

Fordham International Law Journal

Volume 12, Issue 1

1988

Article 5

Delimitation of the Continental Shelf in the Aegean Sea

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Abstract

This note argues that the continental shelf between Greece and Turkey should be delimited under general principles of international law. Part I discusses the present dispute and its historical underpinnings. Part II examines the relevant treaty and customary international law applicable to continental shelf delimitations. Part III analyzes the positions of the parties and proposes a solution under principles of customary international law. This Note concludes that the continental shelf should be delimited by drawing a median line between the two states giving half effect to Eastern Islands and then adjusting the line to avoid enclaving them.

DELIMITATION OF THE CONTINENTAL SHELF IN THE AEGEAN SEA

INTRODUCTION

On March 27, 1987, a Turkish seismic research vessel, the *Sismik I*, escorted by warships and jetfighters, prepared to sail for disputed waters around the Greek islands of Lesbos, Lemnos, and Samothrace.¹ The proposed expedition exacerbated the ongoing dispute between Greece and Turkey over delimitation of the continental shelf in the Aegean Sea appurtenant to the two countries.² At stake in this dispute are the legal rights to explore and exploit the potentially rich reserves of oil and gas underlying the Aegean seabed.³ The longstanding historical animosities between the parties make it unlikely that they will be able to negotiate a resolution.⁴

This Note argues that the continental shelf between Greece and Turkey should be delimited under general principles of international law. Part I discusses the present dispute and its historical underpinnings. Part II examines the relevant treaty and customary international law applicable to continental shelf delimitations. Part III analyzes the positions of the parties and proposes a solution under principles of customary

1. Cowell, *Greece and Turkey Alert Forces as Tension Builds on Oil Search*, N.Y. Times, Mar. 28, 1987, at A1, col. 1; see *A Nasty Squall in the Aegean*, THE ECONOMIST, Apr. 4, 1987, at 38 (referring to the *Sismik I* as an oil prospecting ship); Carr & Demirsar, *Greece, Turkey Defuse Aegean Face-Off; but Fight Over Territorial Limits Persists*, Wall St. J., Mar. 30, 1987, at 15, col. 5.

2. Cowell, *supra* note 1.

3. See Phylactopoulos, *Mediterranean Discord: Conflicting Greek-Turkish Claims on the Aegean Seabed*, 8 INT'L LAW. 431 (1974). During exploratory drills the North Aegean Petroleum Company (the "NAPC") discovered "heavy" oil in October 1971 and substantial quantities of natural gas in December 1972 off the island of Thassos. The aggregate oil capacity translates into 900,000 tons of good quality oil per year. *Id.* at 432.

The Greek government granted a license to the NAPC, a private international consortium with partners from Canada, the United States, and the Federal Republic of Germany. Letter from Permanent Representative of Turkey to United Nations Security Council, U.N. Doc. S/18759 at 1 (1987) [hereinafter 1987 Turk. Letter]. Turkey granted permits to the Turkish State Petroleum Company for 27 maritime areas beyond the six-nautical-mile territorial water limit of the Greek islands. Aegean Sea Continental Shelf (*Greece v. Turk.*), 1976 I.C.J. 3, 7 (Interim Protection Order of Sept. 11).

4. See Carr & Demirsar, *supra* note 1. See generally Clogg, *Troubled Alliance: Greece and Turkey*, in GREECE IN THE 1980s 123 (R. Clogg ed. 1983).

international law. This Note concludes that the continental shelf should be delimited by drawing a median line between the two states giving half effect to the Eastern Islands and then adjusting the line to avoid enclaving them.⁵

I. CONFRONTATION IN THE AEGEAN: DEVELOPMENT OF THE DISPUTE

The origins of the dispute between Greece and Turkey over the Aegean seabed can be traced back to the early 1970s, when Turkey granted petroleum exploration permits in the Aegean Sea over areas of seabed that Greece claimed belongs to its islands.⁶ In February 1974, Greece, in a *Note Verbale* sent to Turkey,⁷ questioned the validity of the licenses granted by Turkey, reserved its sovereign rights over the continental shelf adjacent to the coasts of the Greek islands, and contended that delimitation between the two states be made on the basis of a median line.⁸ Turkey replied by *Note Verbale*⁹ that the Greek islands close to the Turkish coast do not possess a continental

5. See *infra* text accompanying notes 145-47 for a definition of half effect and note 218 for a listing of the Eastern Islands. Enclave means to surround or enclose the continental shelf of one country with the continental shelf of another country. WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 597 (2d ed. 1979).

6. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 21 (Greek Note Verbale of Feb. 7, 1974) [hereinafter Greek Note Verbale of Feb. 7, 1974]. The Turkish government granted petroleum exploration permits over areas west of the Greek islands on October 18, 1973, and the Official Turkish Gazette published the announcement on November 1, 1973. *Id.* The Turkish government later extended the area for exploration further west by its decision of July 2, 1974, and the Official Turkish Gazette published that announcement on July 18, 1974. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 28 (Greek Note Verbale of Aug. 22, 1974) [hereinafter Greek Note Verbale of Aug. 22, 1974]. Greece had granted exploration permits in the same areas since 1961. Greek Note Verbale of Feb. 7, 1974, *supra*, 1976 I.C.J. Pleadings at 21.

7. Greek Note Verbale of Feb. 7, 1974, *supra* note 6, 1976 I.C.J. Pleadings at 21. A *Note Verbale* is a diplomatic communication prepared in the third person and unsigned. It is designed to show that a matter is not urgent, but at the same time it has not been overlooked. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1326 (2d ed. 1987); WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 2029 (2d ed. 1979).

8. Greek Note Verbale of Feb. 7, 1974, *supra* note 6, 1976 I.C.J. Pleadings at 22; see Aegean Sea Continental Shelf (Greece v. Turk.), 1978 I.C.J. 3, 8 (Judgment of Dec. 19). For a definition of median line under conventional law see *infra* note 79.

9. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 23 (Turkish Note Verbale of Feb. 27, 1974) (French version), 2 MEDITERRANEAN CONTINENTAL SHELF 1519 (1988) (unofficial English translation of Turkish Note Verbale) [hereinafter Turkish Note Verbale of Feb. 27, 1974].

shelf of their own, disputed the applicability of a median line, and sought to reach a solution by agreement.¹⁰

According to Greece, delimitation could be accomplished by applying the principles enunciated under the 1958 Convention of the Continental Shelf (the "Geneva Convention").¹¹ Turkey expressed readiness to enter into negotiations;¹² nevertheless, in May 1974 a Turkish vessel began an exploration program in the Aegean Sea.¹³ In February 1975, Greece and Turkey agreed to draft a special agreement to enter into negotiations over the question of the Aegean Sea continental shelf.¹⁴ The Joint Communiqué Issued After the Meeting of Prime Ministers of Greece and Turkey (the "Brussels Communiqué"),¹⁵ was issued in May 1975. It stated that the delimitation of the continental shelf should be resolved peacefully by negotiations and by the International Court of Justice (the "ICJ" or the "Court").¹⁶ However, the parties subsequently failed to agree on the delimitation of the continental shelf.¹⁷

On August 6, 1976, Turkey dispatched the research ship *Sismik I* to the Aegean Sea to carry out seismological explorations of portions of the continental shelf that Greece claimed as its own.¹⁸ Four days later, in view of what Greece called the "dangerous situation created for peace and security in the Eastern Mediterranean as a result of arbitrary and provocative

10. *Id.* at 23, 2 MEDITERRANEAN CONTINENTAL SHELF at 1520-23; see *Aegean Sea Continental Shelf*, 1978 I.C.J. at 8.

11. Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 [hereinafter Geneva Convention].

12. *Aegean Sea Continental Shelf*, 1978 I.C.J. at 8.

13. See *id.* The Greek government vigorously protested the following month by *Note Verbale*. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 26 (Greek Note Verbale of June 14, 1974). The Turkish government refused to accept the protest and repeated its suggestion of negotiation. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 27 (Turkish Note Verbale of July 4, 1974) (French version), 2 MEDITERRANEAN CONTINENTAL SHELF 1526 (1988) (unofficial English translation of Turkish Note Verbale); see *Aegean Sea Continental Shelf*, 1978 I.C.J. at 8.

14. See *Aegean Sea Continental Shelf*, 1978 I.C.J. at 9.

15. May 31, 1975, Greece-Turkey [hereinafter Brussels Communiqué], reprinted in U.N. Doc. S/18766 at 5 (1987).

16. *Id.*

17. *Aegean Sea Continental Shelf*, 1978 I.C.J. at 10.

18. Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. 3, 7 (Interim Protection Order of Sept. 11); see 31 U.N. SCOR (1949th mtg.) at 2, U.N. Doc. S/PV.1949 (1976) [hereinafter S.C. 1949th mtg.].

acts by Turkey against Greece,"¹⁹ the Greek government asked for an urgent meeting of the United Nations Security Council and referred the matter to the ICJ.²⁰ The relationship between Greece and Turkey was already tense because of the Turkish presence in Cyprus since 1974.²¹

On August 25, 1976, the Security Council adopted Resolution 395,²² calling on the two governments to exercise restraint and to reduce tensions.²³ It asked Greece and Turkey to resume direct negotiations and appealed to them to do everything within their power to reach mutually acceptable solutions.²⁴ Resolution 395 further invited the two governments to consider appropriate judicial means, such as the ICJ, for settling their legal differences.²⁵

In its application, Greece asked the ICJ to declare that the Greek islands²⁶ possess a continental shelf as part of the territory over which Greece exercises sovereign rights and to adjudge the boundary of the continental shelf appertaining to the

19. S.C. 1949th mtg., *supra* note 18, at 1.

20. *Aegean Sea Continental Shelf*, 1976 I.C.J. at 12; see Gross, *The Dispute Between Greece and Turkey Concerning the Continental Shelf in the Aegean*, 71 AM. J. INT'L L. 31 (1977) (discussing Greece's appeal to the Security Council and the ICJ to effect settlement of the Aegean Sea continental shelf boundary dispute).

21. S.C. 1949 mtg., *supra* note 18, at 2. On July 15, 1974, Greek-officered units of the Cypriote National Guard overthrew the elected Cypriote government. On July 20, 1974, Turkish forces invaded Cyprus and occupied 40% of the island. Robertson, *Turkey Lands an Armed Force in Cyprus; Drops Paratroopers into Nicosia Sector*, N.Y. Times, July 20, 1974, at A1, col. 7. See generally, SENATE COMM. ON FOREIGN RELATIONS, 94TH CONG., 1ST SESS., GREECE AND CYPRUS (Comm. Print 1975) (report of Sen. Pell).

22. S.C. Res. 395, 31 U.N. SCOR (1953d mtg.) at 15, U.N. Doc. S/INF/32 (1976).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Aegean Sea Continental Shelf (Greece v. Turk.)*, 1976 I.C.J. 3, 4 (Interim Protection Order of Sept. 11). Greece specifically asked the Court to adjudge and declare the Greek islands specified in the Greek Application of August 10, 1976, a territory of Greece and that these islands are entitled to the continental shelf that appertains to them. *Id.* The specified islands are Samothrace, Limnos, Aghios Eustratios, Lesbos, Chios, Psara, Antipsara, Samos, Ikaria, and all the islands of the Dodecanese group. *Id.* at 6; see *Aegean Sea Continental Shelf (Greece v. Turk.)*, 1976 I.C.J. Pleadings 3, 10 (Greek Application of Aug. 10) [hereinafter Greek Application of Aug. 10, 1976]. The Dodecanese group includes the islands of Patmos, Leros, Kalimnos, Kos, Astypalaia, Nisiros, Tilos, Simi, Chalki, Rhodes, Karpathos, Kassos, Lipsi, Castellorizo, Levitha, Arki, Alimia, and Agathonision. STATISTICAL YEARBOOK OF GREECE 3 (1983).

two countries in the Aegean Sea.²⁷ Greece further petitioned the Court to declare that Turkey must discontinue activities on the Greek continental shelf.²⁸ Pending the final decision of the ICJ, Greece asked the Court to provide interim measures of protection.²⁹

While Turkey did not appear before the ICJ, it sent a letter to the Court asking it to dismiss the request for interim measures of protection and to remove the case from the Court's list.³⁰ Turkey claimed that Greece's application for interim measures was premature because they were not required to protect Greece's rights and that the Court lacked jurisdiction over the case because Turkey had not appointed an agent to represent it before the Court.³¹

The ICJ held that Turkey did not have to appear for the Court to indicate interim measures of protection.³² However, the ICJ denied Greece's request for interim injunctive relief, because the denial would not cause irreparable prejudice to the parties.³³ The Court reasoned that Turkey's seismic exploration did not involve any risk of physical damage to the seabed or subsoil of the Aegean Sea or to its natural resources.³⁴ Further, the Court refused Turkey's request to remove the case, leaving determinations of jurisdiction and the actual merits to a later time.³⁵

On November 11, 1976, while the case was pending before the ICJ, Greece and Turkey signed the Agreement on Procedures for Negotiations of Aegean Continental Shelf Issue (the "Berne Agreement")³⁶ in Berne, Switzerland. The parties agreed to conduct negotiations in good faith on the delimitation of the continental shelf.³⁷ They further agreed to abstain from any initiative or act that might prejudice the negotia-

27. *Aegean Sea Continental Shelf*, 1976 I.C.J. at 4.

28. *Id.*

29. *Id.*

30. *Id.* at 5.

31. *Id.*

32. *Id.* at 6.

33. *Id.* at 11.

34. *Id.* at 10; see Note, *Oil Exploration in the Aegean*, 93 L.Q. REV. 29 (1977) (discussing ICJ's denial of Greece's request for interim measures of protection).

35. *Aegean Sea Continental Shelf*, 1976 I.C.J. at 13.

36. Nov. 11, 1976, Greece-Turkey [hereinafter Berne Agreement], reprinted in 16 I.L.M. 13 (1977).

37. *Id.* art. 1, reprinted in 16 I.L.M. at 13.

tions³⁸ or discredit the other party.³⁹ Finally, the parties agreed to study state practice and international rules, and to identify principles and practical criteria useful in the delimitation of the continental shelf.⁴⁰

In 1978, the ICJ addressed the question of whether it had jurisdiction to decide the case on the merits.⁴¹ According to article 53 of the Statute of the International Court of Justice,⁴² when a party does not appear before the Court or fails to defend its case, the Court must be satisfied that it has jurisdiction over the case and that the claim is well founded in fact and law.⁴³

Greece argued that Turkey had consented to the ICJ's jurisdiction on the basis of two agreements.⁴⁴ First, Greece and Turkey had agreed to the General Act on the Pacific Settlement of International Disputes (the "1928 Act"),⁴⁵ a treaty providing that all disputes between the parties be submitted to the ICJ.⁴⁶ Second, the parties had issued the Brussels Communiqué,⁴⁷ which provides that problems of relations between the two countries be negotiated peacefully and, specifically, that the dispute of the continental shelf be resolved by the ICJ.⁴⁸

38. *Id.* art. 6, reprinted in 16 I.L.M. at 13.

39. *Id.* art. 7, reprinted in 16 I.L.M. at 13.

40. *Id.* art. 8, reprinted in 16 I.L.M. at 13.

41. *Aegean Sea Continental Shelf (Greece v. Turk.)*, 1978 I.C.J. 3, 7 (Judgment of Dec. 19); see Note, *Limits of Consent: The Aegean Sea Continental Shelf Case*, 18 HARV. INT'L L.J. 649 (1977) (examining issue of whether ICJ has jurisdiction over the case).

42. June 26, 1945, art. 53, 59 Stat. 1055, 1062, T.S. No. 993, at 32, 3 Bevens 1179, 1190 [hereinafter ICJ Statute].

43. *Id.*

44. *Aegean Sea Continental Shelf*, 1978 I.C.J. at 14.

45. Sept. 26, 1928, 93 L.N.T.S. 345 [hereinafter 1928 Act].

46. *Id.* art. 17, at 351. Article 17 states in part:

All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

Id. Article 17 of the 1928 Act states that disputed matters be submitted to the Permanent Court of International Justice. However, this was later changed by article 37 of the ICJ Statute, which refers matters of the Permanent Court of International Justice to the ICJ. ICJ Statute, *supra* note 42, art. 37, 59 Stat. at 1060, T.S. No. 993, at 30, 3 Bevens at 1187; see also *Aegean Sea Continental Shelf*, 1978 I.C.J. at 14.

47. Brussels Communiqué, *supra* note 15; see also *Aegean Sea Continental Shelf*, 1978 I.C.J. at 39.

48. Brussels Communiqué, *supra* note 15.

The Court refuted both of Greece's claims and refused to consider the application filed by Greece.⁴⁹ The ICJ concluded that the 1928 Act did not apply to the present dispute because Greece expressly excluded from the Court's jurisdiction disputes relating to its territorial status.⁵⁰ Furthermore, the Court reasoned that the Brussels Communiqué was not intended to constitute a commitment by the two governments to accept unconditionally the jurisdiction of the Court.⁵¹ Rather, the parties intended first to conclude a special agreement defining the issues to be resolved before they jointly accepted the jurisdiction of the ICJ.⁵² Although negotiations floundered following the ICJ's decisions of 1976 and 1978, the two nations refrained from any overt acts in the Aegean Sea until 1987.

In February 1987, a private international consortium that was granted a license by Greece announced its intent to begin drilling for oil in late March 1987, in disputed waters in the Aegean Sea.⁵³ Greece asked the consortium to postpone its drilling plans⁵⁴ and, in February 1987, submitted to the Greek Parliament a draft law authorizing it to buy a majority of the consortium's shares.⁵⁵ The Greek prime minister and Greek secretary of industry and energy claimed that the purpose of

49. *Aegean Sea Continental Shelf*, 1978 I.C.J. at 38, 44.

50. *Id.* at 37; see Greek Accession to the General Act on the Pacific Settlement of International Disputes of 1928, Sept. 14, 1931, 111 L.N.T.S. 414. In full, the Accession excludes the following:

(a) Disputes resulting from facts prior either to the Accession of Greece or to the accession of another Party with whom Greece might have a dispute;

(b) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece including disputes relating to its rights of sovereignty over its ports and lines of communication.

Id. at 414-15.

51. *Aegean Sea Continental Shelf*, 1978 I.C.J. at 44.

52. *Id.* at 43-44.

53. 1987 Turk. Letter, *supra* note 3, at 1.

54. Kraloglou, *The Prinos' Case Enflames the New Crisis*, *To Vima*, Mar. 29, 1987, at 36.

The Greek government sent a letter to the North Aegean Petroleum Company informing it that for national reasons it was urgent that they postpone drilling. *Id.*

55. Letter from Permanent Representative of Greece to United Nations Security Council, U.N. Doc. S/18766 at 1 (1987) [hereinafter 1987 Greek Letter].

The law was finally passed by the Greek Parliament on May 4, 1987. The new law allowed for negotiations between the Greek government and the North Aegean Petroleum Company, to be followed by a government buyout. See *Greece Plans Oil Takeover*, *N.Y. Times*, May 5, 1987, at D20, col. 1.

the buyout was not to expropriate the consortium's investment but rather to safeguard the national resources located at places of national importance and security.⁵⁶ They also claimed that control of the consortium would enable the Greek government to decide "how, when and where" to drill.⁵⁷ Turkish officials claimed that the plan indicated an intention by Greece to proceed with the drilling.⁵⁸ Subsequently, the Turkish government sent an oceanographic research vessel, the *Piri Reis*, into international waters off the Greek island of Thassos early in March 1987 and prepared the *Sismik I* to set sail later that month.⁵⁹

II. DELIMITATION OF THE CONTINENTAL SHELF UNDER INTERNATIONAL LAW

Although the term "continental shelf" finds its origins in the geological, geographical, and oceanographical sciences,⁶⁰ it has not had any real legal significance until this past half century.⁶¹ The idea that a country can claim rights to exploration and exploitation over the natural resources of the subsoil and seabed beneath the high seas and contiguous to its coasts was first enunciated in 1945 in the Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf (the "Truman Proclamation" or the "Proclamation").⁶² The Proclamation declared the continental shelf to be an extension of the coastal state and naturally appurtenant to it.⁶³ It justified exploitation of the continental

56. See *Greece Plans Oil Takeover*, *supra* note 55; Kraloglou, *supra* note 54.

57. 1987 Greek Letter, *supra* note 55.

58. Cowell, *supra* note 1, at A4, col. 4.

59. *Id.* But see Cowell, *Greeks and Turks Ease Aegean Crisis*, N.Y. Times, Mar. 29, 1987, at A1, col. 5 (parties agreeing to refrain from further drilling).

60. M. MOUTON, *THE CONTINENTAL SHELF* 6 (1952).

61. Howard, *Third United Nations Conference on the Law of the Sea and the Treaty/Custom Dichotomy*, 16 *TEX. INT'L L.J.* 321, 324 (1981).

62. Proclamation No. 2667, 3 C.F.R. 67 (1943-1948). A few isolated claims by other nations existed prior to 1945, however the Truman Proclamation was the first to invoke worldwide attention and set a precedent for other states to follow. See Howard, *supra* note 61, at 324-25.

63. Proclamation No. 2667, 3 C.F.R. at 68.

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just . . . since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it

shelf first by making reference to the worldwide need for new sources of petroleum and minerals.⁶⁴ Second, it pointed to the modern technological progress that has made utilization of these new sources practicable.⁶⁵ Third, it stated that jurisdiction over these resources is required to ensure their conservation and prudent utilization.⁶⁶

A. *Treaty Law on the Continental Shelf*

1. The Geneva Convention of 1958

The Convention of the Continental Shelf,⁶⁷ opened for signature in Geneva on April 29, 1958, was the first general multilateral convention to define the term "continental shelf."⁶⁸ Article 1 of the Geneva Convention defines "continental shelf" as the seabed and subsoil adjacent to the coast of a state, outside its territorial waters, and to a depth of 200 meters or beyond that limit to a depth of feasible exploitation.⁶⁹ Article 1 states that the concept of a continental shelf also applies to islands.⁷⁰ The ICJ has stated that article 1 reflects rules of customary international law⁷¹ and is, therefore, binding as law on all states.⁷² The Geneva Convention entered into

Id.

64. *Id.* at 67.

65. *Id.* at 67-68.

66. *Id.* at 68.

67. Geneva Convention, *supra* note 11.

68. Howard, *supra* note 61, at 326.

69. Geneva Convention, *supra* note 11, art. 1, 15 U.S.T. at 473, T.I.A.S. No. 5578, at 3, 499 U.N.T.S. at 312. Article 1 states in full:

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Id.

70. *Id.* art. 1(b), 15 U.S.T. at 473, T.I.A.S. No. 5578, at 3, 499 U.N.T.S. at 312.

71. North Sea Continental Shelf (W. Ger. v. Den.; W. Ger. v. Neth.), 1969 I.C.J. 3, 39 (Judgment of Feb. 20).

72. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 (1988) [hereinafter RESTATEMENT THIRD]. Section 102 summarizes sources of international law as follows:

force on June 10, 1964,⁷³ and has been signed by forty-five states.⁷⁴ Turkey has neither signed nor acceded to the Geneva Convention.⁷⁵ In acceding to the Geneva Convention in 1972, Greece made a reservation to the system of delimiting the continental shelf as provided for in article 6.⁷⁶

Although neither party considers itself bound by article 6, it addresses one of the methods of delimiting the continental shelf common to opposite or adjacent states under international law.⁷⁷ The article states that in the case of opposite states, absent agreement or special circumstances, the boundary of their common continental shelf is the median line between them. In this situation, a line is drawn equally distant from the baseline⁷⁸ of each opposite state.⁷⁹ In the case of adjacent states the method of lateral equidistance applies. In this

(1) A rule of international law is one that has been accepted as such by the international community of states

(a) in the form of customary law;

(b) by international agreement; or

(c) by derivation from general principles common to the major legal systems of the world.

(2) Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation.

(3) International agreements create law for the states parties thereto and may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted.

(4) General principles common to the major legal systems, even if not incorporated or reflected in customary law or international agreement, may be invoked as supplementary rules of international law where appropriate.

Id.

73. See MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, STATUS AS AT DEC. 31, 1987, at 728, U.N. Doc. ST/LEG/SER.E/6, U.N. Sales No. E.88.V.3 (1988) [hereinafter MULTILATERAL TREATIES].

74. *Id.*

75. *Id.*

76. *Id.*; see Accession No. 7302 to the Convention on the Continental Shelf, Nov. 6, 1972, 847 U.N.T.S. 338 [hereinafter Geneva Convention Accession]. But see Greek Note Verbale of Feb. 7, 1974, *supra* note 6, 1976 I.C.J. Pleadings at 22, where Greece stated that the delimitation of the continental shelf is based, both in theory and practice of international law, on the median-line method as provided in article 6, paragraph 1 of the Geneva Convention.

77. Geneva Convention, *supra* note 11, art. 6, 15 U.S.T. at 474, T.I.A.S. No. 5578, at 4, 499 U.N.T.S. at 316; see *infra* text accompanying notes 83-84.

78. The normal baseline for measuring the breadth of the territorial sea has been defined as "the low water line along the coast as marked on large-scale charts officially recognized by the coastal State." Third United Nations Convention of the Law of the Sea, *opened for signature* Dec. 10, 1982, art. 5, U.N. Doc. A/CONF.62/122, *reprinted in* 21 I.L.M. 1261, 1272 (1982) [hereinafter 1982 Convention]. Greece has

situation, a line is drawn equally distant from the baseline of each adjacent state.⁸⁰

2. UNCLOS III and the 1982 Law of the Sea Convention

The United Nations General Assembly convened the Third United Nations Conference on the Law of the Sea ("UNCLOS III") in 1973 to review the entire law of the sea.⁸¹ UNCLOS III intended to resolve certain questions left unanswered by customary international law, such as the breadth of the territorial sea, the fishery zone, and the precise method of

claimed application of the normal baseline system for the purpose of measuring the breadth of the territorial sea. Geneva Convention Accession, *supra* note 76, at 338.

Turkey has claimed straight baselines. Act Concerning the Territorial Sea, No. 476, art. 4 (Turk. 1964) [hereinafter Law No. 476] *reprinted in* NATIONAL LEGISLATION AND TREATIES RELATING TO THE TERRITORIAL SEA, THE CONTIGUOUS ZONE, THE CONTINENTAL SHELF, THE HIGH SEAS AND TO FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE SEA 128, U.N. Doc. ST/LEG/SER.B/15, U.N. Sales No. E/F.70.V.9 (1970). Straight baselines is a method of joining appropriate points in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, in drawing the baseline from which the breadth of the territorial sea is measured. 1982 Convention, *supra*, art. 7(1), *reprinted in* 21 I.L.M. at 1272.

79. Geneva Convention, *supra* note 11, art. 6, 15 U.S.T. at 474, T.I.A.S. No. 5578, at 4, 499 U.N.T.S. at 316. Article 6(1) states in full:

Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In absence of agreement, and unless another boundary is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

Id.

80. *Id.* Article 6(2) states in full:

Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest point of the baselines from which the breadth of the territorial sea of each State is measured.

Id. Thus the difference between the two methods is that the median line is measured from the baselines of the coasts of opposite states and the lateral equidistance line is measured from the baselines of the coasts of adjacent states. However, both the median-line and the lateral-equidistance-line methods have been referred to as the principle of equidistance. North Sea Continental Shelf (W. Ger. v. Den.; W. Ger. v. Neth.), 1969 I.C.J. 3, 37 (Judgment of Feb. 20).

81. See 9 S. JAGOTA, MARITIME BOUNDARY 28 (1985).

delimiting the continental shelf.⁸² Despite the Geneva Convention, the means of continental shelf delimitation remained an issue of intense controversy⁸³ because the ICJ had previously held that the delimitation provisions embodied in article 6 of the Geneva Convention do not reflect rules of customary international law.⁸⁴

After prolonged negotiations, UNCLOS III agreed upon the precise outer limits of the continental shelf and approved the concept of a twelve-nautical-mile territorial sea surrounding each state.⁸⁵ On April 30, 1982, UNCLOS III adopted the Third United Nations Law of the Sea Convention (the "1982 Convention")⁸⁶ by a vote of 130 in favor, 4 against, and 17 abstaining.⁸⁷ Greece voted in favor of the 1982 Convention, while Turkey voted against it.⁸⁸ Although the 1982 Convention allows a maximum territorial sea of twelve nautical miles,⁸⁹ Greece and Turkey each presently claim a territorial sea of only six nautical miles in the Aegean Sea.⁹⁰

82. *See id.* at 57.

83. *See id.*

84. *North Sea Continental Shelf*, 1969 I.C.J. at 38.

85. 1982 Convention, *supra* note 78, arts. 3, 76, *reprinted in* 21 I.L.M. at 1272, 1285; *see* 9 S. JAGOTA, *supra* note 81, at 29-30.

86. 1982 Convention, *supra* note 78, *reprinted in* 21 I.L.M. at 1261.

87. REPORTS TO THE UNITED STATES DELEGATION TO THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 592-93 (Occasional Paper No. 33, 1983). The four states voting against were Israel, Turkey, the United States, and Venezuela. *Id.*

88. *Id.*

89. 1982 Convention, *supra* note 78, art. 3, *reprinted in* 21 I.L.M. at 1272.

90. Law No. 230 (Greece 1936), *reprinted in* LAWS AND REGULATIONS ON THE REGIME OF THE TERRITORIAL SEA 18, U.N. Doc. ST/LEG/SER.B/6, U.N. Sales No. 1957.V.2 (1957); Law No. 476, *supra* note 78, *reprinted in* NATIONAL LEGISLATION AND TREATIES RELATING TO THE TERRITORIAL SEA, THE CONTIGUOUS ZONE, THE CONTINENTAL SHELF, THE HIGH SEAS AND TO FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE SEA at 128. However, Turkey has claimed 12 nautical miles of territorial waters in the Black Sea. Protocol Concerning the Establishment of Territorial Waters in the Black Sea, Apr. 17, 1973, USSR-Turkey, *reprinted in* THE LAW OF THE SEA - MARITIME BOUNDARY AGREEMENTS at 191, U.N. Sales No. E.87.V.12 (1987); *see also*, Law No. 476, *supra* note 78, art. 2, *reprinted in* NATIONAL LEGISLATION AND TREATIES RELATING TO THE TERRITORIAL SEA, THE CONTIGUOUS ZONE, THE CONTINENTAL SHELF, THE HIGH SEAS AND TO FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE SEA at 128 (in cases of neighboring states whose territorial sea is of breadth greater than six nautical miles, Turkey's territorial sea is determined by reciprocity); Regulations of 5 August 1960 for the Protection of the State Frontier of the Union of Soviet Socialist Republics, as amended in 1971, art. 3, *reprinted in* NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA at 34, U.N. Doc. ST/LEG/SER.B/16, U.N. Sales No. E/F.74.V.2 (1972) (the USSR has claimed a territorial sea of 12 nautical miles).

Article 76(1) of the 1982 Convention defines "continental shelf" as the submarine seabed and subsoil that form the natural prolongation of the land territory of the coastal state.⁹¹ The outer limits of the continental shelf are measured by the outer edge of the "continental margin."⁹² Where the distance between this outer edge and the baselines from which the territorial sea is measured is less than two hundred nautical miles, the coastal state can claim up to two hundred nautical miles of continental shelf.⁹³

The 1982 Convention is less specific than the Geneva Convention for delimiting the continental shelf between states with opposite or adjacent coasts. During the negotiations, one group of nations, including Greece, favored the median-line and lateral-equidistance methods.⁹⁴ Another group, including Turkey, emphasized that "equitable principles, taking into account all circumstances," should be the main consideration.⁹⁵

91. 1982 Convention, *supra* note 78, art. 76(1), reprinted in 21 I.L.M. at 1285. Article 76(1) defines the continental shelf as

[t]he sea-bed and subsoil of the submarine areas that extend beyond [the coastal state's] . . . territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Id.

92. *Id.* The continental margin is defined as comprising "the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof." *Id.* art. 76(3), reprinted in 21 I.L.M. at 1285.

93. *Id.* art. 76(1), reprinted in 21 I.L.M. at 1285; see *supra* note 91.

94. See Chiu, *Some Problems Concerning the Application of the Maritime Boundary Delimitation Provisions of the 1982 United Nations Convention on the Law of the Sea Between Adjacent or Opposite States*, 9 MD. J. INT'L L. & TRADE 1, 4-5 (1985).

Greece's draft proposal on the question of the delimitation between states reads:

1. Where the coasts of two or more States are adjacent or opposite to each other, the delimitation of the continental shelf boundaries shall be determined by agreement among themselves.

2. Failing such agreement, no State is entitled to extend its sovereignty over the continental shelf beyond the median line every point of which is equidistant from the nearest points of the baselines, continental or insular, from which the breadth of the continental shelf of each of the two States is measured.

Greece: Draft Articles on the Continental Shelf, 8(3) U.N. Conference on the Law of the Sea at 202, U.N. Doc. A/CONF.62/C.2/L.25 (1974).

95. Chiu, *supra* note 94, at 5. Turkey's draft proposal reads in its entirety:

The final version, embodied in article 83,⁹⁶ is a compromise between the two views. On the one hand, it omits reference to the median-line and lateral-equidistance methods in the text; on the other, it refers only to the broad phrase "equitable solution" rather than to any specific "equitable principles."⁹⁷ Article 83 further states that parties with a common continental shelf should delimit "by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."⁹⁸ Because the term "equitable solution" is subjective, application of article 83 allows for development by inter-

1. Where the coasts of two or more States are adjacent and/or opposite, the continental shelf areas appertaining to each State shall be determined by agreement among them, in accordance with equitable principles.

2. In the course of negotiations, the States shall take into account all the relevant factors, including, *inter alia*, the geomorphological and geological structure of the shelf up to the outer limit of the continental margin, and special circumstances such as the general configuration of the respective coasts, the existence of islands, islets or rocks of one State on the continental shelf of the other.

3. The States shall make use of any of the methods envisaged in Article 33 of the Charter of the United Nations, as well as those established under international agreements to which they are parties, or other peaceful means open to them, in case any of the parties refuses to enter into or continue negotiations or in order to resolve differences which may arise during such negotiations.

4. The States may decide to apply any one or a combination of methods and principles appropriate for arriving at an equitable delimitation based on agreement.

Turkey: Draft Article on Delimitation Between States, 8(3) U.N. Conference on the Law of the Sea at 201, U.N. Doc. A/CONF.62/C.2/L.23 (1974).

96. 1982 Convention, *supra* note 78, art. 83, *reprinted in* 21 I.L.M. at 1286. Article 83(1) states that "[t]he delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution." *Id.*

97. *Id.*; see Chiu, *supra* note 94, at 4-5.

98. 1982 Convention, *supra* note 78, art. 83, *reprinted in* 21 I.L.M. at 1286. Article 38 of the ICJ Statute states in full:

1. The Court whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

national case law.⁹⁹

As of December 9, 1984, the closing date for signature, 159 states and entities had signed the 1982 Convention.¹⁰⁰ Greece signed the 1982 Convention; Turkey did not.¹⁰¹ The 1982 Convention has not yet been ratified or acceded to by the requisite number of states, therefore it has not entered into force.¹⁰² Nevertheless, the 1982 Convention is significant because it is a general convention codifying the law of the sea.¹⁰³ Thus, the ICJ can look to the 1982 Convention as a source of international law even though the parties have not ratified it.¹⁰⁴

B. *General Principles of Delimiting a Continental Shelf Under International Case Law*

In recent years, the ICJ and other international tribunals have considered a number of cases brought by states that wish to delimit the boundaries of their common continental shelf. The relevant judgments form an important body of legal interpretation of the Geneva and 1982 Conventions. They also clarify issues of customary international law, which is binding on all states.

1. *The North Sea Case*

In the landmark 1969 decision, *North Sea Continental*

ICJ Statute, *supra* note 42, art. 38, 59 Stat. at 1060, T.S. No. 993, at 30, 3 Bevans at 1187.

99. See *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Can. v. U.S.), 1984 I.C.J. 246, 294 (Judgment of Oct. 12).

100. See MULTILATERAL TREATIES, *supra* note 73, at 735-36; see also Status of the United Nations Convention on the Law of the Sea, reprinted in 26 I.L.M. 1108 (1987).

101. See MULTILATERAL TREATIES, *supra* note 73, at 736.

102. As of December 31, 1987, 35 states and entities had ratified or acceded to the 1982 Convention. *Id.* Greece has not ratified it. See *id.* The Convention will come into force one year after 60 states ratify or accede to it. 1982 Convention, *supra* note 78, art. 308, reprinted in 21 I.L.M. at 1327.

103. See *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 1984 I.C.J. at 294. The ICJ ascertains the principles and rules of international law by reference to "general conventions," including, *inter alia*, the conventions codifying the law of the sea to which the two States are parties." *Id.* at 291. The ICJ referred to the 1982 Convention as a source of international law on the continental shelf because it "may nevertheless be regarded as consonant at present with general international law on the question." *Id.* at 294.

104. See RESTATEMENT THIRD, *supra* note 72, comments (1)(b), (3); see also MacRae, *Customary International Law and the United Nations' Law of the Sea Treaty*, 13 CAL. W. INT'L L.J. 181 (1983) (stating that the 1982 Convention has codified principles of customary international law of the sea with almost unanimous international consent).

Shelf,¹⁰⁵ a dispute arose between West Germany and its adjacent states, the Netherlands and Denmark, concerning the delimitation of their common continental shelf in the North Sea. The ICJ set out the fundamental rule of law relating to the continental shelf as codified in article 2 of the Geneva Convention. The Court held that the rights of the coastal state over its continental shelf exist *ipso facto* and *ab initio*.¹⁰⁶ In other words, the rights of the coastal state are inherent and exclusive, by virtue of its sovereignty over the land, and the state need not perform any special legal acts to protect those rights.¹⁰⁷ The Court further held that the process of delimitation is essentially one of drawing a boundary line between areas appurtenant to one or more of the affected states.¹⁰⁸ Thus, while delimitation may not grant an equal share to each state, it should create an equitable effect.¹⁰⁹

The Court also stated that the principle of natural prolongation determines what constitutes a state's continental shelf.¹¹⁰ Natural prolongation is the "continuation of the land territory or domain, or land sovereignty of the coastal State, into and under the high seas via the bed of its territorial sea which is under the full sovereignty of that State."¹¹¹ The Court reasoned that the continental shelf belongs to a state not because of proximity to it, but because the continental shelf is a natural extension of its land territory.¹¹²

105. North Sea Continental Shelf (W. Ger. v. Den.; W. Ger. v. Neth.), 1969 I.C.J. 3 (Judgment of Feb. 20).

106. *Id.* at 22.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 22, 31.

111. *Id.* at 31.

112. *Id.* One of the methods suggested by the Netherlands and Denmark for the delimitation of the common continental shelf of states with opposite or adjacent coasts was the "equidistance-special circumstances" rule, reflecting the language of article 6 of the Geneva Convention. *Id.* at 19-20. The "equidistance-special circumstances" rule draws a boundary line by means of an equidistance line, except where special circumstances exist. *Id.*

The Court recognized the difficulties of applying an equidistance line in the case of opposite or adjacent states. It stated that a lateral equidistance boundary between adjacent states may leave to one of the states concerned "areas that are a natural prolongation of the territory of the other." *Id.* at 37. It found the median-line boundary of opposite states easier to apply, because where the natural prolongations of opposite states meet and overlap the line effects an equal division of the particular area involved. *Id.* at 36.

The Court suggested that articles 1, 2, and 3 of the Geneva Convention, which define the nature and limits of the continental shelf, are rules of customary international law.¹¹³ In contrast, the Court did not accept the median-line and lateral-equidistance methods, enumerated in article 6 of the Geneva Convention, as the exclusive means of delimiting the continental shelf. Specifically, the Court stated that article 6 was not an emerging rule of customary international law.¹¹⁴

The Court discussed equitable principles as a means of determining continental shelf boundaries, noting that any method of delimitation can lead to relative injustices.¹¹⁵ According to the Court, equity does not imply equality between the states or a complete refashioning of natural geography. Rather equity attempts to abate the effects of an incidental special feature from which unjustifiable treatment could result.¹¹⁶ The equitable factors that the ICJ considered relevant to the *North Sea* dispute included the natural prolongation of the land territory, the geographical configuration of the coasts, the presence of any special or unusual features, the physical and geological structure and natural resources of the continental shelf areas involved, and the reasonable degree of proportionality given the length and general direction of the coast.¹¹⁷

2. *The Gulf of Maine Case*

Fifteen years after the *North Sea* decision, the ICJ reiter-

113. *Id.* at 39. These articles define the outer limits of the continental shelf, the nature of the rights that can be exercised over the continental shelf, the juridical character of the coastal state's entitlement, the kind of natural resources to which these relate, the legal status of the waters over the shelf as high seas, and the remaining legal status of the superjacent air-space. *Id.* Although the Court did not specifically mention islands, the concept that a continental shelf also applies to islands is included in the Geneva Convention. Geneva Convention, *supra* note 11, art. 1(b), 15 U.S.T. at 473, T.I.A.S. No. 5578, at 3, 499 U.N.T.S. at 312.

114. *North Sea Continental Shelf*, 1969 I.C.J. at 38.

115. *Id.* at 50.

116. *Id.* at 49-50.

117. *Id.* at 51-52. Following the ICJ decision, West Germany entered into agreements with the Netherlands and Denmark that, in effect, extended the hypothetical equidistance line with a parallel sideways shift outwards toward the Netherlands on one side and Denmark on the other, thus allowing West Germany more continental shelf. Treaty Concerning the Delimitation of the Continental Shelf Under the North Sea, Jan. 28, 1971, Denmark-West Germany, 857 U.N.T.S. 109; Treaty Concerning the Delimitation of the Continental Shelf Under the North Sea, Jan. 28, 1971, Netherlands-West Germany, 857 U.N.T.S. 131.

ated, in the *Gulf of Maine*¹¹⁸ case, that the median-line and lateral-equidistance methods of delimitation are not the exclusive methods of delimiting the continental shelf.¹¹⁹ The United States and Canada, both of whom are parties to the Geneva Convention, asked the ICJ to determine the course of the single maritime boundary that divides the continental shelf and fishery zone in the Gulf of Maine area.¹²⁰ The Court stated that the fundamental norm governing maritime delimitation, whether effected by direct agreement or by the decision of a third party, must be based on the application of equitable criteria and the use of practical methods capable of ensuring an equitable solution.¹²¹

The Court made reference to conventions, international custom, and judicial decisions to arrive at the principles of law that govern maritime delimitation.¹²² The Court stated that there can be no systematic definition of the equitable criteria that must be considered, because they necessarily vary from case to case.¹²³ However, the Court listed five equitable criteria that should serve as guidelines to delimitation. First, the land should dominate the sea.¹²⁴ Second, overlapping areas of continental shelf appertaining to neighboring states should be equally divided, except where special circumstances require correction.¹²⁵ Third, the seaward extension of a state's coast should not encroach on another state's coastline.¹²⁶ Fourth, a court should seek to prevent a cutoff of the seaward projection of the coast of the state concerned.¹²⁷ Fifth, a court should consider any inequalities between the coasts of the two

118. *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Can. v. U.S.), 1984 I.C.J. 246 (Judgment of Oct. 12).

119. *Id.* at 303.

120. *Id.* at 246.

121. *Id.* at 312-13.

122. *Id.* at 290. Article 38 of the ICJ Statute specifies what principles the ICJ should apply in deciding disputes. *See supra* note 98.

123. *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 1984 I.C.J. at 312.

124. *Id.* This concept was set forth in the *North Sea* case as the natural prolongation or continuation of land territory under the high seas. *See supra* text accompanying note 111; *see also* Collins & Rogoff, *The International Law of Maritime Boundary Delimitation*, 34 MAINE L. REV. 1, 33 (1982).

125. *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 1984 I.C.J. at 312-13.

126. *Id.* at 313.

127. *Id.*

states.¹²⁸ In addition, the Court enumerated special circumstances or auxiliary criteria to modify these basic criteria.¹²⁹ Specifically, the Court mentioned the difference in the coastal length of the states involved,¹³⁰ referred to the *Tunisian-Libyan* case,¹³¹ where the coasts of the two states were adjacent in certain places and opposite in others,¹³² and, referred to the presence of geographical features such as islands.¹³³

The Court further suggested three practical methods to effect delimitation.¹³⁴ First, a court may draw either a lateral equidistance line for adjacent coasts or a median line for opposite coasts.¹³⁵ Second, a court may draw a line perpendicular to a coast or general direction of a coast that extends to the limits of the continental shelf.¹³⁶ Lastly, a court may extend the method of an existing division of territorial waters, the direction of the final segment of a land boundary, or the overall direction of such boundary.¹³⁷ The Court concluded that its object was to select the criteria it regarded as the most equitable, as well as the methods that would best permit concrete implementation.¹³⁸

C. *The Effect of Islands in the Delimitation Process*

It is a recognized rule of customary international law that islands possess a continental shelf.¹³⁹ Less clear, however, is

128. *Id.*

129. *Id.* at 328.

130. *Id.* at 322, 328.

131. *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, 1982 I.C.J. 18 (Judgment of Feb. 24); see *infra* text accompanying notes 170-178.

132. *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 1984 I.C.J. at 324.

133. *Id.* at 328.

134. *Id.* at 313.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 312.

139. See *supra* text accompanying notes 70-71.

Under article 121 of the 1982 Convention, the continental shelf of an island is determined in accordance with the provisions of the 1982 Convention applicable to other land territory. However, rocks that cannot sustain human habitation or economic life have no continental shelf.

Article 121, on the regime of islands, states in part:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3 . . . the continental shelf of an

the boundary effect to be given to islands that lie between two or more opposite or adjacent states. States have generally asserted rights over the continental shelves of their islands.¹⁴⁰ Thus according to state practice,¹⁴¹ an island lying within a state's territorial sea is given full effect.¹⁴² That is, the offshore island is used as the outer basepoint of the state to which it belongs.¹⁴³ Islands that lie proximate to their state, but beyond its territorial sea, are given half effect only.¹⁴⁴ The method of half effect consists of delimiting the median line between the two coasts twice.¹⁴⁵ First, a median line is drawn between the two states without the use of the offshore island as a basepoint, and second, the median line is redrawn with the offshore island as a basepoint.¹⁴⁶ The boundary drawn midway between the two median lines gives half effect to the island.¹⁴⁷

island [is] . . . determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no . . . continental shelf.

1982 Convention, *supra* note 78, art. 121, *reprinted in* 21 I.L.M. at 1291.

140. D. BOWETT, *THE LEGAL REGIME OF ISLANDS IN INTERNATIONAL LAW* 140 (1979).

141. State practice is what states have done, or abstained from doing, in the international field. For example, that a state has claimed certain rights over a continental shelf, or recognized such rights claimed by other states would be considered state practice. H. THIRLWAY, *INTERNATIONAL CUSTOMARY LAW AND CODIFICATION* 58 (1972).

142. D. BOWETT, *supra* note 140, at 176-77. Professor Bowett supports his proposition that the effect to be given an island depends on its distance between two states with evidence from nine bilateral agreements and the *Anglo-French* case. *Id.* at 177 nn.94-99. A series of bilateral agreements concluded over a period of time by various states, all consistently adopting the same solution to the same problem of the relationships between them may give rise to a new rule of customary international law. H. THIRLWAY, *supra* note 141, at 59.

143. *See* United Kingdom-French Continental Shelf Case-First Decision (U.K. v. Fr.), 54 I.L.R. 6, 115 (1977).

144. D. BOWETT, *supra* note 140, at 176-77. Even though Professor Bowett uses the term partial effect, the agreements used to support his conclusion actually give half effect to the islands.

145. *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 124; *see* Continental Shelf (Tunisia v. Libyan Arab Jamahiriya), 1982 I.C.J. 18, 89 (Judgment of Feb. 24).

146. In other words, one line is drawn giving the island no effect and one line is drawn giving the island full effect. *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 124.

147. The delimitation line may also be a bisector of the angle produced by the first two lines, or the island can be treated as displaced toward its state by half its actual distance therefrom. *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, 1982 I.C.J. at 89. For examples of half effect, *see infra* text accompanying notes 163-67 & 175-78.

Islands midway between two opposite states may be given full effect, almost full effect, or may be subject to reciprocal concessions.¹⁴⁸ Islands belonging to one state, but in close proximity to another state, may be given a diminished effect.¹⁴⁹ Another solution is to enclave the islands.¹⁵⁰ The only instance in which this solution has been adopted was with respect to the Channel Islands in the *Anglo-French case*.¹⁵¹

1. The *Anglo-French Case*

In the *Anglo-French case*,¹⁵² the Court of Arbitration¹⁵³ considered the delimitation effect of islands in the English Channel and the Atlantic Ocean beyond the United Kingdom and France.¹⁵⁴ The court found article 6 to control the method of delimiting the continental shelf in the Atlantic Region,¹⁵⁵ because both states are parties to the Geneva Convention.¹⁵⁶ However, because of the French reservations to article 6,¹⁵⁷ the court found it inapplicable to the English Channel¹⁵⁸

148. D. BOWETT, *supra* note 140, at 177. Professor Bowett gives as examples of islands that are given full effect, the agreements between Indonesia/Malaysia and Japan/Korea. For islands that are given less than full effect the author points to the Indonesia/Australia agreement. For the islands that are subject to reciprocal concessions, the author points to the agreements between Italy/Yugoslavia, Iran/Saudi Arabia, and Iran/United Arab Emirates. *Id.* at 177 nn.96-98.

149. *Id.* at 177. As examples, Professor Bowett points to the agreement between Tunisia and Italy, Agreement Concerning the Delimitation of the Continental Shelf, Tunisia-Italy, Aug. 20, 1971, 1978 I.T.G.U. 191, *reprinted in* THE LAW OF THE SEA - MARITIME BOUNDARY AGREEMENTS at 174, U.N. Sales No. E.87.V.12 (1987), and the Channel Islands in *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 6. D. BOWETT, *supra* note 140, at 177 n.99.

150. *See supra* note 5.

151. D. BOWETT, *supra* note 140, at 178; *see infra* text accompanying notes 160-61.

152. *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 6.

153. The United Kingdom and France agreed to form the Court of Arbitration, each country nominating its own members to the court. Arbitration Agreement, July 10, 1974, France-United Kingdom, 1975 U.K.T.S. No. 137, at 3 (Cmd. 6280), 999 U.N.T.S. 142; *see United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 6.

154. *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 7.

155. *Id.* at 118.

156. *Id.* at 47.

157. *See* MULTILATERAL TREATIES, *supra* note 73, at 729. When acceding to the Geneva Convention, France did not accept application of the equidistance principle to the English Channel. *Id.* For Greece's reservation to article 6, *see supra* note 76 and accompanying text.

158. *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 52, 57.

and instead applied customary international law.¹⁵⁹

a. *Channel Islands*

The parties disputed the boundary consequences of the British Channel Islands, which lie in the English Channel, directly off the coast of France.¹⁶⁰ The Court of Arbitration ignored the islands' presence and delimited the area by drawing a median line from the baselines of the two opposite coasts. The amount of continental shelf granted to the islands themselves extended in the north and west only as far as the boundary of their twelve-mile fishery zone, while the boundary extending from the east to the south-west was not specified by the court.¹⁶¹ In making this determination, the court considered as important factors the islands' location, their size, and their political and economic significance to the United Kingdom.¹⁶²

b. *Atlantic Region*

The Court of Arbitration also sought to remedy any distorting effect the British Scilly Islands would produce on a lateral equidistance line in the Atlantic Ocean.¹⁶³ The Scilly Islands lie some twenty-one miles off the southwestern coast of England.¹⁶⁴ The court gave half effect to the Scilly Islands in drawing the lateral equidistance line.¹⁶⁵ Half effect was achieved by drawing one lateral equidistance line disregarding

159. *Id.* at 100.

160. *Id.* at 74.

161. *Id.* at 102-03. The Court of Arbitration refers to this enclosure of the islands as an enclave. As a result, the continental shelf of the Channel Islands does not connect with the continental shelf of the United Kingdom, but rather it is enclosed by France's continental shelf. *Id.*

162. Additional factors that the court took into account were the islands' population, *id.* at 96, their territorial seas and fishing regimes, *id.* at 94-95, the defense and security interests of each nation—though these did not have a decisive influence on boundary delimitation, *id.* at 98, and the geological continuity of the continental shelf in the English Channel, *id.* at 70. The court did not treat the principle of natural prolongation as absolute. It indicated that natural prolongation may be subject to qualification in particular situations, as indicated by the use of the words "special circumstances" in article 6 of the Geneva Convention and by the emphasis in prior decisions on "equitable principles" in customary law. *Id.* at 99.

163. *Id.* at 121.

164. *Id.* at 123.

165. *Id.* at 125.

the Scillies and a second line giving them full effect.¹⁶⁶ The distance between the two equidistance lines determined the maritime boundary.¹⁶⁷ However, the court applied full effect to the French island of Ushant, which the court noted is no more than ten nautical miles off the northwestern coast of France¹⁶⁸ and within its territorial waters.¹⁶⁹

2. The *Tunisian-Libyan* Case

The ICJ, in delimiting the continental shelf appertaining to Tunisia and Libya, decided to apply half effect to the Kerkennah Islands off the coast of Tunisia.¹⁷⁰ The Court adopted two different delimitation methods, one for the continental shelf near the coasts of Tunisia and Libya and one for the area further offshore.¹⁷¹ For the sector closer to shore, the Court drew a lateral equidistance line perpendicular to the coast.¹⁷² For the sector further offshore, the Court took into account the radical change in the general direction of the Tunisian coastline in the Gulf of Gabes.¹⁷³ Thus, the Court applied a line parallel to the general direction of the Tunisian coast alongside the Kerkennah Islands.¹⁷⁴ The Court gave the Kerkennah Islands, which are located about eleven miles off the coast of Tunisia,¹⁷⁵ half effect.¹⁷⁶ The Court treated the islands as if they were displaced to the west, toward the mainland of Tunisia, by half the actual distance.¹⁷⁷ Thus, the boundary line was drawn parallel to a bisecting line between the Tunisian coast and the Kerkennah Islands.¹⁷⁸

166. *Id.* at 124.

167. *Id.*

168. *Id.* at 125.

169. *Id.* at 123.

170. Continental Shelf (*Tunisia v. Libyan Arab Jamahiriya*), 1982 I.C.J. 18, 89 (Judgment of Feb. 24). In the *Tunisian-Libyan* case, Tunisia and Libya requested that the ICJ delimit the continental shelf appertaining to each of those countries by considering equitable principles and relevant circumstances. *Id.* at 21.

171. *Id.* at 82.

172. *Id.* at 85-86.

173. *Id.* at 86.

174. *Id.* at 89.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* at 90. The Court considered as relevant circumstances the configuration of the parties' coasts, *id.* at 85, the presence of the islands, *id.* at 88, the land frontier of the parties, *id.* at 85, prior conduct of the parties in granting concessions

3. The Guinea/Guinea-Bissau Case

The countries of Guinea and Guinea-Bissau, both situated in West Africa, disputed whether the numerous islands off the coast of Guinea-Bissau should have any effect on their common maritime boundary.¹⁷⁹ To determine what effect these islands would have on the delimitation process, the Arbitration Tribunal¹⁸⁰ divided the islands into three types.¹⁸¹ First, the tribunal stated that "the coastal islands, which are separated from the continent by narrow water courses and often joined to it at low tide," are an integral part of the continent.¹⁸² Second, the tribunal considered another group of islands further west of the coastal islands, the Bijagos Archipelago.¹⁸³ The territorial waters of this group are linked to each other and to the territorial waters of the continent.¹⁸⁴ Third, the tribunal used some of the more southerly islands for the establishment of baselines and included them within the territorial waters.¹⁸⁵

In essence, the tribunal considered the first and second groups of islands as relevant in determining the general direction of Guinea-Bissau's entire coastline.¹⁸⁶ By taking into account these islands, the tribunal increased Guinea-Bissau's coast length by twenty percent, thereby, in effect, treating the parties' coastlines as equal in length.¹⁸⁷ Noting first that the equidistant method is one among many, the tribunal chose not to apply it.¹⁸⁸ Instead, it examined West Africa's coastline as a whole, taking into account future delimitations of the region¹⁸⁹ and the possibility of enclaving Guinea's coast if the adjacent

in the area, *id.* at 83; *see id.* at 87, the element of a reasonable degree of proportionality, *id.* at 91, and state practice, *id.* at 89.

179. Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau (Guinea v. Guinea-Bissau), 25 I.L.M. 251 (1985). The dispute was complicated by the existence of a century old boundary treaty negotiated by French colonizers. *See id.* at 261, 263.

180. The Arbitration Tribunal was composed of three members of the ICJ. *Id.* at 251.

181. *Id.* at 291-92.

182. *Id.* at 291.

183. *Id.* at 292.

184. *Id.*

185. *Id.* at 291-92.

186. *Id.* at 292.

187. *Id.* at 293.

188. *Id.* at 294, 297.

189. *Id.* at 297.

state of Sierra Leone decided to delimit.¹⁹⁰

In its final delimitation the tribunal applied the "southern limit" of the Convention on the Delimitation of French and Portuguese Possessions in West Africa (the "1886 Convention")¹⁹¹ to the area close to shore.¹⁹² The "southern limit" of Guinea-Bissau, as embodied in the 1886 Convention, is latitudinal and allows 2.25 nautical miles of territorial waters to the north of the island of Alcatraz.¹⁹³ The tribunal extended this southern limit twelve nautical miles west of the island of Alcatraz to provide for the island's territorial waters under the 1982 Convention.¹⁹⁴ At this point the boundary line was drawn in a southwesterly direction perpendicular to the line joining Almadies Point, Senegal and Cape Shilling, Sierra Leone.¹⁹⁵

4. The *Libyan-Maltese* Case

On July 26, 1982, Libya and Malta requested that the ICJ decide the principles and rules of international law applicable to the delimitation of the area of continental shelf appertaining to the two countries.¹⁹⁶ The Court decided that a median line

190. *Id.* at 295, 297.

191. May 12, 1886, France-Portugal, 14 Martens Nouveau Recueil (ser. 2), 108 [hereinafter 1886 Convention], reprinted in *Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau*, 25 I.L.M. at 273. The 1886 Convention established a boundary separating the Portuguese possessions from the French possessions. However, the tribunal concluded that the 1886 Convention did not determine the maritime boundary between the two countries in West Africa. *Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau*, 25 I.L.M. at 289.

192. *Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau*, 25 I.L.M. at 298. Guinea claimed that under the 1886 Convention negotiated by the French, Guinea-Bissau had a southern limit 2.25 nautical miles above the island of Alcatraz, which belonged to Guinea. *Id.* at 296. Without this "southern limit," Guinea-Bissau would claim more continental shelf under the lateral equidistance line, but this would also have the effect of placing Alcatraz on the "wrong side" of the lateral equidistance line. *Id.* at 295. In other words, the island of Alcatraz, which belongs to Guinea, would be placed on Guinea-Bissau's side of the line.

193. *Id.* at 298.

194. *Id.*

195. *Id.* The tribunal accounted for the overall configuration of the West African coastline, thus involving two other states (Senegal and Sierra Leone) in the delimitation process. *Id.*

196. *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. 13, 15-16 (Judgment of June 3).

The parties agreed to allow the Court to apply principles of customary international law. Malta is a party to the Geneva Convention but Libya is not. Although

between the two opposite states, with some adjustments, would achieve an equitable solution. It estimated that the boundary line lay somewhere between a northern limit, the minimum shelf allowable to Malta, and a southern limit, the maximum shelf allowable to Malta. The southern limit was determined by a median line drawn between Malta and Libya.¹⁹⁷ The Court then reasoned that relevant circumstances dictated a northward shift of this southern limit.¹⁹⁸ The relevant circumstances were first, that Malta, being an independent island state, appears as a relatively small feature compared to its neighboring states in the semi-enclosed sea, and second, that Libya's coast length is considerably longer than Malta's.¹⁹⁹ As to the northern limit, the Court drew a median line between Sicily and Libya.²⁰⁰ The Court reasoned that if Malta were part of the Italian territory and Italy and Libya decided to delimit, even if minimum account were taken of Malta, the median line would be south of this northern limit.²⁰¹ The Court assumed that an equitable boundary between Libya and Malta must be south of the hypothetical median line between Libya and Sicily.²⁰²

The Court weighed these considerations and decided that an equitable boundary line between Malta and Libya would be three-quarters of the distance north of the southern limit, thus, one-quarter south of the northern limit.²⁰³

III. ANALYSIS OF THE CLAIMS AND A SOLUTION UNDER INTERNATIONAL LAW

A. *Disputes Between Greece and Turkey*

At present, Greece and Turkey are involved in two disputes. First, they disagree on the method of settling their maritime boundary dispute.²⁰⁴ Second, they dispute what the

both Malta and Libya signed the 1982 Convention, it had not yet entered into force and, therefore, was not binding on the parties. *Id.* at 29.

197. *Id.* at 51.

198. *Id.*

199. *Id.* at 51-52.

200. *Id.*

201. *Id.* at 51.

202. *Id.*

203. *Id.* at 52.

204. Aegean Sea Continental Shelf (Greece v. Turk.), 1978 I.C.J. 3, 12 (Judgment of Dec. 19).

proper continental shelf boundary in the Aegean Sea should be.²⁰⁵

1. Dispute Between the Parties: Method of Resolution

Greece wants to submit the question of the continental shelf delimitation to the ICJ.²⁰⁶ Turkey, however, wants to continue negotiations in the context of the Berne Agreement.²⁰⁷

Greece contends that the boundary dispute is a question of law, not politics, and thus should be resolved on the basis of customary and conventional international law.²⁰⁸ Greece further contends that the Berne Agreement has become inactive because Turkey has declared its intention to disregard international principles of law in negotiating the boundary dispute.²⁰⁹ Greece implies that Turkey has refused to accept the decisions of the ICJ and international practice, as specified in the Berne Agreement.²¹⁰ Turkey, for its part, considers the Berne Agreement operative and contends that Greece is responsible for the lack of negotiations, because Greece terminated the negotiating process after the elections of the new Greek government in 1981 and indicated strong opposition to a negotiated settlement.²¹¹

2. Dispute Between the Parties: The Delimitation of the Continental Shelf

At present, both parties claim six and not twelve nautical miles of territorial waters around their land in the Aegean

205. *Id.*

206. 1987 Greek Letter, *supra* note 55, at 4.

207. 1987 Turk. Letter, *supra* note 3, at 4.

According to Greek officials, during a meeting of experts in 1977, Turkey reversed its position and stated that the negotiations should be political and without reference to international precedents or rules. 1987 Greek Letter, *supra* note 55, at 2. Greek officials stated that at a meeting of the secretaries-general of the respective Ministries of foreign affairs in 1980, Turkey reiterated its position that international law should not be taken into consideration, and, that although islands possess a continental shelf, the shelf should be restricted according to Turkey's claims. *Id.*

208. 1987 Greek Letter, *supra* note 55, at 4.

209. *See id.* at 2; *see also* Berne Agreement, *supra* note 36, art. 8, *reprinted in* 16 I.L.M. at 13.

210. *See* 1987 Greek Letter, *supra* note 55, at 4; *see also* Berne Agreement, *supra* note 36, art. 8, *reprinted in* 16 I.L.M. at 13.

211. *See* 1987 Turk. Letter, *supra* note 3, at 2-3.

Sea.²¹² Turkey has stated that it would consider it a cause for war if Greece extended its territorial waters to twelve nautical miles.²¹³

Greece contends that all the islands under its sovereignty, and in particular the islands in the eastern half of the Aegean Sea near the coast of Turkey,²¹⁴ are an integral part of its territory and that it is entitled to the continental shelf that appertains to them.²¹⁵ Greece argues that the delimitation should be effected by a median line between the Greek islands and such baselines on the Turkish coast established for delimiting its territorial sea, so that equal division between the two areas is achieved.²¹⁶ Greece takes the position that the rights of coastal states over the continental shelf exist *ipso facto* and *ab initio*, without the need for any legal or other action for recognition.²¹⁷

Turkey has claimed rights to explore and exploit the continental shelf in the eastern half of the Aegean Sea, essentially enclaving some of the eastern Greek islands (the "Eastern Islands")²¹⁸ within their six-nautical-mile territorial sea.²¹⁹ Tur-

212. See *supra* note 90 and accompanying text. Greece reserves the right to extend its territorial waters to twelve nautical miles. 1982 Convention, *supra* note 78, art. 3, reprinted in 21 I.L.M. at 1272. For a discussion of maritime boundaries in the Aegean Sea, see D. BOWETT, *supra* note 140, at 249-81.

213. See Cowell, *supra* note 1, at 4, col. 4.

214. See *supra* note 26.

215. Greek Application of Aug. 10, *supra* note 26, 1976 I.C.J. Pleadings at 10.

216. *Id.*; see Georgacopoulos, *The Aegean Sea Continental Shelf Problem: Presentation of the Greek Case*, 6 INT'L BUS. LAW. 479, 486-90 (1978) (arguing that the Greek islands be given full effect in drawing an equidistance line between Greece and Turkey and that the islands not be considered as special circumstances); Rozakis, *The Greek-Turkish Dispute Over the Aegean Continental Shelf* 9-11 (Law of the Sea Institute Occasional Paper No. 27, 1975) (proposing delimitation should be effected by median line between Greek islands and mainland Turkey as supported by the Geneva Convention).

217. 1987 Greek Letter, *supra* note 55, at 6; see also *supra* text accompanying notes 106-07.

218. The term "Eastern Islands" has been chosen for purposes of this Note. The Eastern Islands are Samothrace, Limnos, Aghios Eustratios, Lesbos, Chios, Psara, Antipsara, Samos, Ikaria, Fourni, Oinousae, and all the islands of the Dodecanese group with the exception of Astypalaia, Karpathos, and Kassos (this includes the islands of Patmos, Leros, Kalimnos, Kos, Nisiros, Tilos, Simi, Chalki, Rhodes, Lipsi, Castellorizo, Levitha, Arki, Alimia, Agathonision); see also the map on page 126.

219. This is evidenced by the exploration permits for petroleum granted to the Turkish Petroleum Company by Turkey in the Aegean Sea. See maps in Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 13 (Greek Application of Aug. 10, Annex I), reprinted from Turkish Government Official Gazette, July 18, 1974, June 6, 1974, Nov. 1, 1973; see also Greek Note Verbale of Aug. 22, 1974, *supra* note

key takes the position that the Greek islands situated near the Anatolian coast do not possess a continental shelf of their own and that all of the continental shelf in that area should accrue to Turkey.²²⁰ It contends that the delimitation should be based not only on purely legal considerations, but also on important political, economic,²²¹ and security considerations.²²² Turkey argues that Greece possesses no sovereign rights in the Aegean Sea beyond its own territorial waters.²²³ It further argues that the areas being explored by the *Sismik I* are contested areas, and thus, the question of violating Greek sovereign rights does not arise.²²⁴

B. *Resolving the Dispute Under International Law*

While Turkey is not a party to the Geneva Convention or the 1982 Convention, these treaties are significant because they identify international principles of general application.²²⁵

Given that Greece and Turkey are unlikely to reach an agreement on the continental shelf boundary, delimitation should be effected by consensual recourse to a competent third party.²²⁶ To reach an equitable result under customary international law, the circumstances should be analyzed according to equitable criteria and practical methods.²²⁷

Greece and Turkey are geographically opposite states, except in the north, where they share a common undisputed land boundary. The median-line method is most equitable in de-

6, 1976 I.C.J. Pleadings at 28; Greek Note Verbale of Feb. 7, 1974, *supra* note 6, 1976 I.C.J. Pleadings at 21; Phylactopoulos, *supra* note 3, at 433, 441.

220. S.C. 1949th mtg., *supra* note 18, at 2; Greek Application of Aug. 10, 1976, *supra* note 26, 1976 I.C.J. Pleadings at 3; Turkish Note Verbale of Feb. 27, 1974, *supra* note 9, 1976 I.C.J. Pleadings at 23, 2 *MEDITERRANEAN CONTINENTAL SHELF* at 1520; see Koymen, *The Aegean Sea Continental Shelf Problem: Presentation of the Turkish Case*, 6 *INT'L BUS. LAW.* 495 (1978) (arguing that the Greek islands be given no effect in a delimitation, because otherwise Turkey would be deprived of any shelf rights beyond its territorial sea and this would be irreconcilable with equitable principles).

221. *But see* Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1985 I.C.J. 13, 41 (Judgment of June 3) (rejecting Malta's appeal to economic factors).

222. 31 U.N. SCOR (1950th mtg.) at 2, U.N. Doc. S/PV.1950 (1976) [hereinafter S.C. 1950th mtg.].

223. *Id.*

224. S.C. 1949th mtg., *supra* note 18, at 3.

225. *See supra* notes 103-04 and text accompanying note 113.

226. *See* Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), 1984 I.C.J. 246, 299 (Judgment of Oct. 12).

227. *See id.* at 300.

limiting the continental shelf of states with opposite coasts.²²⁸ However, this initial median line must be adjusted in view of the relevant circumstances of the area, such as the lengths of the coasts,²²⁹ the distance between the two coasts,²³⁰ the general direction of the coast,²³¹ and special circumstances such as the existence of islands.²³² In addition, a reasonable degree of proportionality should be applied to check the fairness of the final line.²³³

Geological or geomorphological characteristics constituting a fundamental discontinuity that terminates the extension of the continental shelf of either country²³⁴ should not present a problem, because the distance between the two countries across the Aegean is less than 400 statute miles.²³⁵

The first step in drawing a median line between two states is to identify the baselines and basepoints from which the me-

228. See *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. 13, 47 (Judgment of June 3); *United Kingdom-French Continental Shelf Case-First Decision (U.K. v. Fr.)*, 54 I.L.R. 6, 66 (1977); *North Sea Continental Shelf (W. Ger. v. Den.; W. Ger. v. Neth.)*, 1969 I.C.J. 3, 36 (Judgment of Feb. 20).

229. See *supra*, notes 117, 130, 199 and accompanying text; *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 1984 I.C.J. at 335. The continental shelf rights are brought into effect by the maritime front of the landmass or its coastline and not by the area of the landmass. *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. at 41. The Court had rejected the argument made by Libya that landmass is a basis of entitlement to continental shelf rights. *Id.*

230. See *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. at 46.

231. See *supra* note 117 and accompanying text.

232. See *supra* note 133 and accompanying text. However, islets, rocks, and minor coastal projections may be ignored for delimitation purposes. *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. at 47.

233. See *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. at 49; *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 91 (Judgment of Feb. 24).

234. The ICJ has pointed out that since a state is entitled to a minimum of 200 nautical miles of continental shelf from its coast, the geological or geomorphological characteristics of areas within the 200 nautical miles is immaterial. *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. at 35. In the *Libyan-Maltese* case the ICJ rejected the "rift zone" argument made by Libya. *Id.* at 35, 37. The discontinuity must be scientifically "fundamental" to constitute a discontinuity of natural prolongation in the legal sense. For example, a tectonic plate boundary would constitute a fundamental discontinuity. *Id.* at 36. There is no such discernible feature in the seabed of the Aegean. See *Aegean Sea Continental Shelf (Greece v. Turk.)*, 1976 I.C.J. Pleadings 93 (Argument of Aug. 25).

235. WEBSTER'S GEOGRAPHICAL DICTIONARY 9 (1967). One nautical mile equals 1.1508 statute miles. WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 126 (2d ed. Supp. 1979).

dian line is to be drawn.²³⁶ The main difficulty in the Aegean Sea is the identification of these baselines and basepoints. Because Turkey has no islands in the Aegean Sea except for Imbros and Tenedos, Turkey's basepoints for the purpose of measuring the median line will lie along the baseline lawfully established for the delimitation of the Turkish territorial sea. Specifically, Turkey has proclaimed straight baselines around its continental coast and coastal islands, along the eastern end of the Aegean Sea.²³⁷ However, the contour of the Greek baseline is unclear. Does it fall between the Greek islands and the mainland of Turkey, or does it run somewhere between the islands in the Aegean Sea? Under international law, the extent to which islands are used as basepoints in determining a median line, depends on their location, size, population, political and economic significance in relation to their state, their territorial seas and fishing regimes, their relation to the defense and security of each nation, and their geological unity to the state as a whole.²³⁸

The Greek islands collectively constitute approximately twelve percent of the total population of Greece and nineteen percent of the national territory.²³⁹ The islands are politically and economically an integral part of Greece.²⁴⁰ All the islands in the Aegean Sea west of the Turkish mainland, with the exception of Imbros and Tenedos, are under Greek sovereignty.²⁴¹ Some of the islands lie so close to the Turkish coast

236. See Geneva Convention, *supra* note 11, art. 6(1), 15 U.S.T. at 474, T.I.A.S. No. 5578, at 4, 499 U.N.T.S. at 316.

237. See *supra* note 78.

238. See *supra* note 162 and accompanying text; see also Karl, *Islands and the Delimitation of the Continental Shelf: A Framework for Analysis*, 71 AM. J. INT'L L. 642 (1977) (setting out a model of continental shelf delimitation involving islands that primarily relies on the island's relative location and size).

239. Wagstaff, *The Geographical Setting*, in GREECE IN THE 1980s 10, 21 (R. Clogg ed. 1983).

240. Minutes of the Greek-Turkish Meetings of Jan. 31, 1976, *reprinted in* 2 MEDITERRANEAN CONTINENTAL SHELF 1556, 1558-59 (1988).

241. This is recognized and guaranteed by treaties to which both Greece and Turkey are parties. Under article 12 of the Treaty of Peace, signed at Lausanne, all the islands in the eastern Aegean Sea, except Tenedos, Imbros, the Rabbit Islands, and the Dodecanese, were ceded to Greece. Under article 15, Turkey ceded the Dodecanese to Italy. Treaty of Peace, July 24, 1923, arts. 12, 15, 28 L.N.T.S. 11, 21, 23. Italy later ceded the Dodecanese to Greece. Treaty of Peace with Italy, Feb. 10, 1947, art. 14, 61 Stat. 1369, 1377, T.I.A.S. No. 1648, at 133, 49 U.N.T.S. 126, 134 [hereinafter Italy Treaty of Peace].

that the territorial seas of the two countries overlap. In these areas, the territorial sea between Greece and Turkey has already been delimited.²⁴² Because of the proximity of some of the Greek islands to the Turkish coast, both parties have raised questions relating to national security.²⁴³ Although national security is not a decisive factor in placing the continental shelf boundary, it may strengthen and support any geographical, political, and legal circumstances.²⁴⁴ Because the parties are hostile to each other, Greece views any unilateral extension by Turkey of its share of the continental shelf as a first step towards the annexation of the Eastern Islands.²⁴⁵

Perhaps the most decisive factor is the geographical configuration of the islands. Geographically, the Greek islands can be divided into two groups. The first group of islands (the "Western Islands") consists of all the islands west of the Eastern Islands, the vast majority of which lie within the territorial waters of each other and whose territorial waters are linked to the territorial waters of the Greek mainland.²⁴⁶ The second group, the Eastern Islands,²⁴⁷ is located in the eastern half of the Aegean Sea and is outside the territorial waters of mainland Greece.²⁴⁸

Under international law, the Western Islands should be

242. Italy and Turkey delimited the territorial sea between the Dodecanese group and Turkey in 1932. Convention for the Delimitation of the Territorial Waters Between the Coasts of Anatolia and the Island of Castellorizo, Jan. 4, 1932, Italy-Turkey, art. 5, 138 L.N.T.S. 243. Italy ceded the Dodecanese group to Greece after World War II. Italy Treaty of Peace, *supra* note 241, art. 14, 61 Stat. at 1377, T.I.A.S. No. 1648, at 133, 49 U.N.T.S. at 134. The territorial waters between the Turkish mainland and the islands of Lesbos and Chios are delimited under international law by the median-line method. See Law No. 476, *supra* note 78, art. 3, reprinted in NATIONAL LEGISLATION AND TREATIES RELATING TO THE TERRITORIAL SEA, THE CONTIGUOUS ZONE, THE CONTINENTAL SHELF, THE HIGH SEAS AND TO FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE SEA at 128; 1982 Convention, *supra* note 78, art. 15, reprinted in 21 I.L.M. 1273.

243. S.C. 1950th mtg., *supra* note 222, at 2; S.C. 1949th mtg., *supra* note 18, at 2.

244. See United Kingdom-French Continental Shelf Case-First Decision (U.K. v. Fr.), 54 I.L.R. 6, 98 (1977); see also Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1985 I.C.J. 3, 42 (Judgment of June 3) (accepting security as an equitable consideration of and related to the concept of continental shelf).

245. S.C. 1949th mtg., *supra* note 18, at 2.

246. See map on page 126. Seven out of the 55 Western Islands are not connected to the territorial waters that are linked to the territorial waters of the Greek mainland.

247. See *supra* note 218.

248. See map on page 126.

granted full effect and used as the basepoints of continental Greece, because their territorial waters are linked to the territorial waters of mainland Greece.²⁴⁹ The Turkish islands of Tenedos and Imbros should also be given full effect because their territorial waters are connected to the territorial waters of Turkey.

Under international law, enclaving, giving half effect, or giving full effect to the Eastern Islands are possible solutions. The enclave solution has so far been adopted only once—by the Court of Arbitration, with respect to the Channel Islands in the *Anglo-French* case.²⁵⁰ However, the situation of the Channel Islands is different. First, the Channel Islands are clearly territorial and political units separate from the mainland of the United Kingdom.²⁵¹ Although they are not constitutionally part of the United Kingdom itself, they are direct dependencies of the British Crown.²⁵² So great is their political, legisla-

249. See *supra* notes 141-42, 168-69, 246 and accompanying text; Aegean Sea Continental Shelf (Greece v. Turk.), 1976 I.C.J. Pleadings 80, 97-99 (Argument of Aug. 25); Greek Application of Aug. 10, 1976, *supra* note 26, 1976 I.C.J. Pleadings at 10. Greece argues that all the Greek islands in the Aegean Sea should be given full effect.

The islands in the *Guinea/Guinea-Bissau* case are similarly situated geographically to the islands in the *Aegean* case. See *supra* text accompanying notes 179-85. Specifically, the Bijagos Archipelago, which is located directly off the shore of Guinea-Bissau and connected to the continent's territorial waters, see *supra* text accompanying notes 183-84, is geographically similar to the Cyclades Archipelago and to the other islands whose territorial waters are connected to each other and the territorial waters of mainland Greece. However, even though the tribunal did not explicitly give full effect to the Bijagos Archipelago, because it did not apply a lateral equidistance line, see *supra* text accompanying note 188, it did account for the Bijagos Archipelago as an element in determining the general direction of the entire coastline of the country, see *supra* notes 186-87 and accompanying text, and as an important factor when drawing a perpendicular to the general direction of the coast, see *supra* text accompanying notes 193-95; *Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau*, 25 I.L.M. 251, 293 (1985).

Unlike the method used in *Guinea/Guinea-Bissau*, which viewed the whole West African coast and took overall account of its coastline, see *supra* text accompanying notes 189-90, the equidistance method, or median-line rule, is more applicable to the situation in the Aegean. See *supra* note 228 and accompanying text. First, Greece and Turkey are opposite states. Second, there is no need to account for future delimitations in the region, because Greece and Turkey are the only two states that share the Aegean seabed. Third, there is no possibility of enclaving either state's coast, since there are no other states adjacent to Greece or Turkey in the Aegean Sea.

250. D. BOWETT, *supra* note 140, at 178.

251. United Kingdom-French Continental Shelf Case-First Decision (U.K. v. Fr.), 54 I.L.R. 6, 96 (1977).

252. *Id.*

tive, administrative, and economic autonomy, that the United Kingdom had asked the Court of Arbitration to regard them as distinct island states for the purpose of determining the continental shelf appurtenant to them.²⁵³

Second, the use of the enclave method depends on the number of islands and their location.²⁵⁴ While there are four principal Channel Islands,²⁵⁵ there are eighty main islands in the Aegean Sea.²⁵⁶ The court viewed the Channel Islands as geographically detached from the United Kingdom;²⁵⁷ it noted that a clustered group of islands should be treated differently from a group of islands stretching along the coast of another state.²⁵⁸ The Channel Islands form a small group off the coast of France in the English Channel, while the Eastern Islands stretch out along the full extent of the Turkish coast.

The English Channel and the Aegean Sea are geographically dissimilar. Although the United Kingdom and France have approximately equal coast lengths along the Channel,²⁵⁹ Greece's coast length in the Aegean Sea is longer than Turkey's.²⁶⁰ The general direction of Greece's southern coast, including the Cyclades Archipelago and the northern mainland coast, engulfs the eight Greek islands off Turkey in the North Aegean Sea. By contrast, the Channel Islands are practically engulfed by the French coast. While the median line, giving full effect to the Channel Islands, between France and the United Kingdom would automatically deviate southward in a long loop around the Channel Islands,²⁶¹ the grant of full ef-

253. *Id.*

254. *Id.* at 102.

255. See CONCISE COLUMBIA ENCYCLOPEDIA 155 (1983).

256. See STATISTICAL YEARBOOK OF GREECE 2-3 (1983). Of the over 2,000 islands in the Aegean Sea, 80 of the approximately 160 inhabited ones are considered main islands. See THE WORLD ALMANAC AND BOOK OF FACTS 524 (1983); see also Wagstaff, *supra* note 239, at 10.

257. *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 102.

258. *Id.*

259. See *id.* at 96.

260. Turkey's Aegean coastline is 3,484 km. Erol, *Turkey and Cyprus*, in THE WORLD'S COASTLINE 491 (1985). The total Aegean coastline is 10,943 km. THREAT IN THE AEGEAN 15 (Athens Daily Newspapers Journalists' Union). The Greek Aegean continental coastline, discounting the islands, is 3,960 km. See STATISTICAL YEARBOOK OF GREECE 2-3 (1983); see also Karl, *supra* note 238, at 672 nn.117-18.

261. *United Kingdom-French Continental Shelf Case*, 54 I.L.R. at 98.

fect to the Eastern Islands in the Aegean will not cause the median line to deviate to such a large extent.

Thus, the territorial and political unity of the Greek islands with the Greek mainland, their vast number and location, the shape and length of the respective coasts of Greece and Turkey around the Aegean Sea, are all factors demonstrating that an enclave solution would not achieve an equitable solution.

Another possibility is granting the Eastern Islands half effect. The purpose of granting half effect to islands is to shift the median line towards the state with the offshore island in order to allow more continental shelf to the opposite state. Thus, in the Aegean Sea, the median line would be drawn closer to Greece to allow Turkey, the opposite state, to claim more continental shelf. This solution presents difficulties because granting half effect to the Eastern Islands would result in enclaving some of them.²⁶² Granting full effect to the Eastern Islands is also difficult to justify under international law.²⁶³ State practice and international case law seem to indicate that something less than full effect be granted to islands that lie closer to the coast of an opposite state than to the state of which they belong.²⁶⁴

In this case the best solution is to draw a median line by granting half effect to the Eastern Islands without enclaving them.²⁶⁵ This would require a western limit beyond which point the median line could not cross. The western limit

262. Half effect would probably enlave the island of Lesbos and possibly enlave the islands of Aghios Eustratios, Psara, and Chios.

263. See *supra* notes 149-51 and accompanying text. Other than the Channel Islands, there are not many cases in which the islands belonging to one state are in closer proximity to the opposite state. An example of such a case under state practice is the agreement between Italy and Tunisia. Four of the Italian islands lie closer to Tunisia than to Sicily. Under this agreement, the islands were not enclaved, however they were not given full effect either. Instead, the existing boundary around the islands was extended to link their shelf to the continental shelf of Sicily. Agreement Concerning the Delimitation of the Continental Shelf, Tunisia-Italy, Aug. 20, 1971, 1978 I.T.G.U. 191, reprinted in *THE LAW OF THE SEA - MARITIME BOUNDARY AGREEMENTS* at 174, U.N. Sales No. E.87.V.12 (1987).

264. See *supra* notes 149-51 and accompanying text.

265. This would be achieved by measuring a median line from Turkey's straight baselines, giving full effect to Tenedos and Imbros, and from the baselines from which the breadth of the territorial sea of Greece is measured, giving full effect to the Western Islands. Another median line should be drawn from Turkey's straight baselines and from Greece's baselines, giving full effect to the Eastern Islands. The line

would be an imaginary line linking the Eastern Islands by the western limit of their six-nautical-mile territorial sea. The eastern limit would be a median line between Greece and Turkey giving full effect to the Eastern Islands. The half effect median line should be bounded on the east and the west between these two limits.

CONCLUSION

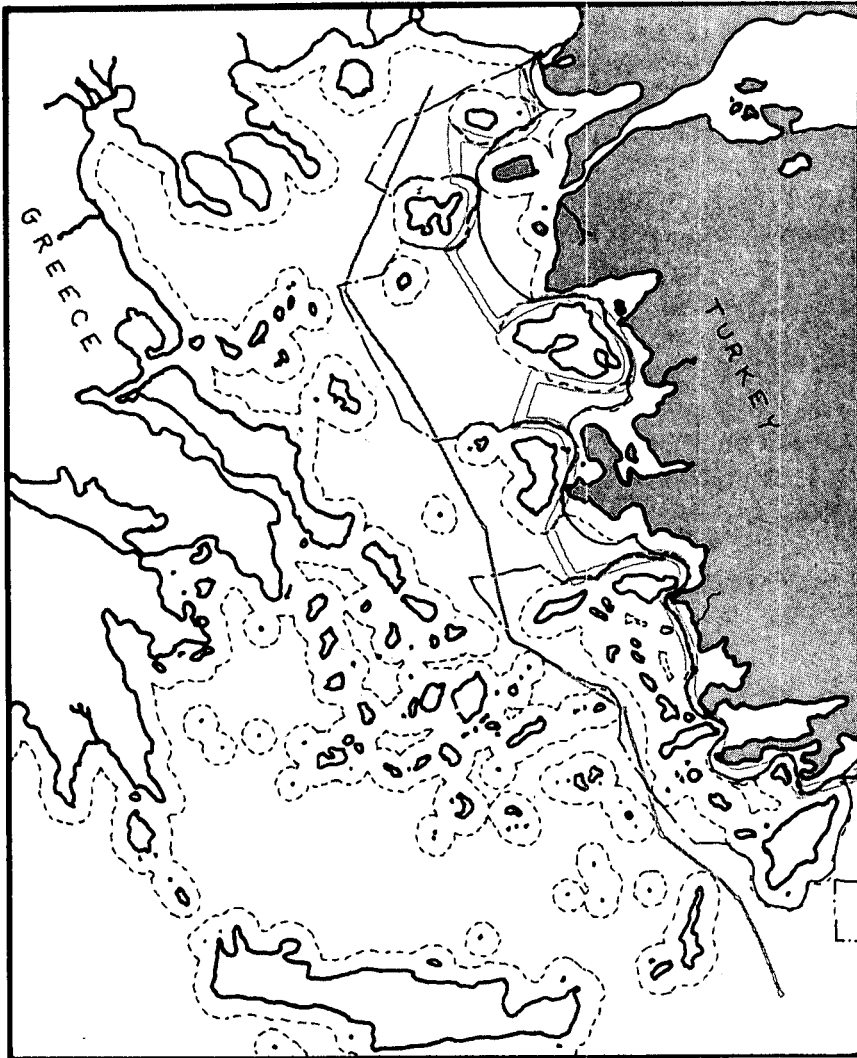
Ever since the latter half of this century, when an increasing number of countries have claimed the right to explore and exploit their continental shelves, the legal means of delimiting such a shelf shared by two or more countries has begun to crystallize. Although the international community has not defined a method that mandatorily applies, international case law and the 1982 Convention have paved the way towards a general application of all facts and circumstances to achieve fairness in each specific case.

The very real danger that the Aegean dispute might lead to armed conflict between Greece and Turkey was demonstrated in 1976 and again in 1987. The expressed willingness of both countries to work towards a negotiated settlement and to refrain from provocative action has recently broken down. International law indicates that the delimitation of the boundary of the continental shelf in the Aegean Sea appertaining to the two countries should be effected by the method of a median line, because the two states are primarily opposite. This median line should give half effect to the Eastern Islands but should not enclave them.

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drawn half way between these two median lines is a boundary giving half effect to the Eastern Islands.

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- Greece's Position
- - - Turkey's Position
- Author's Proposal
- Division Between Eastern and Western Islands