The Troubled Situation of the Aegean Territorial Waters

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RÉSUMÉ

Cet article aborde la délimitation et l'étendue de la mer territoriale sur la base de l'équité et du droit ainsi que le statut légal des îlots d'Imia dans la mer Égée.

Pour la délimitation de leur mer territoriale, les États ne jouissent pas de pouvoir absolu à leur discrétion. Ils peuvent l'utiliser en prenant en considération toutes les conditions y compris les intérêts de la société internationale, conformément à l'équité et à la justice provenant du droit international. Parce que la délimitation et l'étendue de la mer territoriale contiennent toujours un aspect international. En effet, la CIJ a confirmé, à plusieurs reprises, ce principe dans ses arrêts. Compte tenu des îles, îlots et rochers qui sont à plus de trois milles, la mer Égée a des conditions très spéciales. De ce fait, les États du littoral, notamment la Grèce, sont tenus, au moment où ils définissent l'étendue ou la délimitation de la mer territoriale, de prendre en considération ce fait.

Comme l'a dit le représentant de la Grèce, M. Kripsis, en 1958, au cas où la Grèce élargit sa mer territoriale au delà de six milles, la mer Égée devient complètement fermée à la communauté internationale et dès lors, ceci signifie l'abus de l'utilisation d'un droit en la matière. En élargissant l'étendue de sa mer territoriale de n'importe quelle manière, contrairement à l'équité et à la justice, la Grèce désire acquérir un nouveau territoire. A notre avis, une telle expansion se fera au dépens des droit *ipso facto* et *ab initio* de la Turquie sur le plateau continental.

ABSTRACT

This article deals with the delimitation and extent of territorial waters in the Aegean on the bases of law and equity. The article also reviews the legal status of the Imia rocks.

When determining the breadth of territorial waters, states do not have absolute discretional power. They are bound to use their power in conformity within the rules of international law and on the bases of justice and equity while taking into account all relevant factors, including the interests of the international community since delimitation and extension have always been of an international nature. Indeed, the judgements of the ICJ confirm this principle of international law.

The Aegean Sea does have very special circumstances due to the islands, islets and rocks, which altogether exceed three thousand. Consequently, the coastal states —especially Greece— ought to take this special feature into consideration when delimiting or determining the breadth of their territorial waters. As the Greek representative, Kripsis, expressly stated in 1958, any extension of territorial waters by Greece beyond six miles would close the whole Aegean to the international community. For this reason, such a move would be an abuse of rights. Besides, by extending its territorial waters by any means, Greece would be acquiring new territories and sea areas in the Aegean in a spirit contrary to law and equity. Such an extension, according to the authors, would also overlap with Turkey's *ipso facto* and *ab initio* rights over its continental shelf areas.

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Introduction

Turkey and Greece are two sovereign states which are obliged to live together in good neighbourliness due to their mutual economic, political and geopolitical interests. However, occasionally, for several reasons, severe differences of opinion on various issues between the two neighbours cause the tension to escalate which can even bring them to the brink of threatening regional peace and security. These disputes vary in character, but some are closely related to each other especially when they are also related to the extension of sovereignty or use of sovereign rights.

Before an attempted analysis of the problems surrounding the Aegean territorial waters, it would be better to indicate briefly the present disputes between the neighbouring coastal countries. The disputes can be classified as:

i. The Cyprus case;

ii. Disputes related to the minority rights of «Western Thrace Turks» which are being secured and guaranteed by various international agreements;

iii. Disputes concerning the «Greek Air Space» zone that extends beyond its territorial waters contrary to various existing multilateral agreements;

iv. Disputes concerning the militarization of the Eastern Mediterranean Islands and the Dodecanese Islands, including the island of Castelorizo, contrary to existing international agreements;

v. Disputes related to the International Law of the Sea, which includes:

• the territorial waters concerns, i.e. disputes related to the extent and delimitation of territorial waters;

• the delimitation of the continental shelf;

vi. Conflicting claims of sovereignty over certain islets (The Imia Case).

This article will try to shed light on to the Aegean territorial sea problems, on the basis of law and equity.

1. International Rules, in General, Applicable to the Problems on Aegean Territorial Waters

Until the UN Convention on the Law of the Sea, which was signed on 10 December 1982, and put into force on 16 November 1994, no multilateral treaty determining the breadth of territorial waters and bounding all states even existed. The 1982 Convention, while codifying some of the international customary rules on the law of the sea, attempted to create some new norms in this field which were not previously treated and organized by international law.

According to the general principles of international law, treaties are only valid and legally effective among the states that are parties to the treaties. If, however, a treaty includes provisions of customary international law then in such a case another state which is not a party to the treaty will only be bound not by the treaty itself but by those provisions that are norms of customary international law. In other words, not the provisions of the treaty but rather norms of customary international law will be applied and will be valid among non-party and party states.

Turkey cast a negative vote to the 1982 Convention, and also persistently objected to some of its provisions. Greece, however, voted in favour of the Convention, signed it and ratified it in the early days of 1995. For reasons stated above, not the provisions of the mentioned Convention but general principles of law and customary rules of international law ought to be applied to Turkish-Greek relations on law of the sea matters.

2. Turkish and Greek Practice Related to the Breadth of Territorial Waters

2.1. Turkish Practice

Turkey, taking its previous practice of three-mile limits into consideration for many years, misinterpreted with the utmost goodwill some of the provisions of the Lausanne Peace Treaty (Art. 6/2 and 12/2).[1] Despite the fact that no provision determining the breadth of the territorial sea existed, Turkey applied a three-mile territorial sea, just like Greece, not only in the Aegean but also in the Black and Mediterranean Seas. In other words, taking past practice into consideration, Turkey accepted and applied the three-nautical-mile territorial sea until 1964.

In 1964, Turkey's territorial waters were declared as six nautical miles (Art. 1/1) by the «Territorial Waters Law» (Law No: 476).[2] Yet Turkey also reserved the right, on the basis of reciprocity, to apply broader territorial sea limits to those countries that accept and apply broader limits (Art. 2). On the other hand, in measuring the breadth of the territorial sea, Turkey also reserved the right to apply either the normal baseline method or, where circumstances accepted by international law justified it, to apply the straight baseline method. (Art. 4)

Since May 1964, Turkey has thus applied a six-mile territorial sea to Greece in the areas where this limit can be applied according to this law. However, where coasts are opposite each other, in the areas less than twelve miles apart, the median line was applied and this line in practice established the territorial sea boundary[3] between Turkey and Greece, since no agreement exists between the parties. (Art. 3)

Relying on this law as well as the customary rules of international law, Turkey applied the straight baselines method in certain bays, such as Xeros, Adramiyti, Izmir, Mendflia and Kos, from 24 May 1965 until July 1973.[4] Since July 1973, however, given the very special circumstances of the Aegean Sea and also the wish not to create any basis for counter-practices and any sort of abuse of rights by its neighbour, Turkey denounced this practice and abolished the chart that applied straight baselines in the mentioned areas (Chart No: 8003 dated 24 May 1965).

Given the changes in the law of the sea, the various views of the states and also some of Turkey's draft article resolutions[5] Ankara submitted to the Third UN Conference on the Law of the Sea, denounced this law (No: 476) and accepted on 20 May 1982 a new «Territorial Waters Law» (Law No: 2674).[6]

Since May 1982, Turkey has applied this law (Law No: 2674), which also accepts a territorial sea of six nautical miles (Art. 1/1). The same law also gave the government the power to declare broader territorial waters in particular seas, where all circumstances justified such an act and where the principles of equity are not compromised (Art. 1/3).

The Turkish Government, taking into consideration this particular provision of the law, declared by a decree (Decree No: 8/4742 dated May 29, 1982)[7], that it would continue to apply a territorial sea of twelve nautical miles in the Black Sea and also in the Mediterranean (as was Turkey's previous practice). As can be seen, this previous practice was maintained and the Aegean Sea was wholly excluded from any extension beyond six nautical miles, given that the special circumstances of the coast and sea do not justify any extension of territorial waters and will fall contrary to the principles of equity. On the other hand, as Greek representative Kripsis stated at the 1958 UN Conference on the Law of the Sea, any extension of territorial waters by Greece in the Aegean Sea will create an abuse of rights.[8] Turkey, by keeping its previous practice, also did not want to abuse any rights already granted her by international law.

The Turkish «Territorial Waters Law» indicates the principles of delimitation between states with opposite or adjacent coasts. According to this law, an agreement is essential between the concerned states, which ought to take into account all relevant factors of the region and also reflect equity (Art. 2).

In addition to those powers stated above, the power to determine the baselines for measuring the breadth of territorial waters is left to the discretion of the government (Art. 3.). This power can definitely only be used by the government in conformity with the principles of international law. The Turkish Government, to our knowledge, has applied the normal baseline method to its territorial waters all over the Aegean since July 1973.

An agreement is necessary on Turkish and Greek territorial waters in the Aegean where coasts are opposite or adjacent to each other. The Lausanne Peace Treaty neither includes a provision concerning the delimitation of Turkish and Greek territorial waters nor a map to this end, not even as an annex to this Treaty.

On 13 November 1926, the two states by an agreement delimited the seaward part of the Meritsa river. This delimitation was agreed upon at a time when the two states applied a three-mile territorial sea limit, but since 1964 this practice has changed. Due to the 1926 agreement, the limit should be revised according to this situation or the parties should agree on a new adjacent delimitation.

Another agreement between Turkey and Greece concerning the delimitation of territorial waters is the January 4, 1932 agreement signed between Turkey and Italy. This agreement determined the sovereignty over the islands and islets between the Turkish coast and the island of Castelorizo. Greece, by means of the 1947 Treaty (Art. 14), became a party to the mentioned 1932 treaty due to succession.

No other agreement concerning the delimitation of territorial sea exists between Turkey and Greece other than those indicated. Indeed, in the Aegean Sea Continental Shelf Case, Greece officially claimed that the 1932 agreement delimited the territorial sea at that particular region.[9] This fact also reveals that there exists no other agreement between Turkey and Greece concerning the delimitation of Turkish and Greek territorial waters in areas where coasts are opposite to each other, all over the Aegean. In other words, Greece through its claims before the ICJ officially rejected the view that Art. 12 of the Lausanne Peace Treaty delimited and determined the breadth of Turkish territorial waters in the Aegean Sea. In other words, Art. 12 only indicates that islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty. It does not indicate or mean that islands and islets situated beyond three miles off the Asiatic coast *ipso facto* belongs to Greece, or limit Turkey's territorial sea to three miles.

2.2 Greek Practice

Until 1936, Greece applied a limit of three nautical miles to territorial seas, not only in the Aegean but also the Ionian. This decision stemmed from the general state practice and Greece's own belief that international law permitted a territorial sea of up to three nautical miles. But, on September 17, 1936, by Law No. 230, Greece extended its territorial waters to six miles, despite having advocated the three-mile limit with 17 other maritime states at the 1930 La Haye Codification Conference. While Greece was advocating three nautical miles territorial waters, Turkey, at this Conference, was advocating a territorial sea up to six nautical miles.

The Greek law (no. 230) does not include any special provision on methods of delimitation, the effects of islands and islets to those.

After Greece extended its territorial waters to six miles in 1936 by relying on its municipal law, Turkey did not object to this practice. This position came not only from Turkish views on the breadth of territorial waters, but also from the spirit of good neighbourliness founded by Atatürk and Venizelos in 1930.

Greece, in the 1958 Conference, despite a six-mile territorial sea practice, advocated a three-mile limit for the territorial sea and declared that it would reduce Greek territorial waters to three miles if the conference agreed.

Greece, since 1936, has not changed its six-mile practice. Nevertheless, on every occasion since the Third UN Conference on the Law of the Sea, Greece has sought to do so by every means unilaterally and also by supporting resolutions to its advantage, including the archipelagic state. Greece ratified the Convention in the early days of 1995, which might, according to Greek opinion, help the country to extend its territorial waters and also its areas of sovereignty in the Aegean. In other words, Greece wanted and still wants to acquire new sea territories and sea areas where it can use its sovereignty or sovereign rights. For this reason, the territorial sea problems, such as extension or by other new means of delimitation that will be unilaterally declared and applied by Greece, seem to prevail over all other issues in the Aegean, e.g., even the continental shelf dispute. By extending the territorial sea, the disputed continental shelf areas will be reduced to the advantage of Greece. However, this will lead to another dispute. In such a case Greece's rights over its new territorial sea will overlap with Turkey's *ipso facto* and *ab initio* rights over its continental shelf which do not require any occupation or any express proclamation.

3. International Law and the Breadth of Territorial Waters

The three-mile territorial sea limit, although a long-lasting practice, never gained general rule status. In none of the codification conferences, such as La Haye (1930), the First UN Conference on the Law of The Sea (1958) and the Second UN Conference on the Law of the Sea (1960), did states reach an agreement on the breadth of the territorial sea.

Despite that reality, since 1950, states have started abandoning the three-mile territorial sea practice and have begun accepting six-to twelve-mile territorial sea limits. Indeed, the draft articles submitted by states to the 1958 and 1960 Conferences indicated this general practice and tendency.

In the Third UN Conference on the Law of the Sea, overall the states declared that the territorial sea limits could be up to twelve miles. They either supported the position or submitted draft articles to this end. Yet only a few states were in

favour of an absolute twelve-mile limit for every state, and they had submitted draft articles to this end, such as India, Fiji, Spain, Greece, etc. Also, a few states were in favour of a two-hundred mile territorial sea.

The Third UN Conference on the law of the Sea, managed to codify this customary rule of international law on the breadth of the territorial sea. According to the 1982 Convention (UN Convention on the Law of the Sea) Art. 3 (Breadth of the territorial sea): «Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles, measured from baselines determined in accordance with this Convention.»

As can be ascertained from the above-mentioned provision, the breadth of the territorial sea is not absolutely twelve miles but could be up to twelve miles. On the other hand, while determining the breadth of their territorial waters and delimiting it, states do not have absolute discretionary power.

4. Discretionary Power of States in Establishing the Breadth of Their Territorial Waters

The littoral states power in determining the breadth of its territorial waters and its delimitation, as previously mentioned, is limited and not left solely to the sovereign powers of the state. This power can be used only within the limits prescribed by international law and also only following the rules of equity. On the other hand, the 1982 Convention also expressly demands that states exercise their rights, jurisdictions and freedoms in a manner which would not constitute an abuse of rights (Art. 300). This provision of the Convention indicates a general principle of law and is also valid for the determination of the extent and delimitation of territorial waters.

4.1 Determination is not Solely Left to the Sovereign Powers of the State

Art. 3 of the 1982 Convention recognizes that states may establish the breadth of their territorial waters up to twelve miles. The same provision does not, however, mean that states are absolutely free and have exclusive powers in exercising this right. The ICJ in the Anglo-Norwegian Fisheries Case (1951) and also in the Anglo-Icelandic Fisheries Jurisdiction Case (1974) indicated an international custom, in both its judgements, to this end.

According to the ICJ, the establishment of the breadth of the territorial sea by a state has always created an international concern. The establishment of the breadth of the territorial sea can not be left solely to the discretion of the littoral state as being indicated in the municipal law of that state. It is also a reality that determination is both a unilateral and national act. Nevertheless, the validity of

this unilateral determination against the other states depends upon the rules of international law. On the other hand, while states are determining the breadth of their territorial waters, they should also take into consideration the interests of the other states and of the international community. In other words, the validity of a determination from the point of international law also depends on the non-objection of the concerned states to this practice.

4.2 Determination Should Conform to the Principles of Equity

The right of the coastal state to establish the breadth of its territorial waters according to the customary rules of international law, jurisprudence, and general principles of law ought to be executed in conformity with the principles of equity. In other words, both Turkey and Greece in the Aegean can establish the breadth of their territorial waters only as their decisions conform to the principles of equity. However, equity can be determined in each case only and by taking into account all relevant factors that will affect justice, such as the geographical, geological—to name a few—circumstances. Indeed, Art. 15 of the 1982 Convention, which reflects a principle of customary international law, makes reference to "special circumstances" in the case of delimitation of territorial sea where the coasts of two states are opposite or adjacent to each other.

Turkey, in its practice and during the Third UN Conference on the Law of the Sea, advocated equity in determining and delimiting the breadth of the territorial sea, and sea areas, especially in semi-enclosed seas having special circumstances.

4.3 Determination Should Not Constitute an Abuse of Rights

Abuse of rights simply means deliberately and with bias using a jurisdiction, right or freedom while disregarding the interests of other states and the international community. In other words, use of a right contrary to its spirit or for the purpose of creating due harm to another or others. No rule of law protects from "abuse of a right", and such acts are considered within the general principles of law, as null and void., e.g., extension of territorial waters in the Aegean Sea for the purpose of restricting or acquiring the continental shelf areas of Turkey is an obvious example of an abuse of a right concerning the determination of the extent of territorial waters, which is contrary to law.

4.3.1 Territorial Sea of a State Should Not Be Cut off from the High Seas

As a customary rule of law, no state has the right to cut off the territorial sea of another state deliberately from the high seas or its exclusive economic zone. This principle of customary international law is being indicated in the 1982 Convention (Art. 7) and also in the 1958 Convention on the Territorial Sea and the Contiguous Zone (Art. 4).

The extension of territorial waters beyond six miles will cut the Turkish territorial seas from the high sea of the Aegean. According to the present practice of both states, Turkey has access to the Aegean high seas from various but narrow passages—areas located over the 38 parallel—amounting to a length of approximately 67 nautical miles and it is possible for Turkish vessels to navigate freely to the Mediterranean through the Aegean high seas, without entering into Greek territorial waters. If Greece extends its territorial waters to twelve miles, Turkey will have small areas of access to the Aegean high seas fully surrounded by Greek territorial waters giving no high seas passage to the Mediterranean. On the other hand, in such a case, Turkey's access to the enclosed Aegean high seas will be from three different but too narrow passages through the Limnos-Lesbos passage, through the Lesbos-Chios passage and through the Karako-Samos passage. All in all, that amounts to a total length of approximately 6.5 nautical miles. Such a practice—eight to twelve nautical miles—of Greece will make the whole Aegean "a Greek lake", which will be an obvious example of Greek expansionist policy in the Aegean.

4.3.2. The Interests of Other States and the International Community Should Be Taken into Account

The Aegean Sea, a semi-enclosed sea, not only has unique features including approximately three thousand islands, islets and rocks, but spreads to an area of 213.016 km^2. There is no other sea in the world with similar features.

Given Turkey and Greece's current six-mile territorial sea practice in the Aegean, Turkey owns approximately 7.47 %, Greece—due to islands and islets —owns 43.68 % of this sea, and the remaining 48.85 % is high seas owned by the international community as *res communis*. The high seas is open to all states and every ship, whether a merchant, government or battle ship, can pass through the Aegean without entering either Greek or Turkish territorial waters. In other words, the said ship can fully enjoy freedom of navigation on the Aegean high seas, if desired (Annex/Maps I).

If Greece extended its territorial waters to twelve miles, which it really wants to achieve if the right occasion presents itself, Greece will own 71.53 % of the Aegean while Turkey with a twelve-mile territorial sea will own 8.76 % of this sea as its own territory. In this case, the high seas areas of the Aegean will be the remainder at 19.71 percent, which will obviously mean reducing the high seas areas contrary to the interests of the international community, and also against the interests of the other coastal state, Turkey. On the other hand, in the case of an increase of territorial waters to twelve miles, no ship will be able to pass through the Aegean without entering the territorial sea of Greece and thus using its right of innocent or transit passage (Annex/Maps II). In any event, the same

will occur even if territorial seas are extended to eight miles respectively in the Aegean. The end result is obviously closing the Aegean Sea and thus denying freedoms to the international community. This reality was clearly seen by Greece, and the Greek representative at the 1958 Conference, Mr. Kripsis, without any hesitation or doubt expressly stated this reality to all the participating states.

If Greece does extend its territorial waters to twelve miles, not only Turkey but also the other states that benefit from the freedom of navigation through the high seas of the Aegean, will no doubt object to such a practice. On the other hand, not only the waters of the Aegean Sea will be closed to free navigation but also the air space above it will also be closed to freedom of flight. In such a case, states benefiting from the freedom of flight in those areas will be compelled to obtain the consent of Greece for their flights, especially for military aircraft. As it is well known, there is no customary right of innocent passage recognized by law for states to fly over the air space of another state.

Greek representative Kripsis during the 1958 Conference in his statement on the extent of the breadth of territorial waters clarified that Greece obviously respects international law and the interests of the international community. On the other hand, Greece without a doubt, recognized the special circumstances of the Aegean Sea. We and the international community hope that Greece's respect of the rules of international law and the interests of the international community has not changed since then.

5. The Legal Status of Imia

The recent dispute between Turkey and Greece, that broke out at the end of January 1996, concerned conflicting claims of sovereignty over the Imia Rocks.

Two international documents, the 1923 Lausanne Peace Treaty and the 1947 Paris Peace Treaty, determine sovereignty over the Aegean islands. According to article 15 of the Lausanne Peace Treaty «Turkey renounces in favour of Italy all rights and title over the following islands: ... Kalymnos, ... and Cos, which are now occupied by Italy, and the islets dependent thereon, and also over the island of Castelorizo.» Also, according to article 14 of the 1947 Paris Peace Treaty, Italy hereby cedes to Greece in full sovereignty the Dodecanese Islands indicated hereafter, namely Kalymnos, ... and Cos and Castelorizo, as well as the adjacent islets.»

If Turkey had ceded its sovereignty over the Imia rocks in the Lausanne Peace Treaty, then Greece, through the 1947 Paris Peace Treaty, would acquire sovereignty over Imia. But, in actual fact, sovereignty over the rocks was not ceded to Italy. Article 16 of the Lausanne Peace Treaty, while indicating Turkey's renunciation of all of its rights over the islands beyond three miles off the Asiatic

coast of Turkey, does not indicate the legal status of the islets and rocks situated beyond three miles and leaves their legal status to be determined by the parties concerned. On the other hand, the interpretation of the terms «islets dependent thereon» and especially «the adjacent islets» indicates that the Imia rocks were not in any way ceded to Italy because they cannot be accepted as adjacent to the closest Greek island, Kalymnos. In fact, they lie 5.5 miles away from the mentioned island but 3.8 miles off the Asiatic coast and 2.2 miles away from the nearest Turkish island (Çavus Island).

Despite the mentioned legal reality and the interpretation of the term «adjacent», Italy and Turkey fell into a disagreement, including the Imia rocks, over sovereignty on the adjacent islets and rocks of the Dodecanese islands.

Upon the above mentioned dispute, Turkey and Italy on January 4, 1932 concluded an agreement concerning the delimitation of the sea boundary between the Asiatic coast and the island of Castelorizo and also settled the question of sovereignty over the adjacent islets and rocks. This treaty was ratified by the signatory states and was also registered with the Secretariat of the League of Nations. In other words, this agreement gained full legal effectiveness.

What misleads Greece on sovereignty over the Imia rocks is the accord signed between Turkey and Italy on December 28 in 1932. According to this document, the Imia rocks were on the Italian side of the maritime boundary, but in reality this accord never and in no way gained legally binding power. It was neither ratified by the concerned parties nor registered to the League of Nations. According to the Covenant of the League of Nations (Art. 18), a treaty cannot gain a legally binding power unless registered. On the other hand, the mentioned accord is not an integral part or an annex of the January 4, 1932 agreement. If it were, the Turkish Grand National Assembly would have ratified both, since the ratification procedure was accomplished on January 14, 1933 by law no. 2106.

For the legal reason stated above, the December 28, 1932 accord did not acquire a binding character. In addition to this, the Italian Government demanded in 1935 that Turkey give official effect to this accord and demanded its reciprocal ratification. On the other hand, during the negotiations of the 1947 Paris Treaty, when Greece demanded a reference to be made to the mentioned accord, Russia's objections and doubts about the validity of this accord led to the refusal of the Greek proposal, which thus created additional legal and political evidence to the stated and defended ends.

On the other hand, if the December 28, 1932 accord was valid, why did Greece in 1950, demand the validity and entry into force of this accord by an exchange of notes. In addition to the above-stated legal reasons, additional evidence and a confession, were the Greek demands in 1955 and 1956 to delimit the territorial sea areas of the northern parts of the Dodecanese islands, by an agreement.

Since the December 28, 1932 accord did not gain a legally binding character, the Imia rocks remained and are still under Turkish sovereignty. During the delimitation of the Aegean territorial sea boundaries by an agreement, in the future, the sovereignty over islets, and rocks situated beyond three miles of the Asiatic coast of Turkey and not namely mentioned by the 1923 and 1947 treaties, ought to be negotiated on the basis of goodwill and equity.

Conclusion

Turkey and Greece are two bordering states that ought to live in peace and enjoy a spirit of good neighbourliness. Despite this reality, there are several disputes between them that need to be settled by meaningful negotiations aiming to reach an agreement or agreements based on law, justice and equity.

Disputes among those two states related to the law of the air (Greek air space), and law of the sea (territorial sea issues and the continental shelf case) are interrelated since they constitute a part of exercising sovereignty or sovereign rights over the mentioned areas. On the other hand, any settlement reached will directly affect another. For this reason, settlements ought to be handled and settled together.

The main territorial sea problem in the Aegean sea is the delimitation issue, which essentially includes the baselines and the breadth of the territorial sea. In addition to those disputes, claims of sovereignty on islets and rocks (the Imia rocks) situated three miles off the shores of Turkey, in the early days of 1996 by those countries is a recent example.

Since 1964, Turkey and Greece have applied a six nautical-mile territorial sea in the Aegean. With this practice, Greece owns approximately 43.68 % of the Aegean as its territorial waters and Turkey owns approximately 7.47 % of those waters as its territorial sea. Turkey therefore has narrow outlets through its territorial waters to the high seas areas of the Aegean. It is also possible for all ships to navigate freely on the high seas of the Aegean from the Black Sea to the Mediterranean without entering into either Greek or Turkish territorial waters. If presently applied methods of delimitation are changed, especially by Greece, or if the territorial waters are extended by Greece, the situation in the Aegean will shift to the advantage of Greece and the disadvantage of both Turkey and the international community. In such a case, any Turkish vessel, or any other vessel carrying the flag of a third state, ought to navigate through the Greek territorial waters by using its right of innocent or transit passage if wants to navigate from the Black Sea to the Mediterranean. On the other hand, Turkey will have only a few overly narrow outlets to the Aegean high seas, which will also be fully surrounded by the Greek territorial waters. As a result, no Turkish or any other state's aircraft, without the consent of Greece, would be able to fly over the Aegean Sea.

Because of this vital situation which strictly limits the rights and freedoms of states and also creates an abuse of rights, as explained briefly above, Turkey pronounced that any extension of Greek territorial waters will create a *casus belli* situation. This declaration was designed to draw the attention of the international public to the vitality of the situation and to Turkey's keenness to protect its rights, freedoms and vital interests.

The determination of the extent of the territorial sea is an international concern and cannot be left solely to the discretion of the coastal state. As international law, state practice and the judgements of international tribunals indicate, the coastal state should take into account the general principles of international law, the principles of equity, the special circumstances of the region when establishing the breadth of its territorial waters so as not to create an abuse of rights by its practice, including the cutting off the territorial waters of a state from the high seas, and the interests of the other coastal states and the international community. Kripsis, as Greek representative to the First UN Conference on the Law of the Sea (1958), expressly stated that the Aegean Sea does have special features and that any extension of Greek territorial water, even if international law permits states to extend their territorial waters up to twelve miles, will create an abuse of rights not only to the disadvantage of Turkey, but also to the disadvantage of the international community.

We and the international community hope that Greece will respect its international obligations arising from international law and to its commitments, and will not in any way extend its territorial waters and close the Aegean, thus preventing the international community from enjoying its freedoms.

NOTES

1. Art. 6/2: "In the absence of provisions to the contrary, in the present Treaty, islands and islets lying within three miles of the coasts are included within the frontier of the coastal State."

Art. 12/2: "Except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty."

If those two articles were interpreted objectively, it would be obviously seen that they do not, in absolute terms, determine the breadth of Turkish territorial waters but only determine the sovereignty on islands and islets within the prescribed limits.

2. For the text of the law, refer to Turkish Official Gazette, 24 May 1964, No: 11711.

3. This median line is not the maritime boundary between those two countries, but only determines the extent of territorial waters. Turkey has *ab initio* and *ipso*

facto exclusive rights over the continental shelf areas beyond those limits, which are the natural prolongation of the Anatolian peninsula.

4. INAN, Y.: Coastal Sea Fisheries and Related Issues from the Aspect of International Law [(published in Turkish) Devletler Hukuku Bakimindan Kiyi Sulari Balikçiligi ve Sorunlari], Ankara 1976, p. 10.

5. UN Doc. A/CONF. 62/C. 2/L.8; UN Doc. A/CONF. 62/C. 2/L.9; UN Doc. A/CONF. 62/C. 2/L.55; UN Doc. A/CONF. 62/C. 2/L.56.

6. For the text of the law, refer to Turkish official Gazette, May 29, 1982, No: 17708.

7. For the text of the decree, refer to Turkish Official Gazette, May 29, 1982, No: 17708 reiterated issue.

8. United Nations Conference on the Law of the Sea, Official Records, Vol. III, First Committee (Territorial Sea and Contiguous Zone), Summary Records of Meetings and Annexes, UN Doc. A/CONF. 13/39, Geneva 24 February -27 April 1958, p. 21-22 (This document will be cited as UN Doc. A/CONF. 13/39).

9. Aegean Sea Continental Shelf Case, I.C.J. Reports 1978, p. 88.

10. Société des Nations, Actes de la Conférence pour la Codification du Droit International, Séances des Commissions, Tome III, Procès-Vearbaux de la Deuxième Commission, No. Officiel: C. 351 (b), M. 145 (b). 1930, V., p.119-125; INAN. Y.: op. cit., p. 36-37.

11. Société des Nations, op. cit., p. 119-125.

12. UN Doc. A/CONF. 13/39, p. 21-22.

13. For the Greek draft article, please refer to UN Doc. A/CONF. 62/C.2/L.22.

14. Anglo-Norwegian Fisheries Case, Judgement of 18 December 1951, I.C.J. Reports 1951, p. 132.

15. The Court in the Anglo-Icelandic Fisheries Case also expressed a similar view as an indication and reiteration of an international custom to this end. Anglo-Icelandic Fisheries Jurisdiction Case, Judgement of 25 July 1974, I.C.J. Reports 1974, p. 22.

16. Please refer to footnote 4 for Turkish draft articles to those ends.

17. UN Doc. A/CONF. 13/39, p. 21-22.