanne and its aftermath: See also "Relations with Greece", [http://www.turkey.org/politics/p_rela08.htm] (17.08.2001).

However, Article 62(2) says that if the treaty establishes a boundary demarcation, these changes cannot be invoked as a ground for terminating the validity of a treaty.

Tentatively, one could argue that at the Lausanne meetings, the parties did not simply determine their borders but also they diligently set up a regime based not only on border issues but also on the status of minorities, the recognition of Turkey etc. If we accept that Turkey's termination or suspension of the Treaty, no matter how Turkey is right, cannot be invoked, one should yield to the fact that, Turkey, at the very least, should be of the right to demand that the provisions of the treaty should be read in good will and interpreted strictly by taking into the factors that gave way to the Treaty. Greece's extension of its territorial seas is blatantly against the *ratio legis* of the Lausanne Treaty. So is the case with the continental shelf. *Fait accompli* should not be ground for invoking such demands that are against the precepts of the Treaty.

Accordingly, the concessions of Turkey with regard to the Aegean should be interpreted from these spectra. The Lausanne Treaty is inherently and delicately balanced upon several presumptions. The spirit of the 1923 Treaty was to grant to coastal states limited areas of maritime jurisdiction and leave the remaining parts of the Aegean to the common benefit of Turkey and Greece. It is clear that if one of the littoral States unilaterally extends its jurisdiction in the Aegean and deprives the other coastal State from exercising its existing rights, it is no longer possible to speak of the Lausanne balance in the Aegean.[94]

Consequently, the bilateral Turco-Greek relationship in the Aegean has to base on the following principles: The Aegean is a common sea between Turkey and Greece. The freedoms of the high seas and of the superjacent air space should not be impaired. Any acquisition of new maritime areas should be based on mutual consent and should be fair and equitable. That the Greek perceive the entire Aegean as a Greek Lake in total disregard of Turkey's rights and interests as one of the coastal states is the main factor for the existence of the ongoing dispute. Turkish policy is constructed on respect for the maintenance of the *status quo* whereas Greece appears determined to alter it in its favour.[95]

4.4 Revisiting the Jurisdiction of the International Court of 'Justice'

Greece hinges on the *status quo* and holds that the delimitation of the continental shelf is the only existing dispute between Greece and Turkey. Therefore, Greece has proposed in many occasions ever since 1975 that the issue should be relegated to the International Court of Justice.[96] As Greece is confident that the Aegean issue is only a legal dispute and her claims accord with international law, Greece wholeheartedly supports the way to settlement of disputes through the judgement of the ICJ.[97]

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[94] [http://www.turkey.org/politics/p_rela08.htm] (17.08.2001).

[95] "Background Note on Aegean Dispute", [http://server4.syd.www.ozemail.net/-~turkembs/aegean.htm] (18.02.2001)

[96] http://www.mfa.gr/foreign/bilateral/relations.htm

[97] Tsilas, *supra,* p. 1595.

As for Turkey, the role and jurisdiction of the ICJ has become more important then ever before as the deadline 2004 is approaching. The cardinal argument of Turkey is that the question of delineation of the continental shelf should not be submitted to adjudication of the ICJ, as this case is not simply a matter of opting for either equity or equidistance (median line).[98] Even though the jurisdiction of the Court comprises all legal disputes provided states recognise its compulsory jurisdiction (Article 36(2) of the Statute of the Court), the Aegean dispute is not solely legal; it also covers political disputes dating back to the Lausanne Treaty.[99] Therefore, unless parties agree to *ex aequo et bono* (Article 38(2)) adjudication of the dispute, the application of equitable principles will be based on 'purely subjective appreciations'.[100]

As the ICJ confessed in *the South West Africa* case, the ICJ is not a legislative organ. Its duty is not to make law, but to apply law as far as it finds".[101] I tend to agree that "the Court is a prisoner of the insufficiencies of international law,"[102] hence it should not be vested in the power to choose the limited alternatives offered by positive international law.[103]

Despite its timid attitude in some cases, it is well known that in some other cases, the Court ventured to go beyond the boundaries of law and acted as a law-maker.[104] So the ICJ oscillates between legal positivism and judicial activism. Polat believes that the ICJ's judicial activism roots in the fact that in cases where there is no risk of disheartening the international community or there is no any risk of creating a political backslide, the ICJ, just as national courts, bravely devises specific results for hard cases. The difficulty lies in the fact that where there are political overtones, the ICJ reverts back to its original position and confines itself within the moulds of legal positivism. The Court's timid attitude in contentious cases is a warning for Turkey that in the

[98] See for the meaning of the equitable principles in Duran, supra note 000, 96-102.

[99] See Dursun for the examination of the the settlement of the disputes through peaceful means, Dursun, *supra*, pp. 104-109.

[100] Strati, A., "Greece and the Law of the Sea: A Greek Perspective", in Gerolymatos, A, Iatrides, J.O. & Chircop, A. (eds.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000, 89-102, p. 96.

[101] South West Africa (Second Phase), ICJ Reports, 1966, p. 48 (Polat, *infra,* p.131).

[102] Chemillier-Gendreau, Monique, "Law, politics and the International Court", (September 1997) 9(3) **Peace Review** 345-349, p. 348.

[103] İnan says that Turkey recognised the jursidiction of the Court between 1947-1972, during which 4 times the recognition was extended for five years. Ever since than Turkey has not renewed its consent to be bound by the jurisdiction of the Court, see in İnan, Yüksel, *Uluslararası Adalet Divanı'nın Yargı Yetkisi*, Ankara İktisadi Ticari İlimler Akademisi, Yay. No. 171, 1982, p. 10.

[104] See Reparation for Injuries Suffered in the Service of UN, ICJ Reports, 1949, p. 174: Reservations to the Convention on Genocide, the ICJ Reports, 1951, p.15, Anglo-Norwegian Fisheries Case, ICJ Reports, 1951, p. 116.

Aegean Dispute the ICJ is likely to uphold the present rules of international law and judge in favour of Greece.[105]

Another important aspect in relation to questioning the ability of the ICJ to decide in the Aegean case is that the Court is feared to be party in the dispute. There is no guarantee that the Court would remain always as a court of 'justice'. The judges who are in front of the veil of ignorance could be under the influence of several factors such as nationality, the interests of the international society or even religion. Toluner, for example, is critical of the Advisory Opinion of the PICJ in Mosul case where Turkey and UK were at odds with each other in 1925. Linderwoodroseward also criticizes the ICJ of taking into account national interest in the cases it dealt with.[106] Kuijer, too, insinuates that the voting behaviour of judges *ad hoc* is influenced by national bias at the International Court of Justice.[107]

Therefore, the Aegean Sea, embroidered with thousands islands, is a difficult case for the Court both geographically and politically speaking. The possible judgement of the Court cannot be prophesied beforehand; it is the legal vulnerability that should make every to be sceptical. In cases where there is no established practice and consistent case law, conferring jurisdiction upon the Court could be of rather irreversible consequences.

When we have a look at the case law of the Court,[108] inconsistent jurisprudence substantiates this conviction. "Equidistance has been largely spurned in judicial proceedings because it is the hard cases that end up in litigation, and in the hard cases pure equidistance will seldom, if ever, produce an equitable result."[109] In 1984 the ICJ rejected median line (equidistance) delimitation as an exclusive method, in the *Gulf of Maine* case between Canada and US.[110] In the *Tunisia v. Libya* case of 1982, Tunisia's

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[105] Polat, Necati, "Uluslararası Hukukta Normatif İçerik Sorunu: Ege Uyuşmazlığı Örneği", in *Ahlak, Siyaset, Şiddet: Bir Kuram Olarak Uluslararası Hukuk*, Kızılelma Yayıncılık, İstanbul, 1999, 127-153, p. 131.

[106] Linderwoodroseward, Wall, *The Influence of National Interests and International Justice in the International Court of Justice: An Analysis of the Voting Practices of the Judges of ICJ or Cases before the Court from 1947-1955, with Special Respect to the Interests of Their Respective National Interests*, Unpublished Ph.D. Thesis, Chicago University, 1956.

[107] Kuijer, Martin, "Voting Behaviour and National Bias in the European Court of Human Rights and the International Court of Justice" (1997) 10(1) **Leiden Journal of International Law** 49-67. Where the author says "The independence and impartiality of the Bench is a *condition sine qua non* for the success of every court". P. 67.

[108] See Tokat, Bikiz Ayşem, *The Contribution of the International Court of Justice to the Continental Shelf Dispute in the Mediterranean Sea*, M.A. Thesis, Bilkent University, Ankara, 1999. Tokat explains all cases in her thesis, and treats specifically the continental shelf dispute between Turkey and Greece at pp. 54-75.

[109] Charney, Jonathan I. & Alexander, Lewis M. (ed.), *Charting the Law of Maritime Boundaries: International Maritime Boundaries*, Martinus Nijhoff Publishers, Dordrecht, Boston, p. 205.

[110] See for a comparison of the case with reference to the Aegean, Mark B. Feldman, "International Maritime Boundary Delimitation: Law and Practice from the Gulf of Maine to the Aegean Sea", in Taşhan, Seyfi (ed.), *Aegean Issues: ...*, Foreign Policy Institute, Ankara, 1995. See also VanderZwaag, D., "The Gulf of Maine Boundary Dispute and Transboundary Management Challenges: Lessons for the Aegean?" in Gerolymatos, A, Iatrides, J.O. &

Kerkennah Islands were given half effect in delimiting the continental shelf between the two states. To determine half effect, two median lines were drawn, one between the coasts without regard to islands and one between the island's baseline and that of the opposing coast. A demarcation line is then drawn set along the midpoint between the two. In the 1985 *Libya-Malta Continental Shelf c*ase, the ICJ ruled that equitable principles required that the tiny uninhabited island of Filfa (belonging to Malta, 3 miles south of the main island) should not be taken into account at all in delimiting the boundary between the two countries). The ICJ recognized special circumstances where islands could not have their own continental shelves. This continued in *the 1977 Anglo-French Continental Shelf* case, in which the Court enclaved the Channel Islands of Britain which lie close to France's coastline. In effect, while recognising the sovereignty and the territorial waters of those islands, the ICJ ruled that they do not have their own continental shelf because they lie too close to the French coastline and too far from that of Great Britain.[111]

Given the contradictory views of the ICJ in the continental shelf cases, and "[t]he uncertainty of the 'equitable' approach, at least compared with the equidistance rule, has led some jurists to question whether there is any longer any law on this matter; and it must be conceded that, given the uniqueness of each delimitation, the view that delimitation is entirely a matter of discretion in the circumstances of each case is a plausible one".[112] As in the case of the delimitation of the continental, the law is unclear given the uniqueness of each delimitation, the Court cannot be relied on hard cases, since it will be at the entire discretion of the judges to decide either way.

4.5 The EU Factor

With the Greek Accession to the EC, the Aegean Sea dispute has had a new façade.[113] At least in three aspects, the Aegean dispute is to do with the European Union. First of all, the European Community ratified the Law of the Sea Convention as the 124th Party on 1 April 1998. This is to mean that the Convention is now a part of Community law. If Turkey really wants to enter into the Union, one way another she has to take this factor into account. With the understanding of total disregard of Community policies, a member country is likely to have an uneasy relationship with the Community organs.

Secondly, in political terms, ever since the beginning of the 1980s, the European Community has taken part in the dispute. Before that time, its engagement in the dispute was declaratory and lacked political will to transcend cliché statements.[114] On 7 September 1980, shortly before the Military Coup, the European Commission proposed the Council that a new regulation be prepared concerning the territorial borders of the Customs Union. When the Council applied for the European Parliament, the EC

Chircop, A. (eds.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000, 118-133.

[111] Clapsis, *supra.*

[112] Churchill, R.R. and Lowe, A.W., *The Law of the Sea*, Manchester University Press, 2nd ed., 1988, pp. 158-159.

[113] See The Impact on Turkey's Relations with the EC upon the accession of Greece, in Güvenç, *supra*, pp. 95-136.

[114] Aydın, *supra*, p. 127.

Parliament commissioned M.M. Fourcade as a reporter. In 1981, the European Parliament adopted, unanimously a non-binding resolution, known as the Fourcade Report. The 62, 63 and 65th paragraphs of the Report, declare the Greek islands as constituent and integral parts (or incidents) of Greek mainland. The report confers territorial sea, exclusive economic zone and continental shelf on these islands and suggests that Greek islets should have continental shelf demarcated on the basis of the equidistance principle.[115] This partial and non-legal document shows that the EU organs dare to cast their verdicts on this delicate issue without taking into account the legal niceties of the problem.

The European Parliament, on 15 February 1996, adopted a resolution titled "On the Provocative Actions and Contestation of Sovereign Rights by Turkey against a Member State of the Union" by an overwhelming 342 to 21 majority. In that Resolution, the Parliament found that "the islet of Imia belongs to the Dodecanese group of islands" pursuant to the 1923, 1932 and 1947 treaties. The Parliament also condemned "the dangerous violation by Turkey of sovereign rights of Greece" and called on Turkey to comply "with international treaties" and to abstain from non-peaceful actions or threats of such actions.

It should be noted that the Parliament, a few months earlier, had ratified the Customs Union decision between Turkey and the EU. It should further be noted that the Common Position of the Council, set out at the EU-Turkey Association Council meeting of 6 March 1995, stated that it was "of paramount importance to encourage good neighbourly relations between Turkey and its neighbouring Member States of the EU". The Parliament, in its 16 February 1996 resolution, emphasised that "these privileged relations between the Union and Turkey should automatically preclude any military aggression."

Greece reiterates in many occasions that after its EU membership as from 1981, this dispute is not an issue of 10 million, but 300 million. In the Kardak dispute, Greece asked the European Union to condemn Turkey for defending its rights on Kardak as well as in the Aegean, by imploring the European Union to take Greece's side in fulfilling its claims under the guise of "EU solidarity". [116] Today, Greece advocate the view that the outer boundaries of the EU start from the Greek boundaries and it is the duty of the EU to defend this borders.[117]

On 26 February 1996, the Italian Presidency of the European Union issued the summary of discussions that took place that day among the EU's fifteen Foreign Ministers on the issue of Kardak. In that announcement the Presidency, among other things, emphasised that "territorial disputes must be resolved only through recourse to law, that is to say, by the International Court of Justice." It is therefore apparent that

[115] Toluner, *supra*, 2000, p. 4.

[116] Kandemir, Nuzhet, "International Security in the Post-Cold War Era: Can International Law Truly Affect Global Political and Economic Stability? Turkey-Greece Relations" 19 **Fordham Int'l Law Journal** 1851-56, 1853.

[117] Cin, Turgay, *Türkiye ve Yunanistan Bakımından Ege'de Kara Suları Sorunu*, Doktora Tezi, Dokuz Eylül Üniversitesi, 1996 (Published by Seçkin Yay., Ankara, 2000, p. 121.)

Turkey's road to full membership entails specific undertakings on her part and should accept the jurisdiction of the ICJ for the settlement of disputes.[118]

The third aspect of the EU involvement is that supposing that Turkey was accepted to the EU, in this case, Turkey and Greece would have to abide by the provisions of Common Fisheries Policy and Common Transport Policy. To put it more clearly, Article 3(f) of the EC Treaty provides that the activities of the Community shall include a common policy in the sphere of transport. Community action in the sphere of transport, including maritime transport, must observe the fundamental Community principles of nondiscrimination on the basis of nationality, the freedom to provide services and EC competition rules.[119]

EC Treaty provisions that bear directly on the Community power to regulate maritime transport come from two major sources. The relevant general EC Treaty provisions concerning maritime transport include the principle of non-discrimination on the basis of nationality, the freedom to provide services and competition rules. The specific acts dealing with maritime transport derive from Article 84(2) of Title IV on transport. The ECJ's decisions are thus applied to the principles of non-discrimination and free movement of workers, Articles 48 through 51, to maritime transport.[120]

All in all, the EU membership entails that Member States accepting Community legislation readily. Neither Turkey nor Greece is to be condoned to pursue policies that will harm Community legislation.

4.6 From Confrontation to Cooperation: Is 'Joint Development' Viable

Not only for 'Communitarian' reasons but also for practical reasons, the future of the Aegean dispute should be different from its past: Both countries make the highest military purchase and have impressive military equipment inventories.[121] For example, Greece spends $3 billion on military defence, mostly in the Aegean, the most per capita of any NATO member.[122] Greece's defence expenditure has risen from $US5.3bn to US$5.5bn between 1988 and 1997.[123] Greece is engaged in a five-year, $8 billion upgrade of its defence forces.[124] By the year 2005, Greek tax payers accepted 25 billion

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[118] http://www.mfa.gr/foreign/bilateral/relations.htm (ATHENS, DECEMBER 15 1999.)

[119] Petrova, Rossina, "Cabotage and the European Community Common Maritime Policy: Moving Towards Free Provision of Services in Maritime Transport" (1998) 21 **Fordham International Law Journal** 1019, p. 1047.

[120] *Ibid.*, p. 1052.

[121] See for military doctrines of the two countries in Gerolymatos, A., "The Military Balance of Power Between Greece and Turkey: Tactical and Strategic Objectives", in Gerolymatos, A, Iatrides; J.O. & Chircop, A. (eds.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000, 47-60, pp. 53-58.

[122] Kurop, Marcia Christoff, *Greece and Turkey*, (1998) 77(1) **Foreign Affairs** 7-13.

[123] Matthews, R., "Greek-Turkish Tensions Fuel Defence Industrialisation", (1999) **RUSI Journal** 52-58, p. 53.

[124] *ibid.*,

dollars to be channelled to arm to defend the Aegean. Similar accounts can also be given for Turkey.

But this can no longer be maintained. Both countries spent billions of dollars for something in return of which would not accrue too much money in the long run. Recently, the Greek governments had to accept that military expenditures are a great burden. Hence, Greece put off buying the Eurofighters by 2004 in order to spend money on social issues.[125] They believe that abstaining from cooperation should be looked on as a sin. Priority should be given to cooperation rather than confrontation.[126] It is the mood of mutual cooperation that will allow for arms reductions in two countries which spend an average of 4.8% of their Gross National Products on military expenditures, compared with 2.8% for the rest of the world.[127]

What could be done is to sign an agreement that will put off legal disputes for sometime. There are many promising examples. For instance, Antarctica is a good example where seven nations claim sovereignty. Article 4 of the Antarctic Treaty has frozen territorial disputes in Antarctica in 1959. Ever since than parties to the Antarctic Treaty seek ways as to how Antarctic resources could be best utilised. To this end, they prepared the Convention on the Regulation of Antarctic Mineral Resources Activities. It did not enter into force due to environmental reasons. Instead, a Protocol was added to the Antarctic Treaty on the Protection on Environmental Protection banning mineral exploitation for 50 years. This shows that more than 40 Antarctic Treaty Consultative Parties could develop a regime that will govern one of the most contentious areas in the world.

Similar experience could be emulated in the Aegean as well. The Parties should cease to further their legal arguments for, say, 20 years until the case law of the ICJ is crystallised. In the meantime, they may sign agreements to undertake joint venture activities. Instead of spending billions of dollars for arms trade, they may channel this money for the exploration and exploitation of resources in the undisputed regions. Tokat also shares the same view and support with the following words:

> "Joint development is the most logical solution to such disputes, because it allows the parties to postpone the final decision on how to draw the boundary. It provides the opportunity for exploration of the resources for the benefit of the population of the parties concerned".[128]

In the light of the impasse begotten by the 1976 Bern Agreement, joint development projects in the Aegean is likely to provide a flexible solution for the exploration of hydrocarbon resources until all legal disputes are finally ironed out.[129] Katsepontes writes that

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[125] Kırbaki, Yorgo, 'Kıbrıs'ta Asker Olmasın', [http://www.radikal.com.tr/2001/04/03/-dis/01kib.shtml].

[126] *Ibid.*

[127] Calipsis, *supra.*

[128] Tokat, *supra.*, p. 86.

[129] Katsepontes, N.P., "Prospects for Joint Resource Development: The Case of the Aegean Sea", in Gerolymatos, A, Iatrides; JO & Chircop, A (ed.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000, 159-187, p. 168.

> "The rationale for joint development is based on an understanding that Greece and Turkey will share the economic benefits and accompanying costs in exchange for achieving the development of a resource which would otherwise remain undeveloped given the status quo… Greece would have to compromise its position that application of the international law of the sea should govern all entitlements in the Aegean. Turkey would have to recognize the principle that equity and dividing the Aegean in half would not replace the existing international system of determining maritime boundaries".[130]

There are a plethora of continental shelf boundary delimitation agreements around the world to be studied over and applied to the Aegean Case.[131] There are many agreements entertaining transboundary or international utilisation of such deposits.[132] The primary example is the United Kingdom and Norway Agreement of 1965. According to this, if a single petroleum field was found to extend across the dividing line in such a way that the field was exploitable from either side of the dividing line, the two states agreed to try to decide on how the field could be most effectively exploited and how to apportion the proceeds. In line with this provision, the United Kingdom and Norway subsequently entered into an agreement to jointly develop the Frigg (Gas) Field Reservoir as a single unit and to apportion the proceeds from the exploitation between them.[133] Ong, in his article on Joint Development of Common Offshore Oil and Gas Deposits, elaborates the topic very clearly. Ong bases his analysis on the three basic models, which are conceptualised in terms of the sophistication of their cooperative arrangements from the simplest to the most complex, are described below. (The following explanation has been borrowed from his article with slight changes).[134]

(1) The first model requires that one state manages the development of the deposits located in a disputed area on behalf of both states. The other state shares in the proceeds from the exploitation after the first state's costs are deducted. (e.g. the 1958 Saudi Arabia-Bahrain and the 1969 Abu Dhabi-Qatar Agreements, the 1989 Australia-Indonesia Timor Gap Treaty).[135]

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[130] *Ibid.*, p. 168-169.

[131] Khan cites many examples. See Khan, J.A., *The International Law of Joint Resource Development: With Special Reference to its Functional Role in the Management and Resolution of Transboundary Resources*, Unpublished Ph.D. Thesis, Tufts University, 1993, pp. 212-440.

[132] E.g. the Malaysia-Thailand, Malaysia-Vietnam and Indonesia-Australia agreements on the South China Sea and the Timor Sea. among the Persian Gulf states, the United Kingdom-Norway and United Kingdom-Netherlands transboundary utilisation agreements also concern a semi-enclosed sea, namely, the North Sea., in Ong, David M. "Joint Development of Common Offshore Oil and Gas Deposits: "Mere" State Practice or Customary International Law?" (1999) 93 **American Journal of International Law** 771-804, p. 773.

[133] *Ibid.*

[134] *Ibid.*

[135] "The 1958 Agreement divided a disputed area of continental shelf in the Persian Gulf between the two parties. It simultaneously provided for the equal sharing of the net income derived from the exploitation of the Fashtu bu Saafa Hexagon, an area lying on the Saudi side of the delimited continental shelf boundary. The division of net revenues was made on the understanding that it would not infringe Saudi rights of "sovereignty" and administration over the designated area. This simple arrangement did not provide for, or even acknowledge, the rights of Bahrain, except for its entitlement to half of the net revenues from the designated area.

(2) The second model is comprised of an agreement devising a system of compulsory joint ventures between the interested states and their national or other nominated oil companies in designated joint development zones. (e.g. the 1974 Agreement between Japan and the Republic of (South) Korea, the 1974 Convention in the Bay of Biscay between France and Spain, and the 1992 Memorandum of Understanding between Malaysia and Vietnam and the Colombia-Jamaica Treaty of 1993, the 1995 Joint Declaration by Argentina and the United Kingdom on the Falkland Islands, the Aden Agreement of 1988).[136]

The 1969 Agreement provides that both Abu Dhabi and Qatar shall have equal rights of ownership over a single oil field, the Hagl El Bundug, even though the delimitation places most of the field within the maritime jurisdiction of Qatar. The field is developed by the Abu Dhabi Marine Areas Co. in accordance with the terms of the concession granted to it by the ruler of Abu Dhabi, with all revenues, profits and benefits divided equally between the two Governments. The 1989 Australia-Indonesia Timor Gap Treaty affords another example of this type of joint development in respect of areas *B* and *C* of the zone of cooperation; each state unilaterally administers the area of the zone adjacent to its territory and pays 10 percent of any revenues to the other", Ong, *supra,* p. 789.

[136] "The 1974 Agreement provides for exploration and exploitation in a defined joint development zone, to be carried out in further divided subzones by entities nominated by both states under a joint operating agreement that, in turn, gives a single entity exclusive operational control over the relevant subzone. Strategic control of hydrocarbon development in the joint zone is retained by the two states by requiring that both of them approve the joint operating agreements… A similar example of this type of joint development agreement is the 1974 Convention in the Bay of Biscay between France and Spain, The delineated *zone speciale* is divided into French and Spanish sectors, and sovereign rights and jurisdiction are similarly divided. The nominated licensees of either party applying to explore the zone are encouraged to enter into joint ventures with the nominee of the other party on an equal basis, financing the operations in proportion to their shares…

Under the 1992 Memorandum of Understanding between Malaysia and Vietnam, the parties agreed to nominate their respective national oil companies, Petronas (Malaysia) and Petrovietnam (Vietnam), to undertake the exploration and exploitation of petroleum within the defined area of overlapping continental shelf claims. Both parties also agreed to urge their national oil companies to conclude a commercial agreement on the exploration and exploitation of petroleum in the defined area…

The Colombia-Jamaica Treaty of 1993 establishes a zone in which the parties exercise joint management and control over the exploration and exploitation of the living and nonliving resources. In particular, activities related to the development of nonliving resources, marine scientific research and marine environmental protection are to be carried out on a joint basis agreed by both states…

The 1995 Joint Declaration by Argentina and the United Kingdom provides for a similar, facilitative Joint Commission. It is charged with submitting recommendations to the two governments on marine environmental protection, as well as the promotion, development and coordination of the hydrocarbon regime, both within the designated special area(s) of cooperation and beyond. The coordination of the exploration and exploitation activities is assigned to a subcommittee of the commission…

A different version of this type of joint development agreement is the Kuwait-Saudi Arabia Agreement concluded in 1965, which, inter alia, provides for the exercise of joint and equal rights in the exploitation of the natural resources in the adjacent offshore area of the partitioned neutral zone. Each state entered into a separate and different concession agreement with the

(3) The third joint development model entails a much higher level of cooperation than the first two models. This model consists of an agreement by the interested states to establish an international joint authority or commission with legal personality, licensing and regulatory powers, and a comprehensive mandate to manage the development of the designated zone on these states' behalf. (e.g. The Sudan-Saudi Arabia Agreement of 1974, the Japan-South Korea of 1974, the 1995 Argentina-United Kingdom agreement, the Malaysia-Thailand Joint Development Agreements of 1979-1990, and the 1989 Timor Gap Zone of Co-operation Treaty between Australia and Indonesia. The Guinea-Bissau-Senegal Agreement of 1993 and its 1995 Protocol constitute further evidence of the continuing popularity of this joint development model, despite the additional administrative burden its institutions impose on the parties.

Although there is not yet a rule of customary international law requiring cooperation specifically with a view toward joint development or transboundary unitization of a common hydrocarbon deposit, as the essential element of *opinio juris* remains indiscernible, there is a general principle of cooperation enjoining joint development as an effective alternative to legal stalemate, even if its normative content is not solidified enough.[137] Should Turkey and Greece agree, the peaceful completion of maritime boundary delimitation will play a significant role in pacifying tension and providing peace and security in the region.[138]

The crux of such agreement should be premised upon avoiding making references to entitlement over the resources. Should sovereignty issue be warded off, joint development could be made possible e.g. with four possible alternatives,: (1) Turkey and Greece would establish a supranational oil company, (2) One of the two states undertakes the exploration and exploitation activities on behalf of both in pursuit of sharing profits, (3) Both countries preserve their claims in the region, but also facilitate the development of mineral resources through joint title, (4) Both countries may develop a co-tenancy arrangement which recognise a claim of some type of sovereignty over all or part of the Aegean.[139]

Last but not least, joint management could also be applied to common fishery resources without undermining the status quo of the Aegean Sea.[140] A joint fisheries

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same company in respect of its undivided 50 percent interest in the resources of the zone, and each state has an equal number of representatives on the board of directors of the company. Each state is therefore entitled to 50 percent of the net revenues of the other state from its concession. Yet another variation of this model is the Yemeni example. The so-called Aden Agreement of 1988 provides for joint investment in the development of hydrocarbon resources of the common region along the ill-defined boundary in the east-central/west-central parts of what was then the parties' territories. Under the Agreement, a jointly created and owned corporation was granted the rights to develop oil and minerals in the common region.", Ong, p. 789-791.

[137] *Ibid.,* p. 791

[138] Tokat, *supra,*

[139] Katsepontes, *supra,* p. 172-173.: See for detailed information as to how such joint resource could be operationalised in a legislative framework see *ibid.*, 174 *et seq.*

[140] Della Mea, C. M., "Fisheries Issues in the Aegean Sea" in Gerolymatos, A, Iatrides; J.O. & Chircop, A (ed.), *The Aegean Sea after the Cold War: Security and Law of the Sea Issues*, Macmillan, Basingstoke, 2000, 152- 158, p.157.

management system in the Aegean will relieve tension, minimise the political clash and lead the way to sustainable management of the region for the generations to come. This would also conform to the principles of the EU's common fisheries policies and the provisions of the Law of the Sea Convention (Article 74(3) and 83(3)).

4.7 'The End of History' or 'Clash of Civilizations'

As Aydın rightly says "[c]ooperation is very easy and tempting to advocate, but difficult to realise in Turkish-Greek relations".[141] If history, as Fukuyama[142] asserts, is to end with the victory of liberalism and free market economy, it is highly likely that two foes will agree on a joint resource development as described above. If, however, Fukuyama were to be wrong and Huntington[143] be right, then the Aegean dilemma is likely to survive the decades to come. The clash of civilisations emerging out of the innate differences in the national tissue of two countries may prolong peaceful dispute settlement mechanism.

When looked at the Greek aggressive attitudes, one makes out physiological mood of the Greeks. As their dominance in the Aegean is so blatantly unfair, they are afraid of losing this advantage one day.[144] To maintain the present status quo, they pursue very active and aggressive policy. For example, Loucas Tsilas, Ambassador of Greece to the United States, undiplomatically accuses Turkey of being 'provocative' 'expansionist', 'revisionist'.[145] The Greek Foreign Ministry also uses very strong language and claims that Turkey "aggressively contesting Greek sovereignty", "the Turkish State systematically ignores fundamental provisions of International Law and existing international treaties", "Turkey has disputed Greek sovereignty over a number of islands in the Eastern Aegean Sea", "Turkey invaded the Greek Island of Imia",[146] "Chronology of Main Turkish Hostile Actions and Arbitrary Claims Against Greece 1955-1996".[147] Greece is conducting a propaganda mechanism and lobbies constantly against Turkey. While she tries to have Turkey recognised as an expansionist country, she also tries to establish "imaginary" states like the "Pontus Greek Republic" and incites the Armenians and the Kurds to snatch away territory from Turkey.[148]

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[141] Aydın, *supra*, p. 113.

[142] Fukuyama, F., *The End of History and the Last Man*, Hamish Hamilton, London, 1992.

[143] Huntington, S.P., "The Clash of Civilizations?" (1993) 72/3 **Foreign Affairs** 22–49.

[144] "When Greece gained her independence in 1832, her territory did not exceed the 47.516 sq. kms that had been carved out of the Ottoman Empire. Today, her territory covers 131.990 sq. kms. All these lands were almost completely seized through diplomatic intrigue without shedding one drop of Greek blood", in, "The Turkish Dossier", *"The Aegean Problem" in Turkish-Greek Relations*, International Affairs Agency (INAF), [http://www.inaf.gen.tr/-english/books/book02/contents.htm].

[145] Tsilas, *supra.*

[146] [http://www.mfa.gr/foreign/bilateral/relations.htm], Hellenic Ministry of Foreign Affairs, 15 December 1999

[147] *Ibid.*

[148] Greek expansionism could be found at the following sources, "The Turkish Dossier", *supra:* "Türk-Yunan Diplomasi Tarihi: 1832-1996", [http://www.inaf.gen.tr/turkish/arastir/aras02.htm]

As for Turkey, "Turkey is not as preoccupied by Greece as Greece by Turkey… the feud with Greece is peripheral to Turkey's main concerns".[149] Turkey wants to be a part of Europe and knows very well that this could only be achieved through cooperation. To this end, Turkey does not highlight Greek attempts to back up terrorist activities in Southern Turkey, does find acceptable formulas for Cyprus and does not make too much pressure for the human rights abuses against Turkish minorities in the Western Terrace. Within the wake of this route, on 24 March 1996, the Turkish Government launched an all-encompassing new initiative concerning Turkish-Greek relations. This new initiative has four basic and distinct dimensions:

- It does not exclude any mechanism for a peaceful solution for the existing problems in the Aegean. It foresees a comprehensive and peaceful resolution process.
- It proposes a political framework to this end. This can be achieved in the form of a Political Document or Declaration to be finalized by the two countries or through an Agreement of Friendship and Cooperation.
- It also puts forward a security framework to be realized by swift agreement between the two countries on a comprehensive set of Confidence Building Measures related to military activities.
- Finally, this initiative lays the ground for a code of conduct to be abided by the two sides, so that both Turkey and Greece avoid unilateral steps and actions that could increase tension, once the process of peaceful settlement is under way.[150]

There are various factors that will prevent the clash of the two countries. First of all, the Law of the Sea Convention, an ill-equipped treaty to provide legal solutions to the Aegean questions, is against the interests of other states: Russia, Ukraine, Bulgaria and Romania will object to any solution that will threaten their national interest in the region in terms of maritime trafficking and commercial air traffic between Europe and Asia.[151] They would object to any imbalance that will threaten their national interest.

The United States has also vital interests in the area in terms of freedom of navigation, the survival of NATO, international trade, and the availability of basing to support out of area operations.[152] The US has serious objections in relation to the changing of the Aegean balance. To preserve any conflict, the United States, unilaterally and under the aegis of NATO, has the power to entice the parties to the negotiating table.

Finally, in cases when the Turkish military reacts to a Greek extension of territorial waters, it is proposed that the United Nations be called in to suspend all jurisdiction

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[149] Aydın, *supra*, p.135.

[150] "Background Note on Aegean Dispute", [http://server4.syd.www.ozemail.net-/~turkembs/aegean.htm] (18.02.2001)

[151] In March 1997, the U.S. Naval Institute, a private, non-profit group focusing on American naval interests, published an analysis of Greek-Turkish tensions entitled "The Aegean Sea: A Crisis Waiting to Happen." In Sitilides, John, "Dividing the Aegean Sea: A Plan in Progress?", [http://www.hri.org/forum/intpol/sitil.html] or [http://www.mjourney.com/news/national/-divide01.htm] (written on 19 May 1997) (downloaded on 26 August 2001).

[152] Schmitt, *supra*, p.55.

claims in the Aegean and bring the region under the international body's authority. A UN naval peacekeeping force would occupy the Aegean Sea to ensure safe international air and sea passage, while the Security Council would advance a Greek-Turkish treaty permitting 'a creative division of the continental shelf.' [153]

All these factors indicate that the future of the Aegean is more likely to be based on cooperation rather than confrontation.

[153] *Ibid.*