



AEGEAN DISPUTE: A LEGAL ANALYSIS

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Abstract

This research paper attempts to contribute to the politics and international law field by examining the validity of the arguments posed by Greece and Turkey on the Aegean Dispute. The objective of this paper is to objectively assess how each country's claims fare against treaties, conventions and customary law. This paper has utilized qualitative data for this report and finds that Greece has legal validity on two components of the Aegean Dispute, whilst one component is ambiguous.

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Introduction

The 'Aegean Dispute' marks almost fifty-one years of unresolved conflict (Hellenic Republic Ministry of Foreign Affairs [HRMFA], n.d.) between Turkey and Greece, making it one of the most protracted-standing disputes in modern times (Bolukbasi, 2004). Recent events such as the 2020 disagreement over the Exclusive Economic Zones (EEZ) led to the deployment of both naval and air forces from both states, resulting in sanctions to Turkey by the European Union (DW, 2020; BBC, 2020). Hence, it is not surprising that the Aegean Dispute has gained momentum among political scientists specializing in security studies and legal scholars of the International Law field. In particular, analyzing the legal complexities of this argument will shed light on other similar cases processed by the International Court of Justice (ICJ) and will provide a baseline for a solution of the conflict to withhold peace in the Mediterranean region. The Aegean Dispute is an umbrella term that identifies six interrelated controversies between Turkey and Greece: (1) the contested sovereignty of certain Greek islands, islets and rocks; (2) the breadth of territorial waters; (3) the extent of national airspace; (4) the delimitation of the continental shelf, including (5) the EEZ; (6) the role of Flight Information Regions (FIR) for the control of military flight activity (Dyke, 2005)

This paper will focus on four of the six components, covering (1), (2), (4) and (5). Although all of the components are significant for sustaining peace in the region, the limited time frame makes it possible to only focus on the issues that recent developments showcase as essential pillars for the foundation of peace.

The paper begins by outlining the historical context of the conflict. It follows by indicating the most recent events that have intensified the ambivalence between the two countries. The analysis of the report has three sections, with each comprising three subsections. These include the arguments of Turkey and Greece and a perusal of the law that applies to each case.

Components (4) and (5) are merged into one section. This is because they are interrelated concepts. Hence, failing to include them under the same analysis would add more complexity to an already composite debate. The last section of the report summarizes the findings.



Historical Context

The Aegean dispute finds its roots at the Treaty of Lausanne. The armistice settled three cardinal issues, consolidating the Aegean status quo. First, it granted sovereignty to all Aegean islands -except for the Dodecanese islands yielded to Italy, Gokceada and Bozcaada - to Greece. Second, the treaty set the maritime jurisdiction of coastal states, leaving the remaining parts of the Aegean for the mutual benefit of Greece and Turkey (Ministry of Foreign Affairs of Turkey, 2000). Last, it demanded the demilitarization of the Greek islands located near the Turkish coastline.

Post-WWII, the Treaty of Paris granted the Dodecanese Islands to Greece with confinements on the level of militarization. The islands had acted as a neutral point, demarcating Turkey and Greece. Hence, the accession of the Dodecanese to Greece upset the balance that the Treaty of Lausanne had set.

Several events set off the Aegean Dispute in the following decades. In 1974, Turkey, propelled by a failed coup d'état, invaded Cyprus, resulting in 36% of the island falling under Turkish control. The incident prompted Greece to go against the treaty of Lausanne and Paris, militarizing the islands adjacent to Turkey under the principle of self-defence. Moreover, in early 1996 at the tiny barren islets of Imia/Kardak, situated between the Dodecanese island chain and the Turkish mainland, a failed navigation of a Turkish vessel raised doubts of actual sovereignty over the territory. As a result, military tensions escalated, despite the politico-economic insignificance of the island. For a few days, the two countries were on the verge of war until international interference defused the conflict. Thereafter, Turkish official sources have suggested that islands such as Pserimos, Agathonisi, Fournoi, and Gavdos (south of Crete) are of disputed sovereignty.



Current Developments of the Case

27 November 2019

In order to establish an Exclusive Economic Zone in the Mediterranean Sea, Turkey and Libya's Government of National Accord (GNA) signed a Maritime Boundary Treaty[a], which allowed them to claim rights to ocean bed resources.

10 October 2020

Egypt and Greece signed a maritime treaty creating an exclusive economic zone for oil and gas drilling rights in the Mediterranean Sea in reaction to the Libya-Turkey maritime agreement. The agreement provides a "partial demarcation of the two countries' marine boundaries, with the remaining demarcation to be reached through discussions."

July and August 2020

Turkey put out a naval alert- known as Navtex- that it was sending its Oruc Reis research ship to carry out a drilling survey in waters close to the Greek island of Kastellorizo. This caused the deployment of military forces from both Turkey and Greece and war threats.

Component 1: Territorial waters, continental shelf and EEZ

In this section, the focus will be on the territorial waters and the EEZ. The first subsection will present the arguments of Greece and Turkey on the issues concerning the territorial waters and the EEZ of the two states. In the last sub-section, the report will examine both arguments over their legal soundness.

Argument of Turkey

Turkey has set forth a myriad of arguments against the 12 nautical mile expansion of the territorial sea by Greece. Firstly, the particular expansion of maritime jurisdiction will allow Greece to acquire 71.5% of the Aegean Sea, Turkey would only increase to 8.8%, while the high seas would decrease to 19.7%. Thus, the Aegean Sea would become a Greek sea, locking Turkey out of the Aegean and restricting it to its territorial waters. Secondly, Turkey's access to the high seas will be blocked and its Aegean coast will be encircled by Greek territorial waters. With this expansion neither Turkey nor any other state will be able to benefit from the high seas in the Aegean for economic, military, or navigational purposes. Furthermore, Turkey advocates that by following an expansion, its economic, scientific and military interests will be seriously jeopardized. The Turkish government points out that it will not be able to: have military training and exercises in the Aegean, organize the defense of her shores, pass from the Aegean to the Mediterranean without Greece's permission, engage in scientific research, fish,

and sponge dive beyond its territorial waters. Subsequently, this expansion will give Greece an unjustified advantage in contrast to Turkey. Last, the 12 nautical mile limit that was established in the 1982 UN Convention of the Law of the Sea is merely the maximum breadth applied if the conditions allow it and not something that should be applied automatically. The Article 3 of the same Convention reads as follows: “*States, Parties.....shall exercise the rights, jurisdiction and freedoms recognized in this convention in a manner which would not constitute an abuse of right.*” Turkey believes that the extension of the territorial sea does not apply to its case since it has refrained from signing the convention. Therefore the extension by 12 nautical miles is not acceptable by Turkey.

Argument of Greece

The Greek argument regarding the delimitation of the territorial waters is based on customary international law recognized in the UN Convention on the Law of the Sea (UNCLOS). To elaborate, the UNCLOS has been approved by most countries, including Greece and Turkey. Despite that, when Greece threatened to expand the territorial waters that surround its Aegean islands, Turkey opposed Greece’s “inalienable right” under Article 3 of the 1982 United Nations Convention. According to the said article every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles^[1]. The right to expand territorial waters to up to twelve nautical miles is a sovereign right that can be exercised unilaterally, and it is therefore not subject to any limits, and it cannot be disapproved by third nations (Article 3 of UNCLOS, which codifies a rule of customary law, does not provide for any restrictions or exceptions regarding this right).

Furthermore, the actions of Turkey invalidate its own argument. For example, Turkey utilized the twelve-nautical-mile boundary to expand its non-Aegean territorial waters. This is the case

with most coastal governments (except for a few). (See: Scotland Act 1998/ South China Sea/ South Korea).

Greece is certainly not “abusing” her power by demanding what is rightful hers according to the law and is not going to accept Turkey’s propagandistic attempts of terrorizing her right to exercise her- again undoubtedly rightfully owned- “power”.

The Greek government does not consider such matters to be “in dispute” but rather Turkish attempts to create one. By law, Greece can expand her territorial waters up to twelve nautical miles- Turkey’s unwillingness to cooperate proves just how far she is willing to take it to avoid international law in the hopes of acquiring more control over the Aegean.

According to Article 121 (2) of the 1982 Convention on the Law of the Sea and Article 6 of the Geneva Convention- all islands have a claim to territorial seas, a contiguous zone, an exclusive economic zone, and a continental shelf. This is a general norm of customary law and hence governments who have not signed the Convention are obligated to acknowledge. Therefore, all the Greek islands have a continental shelf under the Law of the Sea. Additionally, Article 1 of the 1958 Convention on the Continental Shelf acknowledges not only seabed rights to all islanders but also a state's authority to expand to its neighboring seabed regions, to the extent that natural resource extraction is permitted. Since the depth of the Aegean allows for such exploitations the seabed rights established by the Greek mainland eastward fall into accordance with the seabed rights generated westward by the Greek islands to the east. This would mean that for any continental shelf delimitation it will have to follow the median line between the coastlines of the easternmost islands and the Turkish shore (Article 156 of law 4001/2011). Even though there are no applicable agreements with Turkey, the concept of equidistance/median still applies in the neighboring marine zone, stretching south from Evros to Samos and Ikari, by customary law. However, in this case, according to Article

15 of the United Nations Convention on the Law of the Sea, no state has the authority to expand its territorial water in the absence of a delimitation agreement.

Discussion

Following the distinct approaches of the two countries towards the aforementioned matter, it is evident that several legal issues arise. First and foremost, maritime rights are regulated in the United Nations Convention under Law of the Sea. Usually, when the territories overlap, it is up to the nations to come to an agreement or a medium line is drawn and it is said that any location belongs to the nation to which it is closest. Nonetheless, when it comes to the issue of the Aegean, the case is not that simple. The UN Convention is a document that outlines all of the regulations and has been signed by most countries of the world, including all members of the EU. Yet, in the eastern Mediterranean three countries; namely Syria, Israel and Turkey have not signed it, thus the maritime orders have not been resolved. More specifically, there is a lot of uncertainty surrounding the criteria of determining the correct number of nautical miles that we need to take into consideration when exploring the territorial waters and the exclusive economic zones of a nation.

Of course, the current dispute among those territories and their exclusive economic zones reignites two additional pre-existing conflicts between Turkey and Greece. The first one occurs because Greece has many islands under its territory, some of which are directly off the Turkish coast. In this case, if both countries implement their territorial claim as 6 nautical miles, then Turkey is in a more advantageous position. However, Greece logically argues that the country is entitled to 12 nautical miles under the UN convention. But with such an extension of the measurement, due to the geographical location of the Greek islands and them being spread all

over the Aegean, Greece's exclusive economic zone becomes massive and limits Turkey's exclusive access to the sea. Hence, it is clear that Turkey's view is an absurd interpretation not shared by any other country and is only based on the fact that Turkey will not benefit from the extension of the exclusive economic zones around the islands. On top of that, this is not in line with the United Nations Convention on the Law of the Sea Treaty and Article 121 clearly states that the islands can have exclusive economic zones and continental shelf just like every other land territory.

Furthermore, the second conflict which affects the territorial claims of the two countries is the disagreement over the status of Cyprus. According to Turkey, Cyprus is divided into two parts: the Republic of Cyprus, which is part of the EU and the Turkish Republic of Northern Cyprus. While Turkey is the only country advocating that it has some sovereignty upon it, it is generally recognised by the EU that the entire island is the national territory of the Republic of Cyprus. This discrepancy of opinions has led to various instances where the borders of Greece and its sea boundaries have been violated. In May 2019 Turkey sent a drilling ship to the northern coast of Cyprus to carry out some seismic surveys and exploratory drilling. It was claimed by Turkey that the exploration was legal because it was in the territorial waters of the Turkish Republic of Northern Cyprus. Nevertheless, the EU found that such an action was completely illegal and imposed sanctions on Turkey, to prevent any potential infringements. It was held that the UN Convention and International Law were breached and it was ultimately demonstrated that Turkey's stance was provocative and fallacious. Had this not been enough, more than a year later, Turkey's ship Oruc Reis was accompanied by several military ships, which has led to further standoffs in the Mediterranean and caused collision among Greece's and Turkey's navy forces. Once again, the EU had to interfere and nearby warplanes and navy ships from France, Italy and Cyprus were deployed, to force Turkey to back off. Consequently,

through the above analysis, it is obvious that certain legal lines are constantly being challenged and crossed by Turkey, without any legitimate grounds to support such initiatives.

Component 2. Issue of demilitarized status

Argument of Greece

The Greek argument on militarizing the islands of Eastern Aegean is rooted in international law. As stated by the Greek Ministry of foreign affairs, there are various international agreements supporting the militarization of the islands in the Eastern Aegean. In particular, the status of the islands of Limnos and Samothrace is governed by the 1923 Lausanne Treaty on the Straits, which has been replaced by the 1936 Montreux Treaty. Moreover, the status of the islands of Mytilene, Chios, Samos and Ikaria, is governed by the 1923 Lausanne Peace Treaty; and the status of the Dodecanese islands is governed by the 1947 Paris Peace Treaty. So the claim that Greece's islands must be demilitarized, as continuously repeated by Turkey, is essentially a manipulation of the Treaties. It is notable that Greece's right to militarise Limnos and Samothrace was recognized by Turkey, in accordance with the letter sent to the Greek Prime Minister on 6 May 1936 by the Turkish Ambassador in Athens at the time, Roussen Esref, upon instructions from his Government. The Turkish government reiterated this position when the then Turkish Minister for Foreign Affairs, Rustu Aras, in his address to the Turkish National Assembly on the occasion of the ratification of the Montreux Treaty, unreservedly recognized Greece's legal right to deploy troops on Limnos and Samothrace, with the following statement : *“The provisions pertaining to the islands of Limnos and Samothrace, which belong to our neighbor and friendly country Greece and were demilitarized in application of the 1923*

Lausanne Treaty, were also abolished by the new Montreux Treaty, which gives us great pleasure” (Gazette of the Minutes of the Turkish National Assembly, volume 12, July 31/1936, page 309). That means that Turkey is now changing its mind and reckons that the militarization of the islands is false, while Greece follows every aspect of the Treaties. The reason why the islands of the Aegean Sea are militarized is that they are under threat. Turkey does not seem to respect international law and systematically violates Greek AirSpace. Its military aircraft, often armed, fly over inhabited Greek islands in the Aegean Sea, which raises serious security concerns. Whilst to date Greece has faithfully implemented the Article 13 of the Lausanne Treaty, Turkey has repeatedly violated the legal obligations incumbent upon it and continues to do so, despite the fact that the same article obliges Turkey not to permit its military aircraft to enter the airspace of these Greek islands. On the other hand, the same article permits Greece to maintain a normal contingent called up for military service, which can be trained on the spot, as well as a force of gendarmerie and police. Greece has categorically stated that there is no chance that demilitarized status of the islands will be discussed.

Argument of Turkey

According to various legally binding international treaties and agreements those islands are to be demilitarized, which brings a legal burden upon Greece to abide by those provisions. The Turkish government bases its case on the following legal documents:

- a. The Treaty of London (1913)[1]states that the decision about the future of the Eastern Aegean Islands is a responsibility of the Six Powers (Great Britain, France, Russia, Germany, Italy and Austria-Hungary).
- b. The Decision of the Six Powers (1914)[2]provided that the islands of Lemnos, Samothrace, Lesvos, Chios, Samos, and Ikaria were part of the greater Greek state provided that they remain demilitarized.

- c. The Lausanne Peace Treaty (1923)[3] provided a confirmation of the Decision in article 12. Moreover, in Article 13 certain restrictions on the presence of military forces and establishment of fortifications were stipulated. Lastly, the Convention of the Turkish Straits, which was part of the Lausanne Treaty required stricter regime for Lemnos and Samothrace due to their vital importance for the safety of Turkey.
- d. The annexed protocol to the Montreux Convention Regarding the Regime of the Straits (1936)[4] asserted the militarization of the Turkish Straits.
- e. The Paris Peace Treaty (1947) once again confirmed the demilitarized status of Eastern Aegean Islands. Additionally, the Dodecanese Islands were ceded to Greece on the condition that they would retain a demilitarized status.

Apart from the legal grounds Turkey is presenting as reasons for the demilitarization of the Greek islands, they are asserting that this status is crucial for the security and sovereignty of their country. Hence, Greece must not have the right to unilaterally reverse the status of these islands. Contrary to that, according to Turkey, Greece has been disobedient towards its legal responsibilities and has been in violation of the aforementioned treaties, by militarizing those islands since the beginning of the 1960s. They claim that the actions of Greece have been increasing significantly over the past few years; thus, the issue has become a key contradictory point for the two countries. Lastly, there have been reservations by Greece concerning the compulsory jurisdiction of the International Court of Justice. In doing so, Greece aimed to avert the initiation of potential proceedings over the militarization of the islands in the ICJ.

Discussion

The aforementioned legal documents lead us to the following conclusions. Taking all into consideration the question is controversial and ambiguous. On the contrary, law is key to forming a holistic approach towards the issue of the demilitarization of the Greek islands. In

order to properly examine the cases of both countries, we shall evaluate the power and potential prevalence of the treaties and conventions.

To begin with, article 13 of the treaty of Lausanne[1]states that with the prospect of ensuring the maintenance of peace, the Greek Government undertakes to observe the following restrictions in the islands of Mytilene, Chios, Samos and Ikaria:

- 1) No naval base and no fortification will be established in the said islands.
- 2) The Greek military forces in the said islands will be limited to the normal contingent called up for military service, which can be trained on the spot, as well as to a force of gendarmerie and police in proportion to the force of gendarmerie and police existing in the whole of the Greek territory.

Hence, it can be clearly concluded that the provisions of the Lausanne Treaty, a legally binding document that has been signed by all UN member states, prohibit Greece from establishing a permanent military base or fortification in the said islands. It is important to note, though, that the Dodecanese islands were ceded to Greece with the provision of demilitarization, according to the Decision of Six Powers. Turkey, by taking advantage of the terms of this treaty, aims to the demilitarization of all Greek islands to facilitate the possibility of an attack in the said area. Greece, on the other hand, recognizes that there is a constant threat of Turkish mobilization in those Greek islands. Bearing that in mind, Greece presents, as a counterargument to the aforementioned articles of the Lausanne Treaty, the right to self-defense. All objections can be summarized to the Article 51 of the UN Charter and customary law: Greece argues that, in view of the situation in Cyprus since 1974 and the on-going tribulations in the bilateral relations, including the "*casus belli*" resolution, it simply cannot afford not to avail itself of all

means necessary for its national defense. From the Greek perspective, the islands must remain militarized so long as Turkey's Aegean Fourth Army exists. Moreover, there have been a series of maritime disputes between the countries. One of the main ones include the issue of Kastellorizo, the smallest of the Dodecanese islands. Turkey issued a navigational telex reserving a large area near Kastellorizo, within the Greek continental shelf, for military purposes. The Turkish Navtex exercised live ammunition, inflaming further tensions. In general, Kastellorizo is militarized and located only 2km away from Turkey, but 600km away from Greece. The question is whether Greece has a legal right to not demilitarize Aegean Islands despite Turkey's insistence and provocative actions. International law recognizes the right to self-defense, as did the International Court of Justice (ICJ), in the 'Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. the United States of America)'[2] on the use of force. This ICJ verdict functions as legal precedent. The key interpretation is that Article 51 of the UN Charter, on which the Court's decision was founded, there are specific criteria that constitute an 'imminent threat' of an armed attack, so that the country can proceed to assert the argument of self-defense. Thus, although it is recognized as a general right, it is definitely not absolute. Article 51 continues to establish the appropriate procedures in each specific event of an armed attack. Lastly, according to the supremacy clause of the Charter, in an event of a conflict between two countries, their obligations under the Charter shall prevail over their obligations to any other international agreement.

In a nutshell, although the Lausanne Treaty stipulates the demilitarization of the Dodecanese islands in favor of the Turkish argumentation line, the provocative and threatening actions of Turkey offer the necessary factual basis for Greece to assert the need for self-defense and hence refuse to demilitarize the islands. Lastly, according to the prevalence of the UN

Charter, the right of self-defense of Greece shall prevail over the Lausanne Treaty, but specific guidelines and framework shall be established in the event of an armed conflict.

[1] https://www.mfa.gr/images/docs/diethneis_symvaseis/1923_lausanne_treaty.doc

[2] <https://www.icj-cij.org/en/case/70/judgments>

Component 3: Turkish claims of grey zones of undetermined sovereignty over a number of islets

Argument of Greece

The Greek argument regarding the sovereignty of the Aegean islets is that the islands have been part of Greece since the Greek civilization. Subsequently, they must still be Greek. Going as far back as c. 2700 to c. 1450 BC, Minoan civilization flourished in Crete and the surrounding Aegean islands. Also, there is written evidence that they were under the control of Athens, while the Ottoman Empire held a presence over the Aegean sea for over 500 years until World War. Also, the Greek sovereignty of the islands is supported by the Treaty of Lausanne (1923) and the Paris Peace Treaties (1947), in which Kastellorizo and the Dodecanese islands were given back to Greece.

Argument of Turkey

Turkey claims that the treaty of Lausanne doesn't give ownership of Inousa, Vatos, Ponticonisi, Antipsara, Foyrnoi or Zoufara Island to Greece, who considers them as their lawful property. Moreover, Turkey has been demanding the re-examination of the issue since 1996 when the Imia case opened for the first time. This was the motive to deepen the research and demand the

ownership of the islands that were referred as "dependent" to the bigger ones that were never officially transferred to the Greek occupation since legal procedures were not executed. Last but not least, according to the deal of 1932 (January 4th) that was sealed between Turkey and Italy about the Dodecanese complex other than the succession of the Italian titles Greece didn't get the Imia islet who got illegally treated like its property even though it's not mentioned in these documents.

Discussion

In recent decades, many doubts have been expressed by the Turkish government regarding the ownership of a great number of Aegean islands and the surrounding sea. One hundred twenty seven islets and about twenty five Islands in the Eastern Aegean are considered part of what Turkey calls the “Grey Zone”. The dispute has led to hostility between Turkey and Greece since the seventies. Presently, neither country possesses any sovereignty over the Aegean Continental Shelf beyond their six nautical miles of territorial sea.

The Aegean islands have been occupied by Greek civilization for millenia. Additionally, there is written evidence that the territory was at a point under the control of Athens. Greece took control of the territory along the Aegean's northern shore during the Greek War of Independence. The Ottoman Empire held a presence over the Aegean sea for over 500 years until World War I. Greece argues that because these islands have historically been a part of Greece, they must remain so. It has been historically proven that the Aegean sea is of Greek sovereignty, recognized by the Treaty of Lausanne in 1923. In the Paris Peace Treaties of 1947, signed by 20 countries, Kastellorizo and the Dodecanese islands were given back to Greece.

Therefore, we can conclude that both countries have formed a complete opinion on the matter and after examining various legal documents, they have developed several arguments that serve

their best interests. However, it is obvious that Greece's argument is mostly based on the past and succession of the Aegean Islands from previous generations, whereas Turkey's is based on details that were not imprinted or even referred to in documents and treaties. Before reaching an assumption about the ownership a further investigation of the documents must be developed and clarifications need to be given in reference to the treaties. We certainly cannot support either of the nations, since they express different types of arguments concerning two different sectors that are equally important in order to find the just solution to the situation. It is important that Turkey expresses her own opinions on Greece's arguments and clarify their thesis on this dispute.

Findings

This report has employed data from legal documents, official government files, articles and past research to examine the validity of each side's argumentation. First, relating to the territorial sea and the EEZ, the analysis has concluded that Greece's rights to expand its nautical miles and recognize the continental shelf of its islands are based on European and International Law. Turkey has a precedent of enforcing the laws and customs that suit its self-interest. Hence, omitting to sign the document should not exempt the country from an internationally recognised doctrine.

Moreover, the analysis of the remilitarization of the Aegean islands suggests that the right of self-defence supported by the United Nations and International Law surpasses pre-signed treaties. As such, the imposing threat of Turkey demonstrated through the annexation of Cyprus, the crossing of Greek water and airspace boundaries justify evoking the principle of Self-defense.

This report also attempted to examine and navigate a solution for the 'Grey Zones'. The conclusion is that both Greece and Turkey's arguments are supported by facts of equal

importance. Because of that, this specific component of the Aegean Dispute is a complex one and for which further research is needed. To this component, one solution would be to update specific treaties that would set the status-quo of the ownership of the territories.