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HOW TO DRAW THE LINES IN THE AEGEAN: A MULTIFACETED CONFLICT TURNING INTO *CASUS BELLI* BETWEEN GREECE AND TURKEY

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ABSTRACT

This paper aims to analyze the greatest problems of the compound Aegean dispute between Greece and Turkey, namely the delimitation of territorial waters, legal entitlement of some Aegean Islands, and delimitation of their respective continental shelves. This article analyzes the nature of each dispute and potential solutions in light of previous international adjudications on similar disputes. Greece and Turkey both have different approaches for the dispute. Greece regards the dispute as a legal issue while Turkey regards it as a diplomatic issue and insists on diplomatic measures only for the resolution of the dispute. The differences in the Parties' approaches have made the issue even more complicated. For this reason, referral of the dispute to an arbitral tribunal is the best solution for lasting peace in the area and adherence to equitable principles. Additionally circumstances particular to the dispute can be considered in the context of international treaties. In case Greece and Turkey fail to agree on inter-state arbitration, the best alternative would be mediation by the U.S. and/or NATO. The U.S. and NATO have neutral positions vis-à-vis the Aegean dispute, and they will both benefit from the resolution of this ongoing conflict.

INTRODUCTION

Greece and Turkey are two littoral states that neighbor the Aegean Sea. The physical proximity of these two nations, as well as their historical and cultural relationship, has resulted in many serious problems pertaining to international law. Though the Parties have come together numerous times to reach an agreement on these matters, the conflict in the region continues to create an increasingly tense atmosphere day by day. The preeminent disputes are those regarding maritime delimitations in the Aegean. According to the Turkish Ministry of Foreign Affairs, some of the main problems in the Aegean are delimitation of territorial waters and the continental shelf, and the legal status of some islands.[1] Greece owns more than two thousand islands in the Aegean and some of them are within five miles of the Turkish coast.[2] Obviously, Greece has a great interest in these islands regarding national sovereignty and security. On the other hand, the islands' geographical proximity to Turkish shores has security implications for Turkey, as well.[3]

A potential legal instrument for solving the dispute, the United Nations Convention on the Law of the Sea (hereinafter UNCLOS), came into force in 1994.[4] While Greece is a party to the Convention,[5] Turkey did not ratify the Convention,[6] even to date. The conflict between Greece and Turkey escalated in 1995 when Greece ratified the Convention.[7] UNCLOS provides for the right to territorial waters up to twelve nautical miles.[8] Turkey claims six nautical miles of territorial waters in the Aegean Sea and has been strongly opposing any Greek claim larger than six

1. *The Outstanding Aegean Issues*, THE TURKISH MINISTRY OF FOREIGN AFFAIRS, https://www.mfa.gov.tr/maritime-issues---aegean-sea---the-outstanding-aegean-issues.en.mfa [https://perma.cc/V9TF-PXAQ] (last visited Sept. 9, 2021).

2. Michael N. Schmitt, *Aegean Angst: A Historical and Legal Analysis of the Greek-Turkish Dispute*, 2 ROGER WILLIAMS U. L. REV. 15, 17 (1996).

3. *Id.*

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

5. *See id.,* Participants, https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXI/XXI-6.en.pdf [https://perma.cc/GE69-LG5C].

6. Turkey was one of the four states that originally voted against UNCLOS in 1982, along with Israel, Venezuela, and the United States. MYRON H. NORDQUIST & CHOON-HO PARK, UNITED STATES DELEGATION TO THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 592-93 (1983).

7. Schmitt, *supra* note 2, at 15.

8. UNCLOS, *supra* note 4, art. 3.

nautical miles.[9] For this reason, Turkey interpreted the ratification of UNCLOS by Greece serious enough to regard it a *casus belli*.[10]

The Aegean issue is indeed a compound problem. The most urgent conflicts are the dispute are over territorial waters, which is addressed in Part II; the legal entitlement of some islands, islets, and rocks, which is addressed in Part III; and the delimitation of the continental shelf, which is addressed in Part IV. Inter-state arbitration, and in case that fails, mediation by the United States and the North Atlantic Treaty Organization (NATO), would be the most suitable methods for permanent settlement of the dispute. These conflict resolution methods are addressed in Parts V and VI, respectively. These methods would result in a fair and equitable outcome for both Parties considering that all diplomatic and judicial attempts have been unsuccessful.

I. HISTORICAL BACKGROUND

A. The Fall of the Ottoman Empire and the Establishment of Greece

After the fall of Constantinople (Istanbul) in 1453 by the Ottoman Turks, Turks and Greeks lived together for almost four centuries.[11] In the 19th century, Greeks started demanding their independence from the Ottoman Empire.[12] As the Ottoman Empire declined, Greeks were able to secure more land in the Aegean.[13] However, even at the end of the 19th century, many Aegean islands, as well as northern Greece, were still under Turkish control and possession.[14] The 20th century brought Greece more control over the Aegean. After the Balkan wars, Greece was able to maintain control over many of the islands in the East Aegean as well as Macedonia, Crete, and most of the Greek mainland.[15] In 1923, the Lausanne Treaty of Peace (Lausanne Treaty) was signed in Switzerland.[16] The Lausanne Treaty fixed the border between Turkey and Greece in

9. Nevin Asli Toppare, A Legal Approach to the Greek Continental Shelf Dispute at the Aegean Sea 22 (March 2006) (A Master's Thesis on file with the Bilkent University Library Repository System).

10. Reuters, *Greek Vote on Aegean Keeps Turkey Worried*, N.Y. TIMES, June 2, 1995, at A7.

11. Schmitt, *supra* note 2, at 20.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 21.

16. Lausanne Treaty of Peace, July 24, 1923, 28 L.N.T.S. 11. This is the peace treaty signed between Turkey and the Allied Powers.

Thrace, and Anatolia was granted to Turkey and the eastern Aegean islands of Lemnos, Lesbos, Samos, Chios, and Ikaria were granted to Greece.[17]

During World War II, Turkey remained neutral until the very end days of the war despite the motivating efforts of the Allies, while Greece entered the war on the side of the Allies.[18] The Paris Treaty of Peace (Paris Treaty) ended the war between Italy and the Allies in 1947.[19] This same treaty also influenced the borders in the Aegean Sea. By the Paris Treaty, Greece was awarded the Dodecanese Islands which lay very close to the Turkish coast.[20] The following years were considerably stable in the region with the accession of both Greece and Turkey into NATO in 1952. However, the tension sparked again with the Turkish invasion of Cyprus.[21]

B. The Cyprus Invasion

One of the relatively recent and still ongoing conflicts between Greece and Turkey is the Cyprus invasion. The Mediterranean island of Cyprus was purchased by Great Britain from the Ottoman Empire in 1878 and annexed formally to Great Britain during World War I.[22] Great Britain granted independence to Cyprus by the Zurich Agreement in 1959.[23] The majority of the population on the island was Greek, but the Turks held a substantial minority.[24] The President of Cyprus was a Greek Cypriot while the Vice President was a Turkish Cypriot, and 30% of the seats in the Parliament were reserved for Turkish Cypriots, which balanced the rights between the majority and minority populations, and their representation.[25] Shortly after the Zurich agreement was struck, several vocal groups of Greek Cypriots started advocating for political union with Greece.[26] In 1964, a Turkish invasion was narrowly prevented by then U.S. President Lyndon B. Johnson.[27]

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17. Schmitt, *supra* note 2, at 21.
18. Scott Keefer, *Solving the Greek Turkish Boundary Dispute*, 11 CARDOZO J. INT'L & COMP. L. 55, 57 (2003).
19. Paris Treaty of Peace, Feb. 10, 1947, 61 Stat. 1245, 49 U.N.T.S. 3.
20. Schmitt, *supra* note 2, at 22.
21. *See* Erhan Bora, *Cyprus in International Law*, 6 ANKARA B. REV. 27, 37 (2013).
22. Schmitt, *supra* note 2, at 22.
23. Zurich Agreement of 1959, Feb 19, 1959, 164 Brit. & Foreign State Papers 219.
24. Schmitt, *supra* note 2, at 22.
25. *Id*. at 22 n.23.
26. *Id.* at 22.
27. *Id*.

In 1974, a coup on the island changed everything. President Archbishop Makarios III fled to London and was replaced by Nikos Sampson, who was a vocal advocate for union with Greece, and Turkey invaded.[28] Turks were eventually able to gain control of thirty percent of the island.[29] The island is still separated by a United Nations monitored Green Line; the north side is administered by Turkish Cypriots while the south is administered by Greek Cypriots.[30] Turkish Cypriots established the Turkish Republic of Northern Cyprus on the northern side of Cyprus.[31] The Turkish Republic of Northern Cyprus is not a member of the United Nations and Turkey is the only country to recognize it.[32] In international law, the northern part of Cyprus is considered to be under Turkish invasion and is referred to as a Turkish-occupied part.[33]

C. Other Recent Incidents Between Greece and Turkey

An incident in 1996 over the islets of Imia revived the Aegean issues.[34] Even though these islets do not have any economic or geopolitical significance, their legal status is crucial for the determination of the ownership of several islands, islets and rocks around the Dodecanese.[35] After exchanges of fierce statements by both states' prime ministers, the naval forces of Greece and Turkey, two NATO allies, sailed to the islets.[36] A military crisis was prevented by the mediation efforts of the United States and NATO.[37]

Recently, hostilities in the Aegean increased once more over the Syrian refugee crisis[38] because many refuges have been trying to reach

28. *Id.* at 23.

29. *Id.*

30. *Id.*

31. *See* Tashin Ertugruloglu, *Recent Developments in the Cyprus Issue: a Realistic Appraisal*, 10 BROWN J. WORLD AFF. 223, 223-28 (2003).

32. *See* Suzanne Palmer, *The Turkish Republic of Northern Cyprus: Should the United States Recognize it as an Independent State*, 4 B.U. INT'L L.J. 423, 423 (1986).

33. Bora, *supra* note 21, at 44.

34. Schmitt, *supra* note 2, at 19-20.

35. *See* KRATEROS M. IOANNOU, GREECE AND THE LAW OF THE SEA 140-47 (Theodore C. Kariotis ed., 1997).

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

37. Schmitt, *supra* note 2, at 20.

38. Turkey hosts 3.6 million Syrian refugees as of 2019, making Turkey the largest host of refugees. *10 Years On, Turkey Continues Its Support for an Ever-Growing Number of Syrian Refugees*, THE WORLD BANK, https://www.worldbank.org/en/news/feature/

Europe from Turkey through Greece. Originally, Turkey and the European Union had signed a refugee deal in 2016 to stop the refugee flow into Europe.[39] In February 2020, being unhappy with the efforts of the European Union regarding their fulfilment of this deal, Turkey declared that it had opened up its borders for refugees seeking passage to Europe.[40] This declaration resulted in the accumulation of thousands of refugees on the Greek borders, who were met with a violent crackdown by Greek police.[41]

Apart from these aforementioned ongoing crises, there are also other conflicts taking place between these two countries in the Mediterranean. Greece and Turkey cannot agree on maritime zone delimitation of their exclusive economic zones and continental shelves in the Mediterranean.[42] In recent years, it has been claimed that the east Mediterranean Sea may possess rich oil and natural gas fields, and such claims have resulted in the escalation of a tense atmosphere in the Mediterranean.[43]

II. THE TERRITORIAL WATERS DISPUTE

The dispute regarding the delimitation of territorial waters is one of the chief issues of the compound Aegean Dispute. This dispute is significant because states can exercise full sovereignty over their territorial waters, with the exception of innocent passage by ships.[44] Greece's ratification of UNCLOS was a contributing factor to the conflict.[45] Turkey neither signed nor ratified UNCLOS.[46] In fact, Turkey was one of the four

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2021/06/22/10-years-on-turkey-continues-its-support-for-an-ever-growing-number-of-syrian-refugees [https://perma.cc/WX5D-SKFK] (last visited May 26, 2022).

39. *See* Manuel P. Schoenhuber, *The European Union's Refugee Deal with Turkey: A Risky Alliance Contrary to European Laws and Values,* 40 HOUS. J. INT'L L. 633, 659 (2018). This agreement has been criticized by many scholars because it closed the European doors to many refugees, especially the ones fleeing from Syria.

40. Matina Stevis-Gridneff and Carlotta Gall, *Erdogan Says, 'We Opened the Doors,' and Clashes Erupt as Migrants Head for Europe*, N.Y. TIMES, March 1, 2020, at A9.

41. *Id.*

42. *Turkey's Legal Approach to Maritime Boundary Delimitation in the Eastern Mediterranean Sea,* INSIGHT TURKEY (Updated: March 9, 2021), https://www.insightturkey.com/article/turkeys-legal-approach-to-maritime-boundary-delimitation-in-the-eastern-mediterranean-sea [https://perma.cc/AGB3-MDY2].

43. *See* Constantine Levoyannis & Mathieu Labreche, *The Geopolitics of Energy in the Eastern Mediterranean*, 3 EEJ 46, 46 (2013).

44. UNCLOS, *supra* note 4, art. 2, 19.

45. *See* Schmitt, *supra* note 2, at 24-26.

46. Emily A. Georgiades, *The IMIA Islets: A Beginning to the Maritime Delimitation of the Aegean Sea Dispute,* 17 OCEAN & COASTAL L.J. 103, 106 (2011).

states to cast a negative vote, and Article 3 was one of the main reasons for its negative vote.[47] Article 3 of UNCLOS establishes the breadth of territorial waters and states that, "every State has the right to establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles, measured from baselines determined in accordance with this Convention."[48] Before 1936, Greece claimed three nautical miles of territorial waters in the Aegean,[49] and later increased it to six nautical miles with a law issued in 1936.[50] Presently, Turkey also claims six nautical miles of territorial waters in the Aegean.[51] Even though Greece later ratified UNCLOS, it has not exercised its right to twelve nautical mile territorial waters in the Aegean.[52] However, Greece has been consistently claiming that, according to UNCLOS, it has a reserved right to twelve nautical mile territorial waters.[53] Greek signature to UNCLOS, and related claims, has been responded to very fiercely by Turkey, interpreting both sufficiently serious enough as to regard Greek signature and potential territorial sea claims as a *casus belli*.[54]

47. Nilufer Oral, *Non-Ratification of the 1982 Law of the Sea Convention: An Aegean Dilemma of Environmental and Global Consequence*, 1 BERKELEY J. INT'L L. PUBLICIST 53, 53 (2009).

48. UNCLOS, *supra* note 4, art. 3.

49. *Background Note on Aegean Disputes*, THE TURKISH MINISTRY OF FOREIGN AFFAIRS, https://www.mfa.gov.tr/background-note-on-aegean-disputes.en.mfa [https://perma.cc/PD6N-C7JV] (last visited May 26, 2022).

50. N. 230/1936 Ar. 1 (concerning the extension of the territorial waters of the Kingdom of Greece).

51. U.S. Navy Judge Advoc. Gen. Corps, *Turkey 2016*, MARITIME CLAIMS REFERENCE MANUAL, https://www.jag.navy.mil/organization/code_10_mcrm.htm [https://perma.cc/ZX85-4DV2] (last visited May 26, 2022), https://www.jag.navy.mil/organization/documents/mcrm/Turkey2016.pdf [https://perma.cc/A6ZZ-4BA5] (last visited May 26, 2022).

52. U.S. Navy Judge Advoc. Gen. Corps, *Greece 2014*, MARITIME CLAIMS REFERENCE MANUAL, https://www.jag.navy.mil/organization/code_10_mcrm.htm [https://perma.cc/ZX85-4DV2] (last visited May 26, 2022), https://www.jag.navy.mil/organization/documents/mcrm/Greece2014.pdf [https://perma.cc/FL8M-2FK9] (Last visited May 26, 2022).

53. Jon M. Van Dyke, *An Analysis of the Aegean Disputes under International Law*, 36 OCEAN DEV. & INT'L L. 63, 83 (2005).

54. *See Text of the Grand National Assembly's Unanimous Declaration of June 8, 1995* (TRT TV Ankara broadcast, June 8, 1995) (transcribed by BBC Summary of World Broadcasts), available in LEXIS.

A. Parties' Claims Regarding Territorial Waters in the Aegean

1. The Territorial Seas of Greece and Turkey

According to Greece, the only issue in the Aegean between the two states is the continental shelf dispute, specifically as it pertains to Greek islands.[55] Greece regards its right of territorial waters under the framework of complete sovereignty and does not agree that there is uncertainty, or any type of conflict, on that matter.[56] Greece claims that "[m]aritime boundaries between Greece and Turkey are clearly delimited" by international agreements, and in the absence of an agreement, boundaries are delimited by customary international law.[57] Greece refers to UNCLOS Article 15,[58] the Athens Protocol of November 26, 1926, and the Agreement and Protocol of 1932 between Italy and Turkey, as the customary international law pertaining to the issue.[59] Greece asserts that these delimitation agreements are in full force, and where there is no agreement, the principle of equidistance applies.[60] Even after the Imia crisis, it has been asserted by Greece that there was only one issue in the Aegean, and that was the delimitation of the continental shelf.[61]

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55. *Greek-Turkish dispute over the delimitation of the continental shelf*, HELLENIC REPUBLIC MINISTRY OF FOREIGN AFFAIRS, https://www.mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/delimitation-of-the-continental-shelf.html [https://perma.cc/SRT2-SPFW] (last visited Sep. 10, 2021).

56. *Issues of Greek – Turkish Relations*, HELLENIC REPUBLIC MINISTRY OF FOREIGN AFFAIRS, https://www.mfa.gr/en/issues-of-greek-turkish-relations/ [https://perma.cc/X88S-6LME] (last visited Sep. 10, 2021).

57. *Maritime boundaries*, HELLENIC REPUBLIC MINISTRY OF FOREIGN AFFAIRS, https://www.mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/maritime-boundaries.html [https://perma.cc/27GQ-K8TJ] (Last visited Sep. 10, 2021).

58. The language of Article 15 of UNCLOS is as follows: "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 equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, 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." UNCLOS, *supra* note 4, art. 15. This principle is referred to as the principle of equidistance.

59. *Maritime boundaries, supra* note 57.

60. *Id.*

61. BYRON THEODOROPOULOS, THE SO-CALLED AEGEAN DISPUTE: WHAT ARE THE STAKES: WHAT IS THE COST? IN GREECE AND THE LAW OF THE SEA 325, 327 (Theodore C. Kariotis ed., 1997).

On the other hand, the Turkish Ministry of Foreign Affairs lists the delimitation of territorial waters in the Aegean as one of the outstanding issues with Greece.[62] The Turkish claim is that the Parties have not reached any agreement for the delimitation of their territorial waters.[63] Turkey accepts as customary international law the rule that states with adjacent or opposite coasts should reach a delimitation agreement.[64] As Turkey moves forward by stating there is no agreement between Greece and Turkey regarding maritime delimitation in the Aegean, neither for the adjacent nor opposite coasts they share, Turkey may challenge the enforceability of the claimed rules of customary international law asserted by Greece. It is put forth by the Turkish side that, "[e]xtension of territorial waters to twelve nautical miles will disproportionately alter the balance of interests in the Aegean Sea to the detriment of Turkey."[65] In the present situation of Greek claiming six nautical miles, because Greece has more than two-thousand islands in the Aegean, Greek territorial waters make up about forty percent of the Aegean Sea. If Greece is to increase its territorial waters to twelve nautical miles, Greek ownership will rise to over seventy percent.[66] In the case of such an extension, Turkish territorial waters will fall below ten percent of the Aegean Sea while the size of the high seas will fall from fifty-one percent to nineteen percent.[67] Turkey believes the extension of Greek territorial waters to twelve nautical miles will turn the Aegean Sea into a Greek lake.[68]

Greece has been basing its reservation of twelve nautical mile territorial waters on Article 3 of UNCLOS.[69] Some navigational provisions of UNCLOS are accepted to be customary international law.[70] Turkey is not a party to UNCLOS and has never shown any sign of interest in signature or ratification, compared to, for example, the United States, who also has neither signed nor ratified the UNCLOS yet has expressed many times that the navigational provisions are accepted as customary international law.[71]

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62. *The Outstanding Aegean Issues*, *supra* note 1.
63. *Id*.
64. *Id*.
65. *The Outstanding Aegean Issues*, *supra* note 1.
66. *Id.*
67. *Id.*
68. Schmitt, *supra* note 2, at 16, 25.
69. George P. Politakis, *The Aegean Agenda: Greek National Interests and the New Law of the Sea Convention,* 10 INT'L J. MARINE & COASTAL L. 497, 498 (1995).
70. *See id*.
71. Ryan P. Kelley, *UNCLOS, but No Cigar: Overcoming Obstacles to the Prosecution of Maritime*, 95 MINN. L. REV. 2285, 2296 (2011).

Customary international law develops over time between states, based upon a relatively consistent practice done out of a sense of legal obligation (*opinio juris*).[72] Turkey has not acquiesced to the formation of customary international law based upon UNCLOS in general, let alone using Article 3 to delimit territorial seas.[73] Turkey has been a "persistent objector" to UNCLOS since the beginning of the negotiation conferences and has kept the same position ever since.[74] If UNCLOS is accepted as customary international law, it still would not have any binding effect on Turkey because customary international law rule cannot be binding on persistent objector states.[75] Turkey can even assert that the rule of six nautical mile territorial waters has been an established "regional practice" in the Aegean because both Parties have been claiming six nautical mile territorial waters for decades.[76]

Extension of territorial waters by Greece will not only shrink the area of Turkish waters but of international waters as well. It has been suggested by Turkish scholars that extension of Greek territorial waters will pose a threat to Turkish national security and navigational freedom.[77] If such an extension were to occur, Turkey would have to pass through Greek territorial waters in order to reach Istanbul and the Port of Izmir, Turkey's second largest port.[78] This extension would also have an effect on Turkey's national defense because the Turkish Army would significantly lose its capability and flexibility to organize the defense of the Turkish coast.[79] However, in territorial waters, there is an exception to the sovereignty of the coastal state, and that is the right of innocent passage.[80] Thus, Turkish ships can exercise innocent passage in Greek territorial waters, with some limitations. For example, innocent passage must always be on the surface.[81] This means Turkish submarines would be unable to submerge in Greek waters. Also, in times of war and emergency, Greece could completely suspend innocent passage.[82] This would likely pose security

72. *See* Hiroshi Taki, *Opinio Juris and the Formation of Customary International Law: A Theoretical Analysis*, 51 GERMAN Y.B. INT'L L. 447, 464 (2008).

73. Georgiades*, supra* note 46, at 107.

74. Van Dyke, *supra* note 53, at 84.

75. 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).

76. Van Dyke, *supra* note 53, at 83.

77. *See* Cuneyt Yenigun, *Aegean Maritime Boundaries: Issues and Solutions,* 6 TURKISH REVIEW OF BALKAN STUDIES 153, 158 (2001).

78. *See id.*

79. *See id.*

80. UNCLOS, *supra* note 4, art. 17.

81. *Id.* art. 20.

82. *Id.* art. 25.

threats unacceptable to Turkey. In addition, during war time, a Turkish ally state, or another state with the authorization to pass through the Turkish Straits, may also need to get Greek authorization. Moreover, because Turkey's size of ownership of the high seas could shrink, Turkey's high seas freedom would be negatively impacted.[83]

2. The Territorial Seas of Greek and Turkish Islands

When it comes to the territorial sea of islands in the Aegean, the Greek suggestion is to apply the principle of equidistance, based specifically on the law of the sea.[84] Even though the first half of Article 15 of UNCLOS suggests the application of the principle of equidistance between states of adjacent or opposite coasts as a default, the second half of Article 15 states that the principle of equidistance 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."[85] Since Turkey and Greece have both opposite and adjacent coasts in the Aegean, the conflict requires a more specific and specialized resolution. Additionally, some Greek islands are on the "wrong side," meaning that they are on the Turkish side of the median line. For instance, Samos is situated around 1.6 kilometers away from the Turkish coast, Meis is around 3.5 kilometers away, and Chios is 6 kilometers away. The geographic proximity of Greek islands to the Turkish coast is highly likely to create a "special circumstance" in the Aegean for delimiting the territorial waters. This may also be the reason why the Parties have not been able to settle on an agreement through diplomatic channels.

Article 121 of UNCLOS defines the rights of islands in international maritime law. Pursuant to that article, except for rocks that cannot sustain any human life and economic activities, islets and islands are entitled to "the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf."[86] Islands are afforded the same rights as the mainland and provisions in UNCLOS that relate to the maritime zones are applicable to islands as well. In the interest of equity, international rulings will, at time, give islands lesser effect than they are entitled to pursuant to UNCLOS.[87] Prevention of a gross disproportion of shares, the preservation

83. FARAJ ABDULLAH AHNISH, THE INTERNATIONAL LAW OF MARITIME BOUNDARIES AND THE PRACTICE OF STATES IN THE MEDITERRANEAN SEA 268 (1993).

84. *Greek-Turkish dispute over the delimitation of the continental shelf*, *supra* note 55.

85. UNCLOS, *supra* note 4, art. 15.

86. UNCLOS, *supra* note 4, art. 121.

87. Phaedon John Kozyris, *Islands in the Recent Maritime Adjudications: Simplifying the Aegean Conundru*m, 39 OCEAN DEV. & INT'L L. 329, 329 (2008).

of freedom of navigation, and the security interests of parties can play a crucial role in such instances.[88]

3. The Aegean as a Semi-Enclosed Sea

Additionally, because the Aegean is a semi-enclosed sea, another issue arises. Article 123 of UNCLOS acknowledges that enclosed or semi-enclosed seas require a different and more specialized regime.[89] "States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention."[90] Under this article, Greece has a direct obligation to cooperate with Turkey as both Parties exercise their rights in the Aegean. It has also been suggested that Turkey can make reference to Article 300 of UNCLOS, which says that states should exercise their rights relating to the Convention "in a manner which would not constitute an abuse of rights."[91] Though at first glance it may seem that Greece should be entitled to twelve nautical miles of territorial waters and delimitation by the principle of equidistance, this extension would completely engulf the southeastern side of the Aegean Sea into Greek territorial waters and severely hamper Turkish navigational freedom.[92]

B. Instructive International Adjudications on the Delimitation of Territorial Waters

1. Nicaragua v. Honduras

One recent example to these international adjudications is the case of *Nicaragua v. Honduras*.[93] Nicaragua and Honduras had an ongoing dispute since the nineteenth century regarding the maritime delimitation and entitlement of several islands in the Caribbean Sea.[94] The International

88. *See id.* at 330.

89. UNCLOS, *supra* note 4, art. 123.

90. *Id.*

91. Yuksel Inan & Sertac H. Baseren, *The Troubled Situation of the Aegean Territorial Waters*, 4 ETUDES HELLENIQUES / HELLENIC STUDIES 55, 61 (1996).

92. Van Dyke, *supra* note 70, at 84.

93. Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.), Judgment, 2007 I.C.J. 659 (Oct. 8) [hereinafter Nicar. v. Hond.].

94. Coalter G. Lathrop, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras),* 102 AM. J. INT'L L. 113, 113 (2008).

Court of Justice started its decision by first identifying the relevant coasts and territorial lands.[95] After determining that four of the disputed islands belonged to Honduras and one to Nicaragua, the Court reached a decision on the maritime delimitation conflict.[96] The Court emphasized the equal treatment of all coasts, whether belonging to an island or the mainland.[97] According to the International Court of Justice, states have the right to extend their territorial waters to twelve nautical miles "from its mainland or for islands under its sovereignty."[98] A historic title or special circumstance could provide a possible exception to this rule. Nicaragua claimed that such an extension for the islands on the opposite side would result in gross inequity.[99] The Court took these claims under consideration but did not find any gross disproportion and established that if there was any inequity, the islands on the opposite side would have an insignificant effect.[100] Regarding situations where a line is to cover several zones of coincident jurisdiction, the Court noted that the application of equitable principles, which is similar to the equidistance method, could be applied.[101] However, even though the method of equidistance had a "certain intrinsic value and scientific character," it did not have "priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate."[102]

2. Romania v. Ukraine

A similar dispute arose between Ukraine and Romania. In 2004, Romania filed a case against Ukraine in the International Court of Justice for a dispute relating to the delimitation of their continental shelf, exclusive economic zone, and Serpents Island.[103] Although there was no controversy regarding the territorial waters, the case was significant because the Court clarified its 3-step process for deciding on disputes of maritime zone delimitation.[104] The Court held that its methodology for

95. Nicar. v. Hond., 2007 I.C.J., ¶ 289.

96. Phaedon John Kozyris, *Islands in the Recent Maritime Adjudications: Simplifying the Aegean Conundrum,* 39 OCEAN DEV. & INT'L L. 329, 331 (2008).

97. *Id.*

98. Nicar. v. Hond., 2007 I.C.J., ¶ 302.

99. *Id*. ¶ 98.

100. *Id.* ¶¶ 300-304.

101. *Id.* ¶ 271.

102. *Id.* ¶ 272.

103. Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment, 2009 I.C.J. 61, ¶¶ 1, 23 (Feb. 3).

104. *See* Jessica Cooper & Nina Mohseni, *Case: Maritime Delimitation in the Black Sea (Rom. v. Ukr.),* 9 CHICAGO-KENT J. INT'L & COMP. LAW 1, 1-2 (2009).

defining maritime zones consisted of first, drawing an equidistance line between appropriate basepoints of two coasts; second, weighing any factors that may make the equidistance line inequitable, and; third, making sure that the other relevant factors such as proportionality and coastal lengths would assure the fairness of the equidistance line.[105] While delimiting the maritime zones, the Court considered the security interests and economic activities of the Parties as well as the geographic features of the Black Sea.[106] The Court also examined whether Serpents Island had any significance to Ukraine other than its potential effect in maritime delimitation.[107] In case of an arbitration on the Aegean Dispute, an arbitral tribunal is very likely to follow the methodology of the International Court of Justice in order to reach an equitable solution.

3. Qatar v. Bahrain

Another example that may be instructive to a potential arbitral tribunal on the Aegean Dispute is the application of equitable principles in the *Qatar v. Bahrain* decision for the delimitation of maritime zones.[108] In order to delimit the Persian Gulf between the two Parties, the International Court of Justice first drew an equidistance line and then made sure that there were no special circumstances making the equidistance line unfair.[109] For instance, the Court ruled that giving Fasht al Azm—an underwater area between the Parties—twelve nautical mile territorial waters would push the equidistance line too far east, and would create disproportionality in the area.[110] The Island of Jaradah was also recognized as a special circumstance by the Court.[111] It was ignored completely while delimiting the maritime borders since it could disproportionally push the median line against Qatar if given effect.[112]

However, an island on the wrong side cannot automatically create a special circumstance. As an example, the International Tribunal for the

105. David H. Anderson*, Maritime Delimitation in the Black Sea Case (Rom. v. Ukr.),* 8 LAW & PRAC. INT'L CTS. & TRIBUNALS 305, 315-317 (2009).

106*. Id.* at 321-23.

107. Petros Siousiouras & Georgios Chrysochou, *The Aegean Dispute in the Context of Contemporary Judicial Decisions on Maritime Delimitation*, 3 LAWS 12, 21-22 (2014).

108. Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.), Judgment, 2001 I.C.J. 40 (Mar. 16) [hereinafter Qatar v. Bahr.].

109. Kozyris*, supra* note 87, at 334.

110*. Id.* at 335.

111. Qatar v. Bahr., 2001 I.C.J., ¶¶ 179, 195, 219.

112. Kozyris*, supra* note 87, at 335.

Law of the Sea decided in *Bangladesh v. Myanmar* that an island, simply by being on the wrong side, cannot create a special circumstance that will prevent the application of the principle of equidistance.[113] The location of the island and its proximity to the equidistance line must be examined altogether to decide if it creates a special circumstance.[114]

C. How Would a Potential Arbitral Tribunal Decide?

The method of using an equidistance line has been widely applied in maritime delimitation cases. However, it is observed that the equidistance line is not a stiff method that leaves no room for alteration. When special circumstances exist in an area, the equidistance line can be altered to attain equitable and fair solutions.

The Greek mainland is entitled to twelve nautical mile territorial waters under UNCLOS. However, the islands on the eastern side of the Aegean, those that are in close proximity to the Turkish coast, are likely to be regarded as special circumstances. Extension of the territorial waters of all Greek islands to twelve nautical miles will not only injure Turkey's right to high seas freedom, but more importantly, Turkey's "unimpeded ability to move its ships and planes between the Turkish Straits and the Mediterranean."[115]

One suggestion is to divide the Aegean into "west" and "east." The islands in the East Aegean are much closer to the Turkish coast than to the Greek coast. This is where a "special circumstance" can arise. In the West Aegean Sea, Greece can claim twelve nautical mile territorial waters or request the application of the principle of equidistance. In the East Aegean Sea, especially around the Dodecanese, Greece can claim three or six nautical mile territorial waters depending on the proximity of the island to the Turkish coast.

In other circumstances, states have agreed to claim three nautical mile territorial waters so as not to hamper navigational freedom. For instance, Venezuela claims three nautical mile territorial waters for its island of Isla Patos near Trinidad-Tobago, Abu Dhabi claims three nautical mile territorial waters for its island of Dayyinah near Qatar, and Australia

113. Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Case No. 16, Judgment of Mar. 14, 2012, ITLOS Rep. 4 [hereinafter Bangl./Myan. Dispute]; Riddhi Shah, *Bangladesh–Myanmar ITLOS Verdict: Precedence for India?*, 37 STRATEGIC ANALYSIS 178, 179 (2013).

114. Bangl./Myan. Dispute, ITLOS Rep. 4, ¶¶ 78-79.

115. Van Dyke*, supra* note 53, at 84.

claims three nautical mile territorial waters for its islands in the Torres Strait near Papua New Guinea.[116]

III. THE DISPUTE REGARDING THE LEGAL STATUS OF ISLANDS, ISLETS, AND ROCKS IN THE AEGEAN

The second dispute in the Aegean Sea relates to the legal status of several islands, islets, and rocks between Greece and Turkey. Because the Parties cannot agree on the legal status of some geographic figures, they cannot agree on the delimitation of their territorial seas and continental shelves. In fact, the Turkish Ministry of Foreign Affairs states that the dispute concerning the status of some islands, rocks, and islets is "the stumbling blocks before reaching a settlement as regards the delineation of maritime boundaries between the two countries."[117] Similar to the dispute regarding delimitation of territorial waters, Greece disagrees that there lays a controversy about the status of geographic figures in the Aegean.[118] The Greek standpoint is that the treaties between the Parties are clear and do not lead to any controversy.[119]

Turkey claims that the dispute has arisen because Greece and Turkey had "contesting claims . . . emanating from differing interpretations related to the meaning, scope, intent and legal effect of the territorial provisions of the relevant and valid international instruments in this respect."[120] In essence, this part of the Aegean Dispute is mainly related to treaty interpretation between the Parties. While Turkey recognizes the indisputable Greek authority of some islands in the Aegean without agreeing on the extension of their maritime boundaries, for some of the geographic figures closer to the Turkish coast, Turkey does not even recognize Greek sovereignty over them let alone their maritime zones.[121]

In order for an arbitral tribunal to render any decision at all, the determination of the legal status of these geographic figures must be the very first step. After determining the legal status of those maritime features in the Aegean, an arbitral tribunal will need to consider whether they are entitled to maritime zones. If the answer is affirmative for the second step, the tribunal will then need to consider the relevant factors in the area and

116. HIRAN W. JAYEWARDENE, THE REGIME OF ISLANDS IN INTERNATIONAL LAW 425, 425, 437, 482 (Shigeru Oda ed., 1990).

117. *The Outstanding Aegean Issues, supra* note 1.

118. Toppare*, supra* note 9, at 23.

119. *Issues of Greek – Turkish Relations, supra* note 56.

120. *The Outstanding Aegean Issues, supra* note 1.

121. *See id.*

decide how much maritime zone should be given to which individual island and islet.

A. Background of the Dispute

Greece owns more than two thousand islands in the Aegean.[122] When it comes to the disputed geographic figures in the area, the first essential step is to examine the language of the relevant treaties.

The first treaty to result in ambiguity, and hence conflict, is the Lausanne Treaty.[123] This Treaty has ended many conflicts between the Parties.[124] In Article 6 of the Lausanne Treaty, the Parties agreed that "in the absence of provisions to the contrary . . . islands and islets lying within three miles of the coast are included within the frontier of the coastal State."[125] In the 1920s, the common and accepted breadth of territorial waters was 3 nautical miles.[126] It can be interpreted that, in the absence of provisions to the contrary, the islets and islands situated in one state's territorial waters shall belong to that same coastal state.[127]

Article 15 of the Lausanne Treaty is also essential to the Aegean Dispute, and it states as follows:

> Turkey renounces in favour of Italy all rights and title over the following islands: Stamalia (Astrapalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), and Cos (Kos), which are now occupied by Italy, and the islets dependent thereon, and also over the island of Castellorizzo.[128]

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122. Schmitt, *supra* note 2, at 17.

123. Lausanne Treaty of Peace, *supra* note 16.

124. The Lausanne Treaty of Peace is one of the most important treaties in Turkish history. It drew the borders of the Republic of Turkey and it ended the Turkish War of Independence 1919-1923. It not only determined the sovereignty on the Anatolian mainland but also on the Aegean islands. *See* discussion infra Section I(A).

125. Lausanne Treaty of Peace, *supra* note 16, art. 6.

126. Van Dyke, *supra* note 53, at 73. In 1598, Denmark was the first state to adopt 3 nautical mile territorial waters, and Fernardo Galiani, an Italian diplomat, also acknowledged the territorial waters for 3 nautical miles in 1782, as this was the longest cannon-shot at that time. Arda Ozkan, Uluslararası Deniz Hukuku Açısından Ege Denizi Kıta Sahanlığı Uyuşmazlığı [Aegean Sea Continental Shelf Dispute in Terms of International Law of the Sea] (July 2009) (Unpublished Master's thesis on file with the Karadeniz Technical University Library Repository System).

127. Van Dyke, *supra* note 53, at 73.

128. Lausanne Treaty of Peace, *supra* note 16, art. 15.

Pursuant to this treaty, Turkey had ceded the Dodecanese Islands to Italy.[129] The wording to be noted here is "the islets dependent thereon," which had not been defined by the Lausanne Treaty. In 1947 Greece signed the Paris Treaty, and in Article 14 Italy ceded full sovereignty over the Dodecanese and Castellerizo islets "as well as the adjacent isles."[130] The Paris Treaty used the term "adjacent islets" instead of "dependent islets."[131] The differing terms has resulted in differing interpretations by the Parties. It is unclear whether the negotiators of these treaties were aiming for a distinction between "adjacent" and "dependent islets," or they indeed were referring to the same group of islands. However, "'[a]djacent' is a more precise term because it refers to geographic contiguity and allows the distinction to be made by cartographers rather than psychologists or philosophers."[132]

B. The Disputed Islands of the Aegean

The ambiguity between these treaty provisions is creating two conflict areas when it comes to the legal status of islands, islets, and rocks in the Aegean. The first is the long-disputed Imia (Kardak) Rocks, and the second is the islets of Gavdos and Gavdopula, which lay thirty kilometers south to Crete.[133]

1. The Imia Rocks

The Imia – or, by its Turkish name, Kardak – crisis broke out in 1995.[134] The islet is approximately 10 acres in size, and, as the title of this subsection suggests, is comprised of many rocks. At the time of the incident, it was uninhabited, it had no flag flying on it, and it had no military force present.[135] Today, the Imia rocks do not hold any significant military or economic benefit or use.[136]

On December 25, 1995 a Turkish cargo ship hit and went aground on the Imia islet.[137] The captain of the cargo ship rejected Greek help at first

129. *Id.*
130. Paris Treaty of Peace, *supra* note 19, art. 14.
131. Van Dyke, *supra* note 53, at 66.
132. Van Dyke, *supra* note 53, at 68.
133. *Id.* at 70.
134. CAROL MIGDALOVITZ, CONG. RSCH. SERV., 96-140 F, GREECE AND TURKEY: THE ROCKY ISLET CRISIS (1996).
135. *Id.*
136. Van Dyke, *supra* note 53, at 73.
137. *Id.*

insisting that the islet was Turkish territory.[138] The mayor of a neighboring Greek island raised a Greek flag on the Imia islet.[139] The Turkish Ministry of Foreign Affairs protested this action by sending a note to Greece that the Imia rocks were under Turkish sovereignty.[140] Upon rejection of this claim by the Greek side, several Turkish journalists landed on the islet by helicopter, lowered the Greek flag and raised a Turkish flag instead.[141] Although this action was later disapproved by the Turkish Ministry of Foreign Affairs, it still increased the tension in the area.[142] Both Turkey and Greece ended up sending their fleets and military forces to the area and preparation for a war had started when then conflict was settled by the successful mediation efforts of the United States.[143] Both Parties withdrew from the islet and removed their flags, and now there is no flag on the islet and its entitlement is still disputed.[144]

Greece claims that the Imia Rocks are "dependent" islands of Kalymnos (which belongs to the Dodecanese Islands) based on the 1923 Lausanne Treaty.[145] In response to that, Turkey claims that the Imia Rocks have not been mentioned specifically in any treaty between the Parties.[146] The rocks and islet are situated 3.8 nautical miles from the Turkish mainland.[147] They are much more "adjacent" to Turkey than to Greece and thus, pursuant to the Paris Treaty, the Imia Rocks are under Turkish sovereignty.[148] As seen, both treaties to which the Parties are referring to are in effect, and their ambiguous language is the source of the controversy.

2. The Islets of Gavdos and Gavdapula

The situation with the islets of Gavdos and Gavdapula have been more tranquil compared to the Imia crisis. These islets are situated close to the Greek island of Crete. Turkey claims that the islets of Gavdos and Gavdopula have been under the sovereignty of the Ottoman Empire and

138. *Id.*
139. *Id.*
140. *Id.*
141. Anastasia Strati, *Postscript: Tension in the Aegean - The 'Imia' Incident*, 9 LEIDON J. INT'L L. 122, 122 (1996).
142. MIGDALOVITZ, *supra* note 134.
143. *Id.*
144. *Id.*
145. Van Dyke, *supra* note 53, at 69.
146. *See* Inan & Baseren*, supra* note 91, at 65.
147. Krateros Ioannou, *A Tale of Two Islets: The Imia Incident Between Greece and Turkey,* 1 THESIS, A JOURNAL OF FOREIGN POLICY ISSUES 33, § 5.1(e) (1997).
148. Inan & Baseren*, supra* note 91, at 64-65.

they have never been openly mentioned or ceded to any state by any treaty.[149] By the Treaty of London in 1913, the Ottoman Empire had ceded Crete to Greece but the treaty made no mention of the islets of Gavdos and Gavdopula.[150] Greece has been exercising authority over these islets since the twentieth century.[151] Even though these two islets are currently under active Greek administration, in 1996 the Turkish General Staff opposed the inclusion of Gavdos islet in a NATO military exercise by claiming that the islet's legal status was controversial.[152]

The islets in controversy here are significantly smaller compared to other islands in the Aegean. However, their significance is their relation to the maritime delimitation of the Aegean Sea. According to Article 121 of UNCLOS, islands are entitled to the same territorial waters, contiguous zone, continental shelf, and exclusive economic zone rights as any mainland.[153]

C. Instructive International Adjudications on the Entitlement of Islands, Islets, and Rocks

If a potential arbitral tribunal is to settle the Aegean dispute, there are several instructive adjudications that the Tribunal could gain guidance from. Most of these adjudications settled disputes regarding legal entitlement of islands by taking into account the principles of equity and the state authority exercised over the islands.

1. Eritrea v. Yemen Arbitration

The *Eritrea v. Yemen* decision[154] is significant for two reasons. First, it is an arbitration case that deals with a conflict similar to the conflict between Greece and Turkey. Second, the Lausanne Treaty is one of the primary legal structures analyzed.

The 1998 dispute between Eritrea and Yemen concerned the delimitation of continental shelves and exclusive economic zones. The Arbitral Tribunal also paid some attention to the delimitation of territorial

149. *Id.* at 70.
150. *See* Treaty of London, May 30, 1913, 107 British and Foreign State Papers 656.
151. Van Dyke, *supra* note 53, at 73.
152. *Id.* at 70.
153. UNCLOS, *supra* note 4, art. 121.
154. Award of the Arbitral Tribunal in the second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation) 22 R.I.A.A. 333 (Perm. Ct. Arb. 1999) [hereinafter Eri./Yemen].

waters.[155] It was accepted that the small islets (defined as "rocks" in UNCLOS) were entitled to twelve nautical mile territorial waters even if they cannot sustain any human habitation and economic life, yet they would not be considered for an exclusive economic zone or continental shelf.[156] The Tribunal also made clear that for the determination of legal entitlement, the historical claims were not ultimately helpful and relevant.[157] Instead, the Tribunal paid greater attention to the active administration on the islands. Based on an evaluation of "public claims, legislative acts seeking to regulate activity on the islands, licensing of activities in the surrounding waters, enforcement of fishing regulations, licensing of tourist activity, search and rescue operations, environmental protection, construction on the islands, and the exercising of criminal and civil jurisdiction on the islands," the Tribunal awarded the islets of Zuqar-Hanish to Yemen.[158] The reason for this decision was that Yemen had been displaying a greater authority on those islets.[159]

Another issue the Tribunal considered while determining the sovereignty over some islands was the islands' location and geographical proximity to Eritrea and Yemen.[160] The Mohabbakahs and the Haycock Islands were awarded to Eritrea because they were situated within twelve nautical miles of the Eritrean coast.[161] The Tribunal also made reference to the Lausanne Treaty and confirmed its provision establishing that islands within the territorial waters of one state shall be under the sovereignty of that same coastal state.[162]

The *Eritrea v. Yemen* decision was not the first to recognize the rule of "recent and continuing authority" for the determination of sovereignty over islands. The Arbitral Tribunal for *Eritrea v. Yemen* based its ruling on two very important cases. The first of these decisions is the *Island of Palmas Case*, which was settled by the Permanent Court of Justice in 1928.[163] The dispute was between the United States and the Netherlands.

155. Kozyris, *supra note* 87, at 336.
156. Eri./Yemen, 22 R.I.A.A., ¶¶ 119, 154, 158, 161.
157. Kozyris, *supra note* 87, at 336-337.
158. Eri./Yemen, 22 R.I.A.A., ¶ 450.
159. *Id.* ¶ 508.
160. Van Dyke, *supra* note 53, at 72.
161. Eri./Yemen, 22 R.I.A.A., ¶ 458.
162. *Id.* ¶¶ 476-480.
163. Judicial Decisions Involving Questions of International Law, Arbitral Award, Rendered in Conformity with the Special Agreement Concluded on January 23, 1925 Between the United States of America and the Netherlands Relating to the Arbitration of Differences Respecting Sovereignty Over the Island of Palmas (or Miangas) (U.S./Neth.), 2 R.I.A.A. 829 (April 4, 1928), *reprinted* in 22 AM. J. INT'L L. 867, 909 (1928) [hereinafter Island of Palmas].

The United States was the colonial power ruling the Philippine Islands and the Netherlands was governing Indonesia. During the proceedings, the United States claimed Palmas Island was discovered by Spain and that the United States was the successor of Spain in the Philippines.[164] The Netherlands, on the other hand, indicated her ongoing contact with the island and claimed that her sovereignty over the island was a result of agreements executed with native princes.[165] Judge Max Huber, the sole arbitrator in this case, ruled that historical claims were irrelevant and international law did not support geographical proximity for making sovereignty decisions.[166] The island was awarded to the Netherlands because she evoked a peaceful and continuous display of state authority whereas the United States' only claims were based on titles relating to acts or circumstances leading to the acquisition of sovereignty.[167]

The second decision that the *Eritrea v. Yemen* Tribunal relied on was from a case between France and the United Kingdom. Both had been claiming sovereignty over the rocks and islets of Minquiers and Ecrehos.[168] The International Court of Justice decided that Minquiers and Ecrehos were under British sovereignty.[169] The Court did not pay attention to the historical sovereignty claims of the Parties but rather, considered the recent and actual displays of authority.[170] According to the evidence presented to the Court, it was the United Kingdom who had been exercising state functions and authority over the geographical features.[171]

2. Qatar v. Bahrain

Another example for a future arbitral tribunal on the Aegean Dispute may be the *Qatar v. Bahrain* decision of the International Court of Justice, a case initiated by Qatar in 1991.[172] The dispute was in regard to the sovereignty over islands in the Gulf region as well as delimitation of maritime zones. The main disputed islands were the Hawar islands,

164. Van Dyke*, supra* note 53, at 71.

165. *Id;* Island of Palmas, 22 AM. J. INT'L L., at 874.

166. Van Dyke*, supra* note 53, at 72.

167. Island of Palmas, 22 AM. J. INT'L L., at 909-11.

168. Minquiers and Ecrehos Case (Fr./U.K.), 1953 I.C.J. 47, 50-51 (Nov. 17, 1953) [hereinafter Minquiers and Ecrehos Case].

169. *Id.* at 72.

170. Van Dyke*, supra* note 53, at 71.

171 Minquiers and Ecrehos Case, 1953 I.C.J., at 70-72.

172. Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.), Judgment, 2001 I.C.J. 40 (Mar. 16) [hereinafter Qatar v. Bahr.].

Zubarah Island, and the island of Jaradah.[173] The International Court of Justice first resolved the conflict regarding entitlement of these islands. Following that, the Court ruled on maritime delimitation.

For the Hawar Islands, the Court consulted primary sources and other legal documents relevant to the case. A decision by the British Government in 1939 made clear that the Hawar Islands were under the sovereignty of Bahrain.[174] Bahrain also actively exercised sovereignty over the islands, and for these reasons, the Court awarded the Hawar Islands to Bahrain and rejected the claims from Qatar.[175]

Zubarah Island was another disputed island between Qatar and Bahrain. While settling the dispute, the Court paid attention to the recent authority on the island, rather than looking at the historical claims of the Parties, and it ruled that since 1868, Qatari Sheikhs had been exercising sovereign authority on the island.[176] As Bahrain could not prove its active and recent authority over the island, Zubarah was awarded to Qatar.[177] This decision marks the importance of exercising sovereign authority on an island when making an entitlement decision.

The Island of Jaradah was also at the center of the controversy. Qatar first claimed that being such a small geographic figure, Jaradah was not an island and it could not be entitled to any maritime zones.[178] Jaradah was twelve nautical miles away from the coasts of both Parties.[179] The International Court of Justice ruled that Jaradah and it was under the sovereignty of Bahrain.[180] The standpoint of the International Court of Justice while determining the entitlement of Jaradah was again the recent and ongoing exercise of sovereignty over the island. Bahrain had placed a navigation beacon, drilled an artesian water well on the uninhabited island, and had been issuing permits for fishing and oil exploration.[181]

173. Kozyris, *supra* note 87, at 335.
174. Qatar v. Bahr., 2001 I.C.J., ¶ 103.
175. *Id.* ¶¶ 101, 128, 147.
176. *Id.* ¶ 96.
177. *Id.* ¶ 97.
178. *Id.* ¶¶ 191, 193. Jaradah is a geographical feature that, at high tide, measures 12 by 4 metres and 0.4 metres high. Malcolm D. Evans*, Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),* 51 INT'L & COMP. L.Q. 709, 716 (2002).
179. Evans, *supra* note 178, at 716.
180. Qatar v. Bahr., 2001 I.C.J., ¶¶ 195-97.
181. *Id.*

3. How Would a Potential Arbitral Tribunal Decide?

As seen above, international adjudications have set the ground rules for determining sovereignty over disputed islands and islets. When it comes to their application, the tribunal will also need to consider Article 6 of the Lausanne Treaty.[182] According to this article, the islands and islets in a state's territorial waters should be awarded to the same coastal state. This interpretation was also confirmed in the *Eritrea v. Yemen* decision.[183] The Imia Rocks are much closer to the Turkish coast than to the Greek coast, and they are situated inside the six nautical mile territorial waters of Turkey.[184] The Imia Rocks are uninhabited, and they cannot sustain any human life or economic activities. Thus, if the Imia Rocks are granted to Turkey, under *Eritrea v. Yemen*, they will be entitled to their own territorial waters, but no continental shelf or exclusive economic zone claim can be claimed by Turkey.

For the islets of Gavdos and Gavdopula, a potential tribunal will need to consider the recent and continuous Greek sovereignty over them. If the tribunal examines the last 100 years to determine sovereignty, it will be clear that the islets have been governed by Greece even though they are not specifically mentioned in any treaty.[185] The islets also lay closer to Greece. Here, Greece holds a significantly stronger position, and Turkey will not be able to claim any sovereignty on the islets of Gavdos and Gavdopula. Even though they are quite small, the islets have a population, and they can sustain human life.[186] It is very likely that a potential arbitral tribunal would grant them their own continental shelf and exclusive economic zone areas as well as territorial waters.

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182. Lausanne Treaty of Peace, *supra* note 16; Van Dyke, *supra* note 53, at 73.

183. Award of the Arbitral Tribunal in the second stage of the proceedings between Eritrea and Yemen (Maritime Delimitation) 22 R.I.A.A. 333, ¶ 373 (Perm. Ct. Arb. 1999) [hereinafter Eri./Yemen]. The Mohabbakahs and the Haycock Islands were awarded to Eritrea because they were in Eritrean territorial waters. *Id.* ¶¶ 370-71.

184. Van Dyke, *supra* note 53, at 73.

185. *Id.*

186. While population increases in summer months due to tourism, the islets have an off-season population of around 100 people. *Greece is preparing for a tourist influx - but is it ready?* EURONEWS (Updated: May 14, 2021) https://www.euronews.com/my-europe/2021/05/13/greece-is-preparing-for-a-tourist-influx-but-is-it-ready? [https://perma.cc/2FL4-EZ25].

IV. THE CONTINENTAL SHELF DISPUTE

The continental shelf is an American concept that was introduced later to the international law of the sea.[187] Before the 20th century, the continental shelf was not an issue that was discussed internationally. On September 28, 1945, Harry Truman, then president of the United States, proclaimed an executive order declaring that the United States "'regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.'"[188] "This order also justified exploitation of the continental shelf by making reference to the 'worldwide need for new sources of petroleum and minerals.'"[189] Later on, in 1953, the United States Congress enacted this policy into the Outer Continental Shelf Act.[190] Following was a need to delimit and define the continental shelves in international law. This need became more apparent as technology advanced and it became possible to exploit the resources of the continental shelf, whether they be over or under.

In 1958, the Geneva Convention on the Continental Shelf[191] defined the continental shelf:

> "(a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."[192]

The Geneva Convention on the Continental Shelf was later superseded by UNCLOS, which put forth a clearer definition: "[t]he continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas

187. *See* Letter from Harold Ickes, U.S. Secretary of Interior, to Franklin D. Roosevelt, U.S. President (June 5, 1943), in 11065-2 Foreign Relations of The United States: Diplomatic Papers, 1945, at 1481 (1967).

188. RESEARCH CENTRE FOR INTERNATIONAL LAW, UNIVERSITY OF CAMBRIDGE, INTERNATIONAL BOUNDARY CASES: THE CONTINENTAL SHELF 2 (1992).

189. Kent W. Patterson, *The Crescent and the Cross: Defining the Maritime Boundaries of Turkey and Greece in the Aegean Sea*, 17 LOY. MAR. L.J. 139, 144 (2018).

190. 43 U.S.C.A. §1331-1356(a) (1953).

191. The Geneva Convention on the Continental Shelf replaced the earlier notion of state sovereignty over a small strip of the surrounding sea areas. The Convention came into force on June 10, 1964, and reached a total number of fifty-eight members.

192. Geneva Convention on the Continental Shelf, art. 1, Apr. 29, 1958, 499 U.N.T.S. 311.

that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin," and if such a natural prolongation does not exist, it extends to 200 nautical miles from the baselines of where the territorial waters were measured.[193] In two exceptions, the continental shelf can be extended up to 350 nautical miles, the first being the existence of submarine ridges.[194] The other instance occurs when the shelf extends beyond 200 nautical miles, and if it does, the coastal state can delineate its continental shelf "by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude."[195] This definition is widely accepted today.[196]

The coastal state enjoys the exclusive authority to explore, develop and exploit the continental shelf for natural resources "consist[ing] of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species."[197] The continental shelf grants a large amount of exploitative rights to the coastal state and its significance has been increasing as the technology capable of exploitation keeps advancing. For this reason, the importance of continental shelf delimitation cannot be overstated.

The Lausanne Treaty did not address delimitation of the continental shelf.[198] While Greece is a party to both UNCLOS and the Geneva Convention on the Continental Shelf, Turkey is a party to neither.[199] Moreover, the specific geographics of the Aegean make it harder for Turkey and Greece to delimit their continental shelf areas. The Aegean Sea is semi-enclosed and its east-west length is less than 400 nautical-miles, leaving Parties with overlapping maritime zones.[200]

A. The Escalation of the Continental Shelf Dispute

The conflict regarding the continental shelf delimitation in the Aegean first appeared in 1963 when Greece issued exploration licenses for the maritime zones and subsoil around Rhodes and Karpathos islands.[201] While Greek research and exploration activities spread in the Aegean in

193. UNCLOS, *supra* note 4, art. 76(1).
194. *Id.* art. 76(6).
195. *Id.* art. 76(7).
196. Van Dyke, *supra* note 53, at 87.
197. UNCLOS, *supra* note 4, art. 77(4).
198. *See* Lausanne Treaty of Peace, *supra* note 16.
199. Patterson, *supra* note 189, at 149.
200. Toppare, *supra* note 9, at 33.
201. *Id.* at 34.

the following years, Turkey decided to respond by issuing exploration licenses to Turkish State Petroleum Corporation in 1973.[202] Greece claimed the licenses encroached upon her continental shelf.[203] Turkish Petroleum Corporation only conducted exploratory operations but did not actually exploit any resources.[204] As Turkey conducted these operations, the tension continued to rise in the area because Greece claimed that the licenses issued by Turkey were of no legal effect and violated the continental shelf rights of several Greek islands.[205]

In August of 1976, Greece appealed to the United Nations Security Council and asked for a meeting regarding Turkey's alleged violations of Greece's rights on its continental shelf.[206] Greece claimed that Turkish exploration operations in the Aegean Sea violated Greece's sovereignty and threatened international peace and security.[207] The Turkish reply to these claims was that the continental shelf was not delimited in the Aegean and exploration was only being conducted in the area that Turkey claimed to be her continental shelf.[208] Turkey also appealed to the United Nations Security Council for inviting Greece into bilateral negotiations for the delimitation of the continental shelf in the Aegean.[209]

Upon these appeals by Greece and Turkey, the United Nations Security Council adopted Resolution 395,[210] yet it was of no benefit. The United Nations Security Council advised Greece and Turkey to do everything in their power so as to reduce the tension in the area and consider potential judicial measures to end the conflict, such as resort to the International Court of Justice, in case diplomatic negotiations fail to settle the issue.[211]

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202. Patterson, *supra* note 189, at 158

203. Aegean Sea Continental Shelf (Greece v. Turk.), Interim Protection Order, 1976 I.C.J. 3, ¶ 16 (Sept. 11) [hereinafter Interim Protection Order].

204. Patterson, *supra* note 189, at 158.

205. Toppare, *supra* note 9, at 47 (naming the islands as Samothrace, Lemnos, Agios Efstratios, Lesvos, Chios, Psara and Andipsara).

206. Letter from George Papoulias, Permanent Representative of Greece to the United Nations, to The President of the Security Council (Aug. 10, 1976). To locate this document, go to https://documents.un.org/prod/ods.nsf/home.xsp (or current website of United Nations Official Document System) and enter S/12167 into the Symbol field.

207. *Id.*

208. *See* Letter from Ilter Türkmen, Permanent Representative of Turkey to the United Nations, to The Secretary-General (Aug. 11, 1976). To locate this document, go to https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp (or current website of United Nations Official Document System) and enter S/12172 into the Symbol field.

209. *Id.*

210. S.C. Res. 395 (Aug. 25, 1976).

211. *Id.* ¶¶ 2-4.

By this time Greece had already initiated the process with the International Court of Justice. Pursuant to Article 41 of the Statute of the International Court of Justice,[212] Greece first claimed interim measures from the Court so as to stop Turkey from conducting any more explorations in the region and threatening peace and security.[213] The International Court of Justice denied the Greek request for interim measures because "the alleged breach by Turkey of the exclusivity of the right claimed by Greece to acquire information concerning the natural resources of areas of continental shelf, if it were established, is one that might be capable of reparation by appropriate means."[214] In order for the International Court of Justice to grant interim measures, there should be sufficient risk of irreparable prejudice to the rights of the state.[215] The Court also stated that "the areas of continental shelf in which the activity complained of by Greece took place are *ex hypothesi* areas which, at the present stage of the proceedings, are to be considered by the Court as areas in dispute, and with respect to which Turkey also claims rights of exploration and exploitation."[216] Therefore, it was established that Greek sovereignty was not clear in the contested area by this order of the Court.

Greece then unilaterally instituted a case in the International Court of Justice against Turkey, for the delimitation of the continental shelf in the Aegean Sea.[217] The case concerned only the continental shelf delimitation and did not enclose any further claims regarding other maritime zones or conflict in the Aegean. In December of 1978, the International Court of Justice ruled that it lacked jurisdiction to settle the dispute.[218] Yet, the Court did acknowledge the legal dispute between Greece and Turkey regarding the delimitation of the continental shelf in the Aegean, without going into the merits of the dispute.[219] In the end, neither diplomatic nor judicial measures have yielded results on the continental shelf dispute.

The continental shelf dispute in the Aegean holds other significance because it is the only issue accepted to exist by Greece. Greek claims for

212. Statute of the International Court of Justice, art. 41(1) ("The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.").

213. Toppare, *supra* note 9, at 46.

214. Interim Protection Order, 1976 I.C.J., ¶ 33.

215. *Id*. ¶¶ 32-33.

216. *Id*. ¶ 28.

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

218. Aegean Sea Continental Shelf Case (Greece v. Turk.), Judgment, 1978 I.C.J. 3, ¶ 109 (Dec. 19).

219. *See id.* ¶ 78.

the Aegean completely disregard the other issues asserted by Turkey.[220] The Turkish side regards the continental shelf issue as being only one of the matters of the compound Aegean dispute.[221] The biggest problem area in the continental shelf dispute is again the eastern side of the Aegean Sea, similar to the territorial waters dispute because many islands in the eastern Aegean are situated just a few kilometers away from the Turkish coast.

The Greek stance on the continental shelf dispute is that every island, as a rule of international law and pursuant to the 1958 Geneva Convention on the Continental Shelf and UNCLOS, is entitled to its own continental shelf up to 200 nautical miles.[222] If continental shelves overlap, the delimitation should be a median line equidistant from the state's baselines (although UNCLOS only specifies using a median line to delimit territorial sea claims).[223] According to that position, Greece claims that the Greek continental shelf should extend from the Greek mainland to a median line between the eastern Greek islands, the Dodecanese and the Turkish coast.[224] "Under this interpretation, virtually all of the Aegean seabed except for the portion beneath the Turkish territorial sea would be under Greek control."[225] It has also been argued by Greek authors that a continental shelf delimited by a median line in the Aegean, and ignoring the islands in the eastern Aegean, would "threaten physical contiguity and military security of the Greek nation."[226] Some Greek authors have stated that even when the proportionality principle is applied, because Greece has many islands in the Aegean that are entitled to continental shelf areas, Turkey would have around ten to fifteen percent of the total continental shelf area of the Aegean.[227]

On the other hand, Turkey strictly opposes the continental shelf claims of the Greek islands. Turkey claims that it has "a right to the Eastern half of the Aegean Sea."[228] The Turkish stance is that, as a semi-enclosed sea and there being many Greek islands close to the Turkish coast, the Aegean Sea should constitute a special case that will hamper several Greek islands from having their own continental shelves.[229] Turkey stresses "its long

220. *Issues of Greek – Turkish Relations*, *supra* note 56.
221. *The Outstanding Aegean Issues, supra* note 1.
222. Schmitt, *supra* note 2, at 33.
223. *Id.*
224. Patterson, *supra* note 189, at 156.
225. Schmitt, *supra* note 2, at 33.
226. Van Dyke, *supra* note 53, at 88.
227. *Id.* at 89.
228. Patterson, *supra* note 189, at 158.
229. *See* John K.T. Chao, *The Aegean Sea Continental Shelf Dispute*, 16 ANNALS CHINESE SOC'Y INT'L L. 7, 9 (1979).

coastline, its large coastal population, its long maritime tradition, and its historical usage of the Aegean for navigation and resource exploitation for many centuries."[230] As previously stated, Turkey is neither a party to the 1958 Geneva Convention on Continental Shelf nor UNCLOS. Being a persistent objector, Turkey rejects the continental shelf rights of all Aegean islands.[231] Even though Turkey opposes the continental shelf areas of the Greek islands by relying on the principles of equitable delimitation and proportionality, "since Turkey desires to exploit the seabed . . . it has not questioned the exclusive control of a coastal state over the natural resources of its continental shelf."[232]

Overall, the continental shelf dispute in the Aegean comes down to whether all Greek islands should produce their own continental shelf areas or not. Both Parties are aiming to control the maximum maritime area possible in the Aegean. While Greece expects to have continental shelf areas for all of its islands, Turkey repudiates the continental shelf area of any Greek island. Being a legal issue, this is a question that can only be answered by international law and the principles of equity and proportionality. In similar disputes where courts have decided on the effect of islands on continental shelf delimitation, the courts considered the significance of islands in terms of population, economic activities, and political status.[233] A court may also consider security concerns, the physical contiguity of the islands, and the principle of non-encroachment.[234]

Even though Article 76 of UNCLOS grants states the right to extend their continental shelf to 200 nautical miles, and 350 nautical miles if certain conditions are met, the regime for delimitation of the continental shelf between states of adjacent and/or opposite coasts is different. According to Article 83 of UNCLOS, "[t]he delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law" and if no agreement is reached for a reasonable amount of time, states shall consult to reach peaceful measures of dispute settlement pursuant to UNCLOS.[235]

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230. Van Dyke, *supra* note 53, at 88.

231. Schmitt, *supra* note 2, at 33.

232. *Id.*

233. *See* Stephen Beaglehole, *The Equitable Delimitation of the Continental Shelf*, 14 VICTORIA U. WELLINGTON L. REV. 415, 437 (1984).

234 The principle of non-encroachment suggests that maritime zones of one state should not hamper another state's access to the high seas from its own maritime zones. UNCLOS, *supra* note 4, art. 7(6).

235. UNCLOS, *supra* note 4, art. 83.

In order to delimit the continental shelf, it will first be necessary to draw the baselines and delimit the territorial waters because the continental shelf is measured from the same baselines used for those waters. This exemplifies the reason that the Aegean dispute is a compound matter. The delimitation of territorial waters and the drawing of the baselines is utterly important because those matters affect the continental shelf dispute and the exploitation of the resources of the Aegean Sea.

B. Instructive International Adjudications on Continental Shelf Delimitation

Settled cases of continental shelf disputes provide an opportunity for a potential arbitral tribunal to interpret the rules on the delimitation of the continental shelf between neighboring states. Some of these cases, which are important landmark developments for the rules of international law, also include similarities to the Aegean dispute, discussed further below.

1. The North Sea Continental Shelf Dispute

The first relevant adjudication is that of the North Sea Continental Shelf dispute between Germany, Netherlands, and Denmark.[236] The International Court of Justice rejected the claim that continental shelf delimitation should be carried out by the principle of equidistance pursuant to the 1958 Geneva Convention on the Continental Shelf.[237] The Court further noted that Germany was not a party to the Convention and the principle of equidistance was not a customary international law rule.[238] In 1969, the Court ruled that continental shelf boundaries shall be drawn between parties in accordance with equitable principles that will entitle parties to continental shelf areas which are natural prolongations of their land territory under the sea.[239] The Court applied a delimitation method

236. North Sea Continental Shelf Cases (Germany v. Denmark; Germany v. Netherlands), Judgment, 1969 I.C.J. 3 (Feb. 20) [hereinafter North Sea Continental Shelf Cases]. The North Sea case is significant for being the first maritime delimitation case between adjacent states where the rule of proportionality was applied. It had been used as a corrective element in the last step in order to prevent an inequitable outcome. *See* NUGZAR DUNDUA, DELIMITATION OF MARITIME BOUNDARIES BETWEEN ADJACENT STATES, UNITED NATIONS NIPPON FOUNDATION FELLOW 17-20 (2006-2007), https://www.un.org/depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/dundua_0607_georgia.pdf [https://perma.cc/3JUZ-XNXA].

237. North Sea Continental Shelf Cases, 1969 I.C.J., ¶ 38.

238. *Id.* ¶¶ 22, 31

239. *Id.* ¶¶ 90-100.

based on equitable principles and considered several factors such as "the natural prolongation, or general configuration, of the coastal State's land territory, its potential encroachment on other territories, the presence of overlapping areas, and the physical and geological structure and natural resources of the continental shelf areas involved."[240] While delimiting the continental shelf, the Court did not give effect to insignificant geographic features because including them in the delimitation would lead to inequitable and disproportionate results.[241]

2. Delimitation of the Continental Shelf Between the United Kingdom of Great Britain and Northern Ireland, and the French Republic

The case between the United Kingdom and France[242] is both similar and dissimilar to the Aegean Dispute. The United Kingdom owned a group of islands, the Channel Islands, that were closer to the French coast than its own.[243] The International Court of Justice ruled that equitable principles were always to be considered while delimiting maritime zones[244] and islands on the wrong side constituted a special circumstance.[245] Based on this assessment, the Court drew a median line between the United Kingdom and France while simultaneously reserving a twelve nautical mile enclave around the Channel Islands.[246] However, the International Court of Justice also stated that this method would not be suitable if a group of islands stretched along the coast of another state.[247] The Channel Islands were a group of seven islands while "Greece possesses six total island groups with some of these groups having over ten islands within them."[248]

The Court also considered the special circumstances and equitable principles that may be relevant to continental shelf delimitation. The Court held that "the combined 'equidistance-special circumstances rule', in effect, gives particular expression to a general norm that, failing

240. Patterson, *supra* note 189, at 151.

241. Kozyris, *supra* note 87, at 335.

242. Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (Fr. v. Gr. Brit.), 18 R.I.A.A. 3 (1977-78) [hereinafter Anglo v. French Continental Shelf Case].

243. *See id.* ¶ 87.

244. *Id.* ¶ 195.

245. *See* E. D. Brown, *Anglo-French Continental Shelf Case*, 16 SAN DIEGO L. REV. 461, 517 (1979).

246. Anglo v. French Continental Shelf Case, 18 R.I.A.A., ¶¶ 201-202

247. Patterson, *supra* note 189, at 153.

248. *Id.* at 152.

agreement, the boundary between states abutting on the same continental shelf is to be determined on equitable principles."[249] The Tribunal had given half effect to the United Kingdom's Scilly Isles as they were situated so closely to the opposite French coast.[250]

3. Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria

In 2003, the International Court of Justice delimited the land boundary and the continental shelf/exclusive economic zone between Nigeria and Cameroon.[251] According to the Court, a cardinal rule is that when delimiting the continental shelf, the first step is to draw an equidistance line, and then consider claims regarding special circumstances, even in situations where the coasts are adjacent or opposite.[252] Based on this consideration, adjustments can be made to the equidistance line.[253] The Court did not heed Cameroon's claim of disproportionality and inequity.[254] Among the important findings of the Court was that equity itself was not a method of delimitation, nor did it mean equality.[255] However, it should also be noted that neither of the Parties had islands in the contested area.

4. Evaluation of the Aegean Dispute in Light of the Instructive International Adjudications

Based on international case law, it is clear that both Parties will have to compromise on their claims regarding continental shelf delimitation in the Aegean. The Turkish claim—that all Greek Aegean islands should be devoid of continental shelf and exclusive economic zone areas—is likely to be extreme and in conflict with international law. The Greek claim—that all islands should create continental shelf areas—is likely to lead to an inequitable solution and might even lead to the nonrecognition of the arbitral award if a potential tribunal makes a decision favoring this claim. It should be noted that in all international adjudications, special circumstances that may make the delimitation disproportionate and

249. Anglo v. French Continental Shelf Case, 18 R.I.A.A.,, ¶ 70.

250. Van Dyke*, supra* note 53, at 113 n.227.

251. Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria: Eq. Guinea intervening), Judgment, 2002 I.C.J. 303, ¶ 287 (Oct. 10).

252. *Id.*¶¶ 287-289, 306.

253. *Id.*

254. *Id.*¶¶ 271, 295, 296, 299.

255. *Id.* ¶ 294.

unequal are examined as the second step, after drawing an equidistance line. However, it should also be noted that the examination of potential special circumstances is only a way to ensure that the already drawn equidistance line does not lead to inequity. Special circumstances themselves cannot be applied as a method of delimitation.[256]

The problem in the Aegean is the existence of several Greek islands on the "wrong side." Based on the precedent discussed above, it is possible to conclude that an arbitral tribunal on the Aegean dispute would adopt the median line approach with a twist of special circumstances specific to geographics of the Aegean Sea. Even though Greece claims a strict median line with all islands and islets having their own continental shelf areas, pursuant to Article 121 of the UNCLOS, only inhabited islands which can sustain economic activities have a right to a continental shelf and exclusive economic zone.[257] Moreover, islands closer to the opposite coast have been accepted to create special circumstances.[258] "Accordingly, the commentary to draft Article 7 of the 1953 International Law Commission report referred specifically to 'the presence of islands' as a possible cause of special circumstances."[259] A potential Tribunal will need to make the decision about which islands and islets to grant continental shelf areas to seeing as not all Greek maritime features in the Aegean are inhabited, can sustain economic life, and hence qualify as islands. It may be an inequitable solution to grant importance to insignificant geographic features. The significance of such Greek geographical featues, especially the ones that are situated on the "wrong" side, may be one of these special circumstances. It is also likely that a tribunal will refer to the principle of non-encroachment while delimiting the Aegean Sea.

Further, a potential tribunal should make remarks to the rule of proportionality. In order to avoid gross disproportionality, geographic features, population, and coastal length are likely to be considered. In 2018, Greece was reported to have a population of around eleven million people while Turkey had around eighty-two million people.[260] In 1991, the total combined population of all inhabited Greek Aegean Islands was 488,480 people, or approximately five percent of the total population of

256. *See* Kozyris*, supra* note 87, at 332.

257. UNCLOS, *supra* note 4, art. 121.

258. *See* Brown, *supra* note 245, at 488.

259. Report of the International Law Commission Covering the Work of its Fifth Session, [1953] 2 Y.B. Int'l L. Comm'n 200, ¶ 82, U.N. Doc. A/CN.4/76.

260. *Total Population Data*, THE WORLD BANK, https://data.worldbank.org/indicator/SP.POP.TOTL [https://perma.cc/5S8P-MDEG] (Last visited Sept. 10, 2021).

Greece.[261] It seems as though Turkey stands a better chance if a tribunal decides to heed the population of the Parties for making a proportionate decision. Yet, it is more likely that a tribunal will aim to prevent a grossly disproportionate result rather than seeking ultimate proportionality. Even though Turkey will have a more favorable result if the ratio of land masses is considered, it is unlikely that a tribunal will take this into account as a special circumstance that warrants adjustments to the equidistance line. Based upon previous international adjudications, it seems unlikely that ratios of population or land masses between Greece and Turkey will play a substantial role in the delimitation of continental shelf areas.

In all, Greece has a stronger position when it comes to the geographic features of the Aegean. First, Greece has sovereignty over 2,000 islands in the Aegean.[262] Second, the Aegean Sea is Greek by three sides and Turkish by only one side. Greece's coastal length is also longer than Turkey's, with the Greek Aegean coastline at 3,960 kilometers versus the Turkish at 3,484 kilometers.[263] Even after considering all the specific circumstances to the case, such as the contiguity of several Greek islands to the Turkish coast, it can be stated with a high level of confidence that Greece should be entitled to a larger portion of the continental shelf areas in the Aegean. All inhabited Greek islands and islets capable of sustaining economic life have the right to continental shelf areas. Greece's legal right has been acknowledged by customary international law, international adjudications, and UNCLOS. The only limitation to this right can be asserted in the eastern Aegean. An island that is on the "wrong" side of the median line cannot be declared devoid of a continental shelf. Yet, regarding the principle of non-encroachment, it will bear an inequitable outcome if Turkey's access from the Mediterranean to the Black Sea is cut off due to Greek territorial seas. Because such an outcome will threaten Turkish navigational freedom and security interests, Turkey should at least be granted a high seas corridor which will allow Turkish ships to reach the Black Sea or the Mediterranean without sailing through Greek territorial waters. In order to achieve this solution, some Greek islands that are situated on the "wrong" side, depending on their significance, may be completely disregarded during delimitation or may be granted a lesser effect.

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261. *Commission of the European Communities*, *Greek Islands in the Aegean Sea*, Final Commission Report, COM (92) 569, at 2-3 (Dec. 23, 1992).

262. Schmitt, *supra* note 2, at 17.

263. Aurelia A. Georopolus, *Delimitation of the Continental Shelf in the Aegean Sea*, 12 FORDHAM INT'L L.J. 90, 123 n.260 (1988).

V. ARBITRATION AS THE MOST PROFOUND METHOD FOR THE SETTLEMENT OF THE AEGEAN DISPUTE

The Aegean issue has been one of the main disputes between Greece and Turkey and it often sparks tension in the area. The main reason this issue remains unsolved today is because the two states have different approaches to the dispute. While Turkey regards the issue as a diplomatic problem, Greece regards it as a legal one. Therefore, neither legal nor diplomatic mechanisms have yielded results. In addition to that, several issues are asserted by Turkey, but Greece only recognizes the dispute regarding continental shelf delimitation. The differences in the Parties' approaches and interpretations only serve to complicate matters. Referral of the dispute to an arbitral tribunal could be the most profound solution for lasting peace in the area, and equitable principles and circumstances particular to the dispute can be considered along with international treaties. In order to understand why arbitration is the most profound solution for the Aegean Dispute, it is necessary to take a brief look at the resolution methods that have been attempted so far between Greece and Turkey.

1. Current Treaties

Starting from the fall of the Ottoman Empire, Greeks and Turks have been signing agreements regarding entitlement in the Aegean Sea. The 1913 Treaty of London, the Lausanne Treaty, and the Paris Treaty are the main international agreements touching upon the entitlement rights in the Aegean Sea. Yet, it is clear that because these agreements are either ambiguous or insufficient in some provisions, they cannot solve the Aegean Dispute alone.[264]

2. Diplomatic Means

Over the years, Greece and Turkey have tried using diplomatic channels for ending the Aegean conflict. The diplomatic meetings and negotiations between the Parties became more intense after the continental shelf crisis broke out. During the crisis, Turkey and Greece exchanged a total of twenty-one Verbal Notes.[265] Through the notes, Greece and Turkey agreed to meet at the prime ministerial level and emphasized that the dispute should be resolved peacefully by negotiations and the continental

264. *See* discussion *supra* Parts III(A) and III(B).
265. Toppare, *supra* note 9, at 36.

shelf dispute could be referred to the International Court of Justice.[266] In May 1975, Greece proposed a draft agreement while the Turkish side proposed "joint exploitation" of the Aegean in addition to suggesting other peaceful dispute settlement methods in case negotiations between the Parties failed.[267] By the end of the meeting, the Parties were only able to undertake the "initial study" of drafting an agreement to submit to the International Court of Justice.[268] By the end of that month, Greece and Turkey agreed upon holding a meeting at the prime ministerial level so as to craft an agreement for the referral of the dispute to the International Court of Justice in the Hague.[269]

Additionally, even though they had both decided to speed up the process by holding expert meetings, they could not agree on what to discuss during the meetings.[270] Greece wanted to work exclusively on the drafting of an agreement for sending the dispute to the International Court of Justice, and Turkey wanted to initiate bilateral negotiations for all of the Aegean disputes and potentially refer the continental shelf dispute to the International Court of Justice in the event that bilateral negotiations fail.[271] In January and February of 1976, the Parties managed to come together twice for expert meetings in Bern.[272] During these meetings, both Parties insisted on their claims very stiffly, without leaving room for any compromise: Turkey rejected any extension of territorial waters and Greece insisted it was entitled to twelve nautical miles of territorial waters by international law.[273] Turkey requested a continental shelf delimitation method solely based on the geographic features and special circumstances of the Aegean, and Greece declared that every Greek island was entitled to a continental shelf and the delimitation should be based on a median line between Greek islands and the Turkish mainland.[274] In the end, both of the expert meetings failed to reach any common outcome at all.[275]

As a solution, Greece referred the dispute to the United Nations Security Council and the International Court of Justice. In its unilateral application, Greece asserted two bases for the jurisdiction of the International Court of Justice on the matter. First was Article 17 of the

266. *Id.* at 38.
267. *Id.*
268. *Id.*
269. *Id.* at 39.
270. *Id.*
271. *Id.*
272. *Id.* at 40
273. *Id.* at 40-41.
274. *Id.*
275. *Id.* at 42.

1928 General Act for the Pacific Settlement of Disputes, which both Parties had acceded into with reservations.[276] The second claimed basis for the International Court of Justice's jurisdiction was the Joint Communiqué from May 1975,[277] which stated that the Parties agreed "that those problems should be resolved peacefully by means of negotiations and as regards the continental shelf of the Aegean Sea by the International Court at The Hague."[278]

Apart from disagreeing with the merits of the dispute, Turkey claimed that the Court lacked *prima facie* jurisdiction.[279] Turkey first claimed that the 1928 General Act for the Pacific Settlement of Disputes was not in effect.[280] Even if it was in effect, Greece had a reservation preventing the submission of Greek territorial disputes to the Court, and this reservation could also be enforced by Turkey in regard to Greece pursuant to Article 39 of the General Act.[281] Turkey claimed second that the Joint Communiqué did not allow Greece to unilaterally submit the dispute to the International Court of Justice, as well as disclaiming that Greek's assertion that continental shelf dispute was the sole matter.[282] The Court decided that the Turkish reservation was valid, and the Parties had not made any unconditional commitment for accepting the jurisdiction of the International Court of Justice.[283] Hence, it became clear that the International Court of Justice lacked jurisdiction on the Aegean dispute.

3. United Nations Charter

As of today, the Turkish Ministry of Foreign Affairs states "Greece advocates that there is no problem in the Aegean between Turkey and Greece other than the delimitation of the continental shelf which should be resolved only through recourse to [the International Court of Justice]. This position of Greece namely 'one problem-one solution' does not reflect the reality at all."[284] The Turkish solution to the Aegean Dispute is

276. Aegean Sea Continental Shelf (Greece v. Turk.), Interim Protection Order, 1976 I.C.J. 3, ¶ 1 (Sept. 11) [hereinafter Interim Protection Order].

277. *Id.*

278. Toppare, supra note 9, at 39.

279. *Id.* at 49

280. *Id.*

281. *Id.* at 49-50.

282. *Id*. at 49.

283. *Id*. at 50-51.

284. *Turkey's Views Regarding the Settlement of the Aegean Issues*, REPUBLIC OF TURKEY MINISTRY OF FOREIGN AFFAIRS http://www.mfa.gov.tr/maritime-issues---aegean-sea---turkey_s-views-regarding-the-settlement-of-the-aegean-issues.en.mfa [https://perma.cc/LKG8-VC4J] (last visited Sept. 10, 2021).

as follows: "Turkey does not rule out from the outset any peaceful settlement method contained in the UN Charter Article 33, including having recourse, if necessary, to International Court of Justice or other third-party solutions based on the mutual consent of both countries."[285]

Article 33 of the United Nations Charter recognizes "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means [chosen by Parties]."[286] However, Greece emphasizes the legal nature of the dispute and claims that resort to the International Court of Justice is the only possible method of resolution.[287] Again, Turkey is not a party to UNCLOS. It would be more likely that the Parties agree on jurisdiction if they were to jointly choose an international tribunal for the settlement of the Aegean dispute.

4. Treaty of Friendship, Neutrality, Conciliation and Arbitration

In 1930, Turkey and Greece signed the Treaty of Friendship, Neutrality, Conciliation, and Arbitration.[288] Article 3 of this treaty provides that parties should submit the disputes between them to conciliation in case diplomatic means failed to resolve the dispute.[289] If conciliation fails as well, and parties could not agree on recourse to an arbitral tribunal, they should seek judicial relief.[290] It is unlikely that Greece or Turkey would prefer conciliation for the settlement of the Aegean dispute. In the Aegean, there are many issues ranging from the delimitation of several maritime zones to legal entitlement of islands. Greece and Turkey cannot even agree on what the dispute is in the Aegean. Therefore, neither of them would prefer conciliation to attempt to resolve such a compound and complicated issue. A permanently binding decision on the dispute would also have great effects on both states regarding sovereignty, natural resource exploitation rights, navigational freedom, and national security. A binding decision from an arbitral tribunal would be better suited considering the nature of the dispute.

285. *Id*.
286. U.N. Charter, art. 33, ¶ 1.
287. *Greek-Turkish dispute over the delimitation of the continental shelf, supra* note 55.
288. Treaty of Friendship, Neutrality, Conciliation, and Arbitration, Greece-Turk., Oct. 30, 1930, 125 L.N.T.S. 9.
289. *Id*. art. 3.
290. *Id.*

5. Arbitration as the Most Profound Method

Greece and Turkey have been adhering to their respective claims and preferred method of settlement for decades. It has become obvious that Greece will not agree to resolve the dispute through diplomatic meetings and Turkey will not consent to the jurisdiction of an international court. Thus, the most profound method will be recourse to an arbitral tribunal. As was done in the Anglo-French Continental Shelf case, Greece and Turkey can decide to sign an arbitration agreement and agree on an ad hoc arbitral tribunal. While judges in the International Court of Justice are the leading experts of international law, being able to appoint law of the sea experts, or even more specifically continental shelf/territorial waters delimitation experts, as arbitrators could be a relief to the Parties. Arbitration may also give the Parties some freedom on determining the procedure of the proceedings.

Another possible path to arbitration could come from Article 280 of UNCLOS.[291] Pursuant to that article, parties can "agree at any time to settle a dispute between them . . . by any peaceful means of their own choice."[292] Article 287 of UNCLOS establishes that a state party to a dispute has already consented to arbitration if it has not made any declaration preventing that dispute to be covered by arbitration.[293] Greece is a state party and has made a reservation excluding maritime zone delimitation disputes from the jurisdiction of the International Tribunal for Law of the Sea,[294] but not from an arbitral tribunal established pursuant to Annex VII of UNCLOS. Article 287(5) of UNCLOS states "[i]f the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree."[295] Hence, even the drafters of UNCLOS have agreed that in case parties to a dispute cannot agree on a certain dispute settlement method, the best way would be arbitration pursuant to Annex VII of the UNCLOS.

Annex VII of UNCLOS specifies the arbitration procedure. Pursuant to Article 1 of Annex VII, "any party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute."[296] Following that,

291. UNCLOS, *supra* note 4, art. 280.
292. *Id*.
293. *Id.* art. 287.
294. *Issues of Greek – Turkish Relations, supra* note 56.
295. UNCLOS, *supra* note 4, art. 287(5).
296. UNCLOS, *supra* note 4, annex VII, art. 1.

Article 3 sets out the rules for the establishment of an arbitral tribunal. Accordingly, the arbitral tribunal will consist of five members.[297] Each party will be allowed to appoint one member, which can also be its national, out of a list of four potential arbitrators it has submitted to the United Nations Secretary-General.[298] The remaining three members are to be determined between the parties by an agreement.[299] UNCLOS has also provided parties with a dual support mechanism. Parties can agree and leave the appointment of the remaining three arbitrators to be made by a person of a third state.[300] If they fail to agree themselves or leave it to a third state or person, then the President of the International Tribunal for Law of the Sea is to appoint the remaining three arbitrators. [301]

This elaborate mechanism foreseen in UNCLOS may be a relief to Turkey and Greece. By being a state party to UNCLOS, Greece has already given consent to an arbitration procedure defined in Annex VII. Since international arbitration is a dispute settlement method that relies on the will of the parties, it is possible for Turkey to give consent to an arbitral tribunal to be established according to the well-defined and supportive mechanism of Annex VII. The arbitration procedure of Annex VII may be much faster than drafting a new arbitration agreement and determining all the procedures, while still entertaining the Parties' free will for a dispute settlement method.

Additionally, as was the case in the *Eritrea v. Yemen* arbitration, Greece and Turkey can form an agreement and submit their dispute to the Permanent Court of Arbitration. Both Turkey and Greece are state parties to the Permanent Court of Arbitration.[302] In the *Eritrea v. Yemen* arbitration, it was held that "even though Eritrea has never acceded to the Convention, the Arbitral Tribunal concluded in its Award in the Second Stage that the Parties' arbitration agreement implied Eritrea's acceptance of the application of provisions of the Convention relevant to maritime delimitation."[303] Therefore, even if Greece and Turkey were not state parties to one of the founding conventions of the Permanent Court of

297. *Id*. art. 3.
298. *Id*.
299. *Id*.
300. *Id.*
301. *Id.*
302. *Contracting Parties,* PERMANENT COURT OF ARBITRATION, https://pca-cpa.org/en/about/introduction/contracting-parties/ [https://perma.cc/FY84-JENT] (Last visited Sep. 9, 2021).
303. *Contribution of The Permanent Court of Arbitration to the Report of the United Nations Secretary-General on Oceans and the Law of The Sea, as at 14 June 2019,* PERMANENT COURT OF ARBITRATION, at 3.

Arbitration, they could still decide to resort to arbitration by concluding an arbitration agreement.

Since UNCLOS came into force in 1994, the Permanent Court of Arbitration has acted as the registry for thirteen arbitration cases out of fourteen that arose out of Annex VII of the UNCLOS.[304] The Permanent Court of Arbitration has gained significant experience in dealing with maritime zone delimitation disputes. As a competent authority that can settle the Aegean dispute permanently by a binding decision, the Permanent Court of Arbitration is the most preferable method for settling the dispute between Greece and Turkey.

VI. MEDIATION BY THE UNITED STATES AND/OR BY NATO

Even though arbitration seems the best way to reach a settlement in the Aegean dispute, the Parties have not yet reached an arbitration agreement. If Greece and Turkey cannot agree on an arbitral procedure for, the best alternative would be mediation by the United States and/or NATO.

There have been mediation attempts between the Parties before. One of these attempts was in 1995 when the United States started military-to-military talks concerning the Aegean dispute.[305] These talks failed due to the escalation of tension from the Imia Rocks crisis.[306] The Imia Rocks incident, was settled temporarily through mediation by the United States.[307] Though Greece and Turkey were on the brink of war, U.S. mediation effectively prevented the use of force. The same result can be achieved for the permanent settlement of the dispute if the U.S. mediates as a neutral state.

Both the U.S. and NATO share a significant interest in the peaceful settlement of the Aegean dispute. After the end of the Cold War, NATO started to form a new identity and objective. A Greek-Turkish dispute before NATO would be detrimental for the alliance. Greece and Turkey are both outstanding members of the alliance, and their withdrawal will have dire effects.[308] The continuation of the Aegean dispute is also detrimental for NATO. Greece and Turkey have been "deadlocked allies

304. *United Nations Convention on the Law of the Sea*, PERMANENT COURT OF ARBITRATION, https://pca-cpa.org/en/services/arbitration-services/unclos/ [https://perma.cc/2TKA-L4GZ] (Last visited Sep. 9, 2021).

305. Schmitt, *supra* note 2, at 32.

306. *Id.* at 20-21.

307. MIGDALOVITZ, *supra* note 134.

308. Schmitt, *supra* note 2, at 19.

of NATO."[309] This creates an internal problem within NATO because the two states are rarely in support of each other. For example, in 1995, NATO sought the establishment of a regional NATO headquarters in Greece.[310] In response, Turkey moved to block the NATO budget, similar to how Greece vetoed the funding of a regional NATO headquarters in Turkey.[311] The United States is a NATO member, and "[t]he United States' interests are those of NATO, writ large."[312] Greece and Turkey routinely oppose each other in virtually all deliberations at NATO. The ongoing dispute between Greece and Turkey creates a vulnerability in NATO's internal decision-making process. Accordingly, both NATO and the U.S. will benefit from the settlement of the Aegean dispute.

The United States has an airbase in Incirlik, Turkey which is near the Mediterranean Sea and in close proximity to some of the world's most conflict prone regions. The United States conducted "Operation PROVIDE COMFORT" from Incirlik Airbase during the Gulf War.[313] "Should Turkish support for the operation falter, the United States' strategy vis-à-vis Iraq would be severely undermined."[314] The Incirlik Airbase was also used during the fight against the Islamic State, and as the conflicts in the Middle East continue, the Incirlik Airbase, and the Turkish alliance in general, will benefit the United States. Greece is also an important ally to the United States and serves as an important location for U.S. forces to deploy or transit through. "Both countries are important to the United States due to substantial bilateral trade, and both, but particularly Greece, enjoy substantial political clout in the United States."[315] Because the delimitation of maritime zones and entitlement of some islands in the Aegean are still disputed, the international community would also benefit from the resolution of sovereignty issues in the Aegean.

The Aegean Dispute is one of the main obstacles to Turkish accession into the European Union.[316] The European Union is requiring resolution of the Aegean Dispute as a pre-condition for Turkey's full accession into the Union.[317] Some authors have argued that the European Union could also

309. *See* Memorandum from CIA, Greek-Turkish Relations: The Deadlocked Allies (released February 16, 2007) [https://perma.cc/6NY9-QX86] https://www.cia.gov/readingroom/docs/CIA-RDP83B00228R000100170005-5.pdf.

310. Schmitt, *supra* note 2, at 19.

311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

316. Ozkan, *supra* note 126, at 96.

317. *Id*.

mediate between Greece and Turkey to settle the Aegean Dispute.[318] However, Turkey is not a member of the European Union and has been losing interest in becoming one. In 1999, Turkey was accepted as a candidate country for European Union membership.[319] Since then, the process has continued with ups and downs. Considering the Cyprus crisis and the accession of Cyprus into the European Union, as well as the failure of the refugee deal, it can be concluded that Turkey's relationship with the European Union is not at its best. It will yield more efficient results if an organization, to which both states are parties, mediate between Greece and Turkey.

The United States and NATO have neutral positions vis-à-vis the Aegean Dispute. The settlement of the conflict will be for the benefit of both. Consequently, mediation by the U.S. and/or NATO is another potential method of dispute settlement in the event that Greece and Turkey fail to reach an arbitration agreement on the Aegean Dispute.

CONCLUSION

Greece and Turkey, being the only two littoral states of the Aegean Sea, have had a long and ongoing dispute in the Aegean Sea. As has been shown, the dispute in the Aegean is comprised of several critical matters. The tension rose so high at certain times that two NATO allies sent their military forces to the Aegean. The Parties have tried to end the conflict through diplomatic channels, appeal to the United Nations Security Council, and resort to the International Court of Justice. However, none of their attempts have been successful. The Aegean Dispute has continued for several decades, and the Parties cannot risk delaying its settlement any further.

Although Greece claims that the Aegean Dispute is only a legal matter regarding the delimitation of the continental shelf, Turkey claims that the delimitation of territorial waters and the continental shelf, in addition to legal entitlement of some islands, are all outstanding issues. Accordingly, the most profound method of dispute settlement should be interstate arbitration. Arbitration will put an end to the dispute with a binding decision and allow the Parties to exercise autonomy, such as appointing leading law of the sea experts as arbitrators or deciding on the laws and procedures to be applied. An arbitral tribunal established by the agreement of Greece and Turkey will have to render an award paying regard to the

318. Keefer, *supra* note 18, at 55.

319. Bahar Rumelili, *Transforming Conflicts on EU Borders: The Case of Greek-Turkish Relations*, 45 J. COMMON MKT. STUD. 105, 118 (2007).

principles of equity and fairness, as is done in international adjudications dealing with maritime zone delimitation.

If an arbitration agreement is not reached, mediation by the U.S. and/or NATO could also resolve the Aegean Dispute. Both the U.S. and NATO have a neutral stance in the Aegean Dispute, and they would benefit from the peaceful settlement of the dispute. In fact, every state would benefit from resolution of the Aegean Dispute. It would not only eliminate one "hot spot," but would also allow NATO, the most successful military and political alliance in the history of the world, to once again effectively support international peace and security.