DISPUTED ISLETS AND ROCKS IN THE AEGEAN SEA

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1. Introduction

Disputed islets question between Greece and Turkey has started with an accident occurred on 25 December 1995 near Kardak/Imia Rocks in the Southeast Aegean Sea. After a few days of silence, diplomatic notes were exchanged between the parties in which both Greece and Turkey claimed that they were the real owner of the said rocks and blamed the other for following a revisionist policy. These made the crisis more complex. The crisis which escalated during the first days of January 1996 has settled down with the mediation of third parties (especially the USA), and Greece and Turkey has added the issue to their long-list of existing bilateral disputes.

Before starting to analyse the status of the islands, islets and rocks of the Aegean Sea causing the dispute, it must be said that the related islands, islets and rocks which are the subject of the dispute are especially the ones lying in the Southeast Aegean region which are known generally as South Sporades that also include the Dodecanese Islands.

It is undoubtedly necessary to examine the historical situation of these islands, islets and rocks in order to put the issue straight. All islands, islets and rocks lying in this region became

part of the Ottoman Empire by the seizure of Create in 1699. In other words, it is not theoretically possible to say that there remained an island, islet or even a rock which did not become the territory of the Ottomans after the conquest of Create. On the other hand, many of these islands, islets and rocks were ceded to other countries and the successors of the Ottoman Empire after World War I, thus Turkey's sovereignty in this region was limited. However, because of the ambiguity of the related international documents and of the state practises, the Kardak/Imia incident brought about a dispute between Turkey and Greece over the sovereignty of the islands, islets and rocks in the Aegean Sea.

In chronological order, the international documents that deal with the status of the said islands, islets and rocks in the region are the Lausanne Peace Treaty of 1923, the Convention and the exchange of letters between Turkey and Italy dated 4 January 1932, the document signed by Turkish and Italian technical experts on 28 December 1932, and finally the Paris Peace Treaty of 1947. On the other hand, before starting the detailed analyses of these international documents, it must be emphasised that, despite some initiatives between 1911 and 1923 about the sovereignty of these islands, islets and rocks, there was no change in the status of these territories due to the fact that above mentioned initiatives were not completed legally.

In short, the Lausanne Conference did not change the status of the islands, islets and rocks of the Aegean Sea. As they were all Ottoman territories and the Lausanne Peace Treaty recognised Turkey as the successor of the Ottoman Empire, it should be accepted that the sovereignty over all these islands, islets and rocks has passed to Turkey.[1] Meanwhile, it must also be stressed that, Turkey and Greece are in an accord of viewpoints about this issue today and Greece does not base any of her sovereignty claims on historical documents other than the ones listed above. In other words, Greece does not have any claim arguing that she acquired the said territories with a historical document or an event before the

[1] While defining the islands of Turkey, the Article 12 of the Lausanne Peace Treaty states that, the islands mentioned one by one shall *remain* under Turkish sovereignty. This expression, obviously, proves that, those islands were Turkish territories before the Treaty as well. Thus, it is accepted that, the sovereign state over these territories was not changed after the Treaty. In other words, Turkey is the successor of the Ottoman Empire.

Lausanne Peace Treaty. So, it seems there is nothing before the Lausanne Peace Treaty to examine which might have effect on the status of the said islands, islets and rocks.

Therefore, in order to analyse the status of these islands, islets and rocks in the context of international law, the documents listed above and the state practises of the parties should be analysed one by one.

2. The Arrangements of the Lausanne Peace Treaty

The related articles of the Lausanne Peace Treaty that may affect the status of the disputed islands, islets and rocks are the articles 12, 15 and 16.

Article 12 of the Treaty states that, 'except where a provision to the contrary is contained in the present Treaty, the islands situated at less than three miles from the Asiatic coast shall remain under Turkish sovereignty'. Greece, using this wording, claims that the Turkish sovereignty over the islands, islets and rocks in the Aegean are limited to 3 mile zone from its coasts. According to this view, Turkey can not have any islands, islets and rocks lying more than 3 miles off the Asian cost.[2] Turkey, on the other hand, argues that the only goal of this Article is to guarantee the Turkish sovereignty in the said zone, which has a great importance for the coastal state (Turkey) in terms of territorial sovereignty. According to this view, if it was aimed to limit the Turkish sovereignty within the 3 mile zone, an expression such as 'all the islands that lie within the 3 miles zone of Asian coast shall remain under Turkish sovereignty and all others will be ceded to Greece and/or Italy,' would have been added, and all the other related articles of the Treaty that complicates arrangements about them would have been unnecessary. In this case, there would probably be no dispute between Turkey and Greece today about the sovereignty of these territories.

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[2]'Turkish Foreign Policy and Practice as Evidenced by the Recent Turkish Claims to the Imia Rocks,' <http://www.mfa.gr/foreign/bilateral/imiaen.htm>, 10.06.1998 (hereafter *Recent Turkish Claims*); Constantin P. Economides, 'Les Ilots D'Imia Dans La Mer égée: Un Différend Créé Par La Force,' *Extrait de la Revue Générale de Droit International Public*, No. 2 (April-May-June 1997), pp. 330, 332-333.

In fact, wording of the Article clearly indicates that it does not intend to take all the islands, islets and rocks out of the 3 mile zone from Turkey automatically. It only stresses that all islands, islets and rocks lying within the 3 mile zone should remain under Turkish sovereignty. It should also be accepted that, if the goal of the Article was as Greece claims, the wording of the Article would have been different and clearer. So, this Article does not seem as making any change on the status of any of the islands, islets and rocks in the whole Aegean Sea.

On the other hand, the Article 15 states that Turkey renounces all her rights and titles in favour of Italy over 13 islands mentioned one by one that are known collectively as the Dodecanese Islands;[3] over the islets 'depending' on them; and over the Castellorizo Island.[4] As understood from the Article 15, there are so many islets in the region, and the ones which are intended to be given to Italy are described by the 'depending islets' expression. In other words, the islets which could be seen as 'depending' to any of the mentioned islands would also be ceded to Italy. Due to the fact that the Article refers to 'depending' islets, it could be argued with *a contrario* interpretation that there are also other islets in the region that could not be seen as 'depending' on one of the mentioned 13 islands. If this was not the case, then the Article would not have created a difference between the islets in the region by using the 'depending' expression and made a specific arrangement for them only. Therefore, it can be argued that the second group of islets (the ones that could not be evaluated as 'depending' on any of the mentioned islands) were not ceded to Italy by this Article, and, in the light of this Article, they continue to be a part of the Turkish state.

On the other hand, the problem of interpreting the meaning and extent of the 'depending' word remains in front of us. However, neither the text of the Treaty nor the preparatory works

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[3]In fact, Dodecanese (*Dodeca-nissas*) means '12 Islands' in Greek although it includes 14 islands. Nevertheless, the Article mentions 13 islands in this context, which are: Stampalia, Rhodes, Calki, Scapanto, Casos, Piscopis, Misiros, Kalimnos, Leros, Patmos, Lipsos, Simi and Cos; and the 14th island, Castellorizo is mentioned separately.

[4]It must be stressed that Italy ceded these territories to Greece with the Paris Peace Treaty of 1947. See *infra.*, pp. 18 ff.

give an idea about the meaning and extent of the word 'depending' or show a criteria on which it depends. The problem of interpreting that expression came to the agenda only after the Kardak Crisis (1996) and both Turkey and Greece argued since then that 'distance' is the (only) criteria in determining the extent of this expression. However, while these two states are of the same opinion about the criteria, namely distance, they differ widely on the interpretation of this criteria.

According to Greece, these islets belong to the state to which they are nearer.[5] In other words, if the disputed islet is nearer to one of her islands or islets than it is to the Turkish coast or island, it would belong to Greece. Turkey, on the other hand, claims that, 'depending' expression is valid only for the islands mentioned in the Article 15 and, therefore, the disputed islet would belong to Greece if it is nearer to any of these mentioned islands than the nearest undisputed Turkish territory.[6] In the present dispute, Greece claims that since Kardak/Imia Rocks are nearer to Kalolimnos Islet (1.9 nautical miles away from these rocks) than the Turkish coast (3.6 nautical miles) or even the nearest Turkish undisputed territory (Kato/Çavuş Island, 2.2 nautical miles), they belong to Greece.[7] On the other hand, Turkey argues that these rocks are 5.4 nautical miles away from the nearer island mentioned in the Article 15, namely Kalimnos Island, and, therefore, they could not be evaluated as being 'depending' on it while they are only 2.2 nautical miles away from the Turkish island Kato/Çavus and 3.6 nautical miles away from the Turkish coast.[8] It is also stressed that Kalolimnos Islet was not mentioned in the Article 15 and therefore, this islet would be Greek territory only if it is evaluated as a 'depending' islet on the nearer mentioned island, Kalimnos Island. In other words, this islet is the **subject** of the Article 15 which can only benefit the rights given by that Article and can not have that rights as if it is the **object** of the Article. So, it

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[5] *Recent Turkish Claims.*

[6] 'Legal Backgrounder on the Kardak Crisis in a Nutshell: Etiology of a Package Approach<http://www.mfa.gov.tr/GRUPF/KARDAK/Kardak15.htm> 17.12.1998 (hereafter *Legal Backgrounder on the Kardak Crisis*).

[7] *Recent Turkish Claims*; Krateros Ioannou, 'A Tale of Two Islets,' *Thesis*, Vol. 1, No. 1, p. 34; Economides, 'Les Ilots D'Imia,' p. 22.

[8] *Legal Backgrounder on the Kardak Crisis*; Yüksel İnan and Sertaç H. Başeren, *Status of Kardak Rocks-Kardak Kayalıklarının Statüsü*, Ankara, 1997, p. 15.

can not take some islets with itself as it is not benefiting from the right given by the 'depending' expression.

In order to make a correct interpretation, we should act in good faith to find the ordinary meaning of the expression in the light of the object and purpose of the treaty.[9] Although 'depending' expression is not clear enough in the Treaty to make a satisfying evaluation, after studying various interpretation initiatives of the parties, it should be mentioned that the 'depending' expression does not state 'relativity' as the parties argue.[10] Because the Article does not include any expression such as 'nearer' and does not mean that the islet(s) shall be the part of the nearest territory and therefore of the state which owns that territory. In other words, this Article is not interested in to which land (island or territory) the islets are nearer in order to determine their status. It only stresses that, some islets shall be ceded (to Italy) with the above mentioned islands only if they are evaluated as 'depending' on any of them and says nothing about the ceding party's (Turkey) rights. In short, 'depending' expression, *per se*, does not give any right to Turkey, and the distance between the disputed islet and Turkey is meaningless in determining the extent of the 'depending' expression.[11] The interpretations done by the parties depending on distance seem unsatisfying and even insufficient. Therefore, an interpretation based on other criterias should be done in order to determine the extent of the said expression.

As mentioned above, the text of the Treaty does not give a satisfying and sufficient idea, and in such situations examining the state practise of the parties seem to be the second alternative for interpreting this expression. In other words, the way the parties acted since the Treaty will show us how the expression was understood and interpreted. Greece, in this context, brings some maps to the agenda and claims that the border lines marked on these maps show the interpretations of the parties.[12] Clearly, these marks show what that state understands from the said expression in

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[9] Article 31, *Vienna Convention on the Law of Treaties.*

[10] Erdem Denk, *Egemenliği Tartışmalı Adalar: Karşılaştırmalı Bir Çalışma-Kardak Kayalıkları ve Spratly ve Senkaku/Diaouyu Adaları Örnekleri*, Ankara, Mülkiyeliler Birliği Vakfı, November 1999, p. 235.

[11] Ibid.

[12] Ioannou, *A Tale of Two Islets*, p. 40.

the Treaty and this means Greek interpretation as she demonstrates this with her practises. On the other hand, Turkey brings other maps supporting her arguments,[13] which complicates the problem. If one of these evidences was accepted, there would not be any problem about determining the status of all disputed islets and rocks in the Aegean. But, these maps came to the agenda just after the Kardak Crisis and there does not seem to be a consensus between the parties on the validity of any of these maps. In fact, since the Crisis, the parties introduced several conflicting maps prepared by various states, which created suspicions about the validity of any of these maps. In fact, the only function of these maps are to show the borders drawn in the texts of the international agreements. But, unfortunately, none of the related international agreements have maps. Therefore, the maps which are published by various states or institutions could not and even should not be necessarily authoritative for our topic.

In this case, it's clear that 'state practises' method seems to be an unsatisfying and insufficient method in interpreting the meaning and extent of the 'depending' expression.[14] Still, if the parties reach a consensus or one of them accepts the claim of the other party in the future, 'state practise' should be satisfying and sufficient for the interpretation of the said expression. However, as the parties have not reached a consensus on the issue yet, there is still a dispute between them about the interpretation of the Treaty. So, the text needs further analysis.

In order to reach a valid interpretation, we have to determine the aim of the concerned article. First of all, since there are a lot of islets, rocks etc. in the region, it is not easy and even possible to mention them one by one. This fact should be taken as a sufficient reason for using such an expression. As the Article mentions 'depending' islands, this *a contrario* means that 'all' islets would not be ceded. So, the writers of the Treaty might have thought to cede only some islets in the region with the mentioned 13 islands

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[13] Hüseyin Pazarcı, 'Différend Gréco-Turc Sur Le Statut De Certains âlots et Rochers Dans La Mer Egéé: Une Réponse A Mr. C. P. Economidés,' *Extrait de la Revue Générale de Droit International Public*, No. 2 (April, May, June 1997), pp. 375-376 and İnan/Başeren, *Status of Kardak Rocks*, Map 14.

[14] This issue would be examined again in the context of territorial acquisition in the following pages.

because of their importance for those islands especially in terms of security. Thus, the sovereignty of Turkey as the successor of the Ottoman Empire on all islets in the region is limited in favour of Italy in so far the latter took the islands mentioned in the Article 15 of Lausanne Peace Treaty and some islets with the 'depending' expression in order to guarantee the security of these islands. In other words, the writers might have used this expression to prevent Turkish sovereignty to extend over the Italian islands so that Turkish sovereignty might not constitute a great danger for these ceded islands. Consequently, it will not be wrong to say that, 'depending' expression aims to cede some islets in the region with the mentioned islands due to the fact that they have a great importance for those islands.

After analysing the meaning of the 'depending' expression, the second question is about the extension of it. The answer to this question will help us to see which islets of the region should be evaluated in the context of the expression. The author thinks that we can benefit here from the 'territorial waters' concept of international law in interpreting the extent of the said expression. As a matter of fact, the circumstances in which the Treaty was made is the other important point to consider while interpreting the related expression.[15] As is well known, the main object in determining the extent of the territorial waters in 1920's and even in 1930's was security and an exclusive sovereignty except innocent passage was given to the coastal states with this concept in order to guarantee their security. Obviously, the 'depending islets' expression used in this Treaty addresses the same concern and this similarity in purposes can help us to make a satisfying and meaningful interpretation that in fact corresponds to the 'ordinary meaning' of the said wording. In fact, if the territorial waters institution of international law which aims protecting the security of the coastal state considers 3 nautical miles enough for this goal, then it might be argued that 'depending' expression which has a very similar purpose should not exceed it.[16]

Furthermore, the Article 12 of the Lausanne Peace Treaty, which also aims to guarantee the security of the coastal state, has a

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[15]Lord McNair, *The Law of Treaties*, Oxford, The Clarendon Press, 1961, p. 367.

[16]Denk, *Egemenliği Tartışmalı Adalar*, pp. 237-238.

similar arrangement and states that 'the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty'. Similarly, the Article 6 mentions that, 'islands and islets lying within three miles of the coast are included within the frontier of the coastal state'. It is obvious that the Lausanne Peace Treaty is very sensitive about the security of the coastal states and makes a specific arrangement by accepting a 3 mile zone in order to guarantee the security of the coastal states where a probability of danger against their security exists. This, of course, clearly indicates that, not only the Treaty takes the 3 mile zone as a basis for guaranteeing the security of the coastal state, but the trend in those days was also using the same distance as a basis in a similar context. If such an interpretation is accepted, then the 'depending islets' expression includes the islets which are in the 3 mile zone of each of the 13 islands mentioned in the Article 15.

However, it must be stressed again that this interpretation is valid only for the mentioned 13 islands and not for the 'depending islets' whatever they are. In other words, 'depending islets' are the **subject** of the Article and they can not benefit from the rights given by this Article. As a matter of fact, 'depending' islets would not have 'depending' islets on them and an expression such as 'depending's depending' could not be accepted. Therefore, the Greek point of view, put forward during the Kardak Crisis that Kardak Rocks are ceded by Article 15 of Lausanne Peace Treaty as they are nearer to Kalolimnos Islet than the nearest Turkish territory, is groundless. Kalolimnos Islet was not mentioned in the Article 15 and it could be a Greek territory only if it is evaluated as a 'depending islet' on the nearest mentioned island, Kalimnos Island. In other words, Kalolimnos Islet is the **subject** of the Article 15 and therefore it can not benefit from the rights given by that Article. As a result, it is not possible to argue that Kardak Rocks are depending on any of the islands mentioned in the Article 15 and this means that they are not ceded with this Article either. On the other hand, it would be accepted that, all islets lying not far than 3 miles from the mentioned islands were ceded to Italy by this Article.[17]

Another related article of the Lausanne Peace Treaty is the Article 16, which stipulates, 'Turkey hereby renounces all rights

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[17]Ibid., pp. 238-239.

and title whatsoever over ... the islands other than those over which her sovereignty is recognised by the said Treaty, the future of ... these islands being settled or to be settled by the parties concerned'. Greece, using this expression claims that Turkey, through this Article, renounced all the islands, islets and rocks lying in the Aegean Sea except the islands on which Turkish sovereignty was confirmed by the Article 12 (namely, Imbros, Tenedos and Rabbit Islands) and the islands and islets in the 3 miles zone of the Asian coast.[18] In other words, Greece argues that this Article has a character of mass renunciation.

Against this argument, it is argued that this Article does not have such a characteristic and the only aim and function of it is to complete the other related articles of the Treaty by explaining them.[19] According to this view, the Article does not foresee a further renunciation other than the ones arranged in the other articles of the Treaty and both the letter and the spirit of the Article support this idea. It is also claimed that the Article considers just the 'islands'; and thus the 'islets' and 'rocks' should not be evaluated within the scope of it. In other words, it is argued that the Treaty includes 'islet' expression in several places in addition to the 'island' expression, which means that the Treaty writers thought that these two expressions are two different concepts. So, because the Treaty makes a differentiation between 'island' and 'islet' expressions, the arrangement about the 'islands' made in the Article 16 should not effect the 'islets' and, Turkey, therefore, did not renounce the islets in the Aegean.[20]

At this point, in order to evaluate the validity of the arguments of the disputing parties, we have to examine the differences, if there exists any, between the 'island' and 'islet' expressions under the international law. The 'island' expression was first defined by *The Hague Codification Conference* in 1930, and the definition made by the 1958 *Law of the Sea Conference*

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[18]Economides, *Les Ilots D'Imia*, pp. 330, 332-333.

[19]Sertaç H. Başeren, 'Ege'de Ada, Adacık ve Kayalıkların Uluslararası Andlaşmalarla Tayin Edilen Hukuki Statüsü,' in Ali Kurumahmut (ed.), *Ege'de Temel Sorun: Egemenliği Tartışmalı Adalar*, Ankara, Türk Tarih Kurumu, 1998, pp. 108-109.

[20]Pazarcı, *Différend Gréco-Turc*, pp. 360-362; İnan/Başeren, *Status of Kardak Rocks*, pp. 8-9.

followed it. In other words, there was not any universally accepted definition of 'island' during 1920's.[21] For this reason, accepting the definition of the Treaty itself seems to be the only alternative. However, the Treaty does not make a definition of the key expressions used in the text. In other words, there seems to be a vacuum about this issue and, therefore, looking at the whole Treaty is the only reasonable alternative.

Articles 6 and 12 of the Treaty include the 'islet' expression in addition to, and apart from, the 'island' expression, which shows that the Treaty makes a differentiation between these two geographic formations.[22] Thus it can not be argued that arrangements made about the 'islands' are valid for the 'islets', and it will not be possible to claim that the 'islets' should be seen within the scope of the Article 16 that foresees the Turkish renunciation of all the islands except the ones on which her sovereignty was confirmed in the Treaty. In this context, it could be argued that the Kardak Rocks, for example, were not renounced by Turkey through this Article.

On the other hand, if it is accepted that the Treaty did not differentiate between these two geographic formations, it could be then argued that Turkey renounced all the geographic formations in the region except the ones remained as her territories. In this case, it would automatically be accepted that the islands, islets and rocks that were not explicitly transferred to any state have been *terra nullius* since then.[23]

After analysing the related articles of the Lausanne Peace Treaty, we can argue that all islands, islets and rocks other than the

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[21] It should be added that the definitions made in 1930 and 1958 were not eventually accepted and supported by the majority of the international community.

[22] The regimes, rights etc. in these two concepts might be the same. However, as the 'concept' is the key-point in determining the ceded territories, in this context, the definition made by the Treaty is the only important thing for us. In other words, one should only seek whether a territory is mentioned or not among the ceded territories in order to determine its status and he would not be interested in its regime, rights etc.

[23] If this alternative is accepted, then it would mean that these territories might have been acquired by the states which established an effective control on them.

ones Turkey had explicitly renounced or ceded remain Turkish territories as she is the successor state of the Ottoman Empire. In the South Sporades region, for example, Dodecanese Islands, the depending islets thereon and Castellorizo Island were ceded explicitly to Italy and it is not possible to say that there still exists any other island or islet to be ceded. All the islands in the region were mentioned in the Treaty and there is no room for dispute on their sovereignty. On the other hand, because of the ambiguity of the 'depending islets' expression used in the Article 15, there is a trouble in determining the status of the islets in the region. Thus, in order to do a specific analysis for each disputed islet (and rock), it is important and necessary to determine whether that islet (or rock) could be evaluated as 'depending' on any of the mentioned 13 islands. In this context, the interpretation made above about the extent of this expression could be of help.

3. Arrangements Made in 1932

Few years after the conclusion of the Lausanne Peace Treaty, it was understood that the status of the islets and rocks around the Castellorizo Island was not determined explicitly and exactly by that Treaty and Turkey and Italy decided to bring the issue before the Permanent Court of International Justice (PCIJ). In the bond of arbitration prepared by these two states, they asked the PCIJ to determine the status of the considered islets and rocks one by one.[24] However, the parties solved the issue and signed the Convention of 4 January 1932, and the PCIJ no longer studied the issue.

The convention that determined the status of the concerned islets and rocks explicitly was signed in Ankara on 4 January 1932. In addition, letters were exchanged between the Minister of Foreign Affairs of Turkey, Tevfik Rüştü Bey, and Italian Ambassador to Ankara, Mr. Aloisi on the same day. In these letters, they stated their happiness for signing the Convention and stressed that, 'since the remaining parts of the Turkish-Italian boundary do not have a conflicting character ... [the parties agreed] to determine the

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[24] 'Delimitation of the Territorial Waters Between the Island of Castellorizo and the Coasts of Anatolia Case,' *Permanent Court of International Justice*, Series C, Pledings, Oral Statements and Documents.

technicians who will start working ...' on the remaining parts of the border.[25] By this, the parties mean north part of the Castellorizo Island, which is clearly understood from the Article 5 of the Convention.[26]

Technicians from both sides gathered in Ankara on 28 December 1932 and fixed 37 pairs of reference points that constitute the border line in the region. In this arrangement, it is said that each islet would belong to the state which owns that side of the border. Therefore, according to this document, there seems to be no problem about the status of all the islets and rocks in the region as it is enough to look on which side of the border the concerned islet or rock lies in order to determine the status of it. According to this, for example, the 30th reference point is defined as the middle point between the Kardak Rocks (Italian side) and Kato/Çavuş Island (Turkish side). So, it's understood from this document that Kardak Rocks would belong to Italy.

Greece, depending on these arrangements, claims that there is no room for dispute in the region and the sovereignty of all islands, islets and even rocks were determined explicitly by valid and binding international documents including the document of 28 December 1932. In this context, she argues that the document dated 28 December 1932 is a valid and binding international agreement and, therefore, all the arrangements about the status of the islets and rocks in the region are valid. Greece completes this argument by saying that she acquired these territories with the Paris Peace Treaty of 1947.

Turkey, on the other hand, argues that this document is null and void. Because, the argument continues, it was prepared and signed by the technicians whose only duty was *to work on the remaining part of the boundary*, thus, in fact, *did not have full*

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[25] See <http://www.hri.org/news/greek/misc/96-02-05.mgr.html>, 18.12.1998 (in French); and, İnan/Başeren, *Status of Kardak Rocks*, s. 14 (in English).

[26] In this Article, it is stipulated that, the described border line joins in the north with the general maritime frontier which is not under discussion between Turkey and Italy. For the text of the Convention, see <http://gwis2.cric.gwu.edu/~stratos/ Imia/greece/1932.html>, 19.12.1998.

powers to bind their state with an international agreement.[27] In short, it is argued that, the document was only a preparation activity that would not have any legal value unless ratified by further processes. In this context, it is also stressed that further correspondence between Italian and Turkish governments to ratify the document was eventually failed. These initiatives prove that the parties saw the document as an invalid one unless it is ratified. So, as this document has never been ratified, the arrangements made by it are wholly null and void.

If we have a close look at the arguments of the parties, we see that there exist two alternative arguments on the Greek side. One of these is that the document dated 28 December 1932 is the supplement of the Convention of 4 January 1932 and constitutes the integral part of it. Second argument alternatively claims that the document itself is a valid and binding international agreement.

The first argument depends on some expressions in the Convention, the exchange of letters dated 4 January 1932, and the document of 28 December 1932. The Convention states that, 'the described border line joins in the north with the general maritime frontier which is not under discussion between Turkey and Italy'.[28] This expression was stated in the letters exchanged at the same day where it is confirmed that 'the remaining parts of the boundary ... do not have a conflicting character'. Finally, the document of 28 December 1932 starts with the statement that the delegates of Turkey and Italy gathered in Ankara as it is foreseen in the letters exchanged during the signing of the Convention of 4 January 1932.

According to Greek view, all these expressions obviously show that the document dated 28 December 1932 was prepared in order to complete the Convention and they not only prove this fact but also constitute the legal tie between these two texts. So, as the Convention is a valid and binding international agreement, this document has the same character because of having a legal tie with it.[29]

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[27] See the mutual letters dated 4 January 1932. İnan/Başeren, *Status of Kardak Rocks*, p. 14.

[28] See Note 24.

[29] *Recent Turkish Claims.*

According to the second argument, the document dated 28 December 1932 itself is a valid and binding international agreement. As such, it clearly shows the consent of the parties, and further ratification processes is not needed according to a report of the First Commission of the General Assembly of the League of Nations. This report, dated 5 September 1921, states that technical and administrative agreements, the only function of which are to explain and complete the arrangements of a formerly signed agreement, do not necessarily need to be registered with the Secretariat of the League of Nations.[30] It is also argued that, the Covenant of the League of Nations includes the obligatory registration of whole treaties and this document, making a territorial arrangement that do not have such a characteristic, would not have to be registered.

Consequently, it is claimed on the Greek side that the document dated 28 December 1932 is, one way or another, valid and binding. Since the document is valid and binding, it would be enough to look at the location of the considered islet or rock for determining the status of it. Thus, Kardak Rocks, for example, were Italian territories as they were exactly at the Italian side of the boundary.

As opposed to this, it is argued that the document is neither the supplement of the Convention nor constitutes itself a valid and binding international agreement. First, it is claimed that the document does not have any title proving the character of it. So, the arguments of the Greek side that claims the document as the supplement of the Convention of 4 January 1932 or itself a valid and binding international agreement are groundless. Furthermore, neither the texts of the document and the Convention, nor the ratification and registration certificates include any statement about the tie between the document and the Convention.[31]

According to this view, the nine separate contacts made between Italy and Turkey for completing the ratification process of the document are the most important evidence of the invalidity of the document. If it was considered as valid and binding, the

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[30] Economides, *Les Ilots D'Imia*, pp. 340-341.

[31] Inan/Başeren, *Status of Kardak Rocks*, p. 6.

argument continues, the parties would no longer have performed such initiatives. Finally, since these efforts between 1933 and 1937 did not reach a successful end,[32] the document does not have the character maintained by the Greek side and all arrangements made by it are null and void.[33]

After summarising the arguments of the parties, we can now examine the character and validity of the document. There exists three alternatives about the validity of the document: It's valid, because it is itself a valid and binding international agreement; it's valid, because it is the supplement of a valid and binding international agreement, the Convention dated 4 January 1932; it's invalid due to the fact that the two claims above are unfounded.

In order to judge the first alternative, we must first look at whether the document met the then requirements of international law, namely being signed by full powered representatives, being ratified by national authority and being registered with the Secretariat of the League of Nations.

First of all, it is obvious that the technicians representing the parties did not have full powers to bind their state with an international engagement. There is no doubt that the representatives other than the ones which normally have full powers, need special full powers. However, there is no evidence about the existence of these, and neither the document nor any other related texts include any explanation about this issue. Moreover, the letters exchanged on 4 January 1932 which foresees this meeting state that, 'the technicians will start working' on the remaining parts of the boundary. As there is not any further statement on the validity of the product of the meeting, it should be accepted that the signatures of the technicians only have a character of authentication. Furthermore, it is obvious that, the Article only mentions 'start working' and does not describe the working as final and/or binding. So, the only aim and function of the signatures of the technicians is to authenticate the text and, therefore, further procedures for expressing the consent of the states to be bound by that document are necessarily needed. As a

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[32] Ibid.

[33] Pazarcı, *Différend Gréco-Turc*, p. 367; Başeren, *Ege'de Ada, Adacık ve Kayalıkların Uluslararası Andlaşmalarla Tayin Edilen Hukuk Statüsü*, p. 114.

result, it seems impossible to say that the document meets the first requirement of international law mentioned above.

Second, according to the then constitution of Turkey, all international engagements should be approved by the parliament. However, there is not any document showing such a procedure and Greece who claims that the said document is itself a valid and binding international agreement does not bring any data on the agenda about such a process. So, it is undoubtedly clear that the document has never been approved by the Grand National Assembly of Turkey, which means that this requirement of the international law was not met either.

Last but not least, the document was not registered with the Secretariat of the League of Nations. According to the Article 18 of the Covenant of the League of Nations, it is compulsory for all the Members to register all the international agreements and engagements with the Secretariat as soon as possible.[34] In short, the Covenant attaches great importance to the registration of the international agreements, which was considered as *sine qua non* for their validity. However, the document of 28 December 1932 was not registered with the Secretariat of the League of Nations; and as such can not be considered as an internationally binding agreement by itself.

Greece, on the other hand, claims that, registration was not compulsory for such agreements according to a report of the First Committee of the General Assembly of the League of Nations dated 5 September 1921. This report states that the technical and administrative agreements that do not make any change on the arrangements of any formerly signed agreement but explain the arrangements of it do not need registration.[35] Nevertheless, the Committee emphases in the report that, the Article 18 of the

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[34]'Every treaty or international engagement entered hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered,' states the Article 18 of the *Covenant of the League of Nations*. If the secret agreements made in 1910's, which were one of the most important reasons of World War I, are remembered, it should not be hard to understand the political motives behind the Article 18.

[35]Economides, *Les Ilots D'Imia*, pp. 340-341.

Covenant includes all international engagements bringing international rights and duties. It is also stressed that a distinction between political, technical and fiscal agreements, is absolutely necessary, and that the registration of the political agreements that have a direct relation with international peace, is obligatory. Additionally, it is stated in the first three articles of the report that all agreements other than the technical or fiscal ones have to be registered even if they explain or complete a former treaty.[36]

Besides, this report was not adopted by the General Assembly, and it would not have affected the documents arranging territorial issues even if it was. In fact, there is not any record showing that such a resolution was adopted by the General Assembly even in the study which brings the issue on the agenda.[37] Finally, it is impossible to claim that this report of the First Committee has gained a character of custom.

It is obvious that the above mentioned report would not affect the document of 28 December 1932 as if it had been adopted by the General Assembly. Moreover, it is not easy to claim that the document had not done any change on the arrangements of the Convention and the exchanged letters dated 4 January 1932, and that the only aim and function of it was to complete them by explaining their arrangements. In fact, the document draws a new border line between the parties and this is *per se* a topic of a new international agreement, although the parties agreed earlier that these parts of the boundary do not have a conflicting character. Therefore, as territorial arrangements made by the document dated 28 December 1932 are political in nature, the registration of the document with the Secretariat is necessary for its validity.[38] Furthermore, as McNair emphasises, 'an agreement as to the interpretation of an international engagement is itself an international engagement and fell within the scope of Article 18 of the Covenant.'[39]

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[36]League of Nations, *Report of the Committee Appointed to Study the Scope of Article 18 of the Covenant From a Legal Point of View*, 05.09.1921, pp. 3-6.

[37]Economides, *Les Ilots D'Imia*, pp. 340-341.

[38]Denk, *Egemenliği Tartışmalı Adalar*, p. 226.

[39]McNair, *Law of Treaties*, p. 182.

As a result, the document itself is not a valid and binding international agreement due to the fact that it does not meet any of the requirements of the then rules of international law.

As stated above, the second alternative view about the validity of the document is that the document is valid since it is the supplement of a valid and binding international agreement, namely the Convention dated 4 January 1932. In order to analyse whether the document is an integral part of a valid and binding international agreement, the related documents, namely the Convention and the exchanged letters, should be examined in detail as this argument depends on certain expressions contained within the said documents.

To summarise, the Convention stipulates that the boundary drawn by it joins with the general maritime boundary, which is not under discussion between the parties. Moreover, the letters exchanged at the same date confirm that that part of the boundary do not have a conflicting character. Besides, the document dated 28 December 1932 starts with the statement that the delegates of Turkey and Italy gathered in Ankara as it was foreseen in the letters exchanged during the signing of the Convention of 4 January 1932.

According to Greek view, all of these expressions constitute a legal tie between the three texts automatically due to the fact that the document of 28 December 1932 completes the former ones and that this was foreseen in them. In other words, since the document emphasises that it was prepared because the Convention had stipulated this, it is a supplement of the Convention.

In fact, while international agreements are being prepared, some related issues might be arranged by supplements and this is a common method used among parties. Nevertheless, this character of the supplement should be indicated in at least one of the texts. In other words, such an expression is necessary but not enough to constitute a legal tie between the main text and its potential supplement. As a matter of fact, according to the then rules of international law and the then domestic laws of the parties, this situation should be also stated during the ratification by domestic authorities and the registration with the League of Nations. However, there is no data proving that the texts include such an

expression or this situation was discussed during the ratification or registration. Moreover, Greece, who claims that the document is an integral part of the Convention, does not argue that there is such legal data and bases her claim only on the expressions given above. As a result, although such expressions could be used in many agreements to state that the related issues would be arranged in a supplement, it is not possible to say that a document is the supplement of another one just because of such an expression. In short, such expressions *per se* could not constitute legal ties between different texts and further explanations and processes are needed. Therefore, it is impossible to argue that the document dated 28 December 1932 is an integral part or supplement of the Convention of 4 January 1932.

Consequently, in the light of the present data, it is clear that all the arguments claiming that the document dated 28 December 1932 is valid and binding are groundless and, therefore, the arrangements made by it are null and void. Thus, it could be said that, for example, Kardak Rocks were not ceded to Italy. However, if it is understood or accepted one way or another that the document is valid and binding, then the whole content of the document arranging the status of several islets and rocks in the Aegean Sea would be valid. In this case, it would be said that, for example, Kardak Rocks were ceded to Italy.

4. Related Arrangements of 1947 Paris Peace Treaty

Before starting to examine the related articles of the Paris Peace Treaty in order to determine the islands and islets ceded to Greece by Italy, the islands and islets belonging to Italy by 1947 should be mentioned again. As stated above, there is no doubt that, the 13 islands[40] mentioned one by one in the Article 15 of the Lausanne Peace Treaty and the depending islets thereon, and the Castellorizo Island were ceded to Italy. In addition, the islets and rocks given to Italy with the Convention of 4 January 1932 were also included in the territories ceded to Italy. All other islets and rocks, however, except above-mentioned ones, should remain

[40]For the list of these islands, see Note 3.

under Turkish sovereignty,[41] and Italy would not have any right and title on any of them including the ones dealt in the document dated 28 December 1932.

Italy, who acquired some islands with the Lausanne Peace Treaty and the Convention dated 4 January 1932, ceded them to Greece with the Paris Peace Treaty of 1947 after losing World War II. The Article 14 of the said Treaty arranges this issue and indicates that the islands generally known as the Dodecanese Islands and all 'adjacent' islets thereto would be ceded to Greece.[42]

The Article 14 of the Paris Peace Treaty is nearly the same with the Article 15 of the Lausanne Peace Treaty examined above, and Italy thereby cedes to Greece nearly the same territories she took from Turkey with the Lausanne Peace Treaty. There are, however, two small but important differences between these two articles.

First, the 'adjacent' expression was used in the Article 14 of the Paris Peace Treaty for defining the islets which would be ceded with mentioned islands. As the expression used in the Lausanne Peace Treaty in the same context was 'depending', there are two possible results of this difference: The difference is either a terminological question and the writers wanted to express different things; or it is just a simple mistake or choice of the writers.

If we accept the first alternative, it would mean that the 'depending' expression is more or less comprehensive than the 'adjacent' expression. In this case, it could be deduced from this difference that there remained some Italian islets which were not ceded to Greece with the Article 14 of the Paris Peace Treaty. In other words, such an implementation would mean that Italy did not cede some of the islets she took from Turkey with the Lausanne Peace Treaty and she continued to own them after the Paris Peace

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41 Naturally, if it is accepted that Article 16 has a character of mass renunciation as Greece claims, it would also be admitted that the territories that were not ceded to a third party have been *terra nullius* which might have been acquired by a state by occupation or state practice.

42 The islands mentioned in this article are: Stampalia, Rhodes, Calki, Scapanto, Casos, Piscopis, Misiros, Kalimnos, Leros, Patmos, Lipsos, Simi, Cos and Castellorizo. See Paris Peace Treaty, *United Nations Treaty Series*, Vol. 49, 1950, pp. 126 ff.

Treaty. However, neither the two parties nor a third party have brought such a claim on the agenda till today and state practises of the parties and third parties support this fact. In short, as there is no evidence or even claim of Italian sovereignty in the region, this seems an impossible alternative.

On the other hand, if it is accepted that the 'depending' expression is less comprehensive than the 'adjacent' expression, it would then mean that Italy ceded more islets in the Aegean to Greece than she took from Turkey. In other words, Italy ceded some islets that she did not own originally. However, such a thing is against one of the basic rules of law, that is, 'no state can transfer more rights than it has (*nemo plus juris transferre potest quam ipse habet*).' In other words, no state can transfer a territory that she did not own originally. Therefore, it is impossible for Italy to cede the islets that she did never acquire.

As a result, it would be impossible to understand and explain the arrangements of the related articles if the two expressions are taken to mean different things. Therefore, it is safe to assume that this difference is made by mistake or it is just a choice of wording and the two expressions were used interchangeable to express the same thing. Furthermore, if we look closely at the developments about the concept of 'territorial waters' which was used above in order to interpret the 'depending' expression, we see that the definition of 'the belt of sea **adjacent** to the coastal state' was used commonly after 1930's.[43] Hence, it should not be wrong to say that, this development in the law of the sea might have affected the Article 14 of the Paris Peace Treaty and the parties might have preferred to use the 'adjacent' expression in order to express the same goal that was stated in the Lausanne Peace Treaty with the 'depending' expression.

The second difference between the Article 15 of the Lausanne Peace Treaty and the Article 14 of the Paris Peace Treaty is about the Castellorizo Island. As a matter of fact, while the Lausanne Peace Treaty cedes the said island alone without saying

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[43] As a matter of fact, Article 1 of the 1958 *Convention On The Territorial Sea and The Contiguous Zone* uses this expression as well. This Article stipulates that, 'the sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea *adjacent* to its coast, described as the territorial sea' (italic mine).

anything about its 'depending' islets, the Paris Peace Treaty cedes it with its 'adjacent' islets, whatever they are. The arrangements made in the Convention of 4 January 1932 could be the reason of this difference. As shown above, this Convention has determined the status of all islets and rocks in the Castellorizo region, thereby leaving no doubt about their status, thus Paris Peace Treaty could have taken this development into consideration. This does not create doubt about the extent of the 'adjacent' expression for the Castellorizo region and this difference in the text makes no effect on the dispute examined here.

It is clear by now that the islands, islets and rocks ceded to Greece by Italy with the Paris Peace Treaty are restricted with the ones ceded to Italy by Turkey with the Lausanne Peace Treaty and the Convention of 4 January 1932.

5. The Situation After 1947

After analysing all related international documents about the status of the disputed Aegean islands, islets and rocks, it is also necessary to look at the state practises of the parties and to examine whether these practises could and did change the status of these territories. On the other hand, it must be emphasised again that, state practises of the parties alone do not give us a sufficient idea on the interpretation of the said ambiguous expressions, namely 'depending' and 'adjacent'. They, on the other hand, could have impact in the context of some modes of territorial acquisition, namely recognition, prescription and acquiescence.

Although it is generally accepted that the status of a territory determined by an international agreement can not be changed by state practices, some institutions of international law listed above could cause such results in certain circumstances. Especially, inhabited territories are suitable for these developments due to the fact that state practises are mainly practicable on such territories. As a matter of fact, if a state, which is sovereign over an island or islet according to a valid and binding international agreement, is silent when she should act (*omission to protest*),[44] then it is

[44] R. Y. Jennings, *The Acquisition of Territory in International Law*, New York, Oceana Publications, 1963, p. 36.

presumed that she accepted the unilateral act of the other state.[45] In this case, it is hard to say that her sovereignty, based on a valid and binding international agreement, still continues after her acquiescence. On the other hand, if uninhabited territories, namely islands, islets and rocks are considered, it is more difficult to make an evaluation due to the difficulty of determining whether a state practise was occurred or not, and, if it had, was it sufficient to constitute a legal title or not? In other words, it is almost impossible for a state to gain the sovereignty of an uninhabited island, islet or rock belonging to another state by state practices. Nevertheless, symbolic activities such as erecting flags or milestones which are known to public and not protested by the state owning that territory could have some important effects on the status of it and result in a territorial acquisition.

To sum up this theoretical framework in the context of our topic, it can be argued that, some or all of the islands, islets and rocks that Turkey did not cede to a third state by any of the related valid and binding international agreements, could be acquired by Greece as a result of her state practises in cases where Turkey has not protested. As a matter of fact, Greece, depending on the above mentioned institutions, has brought some issues on the agenda since the Kardak crisis in 1996, and claims that Turkey was silent and did not protest any of her practises since the Paris Peace Treaty of 1947. Greece, in this context, states, for example, that the Law No. 547 dated 1948 that regulates the administration of the Aegean islands cites all these islands, islets and rocks including the Imia (Kardak) Rocks as Greek territories and that this is the best evidence for her claims as this has never been protested.[46] A number of partnership programs carried within the European Union framework in the east and south-east Aegean were also cited by Greece as evidence. In this context, Greece claims that these programs include the disputed region that includes the Kardak Rocks. Turkey, on the other hand, argues that she does not have any data about the existence of such development programs and Kardak Rocks are registered with the land registration office of Bodrum, Turkey.

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[45] Collecting taxes and granting citizenship are the most common ways of state practices resulting with territorial acquisition.

[46] Ioannou, *A Tale of Two Islets*, pp. 35-37.

In order to analyse these diverging claims, we need to find the answer to two crucial questions: Have such state practises occurred; and -if they did- were they public?

It is true that every country could make some registrations in their domestic offices or could enact laws in their parliaments which need not to be public. Nevertheless, their being public is more important than their existence and this is the core issue when the territorial acquisition is considered due to the fact that 'being public' is one of the key points of 'acquiescence' mode. However, none of the parties could show such evidences so far. On the other hand, it is not easy to reach and confirm such data and it usually needs access to the state archives.

If the existence of a state practise is confirmed, then the fact that whether the other party protested it or not gains great importance. Because, absence of such a reaction could mean that a territorial acquisition has occurred on behalf of the former. In this case, it would be possible to say in some circumstances that, Greece could acquire the sovereignty of the islands, islets and/or rocks in the Aegean which she did not gain by a valid and binding international agreement. However, in the present case, it is difficult to make a final analysis about the sovereignty of these islands, islets and rocks because of the difficulty of access to the related state archives. Nevertheless, if it should be remembered that only the initiatives that was made in public, such as happened in 1996 during the Kardak crisis, could be accepted as serious and acceptable evidence of state practise, and since no such development occurred between 1947 and 1996, it can be said that such initiatives which could result in a territorial acquisition did not happen. On the other hand, if it is argued that such initiatives have occurred but they were not and even need not to be public, then it is obvious that they would never result with a territorial acquisition, for the original sovereign state could not protest a development which is not known neither by her nor the rest of the world. It should not be overlooked the fact that the burden of the proof in this case rests with the claimant.