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# AEGEAN SEA CONTINENTAL SHELF CASE (GREECE V. TURKEY)

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In the INTERNATIONAL COURT OF JUSTICE/

COUR INTERNATIONALE DE JUSTICE

## Bench and Quorum

President Jimenez de Arechaga; Vice-President Nagendra Singh; Judges Forster, Gros, Lachs, Dillard, de Castro, Morozov, Sir Humphrey Waldock, Ruda, Mosler, Elias and Tarazi~; Judge ad hoc Stassinopoulos.

Of the 12 Members of the Court who voted for the decision, Vice-Resident Nagendra Singh and Judges Gros, Lachs, Morozov and Tarazi have appended separating opinions or declarations.

Dissenting opinions have been appended to the Judgment by Judge de Castro and Jude ad hoc Stassinopoulos.

## Procedural History

**Greek Appeal to the United Nations Security Council:** Greece's application to the UN Security Council was motivated by the assertion that the Turkish explorations on the Aegean continental shelf, which Greece claims as its own, had created a hazardous scenario. Greece argues that this position poses a threat to world peace and security. Greece invoked Article 35 of the UN Charter in its plea, seeking the Council's assurance to restore peace that had been jeopardised by Turkey's exploratory efforts in the Aegean Sea. Greece established a precarious state of calm through the actions of Turkish air and naval troops, who were escorting the research vessel Sismik-I. The Greek government responded with military measures to address the situation. Turkey reiterated its stance that the Greek assertions on the continental shelf lacked a solid basis, as the delimitation of the Continental Shelf had not yet been determined. Turkey also noted that its own warship was subjected to harassment by Greek vessels and

planes. In addition, Turkey lodged a complaint asserting that Greece had sent military forces to the Eastern Aegean Islands, which is deemed a breach of the Lausanne Treaty of 1923. Therefore, Turkey requested that the Council extend an invitation to Greece for substantive discussions and insisted that Greece demilitarise the islands in question in order to eliminate the threat to peace and security in the region.

**Greek Request of Indication of Interim Measures:** Additionally, Greece submitted a petition to the Court, seeking provisional safeguards. The request asks the Court to instruct the governments of Greece and Turkey to abstain from engaging in any exploration activities or scientific research, as well as from undertaking any additional military actions that could jeopardise their peaceful relations, until a final verdict on the matter is rendered.

**Greek Application to the International Court of Justice:** Greece unilaterally initiated legal proceedings in the International Court of Justice (ICJ) against Turkey. The dispute revolves around the delineation of the continental shelf in the Aegean Sea, as well as the legal rights of both countries to explore and exploit the Aegean continental shelf. The Greek application exhibited a constrictive stance by confining the dispute solely to the continental shelf that is adjacent to the Greek islands, excluding any other area of the Aegean or its bottom. Within this framework, Greece asserted that the exploratory activities conducted by the Turkish government encroached over the continental shelf of the Greek islands of Samothrace, Lemnos, Agios Efstratios, Lesvos, Chios, Psara, and Andipsara. Greece contended that the matter could not be settled through bilateral negotiations between Greece and Turkey.

## **Facts**

Greece and Turkey, two governments that are geographically close to one another and share the Aegean Sea, have a history of both cooperative and antagonistic relations with one another. Beginning in the middle of the 1950s and continuing up until the present day, the two states have been involved in a number of disagreements, some of which have developed into major crises that have pushed them to the verge of wars. Whether it is Cyprus or the Aegean Sea, the primary source of contention between the governments of Greece and Turkey is likely to originate from either of these territories. Not only do these issues continue to be unresolved, but they also contribute to the persistently unstable and tense climate that prevails in the region overall. One of the numerous concerns that are now leading the way in terms of international relations between Turkey and Greece is the matter of delimiting the continental shelf and

exclusive economic zone that exists between the two countries between Turkey and Greece.

The petroleum research operations and licences that were carried out in the Aegean Sea throughout the 1970s gave rise to an additional challenge, which is the primary topic that this thesis seeks to answer. By 1963, Greece had begun to perform scientific work and issued exploration licences in the Aegean Sea outside of Greek national waters. Prior to this, there had been no delimitation of the continental shelf in the Aegean Sea. On the other hand, Turkey initiated its initial seismic research endeavour in the Aegean region in the year 1968. Additionally, in 1973, Turkey gave licences to the Turkish Petroleum Corporation (TPAO), which was concurrent with the intensification of Greek extraction activity. The legitimacy of the permits that were awarded by the governments of the two Aegean nations began to be called into question as more permits were granted by the two Aegean states to undertake research on the Aegean. With regard to the delimitation of the continental shelf in the Aegean, this topic quickly became quite intense and troublesome with regard to the situation. The issue of continental shelf has become one of the most intractable topics that have been left unaddressed between Greece and Turkey, and it has a direct impact on the bilateral relations between the two countries. This is in addition to the other problems that have arisen in the Aegean Sea and the disagreement that has arisen surrounding Cyprus.

### **Issues**

- Were the Greek islands in the area entitled to their lawful portion of continental shelf?
- Delimitation of the respective parts of that shelf appertaining to Greece and Turkey.
- Request for interim measures indicating that, pending the Court's judgment, neither State should, without the other's consent, engage in exploration or research with respect to the shelf in question.
- Does the Court have Jurisdiction to give Judgement on the present case?

### **Arguments**

#### **Greek's Arguments:**

The legal grounds of Greece are encompassed by three main topics. Firstly, Greeks emphasise

that the islands have their own continental shelf, referring to the 1958 Geneva Convention on the Continental Shelf, which Turkey is not a signatory of. Furthermore, Greece is a nation consisting of both mainland territory and numerous islands, and it is imperative that its political and territorial integrity be not compromised by entering foreign waters. Greece's third legal basis is the restriction of the continental shelf at the easternmost islands, following the principle of equal distance between the two surrounding states. Greece has always asserted on the international stage that the Greek islands possess a continental shelf that is equivalent to that of the mainland. However, Turkey asserts that the delineation of the continental shelf boundaries between Greece and Turkey pertains to the partition of the entire Aegean region. Nevertheless, Greece argues that the islands possess their own continental shelf, and as a result, they should be granted an equal continental shelf to that of the mainland country during the process of determining continental shelf boundaries. Greece asserts that it is a nation comprised of both mainland territory and islands, and hence any external maritime zones should not infringe upon its political and territorial integrity. In addition, the Greeks regarded the country as an archipelago in the Aegean, and believed that both the islands and the mainland should be viewed as a unified entity, encompassing the waters of the Aegean. Greece emphasised the need to reaffirm the concept of territorial integrity and indivisibility of states, as established in international law. Furthermore, in 1974, Greece presented a preliminary version of articles that addressed the matter of each archipelago having its own territorial waters. Nevertheless, Greece decided to withdraw its attempt to assert territorial integrity with the archipelago regime due to the non-acceptance of the draught proposed by Greek officials at the Conference, as well as the realisation that only island and archipelago states can benefit from the water resources of the archipelago. (YÜCEL, 2015) Conversely, Greece seeks to establish the boundary of the continental shelf in the Aegean Sea by employing an equidistant line between the Greek islands that front the Turkish coastlines and the Anatolian coast. Greece formulated this particular viewpoint by referencing Article 6 of the 1958 Geneva Continental Shelf Convention. Article 6 of the 1958 Geneva Continental Shelf Convention states that in the absence of an agreement, the border of the continental shelf is determined by the midline, which is the equidistant point between the nearest points of the territorial waters of each state. Hence, it is evident that the Greek claim comprises two distinct components. The first point to note is that if an agreement cannot be reached, the general principle of equal distance is applied to determine the limitation of the continental shelf. In the specific case of Turkey and Greece, this principle is used to establish the boundary between them along the Anatolian coast, taking into account the islands that are closest to Turkey.

**Turkey's Arguments:**

Turkey asserts that the primary viewpoints regarding the restriction of the continental shelf in the Aegean Sea are as follows: the limitation should be established through a formal agreement, the natural extension of the limitation should be considered, if an agreement cannot be reached, restrictions should be imposed based on equitable principles, the islands should be treated as a special case due to their unique circumstances, and the Aegean Sea should be recognised as a partially enclosed body of water. Furthermore, Turkey emphasises the importance of considering the provisions outlined in the 1923 Lausanne Treaty when addressing the issue of limiting the continental shelf and other related matters. The source cited is Aydin (1997). Turkey has consistently advocated for negotiations to determine the boundaries of the Aegean continental shelf, and it is possible that an agreement might be reached through bilateral discussions. Turkey is utilising international accords to establish restrictions about the boundaries of its continental shelf. Article 6 of the Geneva Continental Shelf Convention and Article 83 of the United Nations Convention on the Law of the Sea emphasise the need of bilateral discussions about the regulation of the continental shelf. Turkey's primary legal argument, which arose in the 1970s, is that all of the Greek islands in the eastern Aegean, where Turkey is situated on a natural extension of the continental shelf, do not possess any form of continental shelf. According to Turkish perspectives, it is seen inappropriate for any nation to acquire a territory that is closer to the coastline of another country than the continental shelf. The source cited is Chrysochou (2014). Turkish delegates also emphasised the importance of implementing fair and reasonable principles of limitation during the discussions on the limitation of the continental shelf at the Conference.

Turkey presented two primary justifications within the framework of valid principles:

- The Greek islands located in the eastern portion of the Aegean Sea have unique characteristics in terms of their location, size, and population.
- The Aegean marine is a partially confined sea that should be jointly determined by the coastal states of the island's marine regions.

Turkey's primary argument was that the presence of islands in a region necessitates a unique approach to determining the limits of the continental shelf. According to Turkey, these islands should be specifically taken into account based on their geographical location and other

distinguishing features.

The application of the idea of equal distance in the Aegean Sea is explicitly stated to be unfeasible. (Source: SEZAL, 2007) The Turkish team offered the theory that the Aegean Sea is a semi-enclosed sea. The notion of semi-enclosed sea is defined in Articles 122 and 123 of the United Nations Convention on the Law of the Sea. Nevertheless, Greece, disregarding this article, restricted the outcomes pertaining to the semi-closed seas solely to matters of environmental collaboration among neighbouring nations, scientific exploration, and the management of living resources. Greece asserts that these limitations will not be impacted. However, the Turkish side objected to the delimitation of maritime jurisdiction regions in the Aegean territorial seas and continental shelf, arguing that the semi-closed nature of the sea and its interconnectedness should be taken into account. The source cited is Dyke (1989). Furthermore, Turkey has asserted that the Lausanne Peace Treaty created a state of equilibrium between Turkey and Greece in the Aegean Sea. Turkey asserts that the balance of the continental shelf should be considered in accordance with the provisions of the Lausanne agreement, which stipulates that the Aegean Sea should be shared equally by both countries. The Turkish Government has emphasised that the delimitation of the Aegean Sea continental shelf zones has a significant influence on the livelihoods of both nations. The Turkish committee considers it crucial to find a mutually agreeable solution to the issue of limiting the continental shelf areas in the Aegean Sea to safeguard the fragile equilibrium created by the 1923 Lausanne Treaty.

### **Laws Applied**

- Security Council resolution 395 (1976) of 25 August 1976
- Article 41 of the UN Charter
- The General Act of 1928
- Greco-Turkish Treaty of Friendship, Neutrality, Conciliation and Arbitration signed on 30 October 1930
- The Brussels Joint Communiqué of 31 May 1975

## Judgement

In the Order issued on 11 September 1976, the Court determined that there was no need for intermediate measures and, since Turkey contested the Court's jurisdiction, it directed that the proceedings should initially focus on the issue of jurisdiction. In a Judgement rendered on 19 December 1978<sup>1</sup>, the Court determined that it did not have jurisdiction over the case based on the two instruments invoked by Greece. The General Act for Pacific Settlement of International Disputes (Geneva, 1928), regardless of its validity, was excluded due to a reservation made by Greece upon its accession. Additionally, the press communiqué issued by Greece and Turkey on 31 May 1975 did not include an agreement that obligated either State to accept the unilateral referral of the dispute to the Court.

The Court found that it is without jurisdiction to entertain the Application filed by the Government of Greece on 10 August 1976.

## Rationale

The 1978 verdict rendered by the International Court of Justice (ICJ) in the Aegean Sea Continental Shelf Case was a momentous decision that tackled the demarcation of the continental shelf between Greece and Turkey in the Aegean Sea. Greece initiated legal proceedings at the International Court of Justice (ICJ) in 1976, contesting Turkey's assertion of jurisdiction over the continental shelf.

The rationale behind the ICJ judgment involved several key points:

- **Delimitation Principles:** a The primary objective of the ICJ was to utilise principles of international law in order to demarcate the boundaries of the continental shelf separating Greece and Turkey. The reliance was placed on customary international law, namely the United Nations Convention on the Law of the Sea (UNCLOS), which, although not in effect at that time, encompassed principles that were indicative of customary law. The Court was guided by the principles of equity, as stated in Article 38(1) of the ICJ Statute. The principles encompassed an equitable and impartial

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<sup>1</sup> Case Concerning Continental Shelf (Greece v. Turkey), Judgment, 1978 I.C.J. 3 (Dec. 19)

assessment of elements such as geography, coasts, economic interests, and other pertinent situations in order to establish the boundary.

- **Geographical factors:** The Aegean Sea exhibits a complex topographical configuration, characterised by the presence of numerous islands dispersed over its vast area. The Court's assessment was influenced by the close proximity of these islands to both the Greek mainland and the Turkish shore. The presence of islands frequently has a substantial influence on maritime boundaries, and the Court acknowledged the significance of taking into account these islands when defining the continental shelf. The Court acknowledged that the existence of islands could impact the scope of marine areas asserted by coastal nations, such as territorial waters and exclusive economic zones (EEZs).
- **Equitable Solution:** The concept of fairness was crucial in shaping the Court's decision-making process. The objective was to achieve equilibrium between the interests of Greece and Turkey by taking into account their distinct geographical positions, historical entitlements, and other pertinent factors. The notion of equity in international law does not imply a strict equal distribution, but rather a just and rational apportionment of maritime boundaries, considering the conditions of both countries involved.
- **Special Circumstances:** The International Court of Justice acknowledged the exceptional conditions of the Aegean Sea, particularly with regards to the abundance of islands in close proximity to the Turkish mainland. This close proximity prompted inquiries over the appropriate delineation of maritime boundaries and the fair distribution of rights among coastal states in these intricate situations. The Court recognised that these exceptional circumstances necessitated a meticulous and comprehensive analysis in order to reach a fair and impartial resolution that satisfied the interests of both Greece and Turkey.

The ICJ's ruling in the Aegean Sea Continental Shelf Case of 1978 was based on well-established principles of international law, particularly those related to jurisdictional consent and the mandatory nature of the Court's jurisdiction. The jurisdiction of international judicial bodies is based on the fundamental premise of consent. Greece initiated the dispute by submitting it to the International Court of Justice (ICJ) in order to

get a decision regarding the bounds of the continental shelf in the Aegean Sea. Nevertheless, in order for the International Court of Justice (ICJ) to possess jurisdiction, it was imperative that both Greece and Turkey, the parties involved, had previously given their agreement to the Court's jurisdiction. The jurisdiction of the ICJ is established on two primary grounds: the mutual agreement of the parties involved or explicit provisions outlined in a treaty. At the time Greece submitted the application, Turkey had not explicitly consented to the Court's jurisdiction in resolving issues over the demarcation of maritime boundaries. Due to Turkey's failure to agree to the ICJ's mandatory authority in cases of this kind, the Court was unable to continue with the case and make a decision based on its content. This decision emphasised the crucial significance of state permission within the jurisdictional framework of international law and made it clear that without explicit assent, the ICJ could not use its authority to settle disputes between states. Hence, relying on recognised principles of international law concerning jurisdictional consent, the International Court of Justice (ICJ) concluded that it lacked the authority to consider the Aegean Sea Continental Shelf Case. This was because Turkey did not give its assent to the Court's mandatory jurisdiction in such disputes.

### **Dissenting Opinions**

**Dissenting opinion by Judge de Castro:** In the 1978 Aegean Sea Continental Shelf Case, Judge José María Ruda de Castro, an ICJ member, delivered a dissenting opinion that diverged from the Court's majority ruling. Judge de Castro's dissent focused on his disagreement with the Court's determination about jurisdiction. Judge de Castro affirmed that the Court unquestionably had the authority to consider the issue. He contended that the Court possessed the power to settle conflicts over the demarcation of the continental shelf based on established international norms, even if Turkey did not explicitly agree to the Court's jurisdiction in this particular case. The crux of his disagreement centred on the elucidation of customary international law and the Court's authority within the purview of these established standards. He argued that the Court's ruling on jurisdiction should have been influenced by the notion of equidistance, a well-established customary norm commonly applied in determining maritime boundaries. As per Judge de Castro, this customary norm indicated that the Court had the authority to settle conflicts related to the determination of marine boundaries, such as the continental shelf, regardless of Turkey's agreement. In addition, Judge de Castro highlighted the importance of fairly distributing rights in the Aegean Sea, taking into account the

geographical conditions and historical background. He held the belief that it was the Court's duty to tackle the conflict and deliver an equitable and impartial settlement for both Greece and Turkey. Essentially, Judge de Castro's dissenting opinion centred on the contention that the Court should have utilised its authority based on customary international law, specifically the principle of equidistance, to handle the Aegean Sea Continental Shelf Case, even without Turkey's explicit consent to the Court's jurisdiction in this particular situation.

**Dissenting Opinion of Judge Stassinopoulos:** Judge Christos S. Stassinopoulos offered a dissenting opinion that offered an alternative viewpoint to the majority ruling of the International Court of Justice (ICJ). Judge Stassinopoulos dissented from the Court's ruling on jurisdiction, notably challenging the determination that the International Court of Justice lacked jurisdiction due to Turkey's non-consent. He contended that the Court had the authority to settle the disagreement between Greece and Turkey about the demarcation of the continental shelf in the Aegean Sea, even though Turkey objected to the Court's jurisdiction. Stassinopoulos argued that the principle of equity, which is a fundamental tenet in international law, bestowed the ICJ with the power to resolve the dispute. He stressed that in matters concerning contradictory assertions regarding maritime limits, especially the continental shelf, the Court's jurisdictional evaluation should be guided by principles of equity and fairness. In addition, Judge Stassinopoulos emphasised the importance of considering the geographical and historical context of the Aegean Sea, emphasising the intricate nature of the region as a result of the multitude of islands present. He contended that the intricate geographical features justified the Court's involvement and direction to guarantee a just and impartial delineation of the continental shelf between Greece and Turkey. Stassinopoulos disagreed with the idea that the Court should only exercise its jurisdiction with Turkey's explicit assent. Instead, she argued that the Court should consider principles of fairness and the specific conditions of the Aegean Sea while deciding whether to exercise jurisdiction.

### **Critical Analysis**

The ruling in the Aegean Sea Continental Shelf Case by the International Court of Justice (ICJ) had substantial consequences and ignited several discussions and examinations.

**Legal Precedent and Jurisdictional Implications:** In cases where there are disagreements over maritime boundaries, the judgement emphasised how crucial it is to have the court's explicit assent before exercising its authority. It maintained the norm that the International

Court of Justice (ICJ) cannot assert its jurisdiction in such situations unless both parties have given their assent in advance. In addition to establishing a precedent that highlights the role of consent in international law, this decision also established a standard for future disputes that may arise about maritime boundaries.

**Diplomatic Impacts:** In spite of the fact that the International Court of Justice did not provide a thorough delimitation of the continental shelf, the judgement motivated Greece and Turkey to engage in diplomatic negotiations. For the purpose of resolving territorial conflicts, it brought to light the importance of bilateral discussions that are founded on equitable principles. However, because the International Court of Justice did not provide a resolution that was legally binding, the matter continued to be a source of disagreement between the two countries, which had an effect on their diplomatic ties for many years to come.

**Geopolitical Tensions:** The fact that the dispute over the Aegean Sea has not been settled has continued to be a factor in the geopolitical tensions that exist between Greece and Turkey. Several areas of their relationship were impacted as a result of this, including the deployment of military personnel, air and sea patrols, and the exploration of natural resources in the geographic area. These tensions were made worse by the absence of a defined legal framework, which resulted in recurrent escalations and difficulties in sustaining calm in the region.

**Impact on International Law:** As a result of the judgement, issues were raised regarding the appropriateness of international law in the resolution of complicated maritime disputes, particularly in places that have intricate topographical features and historical animosities. It brought to light the limitations of international judicial bodies in terms of resolving disputes in situations where one of the parties does not submit to their jurisdiction, which creates obstacles in the way of reaching conclusions that are both fair and legally binding.

A critical analysis of the judgement reveals that, despite the fact that it emphasised the necessity of diplomatic negotiations and the concept of consent, it was unable to give a definitive conclusion, which contributed to the continuation of ongoing tensions. The fact that the decision was not legally binding made it less successful in providing a solution that was both clear and enforced. As a result, the problem was left open to the possibility of further escalation, and it made it more difficult to define maritime boundaries that were both solid and agreed upon.

For the purpose of properly resolving difficult conflicts between nations, the case serves as a prominent example that highlights the complexities and limitations of international law. It also emphasises the necessity of striking a balance between legal principles, diplomatic talks, and equitable solutions.