# Postscript: Tension in the Aegean - The 'Imia' Incident

**Keywords:** Greece; Imia; islands; law of the sea; Turkey.

## 6. INTRODUCTION

In January 1996, tension escalated in the south-eastern Aegean as a result of Turkey's challenge of Greek sovereignty over the Imia rocks. Turkish 'journalists' from the newspaper *Hurriyet* occupied the Greek rocks and took down the Greek flag. This led to a build-up of Turkish and Greek naval forces near the rocks, thus creating a potential source of armed conflict. The tension was reduced after diplomatic intervention by the United States. However, there was a surprising absence of initiative on the part of the European Union in spite of the fact that the external borders of one of its member states had been challenged. The following will be a very brief account of the incident and the arguments of both parties, as evidenced primarily by their respective verbal notes.[47]

Turkey's claims should be considered in the wider context of its attempts in recent years to disrupt the *status quo* in the Aegean by the following actions: firstly, by prohibiting the extension of Greece's territorial sea to 12 n.m.; secondly, by securing the entire shelf area east of a median line down the middle of the Aegean, thus depriving the Greek islands of their continental shelf; thirdly, by challenging the ten-mile Greek territorial sea for the purpose of aviation - a right which Greece has constantly exercised since 1931[48] - by continuous violations of Greek national airspace; and fourthly, by expanding unilaterally the Istanbul Flight Information Region (FIR) to the middle of the Aegean in violation of the existing conventional settlement of the Greek (Athens) and Turkish (Istanbul) FIRs.[49] Finally, it appears that Turkey has moved from boundary claims

47. *See* the Turkish verbal note of Monday, 29 January 1996, and the Greek verbal note of Friday, 16 February 1996, respectively.

48. *See* note 12, *supra*.

49. The respective FIRs have been established at the Regional Air Navigation Meetings in Paris (1952) and in Geneva (1958), and were subsequently adopted by the Council of the

Leiden Journal of International Law 9: 122-128, 1996.

to territorial claims by asserting sovereignty over Greek rocks in the Aegean Sea. The undoubted purpose of all these attempts is to divide the Aegean and to reverse the territorial settlement reached at Lausanne in 1923.[50]

## 7. THE POSITION OF TURKEY

Turkey claims that the Turkish-Italian agreements of 1932 on the delimitation of their territorial sea boundary are not valid and therefore not binding upon the parties.[51] In particular, Turkey alleges that these instruments were negotiated within the context of the particular situation of the pre-World War II era. In its view, the only reference to the Imia rocks (called 'Kardak' in Turkish) can be found in the Agreement of 28 December 1932 (*procès-verbal*) which specifically refers to them as Italian territory. According to Turkey, however, the legal procedures with respect to this Agreement were never completed, nor was the Agreement ever registered with the League of Nations.

Secondly, Turkey alleges that the only document that could be referred to is the 1947 Paris Treaty of Peace With Italy (1947 Paris Peace Treaty), whereby the Dodecanese Islands are ceded to Greece. However,

---

International Civil Aviation Organization on 23 June 1952 and 15 May 1958, respectively, and have never been challenged by Turkey. *See* Report of the Third European-Mediterranean Regional Air Navigation Meeting, Paris, February-March 1952, ICAO Doc. 7280, EUM III, and Report of the Fourth European-Mediterranean Regional Air Navigation Meeting, Geneva, 28 January-21 February 1958, ICAO Doc. 7870, EUM IV. A similar approach has been pursued by Turkey with respect to the application of the 1979 International Convention on Maritime Search and Rescue ((SAR 1979), published by the International Maritime Organisation (IMO), sales number 955E) in the Aegean and the determination of the respective zones of responsibility.

50. For the text of the 1923 Treaty of Lausanne Between Principal Allied and Associated Powers and Turkey, *see* 28 LNTS 11 (1924). As pointed out by Bowett, *supra* note 42, at 251, "with Turkey retaining only the three islands at the mouth of the Dardanelles (Imbros, Tenedos and the Rabbit island), one sees how comprehensively 'Greek' the Aegean was conceived to be in the territorial settlement in the Treaty of Lausanne [...]. The impression that, in effect, the Turkish/Greek frontier was to be the Turkish mainland coast, leaving Greece in control of the Aegean, but excluding Greece from the Anatolian mainland is reinforced by the Conference's decision that Smyrna (on the Anatolian mainland) was to remain Turkish and not to be allocated to Greece as originally envisaged in the Treaty of Sèvres." It should be recalled that the Dodecanese were ceded to Greece by Italy under the 1947 Paris Peace Treaty (*supra* note 20).

51. On these agreements, *see* note 19 and accompanying text, *supra*.

in Turkey's view, the Imia rocks do not fall within the scope of Article 14(1) of that Treaty, which provides that "Italy cedes to Greece in full sovereignty the islands of the Dodecanese enumerated below, namely [...] as well as the adjacent islets". The Imia rocks, which lie 5.5 n.m. off the nearest Greek islands, can neither be defined as being adjacent, nor can they be termed islets. Hence, the Imia rocks, which lie just 3.8 n.m. off the Turkish mainland, belong to Turkey.

Thirdly, Turkey invokes the provision on the demilitarization of the Dodecanese. More specifically, it argues that if Greece wishes to infer rights from Article 14(1) of the Peace Treaty, it should also fulfil in good faith the obligations that emanate from Article 14(2), according to which the Dodecanese "shall be and shall remain demilitarised".

In conclusion, Turkey proposes that the "possession of small islands, islets and rocks in the Aegean, the status of which has not been clearly defined by international documents has yet to be determined by agreement".[52] In the context of such negotiations, the delimitation of the territorial sea should also be discussed.

## 8. THE POSITION OF GREECE

Greece rejects the Turkish allegations. Firstly, Greece claims that the agreements of 1932 are valid and binding upon the parties. The assertion that these agreements were negotiated within the context of the particular political situation of the pre-World War II era does not have any legal significance. According to a fundamental principle of international law, boundary agreements are governed by the principle of stability, and are permanent and unchangeable.[53] More specifically, the *procès-verbal* which was

52. *See* Turkish verbal note, *supra* note 47.

53. This rule has been expressly codified in Art. 62 of the 1969 Vienna Convention of the Law of Treaties (1155 UNTS 331 (1980)) as well as in Arts. 11 and 12 of the 1978 Vienna Convention on Succession of States in Respect of Treaties, *supra* note 20. *See also* Mosul Boundary, Advisory Opinion, 1925 PCIJ (Ser. B) No. 12, at 20; Temple of Preah Vihear (Cambodia *v.* Thailand) (Merits), 1962 ICJ Rep. 6, at 34; and, more recently, Territorial Dispute (Libyan Arab Jamahiriya *v.* Chad), 1994 ICJ Rep. 6, at 37, paras. 72-73: "[o]nce agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries [...]. [A] boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy".

signed between Italy and Turkey on 28 December 1932 is valid and binding upon the parties, even though it was not registered separately with the League of Nations. As stated above,[54] this *procès-verbal* had been concluded on the basis of an exchange of letters between the two parties, dated 4 January 1932, whereby they undertook to proceed with the demarcation of their remaining territorial sea boundary. The *procès-verbal* complements the Italian-Turkish Agreement of 4 January 1932,[55] which was duly ratified by both parties and registered with the Secretariat of the League of Nations. Thus, it needed no further approval by the parties as it only demarcated the territorial sea boundary in a region, where, as the text itself and the exchanged letters affirm, no dispute whatsoever existed with respect to sovereignty. Furthermore, it is evident from the text that the intention of the parties was that it should enter into force upon signature, as indeed happened.[56] For the same reasons, registration with the League of Nations was not needed in this case.[57]

Moreover, in the period 1932-1947 and thereafter, until the Imia incident, Turkey has never challenged the validity of these agreements. The same holds true for Italy for the period during which this state exercised sovereignty over the Dodecanese Islands.[58] Turkey's acceptance of the

---

54. *See* note 19, *supra*.
55. *Id.*
56. It may, therefore, be classified as an agreement of simplified form of a technical nature; the *procès-verbal* notably marks the territorial sea boundary on official English hydrographic charts, Nos. 236, 872, and 1546, respectively.
57. In any case, despite the wording of Art. 18 of the Covenant of the League of Nations (225 Consolidated Treaty Series 188 (1919)), which states that "no such treaty or international engagement shall be binding until so registered", the Permanent Court of International Justice (PCIJ) never applied this sanction. As pointed out by Hudson, the PCIJ did not refuse to give effect to any instrument because of its not having been registered. *See* M.O. Hudson, *Legal Effect of Unregistered Treaties in Practice*, 28 AJIL 546, at 522 (1934). The same applies to the ICJ and the application of Art. 102(2) UN Charter which reduces the sanction for non-registration to a prohibition on invoking an otherwise valid and binding unregistered treaty before an organ of the United Nations. It should be noted, however, that the majority opinion in Art. 18 considered too that an unregistered treaty was binding; the non-complying party would only be prevented from invoking the treaty before an organ of the League. Nevertheless, as the PCIJ never applied the sanction under Art. 18 of the Covenant, the sanction provided for in Art. 102(2) has so far hardly played any role in the practice of UN organs, although they have had to deal with unregistered agreements on various occasions. *See further* B. Simma (Ed.), The Charter of the United Nations - A Commentary 1103-1116 (1995).
58. On the contrary, several official documents (on file with the Italian Ministry of Foreign Affairs) exchanged between Italy and Turkey in 1933 and 1936 clearly reveal that the parties, far from raising any question as to their validity, expressly accepted them as fixing the

boundary of 1932 is evidenced by both the Regional Air Navigation Agreement of the Second Middle East Regional Air Navigation Meeting in Istanbul in 1950, as adopted by the ICAO Council, under which the Athens/Istanbul borderline coincides with the Turkish western frontiers in the area (see the relevant ICAO map No. 7),[59] and the official Turkish International Air Navigation Map of 1953.[60] Such maritime delimitation is also depicted on the official Turkish map attached to the Annual Report of 1953 on the navigation of ships across "the Strait of Istanbul, the Strait of Canakkale and the Marmara Sea" in accordance with the 1936 Montreux Convention Regarding the Regime of Straits.[61] On all these maps, as well as on other Turkish and international official maps, the Imia rocks are depicted as belonging to Greece. Thus, the *procès-verbal*, itself a binding international agreement, was enforced and applied by both parties, as well as Italy during the period of its sovereignty over the Dodecanese Islands, and has never been disputed until recently. If Turkey, after 60 years during which it observed it without any contestation, decides to challenge its validity now, this would constitute a typical case of estoppel, a notion based on the maxim *venire contra factum proprium.*[62]

Secondly, the Imia rocks fall within the scope of Article 14(1) of the 1947 Paris Peace Treaty, as they form part of a chain of islands, islets, and rocks of the Dodecanese-complex and constitute adjacent islets within the meaning of this provision. This fact has been expressly recognized in the *procès-verbal*, which refers explicitly to the Italian sovereignty over Imia (see point 30 providing for the median line between the 'Kardak' (Imia) rocks (Italy) and the island of Kato (Anatolia)). Moreover, under Article

---

maritime boundary in the region. It is notable that in one of these documents, the Turkish government specifically states that the demarcation of the boundary, under the *procès-verbal*, is an application of the 1923 Treaty of Lausanne (*supra* note 50). *See also* note 63, *infra*.

59. *See* Greek verbal note, *supra* note 47.

60. The map has been reproduced *in* The Hellenic Parliament, Memorandum on the Crisis of the Imia Rocky Islets and on Greek-Turkish Relations (February 1996).

61. *Id.* The 1936 Montreux Convention can be found *in* British Institute of International and Comparative Law, New Directions in the Law of the Sea, vol. II, at 535-548 (1973). It should be noted that the Montreux Convention, in its Preamble, uses the term "the Straits of the Dardanelles, the Sea of Marmora and the Bosphorus".

62. The effect of subsequent conduct on a state's legal position was discussed in Temple of Preah Vihear, *supra* note 53, at 22-25. In this case, the Court upheld a "map line" on the fact that "both parties, by their conduct, recognised the line and thereby in effect agreed to regard it as being the frontier line". *Id.*, at 33.

16 of the 1923 Treaty of Lausanne, Turkey renounced all its rights and titles, of whatever nature, over the territories lying beyond its borders as recognized by the Treaty, as well as over the islands, except those recognized as being under Turkish sovereignty by the Treaty.[63] Greece's titles, which are based on binding international treaties, have acquired an *erga omnes* character, whilst Turkey now invokes extra-judicial criteria, such as that of distance, based on figures which are inaccurate in any case, to justify its claims. The legal status of the Aegean islands is clearly defined and there is no legal uncertainty, as claimed by Turkey. All islands, inhabited or not, irrespective of how they are termed (islets, rocks, etc. - these terms only have a geographical and not a legal connotation) and irrespective of their size, are accorded the same legal treatment by both the 1923 Treaty of Lausanne and the 1947 Paris Peace Treaty.[64]

Finally, with respect to the issue of the demilitarization of the Dodecanese, Greece claims that their partial rearmament is justified as an act of anticipatory self-defence. The right of self-defence constitutes a fundamental principle of international law which has been laid down in Article 51 of the UN Charter as one of the few exceptions to the prohibition of the use of force as laid down in Article 2(4). However, Article 2(4) of the Charter does not only impose upon the members of the United Nations the obligation to refrain from the *use* of force, but also from the *threat* of the use thereof against the territorial integrity of another state. Since Turkey's invasion in Cyprus in 1974, Greece is facing a threat of the use of force

---

63. *See* note 50, *supra*. Under Art. 12, Greek sovereignty is recognized over the islands in the eastern Mediterranean, whilst Turkish sovereignty is retained, apart from the Imbros, Tenedos, and Rabbit Islands, only over the islands lying within the three-mile limit off the Turkish coast, unless otherwise provided for in the Treaty. Finally, it should be recalled that, under Art. 15, the Dodecanese and its adjacent islands were ceded to Italy by Turkey.

64. The term 'islet' cannot be interpreted to exclude 'rocks', a term introduced by the 1982 Convention on the Law of the Sea (*supra* note 1) with the sole purpose of limiting their entitlement to a continental shelf or an EEZ (*see* Section 4.1.6., *supra*). The rock is a special type of island that only generates a territorial sea and a contiguous zone. There is no way that such a distinction would be valid and operative, so as to offer a basis for interpreting Art. 14 of the 1947 Paris Peace Treaty - or even more in relation to the 1923 Treaty of Lausanne - at a time when the concept of the continental shelf had just evolved and the institution of the EEZ was completely unknown. In the words of Judge Max Huber in the Island of Palmas arbitration, "a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled", Island of Palmas (The Netherlands *v.* United States of America), II RIAA 829, at 845. *See further* T.O. Elias, The International Court of Justice and Some Contemporary Problems 119-147 (1983).

against its territorial integrity. In addition to expansive claims over the Aegean continental shelf, Turkey is building up troops together with naval support along its coasts ('the Army of the Aegean'), whilst it has repeatedly threatened Greece that the extension of its territorial sea to 12 n.m. would amount to a *casus belli*. In this respect, one should particularly consider the above-mentioned resolution of the Turkish National Assembly, authorizing the Turkish government to use all means,[65] including military ones, against Greece in such an event, as well as the Imia incident itself. Greece would, in fact, be deprived of the possibility to exercise its fundamental right of self-defence if it were to observe strictly Article 14(2) of the 1947 Paris Peace Treaty, the purpose of which is to better organize and preserve peace and not to create favourable conditions for prospective aggressors. In any case, Article 51 prevails over every other conflicting conventional rule by virtue of Article 103 of the UN Charter. Taken together, all these factors confirm that Greece's arguments on this matter are both legitimate and justified. However, even if resort to anticipatory defensive measures is considered to be outside the limits of the right of self-defence, the adopted measures are 'legitimized' as a justified response to the initial violation of international law by Turkey, i.e., such measures would constitute reprisals in the sense of countermeasures of a defensive character.[66]

For these reasons, Greece rejects the Turkish allegations and it is not inclined to negotiate in any manner questions related to its territorial sovereignty. It may, however, accept a submission of the dispute to the International Court of Justice (ICJ). It should be noted that Greece, by a declaration made on 10 January 1994,[67] has accepted, under Article 36(2) of the ICJ Statute, on the basis of reciprocity, the compulsory jurisdiction of the ICJ in all legal disputes, with the exception of those concerning the

65. *See* Greek verbal note, *supra* note 47.

66. As pointed out by De Lupis, "the traditional concept of reprisals implies the right of a State, in response to a violation of international law, to resort to force against that State, or to take other counter-measures; the degree of force and the nature of the other acts would themselves have amounted to violations of international law unless they were 'legitimised' as justified response to the initial violation. Such reprisals against a State are legitimate provided they are proportionate to the violation, and, above all, provided there actually was a violation in the first place by the other State". *See* I.D. De Lupis, The Law of War 254 (1987). *See further* L.-A. Sicilianos, Les Réactions Décentralisées a l'Illicite des Contre-Mesures á la Légitime Défense (1990).

67. International Court of Justice, Yearbook 1993-1994, at 93.

undertaking of military measures of a defensive character by the Hellenic Republic for reasons of national security. In other words, the issue of the demilitarization of the Dodecanese has been excluded from the compulsory jurisdiction of the Court.

*Anastasia Strati*[*]

* Lecturer, Public International Law, Democritos University of Thrace, Kamotini, Greece. The author wishes to express her gratitude to Dr Theodore Chalkiopoulos, Special Legal Advisor to the Ministry of Foreign Affairs of Greece, for his constructive comments and advice.