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Aegean Angst: A Historical and Legal Analysis of the Greek-Turkish Dispute*

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INTRODUCTION

On 16 November 1994, some twelve years after being opened for ratification, the 1982 Law of the Sea (LOS) Convention came into force.¹ Less than one year later, the Greek Parliament ratified the convention, a move which evoked a fiery response from Turkey, the only NATO nation which has not indicated an intent to do likewise.² Labeling the vote a *casus belli*, the Turkish parliament promptly authorized the government to take "all necessary measures, including military steps, deemed necessary to protect the vi-

* The views, opinions, and conclusions expressed in this article are those of the author and should not be construed as an official position of the Department of Defense, the United States Air Force, or any other government agency. An earlier version of this article appeared in the *Naval War College Review*, Summer 1996.

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1. Article 308 of the Law of the Sea Convention provided that it would enter into force 12 months after deposit of the sixtieth instrument of ratification. United Nations Convention of the Law of the Sea, *opened for signature* Dec. 10, 1982, art. 308, U.N. Doc. A/CONF.62/122 [hereinafter LOS Conv.], *reprinted in* 21 I.L.M. 1261, 1327. As of August 14, 1995, there were 81 instruments of ratification.

2. Informal Rough Translation, Deposit of the Instrument of Ratification, U.N. Doc. F.8243/48/AS 2947, July 21, 1995 [hereinafter Instrument of Ratification]. Turkey was one of four participants that voted against the Convention in 1982. The others were the United States, Israel and Venezuela. Reports of the United States Delegation to the Third United Nations Conference on the Law of the Sea 592-93 (Myron H. Nordquist & Choon-ho Park eds., 1983).

tal interests" of Turkey.³ Contemporaneous naval exercises in the Aegean Sea by the two did little to calm the waters.⁴

The immediate cause of the controversy is the fact that the convention provides for a territorial sea of up to twelve nautical miles (NM).⁵ Currently, the Greeks claim only a six NM territorial sea in the Aegean.⁶ Should Greece extend to the maximum allowable limit, the Aegean, as Turkey has repeatedly noted, would become a virtual "Greek lake." Indeed, Turkish vessels traveling between the Mediterranean Sea and ports on the eastern coast of Turkey would have to pass through Greek territorial waters, a clearly unacceptable prospect from Turkey's perspective. Today, despite intervention by President William J. Clinton and qualified Greek assurances that the ratification was not an attempt to expand its territorial reach, the dispute continues to fester.⁷ In actu-

3. *Text of the Grand National Assembly's Unanimous Declaration of June 8, 1995* (TRT TV Ankara broadcast, June 8, 1995) (transcribed by BBC Summary of World Broadcasts), available in LEXIS, News Library, Bbcswb File. The response of Greek spokesman Evangelos Venizelos was that, "[t]he Turkish move constitutes an official threat and an insult to international law . . . Greece will make use of its sovereign right to extend its territorial waters whenever the government sees fit." *Greece Blasts Turkey Over Threat*, UPI, June 9, 1995, available in LEXIS, News Library, UPI file.

4. Though the Turkish Ministry of Foreign Affairs emphasized that the exercises Efes-95 and Sea Wolf 95 were previously scheduled, the Greeks, nevertheless, labeled them "provocative." The Greek exercise, Niriis 94, was jointly conducted with the United States, France, Spain, and Great Britain. *Tensions Rise Between NATO Allies Greece and Turkey*, Reuters, June 1, 1995, available in LEXIS, News Library, Reuwlid File; *Greek Vote on Aegean Keeps Turkey Worried*, N.Y. Times, June 2, 1995, at A7; *Greece Says Treaty Ratification Does Not Mean Expansion of Waters*, Nov. 14, 1994, available in LEXIS, AP File.

5. LOS Conv., *supra* note 1, art. 3, reprinted in 21 I.L.M. 1261, 1272.

6. Act Concerning the Extension of the Territorial Waters of the Kingdom of Greece, No. 230, art. 1 (Greece 1936) [hereinafter Law No. 230], reprinted in 1 *Mediterranean Continental Shelf: Delimitations and Regimes, International and Legal Sources* 343 (Umberto Leanza et al. eds., 1988) [hereinafter *Mediterranean Continental Shelf*]. This series is an excellent collection of primary source material, including transcripts of proceedings from the Law of the Sea Conferences, as well as domestic legislation. See also U.S. Department of Defense, 1 *Maritime Claims Reference Manual* (DOD 2005.1-M) 2-203 (1990).

7. As will be discussed *infra*, the dispute was based in great part on Turkish concern that the Greeks would expand their six nautical mile (NM) territorial sea to 12 NM as permitted in the Law of the Sea Convention. Greek government spokesmen emphasized that the 12 NM Limit was permissive, not obligatory, and that Greece was merely acting in a manner consistent with that of its European Union colleagues in ratifying the Convention. *Greece Says Treaty Ratification Does Not Mean Expansion of Waters*, *supra* note 4. However, other Greek officials hastened to add that the prospect of extending the limit was not forever foreclosed.

ality, the rift is more complex, and of longer lineage, than suggested by the recent focus on the territoriality component of the LOS Convention. Equally contentious disagreements exist over delimitation of the continental shelf (which contains significant oil deposits), the breadth of Greek airspace over the Aegean, Greek control of a flight information region (FIR) in the area, and militarization of numerous Greek islands. Operating synergistically, these five areas of dispute render solution of any one issue elusive. At times, they have driven the two NATO allies to the brink of war.

The importance of the conflict to all parties concerned, both regional and international, cannot be overstated. Greece has more than 2,000 islands in the Aegean, some within five miles of the Turkish coast. Obviously, Greece's interest in the security of, and sovereignty over, these islands is paramount, but the islands' geographical proximity to Turkish shores has security implications for Turkey as well. The Turks are particularly concerned about assured high seas access to the Mediterranean and Black Seas. Additionally, both states view control of Aegean airspace as a major security issue, and, given the economic trauma experienced by Turkey and Greece over the past decades, the prospect of exclusive ownership of the Aegean oil reserves is highly desirable to each.

Unfortunately, Greece and Turkey appear headed in contradictory directions in the international arena, a fact which can only serve to exacerbate the Aegean conflict. Turkey has concluded military cooperation agreements with Albania, The Former Yugoslav Republic of Macedonia, and Bosnia, whereas Greece, a country that almost went to war with the Macedonians over their selection of a national flag, has close ties to the Serbs and has been noticeably lax in enforcing United Nations sanctions. The Armenian-Azerbaijani conflict is a second source of anxiety. While Turkey supports the Turkic Azerbaijanis, Greece has signed a military cooperation agreement with the Armenians.⁸

Accordingly, Greek Deputy Prime Minister George Mangakis told Parliament prior to the ratification vote that "Greece will exercise its rights whenever its interest dictate." *Greek Vote on Aegean Keeps Turkey Worried*, *supra* note 4, at A7. Even before ratification, President Clinton sent a letter to the Turkish President and Prime Minister indicating that he had received reliable assurances from the Greeks that the territorial sea would not be extended. Hugh Pope, *Clinton Steps into Aegean Feud*, *The Independent*, Nov. 15, 1994, at 10.

8. Paul Saunders, *Watch Out for Bosnia's Neighbors*, *Newsday*, Aug. 23, 1995, at A33.

Furthermore, the current political situation has economic overtones. Most recently, Turkey and Russia have been at odds over oil and gas pipelines from Central Asia. Partly in response, the Greeks, Bulgarians and Russians have agreed upon construction of a pipeline from Russia through Bulgaria and Greece. The pipeline is especially appealing to the Russians because it provides an alternative to its current means of shipping oil from its Black Sea ports through the Bosphorous and Dardennelles Straits.⁹ Also of particular import is Turkey's fervent desire to join the European Union, a possibility which Greece, a present EU member, opposes.

As the political scenario evolves, both sides are enhancing their conventional military forces. Between 1992 and 1994 Turkey acquired 1,605 main battle tanks and Greece added 1,410. Many of the transfers were the product of NATO's "Cascade" program, by which NATO countries required to dispose of equipment in accordance with the Conventional Forces in Europe Treaty transfer excess to their southern NATO allies.¹⁰

Contextually, these events are occurring in the absence of "the tie that binds" — the former Union of Soviet Socialist Republics. In the past, the existence of a hostile U.S.S.R. forced Greece and Turkey to cooperate (to an extent) in an uneasy "my enemy's enemy is my friend" approach. Despite this incentive, tensions were high even during the Cold War. With the Soviet Union gone from the scene, and a relatively docile Russia in its stead, the Cold War's moderating influence will no longer serve to cap potential conflict. Arguably, the Aegean is a much more delicate security environment today than it has been for years.

Not surprisingly, both NATO and the United States are extremely anxious over this state of affairs. Whereas, the southern region used to be of secondary concern to a NATO facing a massive Soviet presence across central Europe, today the southern region is the front. NATO forces are engaged in peace enforcement operations in the former Yugoslavia, and nowhere is the likelihood of out of area operations for NATO greater than on Turkey's southern

9. *Id.*

10. In 1994 alone, for example, Greece received 43 Leopard-1 tanks from Germany, whereas Turkey received 62 M-60 tanks from the United States, 54 BTR-80 armored cars from Russia, 19 F-4 Phantom aircraft from Germany, and leased four frigates from the United States. Bruce Clark, *Arms Pour Into Two NATO Rivals*, *Fin. Times*, July 14, 1995, at 2.

and eastern borders. A Greek-Turkish dispute could easily split the alliance, just as its search for a new identity is maturing. Further, the loss of either Greece or Turkey from NATO, *à la* the Greek withdrawal following the Cyprus invasion, would have dire operational and planning consequences.

The impact of Greek-Turkish hostilities was aptly illustrated in 1995 when NATO sought to establish a regional NATO headquarters in Greece. Reacting to the proposal, Turkey immediately moved to block the NATO budget, a response mirroring an earlier Greek veto of funding for the NATO headquarters at Izmir, Turkey.¹¹ Though these issues have since been resolved, they illustrate the alliance's susceptibility to internal disputes.

The United States' interests are those of NATO, writ large.¹² For instance, the United States, in collaboration with French, British and Turkish allies, is conducting Operation PROVIDE COMFORT from Incirlik Air Base in southeastern Turkey. Should Turkish support for the operation falter, the United States' strategy *vis-à-vis* Iraq would be severely undermined. The future value of Turkey, bordering as it does Syria, Iran, Iraq and the most conflict prone regions of the former Soviet Union, is self-evident. As to Greece, though most American bases there have closed, the country remains important as a potential location through which United States forces could either deploy or transit. For instance, Hellenikon Air Base near Athens was critical during the Gulf War. Both countries are important to the United States due to substantial bilateral trade, and both, but particularly Greece, enjoy substantial political clout in the United States.

Over the years, NATO and the United States have attempted to maintain stability in the area by searching for common ground between Greece and Turkey. In 1995, the United States engaged in exploratory military-to-military talks focused on the Aegean-based disputes. Yet, as was demonstrated by the incident of January and February 1996 involving a tiny, uninhabited islet of the Dodacanese group, matters can deteriorate quickly in the region.

11. Costas Paris, *NATO's Claes Mediates in Greek-Turkish Command Row*, Reuters, May 17, 1995, available in LEXIS, News Library, Reuwl File; (ER Radio Athens broadcast, June 8, 1995) (transcribed by BBC Summary of World Broadcasts), available in LEXIS, News Library, Bbcswb File.

12. For an excellent discussion of relations between the United States, Greece, and Turkey, see Theodore A. Coulombis, *The United States, Greece, and Turkey: The Troubled Triangle* (1983).

When Greece placed a dozen commandos on the barren island of Imia (Kardak in Turkish) and raised the Greek flag, Turkey vowed to retake it and sent naval and air forces into the area. Athens responded by deploying military units of its own. Calamity was avoided only through aggressive United States mediation and the eventual withdrawal of Greek troops. The hostility and volatility displayed throughout the course of these events highlight the importance of endeavoring to fashion a lasting *modus vivendi*.¹³

The purpose of this article is to highlight the points of contention between Greece and Turkey over the Aegean at this critical juncture in history. The dispute is quite possibly the seminal issue facing the region, for while resolution would serve to anchor NATO's southern tier, continued intransigence by the two antagonists could spell disaster, possibly even intra-alliance armed conflict. Before turning to the issues proper, however, it is instructive to briefly review the historical context in which these matters are playing themselves out.

I. HISTORICAL CONTEXT

That Greek-Turkish animosity is indelibly etched on the national psyche of both countries is perhaps best illustrated by their respective national holidays. Whereas the Greeks celebrate the outbreak of their struggle for liberation from the Ottoman Turks in 1821, the Turks celebrate their own efforts to found a Republic by commemorating Mustafa Kemal Atatürk's victory over the Greeks in 1921.¹⁴

This hostility traces its roots to the fall of Constantinople to the Turks in 1453. It was nearly four hundred years before an independent Greece rose from the ashes of the Byzantine Empire. In 1829, victory in the Greek War of Independence led to creation of the Greek monarchy under a joint British, French and Russian Protectorate. Following the Russo-Turkish War of 1877-78 and the 1881 Conference of Constantinople, the Greeks were able to further consolidate what is today central Greece. However, northern Greece, most importantly Salonika, remained in Turkish hands, as did many of the eastern Aegean islands.

13. Celestine Bohlen, *Greek Premier Already in Hot Water*, N.Y. Times, Feb. 9, 1996, at A8.

14. On the history of relations between Greece and Turkey, see Greece: A Country Study 1-77 (Rinn S. Shinn ed., 1986).

The twentieth century brought further Greek expansion. Greece's alliance with Serbia and Bulgaria during the Balkan War of 1912-13 was designed in part to consolidate territories with a large Greek population. The Turkish defeat led to control of the Greek mainland, with the exception of Thrace. A second Balkan conflict in 1914 further enlarged Greek territory through addition of Macedonia, Crete and most of the eastern Aegean islands.

Following the First World War, Greek troops occupied much of western Anatolia pursuant to a mandate by the war's victors. Under the Treaty of Sevres, the populations of the occupied lands were to decide within five years whether to become part of Greece or Turkey;¹⁵ however, the uprising led by Mustafa Kemal Atatürk against the sultanate foreclosed that possibility. Though nearly losing Ankara to the Greeks, Atatürk turned the tide, destroyed the Greek stronghold of Smyrna and took control of western Anatolia. In 1923, the Treaty of Lausanne¹⁶ marked the end of hostilities. The present mainland border between Greece and Turkey was fixed in Thrace, Anatolia was granted to the Turks, and Turkey accepted Greek sovereignty over the eastern Aegean islands of Lemnos, Lesbos, Chios, Samos and Ikaria, all of which had been seized from the Ottomans between 1878 and 1913. The Treaty of Lausanne, together with the Straits Convention appended to it,¹⁷ also provided for demilitarization of the Bosphorus and Dardanelles Straits; but to assuage Turkish concerns over vulnerability, numerous Greek islands in the region were either demilitarized or had their previously demilitarized status confirmed.

In the 1930s, growing concern over the threatening posture of Italy and Germany led to a remilitarization of the straits pursuant to the Montreux Convention,¹⁸ though freedom of navigation re-

15. Peace Treaty between the Allied Powers and Turkey (Treaty of Sevres), Aug 10, 1920, art. 83, in 3 *Major Peace Treaties of Modern History: 1648-1967*, at 2055 (Fred L. Israel ed., 1967) [hereinafter *Peace Treaties*].

16. Peace Treaty between the Allied Powers and Turkey (Treaty of Lausanne), July 24, 1923, 28 L.N.T.S. 11 [hereinafter *Treaty of Lausanne*]; 4 *Peace Treaties*, *supra* note 15, at 2301. The "Treaty" actually consisted of a peace treaty and numerous appended conventions covering such topics as straits.

17. Convention Relating to the Regime of the Straits (Straits of the Dardanelles Convention), July 24, 1923, annex, art 4(3), 28 L.N.T.S. 115, 129 [hereinafter *Straits Convention*]; 4 *Peace Treaties*, *supra* note 15, at 2376.

18. Convention Regarding the Regime of the Straits (Montreux Convention), July 20, 1936, 173 L.N.T.S. 213 [hereinafter *Montreux Convention*]; 31 *Am. J. Int'l Law Supp.* 1 (1937).

mained unimpeded. The fact that the convention did not specifically address the status of the previously demilitarized islands ultimately became problematic.¹⁹ Inevitably, the Second World War did come to the region, as Greece was occupied after valiant, but fruitless resistance; Turkey elected to stay neutral until the waning days of the war. In 1947, the Treaty of Paris formally ended the state of war between Italy and the Allies.²⁰ Greece was awarded the formerly Italian Dodecanese Islands, which lay just off the Turkish coast.²¹ Though these islands had been Turkish until the Italian-Turkish War of 1912,²² given Turkey's neutral stance during the war, there was little it could do to preclude the transfer. Important to the present dispute is the fact that Greece received the islands subject to the condition subsequent that they be demilitarized.

The onset of the Cold War and the entry of Greece and Turkey into NATO in 1952 ushered in a short-lived period of relative stability in Greco-Turkish relations. Cyprus, however, soon emerged as a source of contention. Great Britain had purchased Cyprus from the Ottomans in 1878, although it was not formally annexed until Turkey joined the Axis in the First World War. The Greeks were in the majority on the island, but there was a substantial Turkish minority. By the Zurich Agreement of 1959, Great Britain agreed to grant Cyprus its independence.²³ Soon thereafter, a particularly vocal contingent of Greek Cypriots began demanding *enosis*, or union with Greece. Simultaneously, many of the Turkish Cypriots made *taksim*, or partition, their rallying call. By 1964 matters had deteriorated to such an extent that a Turkish invasion of the island was only narrowly averted after President Lyndon B. Johnson warned against the use of American supplied weapons in any such operation.²⁴

19. See *infra* Part V.

20. Treaty of Paris, Feb. 10, 1947, 61 Stat. 1245, 49 U.N.T.S. 3.

21. *Id.*

22. Italian sovereignty over the islands was recognized in the Treaty of Lausanne. Treaty of Lausanne, *supra* note 16, art. 15.

23. Zurich Agreement of 1959, Feb 19, 1959, 164 Brit. & Foreign St. Papers 219. To balance majority and minority rights, the President was Greek Cypriot, while the Vice-President Turkish Cypriot and 30% of the seats in the Cypriot Parliament were reserved for those of Turkish descent.

24. Richard Clogg, *Greek-Turkish Relations in the Post-1974 Period*, in *The Greek-Turkish Conflict in the 1990s* (Dimitri Conostas ed., 1991).

It was the July 1974 invasion, however, that permanently soured Greco-Turkish relations. When a coup resulted in an escape to London for Cypriot President Archbishop Makarios III and his replacement by Nikos Sampson, an advocate of *enosis*, Turkey invaded. A United Nations sponsored cease-fire quickly fell apart, and by the end of operations the Turks controlled thirty percent of the island.

In response to what it perceived as NATO inaction, Greece withdrew from the alliance. It also militarized the islands which had been demilitarized pursuant to the Treaty of Lausanne, the Straits Convention and the Treaty of Paris. At the same time, under pressure from the powerful Greek lobby and upset over what it perceived as naked aggression, the United States Congress imposed an arms embargo on Turkey. The embargo, which lasted until 1978, had a major impact on the Turkish military's readiness, and American military establishments in Turkey were limited in operational effectiveness due to retributive Turkish restrictions. Unfortunately, the affair so maligned both U.S.-Greek and U.S.-Turkish relations that its impact continues to be felt. Today, Cyprus remains a virtual armed camp on both sides of the United Nations enforced "Green Line" separating the two sides.²⁵

By the end of the decade, Greece sought return to NATO, in part to offset what it perceived as growing Turkish influence within the alliance. Not unexpectedly, the Turks opposed the move, and made formal division of responsibility for the Aegean, which had previously been under Greek control, a condition to its approval. General Bernard Rogers, the Supreme Allied Commander in Europe, eventually convinced the Turks to drop their objections in what became known as the "Rogers Plan."²⁶ Since that time, Greece and Turkey have coexisted as "uncomfortable allies" under the NATO umbrella. Though not on the scale of the 1974 Cyprus invasion, disputes between the two do continue to

25. For a general discussion on the Cyprus episode, see Joseph S. Joseph, *Cyprus: Ethnic Conflict and International Concern* (1985).

26. One commentator has suggested that Turkish acquiescence came out of a greater fear of the Soviets, who, of course, shared a common border with Turkey. Tozun Bahcheli, *Greek-Turkish Relations Since 1955*, at 149-50 (1990). Recall that in 1979 the Soviet Union invaded Afghanistan.

surface, at times approaching armed conflict. It is to the feuds over the Aegean that we now turn.²⁷

II. THE TERRITORIAL SEA

The most important, and potentially divisive, disagreement over the Aegean concerns Greece's territorial sea. Since 1936, Greece has claimed a six NM territorial sea. Turkey's claim in the Aegean is identical, but extends to twelve NM off both its Black and Mediterranean Sea coasts.²⁸ Based on these current breadths, there are three high seas corridors traversing the Aegean which permit Turkish vessels leaving their eastern coastal ports such as Izmir and Kusadasi to reach the Mediterranean without having to transit Greek waters.

Until the Third United Nations Conference on the Law of the Sea (UNCLOS III) in 1972, the issue of the breadth of territorial seas in the Aegean had caused little friction. Though many states had unilaterally extended their seas beyond the three NM traditionally deemed appropriate under customary international law (and recognized by the United States), Greece and Turkey's opposing six mile seas had proven workable. However, UNCLOS III was convened in great part to resolve the issue of the territorial sea breadth, a resolution which had proven elusive at the two previous conferences on the law of the sea.²⁹

This was an issue of enormous import for the Turkish delegation. Given the geographical placement of Greek islands in the Aegean, and the fact that islands are generally deemed to have a territorial sea of their own, extension of the territorial sea limit

27. For a somewhat dated, but still useful, general discussion of the disputes between Greece and Turkey, see Andrew Borowiec, *The Mediterranean Feud* (1983). See also Greece and Turkey: *Adversity in Alliance* (Jonathan Alford ed., 1984).

28. Act on the Territorial Sea of the Republic of Turkey, No. 2674, art. 1 (Turk. 1982) [hereinafter Law No. 2674], reprinted in 1 *Mediterranean Continental Shelf* 597. This act superseded Act No. 476 of May 15, 1964, currently cited in the *Maritime Claims Reference Manual*, *supra* note 6, at 2-450. By decision of the Council of Ministers, the Black and Mediterranean territorial seas were set at 12 NM. Decree of the Council of Ministers No. 8/4742 of May 29, 1982, reprinted in 2 *Mediterranean Continental Shelf* 957. Note that this was contemporaneous with the conclusion of UNCLOS III.

29. The previous Law of the Sea conferences were convened in Geneva in 1958 (UNCLOS I) and 1960 (UNCLOS II). Though numerous conventions were produced, attempts to reach agreement on the territorial sea were unsuccessful.



would effectively turn the Aegean into the “Greek lake” the Turks feared. For instance, under the current scheme 35% of the Aegean Sea is Greek territorial sea. However, if extended to twelve NM that percentage would grow to 63.9%, and Turkey would be left with only 10%.³⁰ More importantly, a wide band of Greek territorial sea would stretch from the Greek mainland to the outer limit of Turkish territorial waters. This would mean that ships transiting to or from the eastern coast of Turkey, as well as those ap-

30. Andrew Wilson, *The Aegean Dispute* 5 (1979).

proaching or departing the Bosphorus and Dardenelles, would have to pass through Greek waters to reach the Mediterranean.

The problem is that with the exception of transit passage through international straits, all navigation through Greek waters would have to be in innocent passage mode. Under customary international law as understood by the United States,³¹ and as adopted at UNCLOS III, innocent passage is travel through a state's territorial sea. The passage must be both continuous and expeditious and may only include stopping and anchoring as required by navigation or due to *force majeure*. Further, it must be innocent, i.e., not prejudicial to the peace, good order or security of the coastal state. No fishing or research is allowed while in innocent passage. For that matter, no activity inconsistent with passage is permitted absent approval of the coastal state.³²

Reflective of the innocent passage regime's balance between sovereignty and freedom of navigation, restrictions on military activities are even more severe.³³ Given the fact that the passage must be innocent, any threat or use of force against the coastal state is obviously unacceptable. So too are certain activities such as military exercises, weapons firing, launching, landing or taking on aircraft or helicopters, and collection of intelligence. In addition, a submarine in innocent passage must surface and fly its flag. Warships violating these restrictions and subsequently disregarding a request for compliance may be enjoined to leave by the

31. Though the United States did not sign the Law of the Sea Convention due to a concern over the seabed regime called for, it supported the territorial and navigational provisions that the Conference arrived at. In 1983, President Reagan, in his Ocean Policy Statement, specifically stated that the Convention contained "provisions with respect to the traditional uses of the oceans which generally confirm existing maritime law and practices and fairly balance the interests of all states." United States Ocean Policy, 19 Weekly Comp. Pres. Doc. 383 (Mar. 14, 1983). Included among those provisions were the 12 NM territorial sea, innocent passage and transit passage. See also *Law of the Sea Negotiations: Hearings before the Subcomm. on Arms Control, Oceans, Int'l Operations and Env't of the Senate Comm. on Foreign Rel.*, 97th Cong., 2d Sess. 107 (statement of Theodore G. Kronmiller, Deputy Assistant Secretary Of State); Department of Defense Ann. Rep., app. H, at H-1. For purpose of this article, Law of the Sea Convention articles will be treated, pursuant to United States policy, as existing customary international law.

32. LOS Conv., *supra* note 1, art. 18-19, reprinted in 21 I.L.M. 1261, 1273-74. See also U.S. Department of the Navy, Naval Warfare Publication 1-14M (Draft), para. 2.3.2.1 (1995) [hereinafter NWP 1-14M].

33. For a discussion of this issue, see F. David Froman, *Uncharted Waters: Non-innocent Passage of Warships in the Territorial Sea*, 21 San Diego L. Rev. 625 (1984).

coastal state.³⁴ Perhaps most importantly, there is no innocent passage regime for aircraft.³⁵ Thus, without Greek consent, Turkish aircraft would have no access across Aegean airspace, except transit passage through international straits. They would be forced to fly circuitous overland routes to the north which are themselves dependent on consent by bordering states, or to fly far to the south through Mediterranean waters. To complicate matters, innocent passage may be temporarily suspended in specified areas for security reasons, though the suspension must be non-discriminatory in execution.³⁶

At the time of UNCLOS III, the narrow territorial seas recognized by maritime powers such as the United States meant that very few straits were overlapped by national waters. However, extension to twelve NM by coastal states would subsume over a hundred. In light of the innocent passage restrictions set forth above, this was unacceptable to the maritime powers at the Conference. Warships passing through international straits such as the Straits of Gibraltar, Hormuz or Malacca, for instance, would be forbidden from taking classic precautionary defensive measures, including the launching of aircraft for defensive combat air and reconnaissance patrols. Similarly, the requirement for submarines to surface would make them easily locatable by adversaries.

34. Los Conv., *supra* note 1, art. 25, *reprinted in* 21 I.L.M. 1261, 1275; NWP 1-14M, *supra* note 32, para. 2.3.2.4. Cambodia justified the 1975 seizure of the SS *Mayaguez* by alleging that its passage was not innocent. However, it was seized outside territorial waters. Even if it had been seized within Cambodian waters, no attempt was made to request compliance prior to the use of force. See Law of the Sea and International Waterways, 1975 Digest § 5, at 423-26. See also Comment, *The Mayaguez: The Right of Innocent Passage and the Legality of Reprisal*, 13 San Diego L. Rev. 765 (1976).

35. On military restrictions, see LOS Conv., *supra* note 1, art. 19-20, *reprinted in* 21 I.L.M. 1261, 1274; NWP 1-14M, *supra* note 32, para. 2.3.2.1 - 2.3.2.4; U.S. Department of the Air Force, Air Force Pamphlet 110-31, para. 2-1(d) (1976) [hereinafter AFP 110-31].

36. LOS Conv., *supra* note 1, art. 25(3), *reprinted in* 21 I.L.M. 1261, 1275; NWP 1-14M, *supra* note 32, para. 2.2.3.2.3. In the United States, the President may suspend innocent passage in response to a national emergency. 50 U.S.C. § 191 (1994). The Law of the Sea Convention does not specify what is meant by "security," other than citing the example of "weapons testing." Further, it neither defines "temporarily," nor describes the extent of the area to which the suspension may apply. LOS Conv., *supra* note 1, art. 25(3), *reprinted in* 21 I.L.M. 1261, 1275.

A satisfactory balance between coastal and maritime power interests was found in the form of the transit passage regime.³⁷ Transit passage is relevant to the Aegean situation because an extension of the Greek territorial sea would leave no high seas passage to remaining high seas in the northern Aegean or to the Black Sea. As with innocent passage, transit passage must be continuous and expeditious, and threatening activities are prohibited. In sharp contrast, however, vessels in transit passage are permitted to pass through international straits in "normal mode." For warships, this includes formation steaming, and aircraft and helicopter operations. Furthermore, submarines may pass submerged and aircraft enjoy the right of transit. Additionally, given the greater interest of maritime powers in transit passage versus innocent passage, the former is non-suspendable.³⁸ Though experts may disagree over whether transit passage was customary law at the time of UNCLOS III, the United States, the maritime power which would most be affected by a limitation to innocent passage, labeled it as such in 1983.³⁹ A decade and a half later, it is clear that transit passage has entered the corpus of customary international law.

As can be seen, Turkey had much at stake in UNCLOS III's handling of the territorial sea issue. Therefore, at the Conference it advocated an approach that relied upon bilateral agreement between opposing coastal states in the delimitation of territorial sea boundaries. It was not *per se* opposed to a twelve NM sea, as evidenced by its own claims in the Black and Mediterranean Seas, but rather viewed the Aegean as a case of "special circumstances."⁴⁰

37. See John Norton Moore, *The Regime of Straits and the Third United Nations Conference on the Law of the Sea*, 74 Am. J. Int'l L. 77 (1980), for a discussion of transit passage. On transit passage by aircraft, see Ram Prakash Anand, *Transit Passage and Overflight in International Straits*, 23 Indian J. Int'l L. 72 (1986).

38. LOS Conv., *supra* note 1, art. 37-44, reprinted in 21 I.L.M. 1261, 1276-78; NWP 1-14M, *supra* note 32, para. 2.3.3.

39. United States Ocean Policy, *supra* note 31. The argument that transit passage was a customary international norm has been made. See Richard J. Grunawalt, *United States Policy on International Straits*, 18 Ocean Dev. & Int'l L. 445 (1987). For an excellent discussion of the issue in terms of national security concerns, see W. Michael Reisman, *The Regime of Straits and National Security: An Appraisal of International Lawmaking*, 74 Am. J. Int'l L. 48 (1980).

40. On the issue of the consideration of circumstances in delimitation of both the territorial sea and the continental shelf, see Malcolm D. Evans, *Relevant Circumstances and Maritime Delimitation* (1989).

Accordingly, Turkey proposed forbidding territorial sea claims which would have the effect of cutting off another state's access to the high seas from its own waters. In making this proposal, Turkey cited the situation of "semi-enclosed seas having special geographical characteristics," a clear reference to the Aegean. In these cases, the Turks argued, delimitation should be based on the application of any combination of methodologies consistent with equitable principles; variables such as "the general configuration of the respective coasts and the existence of islands, islets or rocks" were of particular relevance.⁴¹ From the Turkish perspective, the Aegean is truly unique. It is a semi-enclosed sea between two coastal states with a history of 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.

For its part, Greece was unwilling to acquiesce to a scheme which would require Turkish agreement over the extent of the Greek territorial sea. In fact, it preferred viewing its extensive island holdings as an archipelago, for the archipelagic regime which was emerging from the Conference would accord it sovereignty over an even greater proportion of the Aegean. Greece was to be disappointed in this effort by the Conference's limitation of archipelagoes to states which consist entirely of islands. However, the Turkish approach was generally rejected, for the Conference agreed that, "[e]very State has the right to establish the breadth of its territorial sea up to a limit not to exceed twelve nautical miles"⁴² A specific article governing delimitation of territorial seas between states with opposite or adjacent coasts encouraged bilateral agreement and prohibited extension beyond a median line equidistant from the respective baselines.⁴³ Given the location of the Greek islands, this did nothing to allay Turkish concerns. Significantly, the LOS Convention explicitly confirmed that islands

41. U.N. Docs A/CONF.62/C.2/L.8-L.9 (1974), *reprinted in* 5 Third United Nations Conference on the Law of the Sea 131 (Renate Platzöder ed., 1984). Turkey has actually written this position into domestic law. Pursuant to Law No. 2674, delimitation between opposite states is to be by agreement "on the basis of the equity principle and taking into account all special circumstances and situations in the region." Law No. 2674, *supra* note 28, art. 2, *reprinted in* 1 Mediterranean Continental Shelf 597.

42. LOS Conv., *supra* note 1, art. 3, *reprinted in* 21 I.L.M. 1261, 1272.

43. *Id.* art. 15, *reprinted in* 21 I.L.M. 1261, 1273.

are entitled to a territorial sea of their own, with no equitable limits placed thereon.⁴⁴

Unable to assent to this de facto confirmation of Greece's right to expand throughout the Aegean, Turkey refused to sign the Convention and maintains that position today. By contrast, Greece did sign, albeit with a declaration to the effect that it was reserving the right to extend its sea. This may have been in response to a Greek fear that if it did not exercise its right, it would lose it. Yet any such concern was unfounded, for though the "use it or lose it" approach may have some basis in customary international law, it is inapplicable to treaty regimes. Despite this fact, Greece made an analogous declaration when it deposited its instrument of ratification with the United Nations in July 1995.⁴⁵

Through an "interpretive declaration," but nevertheless in a clear expression of security concerns at the time of signature, Greece reserved the right to determine which of its straits would be subject to transit passage, limiting all others to innocent passage.⁴⁶ The declaration, reiterated at the time of deposit, stated:

In areas where there are numerous spread out islands that form a great number of alternative straits which serve in fact one and the same route of international navigation, it is the understanding of Greece that the coastal state concerned has the responsibility to designate the route or routes, in the said alternative straits, through which ships and aircraft of third countries could pass under transit passage regime, in such a way as on the one hand the requirements of international navigation and overflight are satisfied, and on the other hand the minimum security requirements of both the ships and aircraft in transit as well as those of the coastal state are fulfilled.⁴⁷

44. *Id.* art. 121(2), reprinted in 21 I.L.M. 1261, 1291. For a discussion of islands in the Aegean context, see Jon M. Van Dyke, *The Role of Islands in Delimiting Maritime Zones: The Case of the Aegean Sea*, 8 Ocean Y.B. 44 (1989). For a general discussion of islands, see Derek W. Bowett, *The Legal Regime of Islands in International Law* (1979).

45. Instrument of Ratification, *supra* note 2.

46. Greek Interpretive Declaration, Dec. 10, 1982, reprinted in U.N. Division for Ocean Affairs and the Law of the Sea, *Law of the Sea Bulletin* No. 25, at 29 (June 1994).

47. *Id.*, reprinted in U.N. Division for Ocean Affairs and the Law of the Sea, *Law of the Sea Bulletin* No. 25, at 29 (June 1994).

The primary purpose of this declaration is most likely a Greek desire to keep Turkish aircraft from flying through straits near the Greek mainland, particularly the Kea Strait southeast of Athens. It is clearly contrary to the Convention's specific intent regarding transit passage⁴⁸ and the general effort to balance navigational freedoms and coastal state interests. However, Article 38(1) of the LOS Convention, the Messina Exception, seems to satisfy any Greek concerns along these lines. That article provides "if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route . . . of similar convenience"⁴⁹ The Kea Strait is just such a case, thus raising the question of why Greece continues to persist in its approach.

Though Greece ratified the LOS Convention, it has refrained from extending its territorial sea.⁵⁰ However, it would be within Greece's rights to do so both under the Convention and in accordance with customary international law.⁵¹ Turkey has refused to acknowledge that right and has pointed to Article 300 of the LOS Convention to claim that any Greek extension would constitute an abuse of rights. By that article, parties to the treaty must "exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right." There are two problems with Turkey's argument. First, and ironically, application requires acknowledgment that the Greeks do

48. By its own terms, the LOS Convention prohibits reservations. LOS Conv., *supra* note 1, art. 309, *reprinted in* 21 I.L.M. 1261, 1327. Greece has attempted to get around this by labeling the reservation a "declaration." However, the convention prohibits declarations which "purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State." *Id.* art. 310, *reprinted in* 21 I.L.M. 1261, 1327. That is precisely what the Greek declaration does *vis-à-vis* the transit passage regime. Further, it is questionable whether such reservations would be effective under basic customary and treaty law. *See, e.g.,* Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969 arts. 19-22, U.N. Doc. A/CONF.39/27 at 289 (1969), 1155 U.N.T.S. 331 [hereinafter *Vienna Convention*], *reprinted in* 8 I.L.M. 679, 686-88 (1969).

49. LOS Conv., *supra* note 1, art. 38(1), *reprinted in* 21 I.L.M. 1261, 1277. The article was included in the convention to address the Messina Straits between Sicily and the Italian mainland. *Id.*

50. *See supra* notes 5-6 and accompanying text.

51. *See* Panayotis G. Charitos, *The Legal Regime of the Greek-Turkish Maritime and Air Frontiers in the Aegean Sea, According to the Conventions of Chicago and Montego Bay and to the General Principles of International Law*, in *II Regime Giuridico Internazionale del Mare Mediterraneo* 67 (Umberto Leanza ed., 1987) (illustrating a representative Greek approach to the territoriality issue).

have a *right* to extend in the first place. Second, and more fundamentally, because Turkey is not a party to the Convention, under principles of international law it may not assert a violation of the Convention's provisions.⁵²

Regardless of any legal justification, on a global scale the political costs of extension would be enormous. An extraordinarily destabilizing step, extension would demonstrably increase the likelihood of hostilities. Turkey's security and commercial concerns are pronounced; it is not unreasonable for it to find any limitation to innocent and transit passage through the Aegean objectionable. Likewise, the area is of significant importance to NATO, which not only regularly conducts exercises in the Aegean, but also relies upon unimpeded passage through the area for operational reasons. In the case of extension, such activities would be at the mercy of Greek acquiescence, and Greece is far from the most cooperative member of the alliance, in the past having even demonstrated a willingness to withdraw from it. The United States harbors similar concerns. Though the current administration is moving towards accession to the LOS Convention,⁵³ and has explicitly recognized the territorial and navigational principles enunciated in the Convention as customary international law, a Greek extension is not in the United States' best interests. The United States has legitimate interests in maintaining navigational and operational leeway in the Aegean, sustaining a cohesive NATO, and not having to choose sides in a dispute between two close allies.

Given these facts, maintenance of the current scheme in the Aegean benefits everyone. NATO, the European Community and the United States are particularly well situated to impress upon the Greeks the destabilizing effects of a precipitous extension of their territorial waters to the legal limit. At the same time, NATO and the United States must work to reassure Turkey that Greece has no intent to take such an action, and that therefore, Turkish saber rattling can only prove counterproductive.

52. See *infra* page 38 for a discussion of this point.

53. As of October 12, 1995, the LOS Convention is being held in committee following submittal for accession by President Clinton.

III. THE CONTINENTAL SHELF

Whereas attention has recently focused on the territorial sea question, and though it is clearly the seminal issue from the Turkish perspective, the dispute over the continental shelf is more complex and has historically generated greater controversy.⁵⁴ The Greek position is that customary international law, as evidenced by both the 1958 Convention on Continental Shelf and its successor, the 1982 LOS Convention, allows it exclusive exploration and exploitation rights over the continental shelf up to two hundred miles from its coastal and island baselines.⁵⁵ To the extent this overlaps with Turkey's continental shelf, the delimitation should be a median line equidistant from the relevant baselines. Under this interpretation, virtually all of the Aegean seabed except for the portion beneath the Turkish territorial sea would be under Greek control.

By contrast, Turkey, a party to neither of the relevant conventions, asserts that much of the Aegean seabed consists of a prolongation of the Anatolian land mass. Relying on the principle of equitable delimitation, Turkey further argues that the Greek islands should not be entitled to their own continental shelf.⁵⁶ But since Turkey desires to exploit the seabed to its own benefit, it has not questioned the exclusive control of a coastal state over the natural resources of its continental shelf.

54. See F. Ahnisch, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea* 356-83 (1993) (introducing the basic continental shelf issue).

55. The continental shelf is defined generally as "the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental [shelf] margin does not extend to that distance." LOS Conv., *supra* note 1, art. 76(1), *reprinted in* 21 I.L.M. 1261, 1285. Islands are entitled to their own shelves. *Id.* art. 121(2), *reprinted in* 21 I.L.M. 1261, 1291. The 1958 Convention on the Continental Shelf set the continental shelf limit at a point where the depth of the water was 200 meters or, beyond that, to a point where exploitation was feasible. Islands were specifically held to have a continental shelf. Convention on the Continental Shelf, *done* Apr. 29, 1958, art. 1, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 312. Greece became a party to this convention in 1972. Turkey never became a party. *Id.*

56. See also Richard T. Robol, *Jurisdiction - Limits of Control - The Aegean Sea Continental Shelf Case*, 18 Harv. Int'l L.J. 649, 651-53 (1977).

The continental shelf issue only surfaced as a core dispute following the Greek discovery of oil off the coast of Thassos, a northern Aegean island, in 1973. It is important to recall that the discovery coincided with a steep rise in oil prices caused by the 1973 Arab oil embargo. Soon thereafter, Turkey awarded mineral exploration licenses in the eastern Aegean to the Turkish State Petroleum Company. That day, 1 November 1973, the Turkish government also published a map in the *Turkish Official Gazette* which showed a delimitation of respective continental shelves in the Aegean that did not take into account the presence of the Greek islands.⁵⁷ By this scheme, the exploration and exploitation rights of the Greeks in all of their sovereign islands east of the Turkish line, which ran roughly down the center of the Aegean, was limited to the insular territorial seas. Turkey felt it was within its rights because of the proximity of the Greek islands to the Turkish coast, and because by the Greek formula nearly ninety-seven percent of the Aegean seabed beyond territorial waters would be Greek.⁵⁸ As it has consistently done with regard to the territorial sea breadth issue, Turkey cited "special circumstances" to justify its continental shelf claims.

Greece lodged protests over the Turkish actions, and Turkey initially responded by offering to hold talks on the situation.⁵⁹ The Greeks were receptive until Turkey announced that it intended to send an exploration vessel, the *Candarli*, into the area. In May 1974, the *Candarli*, began six days of exploration conspicuously accompanied by thirty-two Turkish warships. When Greece again filed diplomatic protests,⁶⁰ Turkey announced it was going to continue exploration preliminary to drilling; it also granted additional exploration licenses.⁶¹ At this point, the affair was overcome by the Turkish invasion of Cyprus.

57. Bahcheli, *supra* note 26, at 130-32. See also Wilson, *supra* note 30, at 5.

58. Bahcheli, *supra* note 26, at 132.

59. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 21 (Greek Note Verbale of Feb. 7, 1974); Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 23 (Turkish Note Verbale of Feb. 27, 1974).

60. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 26 (Greek Note Verbale of June 14, 1974).

61. Robol, *supra* note 56, at 650. Its formal response to the Greek Note Verbale was a rejection of the protest and proposal that negotiations continue. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 27 (Turkish Note Verbale of July 4, 1974).

In January of the following year, Greece proposed the issue be submitted to the International Court of Justice (ICJ) for resolution. Though Turkey originally agreed, that spring Suleyman Demirel became prime minister and policy shifted from judicial settlement back to a preference for bilateral negotiations.⁶² In Turkey's opinion, the issue was more political than legal, and thereby susceptible of negotiations. Though the Turks could fashion colorable legal arguments to support their position, even if the principle of equity were employed the weight of authority arguably favored Greece. Based on Turkish hesitancy over a judicial forum, in February the two parties agreed to the drafting of an agreement for a framework of negotiations.⁶³

Negotiations did proceed, and at the May 1975 NATO summit meeting in Brussels, Greek Prime Minister Karamanlis and Prime Minister Demirel issued a joint communiqué to the effect that problems between the countries could be resolved amicably through negotiations.⁶⁴ Interestingly, and despite the ongoing bilateral negotiations over the continental shelf, the communiqué also mentioned referral to the ICJ. Demirel was immediately attacked by Bulent Ecevit, the opposition leader, for acquiescing to the Greeks.⁶⁵ At the same time, relations between Greece and Turkey soured as Turkey stood up the Fourth Army in Izmir. Known as the Aegean Army, this force was independent of the NATO command structure.

In February 1976, with tensions at a post-Cyprus high, Turkey announced it was going to conduct explorations in the area where Greece had discovered oil. Ostensibly, the mission of the vessel involved, the *Sizmik I*, was to gather the scientific data Turkey

62. Greek Note Verbale of Jan. 27, 1975, and Turkish Note Verbale of Feb. 6, 1975, *reprinted in* Greek Application Instituting Proceedings on the Aegean Sea Continental Shelf, filed Aug. 10, 1976 [hereinafter Greek Application] (on file at Harvard Law School International Law Library).

63. Aurelia A. Georgopoulos, *Delimitation of the Continental Shelf in the Aegean Sea*, 12 Fordham Int'l L.J. 91, 92 (1988).

64. Joint Communiqué Issued After the Meeting of Prime Ministers of Greece and Turkey [hereinafter Brussels Communiqué], May 31, 1975, *reprinted in* U.N. Doc. S/18766, at 5 (1987).

65. Bahcheli, *supra* note 26, at 134. Note that Ecevit and Demirel traded positions of Prime Minister and opposition leader during much of the 1970s and 1980s. At the time, Ecevit was viewed as an aggressive leader, having been Prime Minister at the time of the Cyprus invasion.

needed for its negotiations.⁶⁶ The Greeks were not convinced and repeatedly expressed concern that the Turks were creating a precipitous situation in the Aegean. Nevertheless, in August the *Sizmik* conducted three days of seismological explorations off the islands of Limnos, Lesbos, Chios and Rhodes accompanied by a Turkish naval vessel and protected by air cover. Though the Greek opposition leader, Andreas Papandreou, called for sinking the *Sizmik*,⁶⁷ Greece showed restraint. At one point, the Greek government may have even concealed the location of the ship in order to keep the press from intensifying nationalistic fervor.⁶⁸

But Greece did launch a two-tiered attack on the Turkish actions.⁶⁹ On one level, it appealed to the United Nations Security Council, arguing that Turkey was endangering the "maintenance of international peace and security." If this were true, the Security Council would have competence to investigate the matter under Article 34 of the United Nations Charter.⁷⁰ Greece also initiated proceedings against Turkey in the ICJ. Its application was in two parts. First, it sought "injunctive" relief in the form of an interim order that the parties refrain from further exploration in the area, as well as any resort to military measures that might endanger their "peaceful relations." Second, and substantively, Greece sought both delimitation of the boundary between the continental shelves and a finding that the previous Turkish activities had been an infringement on Greek sovereign rights.⁷¹

66. 31 U.N. SCOR (1950th mtg.) at II, U.N. Doc. S/PV.1950 (1976).

67. Clogg, *supra* note 24, at 16.

68. Wilson, *supra* note 30, at 8.

69. For an excellent contemporaneous discussion of the dispute, see Leo Gross, *The Dispute Between Greece and Turkey Concerning the Continental Shelf in the Aegean*, 71 Am. J. Int'l. L. 31 (1977). Interesting examples of Greek academic commentary on the issue at the time are provided in C. L. Rozakis, *The Greek-Turkish Dispute Over the Aegean Continental Shelf*, 27 Occasional Paper, University of Rhode Island (1975), and Phylactopoulos, *Mediterranean Discord: Conflicting Greek-Turkish Claims on the Aegean Seabed*, 8 Int'l Law. 431 (1974).

70. U.N. SCOR (1949th mtg.) at 1, U.N. Doc. S/PV.1949 (1976). Under Article 35 of the Charter, member states can bring a matter referred to in Article 34 before the Security Council. Article 34 grants the Council competence to "investigate any dispute, or situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security." Charter of the United Nations and Statute of the International Court of Justice, *done* June 26, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, 1976 U.N.Y.B. 1043.

71. Greek Application, *supra* note 62; Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 33.

Proceedings in the Security Council yielded little new. Greece presented an essentially legal argument centered around the contention that the 1958 Convention was declaratory of customary international law, and thus, even non-signatory countries like Turkey were bound by it. It also cited the Turkish invasion of Cyprus in the hope of playing upon still fresh memories of the Council members. Turkey's position was equally predictable. Continuing to cite the Aegean as a "special case," it pointed to the fact that UNCLOS III had been working on boundary matters for three years as apt evidence that the law in this area was unsettled. For Turkey, the issue went beyond law; it involved political, economic and social concerns.

The Council punted via Resolution 395. Less than anxious to get in the middle of the dispute, particularly in light of its Cyprus experience, the Security Council simply called on the parties to "resume direct negotiations over their differences and appeal[ed] to them to do everything in their power to ensure these result in mutually acceptable solutions."⁷² Yet, it also "[i]nvit[ed] the Governments of Greece and Turkey . . . to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, are qualified to make to the settlement of any remaining legal differences."⁷³ Thus, without reaching the merits of the matter, it appeared to side with both Turkey (political settlement through negotiations) and Greece (legal adjudication through the ICJ). In essence, nothing was accomplished.

Proceedings at the ICJ also failed to resolve the situation. In 1976, the court issued its ruling on the request for "injunctive relief." Finding insufficient risk of prejudice to Greece's rights, the court held that it could not declare interim measures under Article 41 of the Court's Statute.⁷⁴ Turning to the merits, the court had to assess whether a jurisdictional basis for hearing the case existed. Pursuant to Article 36(1), ICJ jurisdiction extends to cases referred by the parties and to matters set forth in international agreements

72. S.C. Res. 395 para. 3, 31 U.N. SCOR (1953d mtg.) at 15, U.N. Doc. S/INF/32 (1976).

73. *Id.* para. 4.

74. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. 3, 11 (Interim Protection Order of Sept. 11), *reprinted in* 15 I.L.M. 985, 993 (1976).

to which the disputants are party.⁷⁵ Greece argued for jurisdiction on both counts.⁷⁶ It contended that the Brussels Communiqué constituted Turkish consent to jurisdiction. It then asserted that because Turkey was a party to the General Act on the Pacific Settlement of Disputes,⁷⁷ a convention which vested jurisdiction in the Permanent Court of International Justice (PCIJ), and because Article 37 of the ICJ's Statute grants the court successor competence over disputes which the PCIJ could have heard,⁷⁸ Turkey had also consented to ICJ jurisdiction by international agreement.

In 1978 the court rejected both tacks. It began by holding that the Brussels Communiqué was not the type of binding acceptance of jurisdiction contemplated in the ICJ Statute.⁷⁹ The court then turned to the General Act, noting that when Greece became a party it had filed a reservation withholding jurisdiction from the PCIJ in cases involving its territorial status.⁸⁰ Finding the reservation applicable to delimitation of maritime boundaries, the court held that Turkey, on the basis of reciprocity, could benefit from the reservation in a dispute with Greece.⁸¹ The result was a lack of jurisdiction.

While the court was deciding not to decide, bilateral negotiations between the two sides continued. Despite the judicial proceedings, the *Sizmik I* episode had highlighted the mutual need for dialogue. In November of 1976, just after denial of the interim measures by the ICJ, the Berne Agreement was jointly issued.⁸²

75. Statute of the International Court of Justice, art. 36(1), *done* June 26, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1179, 1186-87, 1976 U.N.Y.B. 1052, 1055 [hereinafter Statute of the ICJ]. Note that Turkey did not appear in the case. Thus, pursuant to Article 53(2) of the Statute, the court was required to establish that it had jurisdiction and that Greece's claim was well-founded in law and fact. *Id.* art. 53(1), 59 Stat. 1062, T.S. No. 993, 3 Bevans at 1190, 1976 U.N.Y.B. at 1056.

76. Aegean Sea Continental Shelf (Greece v. Turk.), 1978 I.C.J. 4, 14 (Dec. 19).

77. Sept. 26, 1928, 93 L.N.T.S. 345 (1929).

78. Statute of the ICJ, *supra* note 75, art. 37, 59 Stat. 1060, T.S. No. 993, 3 Bevans at 1187, 1976 U.N.Y.B. at 1055.

79. Aegean Sea Continental Shelf, 1978 I.C.J. at 44.

80. Greek Accession to the General Act on the Pacific Settlement of International Disputes of 1928, Sept. 14, 1931, 111 L.N.T.S. 414. Specifically, the accession reserved from P.C.I.J. jurisdiction "[d]isputes concerning questions which by international law are solely within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece . . ." *Id.* at 415.

81. Aegean Sea Continental Shelf, 1978 I.C.J. at 37.

82. Agreement on Procedures for Negotiations of Aegean Continental Shelf Issue, Nov. 11, 1976, Greece-Turk., reprinted in 16 I.L.M. 13 (1977) [hereinafter Berne Agreement].

In that Agreement, Greece and Turkey agreed that further negotiations would be "sincere, detailed and conducted in good faith with a view to reaching an agreement based on mutual consent."⁸³ They were also to be confidential; both parties committed to refrain from prejudicial actions, and both agreed to study state practice and international law in order to identify "principles and practical criteria" which could be used in the delimitation process. A mixed commission conducted talks until 1981 when Papandreou's PASOK government lost interest in the process.⁸⁴ Recall that it was Papandreou, then in the opposition, who had called for the sinking of the *Sizmik I* in 1975.

Amidst the turmoil of the Cyprus invasion, bilateral negotiations and ICJ proceedings of this period, UNCLOS III had been struggling with the issue of how to delimit continental shelves. In particular, Greece and Turkey actively pressed arguments regarding delimitation in situations involving opposite coasts. Greece proposed verbiage that sought delimitation by agreement. However, barring agreement, as was likely to be the case vis-à-vis Turkey, states would be prohibited from extending "sovereignty . . . beyond the median line every point of which is equidistant from the nearest points of the baselines, continental *or insular*, from which the breadth of the continental shelf of each of the two States is measured . . ."⁸⁵ Greece also proposed islands be allowed continental shelves of their own.⁸⁶ Thus, by the Greek formula, Greece was entitled to the continental shelf it was already claiming, unless a different arrangement could be fashioned with Turkey.

83. *Id.*, reprinted in 16 I.L.M. 13 (1977).

84. *Sea Lawyer's Delight*, Economist, Apr. 4, 1987, at 38; Bahcheli, *supra* note 26, at 137.

85. U.N. Conference on the Law of the Sea III [hereinafter UNCLOS III], U.N. Doc. A/CONF.62/C.2/L.25, art. 6(2), July 26, 1974, reprinted in Platzöder, *supra* note 41, at 145 (emphasis added).

86. UNCLOS III, U.N. Doc. A/CONF.62/C.2/L.50, Aug. 9, 1974, reprinted in Platzöder, *supra* note 41, at 170. The convention employed both the equidistance and special circumstances approaches. "In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured." Convention on the Continental Shelf, *supra* note 55, art. 6, 15 U.S.T. at 474, T.I.A.S. No. 5578, 499 U.N.T.S. at 316. As can be seen, Greece adopted the formula *sans* special circumstances, whereas Turkey omitted equidistance in lieu of retaining special circumstances.

In comparison, Turkey emphasized principles of equity over equidistance. As with the Greek proposal, Turkey first called for agreement, albeit "in accordance with equitable principles." Factors Turkey wanted considered during negotiations included, *inter alia*, geomorphological and geological structure of the shelves, the general configuration of the coastlines, and islands, islets and rocks which were situated on the continental shelf of the opposing state.⁸⁷ As to islands, Turkey proposed that those located in semi-enclosed seas have their maritime space determined by agreement.⁸⁸ In other words, in the context presented, Turkey was focusing once again on its "special circumstances," and relying on negotiations, a political solution, for resolution.

Ultimately, the Conference combined the two position in compromise. Article 83(1) of the LOS Convention provides that "[t]he delimitation of the continental shelf between States with opposite or adjacent coasts shall be *effected by agreement* on the basis of *international law, as referred to in Article 38 of the Statute of the International Court of Justice*, in order to achieve an *equitable solution*."⁸⁹ Concerning islands, the Convention adopted the Greek approach. Pursuant to Article 121(2), "the continental shelf of an island [is] determined in accordance with the provisions of this Convention applicable to other land territory."⁹⁰ The priority accorded *agreement*, as well as the "equitable solution" verbiage, were responsive to the Turkish position; however, the reference to Article 38, which provides for resort to conventions and custom as the preeminent sources of international law, and the acceptance of an unconditioned continental shelf regime for islands, were not. Further, the convention refers to pursuit of an equitable *solution*, not application of equitable *principles*. Thus, equitable principles of delimitation, most often enunciated by the ICJ, would not *necessarily* be applicable in the search for an equitable solution. Based upon this outcome, Turkey elected not to sign.

Since conclusion of UNCLOS III, disagreements and confrontations over the continental shelves of Greece and Turkey have

87. UNCLOS III, U.N. Doc. A/CONF.62/C.2/L.23, July 26, 1974 para. 2, reprinted in Platzöder, *supra* note 41, at 144.

88. UNCLOS III, U.N. Doc. A/CONF.62/C.2/L.55, Aug. 13, 1974, art. 5, reprinted in Platzöder, *supra* note 41, at 173.

89. LOS Conv., *supra* note 1, art. 83(1), reprinted in 21 I.L.M. 1261, 1286 (emphasis added).

90. *Id.* art. 121(2), reprinted in 21 I.L.M. 1261, 1291.

continued to arise. Most notably, a "repeat" of the *Candarli* episode nearly brought the two to the brink of war. When Greece announced in 1987 that it planned to begin drilling for oil in the waters off the island of Thassos, Turkey responded by announcing that it was going to send the *Sizmik I* in to conduct oil explorations. It argued that the Greek action 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 agreement could be reached. Greece responded that the agreement had become inoperative through the passage of events. The situation took on international dimensions when Prime Minister Papandreou intentionally snubbed his NATO allies by briefing ambassadors from the Warsaw Pact countries on the crisis before doing so with those from NATO nations. While simultaneously casting blame for the situation on NATO, Papandreou ordered operations suspended at the United States communications base at Nea Makri. The situation was further enflamed when both the Greek and Turkish militaries were placed on alert. Reacting to pressure from the United States and NATO, Turkish Prime Minister Ozal finally ordered the *Sizmik* to stay clear of the contested area, a move which only narrowly averted hostilities. In return for this concession, Greece agreed not to conduct the planned drilling.⁹¹

The following year, the Greek and Turkish Prime Ministers held summit talks in Davos, Switzerland, designed to implement tension reducing procedures. For instance, they agreed to set up a "hot line" between Ankara and Athens, and to meet yearly. They also established a joint committee to work standing disagreements, including those over the Aegean. On the continental shelf issue, though, both continued to advance their preference for resolution, with Greece suggesting resort to the ICJ, and Turkey favoring bilateral negotiations. Unfortunately, as had happened so often in the past, the Davos process would ultimately generate little of substance; even the good will engendered quickly dissipated over Greek charges of repeated violations of its airspace by Turkish aircraft. The Davos episode illustrates not only the difficulty of achieving mutual accommodation of opposing Aegean interests,

91. On this affair, see Alan Cowell, *Greeks and Turks Ease Aegean Crisis*, N.Y. Times, Mar. 29, 1987, at 1; *Turks Back Off in Naval Confrontation with Greece*, Chicago Tribune, Mar. 29, 1987, at 3; Clogg, *supra* note 24, at 20.

but also the extent to which the Aegean dispute is an interrelated whole, rather than autonomous issues.

Ultimate resolution of this particular dispute is likely to prove extremely elusive. Characterization of the problem as essentially legal by Greece, but political by Turkey, leads to differing conclusions about the appropriate forum for resolution. As a result, whatever method is chosen, one party is likely to believe it is disadvantaged by the forum, and therefore, arrive less than fully committed.

In this environment, the best alternative appears to be one in which a third party serves as an honest broker between the two. Obviously, the United States is best suited to the broker role by virtue of its ties to Greece and Turkey. Unfortunately, given past history, as well as American interests in the dispute specifically and in freedom of navigation generally, the United States is unlikely to be viewed as truly "honest" by either side. NATO suffers from much the same problem, having been viewed suspiciously by both sides at various times. A neutral third party or the United Nations could credibly serve as an honest broker, but would be unlikely to wield the clout necessary to ensure positive negotiations between the antagonists.

An even more basic problem is disagreement over the legal principles to apply. Both sides can point to authority for their position. The 1958 Convention includes islands in the continental shelf calculation, a provision that was held to be customary international law in the *North Sea Continental Shelf Cases*.⁹² Article Six of the Convention also provided for application of equidistance in the absence of agreement, but only if special circumstances did not justify a different delimitation. However, the court held that the article was not declaratory of customary international law.⁹³

92. Article 1 provided that "For the purposes of these articles, the term 'continental shelf' is used as referring to . . . (b) . . . the seabed and subsoil of similar . . . areas adjacent to the coasts of islands." Convention on the Continental Shelf, *supra* note 55, art. 1. The court found this to be customary international law. *North Sea Continental Shelf* (F.R.G. v. Den.; F.R.G. v. Neth.), 1969 I.C.J. 3, 39 (Feb. 20).

93. The rejected article provided that "[i]n the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines" Convention on the Continental Shelf, *supra* note 55, art. 6, para. 1, 15 U.S.T. at 474, T.I.A.S. No. 5578, 499 U.N.T.S. at 316. This was held not to be custom. *North Sea Continental Shelf*, 1969 I.C.J. at 38.

Since Turkey was not a signatory,⁹⁴ and because Greece specifically filed a reservation based on the "special circumstances" clause,⁹⁵ the convention is relevant only to the extent it can support arguments based on custom. In this context, Greece holds the advantage because the 1958 Convention provisions on islands track those in the 1982 LOS Convention, which itself has been characterized as declaratory of customary international law.

Though the latter convention generally favors Greece, in a markedly guarded fashion, Turkey can point to a number of judicial decisions to support its case. In the *North Sea* cases, the ICJ rejected strict application of equidistance in the absence of equitable considerations. It specifically held that factors such as configuration, length and direction of the coast, geological structure, and the natural resources involved were relevant in crafting an equitable solution. It also noted, however, that equity did not imply equality.⁹⁶ A decade and a half later, the court again rejected the median line/equidistance method of delimitation as exclusive in the *Gulf of Maine Case*.⁹⁷ It further noted that the equitable criteria applied varies from case to case.⁹⁸

The narrower issue of the effect of islands in delimitation has also been the subject of adjudication. Generally, state practice affords islands a full continental shelf.⁹⁹ However, that is not always so when islands lie in close proximity to an opposing coast. In the *Anglo-French Continental Shelf* arbitration¹⁰⁰ and the ICJ's holding in the *Tunisian-Libyan Continental Shelf Case*,¹⁰¹ half effect was given to the Scilly and Kerkennah Islands respectively. In this method, two median lines are drawn, one between the coasts without islands and one between the island's baseline and that of the opposing coast. The delimitation is then set at the midpoint of the two. In another approach, the British Channel Islands were

94. Beyond that, the LOS Convention states that the 1982 Convention applies over that of 1958 as between parties. LOS Conv., *supra* note 1, art. 311, *reprinted in* 21 I.L.M. 1261, 1327.

95. Greek Accession to the Convention on the Continental Shelf of 1958, Nov. 6, 1972, 847 U.N.T.S. 338.

96. *North Sea Continental Shelf*, 1969 I.C.J. at 38-52.

97. Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), 1984 I.C.J. 246, 303 (Oct. 12).

98. *Id.* at 312.

99. Bowett, *supra* note 44, at 176-77.

100. United Kingdom-France Continental Shelf, 54 I.L.R. 6 (1977).

101. Continental Shelf (Tunis. v. Libya), 1982 I.C.J. 18 (Feb. 24).

enclaved in the *Anglo-French Continental Shelf* arbitration. The Court of Arbitration made its determination after focusing on the islands' size, their location just off the French coast, and their significance to Great Britain.¹⁰² Numerous other decisions have also served to illustrate the general approach of applying equitable principles on a case-by-case basis in delimitations of continental shelves involving islands.¹⁰³

Given differences of perspective on forum and law, some have highlighted the possibility of a joint development scheme, such as those which exist between Kuwait and Saudi Arabia, Saudi Arabia and the Sudan, Japan and Korea, Malaysia and Thailand, and Norway and Iceland.¹⁰⁴ Shifting the paradigm in this manner might prove useful in light of the inability of Greece and Turkey to achieve consensus using more traditional approaches. However, the ingrained hostility between the two will pose a substantial obstacle in any such cooperative.

What role should the United States play in this complex environment? Given its own interests, it must stay engaged in the process of seeking resolution. Additionally, despite credibility problems as an honest broker, it is probably the only country able to wield the influence necessary to press the process forward. Most importantly, the continental shelf dispute must be considered as part of the *entire* Aegean dilemma, for so characterizing it yields the benefits of asymmetrical negotiation. Negotiating each issue individually is no more likely to be successful than it has in the past. Finally, it should be noted that the time for negotiations may be ripe. With the surfacing of the Aegean territorial sea issue, and the tension thus created, both sides now have a visible incentive to work towards mutual accommodation. Since Greece has thus far not indicated a desire to extend its territorial waters, it has negoti-

102. *United Kingdom*, 54 I.L.R. at 70-96.

103. *See, e.g.*, *Delimitation of the Maritime Boundary (Guinea v. Guinea-Bissau)*, 25 I.L.M. 251 (1985). This case was an arbitration conducted by three members of the I.C.J. The Arbitration Tribunal rejected the equidistance method and, interestingly, considered the entire West African coast in the process of delimitation. *Id.* at 294-97. *See also, e.g.*, *Continental Shelf (Libya v. Malta)*, 1985 I.C.J. 13 (June 3), in which the I.C.J. adjusted the line of delimitation southward from Malta to account for Malta's status as an island. *See generally* Douglas M. Johnston, *The Theory and History of Ocean Boundary-Making* (1988); Gerard J. Tanja, *The Legal Determination of International Maritime Boundaries* (1990) (analyzing delimitation and discussing the cases cited herein).

104. Bahcheli, *supra* note 26, at 141.

ating latitude. At the same time, Turkey's concern over the territorial sea may predispose it to compromise somewhat on the continental shelf issue in exchange for Greek assurances vis-à-vis the territorial sea.

IV. AIRSPACE SOVEREIGNTY AND CONTROL

There are two disputes between Greece and Turkey over airspace. The first involves the extent of Greek territorial airspace, an issue of sovereignty. The second raises the question of the division between the Greek and Turkish flight information regions.

A. Airspace Sovereignty

In 1931 Greece proclaimed a ten NM territorial sea, noting that the extension of sovereignty included "matters of air navigation and its policing."¹⁰⁵ However, when the ten NM was reduced to six some five years later, the territorial airspace claim remained in place.¹⁰⁶ Greece bases its assertion of aerial sovereignty on security, arguing that the speed of aircraft necessitates a wider territorial width in the air than on the water.¹⁰⁷ Turkey, by contrast, has advanced no such claims in excess of its territorial seas.

It is well settled that sovereignty over airspace extends above a nation's territorial sea. For instance, the 1958 Convention on the High Seas provides for freedom of flight over the high seas.¹⁰⁸ A similar provision is found in the 1958 Convention on the Territorial Sea and Contiguous Zone; there sovereignty is said to extend to the airspace above the territorial sea.¹⁰⁹ The successor to the two, the 1982 LOS Convention, also specifically cites overflight as a high seas freedom.¹¹⁰ Issues of Turkey's non-party status aside,

105. Presidential Decree 6/18, Sept. 1931, *cited in* 1 Maritime Claims Reference Manual (DOD 2005.1-M) 2-203 (1990).

106. Law No. 230, *supra* note 6.

107. Wilson, *supra* note 30, at 24.

108. "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas . . . comprises . . . (freedom to fly over the high seas." Convention on the High Seas, Apr. 29, 1958, art. 2, 13 U.S.T. 2312, 2314, T.I.A.S. No. 5200, 450 U.N.T.S. 82, 84.

109. "The sovereignty of a coastal State extends to the airspace over the territorial sea . . ." Convention on the Territorial Sea and Contiguous Zone, Apr. 29, 1958, art. 2, 15 U.S.T. 1606, 1608, T.I.A.S. No. 5639, 516 U.N.T.S. 205, 208.

110. "The high seas are open to all States . . . Freedom of the high seas . . . comprises, *inter alia*, . . . freedom of overflight." LOS Conv., *supra* note 1, art. 87, *reprinted in* 21 I.L.M. 1261, 1286-87. See Major George W. Ash, 1982 Convention

each of these maritime conventions is ample evidence of customary international law. Additionally, the Chicago Convention, the cornerstone of civil aviation law, provides that "every state has complete and exclusive sovereignty over the airspace above its territory,"¹¹¹ with territory defined as "the land areas and territorial waters adjacent thereto."¹¹² Though the Chicago Convention is only applicable to non-state aircraft, and while most of the disputes involve military "intrusion," it is further customary law evidence of where the boundaries of aerial sovereignty lie, regardless of aircraft character.

So too is state practice, which overwhelming acknowledges that airspace sovereignty cannot extend beyond the territorial seas. In the United States, our own military manuals have adopted this position. Air Force Pamphlet 110-31 notes that "as sovereignty may not be exercised over the high seas, so assertions of sovereignty in the form of controlling or denying access, exit or transit are improper in the airspace above the high seas"¹¹³ The Navy version is in accord.¹¹⁴

Despite the relative clarity of the legal norms regarding territorial airspace, a very real practical problem presents itself in the Aegean case. Greece has technically exceeded its authority, but it is within its rights to extend the territorial sea to ten or even twelve NM.¹¹⁵ Should it do so, it is clear that it could claim a territorial airspace consistent with that revised limit.

Thus, a Catch-22 dilemma is presented. Valid protests of the ten NM airspace claim could lead Greece to extend its territorial sea, further destabilizing the current situation in the Aegean. Thus, the pursuit of expanded navigation rights could actually result in a diminishment of those rights in the Aegean. A strategy

on the Law of the Sea - Its Impact on Air Law, 26 A.F. L. Rev. 35 (1987) (discussing the impact of the 1982 LOS Convention on air law).

111. Convention on International Civil Aviation, Dec. 7, 1944, art. 1, 61 Stat. 1180, T.I.A.S. No. 1581, 15 U.N.T.S. 295, 296 [hereinafter Chicago Conv.].

112. *Id.* art. 2, 61 Stat. 1180, T.I.A.S. No. 1581, 15 U.N.T.S. at 298.

113. AFP 110-31, *supra* note 35, para. 2-1e.

114. NWP 1-14M, *supra* note 32, para. 1.8. For a superb analysis of the use of military manuals in serving as "a litmus test of whether a putative prescriptive exercise has produced effective law," see W. Michael Reisman & William K. Leitzau, *Moving Law from Theory to Practice: The Role of Military Manuals in Effectuating the Law of Armed Conflict*, in *International Law Studies 1991: The Law of Naval Operations 1* (H. Robertson ed. 1991).

115. See *supra* text accompanying note 42.

failing to consider this possibility would represent a classic elevation of form over substance. Given this dilemma, the reasonable approach would be to continue making legal assertions that the ten NM claim is invalid, thereby avoiding acquiescence to the practice of differentiating territorial seas from airspace sovereignty, yet refrain from taking tangible actions that might cause Greece to respond in a way that would represent a greater harm to American and Turkish interests. Since the situation is an isolated one, there is little risk this tactic would generate state practice supportive of a new legal regime.

B. *Flight Information Regions*

The second Aegean airspace issue involves flight information regions (FIRs). In order to enhance flight safety, the International Civil Aviation Organization (ICAO) has divided the world into various zones for the purpose of assisting and controlling aircraft. Each zone is further subdivided into FIRs and areas of "controlled airspace." Within each FIR, which may consist of both national and international airspace, flight information and reporting services are available; aircraft passing into them can also be required to provide a flight plan and position reports. Though air traffic control is not provided in a FIR, it is provided in controlled airspace.¹¹⁶

In 1952, ICAO set a dividing line between the Athens and Istanbul FIRs that tracked the territorial sea boundaries between the Greek Aegean islands and the Turkish coast. At the time, this was a reasonable approach, for it facilitated civil air traffic to and from the Greek islands and mainland Greece. Additionally, tensions between the states were at an all time low as both joined NATO. The scheme worked smoothly until the Cyprus invasion in 1974.

Given the hostilities, Turkey issued Notice to Airmen (NOTAM) 714 requesting all aircraft to report their position to Turkish controllers when crossing the median line in the Aegean between Greece and Turkey.¹¹⁷ This was done to permit Turkey to distinguish between hostile and non-hostile aircraft. The following

116. Michael N. Schmitt, *Aerial Blockades in Historical, Legal, and Practical Perspective*, 2 USAF J. L. Stu. 21, 60 (1991).

117. Turkish NOTAM 714, Aug 6, 1974, reprinted in Sazanidis, *The Greco-Turkish Dispute Over the Aegean Airspace*, 1980 Hellenic Rev. Int'l Rel. 87, app. 1.

day, Greece issued its own NOTAM declaring the Turkish notice to be without force and contrary to ICAO regulations.¹¹⁸ It also filed a diplomatic protest in which it characterized the Turkish NOTAM as invalid and dangerous to civil aviation.¹¹⁹ The Turkish response was a disavowal of responsibility for the safety of those aircraft ignoring its notice.¹²⁰ At that point, the Greeks issued NOTAM 1157 declaring the Aegean airspace, with certain minor exceptions, a "danger zone."¹²¹ Based on that declaration, international airlines promptly suspended routes between Greece and Turkey. Turkey protested the Greek ten NM territorial airspace claim and began military flights into Greek airspace, particularly above the Aegean islands which were supposed to be demilitarized.¹²² Attempts by ICAO Secretary General Walter Binagi to mediate proved unsuccessful.¹²³

Matters calmed with the issuance of the Brussels Communiqué in 1975 and the establishment of the various working groups it called for. In June, a joint committee of experts met in Ankara to

118. Greek NOTAM 1018, Aug. 7, 1974, *reprinted in* Sazanidis, *supra* note 117, at app. 2.

119. Greek Note Verbale of Aug. 29, 1974, *reprinted in* Sazanidis, *supra* note 117, at app. 4.

120. Turkish Note Verbale of Aug. 29, 1974, *reprinted in* Sazanidis, *supra* note 117, at app. 5. The disavowal was crystal clear. "Pour les avions qui ne se conformeraient à ce Notam, les autorités turque déclinent toute responsabilité en ce qui concerne la sécurité de vol." *Id.*, *reprinted in* Sazanidis, *supra* note 117, at app. 5. Translated from the French this means, "For the aircraft that do not conform to this NOTAM, the [Turkish] authorities decline all responsibility for that which concerns the security of flight."

121. Greek NOTAM 1157, Sep. 13, 1974, *reprinted in* Sazanidis, *supra* note 117, at app. 7.

122. *See, e.g.*, Greek protests at: Letters from Greek UN Representative to Secretary General of Mar. 24, 27 Mar. and 3 Apr. 1975 (U.N. Docs. 11660, 11661, 11665), *reprinted in* Sazanidis, *supra* note 117, at apps. 9-11.

123. C. Panagakos, *The Aegean Dispute: Historical Development and Potential Solutions* 78 (1991) (Thesis, University of Rhode Island). A number of other student works are valuable sources on the Aegean dispute. *See, e.g.*, G. Avcı, *International Legal Disputes: The Aegean Continental Shelf Case* (1991) (Thesis, University of Georgia); C. Botzios, *The Aegean Continental Shelf and the Greek-Turkish Crisis* (1984) (Thesis, San Francisco State University); E. Georgoussis, *The Strategic Value of Aegean Islands and Today's NATO Policy* (1988) (Research Report, Air War College); G. Marsh, *The Aegean Dispute: Prospects for Resolution* (1989) (Research Report, Naval War College); M. Paley, *The Greek-Turkish Disputes and Their Effect on NATO's Southern Flank* (Report No. AU-AWC-86-167, Air War College, 1986).

begin addressing airspace issues.¹²⁴ Unfortunately, progress was impeded when Turkey expanded its interpretation of NOTAM 714 to cover military aircraft. Under the Chicago Convention, ICAO and ICAO flight safety systems are inapplicable to state aircraft.¹²⁵ Yet, Turkey now insisted that all military aircraft notify Turkish controllers of their position and file flight plans upon entering the 714 area.¹²⁶ Surprisingly, the Greeks remained at the negotiating table and some progress was made until the *Sizmik* affair of 1976 interrupted the talks, yet another excellent example of how the multiplicity of Aegean disputes renders agreement on any one difficult.

As relations improved following the incident, the two sides commenced a fifth round of talks in Paris. These talks produced an agreement to reopen a "hot line" between the Greek 28th Tactical Air Force (TAF) at Larissa and Turkey's 1st TAF at Eskişehir,¹²⁷ closed since the Cyprus invasion. Additional negotiations at various levels were conducted, though with negligible substantive effect until February of 1980,¹²⁸ when Turkey suddenly withdrew NOTAM 714.¹²⁹ Greece responded by canceling notice 1157, and civil aviation in the Aegean returned to the *status quo ante*.¹³⁰

NATO was critical in achieving this breakthrough. Recall that at the time NATO, Greece and Turkey were negotiating the return of Greece to the alliance. The issue of the NOTAMs and their revocation pervaded those negotiations, and NATO consistently cited the matter as one of the prerequisites to agreement.¹³¹ The withdrawal of the NOTAMs in February served as a good faith sign

124. See Committee Communiqués of 20 June, 1975, 25 July 1975, 26 Jan. 1976, and 20 Nov. 1976, reprinted in Sazanidis, *supra* note 117, at apps. 14-17. The meetings took place in Ankara, Athens, Istanbul and Athens, respectively.

125. Chicago Conv., *supra* note 111, art. 3(a), 61 Stat. 1181, T.I.A.S. No. 1581, 15 U.N.T.S. at 298.

126. Wilson, *supra* note 30, at 11.

127. Joint Communiqué of the Meeting Between the Experts of Greece and Turkey in Paris, Nov. 20, 1976, reprinted in Sazanidis, *supra* note 117, at app. 18.

128. See Sazanidis, *supra* note 117, at 93-96, for a discussion of these talks.

129. Turkish NOTAM 211, Feb. 22, 1980, reprinted in Sazanidis, *supra* note 117, at app. 19B.

130. Greek NOTAM 267, Feb. 23, 1980, reprinted in Sazanidis, *supra* note 117, at app. 20B.

131. See Sazanidis, *supra* note 117, at 97-100, for a (somewhat slanted) discussion of these negotiations.

that, at least in part, permitted consensus on Greece's readmission to NATO in October 1980.

Today, the FIR issue continues to plague Greco-Turkish relations. Greece presently insists that military aircraft conform to the ICAO reporting procedures within the Athens FIR. The Turkish response is that state aircraft are only required to fly "with due regard" to safety because the Chicago Convention and ICAO are applicable solely to civil aircraft. This contention is consistent with the express terms of the Chicago Convention.¹³² Indeed, absent the Convention and the regime ICAO has established to facilitate flight safety, Greece could not require any reporting in international airspace, except as a precondition to entry into Greek national airspace. Though United States military aircraft generally follow ICAO rules and utilize FIR services on point-to-point routes, this is explicitly done as a matter of policy, not legal obligation. The United States does not strictly comply with ICAO requirements in military contingency operations, classified or politically sensitive missions, or during carrier operations, but instead operates with *due regard* to the safety of civil aviation.¹³³

In the most recent iteration of the FIR dispute, Greece has the weaker case. It is using an international safety regime for its own security ends. The only appropriate mechanism for doing what the Greeks seek is establishment of an air defense identification zone (ADIZ). ADIZs are reasonable conditions on the entry of an aircraft into national airspace that does not otherwise have such a right. The aircraft may be required to identify itself in international airspace prior to crossing into national airspace. Note that based on the right to fly over international waters, the United States does not recognize an ADIZ which requires identification by aircraft that are merely transiting the area as opposed to seeking entry.¹³⁴ This is the best expression of the balance between the conflicting interests in international law of freedom of navigation and sovereignty. Thus, Greece cannot "convert" its FIR into an ADIZ to achieve like ends.

132. "The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft." Chicago Conv., *supra* note 111, art. 3(d), 61 Stat. 1181, T.I.A.S. No. 1581, 15 U.N.T.S. at 298.

133. NWP 1-14M, *supra* note 32, para. 2.5.2.2.

134. On ADIZs, see NWP 1-14M, *supra* note 32, para. 2.5.2.3; Note, *Air Defense Zones: Creeping Jurisdiction in the Airspace*, 18 Va. J. Int'l. L. 485 (1978).

Greek use of the FIR in this manner should be opposed, and it should not be the subject of negotiation. Allowing Greece to manipulate for security reasons a procedure designed to ensure safety of international civil aviation would weaken that regime significantly. It is the universality of the procedures which renders them beneficial; should they be turned to unilateral ends, they will become less reliable, less predictable and less effective. There are no countervailing interests on the part of interested states which would justify that cost.

V. REMILITARIZATION OF THE GREEK ISLANDS

As noted earlier, certain of the Aegean islands Greece acquired in the past century were demilitarized by international agreement. For ease of analysis, these may be divided into three groups, the "Northern Group" of Lemnos and Samothrace, the "Central Group" of Mytilene, Chios, Samos and Ikaria, and the Dodecanese Islands.¹³⁵

During the 1960s, Greece began to slowly remilitarize many of these islands, a move protested by Turkey on repeated occasions. Each time, Greece reassured Turkey that the activities were only meant to enhance the law enforcement capabilities of the local police and in no way violated applicable international agreements.¹³⁶ However, upon the Turkish invasion of Cyprus, remilitarization began in earnest. For example, a series of defensive fortifications were erected on Lesbos, Chios, Samos and Ikaria. These fortifications included armored vehicles, artillery and an increase in troop strength. Additionally, Greece built a major air base on Lemnos.¹³⁷ In response, Turkey created the Fourth Army, the Army of the Aegean, which was based at the major port of Izmir and equipped with amphibious capability. To justify its militarization of the islands, the Greeks pointed to the Turkish willingness to use force, as demonstrated on Cyprus, and to the power projection capability the Turks now possessed in the region. Greece also fashioned legal arguments, described below, to support their actions. However, it is clear that the Greeks had not experienced a juris-

135. The fourteen main islands in the Dodecanese are: Astypalea, Kalymnos, Karpathos, Kasos, Khalke, Kos, Leros, Lipsi, Megisti, Nisyros, Patmos, Rhodes, Symi and Tilos.

136. Bahcheli, *supra* note 26, at 147.

137. Greece: A Country Study, *supra* note 14, at 316.

prudential epiphany; instead, the remilitarization was simply an expression of Greece's understandable concern about its security and that of its citizens living on the islands.

Since 1974, additional remilitarization has occurred on a periodic basis. Interestingly, Greece has often sought *de facto* legitimization for its actions through NATO. For instance, Greece recently requested establishment of a NATO infrastructure project on Lemnos, and sought to have that island included in a NATO Apex Express exercise. Both attempts were unsuccessful, but they do display the approach Greece is taking in the matter. To better understand the situation, however, it is necessary to assess the historico-legal background to each of the three components of the militarization dispute.

A. *The Northern Group: Lemnos and Samothrace*

Recall that during the 1923 Lausanne Conference, Turkey was concerned about the security implications of Greek islands near the entrance to the Dardanelles. Therefore, in the Straits Convention it negotiated the demilitarization of two islands, Lemnos and Samothrace, in exchange for demilitarization of islands Turkey was to receive pursuant to the treaty.¹³⁸ Thirteen years later, concerned over threatening Italian and German activities, remilitarization of the straits was authorized by the Montreux Convention, an agreement signed by both Greece and Turkey.¹³⁹ That document made no mention of the islands, though the preamble did state that the parties "resolved to replace by the present [Straits] Convention, the convention signed at Lausanne . . ."¹⁴⁰ Focusing on this language, the Greeks today argue that the intent of the Montreux drafters was to supplant the Straits Convention entirely. As support for this position, Greek officials point to a statement made by the Turkish Foreign Minister in 1936 to the Turkish Grand National Assembly. In that statement, the Foreign Minister noted, "[t]he provisions concerning the islands of Lemnos and Samothrace, which belong to our friend and neighbor, Greece,

138. Straits Convention, *supra* note 17, art. 4. The islands which Turkey received were Gökçeada and Bozcaada.

139. Montreux Convention, *supra* note 18.

140. *Id.* at Preamble.

and which had been demilitarized by the Treaty of Lausanne in 1923, are abolished also by the Treaty of Montreux"¹⁴¹

From the Turkish perspective, the statement was merely a hortatory expression of goodwill and cannot be deemed legally binding.¹⁴² While technically correct from a legal perspective, the statement is *evidence* of the intent of the parties regarding the convention. Turkey also urges that the failure to specifically address the islands in the treaty implies the demilitarization regime remains intact. However, on this point, Greece appears to have the better argument. Under customary law, international agreements are generally interpreted in accordance with their contextual plain meaning, and context specifically includes preambles.¹⁴³ In this case, the preamble did not suggest provision by provision replacement of the Straits Convention with the Montreux Convention, but rather a wholesale replacement. Additionally, the international law of termination, by reference to the preambular language, would suggest Montreux superseded the Straits Convention *in toto*.¹⁴⁴ Therefore, remilitarization of these islands is authorized.

141. Statement of Foreign Minister to Grand National Assembly, 12 Record of the Grand National Assembly 309 (5th Parliamentary Period, 5th sess., 61st mtg.) (1936), *reprinted in* Journalists Union of Athens Daily Newspapers, *Threat in the Aegean* 33, n.d.

142. For instance, Turkish officials have stated that the Foreign Minister's statement "has to be read, as an expression of goodwill in the light of the international political climate prevailing at the time which cannot change, in any way, the provisions of international treaties." Bahcheli, *supra* note 26, at 148.

143. Consider the Vienna Convention, Article 31:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes

Vienna Convention, *supra* note 48, art. 31(1)-(2), *reprinted in* 8 I.L.M. 679, 691-92. Though the United States is not party to the Convention, it accepts the greater part as declaratory of customary international law.

144. The Vienna Convention provides that if the parties to a treaty conclude a later agreement relating to the same subject matter and "it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty," the first shall be considered terminated. *Id.* art. 59(1)(a), *reprinted in* 8 I.L.M. 679, 700.

B. *The Central Group*

The Treaty of Lausanne, which was unaffected by the Montreux Convention and remains in force today, confirmed the earlier demilitarization of the central group of islands: Mytilene, Chios, Samos and Ikaria. In Article 13, the Greek government undertook not to build naval bases or fortifications on the islands and to limit military forces to "the normal contingent called up for military service, which can be trained on the spot, as well as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory."¹⁴⁵ While Turkey asserts the strengthening of forces on the islands in the aftermath of the Cyprus invasion violated Article 13, Greece has responded that the terms of the treaty do not prohibit local self-defense. However, the extent and posture of the Greek military forces clearly exceed permitted measures, a point which the United States has made to its Greek ally.

C. *Dodecanese Islands*

The Treaty of Paris provided for the demilitarization of the final group of islands, the Dodecanese. That treaty transferred the islands from Italy to Greece following the Second World War. Article 14 specifically prohibits "all naval, military and military air installations, fortifications and their armaments, . . . the basing or the permanent or temporary stationing of military, naval and military air units, military training in any form, and the production of war materiel [sic]."¹⁴⁶ However, internal security forces "equipped with weapons that can be carried by one person" are permissible.¹⁴⁷

Following the Cyprus invasion, significant military forces were placed on the Dodecanese Islands in clear violation of the treaty, an action over which the United States expressed concern. Nevertheless, in response to Turkish protests, Greece has maintained the position that the demilitarization provisions of the Treaty cannot preclude it from taking inherent self-defense measures. With particular regard to Turkey, Greece has accurately argued that Turkey does not have standing to complain of violations of the

145. Treaty of Lausanne, *supra* note 16, art. 13(3).

146. Treaty of Paris, *supra* note 20, art. 14.

147. *Id.*

Treaty of Paris because Turkey was a non-party to that treaty.¹⁴⁸ Thus, while Greece is in violation of a legal obligation regarding the Dodecanese, Turkey is ill-situated to protest it.

CONCLUSION: WHAT IS TO BE DONE?

The labyrinthal disputes over the Aegean are complex and long-standing. As such, they do not easily admit of conclusive resolution. Nevertheless, the United States has vital interests in the area, e.g., freedom of navigation, the survival of NATO, international trade, and the availability of basing to support out of area operations. What can, or should, the United States do to unravel the enigma that is the Aegean?

First, every effort must be made to ensure the present "crisis" is not blown out of proportion. Greece has ratified the Law of the Sea Convention, but has not indicated any intent to expand its territorial sea. In light of the fact that the legal basis for a Greek extension existed even before ratification, there is little cause for the present saber rattling: nothing substantive has changed. Indeed, highlighting the issue can only prove counterproductive. Thus, the best approach is to reassure Turkey over Greek intentions, and to encourage Greece to take no precipitous action likely to further enflame the situation.

At the same time, the continental shelf issue highlights the need to take a comprehensive view of the disputes. The history set forth above amply demonstrates the synergistic destabilizing tendencies that exist. On repeated occasions, progress on one issue has been frustrated by discord over another. Any lasting resolution, therefore, must address the disputes as an integral whole. Interestingly, it is the interrelatedness itself that presents the opportunity for constructive asymmetrical negotiations. The possibility of give and take is enhanced by the broad scope of the issues at hand. Although not perfectly situated to play an honest broker role, the United States, unilaterally and through NATO, is best equipped to entice the parties to the negotiating table, and to keep

148. Wilson, *supra* note 30, at 16. This latter position would appear to be supported by the principle of international law that rights and obligations are created only among parties to a treaty, *pacta tertiis nec nocent prosunt*. See also Vienna Convention, *supra* note 48, art. 34, reprinted in 8 I.L.M. 679, 693. "A treaty does not create either obligations or rights for a third State without its consent." *Id.*, reprinted in 8 I.L.M. 679, 693.

them there. The United States can exert an influence on the two that no other state can. Further, among the potential third party mediators, the United States has the greatest interest in seeing negotiations reach a successful conclusion.

The best approach to negotiations is a phased strategy which has been discussed in official circles. In the first phase, the United States would conduct separate bilateral talks with each of the parties. This offers the benefit of identifying and developing common ground without the risks inherent in *ab initio* face-to-face meetings. Once parameters and directions have been identified and agreed upon, phase two would begin: a trilateral negotiation. This phase would explore proposals and begin substantive work on the foundations laid during phase one. It would also serve as a "confidence builder" for the final stage of negotiations. That final phase would involve regularly scheduled trilateral meetings until a comprehensive settlement is reached.

Ultimately, success in any dispute resolution effort is less dependent on forum, strategies or approach, than it is on a sincere willingness of the parties to work in good faith. Success also requires an understanding that the process need not be zero-sum. Hopefully, the extent to which the present "crisis" has escalated beyond the degree merited will serve to generate the attitudinal shifts necessary for positive forward progress.