Naval War College Review

Volume 49
Number 3 *Summer*

Article 4

1996

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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 that evoked a fiery response from Turkey, the only Nato nation that has not indicated an intent to do likewise.[2] Labeling the Greek vote a *casus belli*, the Turkish parliament promptly authorized the government to take "all necessary measures, including military steps, deemed necessary to protect the vital interests" of Turkey.[3] Simultaneous 1995 naval exercises in the Aegean Sea by the two nations did little to calm matters.[4]

The immediate cause of the controversy was the LOS Convention's allowance of a territorial sea of up to twelve nautical miles.[5] Currently, the Greeks claim only a six-mile territorial sea in the Aegean. Should Greece extend it to the maximum allowable limit, the Aegean—as Turkey has repeatedly pointed out—would become a virtual "Greek lake."[6] 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 (qualified) Greek assurances that the ratification was not an attempt to expand its territorial reach, and even intervention by President William J. Clinton, the dispute continues to fester.[7]

In actuality, the rift is more complex, and of greater lineage, than the recent focus on the territoriality component of the LOS Convention would suggest. Equally contentious disagreements exist over delimitation of the continental shelf (which contains oil deposits large enough to merit extraction), the breadth

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Naval War College Review, Summer 1996, Vol. XLIX, No. 3

of Greek air space over the Aegean, Greek control of a flight information region in the area, and militarization of numerous Greek islands. The mere multiplicity of issues renders elusive the solution of any given one. But the dispute is deadly serious; at times the two Nato allies have approached the brink of war.

The importance of the dispute to all parties concerned, both regional and otherwise, is difficult to overstate. Greece has more than two thousand islands in the Aegean, some within five miles of the Turkish coast. Obviously, the security of, and sovereignty over, these islands is of paramount interest to Athens, while their presence so near Turkish shores has security implications for Ankara. The Turks are also concerned that they be 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 traumas experienced by Turkey and Greece over the past decades, the prospect of exclusive ownership of the Aegean oil reserves is highly attractive to the two.

Unfortunately, Greece and Turkey appear headed in different directions in the international arena, a fact that can only exacerbate the Aegean dispute. Turkey has concluded military cooperation agreements with Albania, The Former Yugoslav Republic of Macedonia, and Bosnia, whereas Greece, which almost went to war with the Macedonians over their selection of a national flag, has close ties to the Serbs and, in the view of some, has been noticeably lax in enforcing United Nations sanctions.[8] 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.[9] The current political situation also has economic overtones. Most recently, Turkey and Russia have been at odds over oil and gas pipelines from Central Asia. Partly in response, Athens, Sofia, and Moscow have agreed upon construction of a pipeline through Bulgaria and Greece. The pipeline is particularly appealing to the Russians in that it provides an alternative to shipping oil from its Black Sea ports through the Bosporus and Dardenelles.[10] Finally, of particular import is Turkey's fervent desire to join the European Union, a possibility that Greece, an EU member, opposes.

As the political scenario evolves, both sides are enhancing their military forces. Between 1992 and 1994 Turkey acquired 1,605 main battle tanks; Greece added 1,410. Many of the transfers were the product of Nato's "Cascade" program, by which alliance countries required to dispose of equipment under the Conventional Forces in Europe treaty provide it to their southern Nato allies.[11]

These events are occurring in the absence of a "tie that binds"—which the USSR used to be. In the past, the existence of a hostile superpower in the region forced Greece and Turkey to cooperate—at least to some extent and however uneasily—under the rubric of "my enemy's enemy is my friend." Despite this incentive, tensions were high even during the Cold War. With the Soviet Union

gone and a relatively docile Russia in its stead, the Cold War's moderating influence will no longer operate to cap potential conflict. Arguably, the Aegean is a much more delicate security environment today than it has been for decades.

Not surprisingly, both Nato and the United States are anxious about this state of affairs. Whereas the southern region used to be of secondary concern to an alliance facing a massive Soviet presence in central Europe, today the southern region *is* the front. Nato forces, having engaged in combat operations in the former Yugoslavia, are now committed there for peace enforcement. To complicate matters, nowhere is the likelihood of out-of-area operations for Nato greater than on Turkey's southern and eastern borders. A Greek-Turkish dispute could easily split the alliance just as its search for a new identity is bearing fruit. Further, the loss of either Greece or Turkey from Nato, à la the six-year Greek withdrawal following the Cyprus invasion, would have dire operational and planning consequences.

The impact of Greek-Turkish opposition was aptly illustrated last year when Nato considered establishing a regional headquarters in Greece. Turkey immediately moved to block the Nato budget, a response mirroring an earlier Greek veto of funding for a Nato headquarters at Izmir, Turkey.[12] Though the budget controversy has since been resolved, such issues are illustrative of the alliance's susceptibility to internal disputes in this quarter.

American interests in the region are those of Nato, writ large.[13] For instance, the United States, in collaboration with its French, British, and Turkish allies, is conducting Operation PROVIDE COMFORT from the Incirlik Air Base in southeastern Turkey. Should Turkish support for the operation falter, U.S. strategy vis-à-vis Iraq would be dealt a severe blow. 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 for Greece, though most American bases there have closed, the country remains important as a potential location to which U.S. forces could deploy, or through which they could transit. For instance, the air base at Hellenikon near Athens was critical during the Gulf war. Finally, both countries are important to the United States by virtue of significant bilateral trade, and both (particularly Greece) enjoy substantial political clout here.

Over the years, Nato and the United States have attempted to maintain stability in the area and search for common ground between Greece and Turkey. In 1995, for instance, Washington 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 Dodecanese group, matters can deteriorate quickly in the region. 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 U.S. mediation and the eventual withdrawal of the Greek troops. The hostility and volatility displayed throughout the course of these events highlight the importance of pressing ahead to fashion a lasting modus vivendi.[14]

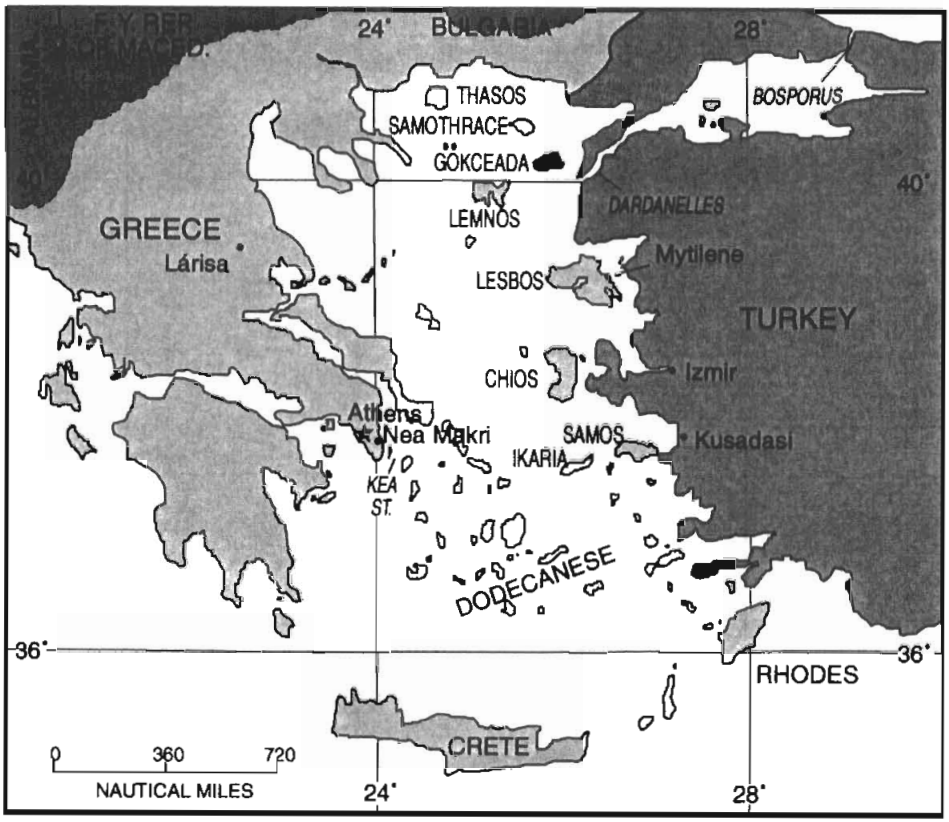
It is the purpose of this article to highlight the points of contention between Greece and Turkey over the Aegean at this critical juncture in history. The dispute may be the most crucial issue facing the region, for whereas resolution would anchor Nato's southern tier, continued antagonism between the two antagonists could spell disaster, possibly even intra-alliance armed conflict.

Historical Context

That Greek-Turkish animosity is strongly etched in the national psyches of both countries is perhaps best illustrated by their respective national holidays: the Greeks celebrate the outbreak in 1821 of their struggle for liberation from the Ottoman Turks; the Turks commemorate Mustafa Kemal Atatürk's 1921 victory over the Greeks during their own war of liberation, which produced the Republic two years later.[15] This hostility traces its roots to the fall of Constantinople to the Turks in 1453, after which it would be nearly four hundred years before an independent Greece would rise from the ashes of the Byzantine Empire. In 1829, victory in the Greek war of independence led to creation of the monarchy under a joint British, French, and Russian protectorate. Following the Russo-Turkish War of 1877–1878 and the 1881 Conference of Constantinople, the Greeks were able to consolidate further what is today central Greece. However, northern Greece, most importantly Salonika, remained in Turkish hands, as did many of the eastern Aegean islands.

The twentieth century would bring further Greek expansion. Greece's alliance with Serbia and Bulgaria during the Balkan War of 1912–1913 was designed in part to consolidate territories having 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 the 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 Sèvres (1920), the populations of the occupied lands were to decide within five years whether to become part of Greece or Turkey;[16] however, the uprising led by 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 Lausanne marked the end of hostilities. On the mainland the present Thracian border



Joseph R. Nunes, Jr.

between Greece and Turkey was fixed, and Anatolia was granted to the Turks. In addition, 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.[17] The treaty, together with the Straits Convention appended to it, also provided for demilitarization of the Bosporus and Dardenelles straits; but to assuage Turkish concerns, numerous Greek islands in the region were either demilitarized or saw their previously demilitarized status confirmed.[18]

In the 1930s, growing European concern over the threatening posture of Italy and Germany led to remilitarization of the straits, though freedom of navigation remained unimpeded, in the Montreux Convention.[19] The Convention did not specifically address the status of the previously demilitarized islands, a fact that, as will be discussed, would prove problematic. Inevitably, the Second World War came to the region, with Greece being occupied after valiant 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, and

awarded the formerly Italian Dodecanese Islands, which lie just off the Turkish coast, to Greece.[20] Though these islands had been Turkish until the Italian-Turkish War of 1912, there was little Turkey could do, given its neutral stance during the war, to prevent the transfer.[21] Important to the present dispute is Greece's receipt of the islands on condition 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, formally annexing it when 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.[22] Soon thereafter, vocal Greek Cypriots began demanding *enosis*, or union, with Greece; simultaneously, many Turkish Cypriots made *taksim*, or partition, their rallying call. Matters had so deteriorated by 1964 that there occurred Turkish air strikes, and United Nations troops were dispatched to the island. A Turkish invasion was averted only when President Lyndon Johnson warned against the use of American-supplied weapons in any such operation.[23]

In July 1974, however, when a coup resulted in the flight to London of the first president of Cyprus, Archbishop Makarios III, and his replacement by Nikos Sampson, an advocate of *enosis*, Turkey did invade. After a UN-sponsored cease-fire quickly fell apart, the Turks gained control of 30 percent of the island. In response to what it perceived as Nato inaction, Greece withdrew from the alliance. It also militarized the islands that 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 U.S. Congress imposed an arms embargo on Turkey. The embargo, which lasted until 1978, had a major impact on the readiness of the Turkish military, whereas retributive Turkish restrictions on American military establishments in that country limited their operational effectiveness. The Cypriot affair soured both U.S.-Greek and U.S.-Turkish relations to such a degree that its impact continues to be felt. Today, Cyprus remains a virtual armed camp on either side of the UN-enforced "Green Line."[24]

In the late 1970s, Greece sought return to Nato, in part to offset what it perceived as growing Turkish influence within the alliance. As would be expected, the Turks initially opposed the move, making formal division of responsibility for the Aegean a condition for its approval. In 1980 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."[25] Since that time Greece and Turkey have coexisted as "uncomfortable allies" under the Nato umbrella. Disputes between the two continue to surface,

and if they are not on the scale of the 1974 Cyprus invasion, they have at times approached armed conflict. It is to the specific feuds over the Aegean that we now turn.[26]

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-nautical-mile territorial sea. Turkey's claim in the Aegean is identical, but it extends to twelve nautical miles off both its Black Sea and Mediterranean coasts.[27] Current claims leave three high-seas corridors across the Aegean that permit Turkish vessels departing east coast 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), which concluded in 1972, the issue of the breadth of territorial seas in the Aegean had caused little friction. Though many states had unilaterally extended their territorial waters beyond the three nautical miles traditionally deemed appropriate (and recognized by the United States), Greece and Turkey's opposing six-mile limits had proven workable. However, UNCLOS III was convened in great part to resolve the issue of territorial sea breadth, resolution having proven elusive at the two previous conferences on the law of the sea, in 1958 and 1960.[28]

It was an issue of enormous import for the Turkish delegation. Given the configuration of the Greek islands in the Aegean and the fact that islands are generally deemed to have territorial seas of their own, extension of the territorial limit would effectively turn the Aegean into the "Greek lake" the Turks feared. For instance, under the current scheme 35 percent of the Aegean Sea is Greek territorial sea; should the limit be extended to twelve nautical miles, that percentage would grow to 63.9 percent (with only 10 percent for Turkey).[29] 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 approaching or departing the Bosporus and Dardenelles, would have to pass through Greek waters to reach the Mediterranean.

The problem is that with the exception of international straits (discussed below), all navigation through Greek waters would have to be "innocent passage," a regime that seeks to balance freedom of navigation and sovereignty. Under customary international law as understood by the United States, and as adopted at UNCLOS III, innocent passage through a state's territorial sea must be both continuous and expeditious;[30] it may include stopping and anchoring only as required by navigation or *force majeure*. Further, it must indeed be

"innocent," i.e., not prejudicial to the peace, good order, or security of the coastal state. Additionally, no fishing or research is allowed while in innocent passage. For that matter, no activity inconsistent with passage itself is permitted, absent approval of the coastal state.[31]

Restrictions on military activities are even more severe.[32] Any threat or use of force against the coastal state is obviously unacceptable; so too are such specific activities as military exercises, weapons firing, the launching, landing, or embarking of aircraft or helicopters, and intelligence collection. Submarines in innocent passage must surface and fly their flag. Warships violating these restrictions and subsequently disregarding a request for compliance may be required to leave by the coastal state.[33] Perhaps most importantly, there is no innocent passage regime at all for aircraft.[34] Thus, without Greek consent, Turkish aircraft would have no access to Aegean airspace (except transit passage through international straits); they would be forced to fly either circuitous overland routes to the north (themselves dependent on consent by bordering states) or far to the south over Mediterranean waters. To complicate matters, innocent passage may be temporarily suspended in specified areas for security reasons, though suspensions must apply equally to all nationalities.[35]

At the time of UNCLOS III, the narrow territorial seas recognized by such maritime powers as the United States caused very few of the world's straits to be overlapped by national waters. However, their extension out to twelve nautical miles would subsume over a hundred. In light of the innocent-passage restrictions, this was unacceptable to the maritime powers at the Conference. Warships passing through international narrows like the straits of Gibraltar, Hormuz, or Malacca would be forbidden from taking basic defensive precautions, and submarines, because of the requirement to surface, could be easily located by adversaries.

A satisfactory balance between the interests of coastal states and maritime powers in general was found in the "transit passage" regime.[36] Transit passage is relevant to the Aegean situation because an extension of the Greek territorial sea would leave the high seas remaining in the northern Aegean and the Black Sea inaccessible by international waters. Under the transit passage regime, however, vessels are permitted to pass through international straits in "normal mode." "International" straits are those used for navigation through a territorial sea which lies between one part of the high seas (or an exclusive economic zone) and another. For warships, "normal mode" includes formation steaming and aircraft operation. Submarines may pass submerged, and, unlike innocent passage, aircraft are included in the regime. Movement must still be continuous and expeditious, and threatening activities are prohibited, but transit passage is non-suspendable.[37] Though experts disagree over whether transit passage had already achieved the status of customary law at the time of UNCLOS III, the

United States—the maritime power that would most be affected by the constraints of innocent passage—asserted in 1983 that it had.[38] In any case, today, 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. At the Conference it advocated an approach that relied upon bilateral agreement between opposing coastal states for the delimitation of territorial sea boundaries. Turkey was not opposed to twelve-nautical-mile limits per se, as evidenced by its own claims in the Black and Mediterranean seas, but rather viewed the Aegean as a case of "special circumstances."[39] Accordingly, Turkey proposed forbidding territorial sea claims that would have the effect of cutting off a state's access to the high seas from its own waters. In cases of "semi-enclosed seas having special geographical characteristics" (a clear reference to the Aegean), the Turks argued, delimitation should be based on any combination of methodologies that was 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.[40] From the Turkish perspective, the Aegean was unique. It is a "semi-enclosed sea" and an important international sea route that lies between two coastal states having a history of conflict, and it is dominated by Greek islands, several in close proximity to the Turkish coast.

For its part, Greece was unwilling to acquiesce to a scheme that would permit a Turkish veto over the extent of the Greek territorial sea. In fact, it preferred to view its extensive island holdings as an archipelago, for the archipelagic regime 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 definition of archipelagoes as states consisting entirely of islands. The Turkish approach was also generally rejected; the Conference ultimately agreed that "every State has the right to establish the breadth of its territorial sea up to a limit not to exceed 12 nautical miles."[41] A specific article governing delimitation of territorial seas between states with opposite or adjacent coasts did, in fact, encourage bilateral agreement and prohibit extension beyond a median line equidistant from the respective baselines.[42] Given the location of the Greek islands, however, this did nothing to allay Turkish concerns. Importantly, the LOS Convention explicitly confirmed that islands are entitled to a territorial sea of their own, determined according to principles applicable to coastal areas.[43]

Unwilling to assent to this de facto confirmation of Greece's right to expand throughout the Aegean, Turkey refused to sign the Convention, a position it maintains today. Greece, by contrast, did sign, albeit with a declaration to the effect that though its territorial limit remained six miles, it was reserving the right

to extend that limit. This may have reflected a Greek fear that if it did not exercise the right it would lose it (though in fact the "use or lose" concept does not apply to treaty regimes). In any case, Greece made a similar declaration when depositing its instrument of ratification with the UN in July 1995.[44]

In a clear expression of its security concerns at both signature and deposit, Greece also reserved (through an "interpretive declaration") the right to determine which of its straits would be subject to transit passage, limiting all others to innocent passage: "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 [the] 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."[45]

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. This appears contrary to the Convention's specific intent with regard to transit passage and to its general effort to balance navigational freedoms and coastal state interests.[46] Interestingly, Article 38(1) of the LOS Convention, known as the Messina Exception, would seem to satisfy any Greek concern along these lines: "If a 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."[47] This precisely describes the Kea Strait case; why Greece persists in its approach is unclear.

As Greece has expressly pointed out, it would be within its rights to extend its territorial sea, both under the LOS Convention and in accordance with customary international law.[48] Turkey, however, refuses to acknowledge that right, holding that any Greek extension would constitute an abuse of rights under Article 300 of the Convention. That article provides that parties to the treaty "shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right"—an argument that, ironically, acknowledges that the Greeks have such a right in the first place.[49] More fundamentally, because Turkey is not a party to the Convention, its desire to benefit from the abuse-of-rights provision is somewhat questionable as a matter of law.

Regardless of any legal justification, the political costs of extension would appear to be enormous. Potentially an extraordinarily destabilizing step, it would seem measurably to increase the likelihood of hostilities. Turkey's security and commercial concerns are apparent and pronounced; from a purely practical

perspective it might be justified in objecting to being limited to innocent or even transit passage through the area. Likewise, the area is of importance to Nato, which not only regularly conducts exercises in the Aegean but also relies upon unimpeded operational passage through it. Such activities would then require the acquiescence of Greece, which has not always been the most cooperative member of the alliance and has even displayed willingness to withdraw from it. The United States harbors similar concerns. Though the administration has forwarded the LOS Convention to the Senate for accession, and despite explicit U.S. recognition of its territorial and navigational principles as customary international law, a Greek extension could hypothetically be contrary to American navigational and operational interests. It would also operate at cross-purposes to the U.S. desire to assure Nato cohesiveness and also avoid having to choose sides in a dispute between two valued allies.[50]

The Continental Shelf

Whereas attention has recently focused on the territorial sea question, which is clearly the seminal issue from the Turkish perspective, the dispute over the continental shelf is more complex and has historically generated even greater controversy.[51] The Greek position is that customary international law, as evidenced by both the 1958 Convention on the Continental Shelf and its successor, the 1982 LOS Convention, allows it exploration and exploitation rights over the continental shelf up to two hundred miles from its coastal and island baselines.[52] To the extent that this expanse overlaps Turkey's continental shelf, the demarcation should, in the Greek view, be a median line equidistant from the relevant baselines. Under this interpretation virtually all the Aegean seabed, with the exception of that beneath the Turkish territorial sea, would fall under Greek control. By contrast, Turkey, a party to neither of the relevant conventions, asserts that much of the Aegean seabed is in fact a prolongation of the Anatolian land mass. Relying on the principle of equitable delimitation, it further argues that the Greek islands should not be entitled to their own continental shelves.[53] Because Turkey itself wishes to exploit the seabed, though, it has not questioned the sovereign and exclusive right of a coastal state to explore and exploit the natural resources of its continental shelf.

The continental shelf issue surfaced as a core dispute only after the Greek discovery of oil off the coast of Thassos, a northern Aegean island, in 1973—precisely as a steep rise in oil prices was being caused by the Arab oil embargo. Soon thereafter, on 1 November 1973, Turkey awarded mineral exploration licenses in the eastern Aegean to the Turkish State Petroleum Company; that very day, Ankara published a map in the *Turkish Official Gazette* showing a delimitation of respective continental shelves in the Aegean that did not take

into account the presence of the Greek islands.[54] By this scheme, east of the Turkish line, which ran roughly down the center of the Aegean, the Greeks would enjoy exploration and exploitation rights only in their insular territorial seas. Turkey felt it was within its rights not only because of the proximity of the Greek islands to the Turkish coast, but also because otherwise, by the Greek formula, nearly 97 percent of the Aegean seabed beyond its own territorial waters would be Greek.[55] As it has consistently done in such issues, Turkey cited "special circumstances" to justify its continental shelf claims.

Greece lodged protests against the Turkish actions, to which Turkey responded by offering to hold talks on the situation.[56] The Greeks were receptive until Turkey announced that it intended to send a survey vessel, the *Candarli*, into the area. In May 1974 the *Candarli*, conspicuously accompanied by Turkish warships, conducted six days of exploration. When Greece again filed diplomatic protests, Turkey announced that it would continue exploration preliminary to drilling; it then granted additional exploration licenses.[57] At this point the affair was overtaken by the Turkish invasion of Cyprus.

In January of the following year, Greece proposed that the issue be submitted to the International Court of Justice (ICJ) for resolution. Turkey at first agreed, but with the accession that spring of Suleyman Demirel as prime minister, policy shifted back to a preference for bilateral negotiations instead of judicial settlement.[58] In Demirel's opinion, the issue was more political, and thereby susceptible to bargaining, than legal. While the Turks could fashion plausible legal arguments to support their position, the weight of authority, even if the principle of equity was applied, arguably favored Greece. Given Turkish hesitance over judicial resolution, in February 1975 the two parties agreed to draft an agreement laying down a framework for negotiations.[59]

Negotiations did in fact proceed, and in May the Greek prime minister, Constantine Karamanlis, and Prime Minister Demirel issued a joint communiqué at a Nato summit meeting in Brussels to the effect that problems between the countries could be resolved amicably through negotiations.[60] However, and although bilateral negotiations were in progress, the communiqué also mentioned referral to the ICJ. Demirel was immediately attacked by Bulent Ecevit, the opposition leader, for acquiescing thereby to the Greeks.[61] At the same time, Turkey established the Fourth Army in Izmir; known as the "Aegean Army," this force was independent of the Nato command structure. Relations between Greece and Turkey immediately worsened.

In February 1976, with tensions at a post-Cyprus high, Turkey announced that it would conduct explorations in the area where Greece had discovered oil. Ostensibly, the vessel involved, *Sizmik I*, was to gather scientific data that Turkey needed in its negotiations.[62] The Greeks were not convinced and repeatedly expressed concern that the Turks were creating a volatile situation in the Aegean.

Nevertheless, in August the *Sizmik I* conducted three days of seismological surveys off the islands of Lemnos, Lesbos, Chios, and Rhodes, protected by a Turkish naval vessel and air cover. Though the Greek opposition leader, Andreas Papandreou, called for sinking the *Sizmik I*, Greece showed restraint.[63] Indeed, at one point the Greek government may have actually concealed the location of the ship in order to keep the press from fanning the flames of nationalistic fervor.[64]

Diplomatically, however, Greece launched a two-tiered attack.[65] On one level, it appealed to the UN Security Council, arguing that Turkey was endangering the "maintenance of international peace and security"; in such a case, the Security Council has competence to investigate, under Article 34 of the UN Charter.[66] 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 from 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 also a finding that the Turkish activities had been an infringement on Greek sovereign rights.[67]

Proceedings in the Security Council yielded little new. Greece presented an essentially legal argument centered around the contention that the 1958 Convention amounted to customary international law, which, of course, would bind even non-signatories like Turkey. It also recalled the Turkish invasion of Cyprus, as if 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 by then 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 finessed the matter in 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 appealed to them "to do everything in their power to ensure these result in mutually acceptable solutions."[68] Yet it also invited "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."[69] Thus, without addressing the merits of the matter, it appeared to side with both Turkey (political settlement through negotiations) and Greece (legal adjudication through the ICJ).

The ICJ also failed to resolve the situation. That same year, 1976, the Court issued its ruling on the request for "injunctive relief." Finding insufficient risk

of prejudice to Greece's rights, it held that under Article 41 of the Court's statute it could not declare interim measures.[70] Turning to the merits, the Court had to assess initially whether a jurisdictional basis for hearing the case even existed. Pursuant to Article 36(1), ICJ jurisdiction extends both to cases referred by the disputants and to matters set forth in international agreements to which the sides are party.[71] Greece argued for jurisdiction on both counts.[72] First, it contended that the Brussels Communiqué (see page 53) constituted Turkish consent to jurisdiction. It then asserted that because Turkey was party to the 1928 General Act on the Pacific Settlement of Disputes, a convention that vested jurisdiction in the League of Nations Permanent Court of International Justice (PCIJ), and because Article 37 of the ICJ's statute grants that court competence over disputes the PCIJ could have heard, Turkey had consented, by international agreement, to ICJ jurisdiction.[73] In 1978 the Court rejected both tacks. It began by holding that the communiqué was not the type of binding acceptance of jurisdiction contemplated in the ICJ statute.[74] As to the General Act, the Court noted that when Greece became a party it had filed a reservation withholding jurisdiction from the PCIJ in cases involving its territorial status.[75] Finding the reservation applicable to delimitation of maritime boundaries, it held that Turkey, on the basis of reciprocity, could benefit from the reservation in a dispute with Greece.[76] The result was a lack of jurisdiction.

While the International Court of Justice was deciding not to decide, bilateral negotiations between the two sides continued, for the *Sizmik I* episode had highlighted the mutual need for dialogue. In November 1976, just after denial of interim measures by the ICJ, the two nations jointly issued the Bern Declaration.[77] 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." The talks were also to be confidential. Both parties committed themselves to refraining from prejudicial actions and agreed to study state practice and international law in order to identify "principles and practical criteria" that could be used in the delimitation process. A mixed commission conducted talks until 1981, when a socialist government headed by Papandreou—who in 1975 had wanted to sink the *Sizmik I*—came to power in Athens.[78]

Throughout this period, amidst the turmoil of the Cyprus invasion, bilateral negotiations, and ICJ proceedings, UNCLOS III had been struggling with the issue of how to delimit continental shelves. In particular, Greece and Turkey were actively pressing arguments regarding situations involving opposite coasts. Greece proposed language that sought delimitation by agreement. 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."[79] Greece also proposed that islands be allowed continental shelves of their own.[80] Thus, by its own formula, Greece would receive the continental shelf it was already claiming, unless a different arrangement was fashioned with Turkey.

Turkey emphasized principles of equity over equidistance. As did the Greek proposal, it first called for agreement, albeit "in accordance with equitable principles." Factors that should be considered during negotiations included, *inter alia*, the relief and geological structure of the shelves, the general configuration of the coastlines and of the islands, islets, and rocks situated on the continental shelf of the opposing state.[81] As to islands, it proposed that the maritime space (i.e., waters defined by reference to an island) of those located in semi-enclosed seas be determined by agreement.[82] In other words, in the context presented, Turkey was focusing once again on its "special circumstances" and relying on negotiations, a political vehicle, for resolution.

Ultimately—and unlike Solomon in the First Book of Kings—the Conference split the baby. Article 83(1) of the LOS Convention provides that the "delimitation of the continental shelf between States with opposite or adjacent coasts shall be *effected by agreement* on the basis of international law, *as referred to in Article 38* of the Statute of the International Court of Justice, in order to achieve an *equitable* solution."[83] Concerning islands, the Convention employs the Greek approach in Article 121(2): the "continental shelf of an island [is] determined in accordance with the provisions of this Convention applicable to other land territory."[84] The priority accorded to "agreement," as well as the "equitable solution" language, was responsive to the Turkish position; however, the reference to Article 38 (which considers conventions and custom the preeminent sources of international law) and the acceptance of an unconditional continental shelf regime for islands were not. Further, the Convention refers to pursuit of an equitable *solution*, not application of equitable *principles*; equitable principles of delimitation would not necessarily underlie an equitable solution. Accordingly, Turkey elected not to sign.

Since the conclusion of UNCLOS III, disagreements and confrontations over the continental shelves of Greece and Turkey have continued. Most notably, a "repeat" of the *Candarli* episode again brought the two close to war. When Greece announced in 1987 that it planned to begin drilling for oil in the waters off the island of Thassos, Turkey responded that it was going to send *Sizmik I* out to conduct oil exploration. Ankara 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 understanding could be reached on the issue. Greece replied that the agreement had been made inoperative by events. The situation took on still larger dimensions when Prime Minister Papandreou

appeared to snub his Nato allies by briefing their ambassadors on the crisis only after those from the Warsaw Pact. At the same time, casting blame for the situation on Nato, Papandreou ordered that operations at the U.S. communications base at Nea Makri be suspended. Both the Greek and Turkish militaries were placed on alert. Reacting to pressure from the United States and Nato, the Turkish prime minister, Turgut Ozal, finally ordered the *Sizmik I* to stay clear of the contested area, only narrowly averting hostilities. In return for this concession, Greece agreed not to conduct the planned drilling.[85]

The following year, the Greek and Turkish prime ministers held summit talks in Davos, Switzerland, to implement tension-reducing procedures. They agreed, for instance, to set up a "hot line" between Ankara and Athens, and to meet yearly. They also established a joint committee to deal with standing disagreements, including those over the Aegean. On the continental shelf issue, however, both continued to advance their preferences, Greece suggesting resort to the ICJ and Turkey favoring bilateral negotiations. Unfortunately, as had happened so often in the past, the Davos process ultimately generated little of substance; indeed, the goodwill it 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 but also the extent to which the Aegean dispute is an interrelated whole rather than a set of autonomous issues.

Ultimate resolution of this particular dispute is likely to prove extremely elusive. First, characterization of the problem as essentially legal by Greece but political by Turkey leads to differing conclusions as to the appropriate forum in which to work on the issue. As a result, whatever method is chosen for resolution, one party is likely to believe itself disadvantaged from the outset and, therefore, be less than fully committed. An alternative might be for a third party to serve as an honest broker. The United States would seem well suited to that role by virtue of its ties to both Greece and Turkey. Unfortunately, in view of U.S. interests in the dispute specifically and in freedom of navigation generally, it is unlikely to be seen as truly "honest" by either side. Nato suffers from much the same problem, having been viewed suspiciously by both nations at various times. A neutral third party, or the United Nations, could serve credibly as an honest broker but would be unlikely to wield the clout necessary to keep negotiations on track.

The disagreement over what legal principles to apply is even more basic. Both sides can point to authority for their positions. The 1958 Convention includes islands in the continental shelf calculation, a provision that was held to be customary international law in the 1969 North Sea Continental Shelf cases.[86] Additionally, Greece can cite the fact that though Article Six of the Convention provided for application of the equidistance approach in the absence of agree-

ment if special circumstances did not justify a different delimitation, the ICJ held that the article was *not* declaratory of customary international law.[87] Since Turkey was not a signatory, and because Greece specifically filed a reservation against the "special circumstances" clause, the 1958 Convention seems relevant only to the extent it supports arguments based on custom.[88] In this context, Greece holds the advantage, because the 1958 Convention provisions on islands are similar to those in the 1982 LOS Convention, which has been specifically characterized as congruent with customary international law.

If the later convention generally favors Greece (in markedly guarded fashion), Turkey can point to a number of judicial decisions to support its own contention. In the North Sea cases, the ICJ rejected strict 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. It also noted, however, that equity did not imply equality.[89] A decade and a half later, the Court again rejected median-line (equidistance) delimitation as an exclusive method, in the Gulf of Maine case. It further noted that the equitable criteria applied would vary from case to case.[90]

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.[91] However, that is not always so when they lie in close proximity to an opposing (i.e., opposite) coast. In the Anglo-French Continental Shelf arbitration and in the ICJ's holding in the Tunisian-Libyan Continental Shelf case, "half effect" was given to the Scilly and Kerkennah Islands respectively.[92] To determine half-effect, two median lines are drawn, one between the coasts without regard to islands and one between the island's baseline and that of the opposing coast. A demarcation is then drawn set along the midpoint between the two. In the Anglo-French arbitration, however, the British Channel Islands were "enclaved," i.e., Britain was awarded twelve-nautical-mile enclaves around the islands, but they did not otherwise affect delimitation. As a result, the area beyond the twelve-mile limit was French. The Court of Arbitration did so in acknowledgement of the Channel Islands' size, their location just off the French coast, and their significance to Great Britain.[93] Numerous other decisions also illustrate the general approach of applying equitable principles on a case-by-case basis in delimitations of continental shelves involving islands.[94]

Given the differences over the appropriate forum and relevant law, some have highlighted the possibility of a joint development scheme, such as those that exist between Kuwait and Saudi Arabia, Saudi Arabia and Sudan, Japan and Korea, Malaysia and Thailand, and Norway and Iceland.[95] Shifting the paradigm in this manner might prove useful in light of the prior inability of the two sides to achieve consensus using more traditional approaches. However, the charac-

teristic hostility between Greece and Turkey would pose a substantial obstacle in any such cooperative venture.

Airspace Sovereignty and Control

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

Airspace Sovereignty. In 1931 Greece proclaimed a ten-nautical-mile territorial sea, noting that the extension of sovereignty included "matters of air navigation and its policing."[96] However, when, five years later, the ten-mile limit was reduced to six, the larger territorial airspace claim remained in place, as it does today.[97] Greece bases its assertion of aerial sovereignty on security, arguing that the speed of aircraft necessitates a wider territorial reach in the air than on the water.[98] Turkey, by contrast, has advanced no such claims beyond its territorial seas.

It is well settled that sovereignty extends to the airspace above a nation's territorial sea. For instance, the 1958 Convention on the High Seas provided for freedom of flight over the high seas, and a similar provision was found in the 1958 Convention on the Territorial Sea and Contiguous Zone; in the latter, sovereignty was said to extend to the airspace above the territorial sea.[99] The successor to these instruments, the 1982 LOS Convention, also specifically describes overflight as a high-seas freedom.[100] Each of these maritime conventions, Turkey's non-party status notwithstanding, is ample evidence of customary international law. Additionally, the Chicago Convention of 1944, the cornerstone of civil aviation law, provides that "every state has complete and exclusive sovereignty over the airspace above its territory," territory being defined as "the land areas and territorial waters adjacent thereto."[101] Though the Chicago Convention is applicable only to non-state aircraft, and while most disputes involve military "intrusion," it is further evidence of customary law as to where the boundaries of aerial sovereignty lie, regardless of aircraft character.

So too is state practice, which overwhelmingly acknowledges that airspace sovereignty cannot extend beyond the territorial seas. In the United States, 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."[102] The Navy counterpart publication, NWP 1-14M, is in accord.[103]

Despite the relative clarity of the legal norms regarding territorial airspace, a very real practical paradox looms in the Aegean case. It seems inescapable that Greece has technically exceeded its authority. Yet that nation would, as discussed above, be within its rights to extend the territorial sea to ten nautical miles, or even twelve, and should it do so Greece could claim a territorial airspace consistent with that revised limit.

Thus, a protest of the present Greek airspace claim might well be upheld, but it could lead Greece simply to extend its territorial sea—which would be even more destabilizing in the Aegean than the current situation. The pursuit of freedom of navigation rights could thereby actually result in diminishment of those rights. Any strategy failing to consider this possibility would represent a classic elevation of form over substance.

Flight Information Regions. The second airspace issue in the Aegean involves flight information regions. The International Civil Aviation Organization (ICAO) has divided the world into zones for the purpose of assisting and controlling aircraft. Each zone is further subdivided into both flight information regions (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 be required to provide a flight plan and position reports. In controlled airspace, unlike FIRs, air traffic control is exercised.[104]

In 1952, ICAO set a dividing line between the Athens and Istanbul FIRs that conformed to 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 remarkably low in this, the year that both joined Nato. The scheme worked smoothly until the Cyprus invasion of 1974.

Given the hostilities, Turkey issued Notice to Airmen (NOTAM) 714 requesting aircraft to report their position to Turkish controllers when crossing the median line in the Aegean between Greece and Turkey.[105] This was done to permit Turkey to distinguish between commercial and military aircraft; non-reporting tracks might in this way be provisionally identified as military.[106] The following day, Greece issued its own NOTAM characterizing the Turkish notice as without force and contrary to ICAO regulations.[107] It also filed a diplomatic protest in which it labeled the Turkish NOTAM invalid and dangerous to civil aviation.[108] The Turkish response was to disavow responsibility for the safety of those aircraft ignoring its notice.[109] At that point, the Greeks issued NOTAM 1157, which declared the Aegean airspace, with certain minor exceptions, to be a "danger zone."[110] International airlines promptly suspended their routes between Greece and Turkey. Turkey now protested the

Greek ten-nautical-mile territorial airspace claim and began military flights into Greek airspace, particularly above the Aegean islands that were supposed to be demilitarized.[111] Attempts by the Secretary General of ICAO, Walter Binagi, to mediate proved unsuccessful.[112]

Matters calmed with the issuance of the Brussels Communiqué in 1975 and the establishment of the various working groups it called for. (Recall that the negotiations agreed to in the communiqué were designed to address several points of contention in the aftermath of the Cyprus invasion.) In June a joint committee of experts met in Ankara to begin addressing airspace issues.[113] Unfortunately, progress was impeded when Turkey expanded its interpretation of NOTAM 714 to cover military aircraft; the Chicago Convention notwithstanding, Turkey now insisted that all military aircraft notify its controllers of their position and file flight plans upon entering the notice area.[114] Surprisingly, the Greeks remained at the negotiating table, and some progress was made until the *Sizmik I* affair of 1976 interrupted the talks—yet another excellent example of how the multiplicity of Aegean disputes renders agreements on any single one difficult.

As relations improved following the incident, the two sides commenced a fifth round of talks in Paris. It produced an agreement to reopen a "hot line" between the Greek 28th Tactical Air Force at Lárisa and Turkey's 1st Tactical Air Force at Eskishehir, closed since the Cyprus invasion. Additional negotiations at various levels were conducted, though with negligible substantive effect until February 1980, when Turkey suddenly withdrew NOTAM 714.[115] Greece responded by canceling notice 1157, and civil aviation in the Aegean returned to the *status quo ante*.[116]

Nato was critical in achieving this breakthrough. At the time, Nato, Greece, and Turkey were negotiating the return of Greece to the alliance; the issue of the NOTAMs pervaded those talks, with revocation consistently cited by Nato as one of the prerequisites to agreement.[117] Their withdrawal in February was taken as a sign of good faith that, at least in part, made possible a consensus on the readmission of Greece 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 view is that state aircraft are only required to fly "with due regard" to safety, the Chicago Convention and ICAO being applicable solely to civil aircraft.[118] Indeed, absent the Convention and the regime ICAO has established for flight safety, Greece could not require any reporting in international airspace at all, except as a precondition to entry into Greek national airspace. For their part, though U.S. military aircraft generally follow ICAO rules and use FIR services on point-to-point routes, they do so explicitly as a matter of policy, not legal obligation. They do not strictly comply

with ICAO requirements in military contingency operations, classified or politically sensitive missions, or during carrier operations, but instead operate with "due regard" to the safety of civil aviation.[119]

The presently accepted mechanism most nearly approximating what Greece seeks is the air defense identification zone (ADIZ). ADIZs are established to impose reasonable conditions on the entry of an aircraft, not otherwise having such a right, into national airspace. For instance, the aircraft may be required to identify itself prior to entry, while still in international airspace. However, it should be noted that, based on high seas overflight rights, the United States does not recognize any ADIZ that requires identification by aircraft that are merely transiting the zone without seeking entry to national airspace.[120] This position seems best to express the need for balance between the conflicting interests in international law of freedom of navigation and sovereignty. Ultimately, then, an ADIZ would not serve Greece's ends well, for it would be difficult to distinguish between aircraft that were merely transiting the area and those intending to penetrate Greek airspace. Even more fundamentally, a nation cannot simply "convert" a FIR into a de facto ADIZ. Doing so would complicate a system designed to ensure the safety of international civil aviation. It is the universality of that system that renders it beneficial.

Remilitarization of the Greek Islands

As noted earlier, certain of the Aegean islands Greece acquired in the past century have been demilitarized by international agreement. 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.[121]

During the 1960s, Greece began slowly to remilitarize many of these islands, a move protested by Turkey on repeated occasions. Each time, Greece reassured Turkey that it meant only to improve the law enforcement capabilities of the local police and was in no way violating the applicable international agreements.[122] However, with the Turkish invasion of Cyprus, open remilitarization began. For example, a series of defensive fortifications were erected on Lesbos, Chios, Samos, and Ikaria, involving armored vehicles, artillery, and increases in troop strength. Additionally, Greece built a major air base on Lemnos.[123] It was for this reason that Turkey equipped the new Fourth, or "Aegean," Army mentioned above with an amphibious capability. The Greeks, to justify their militarization of the islands, pointed to both the demonstrated Turkish will to use force (e.g., Cyprus) and the power-projection capability the Turks now possessed in the region. Though Greece also fashioned the legal arguments, described below, in support of the steps it took, the remilitarization is arguably

best characterized as an expression of Greece's concern about its security and that of its citizens living on the islands.

Since 1974, additional militarization has occurred on a periodic basis. Interestingly, Greece has often sought de facto legitimization through Nato. For instance, it recently requested (without success) establishment of a Nato infrastructure project on Lemnos and inclusion of that island in a Nato APEX EXPRESS exercise. Both attempts were unsuccessful, but they do display the approach Greece is taking in the matter. To understand better the situation, however, it is necessary to assess the historico-legal background for each of the three variants of the militarization's dispute.

The Northern Group. Recall that during the 1923 Lausanne Conference Turkey was concerned about the security implications of Greek islands lying near the entrance to the Dardenelles. Therefore, in the Straits Convention it negotiated the demilitarization of two of them, Lemnos and Samothrace, in exchange for demilitarization of islands that Turkey was to receive.[124] Thirteen years later, in 1936, because of threatening Italian and German activities, remilitarization of the straits was authorized by the Montreux Convention, an agreement signed by both Greece and Turkey.[125] That document made no mention of the islands, though the preamble, as noted by Greece, did state that the parties "resolved to replace by the present [Straits] Convention, the convention signed at Lausanne."[126] Today, citing that language, the Greeks argue that the intent of the Montreux drafters was to supplant the Straits Convention entirely. As support for this position they point to a statement by the Turkish foreign minister in 1936 to the Turkish Grand National Assembly, that the "provisions concerning the islands of Lemnos and Samothrace, which belong to our friend and neighbor, Greece, and which had been demilitarized by the Treaty of Lausanne in 1923, are abolished also by the Treaty of Montreux."[127]

From the Turkish perspective, the statement was merely a hortatory expression of goodwill and cannot be deemed legally binding.[128] While it is technically correct from a legal perspective that the statement itself is not "law," it is nevertheless at least *evidence* of intent regarding the Montreux Convention. Turkey also urges that the failure explicitly to address the islands in the treaty implies that the demilitarization regime remained intact. However, as the Greeks argue, international agreements are generally interpreted in accordance with their plain contextual meaning—and "context" specifically includes preambles.[129] In this case, the Montreux preamble suggested wholesale replacement of the Straits Convention. The general principles of the international law on termination of agreements also support the contention that Montreux superseded the Straits Convention *in toto*—and that accordingly remilitarization of these islands remains authorized.[130]

The Central Group. The Treaty of Lausanne itself, which was unaffected by the Montreux Convention and remains in force today, confirmed the earlier demilitarization of Mytilene, Chios, Samos, and Ikaria. In Article 13 the Greek government undertook not to build naval bases or fortifications on the islands and also 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."[131] While Turkey asserts that 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 do appear to many to exceed that permitted, a point which the United States has made to its Greek ally.

The Dodecanese Islands. Demilitarization of this final group of islands was provided for in the Treaty of Paris, which transferred the islands to Greece from Italy following the Second World War. Article 14 of the treaty 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." However, internal security forces "equipped with weapons that can be carried by one person" are permissible.

Following the Cyprus invasion, the internal security forces were enhanced to the point that they became almost indistinguishable from regular Greek units; this prompted an expression of concern by the United States. Nevertheless, in response to Turkish protests, Greece has maintained that the demilitarization provisions of the Treaty cannot prevent it from taking self-defense measures. With particular regard to Turkey, Athens has argued that Ankara, not being a party to the Treaty of Paris, does not have standing to complain of its violation.[132] Thus, while Greece has introduced forces that appear inconsistent with those specified in the Treaty of Paris, as a non-party Turkey is ill-situated to protest.

The labyrinthine disputes over the Aegean are complex and long-standing. As such, they do not easily admit of conclusive resolution. Nevertheless, American interests in the area are vital ones. They include freedom of navigation, the health of Nato, international trade, and basing to support out-of-area operations.

In light of these interests, assuring stability in the region is of paramount importance to all. However, the difficulty of doing so was made glaringly

apparent during a recent face-off over Imia (Kardak) Island. The speed and intensity with which this crisis over a tiny, barren islet escalated highlights the seemingly infinite number of potential flashpoints in the Aegean. In light of this reality, are there nevertheless lessons or guidelines that can be drawn from the historical and legal context described above that might moderate the conflict and foster resolution? I believe there are.

First, the historical record teaches us that the issues presented in the Aegean case are interrelated; on repeated occasions, progress on one has been frustrated by discord over another. Any lasting resolution, therefore, will inevitably have to address the disputes as an integral whole. While this would appear to be cause for pessimism, it often happens that give-and-take negotiations are actually enhanced by a multiplicity and scope of the issues at hand. Thus, the glass need not be viewed as half-empty.

Second, in order to assess the various disputes, as well as the positions the parties hold in each, it is necessary to move beyond the confines of purely legal analysis. For instance, both the airspace sovereignty and territorial sea issues are classic examples of situations in which an exercise of rights to the limits of the law might prove destabilizing. Nations, like people, must be careful what they wish for. Any resolution that is eventually fashioned must, therefore, blend law with both practicality and a sensitivity to the reasonable concerns of the other side.

Third, it is striking that despite the number of times Greece and Turkey have found themselves at the brink of hostilities, they have always backed away. Even the invasion of Cyprus did not lead to open combat between their regular military forces. Instead, these Aegean neighbors seem as if intuitively to understand that in the long term they have far more to lose from a conflict than they could ever possibly gain, a fact that remains true even in the post–Cold War environment. This is a positive factor, and a cause for cautious optimism.

Finally, it is inescapable that the successful unraveling of the Aegean enigma will prove less dependent on the forum chosen for resolution or the negotiating tactics of the respective sides than on a willingness of the parties to work in good faith. Doing so will necessitate a mutual realization that the process need not be zero-sum. As it has in the past, the United States, unilaterally and through Nato, can play a useful role in drawing the parties towards an understanding of this dynamic. Indeed, the United States itself has a significant stake in seeing the antagonism between two of its most important Nato allies put to rest. Ultimately, however, it is on Greek and Turkish shoulders that the future of this region rests. Only they have the power to ensure that the future is one of peace and cooperation.

Notes

1. Article 308 provided that the LOS Convention would enter into force twelve months after deposit of the sixtieth instrument of ratification (United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, art. 308, UN Document A/CONF.62/122 [hereafter LOS Convention], reprinted in *International Legal Materials* [hereafter *ILM*], vol. 21, 1982, p. 1261). As of 14 August 1995 there were eighty-one parties.

2. Informal Rough Translation, Deposit of the Instrument of Ratification, UN Document F.8243/48/AS 2947, 21 July 1995 (hereafter Instrument of Ratification). In the interim since 1982, Greece, as a signatory to the Convention, had been committed not to act at cross-purposes to it; with ratification, Greece formally bound itself to the treaty. For its part, Turkey was one of four Conference participants who voted against the Convention in 1982; the others were the United States, Israel, and Venezuela. Myron Nordquist and Choon-ho Park, eds., *Reports of the United States Delegation to the Third United Nations Conference on the Law of the Sea*, Occasional Paper 33 (Honolulu, Hi.: Law of the Sea Institute, 1993), pp. 592–3.

3. Text of the Grand National Assembly's Unanimous Declaration of 8 June 1995, *BBC Summary of World Broadcasts* (TRT TV), 8 June 1995 (Lexis). The response of Greek spokesman Evangelos Veizelos was that the "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, 9 June 1995 (Lexis).

4. The Turkish Ministry of Foreign Affairs emphasized that the exercises, EFES 95 and SEA WOLF 95, were previously scheduled; the Greeks nevertheless labeled them as "provocative." The Greek exercise, NIRIIS 94, was conducted jointly with the United States, France, Spain, and Great Britain. "Turk-Greek Dispute Latest in Long History of Fights," Reuters, 1 June 1995 (Lexis); "Greek Vote on Aegean Keeps Turkey Worried," *New York Times*, 2 June 1995, p. A7 (Lexis); and AP Worldstream, "Greece Says Treaty Ratification Does Not Mean Expansion of Waters," 14 November 1994, n.p. (Lexis).

5. LOS Convention, art. 3.

6. Law no. 230, October 1930, reprinted in U. Leanza et al., eds., *Mediterranean Continental Shelf Delimitations and Regimes: International and National Legal Sources* (hereafter *Mediterranean Continental Shelf*) (Dobbs Ferry, N.Y.: Oceana, 1988), vol. 1.I, p. 343. 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. Dept. of Defense, *Maritime Claims Reference Manual*, DOD 2005.1-M, vol. 1 (Washington: 1990), p. 2-203.

7. As will be discussed below, the dispute was based in great part on Turkish concern that the Greeks would expand their six-nautical-mile territorial sea to twelve miles, as permitted in the LOS Convention. Greek government spokesmen emphasized that the twelve-nautical-mile 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 (AP Worldstream). However, other Greek officials hastened to add that the prospect of extending the limit was not forever foreclosed. Accordingly, the Greek deputy prime minister, George Mangakis, told the parliament prior to the ratification vote that "Greece will exercise its rights whenever its interests dictate" ("Greek Vote on Aegean Keeps Turkey Worried"). Even before the 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 the Aegean Feud," *The Independent*, 15 November 1994 [Lexis]).

8. Paul Saunders, "Watch Out for Bosnia's Neighbors," *Newsday*, 23 August 1995, p. A33 (Lexis).

9. Ibid.

10. Ibid.

11. In 1994 alone, for example, Greece received forty-three Leopard tanks from Germany, whereas Turkey received sixty-two M-60 tanks from the United States, fifty-four BTR-80 armored personnel carriers from Russia, and nineteen F-4 aircraft from Germany, and also leased four frigates from the U.S. Bruce Clark, "Arms Pour into Two NATO Rivals," *Financial Times*, 14 July 1995, p. 2 (Lexis).

12. In 1992, Greece agreed to set up a Nato command in Salonika for Turkish, Italian, and Greek units. Turkey sought its placement on Turkish soil. Additionally, Turkey opposed creation in Greece of an Allied Tactical Air Force (ATAF) headquarters similar to 6ATAF in Izmir. The funding dispute was resolved when Turkey lifted its budget reservations in exchange for Greece's agreement to do likewise vis-à-vis funding of the Nato headquarters in Izmir. "NATO's Claes Mediates in Greek-Turkish Row," Reuters (Paris), 17 May 1995 (Lexis); *BBC Summary of World Broadcasts* (TRT Radio) broadcast of 9 June 1995 (Lexis).

13. For an excellent discussion of relations between the U.S., Greece, and Turkey, see Theodore A. Couloumbis, *The U.S. and Greece and Turkey: The Troubled Triangle* (New York: Praeger, 1983).

14. Celestine Bohlen, "Greek Premier Already in Hot Water," *New York Times*, 9 February 1996, p. A8 (Lexis).

15. On the history of relations between Greece and Turkey, see G. Curtis, ed., *Greece: A Country Study* (Washington: U.S. Govt. Print. Off. [hereafter GPO], 1995), pp. 251–5.

16. Peace Treaty between the Allied Powers and Turkey (Treaty of Sèvres), 10 August 1920, art. 83; in F. Israel, ed., *Major Peace Treaties of Modern History, 1648–1967* (hereafter *Peace Treaties*), vol. 3 (New York: Chelsea House, 1967), p. 2055.

17. Treaty of Lausanne, 24 July 1923, 28 League of Nations Treaty Series (hereafter LNTS) 11; and *Peace Treaties*, vol. 4, p. 2301. The "treaty" actually consisted of a peace treaty and numerous appended conventions covering such topics as the straits regime.

18. Convention Regarding the Regime of Straits (hereafter Straits Convention), 24 July 1923, 93 LNTS 115, annex, art. 4.3; and *Peace Treaties*, vol. 4, p. 2369.

19. Montreux Convention, 20 July 1936, 173 LNTS 213; and *American Journal of International Law*, vol. 31, 1937, supp. 1.

20. Treaty of Paris, 10 February 1947, 61 Stat. 1245, Treaties and Other International Acts Series (hereafter TIAS) no. 1648, 49 United Nations Treaty Series (hereafter UNTS) 3.

21. Italian sovereignty over the islands was recognized in the 1923 Treaty of Lausanne.

22. Zurich Agreement of 1959, 19 February 1959, *British and Foreign State Papers*, vol. 164, p. 219. To balance majority and minority rights, the president was a Greek Cypriot, while the vice president was a Turkish Cypriot and 30 percent of the seats in the Cypriot parliament were reserved for those of Turkish descent.

23. Richard Clogg, "Greek-Turkish Relations in the Post-1974 Period," in *The Greek-Turkish Conflict in the 1990s: Domestic and External Influences*, ed. D. Constas (New York: St. Martin's Press, 1991), pp. 12–4.

24. On the Cyprus episode generally, see J. Joseph, *Cyprus, Ethnic Conflict and International Concern* (New York: P. Lang, 1985).

25. One commentator has suggested that Turkish acquiescence came out of a greater fear of the Soviets, who, of course, had a common border with Turkey (T. Bahcheli, *Greek-Turkish Relations since 1955* [Boulder, Colo.: Westview Press, 1990], pp. 149–50). It was in 1979 that the Soviet Union invaded Afghanistan.

26. For a somewhat dated, but still useful, general discussion of the disputes between Greece and Turkey, see A. Borowiec, *The Mediterranean Feud* (New York: Praeger, 1983). See also J. Alford, ed., *Greece and Turkey: Adversity in Alliance* (New York: St. Martin's Press, 1984).

27. Law no. 2674, 20 May 1982, reprinted in *Mediterranean Continental Shelf*, vol. 1.II, p. 957. This law superseded Law no. 476, 15 May 1964, currently cited in *Maritime Claims Reference Manual*, p. 2-450. By decision of the Council of Ministers, the Black Sea and Mediterranean territorial waters were set at twelve nautical miles (Decree of the Council of Ministers no. 8/4742, *Turkish Official Gazette*, no. 177708, 29 May 1982; reprinted in *Mediterranean Continental Shelf*, vol. 1.II, p. 957). This action was contemporaneous with the conclusion of UNCLOS III and the completion of the 1982 LOS Convention.

28. 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 territorial seas were unsuccessful.

29. A. Wilson, *The Aegean Dispute*, Adelphi Paper no. 155 (London: International Institute for Strategic Studies, 1979), p. 5.

30. Though the United States did not then sign the LOS Convention, principally due to concern over the seabed regime the instrument called for, it supported the territorial and navigational provisions. In 1983 President Ronald Reagan, in his Oceans Policy Statement, specifically declared 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." Included among these were the twelve-nautical-mile territorial sea, innocent passage, and transit passage ("United States Oceans Policy," *Weekly Compilation of Presidential Documents*, vol. 19, no. 10, 14 March 1983, p. 383). See also U.S. Congress, Law of the Sea Negotiations: Hearings before the Subcommittee on Arms Control, Oceans, International Operations, and Environment, Statement of Theodore Kronmiller, 97th Cong., 2d Sess., (Washington: GPO, 1982); and *1995 Department of Defense Annual Report* (Washington: 1995), p. H-1. (For the purpose of this article, relevant LOS Convention articles will be treated, pursuant to U.S. policy, as existing customary international law.)

31. LOS Convention, arts. 18–9. See also U.S. Navy Dept., 1995, Naval Warfare Publication 1-14M (hereafter NWP 1-14M) (Washington: 1995), para. 2.3.2.1.

32. For a discussion of this issue, see F. David Froman, "Uncharted Waters: Non-innocent Passage of Warships in the Territorial Sea," *San Diego Law Review*, vol. 21, 1984, p. 625.

33. LOS Convention, art 25; NWP 1-14M, para. 2.3.2.4. Cambodia justified the 1975 seizure of the SS *Mayaguez* by alleging that its passage was not innocent. However, the ship was seized outside territorial waters. Even if it had been seized within territorial waters, no attempt was made to request compliance prior to the use of force (Eleanor C. McDowell, *Digest of U.S. Practice in International Law* [Washington: GPO,

1976], pp. 423–6). See also "Note—The *Mayaguez*: The Right of Innocent Passage and the Legality of Reprisal," *San Diego Law Review*, vol. 13, 1976, p. 765.

34. On military restrictions, see LOS Convention, arts. 19–20; NWP 1-14M, paras. 2.3.2.1–2.3.2.4; and U.S. Air Force Dept., 1976, Air Force Pamphlet 110-31 (hereafter AFP 110-31), para. 2-1d.

35. LOS Convention, art. 25(3); and NWP 1-14M, para. 2.2.3.2.3. The president may suspend innocent passage in response to a national emergency (50 USC, sec. 191). The LOS Convention does not specify what is meant by "security" other than by 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 Convention, art. 25[3]).

36. For a discussion of transit passage, see John Norton Moore, "The Regime of Straits and the Third International Conference on the Law of the Sea," *American Journal of International Law*, vol. 74, 1980, p. 77. On transit passage by aircraft, see Ram Prakash Anand, "Transit Passage and Overflight in International Straits," *Indian Journal of International Law*, vol. 23, 1986, p. 72.

37. LOS Convention, arts. 37–44; and NWP 1-14M, para. 2.3.3.

38. "United States Oceans Policy." The argument that transit passage was a customary international norm has been made in Richard J. Grunawalt, "United States Policy on International Straits," *Ocean Development and International Law*, vol. 18, 1987, p. 445. 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," *American Journal of International Law*, vol. 74, 1980, p. 48.

39. On the issue of the consideration of circumstances in delimiting both the territorial sea and continental shelf, see M. Evans, *Relevant Circumstances and Maritime Delimitation* (Oxford: Clarendon Press, 1989).

40. UNCLOS III Documents A/CONF.62/C.2/L.8-1.9 (1974); and R. Platzoder, ed., *Third United Nations Conference on the Law of the Sea*, vol. 5 (Dobbs Ferry, N.Y.: Oceana, 1984), p. 131. Turkey has actually written this position into domestic law: 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, art. 2).

41. LOS Convention, art. 3.

42. Ibid., art. 15.

43. Ibid., art. 121(2). For a discussion of islands in the Aegean context, see John M. Van Dyke, "The Role of Islands in Delimiting Maritime Zones: The Case of the Aegean Sea," *Ocean Year Book*, vol. 8, 1990, p. 44. A general discussion of islands is found in D. Bowett, *The Legal Regime of Islands in International Law* (Dobbs Ferry, N.Y.: Oceana, 1979), esp. pp. 34–44.

44. Instrument of Ratification (see note 2, above).

45. Greek Interpretive Declaration, 10 December 1982; reprinted in UN Division for Ocean Affairs and the Law of the Sea, *Law of the Sea Bulletin*, no. 25, June 1994, p. 29.

46. By its own terms (art. 309), the LOS Convention prohibits reservations, a point Greece has attempted to evade by labelling this reservation a "declaration." However, the Convention also prohibits declarations that "purport to exclude or modify the legal effect of the provisions of this Convention in their application to that State" (art. 310)—precisely what the Greek declaration seems to do vis-à-vis the transit passage regime. Further, it is questionable whether such reservations would be effective under basic customary and treaty law. See, for example, Vienna Convention on the Law of Treaties (hereafter Vienna Convention), arts. 19–22, UN Document A/CONF.39/27 (1969), p. 289, 1155 UNTS 331, reprinted in *ILM*, vol. 8, 1969, p. 679.

47. LOS Convention, art 38(1). The article was included in the Convention to address the Messina Strait, between Sicily and the Italian mainland.

48. For an illustration of a representative Greek approach to the territoriality issue, 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 U. Leanza, ed., *Il Regime Giuridico Internazionale del Mare Mediterraneo* (Milan: Giuffrè, 1987), p. 67.

49. More fundamentally, because Turkey is not a party to the Convention, it may not, under the principles of international law, complain of a violation of its provisions. See note 122 for more on this point.

50. As of 1 March 1996, the LOS Convention is being held in committee following submittal by President Clinton for accession.

51. For a basic introduction to the continental shelf issue, see F. Ahnish, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea* (Oxford: Clarendon Press, 1993), pp. 356–83.

52. The continental shelf is generally defined 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 Convention, art. 76[1]). Islands are entitled to their own shelves (art. 121[2]). The 1958 Convention on the Continental Shelf set the limit at a point where the depth of water was two hundred meters

or, beyond that, to where exploitation was feasible. Islands were specifically held to have continental shelves (Convention on the Continental Shelf, 29 April 1958 [hereafter 1958 Convention on the Continental Shelf], art. 1, 15 UST 471, TIAS no. 5578, 499 UNTS 312). Greece became a party to this convention in 1972; Turkey has never become one.

53. See discussion below. See also "Note—Jurisdiction: The Aegean Sea Continental Shelf Case," *Harvard International Law Journal*, vol. 18, 1977, pp. 649, 651–3.

54. Bahcheli, pp. 130–2. See also Wilson, p. 5.

55. Bahcheli, p. 132.

56. "Aegean Sea Continental Shelf (*Greece v. Turkey*)," *International Court of Justice Pleadings*, 1976 (Greek Note, 7 February 1974), p. 21 (hereafter Aegean Sea Continental Shelf—Pleadings); and ibid. (Turkish Note Verbale of 27 February 1974), p. 23.

57. For the second Greek protest, see "Aegean Sea Continental Shelf—Pleadings" (Greek Note Verbale of 14 June 1974), p. 26. Turkey's formal response to the Greek Note Verbale was a rejection of the protest and a proposal that negotiations continue ("Aegean Sea Continental Shelf—Pleadings" [Turkish Note Verbale of 4 July 1974], p. 27).

58. Greek Note Verbale of 27 January 1975, and Turkish Note Verbale of 6 February 1975, reprinted in "Aegean Sea Continental Shelf—Pleadings" (Greek Application of 10 August 1976), p. 33.

59. "Note—Delimitation of the Continental Shelf in the Aegean Sea," *Fordham International Law Journal*, vol. 12, 1988, pp. 91–2.

60. "Joint Communiqué Issued after the Meeting of Prime Ministers of Greece and Turkey (the Brussels Communiqué)," 31 May 1975, reprinted in UN Document S/18766, 1987, p. 5.

61. Bahcheli, p. 134. Ecevit and Demirel traded the positions of prime minister and opposition leader throughout 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.

62. *United Nations Security Council Official Record* (hereafter *UN SCOR*) 1,950th meeting, vol. 31, p. II, in UN Document S/PV.1950, 1976.

63. Clogg, p. 16.

64. Wilson, p. 8.

65. For an excellent contemporaneous discussion of the dispute, see Leo Gross, "The Dispute between Greece and Turkey Concerning the Continental Shelf in the Aegean," *American Journal of International Law*, vol. 71, 1977, p. 31. Interesting examples of Greek academic commentary on the issue at the time are provided in C. Rozakis, *The Greek-Turkish Dispute over the Aegean Continental Shelf*, University of Rhode Island Occasional Paper 27, North Kingston, R.I., 1975; and by Alexis Phylactopoulos, "Mediterranean Discord: Conflicting Greek-Turkish Claims on the Aegean Seabed," *International Lawyer*, vol. 8, 1974, p. 431.

66. *UN SCOR*, 1,949th meeting, p. 1, in UN Document 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, done June 26, 1945; 59 Stat. 1031, TS no. 993, 3 Bevans 1153, *Year Book of the United Nations*, 1976, p. 1043).

67. "Aegean Sea Continental Shelf—Pleadings" (Greek Application of 10 August 1976), p. 33.

68. Security Council Resolution 395, para. 3, *UN SCOR*, 1,953rd meeting, vol. 31, p. 15, in UN Document S/INF/32, 1976.

69. Ibid., para 4.

70. "Aegean Sea Continental Shelf (*Greece v. Turkey*)," *International Court of Justice Reports*, 1976, p. 11 (Interim Protection Order of 11 September), reprinted in *ILM*, vol. 15, 1976, p. 985.

71. Statute of the International Court of Justice, art. 36(1), done June 26, 1945; 59 Stat. 1031, TS no. 993, 3 Bevans 1153; *Year Book of the United Nations*, 1976, p. 1052. Turkey did not appear in the case; thus, pursuant to art. 53(2) of the statute, the Court was required to satisfy itself that it had jurisdiction and that the claim made by Greece was well founded in law and fact (art. 53[1]).

72. "Aegean Sea Continental Shelf (*Greece v. Turkey*)," *International Court of Justice Reports* (Judgment of 19 December) 1978, p. 14 (hereafter "Aegean Sea Continental Shelf—1978").

73. General Act of 16 September 1928, 93 LNTS 345. For successor competence over the PCIJ, see Statute of the International Court of Justice (note 71, above), art. 37.

74. "Aegean Sea Continental Shelf—1978," p. 44.

75. "Greek Accession to the General Act on the Pacific Settlement of International Disputes of 1928, September 14, 1931," 111 LNTS 414. Specifically, the accession reserved from PCIJ jurisdiction disputes "concerning questions which by international law are solely within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece."

76. "Aegean Sea Continental Shelf—1978," p. 37.

77. "Agreement on Procedures for Negotiations of the Aegean Continental Shelf Issue (Bern Agreement), November 11, 1976," reprinted in *ILM*, vol. 16, 1977, p. 13.

78. "Sea Lawyer's Delight," *The Economist*, 4 April 1987, p. 38 (Lexis); and Bahcheli, p. 137.

79. UNCLOS III Document A/CONF.62/C.2/L.25, 26 July 1974; reprinted in Platzoder, p. 145. (Emphasis added.)

80. UNCLOS III Document A/CONF.62/C.2/L.50, 9 August 1974; reprinted in Platzoder, p. 170. The 1958 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" (1958 Convention on the Continental Shelf, art. 6). As can be seen, Greece adopted the formula without reference to special circumstances, whereas Turkey, stressing circumstances, omitted equidistance.

81. UNCLOS III Document A/CONF.62/C.2/L.23, 23 July 1974; reprinted in Platzoder, p. 144.

82. UNCLOS III Document A/CONF.62/C.2/L.55, 13 August 1974; reprinted in Platzoder, p. 173.

83. LOS Convention, art. 83(1). (Emphasis added.)

84. Ibid., art. 121(2).

85. On this affair, see Alan Crowell, "Greeks and Turks Ease Aegean Crisis," *New York Times*, 29 March 1987, p. 1 (Lexis); "Turks Back Off in Naval Confrontation with Greece," *Chicago Tribune*, 29 March 1987, p. 3 (Lexis); and Clogg, p. 20.

86. 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" (1958 Convention on the Continental Shelf, art. 1). The Court found this to be customary law ("North Sea Continental Shelf [*West Germany v. Denmark, West Germany v. The Netherlands*]," *International Court of Justice Reports*, 1969, p. 39 [Judgment of 20 February]).

87. The rejected article provided that in "the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines." This was held not to be custom (ibid., p. 38).

88. Note that LOS Convention art. 311 states that the 1982 Convention applies over that of 1958. For the Greek reservation, see "Accession no. 7302 to the Convention on the Continental Shelf," 6 November 1972, 847 UNTS 338.

89. "North Sea Continental Shelf," pp. 38–52.

90. "Delimitation of the Maritime Boundary in the Gulf of Maine Area (*Canada v. United States*)," *International Court of Justice Reports*, 1984, pp. 303 and 312 (Judgment of 12 October).

91. Bowett, pp. 176–7.

92. "United Kingdom–French Continental Shelf Case (*United Kingdom v. France*)," *International Law Reports*, vol. 54, 1977, p. 6; reprinted in *ILM*, vol. 18, 1979, p. 397; and "Continental Shelf (*Tunisia v. Libyan Arab Jamahiriya*)," *International Court of Justice Reports*, 1982, p. 18 (Judgment of 24 February).

93. "United Kingdom–French Continental Shelf," *International Law Reports*, vol. 54, pp. 70–96.

94. See, for example, "Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau (*Guinea v. Guinea-Bissau*)," *ILM*, vol. 25, 1985, p. 251. This case was an arbitration conducted by three members of the ICJ; the tribunal rejected the equidistance method and, interestingly, considered the entire West African coast in the process of delimitation (pp. 294–7). See also "Continental Shelf (*Libyan Arab Jamahiriya v. Malta*)," *International Court of Justice Reports*, 1985, p. 13 (Judgment of 3 June), in which the ICJ adjusted the line of delimitation southward from Malta to account for Malta's status as an island. For a general analysis of delimitation, as well as discussion of most of the cases cited above, see Gerard Tanja, *The Legal Determination of International Maritime Boundaries* (Boston: Kluwer, 1990); and Douglas Johnston, *The Theory and History of Ocean Boundary-Making* (Kingston, Ont.: McGill-Queen's Univ. Press, 1988).

95. Bahcheli, p. 141.

96. "Presidential Decree 6/18, September 1931," cited in *Maritime Claims Reference Manual*, p. 2-203.

97. Law no. 230 (note 6, above).

98. Wilson, p. 24.

99. "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. . . . [f]reedom to fly over the high seas" (Convention on the High Seas, 29 April 1958, art. 2; 13 UST 2312, TIAS no. 5200, 450 UNTS 82). Also, "the sovereignty of a coast State extends to the air space over the territorial sea" (Convention on the Territorial Sea and Contiguous Zone, 29 April 1958, art. 2; 15 UST 1606, TIAS no. 5639, 516 UNTS 205).

100. "The high seas are open to all States. . . . Freedom of the high seas . . . comprises, *inter alia*, . . . freedom of overflight" (LOS Convention, art. 87). For a discussion of the impact of the 1982 LOS Convention on air law, see George Ash, "1982 Convention on the Law of the Sea—Its Impact on Air Law," *Air Force Law Review*, vol. 26, 1987, p. 35.

101. Convention on International Civil Aviation, opened for signature 7 December 1944 (hereafter Chicago Convention) arts. 1–2; 61 Stat. 1180, TIAS no. 1581, 15 UNTS 295.

102. AFP 110-31, para. 2-1e.

103. NWP 1-14M, para. 1.8. For a superb analysis of the use of military manuals as "a litmus test of whether a putative prescriptive exercise has produced effective law," see W. Michael Reisman and William K. Leitzau, "Moving Law from Theory to Practice: The Role of Military Manuals in Effectuating the Law of Armed Conflict," in *The Law of Naval Operations*, International Law Studies, vol. 64., ed. Horace B. Robertson, Jr. (Newport, R.I.: Naval War College Press, 1991).

104. For a discussion of this point, see Michael N. Schmitt, "Aerial Blockades in Historical, Legal, and Practical Perspective," *U. S. Air Force Academy Journal of Legal Studies*, vol. 2., 1991, p. 60.

105. Turkish Notice to Airmen (hereafter NOTAM) 714, 6 August 1974, reprinted in Christos Sazanidis, "The Greco-Turkish Dispute over the Aegean Airspace," *Hellenic Review of International Relations*, 1980, p. 87, app. 1.

106. Chicago Convention, art. 3(a).

107. Greek NOTAM 1018, 7 August 1974; reprinted in Sazanidis, app. 2.

108. Greek Note Verbale of 29 August 1974; reprinted in Sazanidis, app. 4.

109. Turkish Note Verbale of 29 August 1974; reprinted in Sazanidis, app. 5. The disavowal (here translated from the French) was crystal-clear: "For the aircraft that do not conform to this NOTAM, the Turkish authorities decline all responsibility for that which concerns the security of flight."

110. Greek NOTAM 1157, 13 September 1974; reprinted in Sazanidis, app. 7.

111. See, for example, Greek protests in "Letters from Greek UN Representative to Secretary General of 24 March, 27 March and 3 April 1975," UN Documents 11660, 11661, and 11665; reprinted in Sazanidis, apps. 9–11.

112. C. Panagakos, "The Aegean Dispute: Historical Development and Potential Solutions," unpublished thesis, University of Rhode Island, Kingston, R.I., 1991, p. 78. A number of other student works are also valuable sources on the Aegean dispute: see, for example, G. Avci, "International Legal Disputes: The Aegean Continental Shelf Case," unpublished thesis, University of Georgia, Athens, Ga., 1991; C. Botzios, "The Aegean Continental Shelf and the Greek-Turkish Crisis," unpublished thesis, San Francisco State University, San Francisco, Calif., 1984; E. Georgoussis, "The Strategic Value of Aegean Islands and Today's NATO Policy," unpublished research report, U.S. Air War College, Maxwell Air Force Base, Ala., 1988; G. Marsh, "The Aegean Dispute: Prospects for Resolution," unpublished research report, U.S. Naval War College, Newport, R.I., 1989; and M. Paley, "The Greek-Turkish Disputes and Their Effect on NATO's Southern Flank," Report no. AU-AWC-86-167 (Maxwell Air Force Base, Ala.: U.S. Air War College, 1986).

113. See Committee Communiqués of 20 June 1975, 25 July 1975, 26 January 1976, and 20 November 1976; reprinted in Sazanidis, apps. 14–7. The meetings took place in Ankara, Athens, Istanbul, and Athens, respectively.

114. Wilson, p. 11.

115. For the "hot line," "Joint Communiqué of the Meeting between the Experts of Greece and Turkey in Paris," 20 November 1976; reprinted in Sazanidis, app. 18. For subsequent negotiations, Sazanidis, pp. 93–6. For the withdrawal of NOTAM 714, see Turkish NOTAM 211, 22 February 1980; reprinted in Sazanidis, app. 19B.

116. Greek NOTAM 267, 23 February 1980; reprinted in Sazanidis, app. 20B.

117. See Sazanidis, pp. 97–100, for a (somewhat slanted) discussion of these negotiations.

118. "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 Convention, art. 3[d]).

119. NWP 1-14M, para. 2.5.2.2.

120. On ADIZs, see ibid., para. 2.5.2.3; and "Note—Air Defense Zones: Creeping Jurisdiction in the Airspace," *Virginia Journal of International Law*, vol. 18, 1978, p. 485.

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

122. Bahcheli, p. 147.

123. Rinn S. Shinn, ed., *Greece: A Country Study* (Washington: GPO, 1986), p. 316.

124. Straits Convention, art. 4. The islands that Turkey received were Gökceada and Bozcaada.

125. Montreux Convention.

126. Ibid., Preamble.

127. "Statement of Foreign Minister to Grand National Assembly," *Record of the Grand National Assembly* (5th Parliamentary Period, 5th Sess. 61st. meeting), vol. 12, 1936, p. 309; reprinted in Journalists Union of Athens Daily Newspapers, *Threat in the Aegean*, n.d., p. 33.

128. For instance, Turkish officials have asserted 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, p. 148.)

129. Consider the first two paragraphs of Vienna Convention, art. 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 light of its object and purpose.
> (2) The context for the purpose of interpretation of treaties shall comprise, in addition to the text, . . . its preamble and annexes. . . .

Though the United States is not a party to the Convention, it accepts the greater part as declaratory of customary international law.

130. The Vienna Convention provides that if parties to a treaty conclude a later agreement relating to the same subject 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 earlier one shall be considered terminated (Vienna Convention, art. 59[1][a]).

131. Treaty of Lausanne, art. 13.

132. Wilson, p. 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, art. 34: "A treaty does not create either obligations or rights for a third State without its consent."

Ψ

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