

THE STATUS OF THE GREEK ISLETS "IMIA"

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Introduction - Recent Developments

On 25 December 1995, the Turkish cargo boat "Figen Akat" ran aground near the Greek Imia islets situated 2.5 miles from the Greek island of Kalolimnos. Although the accident occurred on Greek territorial waters, the captain of the Turkish boat initially refused assistance offered by the Greek authorities. He claimed that he was within Turkish territorial waters. Finally, however, the ship was freed on 28 December through the aid of a Greek salvage company and was towed to the Turkish port of Guluk.

On 29 December, the Turkish Ministry of Foreign Affairs addressed a verbal note to the Embassy of Greece wherein it was asserted the islets of Imia constitutes part Turkish territory and that they have recently registered in the Registry of Deeds of the Turkish province of Mugla. On 10 January 1996, the Greek Embassy addressed a verbal note to the Turkish Ministry of Foreign Affairs in which the Turkish claim to the islets was rejected on the grounds that Turkey had clearly recognized the Imia islets as belonging to Italy by virtue of a bilateral agreement concluded in 1932 and that they were subsequently ceded by Italy to Greece with the rest of the Dodecanese island chain by the Paris Peace Treaty of 1947.

On 28 January, a few days after the Mayor of nearby Kalymnos (capital city of the Kalymnos District where the Imia islets belong) raised a Greek flag in order to underline the islets were Greek territory. Turkish journalists took down the Greek flag and replaced it with a Turkish flag in front of the cameras of a private Turkish TV channel. The Greek flag was re-raised on the same day and this time a guard of 12 was placed on the larger of the two Imia islets in order to protect the national symbol. On 29 January, Turkey addressed a second verbal note to the Greek Embassy which claimed that the Protocol of 1932 is not in force. In the meanwhile, Turkish naval forces were assembling in the nearby area, soon to be met by Greek units.

Tension rose dramatically the night of 30 to 31 January, when a contingent of Turkish commandos occupied the smaller of the two Imia islets. In view of this intended act of escalation, which constituted a flagrant violation of Greek sovereignty, Greece showed remarkable restraint – despite strong domestic feelings in favor of a more dynamic reaction; it averted further escalation by accepting a mutual withdrawal of the fleets and troops from the area proposed by the United States.

A. The International Legal Framework

The islets of Imia (known also under the 1932 treaty name "Kardak") became parts of Greece along with the rest of the Greek – inhabited Dodecanese islands and islets through the *Treaty of Peace with Italy* signed between the Allied Powers and Italy in Paris on 10 February 1947. Article 14 of the Treaty provided that:

"Italy hereby ceded to Greece in full sovereignty the Dodecanese islands indicated hereafter, namely Stampalia (Astropalia), Rhodes

(Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos) , Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), Cos (Kos) and Castellorizo, *as well as adjacent islets.*¹"

Thus Greece formally succeeded Italy in the sovereignty of the Dodecanese islands and inherited the legal status, including the delimitation of the sea frontier, formerly established between Italy and Turkey in this area of the Aegean Sea. This legal regime is briefly described below.

With the Treaty of Lausanne signed in 1923 Turkey formally ceded the Dodecanese islands to Italy (Article 15). Due to a dispute regarding the islets between the island of Castellorizo and the Turkish coast, Italy and Turkey concluded on January 4 1932 the *Convention Between Italy and Turkey For the Delimitation of the Territorial Waters Between the Coasts of Anatolia and the Island of Castellorizo*².

On the same day, through an exchange of letters between the Italian and Turkish governments *initiated by Turkey*, it was agreed that the two sides would prolong the already established delimitation to cover the whole of the Dodecanese region. A follow-on Protocol was signed to this effect on 28 December 1932. It continues the delineation of the border lines between the Dodecanese and Turkish coast of Anatolia using 37 points and refers explicitly to the islets of Imia/Kardak as belonging to the Italian (and therefore, since 1947, to the Greek) side. More precisely point no.30 reads, in the original French text:

"La ligne frontiere [...] passé par les suivants:

[...]

30- a moitie distance entre Kardak (Rks.) et Kato I. (Anatolie)"

Due to this technical nature and undisputed character, which is explicitly stated in the letters exchanged before its conclusion and in its preamble, this Protocol was negotiated and agreed upon at a lower level of representatives. This argument according to which the Protocol needed to be registered by the League of Nations

Secretariat and eventually published in the League of Nations Treaty Series, cannot withstand criticism. In fact, the provisions of Article 18 of the League of Nations Covenant were not adhered to in several instances in international practice; that was precisely the reason for which the UN Charter provides that lack of registration simply derives the parties to the

¹ See *United Nations Treaty Series*, Vol.49, I. No. 747, 1950; emphasis added

² See *League of Nations Treaty Series*, No. 3191, 1933

non-registered agreements from the possibility of invoking them before the organs of the United Nations³.

Moreover, the recent case law of international tribunals and the International Court of Justice clearly affirm the validity of such agreements, which nonetheless remain binding upon the parties⁴.

Furthermore, Turkish allegations questioning the full validity of the Protocol have been brought up only too recently. Turkey had not expressed a similar view during the critical period 1932-1947 nor thereafter, until the recent crisis.

Finally, to the validity of the aforementioned legal status testifies the statement made on 6 February 1996 by the head of the Italian Foreign Ministry's spokesman, Gabriele Menegati:

"The Italian – Turkish agreement of 1932, settling the regime of the Dodecanese is valid and remains in force[...]there is full continuity in the international agreements signed by the fascist Italy of that era and today's democratic Italy[...]*Pacta sunt servanda*"⁵.

B. International Practice and Evidence

The bilateral practice of Greece and Turkey since 1947 bears witness to the undisputed status of the islets. Greece has been exercising its sovereignty over the islands and islets unhindered over the years, the Turkish side never contested the exercise of Greek sovereignty as provided by the relevant treaties and agreements. Moreover, the fishermen from nearby Kalymnos routinely fish in the waters around Imia while their goats graze on the islets.

As for the international evidence, international maritime cartography acknowledges that the islets belong to Greece. The following list is a brief selection of pertinent official maps (including a Turkish one) acknowledging that the islets are Greek territory.

- i) **US map** no. 54418 (prepared and published by the Defense Mapping Agency, Washington D.C., Nov. 1990, 3rd Edition – see Annex I)
- ii) **Royal Navy map** no. 1056 (Royal British Admiralty, London, March 1995, see Anex II)

³ According to Paul Reuter, 25% of international agreements are not registered; see Paul Reuter, *Introduction au Droits des Traités*, Universitaires de France, Paris, Geneve, 1985, p52, note 85

⁴ See, inter alia, Introduction Court of Justice, Reports of Judgements, Advisory opinions and Orders, Judgement of 1 July 1994, case concerning: Maritime Delimitation and Territorial Questions Between Qatar and Bahrain, para. 29, p.122

⁵ Athens News Agency, Daily Bulletin, 7 February 1996, No. 2264, pp. 1-2; emphasis added

- iii) **Turkish map** no. 18, Seri K613 (Baski 1 – Tuhum -1969 – see Annex III)

No map has ever been produced in support of the Turkish claims.

B. The Turkish Behaviour

The recent statements by Turkish officials during and immediately after the recent crisis demonstrate Turkey's intention to challenge the overall status quo in the Aegean Sea, beyond the Imia islets which are apparently used as a pretext. The following statements by Turkish officials are revealing.

Turkish Foreign Ministry Spokesman Mr. Omer Akbel on 31 January 1996 [*Turkish Daily News*, 1 February 1996; emphasis added]:

"Turkey said from the beginning that the issue was not merely the ownership of Kardak rocks, which Turkey claim as its own under international law. There are **hundreds of little islands, islets and rocks in the Aegean** and their status remains unclear, due to the absence of a comprehensive bilateral agreement between the two countries."

Although the Turkish government acknowledges that they have no record of islets of the Aegean which purportedly belong to them, they continue to lay claims on a large number of islets and islands; Prime Minister Tansu Ciller [*Milliet* and *Cumhuriyet*, 4 February 1996; emphasis added]:

"The Imia incident highlighted deficiencies in Turkey's position [...] especially among the Turkish foreign ministry's files [...] There are **approximately 1,000 islands, islets and rocky islets such as Kardak or larger**; we shall try to bring up their status to the international legal arena and the fact that they are Turkish territory."

The above mentioned statements and Turkey's corresponding acts (occupation of / landing on Greek soil, threats to the peace / *cassus belli*, deployment of large naval forces, ever-expanding claims, abrogation of treaty obligations, etc.) demonstrate a non-European attitude, from a country whose Customs' Union agreements with the European Union entered recently into force and which wants to be treated as part of the European family. The European Commission concurs when it states:

"On this occasion, the European Commission expressed deep concern over the recent developments on Imia in the Aegean Sea...The Commission reminds that the decision taken by the Council of Ministers on March 6, 1995, which concerns customs union with Turkey and which were ratified by the European Parliament on December 13, were aimed at creating conditions for an upgraded level of relations based

on respect for democratic principles, international law and definitely excluding resorting to force.⁶"

D. Concluding Remarks

In conclusion, according to the international treaties and agreements entered into by Greece (previously Italy) and Turkey, which are undoubtedly still in force, the legal status of Imia and all other islets is undisputable. As explained in previous paragraphs, the Treaty of Lausanne of 1923 and more explicitly, the 1932 agreements between Italy and Turkey, have clearly delineated the border between the Dodecanese and the Turkish coast of Anatolia. As a successor state to Italy's rights and obligations in the area by virtue of the 1947 Peace Treaty, Greece has therefore full sovereignty over the Imia islets.

⁶ Athens News Agency, Daily Bulletin, 8 February 1996, No. 2265, pp. 1-2