

## The Torres Strait treaty: a possible solution to the Aegean conflict

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### Abstract

*The Aegean conflict constitutes a dispute that has been affecting Greek-Turkish bilateral relations for the last five decades. It involves elements such as sovereignty, sovereign rights and national security. This paper suggests that the Torres Strait Treaty, an international agreement that provides the framework for the management of Australia and Papua New Guinea's (PNG) maritime boundaries, can be utilised to provide a possible solution to the Aegean conflict. The resolution of the Aegean conflict would improve the political and diplomatic relations between Greece and Turkey, guarantee the security of the Aegean region and allow for the two countries to benefit from economic cooperation.*

*Keywords:* international law, conflict resolution, bilateral relations

### Introduction

The Aegean conflict constitutes a set of disputes which involves elements such as the exploitation of the Aegean seabed for natural resources, the extent of territorial waters and national airspace, territorial integrity and national security. It has caused tension in Greek-Turkish relations, with both countries contesting each other's sovereignty, sovereign rights and responsibilities in the Aegean Sea. This tension has led Turkey to issue a *casus belli* (threat of war) over Greece's intentions to exercise its legal rights according the *United Nations Convention on the Law of the Sea* (UNCLOS), while both countries have engaged into a costly arms race to defend their territories.

The Torres Strait Treaty is an international agreement that provides a framework for the management of Australia and PNG's common border area, their respective sovereignty over certain islands in the Torres Strait and the protection of the way of life of the traditional inhabitants. Following PNG's independence from Australia in 1975, the Torres Strait Treaty was designed to deal with multiple issues that arose, including the territorial boundaries of both countries, sovereignty over

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hundreds of islands in the Torres Strait, the continental shelf,<sup>2</sup> fishing boundaries and the protection of the way of life of the Torres Strait Islanders (Parliament of Australia, n.d.). It was hailed “as one of the most creative solutions in international law to a boundary problem touching on the lives of traditional inhabitants” (Australian Government, Department of Foreign Affairs and Trade, n.d., p. 2) and offered a practical and fair solution despite the administrative difficulties during the negotiations.

The aim of the following study is to show that the Torres Strait Treaty provides a framework which can be utilized for the possible peaceful resolution of the Aegean conflict. As the dispute between Greece and Turkey raises international concerns for peace and security in the Aegean region, and by extension the Mediterranean Sea, the Torres Strait Treaty can be viewed as an example of a method which can help reduce tensions, prevent conflict in the Aegean Sea and initiate a period of positive bilateral relations between the two countries.

## 1. Background

### 1.1. The Aegean Conflict

The Aegean Sea is located between the Balkan and Anatolian Peninsulas, stretching from the coasts of the geographical region of Macedonia to the island of Crete. It connects the Eastern Mediterranean to the Black Sea through the Dardanelles, the Sea of Marmara and the Bosphorus. It contains over 1,400 islands, the majority of which are under Greek sovereignty and very few under Turkish sovereignty. Throughout history, the Aegean Sea has been considered a region of high geostrategic importance, as it has allowed for great civilisations, such as the Minoans, Greeks, Romans and Byzantines, to flourish through commerce, and for hegemonic powers and totalitarian states, such as the Ottoman Empire, Nazi Germany and Fascist Italy, to utilise it in order to realise their plans for territorial expansion through war (Diaconu, 2016).

The Aegean conflict constitutes a set of disputes that have been affecting Greek-Turkish relations since 1973 and comprises the following elements: 1) the delimitation of the continental shelf in the Aegean Sea; 2) the breadth of the territorial sea;<sup>3</sup> 3) the breadth of Greek national airspace;<sup>4</sup> 4)

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<sup>2</sup> According to Article 76.1 of the United Nations Convention on the Law of the Sea (UNCLOS), “The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its 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” (United Nations, n.d.).

<sup>3</sup> According to Article 1.1 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, the state’s territorial sea is defined as the belt of sea adjacent to the States coast (United Nations Treaty Collection, n.d.).

<sup>4</sup> According to Article 2.2 of the UNCLOS, the sovereignty of the coastal state extends to the airspace over the territorial sea.

the demilitarisation status of the islands in the eastern Aegean Sea; 5) the sovereignty of the two Imia islets or Kardak rocks and the grey zones; 6) the dispute regarding the Athens Flight Information Region (FIR);<sup>5</sup> 7) the maritime search and rescue region (SAR).<sup>6</sup>

Greece was established as an independent nation in 1832, following a violent revolution against Ottoman rule in 1821. It consisted of the Peloponnese, Central Greece, Euboea and the Cyclades Islands in the Aegean Sea. Over the following century, Greece would expand its territories by including Thessaly, Epirus, a large part of the region of Macedonia, Thrace, Smyrna and its surrounding area, and the majority of the islands in the Aegean Sea. The Republic of Turkey was established in 1923, following centuries of its predecessor's - the Ottoman Empire - decline and the Turkish War of Independence (1919-1923). Following a Greek-Turkish war from 1919-1922, the two countries signed the landmark *Treaty of Peace with Turkey*, also known as Treaty of Lausanne, in July 1923. The treaty established their common modern-day borders and inaugurated a period during which the two states would positively seek to ameliorate and normalise their bilateral relations. In the Aegean Sea, the treaty provided that "the islands situated at less than three miles from the Asiatic coast remain under Turkish sovereignty" (Article 12), including the islands of Imbros, Tenedos and Rabbit Islands. Greece established sovereignty over the rest of the Aegean islands, except for the Dodecanese, which were under the control of Italy. The Dodecanese were ceded to Greece following the *Treaty of Peace with Italy* in 1947. One of the clauses, which later would become a cause of contention between Greece and Turkey, provided that the Dodecanese should be and should remain demilitarized (Article 14).

In 1973, and while Greek-Turkish relations had become particularly strained due to the Cyprus crisis, the Aegean conflict was triggered, shortly after Greece claimed that it had discovered oil off the coast of Thassos, in the north-eastern Aegean Sea. Turkey then awarded explorations rights to the state-owned petroleum company *Türkiye Petrolleri Anonim Ortaklığı* (TPAO), in maritime areas west of the Greek islands in the eastern Aegean Sea. The issue for the delimitation of the continental shelf had surfaced, with Greece arguing that, according to the UNCLOS, the Greek islands afforded a continental shelf,<sup>7</sup> and Turkey arguing that "the submarine areas along and offshore the Turkish coast...constitute the natural prolongation of the Anatolian coast and therefore its continental shelf" (International Court of Justice, 1980, p. 3). In 1974, Turkey further raised the issue of the 12 nm of

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<sup>5</sup> A *Flight Information Region* (FIR) is "an airspace of defined dimensions within which flight information services and alerting services are provided" (p. 3), and it is "managed by a controlling authority that has responsibility for ensuring that air traffic services are provided to the aircraft flying within it" (p. 8). The International Civil Aviation Organisation (ICAO) is responsible for appointing the controlling authority for a defined FIR (Skybrary, n.d.).

<sup>6</sup> An SAR is "an area of defined dimensions associated with the rescue coordination center within which search and rescue services are provided" (International Civil Aviation Organisation (ICAO), 2007, p. 2).

<sup>7</sup> Article 121 of the UNCLOS affords a continental shelf to islands.

territorial sea, which derives from the UNCLOS,<sup>8</sup> stressing the need for a resolution through negotiations, and declaring that, despite the provisions of the UNCLOS, a unilateral extension of the Greek territorial sea to 12 nm would result in a Greek-Turkish war (Heraclides, 2010).

Following Turkey's military intervention and invasion of Cyprus in 1974, three more elements were added to the Aegean conflict: the militarisation and fortification of the Greek islands in the eastern Aegean Sea, the dispute regarding the Athens FIR, and the breadth of the Greek national airspace. Greece did not deny militarising and fortifying its islands due to the Cyprus crisis, while Turkey argued that Greece's actions were contrary to its treaty obligations. The Athens FIR, established by the International Civil Aviation Organisation (ICAO) in 1952 to cover the Aegean Sea to the outer limits of the Turkish territorial waters, was disputed by Turkey in an attempt to extend its own Istanbul FIR over the Aegean Sea. Further, Turkey argued that Greek national airspace, which was extended unilaterally by Greece in 1931 to 10 nm, constituted a breach of international law (Heraclides, 2010).<sup>9</sup>

Thereafter, the Aegean conflict led to a series of impassable negotiations in search for settlement between Greece and Turkey, and produced several severe crises which brought the two states to the brink of war. The 1996 crisis, known as the Imia/Kardak crisis, added one more element to the Aegean conflict agenda known as the grey zones, an item related to the status of islets and rocks in the eastern Aegean Sea, and has led Turkey to issue a *casus belli* against Greece (Hellenic Republic, Ministry of Foreign Affairs, n.d.).

A final element added to the Aegean conflict is the SAR dispute, which emerged following the 2015 migrant crisis, namely, the refugee and migrant flows towards Europe from the Middle East and Africa. This dispute concerns the delineation of maritime regions within which Greece and Turkey have the responsibility for providing search and rescue services in case of accidents at sea (Hellenic Republic, Ministry of Foreign Affairs, n.d.).

For the last five decades, the Aegean conflict constitutes a source of tension which has had a negative impact on Greek-Turkish bilateral relations, their respective economies, as both states have engaged in a costly arms race, and persists as an irritant for their NATO allies who are interested in a peaceful resolution (Kassimeris, 2008).

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<sup>8</sup> According to Article 3 of the UNCLOS, "Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention".

<sup>9</sup> As noted earlier, Article 2.2 of the UNCLOS provides that the sovereignty of a coastal State "extends to the air space over the territorial sea as well as to its bed and subsoil".

## 1.2. The Torres Strait Border Issue

The Torres Strait Islands are a group of over two hundred islands stretching from the tip of Cape York Peninsula, Australia, to the southern coasts of PNG (Gab Titui Cultural Centre, n.d.). They are situated in the Torres Strait region, an area of great geostrategic importance to Australia's security in the north and a major international shipping route (Saltzman, 2002). The islands were annexed by the State of Queensland in 1879, when, according to the *Queensland Coast Islands Act* of 1879, the northern border was established a few hundred metres off the New Guinea mainland, thus including all the islands of the Torres Strait. Several islands, such as Kawa, Mata Kawa and Kussa, which lie as close as a kilometre (km) away from the coast of PNG, then came under Australian sovereignty. The south-eastern part of New Guinea became a British protectorate in 1888 and it was run by an administrator who was subject to the control of the Governor of Queensland. Following the *Papua Act* of 1905, the south-eastern part of New Guinea was declared a Territory under the jurisdiction of the Commonwealth of Australia, known as the Territory of Papua. However, according to the *Acts Interpretation Act* of 1901, external Territories, such as the Territory of Papua, were excluded from the definition of "Australia"; accordingly, the islands annexed in 1879, remained part of the State of Queensland (McDermott, 2009).

Following World War I, the north-eastern part of New Guinea was administered by Australia as a League of Nations Trust Territory. After World War II, the Territories of Papua and New Guinea were unified under a single administration according to the *Papua and New Guinea Act* of 1949, forming the Territory of Papua and New Guinea; however, they still remained under the control of the Commonwealth of Australia. The *Papua and New Guinea Act* of 1963 stipulated that the Territory of Papua and New Guinea would have a House of Assembly consisting of members elected from a common poll (Doran, 2006). This represented the beginning of a process whereby PNG would seek to become an independent state. It eventually achieved its independence from Australia in September 1975 (McDermott, 2009).

By 1968, the need for the adjustment of PNG's common borders with Australia, the delimitation of the continental shelf, the establishment of fisheries zones and the protection of the traditional way of life of the Islanders in the Torres Strait arose. The top western group of the Torres Strait Islands, namely Boigu, Dauan and Saibai, are as far as 5 km away from the coast of PNG, but 140 km away from the coast of Australia (Doran, 2006). Australia had already fixed its own territorial sea at 3 nautical miles (nm), subscribing to the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. PNG considered Australia's claims as undue, and also opted to invoke the 1958

Geneva Convention on the Territorial Sea and Contiguous Zone as a basis of negotiations with the latter. It was apparent to both states that, upon PNG's independence, the boundaries established unilaterally by Australia in 1879 would be nullified. However, the Convention itself complicated issues further, as it provided that islands have their own continental shelf which should be considered when determining a median line (Griffin, 1977).

Of the approximately eight thousand inhabitants of the Torres Strait Islands, the majority were of Melanesian descent, akin to the majority group in PNG. In the case of an independent PNG, islands which are several hundred metres away from the coasts of PNG and populated by people of the same ethnic origin and culture as those on the coasts, would be cut off from their kin. There were fears for the potential rise of Papuan irredentism, since there were PNG nationalists who argued that the Torres Strait Islanders should want to become citizens of PNG (Griffin, 1977). On the other hand, it was possible that an adjustment of the border would cause illegal immigration flows from PNG to Australia, as the latter argued that the Torres Strait Islanders wished to remain part of Australia, because of the social services, education, and employment opportunities provided by Australia (Doran, 2006). Therefore, it became necessary for Australia and PNG to recognise sovereignty over the many islands in the Torres Strait and establish their respective maritime borders, by considering history and the interests of the traditional inhabitants.

By 1953, Australia had claimed sovereignty over its continental shelf and in 1968 made claims to oil exploration in the Torres Strait (Griffin, 1977). As PNG rejected these claims, it was necessary to establish a Seabed Jurisdiction Line, considering the codes and mechanisms of the UNCLOS.<sup>10</sup> PNG suggested a Seabed Jurisdiction Line south of the top western group of islands, requesting that the uninhabited islands north of the line, such as Kawa, Mata Kawa and Kussa, were transferred to it. This position implied that the inhabited islands of Boigu, Dauan and Saibai would remain an Australian enclave north of the proposed border, something to which the Australian government agreed, under the condition that their respective territorial seas remained at 3 nm (Parliament of Australia, n.d.).

Another issue to be resolved was the establishment of a fisheries zone, as, by 1968, Australia had legislated for a 12 nm limit regarding its fisheries zones. PNG argued that there should be a border established at 10° South, as the marine wealth north of that area traditionally belonged to PNG. In the end, the two states agreed to establish a Fisheries Jurisdiction Line, which would form a 'top hat' enclosing the three islands of Boigu, Dauan and Saibai, up to 3 nm from their coasts. Australia

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<sup>10</sup> Article 77.1 provides that "The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources", while Article 83.1 suggests that "The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law".

suggested to control the fisheries south of the line, whereas PNG would control the fisheries north of the line (Griffin, 1977).

A possible resolution of the fisheries zone issue was tied to a proposed Protected Zone, within which freedom of movement and traditional activities would be allowed, while the marine environment and indigenous fauna and flora would be protected and preserved. This arrangement was unique, as, while not related to international boundaries, it provided that the traditional inhabitants who lived within the Protected Zone would be able to “maintain their traditional customary associations with the area or in the vicinity of the Protected Zone” (Parliament of Australia, p. 2). That also meant that, under the treaty, PNG traditional inhabitants would be entitled to free movement within the Protected Zone without passports.

Australia and PNG released a Joint Statement in 1976 declaring that they reached an agreement: PNG accepted that Australia would retain all inhabited islands south of the proposed Seabed Jurisdiction Line; Australian territorial sea around the top western group of islands would be at 3 nm; a Protected Zone would be established to protect and preserve the traditional way of life of the Torres Strait Islanders, including fishing and freedom of movement both north and south of the boundary (Ryan and White, 1977).

## **2. The Framework of the Torres Strait Treaty**

The Torres Strait Treaty, officially known as the *Treaty between Australia and the Independent State of Papua New Guinea*, was entered into force in February 1985, concluding negotiations which lasted six years. It defines two separate maritime boundaries; a Seabed Jurisdiction Line is defined as the main boundary between the two countries, dealing with the issue of sovereignty over several islands in the Torres Strait and delineating who has control over the seabed (continental shelf). Australia recognised the sovereignty of PNG over the islands of Kawa, Mata Kawa and Kussa, settling thus PNG’s concerns about Australian borders being too close to its coasts, while PNG recognised the sovereignty of Australia over several inhabited islands north of the line, including the islands of Boigu, Dauan and Saibai. Both countries agreed that sovereignty over the islands included sovereignty over their respective territorial sea, limited to 3 nm, the airspace, the seabed and any other rock or low-tide elevation within their territorial sea (Articles 2-3). The decision to limit their claims to 3 nm, while according to the UNCLOS they could make a claim to territorial seas up to 12 nm, was adopted by taking into consideration the proximity of the Australian islands north of the Seabed Jurisdiction Line and in respect of the PNG coastline in the central Torres Strait area. This seemed

for both sides to be a sensible and fair resolution regarding the territorial seas issue (Ryan and White, 1977).

In regard to the exploitation of seabed mineral resources, the treaty provides that Australia and PNG should equitably share the benefits from exploitation (Article 6). This has led to the drafting of a number of projects concerning the exploration and exploitation of mineral resources in the Torres Strait and the heightened interest of Australian oil companies to operate in PNG, contributing thus to the Australian economy and the PNG income taxes (Nicholas and Lyons, 2021). A freedom of navigation and overflight clause is linked to this part of the treaty, ensuring that vessels and aircraft remain subject to the laws and regulations of each country, that they do not need to obtain permission to navigate through the Torres Strait or for overflight, that they enjoy the right of innocent passage<sup>11</sup> and that they are subject to the provisions of the UNCLOS (Article 7).

A separate Fisheries Jurisdiction Line is defined in the treaty, establishing the areas “in which each country exercises sovereign jurisdiction for swimming fish and sedentary species on their respective sides of the agreed jurisdiction lines” (Australian Government, Department of Agriculture, n.d., p. 6). The two countries agreed to prioritise traditional fishing, to work together on the conservation and management of commercial fisheries within a separate Protected Zone, and to share the catch of commercial fisheries (Articles 22-23). Article 23 of the treaty determines each state’s respective percentages regarding the commercial fisheries catch, with Australia sharing 25% of the catch with PNG in areas under Australian jurisdiction, and PNG sharing 25% of the catch with Australia in areas under PNG jurisdiction (Article 23). This settled PNG’s concerns regarding the marine wealth and commercial activities north of the Seabed Jurisdiction Line.

An element of the treaty, considered to be “the most striking and original feature” (Ryan and White, 1977, p. 103), is the establishment of the Protected Zone. This provides that, despite the existence of national borders between Australia and PNG, the Torres Strait Islanders, including the residents of some of the villages along the southern coast of PNG, are afforded, as noted above, freedom of movement between the islands and the PNG coast. The treaty states that the purpose of the Protected Zone “is to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement” (Article 10), but also “to protect and preserve the marine environment and indigenous fauna and flora” (Article 10). Most importantly, it provides that neither of the two countries are allowed to undertake or permit mining or drilling of the seabed or subsoil within the Protected Zone for the purpose of exploration or

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<sup>11</sup> Article 19 of the UNCLOS describes passage to be innocent as long as “it is not prejudicial to the peace, good order or security of the coastal State”.



exploitation or natural resources, a clause which was valid for ten years from the date of entry into force of the treaty. So far, the moratorium on seabed mining in the Protected Zone has been maintained.

Australia and PNG signed the Torres Strait Treaty as “good neighbours and in a spirit of cooperation, friendship and goodwill” (Preamble). Although it is considered one of the most complicated maritime boundary delimitations, and unique in emphasising the importance of protecting the interests and traditions of the local inhabitants, it achieved success in resolving a “potentially dangerous border dispute” (Griffin, 1977, p. 224) and helped prevent a local war between the PNG nationalists and the Torres Strait Islanders, with the latter desiring their lands to remain under Australian sovereignty (Griffin, 1977).

### **3. The Current Status of the Aegean Conflict**

Greece maintains that the only outstanding difference between itself and Turkey is the delimitation of the continental shelf, which it wishes to resolve in accordance with the regulations of the UNCLOS. It argues that the dispute over the continental shelf constitutes an attempt by Turkey to violate Greece’s sovereign rights in the Aegean Sea and asserts that the delimitation must be governed by the principle of the median line, namely, that, in the absence of a delimitation agreement with Turkey, “the outer limit of the continental shelf is the median line between the Greek coasts and the coasts opposite or adjacent to those” (Hellenic Republic, Ministry of Foreign Affairs, n.d., p. 12). Further, Greece adopts the UNCLOS provision that all islands have a territorial sea and a continental shelf. Thus, two thirds of the Aegean continental shelf are awarded to Greece, denying Turkey any continental shelf west of its borders. Turkey, on the other hand, contends that the Greek islands of the eastern Aegean are formations on Anatolia’s natural prolongation; accordingly, they do not possess a continental shelf (International Court of Justice, 1980). It suggests that the principle of the median line does not apply in this case and argues that any solution regarding the continental shelf should be mutually agreed upon, so that both states should enjoy a continental shelf in the Aegean Sea (Heraclides, 2010).

The breadth of Greece’s territorial sea in the Aegean is currently set at 6 nm. Greece maintains that, according to the UNCLOS, it has the right to unilaterally extend its territorial sea claims to 12 nm. It claims emphatically that a possible extension to 12 nm is “not subject to any kind of restriction or exception and cannot be disputed by third countries” (Hellenic Republic, Ministry of Foreign Affairs, n.d., p. 3). Greece further contends that Turkey’s reaction to a possible territorial sea

extension undermines the peaceful resolution of disputes and peaceful coexistence between two states. The breadth of Turkey's territorial sea in the Aegean Sea is also set at 6 nm. Turkey maintains that Greece's claim to a 12 nm territorial sea is unlawful, as it disregards the UNCLOS, which provides that two coastal states, adjacent or opposite, would not extend their territorial sea unless they have reached agreement to do so (Article 15). Further, it argues that a possible extension to 12 nm "will alter the balance of interests in the Aegean Sea to the detriment of Turkey" (Republic of Türkiye, Ministry of Foreign Affairs, n.d., p. 8), increasing Greece's sovereignty to 65% of the Aegean Sea, with Turkey's territorial sea remaining at 10%, and limiting the latter's access to high seas,<sup>12</sup> which will be reduced at 25%. To prevent a unilateral act by Greece, Turkey has issued a *casus belli* threat (Hellenic Republic, Ministry of Foreign Affairs, n.d.).

Greece contends that it chose to extend its national airspace and exercise its sovereignty in the air within 10 nm for aviation purposes. It claims that the unilateral extension to 10 nm is legal, as it has issued a presidential decree in 1931 which has never been contested,<sup>13</sup> and that the national airspace does not exceed the 12 nm limit provided by the UNCLOS (Hellenic Republic, Ministry of Foreign Affairs, n.d.). Turkey rejects the 10 nm Greek national airspace and has been demonstrating its disapproval by sending its military aircraft to enter the areas between 6 and 10 nm. It rejects that it violates Greek national airspace, by maintaining that no one recognises the 10 nm regime in the Aegean Sea (Heraclides, 2010).

Greece maintains that it has fortified and militarised its islands in the eastern Aegean Sea as the demilitarisation status imposed by the *Treaty of Peace with Italy* in 1947 has lost its *raison d'être*, following the Turkish invasion of Cyprus in 1974, to which Greece had to respond by fortifying and defending its islands, and the *casus belli* issued by Turkey. Greece also claims that Turkey is systematically violating Greek national airspace by sending armed military aircraft over inhabited Greek islands in the Aegean Sea, raising serious security concerns (Hellenic Republic, Ministry of Foreign Affairs, n.d.). Turkey claims that the islands in the eastern Aegean Sea should remain demilitarised according to the Treaty of Lausanne and the *Treaty of Peace with Italy*. It argues that Greece violates its treaty obligations, and that the militarisation of the islands constitutes a security threat (Republic of Türkiye, Ministry of Foreign Affairs, n.d.).

A major issue, which has brought Greece and Turkey to the brink of war, is the grey zones dispute, which concerns the sovereignty of some smaller islands, islets and rocks in the eastern

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<sup>12</sup> According to Article 86 of the UNCLOS, high seas are considered "all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State".

<sup>13</sup> The United Kingdom formally protested the extension of Greek national airspace to 10 nm in 1932 (Heraclides, 2010).

Aegean Sea. Greece maintains that, according to the Treaty of Lausanne, all islands beyond 3 nm of the Turkish coastline belong to Greece, except for Imbros, Tenedos and the Rabbit Isles. It further argues that, according to the 1932 Border Protocol between Italy and Turkey, certain islets and rocks, including the controversial Imia/Kardak rocks, were under Italian sovereignty; these came under Greek sovereignty following the *Treaty of Peace with Italy* in 1947. Greece considers Turkey's intentions regarding the Imia/Kardak rocks to be a clear indication of undermining Greek sovereignty in the eastern Aegean Sea and of its expansionist designs in the eastern Mediterranean region (Heraclides, 2010). Interestingly, Turkey claims that it “does not have any claim over the islands, islets or such features which were unambiguously ceded to Greece by internationally valid instruments” (Republic of Türkiye, Ministry of Foreign Affairs, n.d., p. 21). Nevertheless, it contends that there are some disputed islets and geographical features which lie close to Turkey's coast and whose sovereignty is undetermined. It further argues that there are certain islets and rocks which are closer to the Turkish mainland than the Greek mainland, and, therefore, belong to Turkey (Republic of Türkiye, Ministry of Foreign Affairs, n.d.).

Greece considers the Athens FIR to be indisputable, as it has been delimited by the ICAO and has been accepted as such at the European Regional Aviation Conferences in 1950, 1952 and 1958 (Hellenic Republic, Ministry of Foreign Affairs, n.d.). Turkey's main argument regarding the FIR is that Greece treats it like a national boundary and that it fails to uphold its FIR responsibilities, namely, the management of air traffic, the provision of flight information services and alerting services (Heraclides, 2010).

Greece argues that its SAR areas coincide with the Athens FIR, designated by an ICAO Regional Air Navigation Agreement in 1952. It maintains that Turkey's SAR areas overlap parts of the Athens FIR, presenting a large part of the Greek territory as being within the Turkish SAR area. This, Greece argues, is contrary to international practice and violates Greek responsibilities entrusted by the ICAO (Hellenic Republic, Ministry of Foreign Affairs, n.d.). Turkey does not deny that its SAR areas overlap with Greek SAR areas. However, it contends that it offers SAR services according to the International Convention on Maritime Search and Rescue of 1979, which provides that an SAR region cannot be established unless the parties concerned “reach an agreement upon appropriate arrangements under which the equivalent overall coordination of search and rescue services is provided in the area” (Republic of Türkiye, Ministry of Foreign Affairs, n.d., p. 26). This implies that Turkey rejects Greece's notion that its SAR area coincides with its FIR.

This paper also explores the dispute between Greek and Turkish fishermen, who find themselves competing for a better fishing catch in the areas between the Turkish coasts and the Greek

islands. Ratti (2017) contends that a “fishing war” commenced in 2016, with fish farming being increased intensively on both sides, but Turkish fishermen exporting fish at a very low prices, thus creating bitter competition. Reports in the Greek media maintain, however, that Turkish fishermen enter Greek territorial waters and operate illegally, plundering and threatening the local Greek fishermen by producing weapons (Kontogiannidis, 2019). Greek fishermen argue that this has become a daily occurrence, while it has impacted their livelihood severely (Polizou, 2021). Contributing to the overall tension, Turkish media report that the Greek Coast Guard has been harassing Turkish fishermen operating in international waters (high seas) by causing material damage to their boats (Anadolu Agency, 2021). Turkish media also report that Turkish submarines have been employed in the past in order to prevent Greek fishing boats from entering and casting their nets inside Turkish territorial waters (Doğan News Agency, 2015).

#### **4. The Torres Strait Treaty as a Framework for the Resolution of the Aegean Conflict**

The Torres Strait Treaty provides a framework through which the following elements of the Aegean conflict can be resolved: 1) the delimitation of the continental shelf; 2) the breadth of territorial sea; 3) the breadth of national airspace; 4) the sovereignty of the islets and rocks in the grey zones, an issue linked to the national borders; 5) a potential fisheries zones issue, which, albeit not an element of the Aegean conflict, affects the lives of the local inhabitants in the Aegean Sea. Regarding the FIR and SAR issues, and assuming that Greece and Turkey are performing their FIR duties according to the ICAO protocols, it is suggested that both countries should abide by the decisions and frameworks of the ICAO and the outcomes of the European Regional Aviation Conferences. On the question of the militarisation of the islands in the eastern Aegean Sea, this paper suggests that both countries, as NATO allies and in good will, can agree to limit the concentration of army personnel and the accumulation of arms on both sides of the border, in order to avoid an accidental or incidental armed conflict. Although not an element of the Torres Strait Treaty, Australia and PNG have developed a defence relationship which materialised into the Defence Cooperation Arrangement (DCA) in 2013 (Australian High Commission, Papua New Guinea, n.d.). A similar agreement between Greece and Turkey can be achieved, considering that both countries share the same strategic and security interests in the Aegean and the Eastern Mediterranean Seas. Further, such an agreement would allow for the two neighbours to strengthen their bilateral relations, share intelligence and to deal with threats and challenges in the region such as terrorism and undocumented immigration flows.

Greece and Turkey can deal with the issue of the delimitation of the continental shelf by establishing multi-stratified boundaries: 1) a main national boundary as provided by the Treaty of Lausanne, which designates the areas over which each country has sovereignty; 2) a Seabed Jurisdiction Line, similar to the example set in the Torres Strait Treaty, which can be established in a precise way to designate where each country has sovereign rights. A legal arrangement can also be achieved where both countries can share the benefits from the exploitation of mineral resources in the continental shelf. Alternatively, Greece and Turkey can agree on prohibiting mining and drilling on the continental shelf, a provision similar to Article 15 of the Torres Strait Treaty. This allows for the protection of the marine environment in the eastern Aegean Sea and offers opportunities for both countries to improve their bilateral relations through tourism cooperation. So far, a Memorandum of Cooperation has been signed which reduces bureaucracy and facilitates travel from Greece to Turkey and vice versa (“Tourism an Area”, 2021). This sets a precedent for greater cooperation through tourism, which can provide both countries with significant economic benefits. Further, a decision to prohibit mining and drilling in the Aegean Sea allows for the two countries to invest in sustainable, renewable energy sources, in accordance with the European Energy Roadmap 2050, whose objective is to reduce the use of carbon dioxide and invest in new energy systems (European Commission, 2012).

As discussed earlier, both Australia and PNG have agreed to limit their territorial sea to 3 nm, given the proximity of the Australian islands to the PNG coasts. While Greece and Turkey can claim territorial seas up to 12 nm, they are not obliged to do so, given the complexity of the issue and the proximity of Greek islands to the coasts of Turkey. It is suggested that the interests of both countries are met under the current 6 nm regime and that there is no reason to perpetuate a conflict based on the interpretation of a customary provision by the UNCLOS, which, in this case, can cause more issues rather than resolve them. Retaining the territorial sea at 6 nm will also put Turkey’s concerns regarding the alteration of balance in the Aegean Sea to rest, as its access to high seas will remain unhindered (Republic of Türkiye, Ministry of Foreign Affairs, n.d.).

Australia and PNG resolved the national airspace issue by merely subscribing to the provisions of the UNCLOS, which provide that the sovereignty of a state extends to the airspace over the territorial sea, as well as to the seabed and subsoil under the territorial sea (Article 2). Greece and Turkey can resolve the national airspace issue by similarly agreeing that they have sovereignty over the airspace above their respective territorial seas. This is based on the presumption that Greece would withdraw its claim to 10 nm of airspace. Such an agreement is beneficial for both countries, as it

would essentially put an end to the Turkish military overflights and, subsequently, reduce both countries' defence budgets (Heraclides, 2010).

Australia and PNG dealt with islets, rocks and low-tide elevations in Article 2 of the Torres Strait Treaty, which provides that sovereignty over an island includes sovereignty over “any island, rock or low-tide elevation that may lie within its territorial sea” (Article 2). Such an arrangement is possible for Greece and Turkey, however, it should take into consideration the main national boundary and be limited to it, as Turkey argues that certain islets and rocks are from 2 to 4 nm away from its own islands or mainland (Heraclides, 2010). It is also possible that such an arrangement would compel Greece and Turkey to draw a new national boundary in the eastern Aegean Sea. This paper suggests that the grey zones issue should be resolved by compromising and in good faith, as sovereignty over islets, rocks or low-tide elevations should not constitute a valid reason to exercise sovereignty politics that cause tensions. Alternatively, the two countries can agree to strictly abide by the Treaty of Lausanne, which provides that all islands beyond 3 nm of the Turkish coastline belong to Greece, therefore compromising and giving up any other claims, and by the *Treaty of Peace with Italy* which has ceded certain disputed areas to Greece.

The Torres Strait Treaty settled PNG's concerns regarding commercial fisheries by setting up a Fisheries Jurisdiction Line where the parties share the catch of commercial fisheries and a separate Protected Zone where traditional fishing is prioritized (Articles 20-23). It is possible for a Fisheries Jurisdiction Line and a separate Protected Zone to be established in the eastern Aegean Sea which would protect the interests and fishing activities of the local inhabitants and put an end to incidents where the Greek and Turkish Coast Guards or military intervene to prevent or enable fishing in certain disputed areas. Thus, the “fishing war” in the eastern Aegean Sea would be resolved by setting up each state's respective jurisdictions and the parameters for cooperation between the Greek and Turkish fishermen. Such an arrangement would be economically beneficial for the local economy and would provide the conditions for a healthy competition.

## Conclusions

This paper suggests that the Torres Strait Treaty constitutes a legal precedent which can serve as a model towards a possible resolution of the Aegean conflict. A similar legal arrangement would allow Greece and Turkey to establish multi-stratified boundaries, thus achieving a fair resolution regarding their respective territorial seas and continental shelves. This can ultimately lead to an economic cooperation between the two countries, which can choose to benefit from the exploitation

of mineral resources in the Aegean Sea, or to expand cooperation through tourism and trade. Through the same framework, the resolution of the national airspace and grey zones disputes can be achieved, essentially ending the utilisation of military resources as a means of contesting each country's respective sovereignty or sovereign rights, and guaranteeing the security of the region. The resolution of the Aegean conflict would limit the probability of a military conflict. This would secure not only Greece and Turkey's strategic interests in the region, but also those of their NATO allies, who favour an equitable solution in the Aegean. The restoration of friendly bilateral relations between Greece and Turkey would also reinforce the latter's efforts for accession to the European Union, a development which would allow for greater bilateral cooperation and further economic possibilities. Finally, a legal arrangement similar to the Torres Strait Treaty would protect the interests and livelihood of the local inhabitants and would provide for the management of the fisheries and marine resources, ending localised conflict and setting the parameters for collaboration and fair competition.

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