



Aegean Disputes Between Turkey and Greece: Turkish and Greek Claims and Motivations in the Framework of Legal and Political Perspectives

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Abstract

There are numerous issues between Greece and Turkey yet the Cyprus and Aegean issues are the most important cases between the two countries. Aegean Sea, a semi-enclosed sea with about 1800 islands, is the longest border between Turkey and Greece. Primary issues of the Aegean disputes are continental shelf, territorial water, the air space, demilitarized status of the eastern Aegean islands, and islets and rocks. A set of interconnected controversies resulted in the Aegean Sea conflicts between Turkey and Greece. The Aegean Sea disputes are extremely complicated and solutions are difficult to reach by both countries because of the sui generis nature of the Aegean Sea structure, and Turkish and Greece different legal perspectives on the same issues in terms of treaty interpretation or international maritime law. In light of nationalism of the both countries and different interpretation of international law, the solutions for the Aegean dispute were stagnant without any progress; nevertheless, for the sake of peace and stability of the Aegean Sea, Turkey and Greece should reach a mutually acceptable solution as soon as possible for the purpose of terminating the current antagonistic situation. The study has shed light on Aegean disputes, the ongoing crisis which occurred many contradictions between Turkey and Greece, and their claims and motivations are explained comprehensively and evaluated in objective way. And it aimed to offer a comprehensive image of the Aegean dispute not just with the legal perspectives but also with the political objectives as well. According to findings, Turkey attempted to seek a solution based on a bilateral re-negotiation with Greece; on the contrary, Greece determined to have recourse to the International Court of Justice (ICJ).

Key words: *Aegean Disputes, Continental Shelf, Territorial Sea/Water, The Air Space, Disputed Islands and Rocks*

Türkiye ve Yunanistan Arasında Olan Ege Sorunu: Hukuki Ve Siyasi Çerçeveden Türklerin Ve Yunanlıların Motivasyonları ve İddiaları

Öz

Türkiye ve Yunanistan arasında birçok sorun var olmasına rağmen taraflar arasındaki en önemli sorunlar Kıbrıs Sorunu ve Ege sorunudur. Ege Denizi yarı-kapalı deniz özelliği ve yaklaşık 1800 adasıyla Türkiye ve Yunanistan arasında en uzun sınırı oluşturuyor. Ege Denizi'nde temel sorunları: kıta sahanlığı, kara suları, hava sahası, Doğu Ege Adaları'nın silahsızlandırılmış statüsü ve adacıklar ve kayalar sorunlarıdır. Birbirine bağlı bir dizi tartışmalar, Türkiye ve Yunanistan arasında Ege Denizi ihtilaflarına yol açtı. Ege Denizi'nin sui generis yapısından ve aynı anlaşmaların ve uluslararası deniz hukukunun hukuki çerçeveden Türkler ve Yunanlılar tarafından farklı

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yorumlanmasından dolayı Ege sorunu oldukça karmaşıktır ve aynı zamanda iki ülke içinde çözüme ulaşmak zordur. İki ülkenin milliyetçiliğinden ve uluslararası hukukun farklı yorumlanmasından dolayı Ege sorunu herhangi bir gelişme olmadan durağan bir şekilde devam ediyor. Ege Denizi'nin istikrarı ve var olan düşmanlığın ortadan kalkması için en kısa zamanda Türkiye ve Yunanistan karşılıklı olarak kabul edilebilir bir çözüme ulaşmalıdırlar. Bu araştırma, Türkiye ve Yunanistan arasında devam eden ve birçok karşıtlar içeren Ege sorununa ışık tutuyor ve tarafların iddiaları ve motivasyonları detaylıca açıklayıp objektif bir şekilde değerlendiriyor. Çalışmada Ege sorunu ile ilgili sadece hukuki iddiaları değil aynı zamanda politik iddiaları da içeren genel bir portre sunmayı amaçlıyor. Bulgulara göre, Türkiye iki ülke içinde gelecekteki faydaları kaybetmeyi önlemek için Yunanistan ile ikili yeniden müzakereci bir temele dayanan çözüm bulmaya çalışıyor ise de Yunanistan sorunu Uluslararası Adalet Divanına taşımayı istiyor.

Anahtar Kelimeler: Ege Sorunu, Kıta Sahaneliği, Kara Denizi/Suları, Hava Sahası, Tartışmalı Adalar, Adacıklar ve Kayalar.

1. Introduction

Turkey and Greece are two adjacent countries, living with each other about centuries. Yet, the relation between Turkey and Greece can be considered as 'rivalries' or 'competitors'. Both countries are the members of the North Atlantic Treaty Organization (NATO); in addition, both countries simultaneously expected to be a member of the EU. However, Greece luckily joined the EU in 1981, but the negotiation of Turkey's accession is still ongoing on the road of thorns.

In the disputes between Turkey and Greece, the Aegean Sea disputes are the most problematic, which occurred the abundant contradictions between the countries¹. This study analyzes the Aegean Sea disputes in terms of the continental shelf, territorial sea/water, the air space, demilitarized status of the eastern Aegean islands, disputed islands and islets and rocks. The Aegean Sea disputes are sophisticated legal and political questions for academic or governments because of its *sui generis* nature as well as Turkish and Greece various arguments. Turkey attempted to seek a solution based on a bilateral re-negotiation with Greece; on the other hand, Greece determined to have recourse to the International Court of Justice (ICJ). Solutions for the Aegean Sea disputes have not been settled yet because of nationalism, antagonism, and mistrust between the parties. In order to sustain a regional peace and security, both countries should improve their relations and reach a consensus peacefully.

¹Murat M. Erdoğan, Hüseyin Bağcı and Seda F. Kundakçı, *Türkiye Büyük Millet Meclisi Tutanaklarında Türk - Yunan İlişkileri ve Avrupalılaşıma: 1994-2006* (Ankara: TBMM Kültür Sanat ve Yayın Kurulu Yayınları, 129, TBMM Basımevi, 2008), 83.



According to the documents provided by the Turkish Foreign Ministry, the Aegean Sea is a common sea between both countries. Both countries should respect each other rights protected by international law so as to secure each vital interest. Therefore, the right of freedom of navigation at the high seas and air space should be intact and any acquisition of new maritime areas thus should be based on the fair, mutual and equitable consents².

In this research, the main question is that if Turkey agrees to bring the Aegean issue to the International Court of Justice in accordance with the conclusions of December 1999 Helsinki Summit, it may lose the case against Greece. Our conjecture is that Turkey should persist on the instrument of the bilateral re-negotiation so as to resolve the Aegean Sea disputes; otherwise Turkey will lose the case before the ICJ wholly or partly. The issues, concerning the continental shelf, the extension of territorial sea of the islands, the air space, the disputed islands, islets and rocks concerning their status and the demilitarized obligation will be addressed by turns.

The main aim of this study is to explain clearly Aegean disputes in detail and to fill the vacuum of the academic filed on the basis of legal and political perspectives of Turkey and Greece on Aegean disputes. The hypothesis of the study is that Turkey should persist on the instrument of the bilateral re-negotiation in order to resolve the Aegean Sea disputes; otherwise if the case will be uploaded to the ICJ, Turkey will lose the case before the ICJ wholly or partly. In order to form a comprehensive image, there search is conducted a literature review of the primary sources, such as: speeches, international agreements and foreign policy concepts, and secondary sources such as books and articles.

2. Aegean Disputes

In this section, above-mentioned issues of the Aegean Sea disputes will be underlined. As for the nature of it, the Aegean Sea, a semi-enclosed sea with about 1800 islands, is the longest border between Turkey and Greece. A set of interconnected controversies resulted in the Aegean Sea conflicts between Turkey and Greece. This had posed a great repercussion on the Turkish-Greek relations since 1970s³ with respect to the continental shelf, the extension of territorial sea of the islands, the air space, the disputed islands, islets and rocks concerning their status and the demilitarized obligation and these issues will be discussed in sequence.

²T.C. Dış İşleri Bakanlığı, "Turkey's Perception of the Aegean Sea", http://www.mfa.gov.tr/turkey_s-perception-of-the-aegean-sea.en.mfa (12.05.2018).

³Petros Siousiouras and Georgios Chrysochou, "The Aegean Dispute in the Context of Contemporary Judicial Decisions on Maritime Delimitation", *Laws* 2 (2014), 13.



2.1. Continental Shelf

The dispute of the continental shelf arose on account of Greek and Turkish geophysical explorations to search for oil during the 1963-72. To begin with, the Greek had operated the extraction of oil reserves in 1968. In response to the Greek, Turkey awarded mineral exploration to the Turkish State Petroleum Company Turkey (Türkiye Petrolleri Anonim Ortaklığı, TPOA) licenses in the Eastern Aegean in regard to natural prolongation continental shelf. Consequently, Greece strikingly condemned Turkish decision and protested against it; on the other hand, Turkey disregarded the Greek objections.

Greece claimed that each island generates the continental shelves in accordance with the 1958 United Nations Convention on the Continental Shelf and the U.N. Convention on the Law of the Sea (UNCLOS). However, Turkey counter-claimed that she is not part of the Convention, thereby there is not legally binding to Turkey herself⁴. Accordingly, Turkey expected to resolve it based on bilateral re-negotiations instead of referring the case to the ICJ⁵.

Based on Turkish position, the question of the continental shelf shall not be submitted to the ICJ in conformity with the Security Council decision so that it urged both parties to resume direct negotiations with each other immediately. In addition, the ICJ had rejected the Greek claims of right to continental shelf in 1978. Moreover, the both parties signed Bern agreement in 1976 that both parties should reach a delimitation of the continental shelf by negotiations. Nevertheless, Greece abruptly suspended the negotiating process with Turkey in 1981 and started seismic and related activities to launch the drilling operations in the disputed areas of the Aegean continental shelf so as to led to the crisis of 1987⁶.

According to Article 77 of the UNCLOS, the coastal states have sovereign rights of exploration and exploitation of its continental shelf, which mostly refers that the coastal state can drill for oil and natural gas in practice. Therefore, it is an inherited right for Greece to operate exploration and exploitation of its continental shelf located in the Eastern Aegean Sea. Furthermore, the UNCLOS is a reflection of customary international law that even the non-

⁴Carol Migdalovitz, "Greece and Turkey: Aegean Issues--Background and Recent Developments", Congressional Research Service, Library of Congress (1997), 5.

⁵Ertuğrul Güven, "Türk-Yunan Uzlaşmazlığında Ege Sorunun Aşılması", *21. Yüzyıl* (2010): 68-69.

⁶T.C. Dış İşleri Bakanlığı, "Background Note on Aegean Disputes", <http://www.mfa.gov.tr/background-note-on-aegean-disputes.en.mfa> (11.05.2018).



signing state, Turkey, should be binding on it. Moreover, based on the equidistance principle recognized by the ICJ in the 1969 *North Sea Continental Shelf Case*, the median line should be defined between the Greek islands and the Turkish mainland.

By contrast, Turkey contended the four important justifications in response to Greece: (1) the need for an agreement for delimitation, (2) the importance of natural prolongation, (3) the principle of equity; and (4) the legal and political balance to be preserved in the Aegean disputes⁷ According to Siousiouras and Chrysochou, the current Turkish position comprised this agenda as follows:

I. The dispute according to the Turkish view concerns continental shelf areas beyond the 6 mile territorial sea in the Aegean.

II. Turkey claims to stand ready to engage in a dialogue with Greece aiming to achieve an equitable settlement to the best interest of both countries.

III. Turkey highlights the arguably ‘binding’ character of the Bern Agreement on November 11, 1976 with Greece, where the parties decided to hold negotiations with a view to reaching an agreement on the delimitation of the Continental Shelf. Under the terms of this Agreement, the two governments have, *inter alia*, assumed the obligation to refrain from any initiative or act concerning the Aegean Continental Shelf.

IV. Furthermore, despite her denial of the ICJ jurisdiction in 1976, Turkey claims to positively examine the solution of the ICJ, by invoking its decision taken in 1982 in the Tunisia-Libya case, stating that ‘delimitation is to be effected by agreement in accordance with equitable principles and taking into account all relevant circumstances⁸’.

2.2. Territorial Sea

Territorial water is the key water for a State in terms of economic interest and security. Instead of six nautical miles, Greece reserves right to express a 12 nautical-mile limit and codified this right. In 1995, Greek Parliament ratified the U.N. Convention on the Law of the Sea (UNCLOS III), which support the idea of that states have the right to a territorial sea up to 12 nautical miles. In response, Turkey refuted the Greek proclamation and may take any

⁷Nevin Aslı Toppare, ‘‘A Legal Approach to the Greek Turkish Continental Shelf Dispute at the Aegean Sea’’ (Master Thesis, Bilkent University, 2006), 63-64.

⁸Petros Siousiouras and Georgios Chrysochou, ‘‘The Aegean Dispute in the Context of Contemporary Judicial Decisions on Maritime Delimitation’’, 15.



necessary measures, including military presence (Causus belli: causing war), if Greece exercises its right⁹.

According to the international practice, it is common for States to claim twelve-mile zone for her territorial sea. Also, Turkey in the area of the Black Sea had exercised this practice, which implied that Turkey has recognized the practice of twelve-mile zone of territorial sea water. However, Turkey argued that after the Greek extension to the 12 nautical-mile limit would adequately change the territorial sea to 71.5 percent to Greece, 8.8 percent to Turkey and remaining 19.7 percent as high seas¹⁰. Turkey cannot accept it because it would rather deprive Turkish vital interests of the Aegean Sea. Turks fear that Aegean would turn to a “Greek lake” that Turkish ships would be obliged to pass Greek waters¹¹. Furthermore, they asserted that Turkish Anatolian Coast would be isolated, and it could directly affect the Turkish economy, security and scientific interests¹². However, the Turkish concerns would be without merits that under international law, States have to allow the ‘innocent passage’ of ships through their territorial waters if the purpose of passage is not prejudicial to the peace, good order or security of the coastal state in accordance with Article 17 of the UNCLOS and the CIL recognized by the ICJ. In the present situation, despite the extension of 12 mile may include most of Aegean Sea for Greece, it will not damage the Turkish right to passage.

2.3. The Air Space

International airspace over the high seas is not under the any states. According to the Article 1 and 2 of the 1944 Chicago Convention on civil aviation, the breadth of national airspace has to correspond to the breadth of territorial sea. Persistent abuse of ‘Flight Information Region (FIR)’ is a main conflict on the Aegean airspace¹³.

The main airspace issues on the Aegean airspace are extension of Greek airspace, Air Traffic Services problems and responsibility of the sharing NATO Air Defence¹⁴. Turkey believed that the air space control regime makes the disadvantage to them in the case of an

⁹Stergios Arapoglou, “Dispute in the Aegean Sea the Imia/Kardak Crisis”, (Thesis, Air University, 2002), 7-8.

¹⁰T.C. Dış İşleri Bakanlığı, “Background Note on Aegean Disputes”, (11.05.2018).

¹¹Stergios Arapoglou, “Dispute in the Aegean Sea the Imia/Kardak Crisis”, 7-8.

¹²Stephen Mann, “The Greek-Turkish Dispute in the Aegean Sea: Its Ramifications for Nato and the Prospects for Resolution”, (Thesis, Naval Post Graduate School, 2001), 21.

¹³T.C. Dış İşleri Bakanlığı, “Background Note on Aegean Disputes”, (11.05.2018).

¹⁴Gökay Bulut, “Ege Hava Sahası Sorunları, Çözölmüş Olanlar ve Sorunların Geleceđi”, *Güvenlik Stratejileri* 8, sy.16 (2008),116.



attack from air. As a result, Turkey at fourth August of 1974 unilaterally issued NOTAM 714. This NOTAM required “all aircraft approaching Turkish airspace to report their position and flight plan on reaching the Aegean median line, which lay considerably to the West of the FIR line...” Greece argued that this was against International Civil Aviation Organization (ICAO) regulations and retaliated by issuing, NOTAM 1157, which expressed the Aegean airspace unsafe due to conflicting control orders but in the end these NOTAM’s were withdrawn in 1980¹⁵.

Secondly, Greece declared a 10 nautical mile national airspace over territorial waters of 6 nautical miles and furthermore Greece request that Turkey submit flight plans for her military aircraft. These two claims were unacceptable by Turkey¹⁶. Turkey feels that the FIR boundary is so close to her land border, and in particular for security issues and purposes, desires a system giving balanced control as well as sufficient mutual early warning of military operations¹⁷.

2.4. Disputed Islands And Islets And Rocks

There are approximately 2.400 islands in the Aegean Sea and most of them are in dispute. There are many small islets and rocks in the Aegean which their ownership is not determined by international treaties. Another issue of the islands and rocks is resulted from their different interpretation of the treaties in light of the ambiguous language embedded in the governing treaties¹⁸. Human habitation and economic life are not available on the most of them. Greece has tried to change their status by opening some of that geographical characteristic to artificial settlement. Turkey regards this Greek policy as another attempt to establish ‘fait accomplis’ with a view to close-off the Aegean Sea as a Greek lake¹⁹. In this section, these will be discussed into three parts concerning the delimitation of the islands of the Eastern Aegean Sea and the Kardak rocks, and finally the Greek demilitarized obligation by turns.

a) The delimitation of the islands of the Eastern Aegean Sea

In the beginning, Greece alleged that the Strait Region Islands and the Saruhan

¹⁵T.C. Dış İşleri Bakanlığı, “Background Note on Aegean Disputes”, (11.05.2018).

¹⁶Stephen Mann, “The Greek-Turkish Dispute in the Aegean Sea: Its Ramifications for Nato and the Prospects for Resolution”, 22-23.

¹⁷Stergios Arapoglou, “Dispute in the Aegean Sea the Imia/Kardak Crisis”, 12.

¹⁸Ufuk Alkan, “Legal and Political Aspects of the Aegean Dispute and Its Implications for Turkey’s Relations with Greece and the European Union”, *Atatürk Üniversitesi İktisadi ve İdari Bilimler* 29, sy.4 (2015), 710.

¹⁹T.C. Dış İşleri Bakanlığı, “Background Note on Aegean Disputes”, (11.05.2018).



Islands, except for the islands of *Gökçeada*, *Bozcaada* and *Tavşan* Islands and those were mentioned in Article 15 of the Lausanne Peace Treaty, belong to Greece. Moreover, based on Article 12 (3), it articulated that the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty. Namely, Greece has sovereignty over the islands that are *beyond* three miles from the said coast except for the islands of the three and the islands *within* three miles belonged to Turkey. However, Turkey repudiated the Greek interpretation of Article 12 of the said treaty because the islands that were not mentioned in the treaty should remain question and wait until the mutual negotiations.

In response to the Turkish contention, Greek argued that the function of Article 15 of the Lausanne Peace Treaty is merely to enumerate the exemplar in the treaty. Accordingly, if the islands without mentioned in the treaty would be based on the general rule of Article 12 that the islands *beyond* three miles are belonged to Greek. Therefore, Greek argument is based on the contextual treaty interpretation in relations with Article 12 and 15 of the Treaty of Lausanne in consistent with Article 31 of the 1969 Vienna Convention on the Law of Treaties (VCLT).

b) The delimitation of the Kardak rocks (Imia Rocks)

Even Kardak islets are relatively small islets and at first seemed as they have great importance, this dispute need to be negotiated in good faith between Turkey and Greece. Additionally, Kardak islets have a strategic importance given that they are situated around four miles off the coast of Turkey and close to other Greek territory²⁰.

Sovereignty issue on the Aegean islets sprang up on 25 December 1995 when Turkish freighter, 'FigenAkat' ran aground on Kardak/Imia, a rocky islets, which is located around 5.5 miles from the Greek islands of Kalymnos and 3.8 miles off the Anatolian coast of Turkey. The ship captain radioed for help but rejected to be towed by a Greek tug, claimed that he was aground on Turkish territory and expecting help from Turkey²¹. On 29 January 1996, brought one of its army group to the eastern Kardak and raised its flag to the eastern and western Kardak and also air forces started to flied over these rocks. Turkey declared a nota to the Greece, but Greece replied that we are not going to put down our flag and continue as Kardak even not will be a subject of negotiation. Followed this event Turkish Underwater Attacks and

²⁰Emily A. Georgiades, "The Imia Islets: A Beginning to the Maritime Delimitation of the Aegean Sea Dispute", *Ocean and Coastal Law* 17, no. 1 (2011), 125.

²¹Stergios Arapoglou, "Dispute in the Aegean Sea the Imia/Kardak Crisis", 15.



Turkish Defense Teams (SAT ve SAS) went to the western Kardak and replaced Turkish flag to the Greek flag. With the mediation of USA, both parties pulled back their armies from the Kardak²².

In the matter of the law, Turkey claimed that the Kardak rocks were not belonged to Greece based on two main reasons; firstly, the document regarding the delimitation of Kardak rocks made by Turkey and Italy was not ratified by the Turkish General National Assembly. The ratification has been regarded as an essential element for the binding treaties; thereby treaties without domestically parliamentary ratification generally would be regarded as non-binding documents. In the 1952 *Ambatielos* case²³ rendered by the ICJ, when a treaty provides for ratification, the practice of ratification is an ‘*indispensable*’ condition for bringing into operation. In the present circumstance, Article 7 of the said document explicitly laid down the ratification is necessary and need to be exchanged at Roma. Therefore, the document has no binding force towards Turkey. Secondly, the said document was not registered by the League of Nations, and hence the unregistered documents are considered to be null and void. However, the arguments made by Turkish are questionable. Firstly, according to Article 11 and 12 of the VCLT, even if the said document between Turkey and Italy concerning the Kardak rocks had not been ratified by Turkish parliamentary, and a mere signature by the representatives can be sufficient. Moreover, since the main agreement on 4 January 1932 had been signed and ratified by Turkey, the annexed document as for Kardak rocks was automatically binding to Turkey. Secondly, Article 18 of the Covenant of the League of Nation should be replaced by Article 102 of the UN Charter according to the doctrine of *lex posterior derogatlegi priori*, namely, when there is a conflict between two legal sources, a later law prevails an earlier. In this sense, the registration of treaties is not necessary since it is not the main element of the binding treaty as well as the ICJ in the case of *Qatar v. Bahrain*²⁴ and *Corfu Channel* has recognized this notion²⁵.

c) The Greek demilitarized obligation on the eastern Aegean islands

The 1923 Treaty of Lausanne mandated the demilitarization of several islands which

²²Cüneyt Yenigün, “Ege'de Baris Yolunda Donmus Sorunlar”, *Dünya Çalışmaları* (2010), 717.

²³The *Ambatielos* Case (Greece v. United Kingdom) Preliminary Objection judgment of July 1st, 1952 I.C.J., http://legal.un.org/riaa/cases/vol_XII/83-153_Ambatielos.pdf (02.06.2018).

²⁴Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar v. Bahrain*) Jurisdiction and Admissibility Judgment Of 1 July 1994 I.C.J., <https://www.icj-cij.org/files/case-related/87/087-19940701-JUD-01-00-EN.pdf> (03.06.2018).

²⁵The *Corfu Channel* Case (Preliminary Objection) Judgment of March 25th, 1948 I.C.J., <https://www.icj-cij.org/files/case-related/1/001-19480325-JUD-01-00-EN.pdf> (07.06.2018).



have been given to Greece in eastern Aegean Based on Treaty of Paris in 1947, Italy ceded the Dodecanese islands to Greece, which has been mandated for demilitarization as well. Greece began to militarize the islands and after the Cyprus crisis of 1947 accelerated the its program. Militarization of Lemos and Samothrace, and its extension to the Dardanelles pose a great threat to Turkey. Turkey denounced Greece that what the Greek have done should be regarded as a serious violation of the Lausanne and Paris Treaties. In this section, the Greek justification of self-defense under international law and the challenge on the Turkish legal standing will be examined in turns.

A. The legality of self-defense by Greek

Greece claimed that the purpose of these islands' militarization is a self-defense and furthermore claimed that Lausanne Treaty was superseded by the 1936 Montreux Convention. However, the allegation of self-defense is not legitimate since there is no 'armed attacks' according to Article 51 of the UN Charter. In 1986 *Nicaragua Case*²⁶, ICJ ruled that the *scale and effects* of the armed attacks is higher the use of force so as to trigger the justification of self-defense²⁷. However, in the present situation, Turkish Fourth Army in İzmir cannot reach to the threshold of current armed attacks, but a mere routine training²⁸. On the contrary, the Greek relied on the self-defense to preclude her wrongfulness of breaching the demilitarized obligation because the operation of the Turkish Fourth Army is not a mere training but must be considered the overall fact circumstantially that first, it is a Turkish amphibious special force with highly equipment for the purpose of combats in the Aegean Sea regions; secondly, considering the fact that Turkish official recently aggressive rhetoric underscoring that "*Our warships and air forces are keeping an eye on the area closely to intervene in every way when required*" and "*invading and taking over 18 Greek islands in the Aegean Sea, just as former Turkish PM Bulent Ecevit invaded Cyprus in 1974*"; because these public discourses showed the reasonable fear and concern for the Greek, she has right to claim its right as a 'preventive self-defense' in the manners of conducting a deterrence measures in consistent with the principle of necessity and proportionality so as to deter any potential threats may happen. Nonetheless, there is no denying that the claim on preventive self-defense is still debatable within international community because it is not codified in the UN Charter and being

²⁶Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.), 1986 I.C.J. <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> (09.06.2018).

²⁷Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.), 1986 I.C.J., (09.06.2018).

²⁸Carol Migdalovitz, "Greece and Turkey: Aegean Issues--Background and Recent Developments", 3.



saliently recognized by States. Therefore, Greece has obligation to demilitarize the islands as soon as possible in order to restore the peace and security of the Aegean Sea since there is no armed attack but a sheer frontier incident and the preventive self-defense is not valid.

B. The legal standing of Turkey before the ICJ

Greece contended that Turkey has no legal standing to contest the demilitarized obligation with regard to the islands that is controlled by the 1974 Paris Peace Treaty, which Turkey is not part of this treaty but Italy. As a result, the only thing that Turkey can do it to push Italy to exercise its right to bring the case to the ICJ. However, Turkey regarded itself in the *erga omnes* legal standing that even if she was not part of the treaty, because she is a third interest party that she may bring the case to the ICJ in order to defend her right. Nevertheless, the ICJ has a confined interpretation on the *erga omnes*, such as the acts of aggression, genocide and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination in the case of the 1970 *Barcelona Traction Case*²⁹ and the 2007 *Bosnian Genocide Case*³⁰. Therefore, the Turkish claim of the *erga omnes* should be inadmissible before the ICJ. To sum up, the issues of demilitarization of the islands had not been resolved until now. This is closely related to the tendency of either side to interpret the governing provisions differently and to overlook certain aspects of them. In fact, resolution of this dispute will create the trust links between Turkey and Greece³¹.

3. Conclusion

Aegean and Cyprus areas are the important issues between Greece and Turkey. In this study, it is emphasized on Aegean disputes, including continental shelf, territorial water, the air space, disputed islands, islets and rocks. If Turkey agrees to bring the Aegean issue to the International Court of Justice in accordance with the conclusions of December 1999 Helsinki Summit, it may lose the case against Greece. Therefore, Turkey should persist on the instrument of the bilateral re-negotiation in order to resolve the Aegean Sea disputes; otherwise Turkey will lose the case before the ICJ wholly or partly. In other words, Greece would like to resolve the Aegean Sea dispute by the International Court of Justice, instead of

²⁹Affaire De La Barcelona Traction, Light and Power Company, Limited (Nouvelle Requête: 1962) (Belgique C. Espagne) Deuxième Phase I.C.J., <https://www.icj-cij.org/files/case-related/50/050-19700205-JUD-01-00-EN.pdf> (02.06.2018).

³⁰Application of the Convention on The Prevention and Punishment of The Crime of Genocide (Bosnia and Herzegovina V. Serbia And Montenegro), Judgment, 2007 I.C.J., <https://www.icj-cij.org/files/case-related/91/091-20070226-JUD-01-00-EN.pdf> (05.06.2018).

³¹Ufuk Alkan, “Legal and Political Aspects of the Aegean Dispute and Its Implications for Turkey’s Relations with Greece and the European Union”, 704.



the proposition provided by Turkey that to settle it based on bilateral re-negotiations in accordance with the Bern Agreement.

If Turkey accepts Greek offer, which is to refer the Aegean Sea dispute before the ICJ, it may not only impair the Turkish sovereignty over her territorial sea and continental shelf but also endanger the Turkish mainland security because of the Greek re-militarized operations. For the continental shelf, Greece claimed the 12 miles instead of 6 miles based on the UNCLOS mostly recognized by countries and reflected as a customary international law. However, Turkey still objects it persistently that extension from 6 to 12 miles by Greece, might lead to *casus belli* (cause of war) between both parties.

The air space issue is also complicated and problematic. Greece claims to have 10 air space miles over the 6 miles over the territorial water and requested Turkey to submit its military and civil flights. These claims do not accepted by Turkey as well.

In turn, because of the unclearness of the treaties, in the case of islands, islets and rocks, both sides do not compromise about ownership of these islands, especially the islands without mentioned in the Lausanne Peace Treaty and the Kardak rocks.

De-militarization of the Eastern islands is so important for Turkey. Although the small islets have no economic and habitual usages, Kardak islets had brought the both sides into the war edge.

Aegean disputes have not resolved so far because of the 'conceptual gaps' between the both parties in terms of treaties interpretation and different perspectives of interests at stake respectively. Therefore, it is difficult to reach the compromise between the both parties.

In 1999, the Helsinki European Council admitted Turkey to the European Union as a candidate state. The academic commented that it created a positive atmosphere for the settlement of the disputes between the parties through amicable means. Nevertheless, the situation in fact based on the foregoing reasons, the Aegean Sea dispute is the hardest conundrum either for the both countries and the world. All in all, for the sake of the peace, prosperity and stability of the Aegean Sea region, both countries should seek the solutions as soon as possible, whether via bilateral negotiations or the reference to the ICJ.



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