LEGAL INTERPRETATIONS OF TURKEY’S STRATEGIC ASPIRATIONS IN THE AEGEAN SEA

P. Sioussiouras
Department of Mediterranean Studies
University of the Aegean
Rhodes, Greece

Abstract. The positive decision of the December 2002 Copenhagen Summit for Cyprus’ accession to the European Union (EU) created a climate of euphoria and optimism not only for the solution of the Cyprus issue but also for the accommodation of the Greco-Turkish dispute in the Aegean Sea. Despite the fact that prima facie it may seem irrational, the two issues are interrelated: the Turkish claims in the Aegean appeared almost the same time with the 1974 invasion on the northern part of Cyprus, which resulted in its occupation ever since. These large-scale claims do not confine themselves only to sea zone issues—in particular the position that the Turkish continental shelf takes up half of the Aegean Sea, which is beyond any legal pragmatism—but extend further to the islands that it hosts. As far as the islands are concerned, the shape of the claims that Ankara has chosen to follow is aiming at the questioning of the defense status which has been assigned to them. What is more, since January 1996, the claims pronounced by the neighboring state, do not relate to the status of the islands only, but, by and large, to the very islands themselves.

In the first part of this paper a brief analysis of the course and development of the International Law of the Sea will be attempted. The aim of this analysis is to become a reference point in order for the divergence of the Turkish views from the existing legal framework would become clearer, and objective, as we hope.

More specifically, this study will deal with the following issues:

- The development of the International Law of the Sea from Grotius to the Law of the Sea Convention (Montego Bay, 1982).¹
- The main arrangements of the LoS Convention concerning the Greek-Turkish relations.
- The divergence of the Turkish foreign policy in relation to these arrangements and the International Law overall.

¹ Hereafter LoS Convention
I. THE EVOLUTION OF THE INTERNATIONAL LAW OF THE SEA

The International Law of the Sea went through three successive formation phases until it reached its current form, in the shape of the LoS Convention. The first of these phases, which lasted for about four centuries, was based on custom. More precisely, it was based on customary principles, which had as an aim to serve as the base for the legitimization the uncontrollable human nature to conquer the world’s sea space. As early as the 2nd century BC, the Principle of the Freedom of the Seas was the fundamental principle for all coastal and naval states. The initial decline, which with the fall of the Roman Empire and the rise of the first naval states, became more evident during the Middle Ages, which led us to the complete abolition of the particular principle during Renaissance.2

Hugo Grotius’ “Mare Liberum” is considered to be the milestone for the revival of the Principle of the Freedom of the Seas. It was written with the purpose to constitute the legitimizing base for the transportation of the goods of a Dutch “East Indies Company” through the Channel. According to Grotius, the freedom of the seas emanates from the freedom of commerce and he put it like that: “Every nation should have free routes for communication and trade with every other nation”.3 The opposite principle, restraining the freedom of the seas in favor of the sovereignty of coastal states, was put forward by the British John Selden, in his book “Mare Clausum”, in 1635. Selden’s theory, envisages the closing of the Channel in favor of England and at the expense of the East Indies Company.4 This literary conflict ended with the victory of the liberal position, which was represented by Grotius through this writing.5 The attempts for the establishment of rules having to do with free navigation “at a time when the world boundaries were unexpectedly extending, due to the discovery of

3 See H. Grotius, Mare Liberum, 1609.
4 See J. Selden, Mare Clausum, 1635.
5 It is, nevertheless, hard to trace the legal character of the high seas. It is not a res nullius, nor a res communitis, since it does not belong to states as part of their sovereignty. According to Professor Roukounas, its proper use is that it constitutes a res communis usus, in the sense that it is a good of common use. See E. Roukounas ibid, p. 173. See also I. Spyropoulos, Public International Law, Athens, Pyrsos Publications A.E., 1940, p. 178.
America", gave the liberal position an overwhelming victory. Since then, everyone could freely use the sea since it did not belong to anyone in particular.

A second, equally important principle is the principle of state sovereignty on the territorial sea or territorial waters of coastal states. The establishment of this principle aimed at strengthening the defense and security of the coastal state. Furthermore, it has a complementary relation with the principle of the freedom of the seas. The relation between the two principles derives from the definition of the open sea, which is always negatively defined: high seas begin where the territorial sea ends, meaning that the area of application of the principle of the freedom of the seas starts where the area of application of the principle of sovereignty ends. The next principle, namely the principle of innocent passage, which was in force throughout that period, presents a certain particularity in relation to the other two principles: it was born as a result of a dialectic relation developed between these two principles. More specifically, the principle of sovereignty, according to which the coastal state should be sovereign in its territorial waters, receded, fact which resulted in facilitating the unimpeded exercise of the principle of the freedom of high seas.

The second stage in the evolution of the Law of the Sea coincides with the attempt made by the international community to codify all International Law rules and principles, which were scattered up to that point. The result of this effort, which initially took place within the Society of Nations in 1930, was limited since no positive results could be obtained because the states could not agree on the breadth of the territorial sea. The year 1947 is considered to be the starting point of the second stage. During that year a codifying process was put into effect, which later turned out to be successful. The project was undertaken by the UN International Law Commission and after a seven-year process (1951-1958) it submitted a codified text, in the shape of a conventional draft, in the First UN Conference on Sea Law.

This Conference, in which 86 states participated, adopted four conventions, in Geneva on April 29, 1958, which have as follows:
- Convention on the Territorial Sea and Contiguous Zone.

---

8 Ibid, p. 22.
• Convention on the High Seas.
• Convention on the Continental Shelf, and
• Convention on Fisheries and High Seas\(^\text{10}\)

It is true that the Geneva Conventions and especially the Convention on the Continental Shelf, constituted a breakthrough for the time they were submitted, because of the new elements that it introduced. This was mainly because of the fact that it largely satisfied the tendency of the 1950s, according to which the coastal states wanted to expand their rights on neighboring seas. However, this was not going to last long. The rapid technological advancement led coastal states to express claims on seas and sea-beds that were situated much further from their continental coasts.\(^\text{11}\) When the arrangements of the Convention for the Continental Shelf proved outdated due to the de facto exploitation of large parts of high seas by the developed coastal states which possessed the financial and technological abilities\(^\text{12}\), a statement or rather, a cry of agony by Arvid Pardo, the Maltese Ambassador to the United Nations General Assembly, was to put an end to this unrestrained behavior, signaling the revision-evolution of the sea law. According to Pardo, “[t]he ocean floor and the sea-bed as well as their subsoil in the high seas, outside the boundaries of the current national jurisdiction, [should be] used for peaceful purposes only, while the exploitation of their recourses to the humanity’s advantage”.\(^\text{13}\) In other words the so-called International Sea-bed, does not belong to the states that have the possibility to exploit it, but also to those which either for financial reasons (developing states) or for geographical ones (landlocked states) do not have this possibility.

The historic timing was particularly favorable since during that period the process of de-colonization of Third World states was at its height. The gradual disengagement of the new states from the former colonial powers and the consolidation of their independence largely contributed to these developments. The

\(^{10}\) Greece ratified one of the four conventions, namely the one on the Continental Shelf with the N.D. 1182/1972.


\(^{12}\) This kind of exploitation was allowed –more precicely was not prohibited- by the fogy regime that governed it. A regime that was silenced when it came to research, exploitation and for any use whatsoever except navigation. Geneva Convention on High Seas, 1958, 450 United Nations Treaty Series 82.

\(^{13}\) See Note Verbale of the August 17\(^{th}\) 1967, submitted by the Maltese permanent representation to the United Nations S. G., Doc A/6695. An analytical interpretation of Pardo’s proposals to the UN General Assembly can be found in UN Doc. A/C.1/PV/1515-16, 1968.
aim of the new states was not only to check the plans the wealthy coastal states had for the extension and exploitation of larger sea parts but also to further claim a proportion from that expansion of sea territories that belonged to them.\(^{14}\) That period the UN was the ground where the newly independent states found available for a "dynamic filing of proposals", which not only did it lead to the alteration of the numerical equation of the international community, but also gave them the courage to claim their interests.\(^{15}\) It was a historical moment, as the whole humanity "was witnessing for that unique, indeed, time the recognition of a common heritage".\(^{16}\)

Under these circumstances the Third UN Conference on the Law of the Sea opened its proceedings in 1973, with the participation of 130 states. The Conference ended after 9 years of tough negotiations, due to the contradicting –economic mainly– interests.

The LoS Convention was officially signed\(^{17}\) in Montego Bay, Jamaica, on October 10, 1982.\(^{18}\) On November 16, 1993, eleven years after its signing, it was ratified by the 60\(^{th}\) state and was put into effect the following year.\(^{19}\) The arrangements which already existed in the Geneva Convention and which were considerably strengthened by the LoS Convention were the following: (i) the breadth of the territorial sea was agreed to reach up to 12 nautical miles\(^{20}\) (in the Geneva Convention there was no agreement reached on the breadth), (ii) the breadth of the contiguous zone was agreed to reach up to 24 nautical miles (in the Geneva Convention it was confined to 12 nautical miles), and (iii) Continental Shelf (the variable of exploitability that was in force under the Geneva Convention was abolished). In the new institutions that the LoS Convention created, the Exclusive

---


\(^{17}\) According to the procedural requirements, the Conference should try to reach a decision based on consensus. Nevertheless, when all efforts for achieving consensus failed, a voting procedure took place for the Draft Convention, which received 130 positive votes against 4 negative ones and 17 abstentions. The negative ones were from Israel, Turkey, USA AND Venezuela, whereas among the abstentions were countries like Germany, England and the Soviet Union.


\(^{19}\) See article 308, par. 1 of the LoS Convention.

\(^{20}\) See article 3 of the LoS Convention.
Economic Zone, the Straits used for International Navigation (which are discussed below) and the International Sea-bed or the so-called "Common Humanity Heritage", are also included. The institutionalization of the international sea-bed was the exact reason why technologically advanced nations, such as the USA, Great Britain, Germany, France, Italy, did not finally signed the LoS Convention. New modifications should be made, motives should be given for a new convention to be finally signed in 1994 which would be put into force in the year 2010.\textsuperscript{21}

II. THE LoS CONVENTION’S CRUCIAL CLAUSES FOR THE GREEK-TURKISH RELATIONS

a. The breadth of the territorial sea

The LoS Convention solved the issue of the breadth of the territorial sea in the most efficient manner. The 12 nautical miles breadth, which had already emerged as a rule of common law, was codified in the Convention in the following manner: "Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles..."\textsuperscript{22} In the Third UN Conference, Greece, along with the overwhelming majority of the international community, was in favor of the establishment of a 12 nautical mile territorial sea. On the contrary, Turkey, one of the few exceptions, initially tried to establish the Aegean Sea in the enclosed or semi-enclosed seas regime\textsuperscript{23}, which envisaged a narrow breadth for the territorial sea.\textsuperscript{24} When this failed, in order to avoid any kind of conventional commitment towards Greece, it voted against the LoS Convention. Ever since, Turkey regards the Convention as a res inter alios acta, intentionally neglecting the fact that this specific clause on the territorial sea had, since a long time, been consolidated as an element of common law. It is therefore binding for all states, regardless if they have signed the Convention or not. Consequently, it is for Turkey too.


\textsuperscript{22} See article 3, LoS Convention.

\textsuperscript{23} For enclosed or semi-enclosed seas, see articles 122, 123 of the LoS Convention.

This *contra legem* Turkish position in the Third UN Conference, which finally led to the voting-down of the LoS Convention, is of particular interest for its contradicting and unconventional character—if we take into consideration that Turkey has selectively implemented the particular clause for the 12 n.m. territorial sea, along with other clauses of the LoS Convention which extend its territorial waters. The selective implementation of these favorable clauses has as follows:

- Article 3 of the LoS Convention envisages the extension of the territorial sea up to 12 n.m. Turkey has adopted the use of a 12 n.m. territorial sea in the Black Sea and Eastern Mediterranean. What is interesting is that Turkey was one of the few states that had espoused the customary character of 12 n.m. breadth since 1956. What is more, Turkey went on with the adoption of the relevant law in 1964.

- Article 7 of the LoS Convention envisages the use of the method of straight baselines, despite the fact that their use has a mainly technical character, in a state with a long coastline, such as Greece, they favor its territorial sea. Turkey, since 1964, has adopted straight baselines, using them in a favorable manner in the NE Aegean “hooking” the Turkish continental coast with the Imvros, Tenedos and Lagousses islands, thus shifting the dividing sea boundary at the expense of Greece. Greece has not yet adopted baselines but maintains its normal coastline for the delimitation of its sea zones. Greece could have easily done that based on the principle of

---

25 It has to be underlined that in the Convention concluded between Turkey and the Soviet Union, the delimitation of the territorial sea between the two neighboring states was done on the basis of equidistance, something that Turkey refuses to accept for the Aegean Sea, pleading the principle of equity, that has nothing to do with the territorial sea. See *International Maritime Boundaries*, Vol. II, edited by J.J. Charney & L.M. Alexander, Martius Nijhoff Publishers, 1993, pp. 1681-1691. See also article 15 of the LoS Convention.

26 The statement that was on the letter by the government of Turkey to the UN International Law Commission, mentioned that: “according to the Turkish principles, the limit of 12 nautical miles has already become sufficiently acceptable in practice, so that it can be considered as a rule of International Law”. See *Annaire de la Commission du Droit International*, 1995, Vol. II, p. 90.


28 See Law no. 476, May 15, 1964, article 4 and 5 was replaced by Law 2674/1982, which settles the issue in a like manner.


30 As baselines we can define the lines for the measurement of territorial seas. The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state. See article 5 of the LoS Convention.

31 See Greece’s interpretative statement on article 2 of ND 1182/1972, FEK A 111 which has to do with the ratification of the Geneva Convention on the Continental Shelf.
reciprocity with Turkey, given the fact that it is in accordance to the LoS Convention.32

- **Closing of bays for the delimitation of baselines at 24 nautical miles (article 2, par. 7, LoS Convention).** Greece despite the fact that is a contracting party of the LoS Convention has not, up to now, moved on with this arrangement and closes its bays at the very small breadth of 10 n.m.33

It has to be pointed out, that the most important of all these arrangements is the possibility presented to Greece to extend its territorial sea to a breadth of 12 n.m., a right which was never surrendered.34 Nevertheless—and this is important—time is not running in favor of Greece.

b. **The Case of the Continental Shelf**

The Geneva Convention has defined the “Continental Shelf” as “...(a) the sea-bed and subsoil of the submarine areas...up to the depth of 200 meters or outside this limit, up to the point that the depth of the superjacent waters allows the exploitation of the natural resources of those areas...”35 From that definition it follows, that whereas the 200 meters isobath constituted a standard parameter for the estimation of the continental shelf, the criterion of exploitability was a variable. We could say that the LoS Convention on that issue in particular made one step forward and two backwards. This is because while it rightfully abolished the unfair—for poor nations—criterion of exploitability36, it also abolished the rigorously fair rule of equidistance as a

32 See article 7 of the LoS Convention. We have to indicate at this point that the adoption of these lines as a measurement method of the territorial sea—instead of using the “antiquated” method of the normal coastline, which Greece is using—is in favor of the coastal state with some advantages for the territorial sea. Advantages which if measured cumulatively are not negligible, especially in the case of states with extensive coastline such as Greece.

33 In extraordinary cases, according to article 1 of N DRMA of 1913, it closes its gulfs up to the breadth of 20 n.m.

34 From the Greek statement in the LoS Convention ratification document, it, inter alia, follows that Greece secured and assumed all the rights and obligations deriving from the Convention and declared that Greece’s determination “when and how it shall exercise these rights, according to its national strategy” did “not imply that Greece renounces these rights anyway”. See Law of the Sea Bulletin, No. 29, 199, p. 6. For an extensive analysis see A. M. Syrigos, The Status of the Aegean Sea According to International Law, 19, Athens, Sakkoulas/Bruyan, pp. 338-339.

35 See article 1, Geneva Convention on the Continental Shelf. Greece ratified this Convention with the ND 1182,1972, PEK A111.

36 As it is characteristically mentioned in the relevant clause, the continental shelf extends “...[up] to the outer edge of the continental margin, or yo a distance of 200 nautical miles from the baselines...” of the coastal states. See article 76, part 76, par. 1, LoS Convention
delimitation method for the continental shelf between two states with opposite or adjacent coasts. The principle of equity, which was adopted against the principle of equidistance, is somehow vague and leaves certain space for subjective interpretation.\textsuperscript{37}

On the issue of the Continental Shelf the policy of Turkey has presented significant fluctuations, all of them incompatible with the existing International Law. So, while Turkey voted against the Geneva Convention of 1958, which promoted the equidistance principle, for delimitation purposes, it then moved on with the delimitation with the Soviet Union, in the Black Sea region based on the principle of equidistance.\textsuperscript{38} However, in the case of the Aegean Sea, for Turkey the principle of equidistance is not an option but it rather chooses the principle of equity for the delimitation of the continental shelf, despite the fact that this principle is an outcome of the LoS Convention, which Turkey has voted down. We have to mention though, that the principle of equity, as well, does not have the revocatory character, the neighboring state would like to attach to it. This is because the principle has an infra legem function, fact which means that even in the case of the use of equity, the founding stone for delimitation is still equidistance.\textsuperscript{39} As a result, the deviations due to “special” or “relative” circumstances or just equity, which Turkey is calling upon, can extend up to a point, given the, ad hoc, nature of the delimitation. However, they still remain deviations. While equity takes into account factors, which cover certain regional particularities or peculiarities, the method of the use of such deviations cannot annul or revoke the spirit of delimitation based on the principle of equidistance, if we consider a much larger group of parameters. Professor Ch. Rozakis expresses it well: “[The principle of equity] merely adds certain corrective components or guidelines to the central logic of equidistance which constitutes the starting point delimitation”.\textsuperscript{40} Consequently, Turkey’s positions, which aim at the fragmentation of

\textsuperscript{37} For an extensive analysis on this issue from the international case law see Ch. Tzimitras, \textit{The Continental Shelf of the Islands in International Case Law}, Athens, A. Sakkoulas Publications, 1997.

\textsuperscript{38} In June 1978, Turkey and the Soviet Union signed a Protocol on the delimitation of the Continental Shelf in the Black Sea. What is interesting to note, is that while this delimitation was in fact done in accordance with the principle of equidistance, in the article it is mentioned that the two parties agreed to go forward with the delimitation based on the principle of equity, taking into consideration “all the relevant principles and norms of the international law.” See Preamble of the Agreement. See also United States Department of State (Bureau of Oceans and International Environment and Scientific Affairs), \textit{Limits in the Seas}, No. 109. \textit{International Maritime Boundaries,} Vol. II, edited by J.I. Charney & L.M. Alexander, Martinus Nijhoff Publishers, 1993, pp. 1693-1700.


\textsuperscript{40} \textit{Ibid}, p. 326.
the geographical unity of the Greek territory between the continental body and the islands, based on the principle of equity are in conflict with the entire International Law, common and conventional. As the geographical territory of Greece is united and the rights of Greece on the Continental Shelf are ipso jure and ab initio, the continental shelf of the Aegean Sea can only be seen as an unified entity. Thus, the Turkish position that the Greek islands of the Aegean are deprived of a continental shelf because “they are situated upon the continental shelf of the coast of Anatolia” is without any merit and besides that, “it was always considered to be arbitrary and was never proved, up to this point.”

In the context of satisfying its strategic goals, Turkey, inter alia, is calling upon article 123 of the LoS Convention on the cooperation of states neighboring enclosed or semi-enclosed seas. According to the ostensible interpretations of the Turkish state, which aim at the appropriation of the continental shelf of half of the Aegean, the particularity of the Aegean Sea is incorporated in the notional framework of article 123, even for matters having to do with the delimitation of sea zones. However, we have to point out, that notionally, this article is moving along the lines of environmental protection. It is self-evident that the cooperation of states neighboring enclosed or semi-enclosed seas is indispensable, exactly because of the increased possibility of intense pollution or contamination of these seas. What is worth-noting, is the fact that this article does not make any reference to delimitation issues, even though Turkey exercised considerable pressure towards this direction during the Third Convention.

Ankara, in the course of satisfying its strategic intentions— including the dispute of the Aegean islands’ continental shelf— calls also into question the defense status of the Aegean Islands. This effort attempted by the Turkish foreign policy, which is either based on older texts that have been abolished, or on newer ones that do not

---

42 The misinterpretation of the principle of equity by Turkey is deprived of, indeed, any logic. The neighboring state totally ignores the Greek islands of the Eastern Aegean and the continental shelf they possess ipso jure and ab initio. It, intentionally, calls these islands as “Aegean Islands” and it shifts the borderline in the middle of the Aegean Sea.
44 In accordance with that frame of mind, Turkey is calling upon the Lausanne Treaty of 1921 (art. 4, par. 3) for the demilitarization of the islands of Limnos and Samothrace, while this Treaty has been replaced, in its entirety, by the Montreux Treaty (1936), which exempted these islands from the militarization regime.
really concern Turkey itself, has the exact same objective: the weakening of the status of the Greek islands in the Aegean.\textsuperscript{45}

c. The Case of the Exclusive Economic Zone (EEZ)

The institution of the EEZ, one of the most important provisions of the LoS Conventions, has as an objective to satisfy the wish of coastal states, which wished for the maximum extension possible of the zones belonging to their national jurisdiction. In such zones, which can extend up to 200 nautical miles, the coastal state exercises specific sovereign rights.\textsuperscript{46}

The notion of the sovereign right is relatively new to International Law. It was initially introduced in 1953, by the International Law Commission in its effort to achieve a consensus between the notion of sovereignty and the demand put forward by the coastal states for the exclusive right of exploitation—more specifically the right to exclusively exploit the natural resources of the sea-bed, which do not belong to their sovereignty. Bearing in mind, that during the specific period the British notion of sovereignty was inextricably related to its effective exercise\textsuperscript{47}, it is easily understood that great amount of difficulty was presented concerning the recognition of a right, of ‘sovereignty’ nature, to a state beyond the boundaries of its territory or sovereignty. With the birth of the new theory of the sovereignty right, the legitimating base for the exercise of a right of sovereignty nature by a state was created. This right could be recognized inside an area that does not belong to that state under the condition, however, that this territory does not belong to no other third state. In the case of the EEZ, the sovereign rights have basically to do with the exploration, exploitation, conserving and managing natural resources, whether living or non-living, of waters superjacent to the sea-bed and its subsoil. The price for their adoption was at the expense of the freedom of the high seas, which were considerably ‘confined’. They

\textsuperscript{45} Turkey supports, among others, the view that the regime for the demilitarization of the Dodecanese was established for its own security and calls upon the Paris Peace Treaty, which envisaged that. Turkey, nevertheless, is not a party of the aforementioned treaty and thus the treaty is a res inter alios acta to it and it does not have the right to call upon it. For an overall presentation of the Turkish positions, see Ch. Pazarç, \textit{The Demilitarized Status of the Islands in the Aegean Sea} and for the refutation of those positions in the same work, see K. Economides, \textit{The Legal Status of the Greek Islands of the Aegean (Answer to a Turkish Study)}, Gnosis Publ. In cooperation with the Hellenic Institute of Defense and Foreign Policy, Athens, 1989.

\textsuperscript{46} For the EEZ institution see articles 55-57 of the LoS Convention.

start where the EEZ ends. However, a number of freedoms remained within the EEZ such as: the freedom of navigation, overflight, the laying of submarine cables, fishing and marine scientific research.  

Turkey, despite the fact that it had voted against the LoS Convention—which promoted the EEZ as one of the most valuable institutions it established—four years later it adopted an EEZ, in the Black Sea, as a result of the bilateral agreement with the Soviet Union. This case is of particular interest, as Turkey in the delimitation process with the Soviet Union the drawing of the EEZ was based on equidistance, while in the document of the Convention signed between the two states the term used was equity. Apparently, this was done so that Turkey will have the ability to call upon the principle of equity, if this appears necessary for the delimitation in the Aegean Sea. However, Turkey has repeatedly declared, for the case of the Aegean, that as equity it does not mean the line between the islands of the Eastern Aegean and Asia Minor, but the line that cuts the Aegean Sea in half.

III. CONCLUSION

The LoS Convention, which was put into effect on November 14, 1994, is a progressive legal document on the International Law of the Sea. Apart from the new institutions that it introduces, such as the International Sea-bed, the EEZ, and the contiguous zone, it solves a number of issues in a manner that defy any further discussion. The issue of the breadth of the continental shelf illustrates this point, as it was extended to 12 nautical miles without any exception, condition or reservation.

As far as Greece is concerned, the LoS Convention is presenting several advantages, contrary to what is the case with Turkey. The first important advantage is the possibility for the extension of the territorial sea up to 12 n.m. This extension is extremely important for Greece since it would include the 70% of the Aegean Sea into

---

48 See article 58 of the LoS Convention.
49 Indeed, on December 23, 1986 and on February 6, 1987 the two states, Turkey and the Soviet Union concluded a new agreement, through the exchange of letters this time, concerning the delimitation of an EEZ. The borderline was exactly the same with the one envisaged in the 1978 Convention for the delimitation of the Continental Shelf. Once again, the delimitation was theoretically done in accordance to the principle of equity, while in practice in accordance to the principle of equidistance. See International Maritime Boundaries, Vol. II, edited by J.I. Charney & L.M. Alexander, Martinus Nijhoff Publishers, 1993, pp. 1701-1707.
50 Id.
the Greek sovereignty, compared to the 42% that it currently possesses today with a territorial sea of 6 n.m. Additionally, this extension would automatically weaken the dispute between Greece and Turkey on the issue of the continental shelf. As this issue is of particular interest for Greece due to the increased possibility of being referred to the International Court of Justice\(^5\), we have to draw attention to the following: the potential drafting of an agreement to refer the dispute to arbitrators by the two state-parties of the dispute, would have to establish that Greece is entitled to a territorial sea of 12 n.m., regardless of the fact that it has not extended its territorial sea up to that breadth yet. Otherwise, if the Court decides, based on the 6 n.m. territorial sea which exists today, the future extension of the territorial sea by Greece would have lost a great part of its meaning. It is worth-noting that the extension of the territorial sea would automatically give Greece a large part of the continental shelf which Turkey has set under dispute. This is because the extension of the territorial sea of a state amounts to the modification of a part of the continental shelf to territorial sea sea-bed. This fact is in favor of the coastal state, since it upgrades the legal status of the coastal state that will not have the restrictive character of the sovereign right status but a total sovereignty status. It would, thus, be unfair if the Court did not take that fact into consideration. However, it would be even more unfair if the Greek side did not bring that to the Court’s notice.

A small disadvantage for Greece, due to the extension of the territorial sea would be the fact that a host of ‘new’ straits would be created, namely the straits used for international navigation, for which the right of transit passage\(^5\) would automatically be enforced. This will broaden the facilitations and the rights of transit for the passing ships, airplanes or submarines in relation to innocent passage.\(^5\) It is also worth-noting that in these straits even the overflight of military aircrafts is allowed, fact, which

---

\(^5\) See the Helsinki Summit, December 10 & 11, 1999 article 4 where the European Council after stressing the principle of the peaceful resolution of disputes according to the UN Charter, with emphasis on territorial disputes, it imposes, in case of non-resolution, their reference to the International Court of Justice within a reasonable time frame. The re-examination of the disputes at hand, by the European Council, according to the same article, will take place in the year 2004, when a final decision will be taken for their reference to the International Court of Justice.

\(^5\) The new transit regime through straits used for international navigation, allows the passing of all ships, commercial and warships, submarines in submersion and for all airplanes, combat planes and military ones, without permission. See articles 36, 38, 41 and 42 of the LoS Convention.

\(^5\) Upon ratification of the LoS Convention (July 21, 1995), the Greek government made a declaration in which it was stated, inter alia, that Greece reiterated the interpretative declaration on straits, in areas where there are numerous spread-out islands that form a great number of alternative straits which serve in fact, one and the same route of international navigation, which is deposited at the time of the Convention’s adoption and the time of its signature. See article 2 of the Greek ratifying document of the LoS Convention (N 2321/1995, PEK A’ 130 July 23, 1995).
definitely does not favor Greek defense and security. On the other hand, the advantages Greece will obtain from the eventual extension in the territorial sea to 12 n.m. counterbalance this shortcoming considerably.

As far as the continental shelf, the EEZ and the Contiguous zone are concerned the LoS Convention is also favorable to the Greece interests. Disregarding Turkey's attempts at the Third Conference, which aimed introducing issues of 'special circumstances' in the Aegean Sea, the LoS Convention recognizes rights for all three sea zones and the islands. It is worth-noting that while in the Geneva Convention the territorial sea and contiguous zone could not exceed the 12 n.m., the LoS Convention allows for an overall extension up to the 24 n.m.55 Thus, even if Greece maintains a territorial sea of 6 n.m., it can adopt a contiguous zone of up to 18 n.m. This is of particular importance, if we take into account that the institution of contiguous zone, apart from competences on customs, fiscal, health and migration control, proposed by the Greek representation56, it also provides the possibility for the protection of archaeological and historical objects found on the sea-bed of that zone.57

The only exception is an arrangement less favorable to the Greek interests, namely the adoption of the principle of leniency as a method of delimitation of continental shelves, because of the relative vagueness it presents, compared to the rule of equidistance, which was adopted in the previous Geneva Convention on the Continental Shelf. However, Turkey is not entitled to appeal to that method, firstly because it has not signed the LoS Convention —and consequently it constitutes for it a res inter alios acta— secondly because the principle of leniency maintains equidistance as a starting point for delimitation. Thus, even the principle of equity defies the subversive character in delimitation that Turkey wants to attach to it.

For all these reasons, which formulate the favorable character of the LoS Convention for Greece, Turkey did not finally become a party to that. However —and this has to be pointed out— the LoS Convention is not any conventional text. It is a text of international character, in the sense that the majority of the international community has signed it,58 and it includes provisions that have already become

55 See article 33, par. 2, LoS Convention.
56 See K. Economides, op. cit., p. 35.
57 See article 303, LoS Convention.
58 It is worth-noting that 138 states, out of a total of 157 states that signed the Convention, had ratified the Montego Bay Convention by 30 August 2002. See UN Doalos/Ola, Table Showing the Status of
practice according to common law. Thus, Turkey’s refusal to accept the arrangements of the LoS Convention amounts, in substance, to a refusal to accept International Law. What is more, Turkey refuses to comply with International Law when it selectively and partially adopts specific arrangements or uses ostensible interpretations that serve its own strategic intentions. Turkey, does not take into account the fact that the provisions of the LoS Convention have been enacted in a package-deal form, that is, in a give and take framework—meaning that either you accept all the Convention’s arrangements as a ‘package’ or you reject the overall arrangement. Such policies, like the one Turkey follows, which consists of a selective implementation of certain provisions and clauses of multilateral conventions exhibit an unconventional character not only towards Greece but towards the international community as a whole. This can be easily understood, if we assume that a number of states, which have not signed the LoS Convention, made selective use of its favorable provisions, that is, of its most important aspects, neglecting the obligations that stem from these aspects. A chaotic situation would automatically ensue, not only in bilateral but also in international level.

Consequently, Greece should be especially cautious to Turkey’s proposals for negotiations. These proposals do not aim at the implementation of the existing International Law, but at the creation of an ad hoc legal entity: the establishment of arrangements with a contra legem character on the existing law. Schematically speaking, the Greek foreign policy towards Turkey should be based on dialogue, excluding parallel negotiations. The difference between dialogue and negotiations is of substantial and critical importance. It is imperative that dialogue should be conducted on every opportunity between the two states in the context of peaceful coexistence and the development of the bilateral relations without any terms and conditions. On the contrary, negotiation is a legal term and according to the International Law presupposes that the two parties which enter into negotiations recognize the subject of negotiations as a dispute. In this sense, the states that are the two parties of a dispute, should show a good faith as well as a mobility in order to

---


59 Indicative of this is the case of the extension of the territorial sea to 12 nautical miles, the implementation of which by a coastal state, based on article 3, should be accompanied by the establishment of straits used international navigation. See above.
reach a commonly acceptable solution.\textsuperscript{60} While it is inconceivable, according to the negotiation process, for two states to remain firm to their initial positions, in the dialogue process, which has a mainly exploratory nature, this stance is completely acceptable. It is worth-noting that Greece recognizes as dispute—in the sense given to the term by the International Law—only the issue of Continental Shelf between Greece and Turkey.

Nevertheless, even on this issue, the Greek side should be extra cautious on each attempt to enter into negotiations, as long as Turkey’s casus belli status is still in place against Greece. This is because, negotiations and the simultaneous threat of use or use of force are two contradictory notions in the ‘constitutional’ framework of the UN. One cannot seek the creation of a peaceful environment with its neighboring state—at least this is what Turkey is declaring— and at the same time threaten with war for acts that are in conflict with your strategic intentions. This ‘imperial’\textsuperscript{61} Turkish policy, which is expressed through the casus belli declaration, is beyond the contemporary spirit of international relations,\textsuperscript{62} beyond the spirit of the 21\textsuperscript{st} century and beyond any logic.

Turkey, at some point, has to understand that coming to understanding with Greece, within a strictly defined framework by the International Law, would only benefit Turkey. Especially now, when it has started timidly to move towards a European course, would have to take initiative for a peaceful coexistence with Greece. It is a fact that Ankara’s road to Brussels, passes through Athens first. Greece has already made important steps to come closer to Turkey. Making an important turn in its usual foreign policy, Greece it encouraged Turkey’s European orientation, it “gave guarantees” for Turkey in the EU and played a leading role for the smoothest possible Turkish accession to the EU. Consequently, it would be unprofessional for Greece to

\textsuperscript{60} See North Sea Continental Shelf Case, ICJ Rep. 1969, p. 47, where it is mentioned that “...parties are under an obligation to enter into negotiations with a view to arriving at an agreement...; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it”. R.M. Wallace, International Law, London, Sweet & Maxwell, 1992, pp. 266-267.


\textsuperscript{62} Indeed, this very Turkish position is in direct conflict with the UN Charter, according to which the peaceful resolution of disputes is a fundamental principle. A number of UN rules and resolutions refer to this principle. In particular, we mention article 1, par. 1 of UN Charter according to which the UN’s objective is “the accommodation or solution of disputes through peaceful means and in accordance with the principles of justice and international law...”, article 2, apr. 2 and 4 and article 5, par. 2 of UN General Assembly Resolution 3314 (December 18, 1974) which includes the definition of attack as follows: “offensive war is a crime against international peace. Attack creates international responsibility”.
hereafter accept any insult on behalf of Turkey due to international law violations or deviations from the commitments that it has undertaken according to the acquis communautaire. In no occasion, Greece’s positive stance towards Turkey, which is stemming from its standard conviction to peacefully coexist with the states that surround it, should be misunderstood. Exactly for that reason every gesture of good will on behalf of Greece towards Turkey should anticipate it positive answer. The lifting of the casus belli status could prove a good start for Turkey.

For the particular or a relevant venture, the current period is particularly favorable. The unexpected turn towards EU by the traditional Islamists, creates the dynamics which seem capable to do away with kemalism and the nationalist stringencies that are largely expressed by Turkey’s military establishment. These particular dynamics, which according to all indications are promoted to a major strategic option, constitute a unique chance to bring to an end the necessary “process of reformation...[and fulfill] the Copenhagen political criteria [so that the EU] can start without any delay the negotiations for accession...”63 Turkey, already after the December 1999 Helsinki Summit moved closer to the EU and receiving the status of the state under accession64 came closer to the political, institutional and its overall modernizing responsibilities.65 The results of this rapprochement are already visible in relation to the Cyprus Issue – even though Turkey has a long way to walk. Cyprus’ entry in the EU, fact which was totally against the expressed Turkish foreign policy and constituted a reason for hurling yet another threat against Hellenism (mainly the partition of the pseudo-state), is an issue that unites rather than divides Greece and Turkey. To this end, the contribution of the EU was catalytic, as since accepting Cyprus without terms and conditions it created the dynamics, not only for the solution of the Cyprus issue, but also, for the further amelioration of the Greek-Turkish relations. Following that policy, the EU gives justice to those who were convinced that “[the] logic behind Cyprus’ European choice was that the EU could offer those possibilities and these safety valves which would assist, consequently the solution of the Cyprus problem in

63 Let us mention that the EU will grant increased financial assistance to Turkey during the pre-entry stage. See Copenhagen European Council of 12-13 December 2002, Presidency Conclusions, par. 25 and 26 of the Chapter on Turkey.
a fair and permanent manner. [That the EU] would provide the guarantees and the security, which all inhabitants—both Greeks and Turks—of Cyprus long for.\textsuperscript{66}

The history of international relations has proved that states that play a leading role in the creation of a peaceful environment are the ones which obtain the greatest advantages. Turkey, has to comprehend that and should take any initiative that would aim towards that direction. Turkey has to plan a new course for its international relations within a framework that would be defined by the acquis communautaire and the contemporary principles of international law. Such a rapprochement between Turkey and Greece would prove beneficiary for strategic, political but also moral reasons, according to all those mentioned above.
