**PART IV**

**Disputes and the related arguments of the two Sides**

**THE GREEK POSITION**

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**Historical Background of the Greek-Turkish Disputes in the Aegean**

In 1973 Greece reacted to Turkish claims over the Aegean continental shelf. The Turkish Official Gazette published licenses to TPAO (the state company for petroleum exploitation) concerning the continental shelf areas west of the triangle of the islands of Chios, Lesvos and Lemnos – Aghios Efstratios. Prior to that Greece had granted licenses to seabed mining companies upon a unilateral delimitation of the area, following the provisions of the 1958 Geneva Convention of the Law of the Sea, based on a median line between the Greek eastern Aegean islands and the coast of Anatolia – Turkey.

This was the trigger point for Turkey to unfold claims and objections in relation to the Aegean Sea. It objected to a prospect of any unilateral delimitation of the continental shelf in the Aegean Sea, claiming areas of the continental shelf based on a different method, that of equitable delimitation. Equally, it objected to Greece’s right to extend its territorial sea from the existing 6nm to the maximum permitted width of 12nm according to the then evolving state practice that reflected an emerging customary international law. Similarly, Turkey further objected to the Greek sovereignty of 10nm airspace, which exceeds the width of the territorial sea of 6nm. Separately, Turkey has asserted that Greece does not observe conventional obligations with regards to demilitarization of the eastern Aegean islands despite Greece’s persistent claims on the customary law right to self-defense.

In 1996, Turkey stepped forward to dispute territories as undetermined by the Treaty of Peace with Turkey signed at Lausanne, July 24, 1923[[1]](#footnote-1) (hereinafter 1923 Lausanne Treaty), which basically defined maritime frontiers between the two states. New arguments were submitted with regard to the so called “grey zones”. There seems to be a contradiction in the statements of the Turkish officials. On the one hand it has been argued that Turkey has exclusive sovereignty over certain disputed islets and rocks and that Greece has been violating this by claiming sovereignty, while on the other, it has been contended that the legal regime of these maritime features remained undetermined. Based on the latter, which is still the dominant view, Turkey has invited Greece to negotiations in order to clarify the status of these disputed maritime features.

Although talks between the two states started in 1975 on the delimitation of the Aegean continental shelf with a view to agreeing on judicial settlement, that process has never been completed and the disputes on continental shelf delimitation remain unresolved. Up until 1999, Turkey objected somewhat aggressively (by declaring a *casus belli[[2]](#footnote-2)*) to Greece’s announcement that it intended to extend its territorial sea to 12nm. Equally, Turkey has insisted on disputing Greece’s excess of 4nm of national airspace beyond its existing 6nm territorial waters by recurrent overflights.

In 1999, in the Conclusions of the Helsinki EU Summit, the member states unanimously agreed to Turkey’s eligibility for candidacy, on the condition that before the end of 2004, the country should have settled outstanding border disputes and other related issues, or recourse to the International Court of Justice (ICJ) for adjudication by way of a special agreement (*compromis*).[[3]](#footnote-3) Following this framework, both Greece and Turkey initiated exploratory talks aiming to clarify whether there was the intention to proceed to negotiations, and equally determine the agenda. In fact, Turkey, anticipating the benefits of the European accession process, saw the talks leading to negotiations as the only way forward. This was an excellent opportunity for both states to sit down and have talks honestly and in good faith to unfold their legitimate interests and high stakes regarding their opposing positions and come up with options for dispute resolution.

After some rounds of exploratory talks, it became evident that the main issue of dispute between the two states was centered around delimiting the Aegean continental shelf. It was clear to both states that the negotiation phase could start only after the breadth of territorial waters and corresponding national air airspace had been determined and respectively adjusted. It was determined that negotiations would be launched upon adoption of a joint communique[[4]](#footnote-4) based on an extended breadth of territorial sea and required that Greece had to legislate on partial extension before that phase started. However, this did not prove possible before the end of 2003 and it was considered that legislation would be enacted after the Greek national elections of March 7, 2004. It should be emphasized that at that time the Turkish side seemed keen to resolve the long-term outstanding Aegean disputes.

In early 2004, the then newly elected Greek government failed to build on the momentum achieved during the first rounds of exploratory talks and by the end of the same year the condition of recourse to judicial adjudication was lifted, allowing the start of Turkey’s EU accession process. However, exploratory talks continued with ups and downs until the failed coup attempt of July 2016 in Turkey. The exploratory talks then were put on ice with the focus of the dispute between the two countries having shifted to the Mediterranean Sea, where both states claim entitlements, but none is taking the initiative to start negotiations regarding delimitation. Nevertheless, the long-stalled exploratory talks finally resumed in 2021 amidst a tense atmosphere due to Turkey’s provocative statements and actions in the Aegean and the Eastern Mediterranean that made the prospect of dialogue seem impossible. Greece now remains firm as far as the dialogue process is concerned, as it is the only way to reach continental shelf/exclusive economic zone (EEZ) delimitation either via bilateral agreement or adjudication.

As early as in 2011, Turkey claimed sovereign rights in undelimited/disputed areas of continental shelf in the Mediterranean Sea between 28ο and 32ο meridians, while at the same time disputing the EEZ of Cyprus, which it has been delimited by agreements with Egypt and Israel since 2003 and 2010 respectively. By 2016, Turkey deployed research and drilling vessels in Cyprus EEZ, objecting to its agreement with Egypt on two basic grounds: first that each agreement was concluded in the absence of the Turkish-Cypriot community as a co-founder of the Republic of Cyprus; and second, that, as was illustrated in a Turkish map,[[5]](#footnote-5) Cyprus, to its west, is not entitled to any maritime zone beyond territorial sea because of the Turkish continental shelf/EEZ claims in the same area. Meanwhile, arguably acting on behalf of the self-proclaimed “TRNC”, Turkey claimed the south-east part of the Cyprus EEZ. The ensuing research and drilling activities of Turkey in the EEZ of Cyprus then constitute a flagrant violation of the Law of the Sea.

From 2019 onwards, even before the adoption of the Turkish-Libyan Memorandum of Understanding (MoU) on delimitation of EEZ on November 27,2019, Turkey started searching for seismic data from the continental shelf’s seabed in the frame of conducting research which is an exclusive sovereign right after the area has been delimited by an agreement and has appertained to it. However, it is worth highlighting at this point that this area between 28ο and 30ο meridian is undelimited and disputed since Greece claims *ipso facto* and *ab initio* sovereign rights in the same zone. This is a clear legal dispute and according to the Law of the Sea, there is obligation for delimitation via a negotiated agreement. As expected, the unilateral actions of Turkey in the Eastern Mediterranean created an escalated dispute with Greece and created a stalemate for resuming exploratory talks.

Greece has opted for a peaceful settlement of disputes since 1975 when negotiations were initiated. The main goal of Greece has been to settle the continental shelf delimitation by recourse to the ICJ. The other issues concerning the extension of territorial sea and the width of national airspace are seen as in the domain of sovereignty and a matter of unilateral legislation. Interests of either side or of the international community concerning international navigation through high seas also thought to be needed to be taken into consideration. However, as Turkey argues both these issues are in dispute. It is not a main legal dispute though because if overlapped continental shelf claims are not delimited either by an agreement or recourse to the ICJ or other adjudication body, neither of the two states can exercise exclusive sovereign rights according to the Law of the Sea. It cannot be delimited unilaterally as it is the case with territorial sea.

From 1975 until the present day, these Aegean disputes remain unresolved and with confrontation having expanded to the Eastern Mediterranean Sea recently, an area which –according to the United Nations on the Law of the Sea (UNCLOS) provisions and the Court’s and other tribunals’ jurisdiction- Turkey and Greece should enter into substantive negotiations to delimit their continental shelves (and possibly EEZs). UNCLOS articles 74, concerning EEZ, and 83, concerning continental shelf, provide for delimitation by agreement in geographical circumstances of overlapping claims between opposite or adjacent coastal states in order to reach an equitable result. These identical articles reflect customary international law binding on Turkey, a non-party to UNCLOS.

Having given the historic framework of how the situation evolved throughout the years, I will now examine in greater detail the disputes between Greece and Turkey as well as the substantive and procedural principles and rules of international law that apply towards settlement.

***What is an international Dispute?***

The jurisprudentially admitted definition of a “dispute” is a disagreement on a point of law or fact, a conflict of legal views or of interests between parties.[[6]](#footnote-6) Disputes may arise from different interpretation of a legal provision or from contesting a legal right. It is important to add that in order for a dispute to exist, it must be shown that the claim of one party is positively opposed by the other and that the two sides must hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations. If a dispute arises even if stemming only from one side, it cannot be negated by the other side.[[7]](#footnote-7)

The delimitation of continental shelf/EEZ, the breadth of the territorial waters and the national airspace are legal disputes that need to be addressed or can be invoked bilaterally and be solved according to principles and rules of international law. As such, any unilateral projection of the opposite or adjacent coastal states creates overlapping claims. In the absence of agreement or judicial decision, the coastal states have only entitlements. According to the Law of the Sea, exclusive sovereign rights of research and exploitation with regard to continental shelf’s natural resources are exercised in the area that appertains to each state after delimitation is agreed or adjudicated. If delimitation agreement is not possible, then the states consensually may resort to judicial adjudication.

The breadth of territorial sea and that of the national airspace are zones of sovereignty and are enacted unilaterally by national legislation. In this case, Turkey contests Greece’s right to extend its territorial sea to 12nm in conformity with the UNCLOS articles 3 and 15, and equally contests the breadth of Greece’s national airspace of 10nm instead of 6nm, corresponding to the extent of its territorial sea. In case of (even partial) extension of territorial waters, the breadth of the national airspace should be adjusted accordingly.

Other disputes concern allegations of Turkey with regard to interpretation of the 1923 Lausanne Treaty. The treaty has determined the frontiers between the two countries and confirmed the sovereignty of the northeastern Aegean islands ceded to Greece by Turkey, along with the Italian sovereignty of the Dodecanese Islands until 1947 when they were ceded by Italy to Greece.

The 1923 Lausanne Treaty confirms sovereignty of the islands of Eastern Aegean Sea. In terms of article 12 of the Lausanne Treaty, Turkey renounced all rights and titles and confirmed Greek sovereignty of the islands of Lemnos, Samothrace, Lesvos, Samos, Ikaria, and Chios. Imbros, Tenedos and the Rabbit Islands remained under Turkish sovereignty. Following article 6, except for these said islands, the islands and islets within 3nm from the Asiatic coast (Anatolia, Turkey) remain under Turkish sovereignty. That was the frontier lines laid down between the two states.

**The Aegean Disputes**

The differences between Greece and Turkey revolve around foundational legal texts. One is the Lausanne Treaty of 1923. In terms of that Treaty, the borders of both states have been determined from Evros river to Meis/Kastellorizo island. The other foundation is the Law of the Sea (UNCLOS), in particular regulations relating to the maritime zones and their delimitation, the entitlements of the islands to those zones, the sovereign rights of the coastal states and other regimes that correspond to these maritime zones. UNCLOS as customary international law entitles islands to all maritime zones considering them as equal to the continental coasts. In particular, the breadth of territorial waters of the islands along with the breadth of the national airspace superjacent to the corresponding national waters is crucial as the sovereign rights over continental shelf and EEZ extend from the outer limit of the territorial waters to the outer edge of the delimited by agreement continental shelf/EEZ. The lesser the extent of territorial waters, the wider the area of continental shelf to be apportioned.

Along these lines, as stated above, it is beyond any doubt that all islands are entitled to maritime zones and are taken into consideration in the delimitation process. This is confirmed by the ICJ’s jurisprudence. This jurisprudence has neither enclaved islands, nor treated them as found in the continental shelf of the opposite coastal state. They were delimited according to the criteria the Court has employed.

Based on the 1958 Geneva Convention on Continental Shelf in 1973/4, Greece argued that the median/equidistance line was the method of delimitation between opposite and adjacent states, respectively. In particular, it argued that the median line is measured between the eastern coasts of the Aegean islands and the opposite Turkish Asiatic coast. Further, Greece argued that unilateral delimitation was permitted under the 1958 Geneva Convention, which was the applicable law in 1973/4.

Following the 1982 UNCLOS provisions 83 et seq., delimitation is effected by agreement in order to reach an equitable solution. When Greece refers to the Law of the Sea in force in respect to delimitation, it includes the relevant provisions of UNCLOS, which reflect customary law and the ICJ’s jurisprudence.

In particular, according to UNCLOS article 83,

1. 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;
2. If no agreement can be reached within a reasonable period of time, the states concerned shall resort to the procedures provided for in Part XV;
3. Pending agreement as provided for in paragraph 1, the states concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

How delimitation is effected has been clarified by the ICJ’s jurisprudence in Romania/Ukraine case of 2009 which it has consistently followed ever since.[[8]](#footnote-8) The ICJ has offered guidance as to the delimitation of continental shelf/EEZ and the interpretation of Article 83. According to the Court’s methodology, after defining the relevant coasts and based on their proportionality between them the relevant area under delimitation is determined as a preliminary step. “The Court has made clear in a number of occasions that the methodology which it will normally employ when called upon to effect a delimitation between overlapping continental shelf and exclusive economic zone entitlements invoke proceeding in three stages.”[[9]](#footnote-9)

As to the methodology of delimitation, “In the first stage, the Court establishes a **provisional delimitation line** between territories (including the island territories) of the Parties. In doing so it will use methods that are geometrically objective and appropriate for the geography of the area. This task will consist of the **construction of an equidistance line**, where the relevant coasts are adjacent, or a **median line**, where the relevant coasts are opposite, unless in either case there are compelling reasons as a result of which the establishment of such a line is not feasible. [….] No legal consequences flow from the use of the term ‘median line’ and ‘equidistance’ since the method of delimitation in each case involves constructing a line each point on which is an equal distance from the nearest points on the two relevant coasts. […] The line is constructed using the most appropriate base points on the coasts of the Parties. […]

At a second stage, the Court considers whether there are any relevant circumstances, which may call for an adjustment or shifting of the provisional equidistance/median line so as to achieve an equitable result. If it concludes that such circumstances are present, it establishes a different boundary, which usually entails such **adjustment** or shifting **of the equidistance/median line** as is **necessary to take account of those circumstances**.…Where the relevant circumstances so require, the Court may also employ other techniques, such as the construction of an enclave around isolated islands, in order to achieve an equitable result.

In the third and final stage, the Court conducts a disproportionality test in which it assesses whether the effect of the line, as adjusted or shifted, is that the Parties respective shares of the relevant area are **markedly disproportionate** to their respective coasts.”[[10]](#footnote-10)

As for the islands, the Court underlines that regardless of their geographic location, they are entitled to continental shelf/EEZ and constitute relevant coasts and base points in the delimitation process. In the Nicaragua/Colombia case the Court underlined that geomorphological configuration of the seabed is not a relevant circumstance, thus rejecting claims that islands should be enclaved if they are situated in the continental shelf area to which the opposite state coastal projection overlap. In the same case, the ICJ stressed that, “[i]t has repeatedly made clear that geological and geomorphological considerations are not relevant to the delimitation of overlapping entitlements within 200nm of the coasts of States.[[11]](#footnote-11) The reality is that the Nicaraguan mainland and fringing islands, and the Colombian islands, are located on the same continental shelf. That fact cannot, in and of itself, give one State’s entitlements priority over those of the other in respect of the area where their claims overlap.”[[12]](#footnote-12) In the end, the Court considered the islands’ effect according to the criteria.

Whether islands are base points in order to construct the provisional delimitation line and constitute relevant circumstances thus giving reduced effect calling for adjustment of the provisional line in the context of equitableness is a matter for the Court to examine in the wider frame of the geographical conditions. As International Tribunal of the Law of the Sea (ITLOS) underlined in Bangladesh/Myanmar case in 2012 and was reiterated in subsequent cases, “…the effect to be given to an island in the delimitation of the maritime boundary in the exclusive economic zone and a continental shelf depends on the geographic realities and the circumstances of the specific case. There is no general rule in this respect. **Each case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable**.”[[13]](#footnote-13)

As regards islands in the so called “wrong” side, meaning being far away from the mainland and beyond the median line between the two continental coasts, the ICJ in Nicaragua/Colombia case of 2012 rejected the argument based on the *Channel Islands* arbitral award legal reasoning. The objection is that the Arbitral Tribunal in Channel Islands case of 1977 “[i]t began with the construction of a provisional equidistance/median line between the two mainland coasts and then enclaved the Channel Islands because they were located on the “wrong” side of that line.”[[14]](#footnote-14) ICJ in Nicaragua/Colombia case in 2012 clarified “...what is important is that the Court of Arbitration did not employ enclaving as an alternative methodology to the construction of a provisional equidistance/median line, but rather used it in conjunction with such a line”.[[15]](#footnote-15) Then the Court in 2012 proceeded “…in accordance with its standards method, in three stages, beginning with the construction of a provisional median line.”[[16]](#footnote-16)

As to the effect in the delimitation “[t]he Court agrees...that the achievement of an equitable solution requires that, so far as possible, the line of delimitation should **allow the coasts of the Parties to produce their effects** **in terms of maritime entitlements in a reasonable and mutually balanced way.[[17]](#footnote-17)** The effect of the provisional median line is to cut Nicaragua off from some three quarters of the area into which its coast projects. Moreover, that cut-off effect is produced by a few small islands, which are many nautical miles apart. **The Court considers that those islands should not be treated as though they were a continuous mainland coast stretching for over 100nm and cutting off Nicaraguan access to the seabed and waters to their east.** The Court therefore concludes that the **cut-off effect is a relevant consideration** which requires adjustment or shifting of the provisional median line in order to produce an equitable result.

At the same time, the Court [notes] that any adjustment or shifting of the provisional median line **must not have the effect of cutting off** **Colombia from the entitlements generated by its islands in the area to the east of those islands**. Otherwise, the effect would be to remedy one instance of cut-off by creating another. An equitable solution requires that each State enjoy reasonable entitlements in the areas into which its coasts project. In the present case, that means that the action which the Court takes in adjusting or shifting the provisional median line should avoid completely cutting off either Party from the areas into which its coasts project.”[[18]](#footnote-18)

In summation, the Court’s jurisprudence in achieving equitable result has formed the rule to be applied as regards delimitation of islands. With regard to cut-off-effect and relevant arguments of Turkey, it must be noted that the islands, especially those that create a continuity, and can be regarded as a continental coast to the west must not have the effect of cutting off Greece from entitlements generated by its islands to the west where they are not opposite to the Turkish coasts. That said, could it be argued that the presence of the Dodecanese Islands does not distort the projection of the Turkish coasts? It should be noted, however, that the continuous Colombian Islands are situated at a distance of 100nm from Nicaragua’s coasts giving some distance to enjoy continental shelf sovereign rights; but in any case, the cut-off effect as a notion is under consideration of delimitation in geographic situations where the coasts are opposite or adjacent. The non-cut-off-effect[[19]](#footnote-19) of an island (St. Martin’s single island of Bangladesh in front of Myanmar), in the delimitation process -if the island causes distortive effect to the projection of the coasts of mainland (Myanmar)- is the legal reasoning behind the decision in the Myanmar/Bangladesh case of 2012.[[20]](#footnote-20) The Tribunal gave this small island of St. Martin no effect beyond the territorial sea.[[21]](#footnote-21) It remains to be seen however, whether this reasoning will prevail in following cases too, with different geographic characteristics and location of continuous islands. Similarly, in the case of Greece and Turkey, any argument about the enclavement of islands is no more upheld and should avoid cutting off either state from the areas into which its coasts project, following the Court’s delimitation criteria. And further regarding all islands, “[i]n accordance with Article 121, paragraph 2, of the 1982 Convention on the Law of the Sea, which reflects customary international law, islands, regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory”[[22]](#footnote-22). Τhe Court recognizes that the islands generate entitlements to all maritime zones. However, in the delimitation process it has determined their effect under the geographic conditions in order to satisfy the equitable result. The Court utilizes the jurisprudential criteria in each continental shelf/EEZ delimitation in considering an island’s effect.

***Territorial sea and continental shelf***

It inevitably follows that a comparatively small island may give an entitlement to a considerable maritime area. Moreover, even an island which falls within the exception stated in Article 121, paragraph 3, of UNCLOS is entitled to a territorial sea. “The Court has never restricted the right of a State to establish a territorial sea of 12nm around an island on the basis of an overlap with the continental shelf and exclusive economic zone entitlements of another State. In the *Nicaragua* v. *Honduras* case[[23]](#footnote-23), Nicaragua argued that the four small islands (Bobel Cay, South Cay, Savanna Cay and Port Royal Cay), which the Court had held belonged to Honduras should be accorded a territorial sea of only 3nm in order to prevent them having an inequitable effect on the entitlement of Nicaragua to a continental shelf and EEZ, whereas Honduras maintained that it was entitled to a 12nm territorial sea around each island, save where that territorial sea overlapped with the territorial sea of one of Nicaragua’s territories.”[[24]](#footnote-24)

The Court found for Honduras on this point: “The Court cannot…accept Nicaragua’s submission that an equitable solution can be achieved by drawing a 3-nautical-mile enclave around each of these islands. It concludes that [islands] (Roncador, Serrana, the Albuquerque Cays and East-Southeast Cays) are each entitled to a territorial sea of 12nm, irrespective of whether they fall within the exception stated in Article 121, paragraph 3, of UNCLOS. Whether or not any of these islands falls within the scope of that exception is therefore relevant only to the extent that it is necessary to determine if they are entitled to a continental shelf and exclusive economic zone. In that context, the Court notes that the whole of the relevant area lies within 200nm of one or more of the islands…each of which…is entitled to a continental shelf and exclusive economic zone.”[[25]](#footnote-25)

Similarly, Greece may claim territorial sea up to the maximum extent of 12nm according to the 1982 UNCLOS and customary international law. The right is unilaterally exercised in consonance with article 15 of UNCLOS. According to it, “where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistance from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured.” This provision does not apply “where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two states in a way which is at variance therewith.” The equidistance/special circumstances pair reflects customary international law. As a preliminary remark it should be noted that delimitation of territorial sea is markedly different from that of the continental shelf/EEZ, even if a single maritime boundary is preferred in delimitation agreements or judicial decisions.[[26]](#footnote-26) Article 15 of UNCLOS alone is applicable in territorial sea delimitation.

It is worth exploring the Aegean disputes through a series of legal documents, in particular in respect of sovereignty and Greece’s inalienable right to defend the eastern islands integrity through their fortification.

***Documents to determine the Aegean disputes: sovereignty and demilitarization***

*Sovereignty*

According to article 16 of the 1923 Lausanne Treaty, Turkey has renounced all rights and title over territories outside frontiers laid down in the said treaty and the islands other than those which its sovereignty is recognized, the future of these territories and islands being settled or to be settled by the parties concerned. This provision might seem to leave open the interpretation with regard to some islands or islets that are not referred to that Treaty by name. However, the legal status of the islands not named in the treaty cannot be disputed. Any argument to suggest that the legal status of these islands should be negotiated runs contrary to articles 12 and 16 of the 1923 Lausanne Treaty. The boundary established by the treaty was not subject to any further settlement as no territorial status was conferred pending determination. According to article 12 of the Treaty, Greek sovereignty in respect of the islands of eastern Aegean is confirmed except for Imbros, Tenedos and Rabbit islands and those within the 3nm from the Asiatic coast. According to the article 16, Turkey renounced all rights and titles of these islands along with the islands named. The rule of 3nm determined the status of the islands and islets not named in the treaty beyond the 3nm from Turkish coast.

Turkey has referred to article 16 of the Treaty and developed the argument that the legal status of the not named islands or small islands or islets should be the focus of an agreement between the two states. Turkey utilized that provision as the basis for developing “grey zones” concept. The determination of territories in this treaty was not referring to the Aegean islands or islets beyond the 3nm limit.[[27]](#footnote-27) It was clear and confirmed by the Arbitral Tribunal in the (1999) Eritrea/Yemen case in which crystal clear interpretation of Article 16 of the 1923 Lausanne Treaty was given, in paragraph 165 stating that: “The correct analysis of Article 16 is, in the Tribunal’s view, the following: in 1923 Turkey renounced title to those islands over which it had sovereignty until then.”[[28]](#footnote-28)

When read together, articles 6 and 16 of the Treaty of Lausanne make clear that Turkey has renounced all rights and titles over the islands beyond the 3nm limit from the Turkish coast except those Greek islands that are located in lesser distance and are named in the Treaty, as well as the Turkish islands named in the Treaty. Islands and islets are identical between them and with territories.[[29]](#footnote-29) This responds to Turkish claims that legal status of islets or rocks is undetermined because they are small in size and uninhabited. It would have been ironic for a treaty to leave islets and rocks undetermined just because they are small sized.[[30]](#footnote-30)

According to the Article 15 of the Lausanne Treaty, the Dodecanese Islands came under Italian sovereignty and Turkey renounced all rights and titles over these islands named in the Treaty -including the Island of Kastellorizo- and the islets dependent on them in favor of Italy. When Turkey questioned the frontiers between Kastellorizo under Italian sovereignty and Kara-Ada (Black Island) of Turkey, it was settled with an agreement between the two states, signed in Ankara in January 1932.[[31]](#footnote-31) Following this agreement, a technical group was assigned to delimit the maritime boundary between the Dodecanese islands and the Turkish coast. Thereafter, the *proces verbal* signed by the representatives delimited the maritime boundary by agreeing 37 points of coordinates. While addressing similar territorial disputes, a reference was made to Imia/Kardak islets. It confirmed that the said twin islets belonged to Italy.[[32]](#footnote-32) Although Turkey has argued that this *process verbal* is not an agreement if not approved by the Turkish Parliament and cannot be binding, it is noted that the ICJ eloquently and consistently in its jurisprudence has confirmed that a binding effect is not determined by the instrument but by the intention of the parties to be bound resulting from the wording of a declaration or joint communique or even a *proces verbal* or minutes.[[33]](#footnote-33)

*Demilitarization*

Article 13 of the 1923 Lausanne Treaty restricts the fortification of the islands Lesvos, Chios, Samos and Ikaria, with a view to ensuring the maintenance of peace. This kind of demilitarization was dictated by the perceptions about responsibility for maintaining international security vested on the organized international community. This regime was superseded in the course of time as peace between the two countries has been restored after the 1930 Greek-Turkish rapprochement and a friendship pact signed between the leaders of the two countries, Eleftherios Venizelos and Mustafa Kemal Atatürk.

The 1923 Lausanne Convention Relating to the Regime of the Straits[[34]](#footnote-34) signed as an integral part of the 1923 Lausanne Treaty established a demilitarized status for Samothrace and Lemnos along with Imbros, Tenedos and Rabbit Islands prohibiting fortification, permanent military organizations, military aerial organization and naval bases. Demilitarization of the above mentioned islands under Greek or Turkish sovereignty was established in order to provide security aiming to neutralize aggression against the demilitarized Turkish Straits. However, the 1936 Montreux Straits Convention terminated the demilitarization of the Turkish Straits, replacing the 1923 Lausanne Strait Convention. In this framework, Turkey fortified Imbros and Tenedos Islands in accordance with the new straits conventional regime. Thus the demilitarization of Lemnos and Samothrace equally ceased to be in force and Greece’s right to fortify the islands was confirmed in a clear statement by Turkish Foreign Minister Rüştü Aras during Parliament’s approval of the Montreux Convention.[[35]](#footnote-35)

Turkey argues that it conceded sovereignty of the islands to Greece upon the condition of demilitarization. The counterargument of Greece, however, is that the sovereignty of islands was confirmed unconditionally. Furthermore, Greece’s arguments against demilitarization include the following:

1. The 1923 Lausanne Treaty cannot override the inherent right of self-defense measures, under the article 51 of UN/Charter and customary international law.
2. With regard to Lemnos and Samothrace, their demilitarization status has been terminated after the signing of the 1936 Montreux Convention.
3. There is a fundamental change of circumstances (*rebus sic standibus*) after Turkish declaration of *casus belli* and Turkish Parliament’s authorization to the government to take necessary measures to defeat extension of Greece’s territorial waters, the presence of Turkish military in Cyprus after 1974 and the deployment of the Turkish Aegean Army close to the Greek islands.
4. Turkey’s material breach by posing threats to Greece.
5. Greece’s right to take appropriate countermeasures and preparing defense of necessity to act to ensure self-preservation (similar to self-defense)
6. With regard to the Dodecanese Islands, Turkey as a non-party cannot invoke the 1947 Paris Treaty with regard to demilitarization of these islands. Neither the demilitarization of the Dodecanese constitutes an objective situation.

The demilitarization is a provisional measure and has been superseded by the 1930 Greek-Turkish rapprochement and the friendship pact; it cannot be in force because of the fundamental change of circumstances and Greece cannot be deprived of the inherent right of self-defense.

***The legal and policy landscape***

*Territorial waters*

Article 3 of UNCLOS provides that every coastal state has the right “to establish the breadth of its territorial sea up to a limit not exceeding 12nm from baselines”. The coastal state enjoys sovereignty in its territorial waters, which include the surface, the water column, the seabed and its subsoil as well as the superjacent air called the national airspace. The coastal state cannot restrict the passage of vessels if it is innocent. As has been underlined previously, delimitation of territorial waters is a unilateral legal act in consonance with the Article 15 of the UNCLOS.

The 12nm outer limit for territorial sea is provided by the UNCLOS. Most of the coastal states have extended their territorial sea to the maximum breadth before the UNCLOS entered into force. It is reflecting customary international law, binding *erga omnes*, on parties and non-parties. The U.S.A. has enacted 12nm territorial sea according to UNCLOS, although it is a non-party to it, adopting the already established customary nature of the provision.

According to the article 3 of the UNCLOS, territorial sea must not exceed the 12nm breadth. There is no obligation to extend to 12nm. As is said, “coastal states may decide to gradually extend their territorial seas or may use different parts of their coasts.”[[36]](#footnote-36) The provision of the article 3 of the UNCLOS does not preclude a coastal state to go on with variegations of breadth measured differently from different baselines. It is a matter of the sovereign discretion of states to decide the breadth within the limit of 12nm. In fact, states are under no obligation to establish their territorial sea, but according to state practice, a minimum duty exists to establish the zone at least up to 3nm for the sake of the safety of passage close to its coasts. The differentiation in breadth of the territorial sea can in no way be confused as accepting other states’ understanding of equitableness in delimitation.

Turkey was a persistent objector towards development of customary international law with regard to the right of every coastal state to extend territorial sea to 12nm. However, Greece counterargues that Turkey is not against the customary nature of this right. As a non-party to UNCLOS, it has enacted the right to extend its territorial sea to 12nm in accordance with relevant UNCLOS provisions in both the Black Sea and the Eastern Mediterranean. This constitutes an obvious acceptance of the customary law of the sea.[[37]](#footnote-37)

Greece has not renounced the right to extend the breadth of the territorial sea and it will do in accordance with the articles 3 and 15 of the UNCLOS. It objects to the Turkish argument that because the Aegean is a semi-closed sea a different method should be applied.[[38]](#footnote-38) During the third UN Conference on the Law of the Sea, Turkey maintained that the delimitation of territorial sea is effected by agreement and equitable principles similar to the delimitation of continental shelf applied to territorial seas between the two countries. Their aim is reduced effect of the territorial seas of the islands compared to those of the continental coasts. It has been argued that in some islands the breadth of territorial sea should be reduced to 3nm as a result of application of principles of equitableness.[[39]](#footnote-39)

Turkey has promulgated law 2674 of 1982 according to which maritime zones are delimited on the basis of equitable principles. This law reiterates the draft submitted to the third UN Conference on the Law of the Sea. However, these arguments were not sustained by the Conference and no other method of delimitation or agreement for that for semi-enclosed seas than that provided at the article 15 of the UNCLOS can be upheld. Cooperation of states in semi-enclosed seas of the article 123 of the UNCLOS does not include delimitation of territorial seas. Enactment of the territorial sea’s breadth and delimitation are unilaterally effected.[[40]](#footnote-40) The ICJ has reaffirmed that islands are delimited according to the article 15 of the UNCLOS and not on equitableness.[[41]](#footnote-41)

If one follows the ICJ’s jurisprudence, in particular the 2001 Qatar/Bahrain case, after delimitation of continental shelf either by agreement or judicial award no extension of territorial waters is permissible. The legal ratio behind such dictum is to avoid encroachment over the continental shelf. This leads us to a policy of extending territorial waters before launching negotiations for delimitating continental shelf. This preliminary step will determine the possible areas in percentages of high seas available for navigation and for apportionment of continental shelf. Delimitation of territorial sea is a unilateral legal act for both countries. Extension of territorial sea is a government’s (act of state) decision.

*The divergence of two regimes that would be expected to coincide*

Greece enacted legislation (230/17-9/13-10-1936) in 1936, defining the outer limit of territorial waters to 6nm. As indicated, this legal act would not affect laws in force regarding pre-existing legal regimes in which the breadth of territorial sea was greater or less than 6nm breadth. Among the other regimes that are wider in breadth than 6nm but were not affected by the 6nm territorial sea was the Presidential decree of 6/18 September 1931 that confined the breadth of territorial sea to 10nm from coastline implementing article 2 of law 5017/1931 with regard to airspace policing and control. According to Greek law, the separate sovereign regime of airspace would not affect the regime of sovereignty of the maritime zone. As has been explained by Greek legal officials, in fact, there are two territorial sea regimes, one for airspace sovereign control, and the other controlling innocent passage.[[42]](#footnote-42) As such, the extension to 6nm of territorial sea according to the Greek law of 1936 did not alter the regime of 10nm with regard to national airspace. Uniquely or rather paradoxically, Greece has a different territorial sea breadth to that of its national airspace.

The 10nm national airspace was not disputed until 1974 when Turkey protested to the International Civil Aviation Organization (ICAO). On September 1, 1974, Turkey requested from Greek Civil Aviation Service to reduce national airspace to 6nm. As the states abstained from contesting the 10nm breadth of national airspace for 43 years, Greece argues in favor of established local customary law binding upon Turkey. This is so far a response to Turkey’s position reflecting the Law of the Sea that sovereignty of the territorial sea extends to the superjacent air space. This extra 4nm of airspace is contested by other states as well.

In international law, article 2, par. 2 of the UNCLOS applies to the regime of airspace. According to the paragraphs (1) and (2) of article 2 of the UNCLOS, “(1) sovereignty of the coastal state extends, beyond its land territory and internal waters….to an adjacent belt of sea, described as the territorial sea, and (2) [t]his sovereignty extends to the air space over the territorial sea…” Thus the territorial waters define the legal status of airspace.

After 1974, parallel to the UN Conference on the Law of the Sea, Greece announced its intention to extend its territorial sea to 12nm. The right to extend to 12nm was invoked in the shadow of Turkish military operations in Cyprus and a means to defend Greek territorial integrity. It was the time when Greece reacted to Turkish claim for continental shelf in the Aegean. Greece followed the Geneva Convention median line and the Turkish claim was perceived by Greece as revisionist policy. Against the policy of extension of Greek territorial sea, Turkey responded with the concept of *casus belli*. That was repeated in 1995 when Greece ratified the UNCLOS and declared that will extend whenever decides to do so, and never renounced this right. *Casus belli* as a mere threat is contrary to article 2(4) of the UN Charter, but it cannot fulfill the requirements for self-defense, though it can justify that the state can take necessary measure in defense preparation if armed attack occurs.

If Greece extended territorial waters to 12 nm, the percentage of Greek sovereignty in the Aegean Sea would increase from 44,4% (in 6nm) to 71,7% (in 12nm), while Turkish sovereignty would increase from 7,4% (6nm) to 8,6% (12nm). The high seas areas would accordingly be reduced from 48.3% (6nm) to 19,7% (12nm). The remaining high seas are the crucial point either for high seas freedoms or delimitation of continental shelf. In particular, the high seas floor beyond the territorial sea is continental shelf to be apportioned between the two coastal states.

During the Greek-Turkish exploratory talks from 2002 onwards, in the spirit of promoting mutual understanding, the issue of extending territorial sea was discussed, before entering the process of negotiations concerning continental shelf delimitation, but the extension would remain in the sovereign domain of each country. It was clear enough to both states that extension cannot be effected by agreement. Besides, it is not unusual to bring to the knowledge of neighboring coastal states the enactment of maritime zones.[[43]](#footnote-43) During the rounds of exploratory talks Greece was intending to proceed with partial extension of territorial waters in the Aegean with drawing corridors in some areas of high seas in order to facilitate free navigation through international routes. There was also concern for areas of high seas for the delimitation of continental shelf.

*Obligation of continental shelf/EEZ delimitation*

The exclusive sovereign rights of continental shelf of every coastal state are *ipso facto* and *ab initio*. In geographical circumstances where the projections of the coasts of the opposite or adjacent states create overlapping claims, in order to exercise these rights, delimitation is effected by agreement or recourse to judicial settlement: “[...] in case of overlap, both states concerned have an entitlement to the relevant shelf on the basis of their relevant coast. Only [an agreement or] a decision on delimitation establishes which part of the continental shelf under dispute appertains to which of the claiming states. This means that the relevant [agreement or decision] gives one entitlement priority over the other. Such [an agreement or] a decision accordingly has a constitutive nature and cannot be qualified as merely declaratory”.[[44]](#footnote-44)

According to article 83(1) of the UNCLOS, 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 ICJ, in order to achieve an equitable solution. According to 83(2), if no agreement can be reached within a reasonable period of time, the states shall resort to the procedures provided for in Part XV, which is the judicial means of settlement. And according to article 83(3), pending agreement “…the states…shall make every effort to enter into provisional arrangements of practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement”.[[45]](#footnote-45)

Accordingly, activities undertaken unilaterally in disputed areas constitute a violation of the obligation to negotiate in good faith pursuant to article 83(1) of the UNCLOS and customary international law. Delimitation is determined by agreement and not by way of a *fait accompli*.[[46]](#footnote-46) “The obligation under article 83(1) of UNCLOS to reach agreement on delimitation necessarily entails negotiations to this effect. The obligation to negotiate in good faith occupies a prominent place in UNCLOS, as well as in general international law, …[and] that this obligation to negotiate in good faith is an obligation of conduct and not one of result. [A] violation of this obligation cannot be based only upon the result expected by one side not being achieved”.[[47]](#footnote-47) In “undelimited/disputed maritime areas states generally refrain from undertaking exploration or exploitation activities there without the consent of the other state concerned”.[[48]](#footnote-48)

In addition, research activities on the continental shelf may be conducted by a state if the area has been delimited by an agreement or by a judicial decision and has been appertained to it.

Pending agreement, according to article 83(3) states concerned shall make every effort to enter into a provisional arrangement of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of a final agreement. This phase covers from the time negotiations have started until the final agreement.

This provision applies also in cases where a state conducts research activities in undelimited/disputed areas after realizing that the area is claimed by another state and is examined whether under the circumstances jeopardizes or hampers the reaching of an agreement.[[49]](#footnote-49)

Unilateral delimitation is not permitted by the UNCLOS, and equally research on continental shelf without delimitation is not permitted. Unilateral research activity in undelimited/disputed continental shelf areas violates the obligation to negotiate in good faith, and seismic data obtained in that way can be neither published nor possessed and after delimitation by agreement or decision the data should be transferred to the state to which the area has appertained.

**Eastern Mediterranean**

The present phase of events in the Greek-Turkish confrontation in the Eastern Mediterranean began prior to 18 March 2019. On that date, the Turkish Permanent Representative to the UN submitted a Letter to the UN Secretary General about Turkey’s claims with regard to its exclusive rights in the continental shelf.[[50]](#footnote-50) He declared that Turkey has *ipso facto* and *ab initio* legal and sovereign rights in the maritime areas of the eastern Mediterranean that are west of meridian 32ο 16’ 18’’. Turkey claims outer limits of the Turkish continental shelf in the above-mentioned maritime areas following the median line between the Turkish and Egyptian coastlines to a point to be determined in the west of 28ο 00’ 00’’E in accordance with the outcome of future delimitation agreements in the Aegean Sea, as well as in the Eastern Mediterranean, among all relevant states, taking into account all prevailing parameters and special circumstances.

However, Turkey also expressed its intention to reach equitable delimitation of maritime jurisdiction areas with all relevant coastal states that it recognizes and with which it has diplomatic relations, in accordance with international law.

On 25 April 2019, the Permanent Representative of Greece to the UN in a Letter to the UN Secretary General objected to the Turkish allegations as legally unfounded, incorrect and arbitrary to the extent that they disregard Greece’s sovereign rights in the area, and in particular the legitimate maritime zones of the Dodecanese islands.[[51]](#footnote-51) He also reaffirmed that the delimitation of the continental shelf or exclusive economic zone between states with opposite coasts (both continental and insular) should take place in accordance with the pertinent rules of international law on the basis of the equidistance/median line principle. Greece underlined that it has *ipso facto* and *ab initio* sovereign rights and jurisdiction in the above area of the Eastern Mediterranean on the basis of the relevant provisions of the UNCLOS of 1982, which codify customary international law, as well as of its national legislation.

The decisive document announcing the forthcoming Turkish-Libyan Memorandum of Understanding (MoU) about delimitation of EEZ between the two countries was the Letter of 13 November 2019 to the UN Secretary General.[[52]](#footnote-52) In a fourth annex announcing the conclusion of the MoU with Libya, Turkey reserved its right to submit the geographical coordinates of the Turkish continental shelf to the west of longitude 28-00-00.000E, which extends to the outer limits of territorial waters of the islands facing the relevant area in the Eastern Mediterranean, given that the insular features in that maritime area cannot encroach upon or cut-off Turkey’s coastal projection and continental shelf.

Greece reacted to the Turkish-Libyan MoU of November 27, 2019 by submitting two Letters on 9 December 2019, one to the UN Secretary General[[53]](#footnote-53) and the other to the Security Council.[[54]](#footnote-54) According to the Letters the MoU signed on November 27, 2019 violates International Law of the Sea on maritime delimitation because Turkey and Libya have neither overlapping zones nor common boundaries in order to conclude maritime delimitation agreement. The MoU disregards Greek islands in the maritime area and violates their right to generate sovereign rights of the continental shelf. This delimitation is arbitrary and unlawful and infringes upon Greek sovereign rights as it excluded the Greek islands from any right to continental shelf. The Letters also noted that although Turkey contends that Greek islands have no weight in the delimitation process, it nevertheless used small Turkish islands and rocks as base points for the construction of the median line with remote Libya. Greece concluded that Turkey had taken a highly contradictory stance concerning maritime delimitation in the Eastern Mediterranean.[[55]](#footnote-55)

Afterwards Greece signed an EEZ delimitation agreement with Egypt on August 6, 2020. The agreement was concluded in conformity with the Law of the Sea and Turkey reacted in practice. During the period from early August to the end of November 2020 research vessel *Oruç Reis* conducted activities for collecting seismic data in the continental shelf area between 30ο and 28ο meridian which is not delimited and is disputed as claimed by Greece. These activities are contrary to and in violation of the law of the sea as explained above.

**Concluding remarks and a forward look**

This chapter discussed the maritime disputes between Greece and Turkey over the years from the Greek perspective with emphasis on international law. In particular, it underscored that de-escalation of the ongoing tension in the Aegean and lately in the Eastern Mediterranean can be achieved via delimitation based on the principles and the rules of applicable international law and the law of the sea. It is inherent to the process of negotiation that the latter constitutes an obligation of both states during which they should abstain from any unilateral acts that may undermine or endanger the process of delimitation agreement. For that reason, a *moratorium* will be a necessary guarantee in negotiating delimitation agreement, if any promise to act in good faith turns out to be inadequate. If no agreement can be achieved within a reasonable period of time, the states should then seek recourse to international justice, opting either for the ICJ or for *ad hoc* arbitral tribunal. The ICJ is a preferable option as it is predictive and it follows a steady jurisprudence.

Maritime delimitation with regard to continental shelf/EEZ will become a reality if both states are convinced that the only way to settle outstanding disputes is, primarily, through dialogue that would enable both sides to prepare an agenda and then, as a next step, through negotiation that would enable them to reach an agreement. In order to achieve this, Greece and Turkey should continue the exploratory talks that resumed on January 25, 2021. The purpose of the exploratory talks is to set up an agenda for the actual negotiations that will follow but also to solve any preliminary issues in dispute, which should be avoided to be addressed in the negotiation phase. For instance, a significant issue that needs to be addressed during the exploratory talks only and not passed through into the next phase, i.e. the negotiation of the continental shelf/EEZ delimitation, is the extension of territorial waters. Hence negotiation will start upon fixed width of territorial waters, which will be the outcome of partial extension. Respectively the width of Greece’s national airspace should be adjusted to the fixed width of its territorial waters. It should be clear that any sovereignty issues by no means should be brought into the negotiation table.

This section also addressed sovereignty and demilitarization questions that are **non-issues** either for negotiations or for adjudication. Equally, Greece has exempted from the ICJ’s compulsory jurisdiction issues of either sovereignty or demilitarization. As regards the latter Greece has taken defense measures by virtue of its inalienable and inherent right to self-defense.

According to a proposed sequential approach, the two states firstly should negotiate to reach delimitation agreement, but failing this, they then start negotiations in order to conclude the special agreement (*compromis*) to request settlement from the ICJ.

However, given the time spent in exploratory talks, a plausible question arises as to whether this is the right moment to explore any convergence and prospect between the two states for a joint recourse directly to the ICJ on the delimitation of the continental shelf/EEZ. Taking into account that the two states have a different approach to the method of delimitation, the possibility of reaching an agreement seems highly unlikely. In this case, a suggested approach to the issue would be for both states to declare their consent at the end of the exploratory talks –provided that the preliminaries of territorial sea partial extension have been resolved- to conclude a special agreement/*compromis* to refer the continental shelf/EEZ delimitation dispute for settlement before the ICJ. We should underline that negotiating the *compromis*, given the complexity of the differences between the two interlocutors about what should be adjudicated, does not sound like an easy task.

In a nutshell, the purpose of this section is to place legal issues, regarding the Aegean and Eastern Mediterranean disputes, within their broader normative and historical context, introducing jurisprudence of the ICJ into the wider public discourse and thereby contribute towards managing each sides’ unrealistic expectations. Meanwhile, it should be made clear to the public opinion of both sides that sovereign rights can be secured and exercised only by a delimitation agreement or adjudication. Equally, in the absence of such an agreement, each state should refrain from unilateral acts that would lead to preclude the other state from claiming its rights.

1. Source: The Treaties of Peace 1919-1923, Vol. II, Carnegie Endowment for International Peace, New York, 1924. [↑](#footnote-ref-1)
2. *Casus belli* literally means action that it is a cause of war. Interpreting Turkey’s stance implies that any extension of Greece’s territorial waters beyond the existing 6nm outer limit in the Aegean Sea is intolerable. In 1995, Turkish Parliament authorized the government to take necessary measures to defeat extension of Greece’s territorial waters. [↑](#footnote-ref-2)
3. From the Conclusion’s extract, “… the European Council stresses the principle of peaceful settlement of disputes in accordance with the United Nations Charter and urges candidate States to make every effort to resolve any outstanding border disputes and other related issues. Failing this they should within a reasonable time bring the dispute to the International Court of Justice. The European Council will review the situation relating to any outstanding disputes, in particular concerning the repercussions on the accession process and in order to promote their settlement through the International Court of Justice, at the latest by the end of 2004”. [↑](#footnote-ref-3)
4. This document remains a draft to the present date, still pending adoption. [↑](#footnote-ref-4)
5. The map was elaborated by Ambassador Çağatay Erciyes, in 2012 illustrating Turkey’s continental shelf claims in Eastern Mediterranean. [↑](#footnote-ref-5)
6. Mavrommatis Palestine Concessions (Greece v. United Kingdom) *Judgment,* [1924] *PCIJ Rep. Series* A, No 2, p.11; 1 *World Court Reports* 293, 319 (M. Hudson ed. 1934). [↑](#footnote-ref-6)
7. See overall and updated analysis in Efthymios Papastavrides, “The Greek-Turkish Maritime Disputes: An International Law Perspective”, *Policy Paper* #36/2020, Hellenic Foundation of European and Foreign Policy, 2020, p. 10. [↑](#footnote-ref-7)
8. Maritime Delimitation in the Black Sea (Romania/Ukraine), *Judgment, I.C.J. Reports* 2009, par 116-117, p. 101 et seq. [↑](#footnote-ref-8)
9. Territorial and Maritime Dispute (Nicaragua/Colombia) *Judgment, ICJ Reports* 2012, p. 695/6 par. 190 [↑](#footnote-ref-9)
10. Nicaragua/Colombia, 2012, *op.cit*., p. 695/6, par. 190-194. [↑](#footnote-ref-10)
11. Cited in this case, e.g., *Continental Shelf (Libyan Arab Jamahirya/Malta), Judgment, I.C.J. Reports 1985*, p. 35, paras. 39-40 [↑](#footnote-ref-11)
12. Nicaragua/Colombia, 2012, *op.cit*., par. 214, p. 703. [↑](#footnote-ref-12)
13. Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), *Judgment, ITLOS Reports* 2012, par. 317, p. 86, and Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Roca/Nicaragua), *Judgment* of 2 February2018, *ICJ Reports,* par. 140. [↑](#footnote-ref-13)
14. Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic (1977), *RIAA, Vol. XVIII*, p. 88, par. 183; ILR, Vol. 54, p. 96. [↑](#footnote-ref-14)
15. Nicaragua/Colombia, 2012, *op.cit*., par. 697/8, par. 198. [↑](#footnote-ref-15)
16. Nicaragua/Colombia, 2012, *op.cit*., par. 199, p. 698. [↑](#footnote-ref-16)
17. *Romania* v. *Ukraine, Judgment, op.cit.,* p. 127, para. 201. [↑](#footnote-ref-17)
18. Nicaragua/Colombia, 2012, *op.cit*., par. 215-216, p. 703-704. [↑](#footnote-ref-18)
19. A case argued in favor of Turkey see, Yunus Emre Acikgonul (2016) “Reflections on the Principle of Non-Cut Off: A growing Concept in Maritime Boundary Delimitation Law”, *Ocean Development & international Law*, 47:1, 52-71, pp. 61 et seq. [↑](#footnote-ref-19)
20. This was the case in the Bangladesh/Myanmar where the latter’s 200nm EEZs would cut off Bangladesh’s access to the continental shelf and leave it with a disproportionately small EEZ relative to the length of its coastline. “Equally important was the ITLOS’s treatment of St. Martin’s Island, a small island belonging to Bangladesh but located directly west of Myanmar. The Tribunal gave full effect to the island when delimiting the two countries’ territorial seas but did not allow Bangladesh to use the island as a base point when marking the equidistance line between the two states’ EEZs and continental shelves. The decision also minimized the island’s importance by declining to identify it as a “relevant circumstance” that should be considered when making adjustments to the boundary line.” See, S. Fietta & R. Cleverly, *A Practitioner’s Guide to Maritime Boundary Delimitation* (Oxford University Press, 2016), at p. 68; and <https://amti.csis.org/the-bangladeshmyanmar-maritime-dispute-lessons-for-peaceful-resolution/>. [↑](#footnote-ref-20)
21. According to ITLOS: “St. Martin’s Island is an important feature which could be considered a relevant circumstance in the present case. However, because of its location, giving effect to St. Martin’s Island in the delimitation of the exclusive economic zone and the continental shelf would result in a line blocking the seaward projection from Myanmar’s coast in a manner that would cause an unwarranted

    distortion of the delimitation line. The distorting effect of an island on an equidistance line may increase substantially as the line moves beyond 12 nm from the coast”. See Myanmar/Bangladesh, 2012, *op.cit*., at p. 86, para. 318. [↑](#footnote-ref-21)
22. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 97, para. 185. [↑](#footnote-ref-22)
23. *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*, (Nicaragua/Honduras), *Judgment, I.C.J. Reports* 2007 (II), p. 745, par. 281. [↑](#footnote-ref-23)
24. Nicaragua/Colombia, 2012, *op.cit*., par. 178, p. 690. [↑](#footnote-ref-24)
25. Nicaragua/Colombia, 2012, *op.cit*., par. 180. The Court recalls that, faced with a similar situation in respect of Serpents’ Island in the *Maritime Delimitation in the Black Sea* case, it considered it unnecessary to determine whether that island fell within paragraph 2 or paragraph 3 of Article 121 of UNCLOS (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 122-123, para. 187). In the present case, the Court similarly concludes that it is not necessary to determine the precise status of the smaller islands, since any entitlement to maritime spaces which they might generate within the relevant area (outside the territorial sea) would entirely overlap with the entitlement to a continental shelf and exclusive economic zone generated by the islands of San Andrés, Providencia and Santa Catalina.” [↑](#footnote-ref-25)
26. See Efthymios Papastavrides, 2020, *op.cit*., p. 24, [↑](#footnote-ref-26)
27. For an in depth and very interesting analysis of these Lausanne Treaty provisions I am citing the paper of Maria Telalian, “Provisions of the Treaties of Peace and International Agreements concerning Territorial Sovereignty of Greece over Islands, Islets of Eastern Mediterranean”, in *International and European Review*, vol. 48-49, pp 114-125, at pp. 117-118, Fall 2020 [in Greek]. [↑](#footnote-ref-27)
28. Award of the Arbitral Tribunal in the First Stage of the Proceedings (Territorial Sovereignty and Scope of the Dispute), Eritrea/Yemen 1998, *114 ILR I,* par. 165. The Eritrea-Yemen Arbitration, http:www.pca-cpa.org (1998-1999). In paragraph 165 stated that: “The correct analysis of Article 16 is, in the Tribunal’s view, the following: in 1923 Turkey renounced title to those islands over which it had sovereignty until then. They did not become *res nullius* – that is to say, open to acquisitive prescription – by any state, including any of the High Contracting Parties (including Italy).”

    In that case, the Tribunal examined the dispute between Eritrea and Yemen as regards determination of the Red Sea Islands. The question of sovereignty over the Red Sea Islands formed part of the post-First World War peace process that culminated in the signature of the Lausanne Peace Treaty in 1923. [↑](#footnote-ref-28)
29. Eritrea/Yemen, 1998, *op.cit*., par. 158: “Although ‘territories’ and ‘islands’ are separately mentioned, their treatment under Article 16 is identical. These phrases presumably covered also those islets not transferred by operation of Article 6.” [↑](#footnote-ref-29)
30. See Maria Telalian, 2020, *op.cit,* at pp. 117-118. [↑](#footnote-ref-30)
31. *Convention Between Italy and Turkey for the Delimitation of the Territorial Waters Between the Coasts of Anatolia and the island of Kastellorizo*, signed in Ankara, January 4, 1932, exchange of ratifications took place at Rome on 25 April 1933, entered into force on 16 May 1933 and registered with the League of Nations May 24, 1933, see *League of Nations – Treaty Series*, No 3191, p. 245 (1933). [↑](#footnote-ref-31)
32. See Maria Telalian, 2020, *op.cit*., p. 122. [↑](#footnote-ref-32)
33. See *inter alia*, Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar), Judgment, [2012*] ITLOS Rep*. par 64 et seq.; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Jurisdiction and Admissibility), Judgment, [1994] *ICJ Rep*. par. 25 at paras 27 & 96; Aegean Sea Continental Shelf Case (Greece v. Turkey), Judgment, [1978] *ICJ Rep*., paras 95, 96, 101, 103; Nuclear Tests (Australia v. France), [1974] *ICJ Rep*. 253, p. 269. [↑](#footnote-ref-33)
34. #### Source: The Treaties of Peace 1919-1923, Vol. II, Carnegie Endowment for International Peace, New York, 1924.

    [↑](#footnote-ref-34)
35. See Jon van Dyke, “An Analysis of the Aegean Disputes under International Law”, 36 *Ocean Development and international Law* 63-117, 2005, at p. 79-80. There the author cites the Aras’ declaration at the time of ratification of the 1936 Montreux Convention and argues that it may not be binding but the declaration follows the practice with regard to fortification, as happened with Imbros and Tenedos. The declaration by the Turkish Foreign Minister as cited in van Dyke’s paper is as follows: “This would mean that the provisions concerning Lemnos and Samothrace belonging to our neighbor and friend Greece which had been demilitarized by the Lausanne Convention of 1923 is also being lifted by the Montreux Convention, about which we rejoice similarly.” [↑](#footnote-ref-35)
36. See Efthymios Papastavrides, 2020, *op.cit*., op. cit., p. 14. [↑](#footnote-ref-36)
37. See Eftymios Papastavrides, 2020, *op.cit*., p. 16. [↑](#footnote-ref-37)
38. See Jon Van Dyke, “An Analysis of the Aegean Disputes under International Law”, 36 *Ocean Development & International Law* 63-117, 2005, p. 83-84. [↑](#footnote-ref-38)
39. See Jon Van Dyke, 2005, *op.cit*., pp. 83-85 [↑](#footnote-ref-39)
40. See Efthymios Papastavrides, 2020, *op.cit*., p. 11. [↑](#footnote-ref-40)
41. Costa Rica v. Nicaragua, 2018, *op.cit.,* par. 97. [↑](#footnote-ref-41)
42. This is the argument developed by former Chief of Legal Department of Hellenic Foreign Ministry, late Professor Constantine Economides. See Constantine Economides, *Issues of International law and Greek Foreign Policy*, Athens, Sakkoulas ed., 1993, pp. 52-53. [↑](#footnote-ref-42)
43. Maria Gavouneli, “The Greek-Turkish Disputes: An International Law Perspective”, 2020, p. 5. [↑](#footnote-ref-43)
44. Dispute Concerning delimitation of the Maritime Boundary Between Ghana and Cote D’Ivoire in the Atlantic Ocean (Ghana/Cote d’Ivoire) *Judgment, ITLOS*, 2017, par. 591, p. 162. [↑](#footnote-ref-44)
45. Ghana/Cote D’Ivoire, 2017, *op.cit*., par. 597 et seq. p. 164. [↑](#footnote-ref-45)
46. Argued by Cote D’Ivoire, Ghana/Cote D’Ivoire, 2017, op.cit., par. 600, p. 164. [↑](#footnote-ref-46)
47. Ghana/Cote D’Ivoire, 2017, *op.cit*., par. 605 et seq., p. 166 seq. [↑](#footnote-ref-47)
48. According to Cote D’Ivoire in Ghana/Cote D’Ivoire, 2017, *op.cit*., par. 611, p. 167. [↑](#footnote-ref-48)
49. Ghana/Cote D’Ivoire 2017, *op.cit*., par. 631, p. 172. [↑](#footnote-ref-49)
50. Letter dated 18 March 2019 from the Permanent Representative of Turkey to the United Nations Addressed to the Secretary-General, UN/Doc. A/73/804 [↑](#footnote-ref-50)
51. Letter dated 25 April 2019 from the Permanent Representative of Greece to the United Nations Addressed to the Secretary-General, UN/Doc. A/73/850-S/2019/344. [↑](#footnote-ref-51)
52. Letter 13 November 2019 from the Permanent Representative of Turkey to the United Nations Addressed to the Secretary-General, UN/Doc. A/74/550. [↑](#footnote-ref-52)
53. Letter dated 9 December 2019 from the Permanent Mission of Greece to the United Nations Addressed to the Secretary-General, Ref. No 90.2.2/3064. [↑](#footnote-ref-53)
54. Letter dated 9 December 2019 from the Permanent Mission of Greece to the United Nations Addressed to the President of the Security Council, Ref. No 90.2.2/3065. [↑](#footnote-ref-54)
55. Letter dated 19 February 2020 from the Permanent representative of Greece to the United Nations Addressed to the secretary-General, UN/Doc. A/74/710-S/2020/129. [↑](#footnote-ref-55)