

Ocean and Coastal Law Journal

Volume 17 | Number 1

Article 5

2011

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Recommended Citation

Emily A. Georgiades, Barrister, *The Imia Islets: A Beginning To The Maritime Delimitation Of The Aegean Sea Dispute*, 17 *Ocean & Coastal L.J.* (2011).

Available at: <http://digitalcommons.maine.edu/oclj/vol17/iss1/5>

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THE IMIA ISLETS: A BEGINNING TO THE MARITIME DELIMITATION OF THE AEGEAN SEA DISPUTE

*Emily A. Georgiades, Barrister**

I. INTRODUCTION

Since the fall of the Ottoman Empire, Greece and Turkey have each been vying for territory within their common waters in the Aegean Sea. For over five decades, the two governments have contested the territorial sovereignty of the two rocky islets of Imia, the delimitation of the continental shelf and the territorial sea, and whether the continental shelf is a natural prolongation of Greece or Turkey's mainland coast.¹ Not surprisingly then, the two countries have disagreed on where to draw the respective border in the Aegean Sea² and, perhaps more fundamentally, on the application of certain practices under international law.³

The Aegean Sea is itself unique being 400 miles long and 200 miles wide, with thousands of islands scattered throughout it.⁴ Of particular importance are the Imia rocks and islets, which are scattered approximately 4 miles off Turkey's west mainland coast, in the southeast

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1. *See infra* Part III.

2. *See id.*

3. For example, Turkey remains a persistent objector to the extension of territorial waters up to twelve nautical miles. *See* BORDER AND TERRITORIAL DISPUTES 47 (Alan J. Day ed., 2d ed. 1987).

4. *Aegean Sea*, COLUMBIA ELECTRONIC ENCYCLOPEDIA, <http://print.infoplease.com/ce6/world/A0802591.html> (last visited Jan. 18, 2012).

Aegean Sea,⁵ and are also approximately 2.3 nautical miles from the Turkish island of Cavus.⁶ The islets are approximately 6 nautical miles east of the Greek island of Kalymnos, 1.9 miles southeast of the Greek island of Kalolimnos, and 1 mile west of the boundary that divides the Greek and Turkish territorial sea.⁷ Being so close to Greek and Turkish territories, the islands are at the center of the Greek-Turkish dispute.

This Article will examine possible maritime and airspace delimitations through the application of international law, including customary law and bi- and multi-lateral conventions. Part II begins with a brief discussion of the historical background that has shaped Greek-Turkish relations and led to the present-day dispute. Part III analyzes whether Turkey is bound by the provisions of the United Nations Convention on the Law of the Sea, and Part IV proposes delimitations of the maritime zones, while specifically discussing the Imia islets and whether they are juridical islands capable of generating any maritime zones. Part V provides possible territorial sea delimitations to the entire Aegean Sea, while Part VI discusses the relation between the territorial sea regime and the airspace above it. Lastly, Part VII outlines methods to delimit the continental shelf and exclusive economic zone areas in the entire Aegean Sea before concluding with a discussion on various dispute resolution methods that Greece and Turkey may consider to resolve their long-standing issues in the Aegean.

II. HISTORICAL BACKGROUND AND CURRENT CLAIMS

Although the dispute concerning the Aegean Sea stems largely from Greece's acquisition of the territory in the first half of the twentieth century,⁸ the dispute is rooted in a deep history of political incidents that have added to the tension between Greece and Turkey.

5. Krateros Ioannon, *A Tale of Two Islets: The Imia Incident Between Greece and Turkey*, 1 THESIS 33, 35 (1997), available at http://www.hri.org/MFA/thesis/spring97/two_islets.html.

6. *Id.*

7. *Id.*

8. The modern Greek state's acquisition of Aegean territory occurred in two phases: The first taking place after World War I, with the signing of the Lausanne Treaty in 1923, after which Greece claimed sovereign rights to the Imia islets. BORDER AND TERRITORIAL DISPUTES, *supra* note 3, at 45. The second occurred after World War II, when Greece acquired the Dodecanese Islands from Italy through the signing of the Paris Peace Treaty. *Id.*

Turkey has frequently challenged Greece's territorial claims in the Aegean Sea. For example, in 1931, Turkey *de facto*⁹ questioned Greece's ten nautical mile airspace for the first time.¹⁰ Although Turkey's official maps began to depict the Imia islets as Greek territory in the 1960s, in 1964 Turkey unilaterally denounced the 1930 Convention of the Establishment of Commerce and Navigation, an agreement devised by then-Turkish President Kemal Ataturk and then-Greek Prime Minister Eleftherios Venizelos.¹¹ During 1973 and 1974, Turkey *de facto* questioned Greece's sovereign rights over the Aegean continental shelf when the Turkish government granted research licenses to the Turkish state petroleum company and sent the research vessel *Cardali* to conduct research in the area.¹² In 1974, Turkey again *de facto* questioned Greece's ten nautical mile airspace.¹³ Tensions continued to rise when Turkey claimed that if Greece extended its territorial waters to twelve nautical miles, then Turkey would consider such an action a *casus belli*.¹⁴

It was not until 1976 that Turkey and Greece agreed to refer the continental shelf dispute to the International Court of Justice (ICJ), after which the dispute became known as the *Aegean Sea Continental Shelf case*.¹⁵ However, Turkey did not attend the hearing and did not submit a counter-memorial, claiming that both parties were still in the negotiating stage.¹⁶ The ICJ examined whether it had jurisdiction to hear the case and concluded that it did not have jurisdiction with respect to the

9. In the legal context, *de facto* means "having effect even though not formally or legally recognized." BLACK'S LAW DICTIONARY 183 (2d ed. 2001).

10. Greece has fixed the lateral limits of its territorial waters in two different ways: a six-mile territorial sea, for general purposes, and a ten-mile territorial sea, established by decree in 1931 for aviation and air-policing purposes. *Greece's Positions on National Airspace and Territorial Waters*, EMBASSY OF GREECE (Jan. 18, 2012), <http://www.greekembassy.org/embassy/content/en/Article.aspx?office=1&folder=45&article=80>.

11. GABRIELLA BLUM, ISLANDS OF AGREEMENT: MANAGING ENDURING ARMED RIVALRIES 129 (2007).

12. *Chronology of Main Turkish Hostile Actions and Arbitrary Claims Against Greece 1955-1996*, HELLENIC RES. NETWORK, <http://www.hri.org/MFA/foreign/bilateral/turchro.htm> (last visited Jan. 18, 2012).

13. U.N. DIV. FOR OCEAN AFFAIRS & THE LAW OF THE SEA OFFICE FOR LEGAL AFFAIRS, THE LAW OF THE SEA: NATIONAL LEGISLATION ON THE TERRITORIAL SEA, THE RIGHT OF INNOCENT PASSAGE AND THE CONTIGUOUS ZONE, at 142, U.N. Sales No. E.95.V7 (1995).

14. Cansu Camlibel, *Solve It or See You in Court, Greece Says*, TURKISH DAILY NEWS, Mar. 27, 2011, <http://www.hurriyetdailynews.com/n.php?n=either-a-solution-or-the-court-greece-urges-turkey-on-aegean-2011-03-26>.

15. *Aegean Sea Continental Shelf (Greece v. Turk.)*, 1976 I.C.J. 3 (Aug. 10).

16. *Id.* at 8, ¶ 14.

delimitation of the continental shelf in the Aegean Sea between Greece and Turkey because: (1) the parties did not agree as to the method of dispute resolution; and (2) when Turkey acceded to the General Act of 1928, it included a reservation stating that the disputes relating to Greece's territorial status, among other things, will be excluded from the procedures of the General Act.¹⁷ The reservation also stated that any disputes relating to international law issues would be solely within the domestic jurisdiction of the states.¹⁸ The ICJ did, however, find that a boundary delimitation dispute of the Aegean Sea continental shelf exists,¹⁹ thus validating the fact that both parties have legal claims which need to be resolved either through negotiations or adjudication.

Today, Greece and Turkey are asserting legal claims to the Aegean Sea. Both nations are contesting the breadth of the delimitation of their respective maritime zones and airspaces in the Aegean Sea and both are claiming ownership of the Imia islets. These claims are interrelated; determining ownership of the Imia may impact the extent of their borders in the Aegean Sea.

III. CUSTOMARY INTERNATIONAL LAW V. TREATY ACCESSION: IS TURKEY BOUND?

The first issue in addressing the validity of each party's claim is determining the applicable international law. Although there are various principles of international law that guide boundary delimitation cases, the most accepted doctrine is codified in the United Nations Convention on the Law of the Sea (UNCLOS or the Convention). However, while Greece has ratified UNCLOS, Turkey is not a signatory party and opposes the Convention; therefore, the Convention itself is not binding upon the parties.²⁰ Accordingly, the issue becomes whether the principles adopted in the Convention have achieved customary status under international law and can therefore be considered *erga omnes* in nature.

Customary law consists of customs that are accepted as legal requirements or obligatory rules of conduct.²¹ Determining whether a

17. Aegean Sea Continental Shelf (Greece v. Turk.), Jurisdiction of the Court, 1978 I.C.J. 46, ¶ 109 (Dec. 19).

18. *Id.* at 23, ¶ 55.

19. *Id.* at 23, ¶ 31; *Id.* at 46-49 (separate opinion of Vice President Nagendra Singh).

20. Peter Prows, *Tough Love: The Dramatic Birth and Looming Demise of UNCLOS Property Law (and What Is to Be Done About It)*, 42 TEX. INT'L L.J. 241, 246 n.19 (2007).

21. BLACK'S LAW DICTIONARY 169 (2d ed. 2001).

certain practice has attained customary international law status is difficult because “[p]roof of customary law, like proof of title to territory, is relative, not absolute.”²² While there is no single feature that is dispositive on such an analysis, generally, for principles to be established as customary international law, they must be established “by virtue of a pattern of claim, absence of protest by states particularly interested in the matter at hand and acquiescence by other states.”²³ In addition, judicial decisions and state legislative acts are other ways of achieving the status of customary international law.²⁴ Treaties also are capable of contributing to the formation of a customary rule because they are manifestations of the conduct of states; as such, they contribute to *opinio juris*.²⁵ The utilization of rules and practices by international bodies, such as the ICJ, further supports a claim that such rules have become customary under international law.²⁶

UNCLOS merely codified rules that were already in practice.²⁷ The fact that 162 states ratified UNCLOS²⁸ signifies a general accord for its rules and principles. Moreover, the preamble of UNCLOS states in part that its goal is to “develop the principles embodied in Resolution 2749 (XXV) of 17 December 1970 and that it is believed that this Convention achieves ‘the codification and progressive development of the law of the sea.’”²⁹ Thus, it is submitted that these rules are customary international law codified under UNCLOS.

However, because Turkey has opposed the Convention, another issue that is raised is whether a state can prevent the formation of customary law. In the *South West Africa* cases, Judge Tanka stated “that a few dissenting States could not prevent the formation of a customary international rule, but this implies nonetheless that a very large majority

22. THE CHALLENGE OF CONFLICT: INTERNATIONAL LAW RESPONDS 427 (Ustinia Dolgopol & Judith Gail Gardam, eds., 2006).

23. MALCOLM N. SHAW, INTERNATIONAL LAW 84 (2003).

24. See JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION’S ARTICLES ON STATE RESPONSIBILITY 94 (2002).

25. Anthea Elizabeth Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 AM. J. INT’L L., 757, 758 (2001).

26. *Id.* at 775.

27. See SHAW, *supra* note 23, at 491-92.

28. U.N. Div. for Ocean Affairs & the Law of the Sea, *Chronological Lists of Ratifications of, Accession and Successions to the Convention and the Related Agreements as at 03 June 2011*, UN.ORG, http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea (last updated June 3, 2011).

29. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

is required.”³⁰ Similarly, Professor Akehurst asserts that “[t]he number of States needed to create a rule of customary law varies according to the amount of practice which conflicts with the rule.”³¹ Article 38(1)(b) of the International Court’s Statute, which refers to customary international law as being established by state practice and *opinio juris*, speaks of a general practice and not of a universal practice.³² Therefore, if a few states dissent to a particular practice then that practice may still become customary international law because it is a general practice—not all states have to accept the practice.³³ Turkey’s dissenting to Greece’s practices does not mean that the practices have not gained customary international law; rather, these practices are customary international law because they are practiced generally by a majority of states.

A similar issue also arises out of Turkey’s non-acquiescence to UNCLOS: can a state be bound by customary international law if the state does not prescribe to it? According to Professor Akehurst, “[a] State can be bound by a rule of customary law even if it has never consented to that rule.”³⁴ However, the caveat is that for the rule to be binding on a state, the state must not have objected to the rule *ab initio*;³⁵ by not objecting at the first opportunity when an objection should be made, a state acquiesces.³⁶ This first opportunity to object has great significance because it is the moment at which the state’s legal rights are either being preserved through objection or changed by silence.³⁷ According to Villiger, a state is not bound by a customary rule if it fulfills two conditions: (1) the state must have maintained its objections from early stages of the rule onwards, through its formation, and beyond; and (2) the objections must be maintained consistently.³⁸ Notably, once

30. Michael Akehurst, *Custom as a Source of International Law*, in SOURCES OF INTERNATIONAL LAW 267 (Marti Koskenniemi ed., 2000).

31. *Id.* at 268.

32. According to Article 38(1)(b) of the Statute of the International Court of Justice: “[t]he Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply . . . international custom, as evidence of a general practice accepted as law” Statute of the International Court of Justice, art. 38, para. 1.

33. *See id.*

34. Akehurst, *supra* note 30, at 273.

35. Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116 (Dec. 18).

36. SHAW, *supra* note 23, at 437.

37. *Id.*

38. MARK E. VILLIGER, CUSTOMARY INTERNATIONAL LAW AND TREATIES: A MANUAL ON THE THEORY AND PRACTICE OF THE INTERRELATION OF SOURCES 34 (1997).

a rule of customary international law becomes binding on a state, the state cannot release itself from its obligations unilaterally.³⁹

In the present case, for approximately fifty years since the signing of the Paris Peace Treaty with Italy, Turkey has not protested the twelve nautical mile rule. Although Turkey may have objected to the twelve nautical mile rule for territorial sea zones at the inception of the rule, it has not maintained its objection. Evidence of this may be found in Turkey's delimiting its territorial waters and continental shelf in the Black Sea with Bulgaria and other countries in accordance with UNCLOS principles.⁴⁰ Turkey may argue that its agreement with Bulgaria was simply a negotiation or a political agreement; however, it is still an agreement that carries legal implications and is based on international legal norms. Furthermore, there is no rule that conflicts with the twelve nautical mile rule for territorial sea delimitation. Thus, Turkey is not exempt from UNCLOS.

IV. MARITIME TERRITORY: ANALYSIS AND DELIMITATION

Having established that the principles expounded by UNCLOS are applicable in the Greek-Turkish dispute, the next step is to analyze the respective claims in the context of the maritime zones outlined in the Convention.

The maritime zones include the territorial sea, the continental shelf, and the exclusive economic zone (EEZ).⁴¹ The territorial sea is a zone of sovereignty and is the area of water that is closest to a state's coastline.⁴² It extends to a maximum breadth of twelve nautical miles.⁴³ In turn, the continental shelf is comprised of the seabed and subsoil, beyond the territorial sea, that projects from the continental landmass into the sea and eventually falls away into the ocean's depths.⁴⁴ The continental shelf extends to the outer edge of the continental margin or to a

39. *Id.* at 261.

40. Turkey extended its territorial waters in the Black Sea to twelve nautical miles. *Territorial Sea: Casus belli*, HELLENIC REPUBLIC MINISTRY OF FOREIGN AFFAIRS, <http://www1.mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/territorial-sea-casus-belli.html> (last updated Mar. 3, 2011). Turkey and Bulgaria delimited their maritime zones in the Black Sea by using the equidistance method of demarcation. NUGZAR DUNDUA, DELIMITATION OF MARITIME BOUNDARIES BETWEEN ADJACENT STATES 30 (2006-2007).

41. UNCLOS, *supra* note 29, pts. II, IV, V.

42. *Id.* art. 3.

43. *Id.*

44. *Id.* art. 76(1).

maximum distance of 200 nautical miles.⁴⁵ It is an area which is typically rich in oil and gas and abundant in fish.⁴⁶ Lastly, the EEZ is the area beyond, and adjacent to, the territorial sea that provides the coastal state sovereign rights to explore, exploit, conserve, and manage its natural resources, as well as a right to conduct marine scientific research.⁴⁷ Like the continental shelf, the EEZ begins from the outer limit of the territorial sea and has a maximum breadth of 200 nautical miles.⁴⁸ Notably, islands that are naturally formed areas of land, surrounded by water, and above water at high tide, are capable of generating their own territorial seas.⁴⁹

Although there is no bright-line rule that delimits these zones—because the facts of each dispute are different, each dispute requires case-by-case analysis—UNCLOS does provide guidelines.⁵⁰ The Convention provides that principles of equity,⁵¹ proportionality,⁵² natural prolongation,⁵³ and non-encroachment,⁵⁴ as well as the consideration of other relevant circumstances, including geographic size and location, be taken into consideration.⁵⁵

45. *Id.*

46. SHAW, *supra* note 23, at 521.

47. UNCLOS, *supra* note 29, art. 56.

48. *Id.* art. 57.

49. *Id.* art. 121.

50. Such guidelines are for drawing closing lines for the delimitation of internal waters of archipelagic states, *id.* art. 50, normal baselines, *id.* art. 5, straight baselines, *id.* art. 7, determining a combination of methods for drawing baselines, *id.* art. 14, delimiting the territorial sea between states, *id.* art. 15, delimiting the EEZ between opposite and adjacent states, *id.* art. 84, and delimiting the continental shelf between opposite and adjacent states, *id.* art. 86.

51. Tribunals and courts have used the principle of equity as a means of mitigating inequities between the parties. SHAW, *supra* note 23, at 103.

52. “Proportionality” refers to the length of relevant coasts of each party; it is this ratio that can be used to apportion the size of each maritime zone. *See Fisheries Case (U.K. v. Nor.)*, 1951 I.C.J. 116 (Dec. 18).

53. The term “natural prolongation” refers to the area of continental shelf which extends from a country’s land territory into and under the sea. *See Continental Shelf*, 1969 I.C.J. 3, 22 (Feb. 20). It is an extension of a State’s landmass and provides the State with an inherent right to explore the seabed and exploit its natural resources. *Id.*

54. The principle of non-encroachment is embodied in Article 7(6) of UNCLOS, which states that no state can use a system of straight baselines “in such a manner as to cut off the territorial sea of another state from the high seas or an exclusive economic zone.” UNCLOS, *supra* note 29, art. 7.

55. In relation to the continental shelf, the Court determined in the *North Sea Continental Shelf* cases, that

delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all relevant circumstances, in such a way as to leave as much

As a matter of law, there are several options available in delimiting a maritime boundary, including a continental shelf and EEZ boundary line of opposite and adjacent states. Accordingly, a delimitation of only the territorial sea around the Imia islets should be proposed for this area, while the continental shelf and EEZ delimitation can be done for the entire Aegean Sea region.

A. Possible Delimitation of the Maritime Zones of the Imia Islets

The delimitation of the area between the Imia islets and the Turkish coastline should be done in light of applicable UNCLOS articles and relevant circumstances (e.g., proximity to the Turkish coastline and the neighboring island of Cavus, and the relative sizes of the coastlines and other neighboring islands).⁵⁶ Accordingly:

[N]either of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line of every point which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.⁵⁷

Thus, a median line is drawn midway between Cavus and Imia and between Imia and the Turkish mainland coast.

In delimiting the area around the Imia islets, the principle of non-encroachment should be considered because of the Imia's close

as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of others.

Continental Shelf, 1969 I.C.J. 3, 54 (Feb. 20). In the *Anglo-Norwegian Fisheries Case*, the ICJ took into consideration Norway's unique coastline that was deeply indented by *ffjords, sunds* (sounds), and by a fringe of islands and rocks (the *skaergaard*) that are difficult to separate from the mainland. Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116 (Dec. 18). In the *Tunisia/Libya* case, the ICJ examined the role of proportionality and considered the disparity of the two states' coastal lengths to adjust the median line and attribute a larger continental shelf to Libya. Continental Shelf (Tunis. v. Libya), 1985 I.C.J. 13, 48-50 (June 3). In the *Cameroon-Nigeria* case, the ICJ had to take into consideration shifting populations, straddling villages, and boundary communities when deciding how to demarcate a boundary line. See generally Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.), 1998 I.C.J. 275 (Mar. 25). Such considerations are important because the Court has to ensure that the rights and interests of the local populations are respected. *Id.* at ¶ 107.

56. ROBIN ROLF CHURCHILL & ALAN VAUGHAN LOWE, *THE LAW OF THE SEA* 63 (3d ed. 1983).

57. *Id.*

proximity to Turkey and other islands. On their eastern coasts, the Imia cannot have a continental shelf and an EEZ because these are areas that extend beyond the territorial sea. However, it may be possible to have such zones on the southern and western coasts of the Imia in a manner which would not encroach upon the maritime zones generated by the islands of Kalymnos and Pserimos.

Presently, there is a median line construction, but if sovereignty of the Imia were found to belong to Turkey, then the boundary line could possibly shift to the west. The extent of this shift would depend on how much effect the islands were given. If the median line construction is used, then it would be drawn between Kalymnos and the Imia (i.e., on the west side of the islands). Alternatively, if half-effect is given, then the line could shift to the west in a manner that would cut less than the half-way distance between Imia and Kalymnos. This latter option would, in effect, extend Turkey's territorial sea by approximately 4-4.2 nautical miles west of the Turkish mainland coast.

V. DELIMITATING TERRITORIAL WATERS IN THE ENTIRE AEGEAN SEA REGION

This section will discuss a possible delimitation of the entire Aegean Sea region, including, but not limited to, the Imia islets. Because the territorial sea is the zone that begins from a nation's coast it is logical to begin the delimitation with this zone and then to delimit the continental shelf and EEZ. The two legal issues to be examined are: (1) the breadth of the territorial sea; and (2) the delimitation of the territorial sea.

The first issue to consider when delimitating the territorial waters of the Aegean Sea is to what extent each state is allowed to extend its territorial seas in the Aegean. Although, in theory, both Greece and Turkey have the right to extend their territorial waters to twelve nautical miles, in practice, this is not feasible due to the close proximity of the two nations. If each nation extended its territorial waters up to ten nautical miles, access to the high seas via the northern Turkish coast and the Turkish straits would be cut off. Therefore, the delimitation of their territorial seas must be seen in light of this special circumstance.

Professor Van Dyke suggests a possible equitable compromise: accepting a twelve nautical mile territorial sea from Greece's coasts, but not from its islands.⁵⁸ Van Dyke also suggests another possible compromise: allow "at least some of Greece's islands in the Western

58. Jon M. Van Dyke, *The Aegean Sea Dispute: Options and Avenues*, 20 MARINE POL'Y 397, 402 (1996).

Aegean to generate 12 nautical miles zones, while continuing to insist that the eastern Greek islands limit their territorial seas to 6 nautical miles.”⁵⁹ Another proposed solution is based on the 1984 Agreement between Chile and Argentina, whereby Chile and Argentina “limited their territorial sea claims in relation to each other to three nautical miles, but claimed twelve nautical miles of territorial seas with regard to all other countries.”⁶⁰

1. The Northern Aegean Sea Sector

Because Turkey and Greece are adjacent states in the northern sector of the Aegean Sea, the territorial sea boundary line should be constructed perpendicular to the land frontier at approximately latitude 40° 43.5’ north, longitude 26° 00’ 2.5’’ east, and extend southwest at a distance halfway between Greece and Turkey and Samothraki Island. Bolukbasi proposed drawing a mainland-to-mainland boundary line, which would not give any effect to Thasos or Samothraki except in allowing these islands to have a six nautical mile territorial sea zone.⁶¹ Likewise, he proposes discounting Bozcaada and Gokceada and not using them for base points.⁶² However, because of the relative size of these islands and the proximity of these Greek and Turkish islands to their respective mainland, it would be advisable to give them all full effect. Given Samothraki’s size and relatively close distance to Greece and Turkey, this island should be given full effect; the perpendicular line should be drawn mid-way. From this point, the boundary should extend south-southwest around Gokceada and south-southeast around the island of Limnos.

2. The Central Aegean Sea Sector

In the central Aegean sector, Bolukbasi’s proposed model includes apportioning six nautical miles to the Northern Sporades and Skiros islands, and not giving them any effect in the median-line delimitation.⁶³ The Northern Sporades islands, along with Skianthos, Skopelos, and

59. *Id.*

60. *Id.* at 402. See also DENIZ BOLUKBASI, TURKEY AND GREECE: THE AEGEAN DISPUTES, A UNIQUE CASE IN INTERNATIONAL LAW 66 (2004).

61. BOLUKBASI, *supra* note 60, at 510-12.

62. *Id.* at 512.

63. TULLIO SCOVAZZI, MARITIME LIMITS AND BOUNDARIES IN THE AEGEAN: SOME MAPS WITH LEGAL COMMENTARIES, *reprinted in* AEGEAN ISSUES: PROBLEMS-LEGAL AND POLITICAL MATRIX 88 (Seyfi Tashan ed., 1995).

Alonisos islands, are situated close to the Greek mainland coast. Therefore, these islands may be regarded as a continuation of the Greek mainland coast as much as Bozcaada and Gozceada are of Turkey's mainland coast. As such, they should be given full effect. Also, Skiros is relatively close to Evvoia and should have full effect. Lesvos Island is situated quite close to the Turkish mainland coast. Therefore, Lesvos should have a median line delimitation with mainland Turkey on the eastern front, and a full twelve nautical mile territorial sea zone on the western front.

3. The South Aegean Sea Sector

The south Aegean sector is harder to delimit because the Greek islands are numerous and scattered across the entire southern region. In light of this, the best solution would be to maintain the status quo from Andros Island southward (i.e., allow only a six nautical mile territorial sea zone for all the islands) so as not to encroach upon the high seas and allow only Crete to extend the territorial sea to twelve nautical miles. This could be the best delimitation for both states because it would give each state the maximum amount of sovereignty within the confines of the Aegean Sea. There is also the question of how much consideration to give to the islets and the surrounding islands. There are three possibilities available: (1) give the islets partial or half effect (or "half angle"), (2) give the islets full effect, or (3) give the islets no effect.⁶⁴ Considering the modest size of the islets and their close proximity to the Turkish coastline, Kos and Kalymnos should have full effect. The delimitation of Kastellorizo Island, also known as "Meghesti," poses some problems with both nations because of its proximity to the Turkish coastline.⁶⁵ Giving Kastellorizo full effect in the delimitation would result in cutting-off the high seas for Turkey on its southwestern coastline.

4. Alternative Solutions

An alternative to delimiting the Aegean Sea area in three distinct sections (northern, central, and southern) is to divide the Aegean Sea in half, down the center, and then delimit the eastern islands and the western islands, respectively. In this construction, straight baselines may

64. U.N. DIV. OF OCEAN AFFAIRS & LAW OF THE SEA, HANDBOOK OF THE DELIMITATION OF MARITIME BOUNDARIES, at 33, U.N. Sales No. E.01.V.2 (2000).

65. SCOVAZZI, *supra* note 63, at 88.

be employed to delimit the Cyclades and the islands extending southeast from Evvoia and Peloponissos because they are “a fringe of islands along the coast in [Greece’s] immediate vicinity.”⁶⁶ All of these islands, except for Ikaria, Phragonisi, Dhenousa, Kinaros, Kalimnos, Antispalata, Andileousa, Tria Nisia, and Saria, may be given a twelve nautical mile territorial sea zone and the remaining islands may be given a six nautical mile territorial sea zone. This would allow navigational passage into the Mediterranean Sea via a corridor of the high seas. The equitableness of this proposed drawing may be assessed by using the proportionality test, which entails comparing the two states’ coastal ratios.

If no island is given effect when the boundaries are drawn then there is a possibility of enclaving islands situated on the “wrong” side of the boundary line. Bolukbasi argues that enclaving the Greek islands situated “on the wrong side of the median line” is the only equitable solution, as any other solution would prove grossly inequitable.⁶⁷ Conversely, Bowett argues that “the enclave solution, however equitable for an isolated group of islands on the wrong side of the median line, is inappropriate for a situation like the Aegean where the islands are so numerous and in fact dominate the whole sea area.”⁶⁸ Given the history of the two states, the geographic location of the islands, and the current relationship between Greece and Turkey, it would be best not to enclave the Greek islands for practical and administrative purposes.

In the interests of justice, a simpler approach is to begin with the demarcations presented on maps by both Greece and Turkey and to devise a boundary line that would satisfy both nations. Such a solution would be political rather than legal because a government’s unilateral demarcation on the map does not hold legal weight without the corresponding physical control (“*uti possidetis*”) over the territory therein.⁶⁹

No matter which approach is taken, the result must balance both parties’ rights. The following illustrates the factors that need to be balanced against either party’s right to extend its borders. If Turkey increases its territorial waters to twelve nautical miles in the Aegean Sea, it would increase its current territorial waters by 1.27%, causing the boundary line to shift outwards.⁷⁰ On the other hand, if Greece was to

66. UNCLOS, *supra* note 29, art. 7(1).

67. BOLUKBASI, *supra* note 60, at 506.

68. SCOVAZZI, *supra* note 63, at 95.

69. ENRICO MILANO, UNLAWFUL TERRITORIAL SITUATIONS IN INTERNATIONAL LAW: RECONCILING EFFECTIVENESS, LEGALITY AND LEGITIMACY 113 (2006).

70. BOLUKBASI, *supra* note 60, at 122.

exercise its right to extend its territorial sea limit to twelve nautical miles (from the present six), then Greece's share of the Aegean Sea would increase by approximately twenty-six percent, causing the boundary line to shift outwards.⁷¹ Moreover, if the territorial seas surrounding the Imia islets were increased, then Turkey would become nautically semi-enclosed on its western front and the only method of gaining access to the Mediterranean Sea from its western coast would be to obtain permission from Greece to cross Greek territorial waters. Therefore, the territorial waters surrounding the islands that lie closely to Turkey's western border should not be increased beyond the median line between their coasts and Turkey's.

Another effect of extending the territorial waters to twelve nautical miles would be a significant reduction of high seas—from 43.68% to 19.71%.⁷² Turkey would be disadvantaged by not having access to the Aegean and Mediterranean Seas; the lack of access would curtail its trade with other countries and possibly lead to a decline in the Turkish economy and standard of living in general. If this were the case, according to Article 17 of UNCLOS, Turkey would still have the right of innocent passage through Greece's territorial sea.⁷³

However, it is not possible to extend the territorial waters of the Imia on its eastern front beyond two nautical miles because there is approximately a four mile difference between the coast of the Imia and the Turkish mainland coast. If this were done in negotiations, Turkey would become nautically semi-enclosed on its western front. However, being semi-nautically enclosed does not mean that Turkey is completely disadvantaged because "the coastal state shall have exclusive jurisdiction . . . with regard to customs, fiscal, health, safety, immigration laws and regulations,"⁷⁴ so that Greece would still have to abide by Turkey's regulations on these matters even though Greece is very close to Turkey's borders.

The disadvantage of extending the territorial waters to twelve nautical miles is the creation of new straits for international navigation. According to Articles 34 and 45 of UNCLOS, military aircraft would be allowed to fly over these straits, which may pose a security issue for either or both states.⁷⁵ In any event, Turkey has expressed the sentiment that if Greece were to extend its territorial waters to twelve nautical

71. *Id.* at 125.

72. *Id.*

73. UNCLOS, *supra* note 29, art. 17.

74. *Id.* art. 60.

75. *Id.* arts. 34, 45.

miles, then Turkey would consider this *casus belli* because it would limit its access to the Mediterranean Sea.⁷⁶

A possible solution to this predicament is to have a separate agreement for the extension of the Flight Information Region (FIR) zone and for the territorial sea zone.⁷⁷ For example, the status quo may be maintained for the overflight zone of ten miles,⁷⁸ while the territorial sea may be extended to a maximum of ten nautical miles; or, alternatively, the status quo could be maintained in both the overflight zone and the current six nautical mile territorial sea zone. Within this overflight zone, the coastal state has rights of sovereignty, as it would within the territorial sea; this sovereignty is provided for in Article 1 of UNCLOS.⁷⁹

In sum, the parties have to strike the right balance in devising their territorial sea borders to ensure that neither party is disadvantaged by an extension of the current territorial sea zone which closely corresponds to the airspace above it.

VI. THE RELATION BETWEEN THE TERRITORIAL SEA AND THE AIRSPACE ABOVE IT

Generally, the borders of a country's airspace mirror the land borders and territorial sea absent an agreement to the contrary.⁸⁰ The borders of the airspace will also mirror the borders of the territorial sea, as the latter is also a zone of sovereignty and essentially an extension of the land of the coastal state.⁸¹ Presently, the territorial waters of Greece extend to six nautical miles, whereas the airspace over it extends to ten nautical miles.⁸² The question posed by this dispute is whether the airspace regime can be separate from the maritime regime—i.e., can an airspace boundary differ from the territorial sea boundary so that two different regimes exist?

76. BOLUKBASI, *supra* note 60, at 122.

77. *See infra* Part VI.

78. By the Decree of 1931, Greece extended its overflight zone by four miles beyond the territorial sea limit of six miles. George Assonitis, *The Greek Airspace: The Legality of a Paradox*, 8 U.S. A.F. ACAD. J. LEGAL STUD. 159, 160 (1997-1998).

79. UNCLOS, *supra* note 29, art. 1.

80. FRANCIS LYALL & PAUL B. LARSEN, *SPACE LAW: A TREATISE* 153 (2009).

81. *Id.*; UNCLOS, *supra* note 29, art. 2.

82. In 1931, Greece claimed a ten nautical mile zone along its coasts for air navigation and policing its airspace. Martin Pratt & Clive Schofield, *The Imia/Kardak Rocks Dispute in the Aegean Sea*, 4 BOUNDARY & SECURITY BULL. 62, 63 (1996). In 1952, the International Civil Aviation Organization ruled that except for a narrow strip of national airspace along the Turkish coast, the Athens FIR should be responsible for policing the Aegean airspace. *Id.*

FIR is an aviation term used to describe airspace with specific dimensions, in which a Flight Information Service and an Alerting Service are provided.⁸³ Greece has the Athens FIR, which presently extends up to the maritime border with Turkey in the eastern Aegean Sea.⁸⁴ The Athens FIR limits were determined during the Regional Air Navigation Meetings in Paris in 1952, and Geneva in 1958, based on the outer limits of Greece's coastal zone and airspace.⁸⁵ Aeronautical maps depicting this delimitation were communicated to the International Civil Aviation Organization (ICAO) in 1955 without third party objections.⁸⁶ Greece has a "coastal zone of 10 nautical miles serving aviation and air policing requirements as established by Presidential Decree 6/18 of September 1931 on the determination of the extent of territorial waters for aviation and air policing requirements."⁸⁷

Turkey has respected and recognized this airspace limit for forty-four consecutive years prior to contesting it by "violating" the national airspace (i.e., Turkish fighter planes flying within the ten nautical mile to six nautical mile airspace).⁸⁸ Moreover, Turkey has published aeronautical maps that recognize Greece's ten nautical mile national airspace zone.⁸⁹ However, Turkey has been attempting to unilaterally change the FIR zone since August 1974, when Turkey unilaterally issued a notice extending the Istanbul FIR beyond the Greco-Turkish maritime border in the eastern Aegean Sea.⁹⁰

Because Turkey did not protest in 1931, or shortly thereafter, it is arguable that Turkey acquiesced to this delimitation. It may, therefore, be too late for Turkey to protest. As a result, it may be that a special international custom has been created, but only a court or tribunal could determine this with certainty. In the meantime, it is necessary to clarify

83. DEP'T OF DEFENSE, DEPARTMENT OF DEFENSE DICTONARY OF MILITARY AND ASSOCIATED TERMS 132 (2011), *available at* http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf.

84. "Under international law, a state's sovereignty extends to the airspace superjacent to its land and territorial sea . . ." Assonitis, *supra* note 78, at 163.

85. *Greek Territorial Waters - National Airspace*, MINISTRY OF FOREIGN AFFAIRS—GREECE IN THE WORLD, <http://www2.mfa.gr/www.mfa.gr/en-US/Policy/Geographic+Regions/South-Eastern+Europe/Turkey/Turkish+claims/Greek+Territorial+Waters+-+National+Airspace/> (last visited Jan. 18, 2012).

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. FOTIOS MOUSTAKIS, *THE GREEK-TURKISH RELATIONSHIP AND NATO* 36 (2003).

each state's FIR zone so that neither state finds itself in breach of the Convention on International Civil Aviation (CICA).⁹¹

If Greece extends its territorial waters in the Aegean, Turkey would lose the airspace over the affected seas and would have to request permission from the Greek government to fly in Greek national airspace. The converse would also be true if Turkey were to extend its territorial waters in the Aegean. Similarly, the reduction of the high seas could lead to an equal reduction of international airspace. It has been stated that “[g]eneral international practice as well as the IMO and ICAO recommendations contained in the International Aeronautical and Maritime Search and Rescue Manual advocate the adoption of identical areas for both air and sea search and rescue, to coincide with the limits of the FIRs.”⁹²

According to the wording of Article 2 of UNCLOS, it would appear that the outer limits of the territorial sea are the defining factor of the outer limits of the airspace above.⁹³ The same principle is reiterated in Articles 1 and 2 of CICA.⁹⁴ Therefore, the present airspace should be approximately seven miles, and if and when Greece's territorial sea limit is extended, the airspace should be extended to match this regime.

VII. THE CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONES

Part VI of UNCLOS, which deals with the continental shelf regime,⁹⁵ incorporates the Geneva Convention on the Continental Shelf, which was crystallized in 1958.⁹⁶ Although the 1958 Convention defines the characteristics that comprise the continental shelf, UNCLOS builds on that definition continental shelf by including the rights and duties of the

91. Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180 [hereinafter CICA]. Under Article 88 of the CICA, the penalty for non-conformity with the convention is the suspension of the offending country's voting power. *Id.* art. 88.

92. *Greek Territorial Waters - National Airspace*, MINISTRY OF FOREIGN AFFAIRS—GREECE IN THE WORLD, <http://www2.mfa.gr/www.mfa.gr/en-US/Policy/Geographic+Regions/South-Eastern+Europe/Turkey/Turkish+claims/Greek+Territorial+Waters+-+National+Airspace/> (last visited Jan. 18, 2012).

93. UNCLOS, *supra* note 29, art. 2.

94. *See* CICA, *supra* note 91, arts. 1-2. Article 1 states, “[t]he contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.” *Id.* art. 1. Article 2 states, “the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.” *Id.* art. 2.

95. UNCLOS, *supra* note 29, pt. VI.

96. *See* Geneva Convention on the Continental Shelf, Apr. 29, 1958, 499 U.N.T.S. 311.

coastal state.⁹⁷ Examples of such rights and duties include sovereign rights for the purpose of exploring and exploiting natural resources,⁹⁸ the right to construct installations after providing notice, and the duty to take appropriate measures in the safety zones for the conservation of natural resources.⁹⁹

Article 76(1) of UNCLOS defines the continental shelf as being comprised of

the seabed 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 measured¹⁰⁰

This definition may not be very helpful in this circumstance because the Aegean seabed appears to be a natural prolongation of the mainland coasts of both Greece and Turkey. Therefore, it is useful to determine which coastal state owns which islands because juridical islands are entitled to a full suite of maritime zones.

A. The Continental Shelf

The delimitation of the continental shelf covers the entire Aegean Sea area. Article 83(1) of UNCLOS provides the guiding principle for delimiting the continental shelf, stating 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.”¹⁰¹ Special circumstances must be taken into consideration when delimiting this zone, including consideration of natural resources found within the seabed.¹⁰²

Turkey favors drawing the boundary line in the middle of the Aegean Sea, equidistant from either the main coastline, without giving effect to the Greek islands in the middle.¹⁰³ Although Greece claims that the continental shelf extends from the Greek mainland coast continuously

97. UNCLOS, *supra* note 29, art. 56.

98. *Id.*

99. *Id.* art. 60.

100. *Id.* art. 76.

101. *Id.* art. 83(1).

102. Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1985 I.C.J. 13, 41 (June 3).

103. Greek Foreign Ministry, *Unilateral Turkish Claims in the Aegean*, HELLENIC RES. NETWORK, <http://www.hri.org/MFA/foreign/bilateral/aegeen.htm> (last visited Jan. 18, 2012).

past the Imia islets, the continental shelf may be considered a continuous natural prolongation of both Greece's or Turkey's mainland coast. However, Greece's coastal ratio in relation to Turkey's is approximately 1.54:1 in favor of Greece, which means that Greece's coast is approximately one and a half times larger than Turkey's.¹⁰⁴ Because the main tenet of the law of the sea is that "a State's entitlement to maritime areas is measured by reference to its coastline,"¹⁰⁵ it is arguable that Greece would be entitled to larger maritime areas in proportion to its coastline.

B. Delimitation of the Aegean Sea Continental Shelf

In the 1979 *Aegean Sea Case*, the ICJ stated that the basic question in dispute was whether the islands under Greek sovereignty generate a continental shelf of their own, and whether those islands entitle Greece to draw a boundary between those islands and the Turkish coast.¹⁰⁶ The issues were posed in the following two questions, which had to be answered successively: (1) Are the Greek islands entitled to a continental shelf? And, if so, (2) how should it be delimited?¹⁰⁷ The Aegean islands (whether Greek or Turkish), which are juridical and able to generate a continental shelf without encroaching on the maritime zones of the other party, should have a continental shelf zone delimited to allow the territorial sovereign to extract the oil and gas which may be found in the subsoil. However, if the parties agree in negotiations to ignore the Aegean islands then the boundary line for this zone would begin from the baselines from which the breadth of the territorial sea is measured.¹⁰⁸

Once the boundaries for the territorial waters are devised, the continental shelf borders may be drawn, but it must be delimited in such a way so as not to encroach upon the maritime zones of one state to the detriment of another state, nor to block access to the high seas.¹⁰⁹ The most appropriate method in this continental shelf delimitation would be to begin by drawing a provisional equidistant line without giving the islands any effect, then to adjust the line to give effect to those islands that should have effect, and then finally to readjust the line again to

104. BOLUKBASI, *supra* note 60, at 521.

105. Shi Yiuong, *Maritime Delimitation in the Jurisprudence of the International Court of Justice*, 9 CHINESE J. OF INT'L L. 271, 275 (2010).

106. Aegean Sea Continental Shelf (Greece v. Turk.), Judgment of December 19, 1978.

107. *Id.*

108. UNCLOS, *supra* note 29, art. 76(5).

109. SHAW, *supra* note 23, at 533.

account for high seas access. For reasons of practicality, it would be helpful to devise the boundaries in the manner outlined above for the territorial seas—the northern, central, and southern Aegean sectors—and then meet the boundary lines before accounting for proportionality and equitableness.

The continental shelf can be extended in the north Aegean Sea but not to a maximum 200 nautical miles because it would encroach upon the high seas. The same may be done in the central Aegean sector if Skopelos Island and Psara and Anti-Psara Islands are given half-effect instead of full effect. However, the central Aegean sector is narrower than the northern and southern sectors, which would result in a shorter continental shelf.

C. The Exclusive Economic Zone

Article 57 of UNCLOS provides that the EEZ extends to a maximum breadth of 200 nautical miles “from the baselines from which the breadth of the territorial sea is measured.”¹¹⁰ Although these are rights that are prescribed to the coastal state, these rights are *sovereign rights*, which are a limited form of sovereignty.¹¹¹ Moreover, “under the Convention there is no obligation on a State to claim an EEZ. Nevertheless, coastal states have in fact exercised their right to make such a claim.”¹¹² Presently, Greece claims a fishery zone with a breadth of six nautical miles in the entire Aegean Sea region.¹¹³

If Greece were to claim an EEZ, then it would have the option of drawing a boundary line following the guiding principles expressed in Article 74(1) of UNCLOS, which provides, in part, that the “delimitation . . . shall be effected by agreement on the basis of international law . . . in order to achieve an equitable solution.”¹¹⁴ Taking into consideration equitable principles (such as the principle of non-encroachment), and the fact that the Imia islets will not have a 200 nautical mile continental shelf

110. UNCLOS, *supra* note 29, art. 57.

111. Beginning from a state’s coastline, the further out one goes the less control the state has in that respective zone. For example, the closest maritime zone to a coastal state is the territorial waters over which a state has sovereignty, *id.* art. 2, but UNCLOS also provides for more limited sovereign rights within the contiguous zone and the EEZ, *see, e.g., id.* art. 56.

112. CHURCHILL & LOWE, *supra* note 56, at 161.

113. BOLUKBASI, *supra* note 60, at 221-22.

114. UNCLOS, *supra* note 29, art. 74(1).

due to its proximity to Turkey, a boundary line could be drawn midway between the Imia islets and the neighboring Turkish island of Cavus.¹¹⁵

The same approach with the same principles can be used to delimit the EEZ as was used for the continental shelf. Furthermore, both zones have a maximum 200 nautical mile limit and both are drawn from the baselines from which the breadth of the territorial sea is measured.¹¹⁶

D. Dispute Resolution Methods

Boundary delimitation is a mutual activity done with the cooperation of the states involved.¹¹⁷ Greece and Turkey have been encouraged several times by other states to refer the matter to the ICJ.¹¹⁸ However, Turkey has not been very keen to take up this suggestion; instead, Turkey seems more inclined to resolve the dispute through unilateral negotiations with Greece.¹¹⁹ Turkey is seemingly unwilling to resort to the ICJ because: (1) the ICJ oscillates between legal positivism and judicial activism; (2) the ICJ has a timid attitude in contentious cases, which is a warning for Turkey that in the Aegean dispute the ICJ is likely to uphold the present rules of international law and judge in favor of Greece; (3) national bias influences the *ad hoc* voting behavior of judges; (4) Turkey is legally vulnerable; and (5) the consequences of a binding judgment would be irreversible.¹²⁰

Greece and Turkey have attempted to settle the dispute peacefully between themselves through negotiations and by resorting to the ICJ.¹²¹ The two countries could also resort to dispute settlement methods such as mediation, inquiry and reconciliation, arbitration, or perhaps by eliciting

115. Cavus, formerly known as Kato, is situated 2.3 nautical miles from Imia.

116. UNCLOS, *supra* note 29, art. 57.

117. State parties involved in solving their boundary delimitation issues may negotiate a solution or may agree to submit their dispute to a Court or Tribunal. CONTINENTAL SHELF LIMITS: THE SCIENTIFIC AND LEGAL INTERFACE 313 (Peter J. Cook & Chris M. Carleton eds., 2000).

118. The U.S. Congress has also encouraged both Greece and Turkey to seek redress at the ICJ for any disputes regarding the established boundaries as set forth by the 1923 Lausanne Treaty, the 1932 Convention between Greece and Turkey, and the 1947 Paris Treaty of Peace. H. R. Res. 199, 11th Cong. (2007).

119. BOLUKBASI, *supra* note 60, at 79 (“At present, Turkey does not accept the compulsory jurisdiction of the ICJ.”).

120. Kemal Baslar, *Two Facets of the Aegean Dispute: de lege lata and ‘de lege ferenda,’* in *TURKEY AND INTERNATIONAL LAW* 28-9 (2000), available at http://usakyayinlari.com/pdf/aegean_sea.pdf.

121. Aegean Sea Continental Shelf (Greece v. Turk.), Application, 1976 I.C.J. 3 (Aug. 10).

advisory opinions from other international institutions, such as the International Tribunal for the Law of the Sea (ITLOS). Greece and Turkey also have the option of appealing to the United Nations Security Council.¹²²

However, of the two states, it is more likely that Turkey would choose to have the Security Council settle this dispute, given that Turkey agreed to settle disputes in accordance with Article 33 of the U.N. Charter in its boundary agreement with Bulgaria.¹²³ Article 34 of the UN Charter gives the Security Council the authority (by virtue of the word “may”) to “investigate any dispute, or any situation which may lead to international friction . . . in order to determine whether the continuance of the dispute . . . is likely to endanger the maintenance of international peace.”¹²⁴ As a practical matter, it is not likely that Greece would consider this recourse because the Security Council does not have the technical experts to delimit the area. Therefore, the best option would be for the two states to attempt to settle their differences with the aid of a third party (e.g., a neutral international organization).

As a result of the two countries’ past experience and expertise on law of the sea issues, the best venue for the solution of this dispute would be ITLOS. ITLOS is favored by most as the first recourse for settlement of law of the sea disputes.¹²⁵ Furthermore, if the case is brought before the ICJ, it is highly likely that the matter will not be heard for many months, given the number of cases waiting to be heard by the ICJ presently. Thus, it is more advantageous for any state to begin proceedings on law of the sea disputes in ITLOS, where it is far more likely that the case will be heard and dealt with expeditiously. This efficiency will free other international bodies to deal with other matters.

Although Turkey has not ratified UNCLOS, the dispute may still be brought before ITLOS. ITLOS has jurisdiction to hear any dispute concerning the interpretation or application of UNCLOS, and over all matters specifically provided for in any other agreement which confers jurisdiction on ITLOS.¹²⁶ ITLOS is open to state parties regardless of whether those states are signatory parties to UNCLOS.¹²⁷

122. U.N. Charter art. 34.

123. 4 Jonathan I. Charney, *INTERNATIONAL MARITIME BOUNDARIES* 2873 (2002).

124. U.N. Charter art. 34.

125. Indeed, ITLOS is listed as the first organization in Article 287(1)(a) of UNCLOS (before even the ICJ). UNCLOS, *supra* note 29, art. 287(1)(a).

126. Statute of the International Tribunal for the Law of the Sea art. 21, Dec. 10, 1982, 1833 U.N.T.S. 561.

127. *Id.* art. 20.

Turkey and Greece could then reach an agreement to request an advisory opinion from ITLOS. This procedure is provided for under Article 138 of the Rules of ITLOS.¹²⁸ They may request an advisory opinion on either the principles to use in delimiting the boundaries without actually delimiting, or on the types of provisional agreements that the two states could implement without prejudicing future boundary delimitations and without prejudice to their sovereign rights. Although this advisory opinion would not be binding, it could very well be instrumental in progressing negotiations and hopefully solving the Aegean dispute. Time is of the essence for both Greece and Turkey, and it is in the interests of both states to settle this dispute as soon as possible.

VIII. CONCLUSION

Greece and Turkey are two ancient empires whose relationship has historically been plagued with tension culminating to the present maritime and airspace disputes in the Aegean Sea and more specifically to the sovereignty dispute over the Imia islets.

While the Imia islets are relatively small islets and at first seem to be of no great importance, the issues which need to be negotiated in good faith between both parties have the potential to open the floodgates for disputing other claims within the same area over other territories. Furthermore, the Imia have strategic importance given that they are situated approximately four miles off the coast of Turkey and close to other Greek territory.

This Article has provided several possibilities to demarcate the Aegean Sea maritime boundaries using customary international law principles, which both Greece and Turkey are subject to. Such boundaries may be devised by either drawing the borders from the parties' respective mainland coastlines and then adjusting the lines to account for the various islands; to enclaving the islands or dividing the Aegean Sea in three parts (northern, central, and southern) and demarcating each section separately before joining the final boundary lines. The complexity of boundary delimitation is appreciated once having considered the various principles (e.g., natural prolongation, non-encroachment, etc.) and techniques (e.g., drawing median lines, accounting for coastal ratios and high seas, etc.) that may be employed in devising a boundary line. The matter is more complex given that the entire Aegean Sea contains thousands of islands of various sizes and it must be determined whether or not they are juridical islands and whether

128. International Tribunal for the Law of the Sea, Rules of the Tribunal art. 138.

they should be considered in drawing the boundary lines. The parties are free to continue ongoing negotiations in hopes of leading to a solution which is acceptable to both sides or they may refer their dispute to an international tribunal such as ITLOS for a binding decision.

The analysis conducted in this Article is meant to be merely a starting point in the opening of a meaningful dialogue between the parties (and perhaps globally) over the numerous possibilities in boundary delimitation, whether it be for maritime zones, airspace, or land boundaries. Every dispute is unique, and this one is no exception, but it is important to set firm land, sea, and air boundaries. As the old adage declares: "good fences make good neighbors."