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A 12-NM GREEK TERRITORIAL SEA, IS TRANSIT PASSAGE SAFE?

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The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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ABSTRACT

Expansion of their territorial sea (TS) in the Aegean Sea by Greece will potentially raise an unresolved issue under the 1982 Law of the Sea (LOS) Convention. That issue is the extent of the right of transit passage through straits which are part of a non-judicial archipelago and which, arguably, do not connect one part of the high sea/EEZ with another part of the high sea/EEZ. The historic tension between Greece and Turkey makes the resolution of this all the more critical as Turkey has declared that a Greek expansion of the current 6-nm TS will be cause for war between the two nations.

Turkey's fear is grounded on the map: expansion of the Greek TS will essentially make the Aegean Sea a Greek lake. Turkey's west coast will be "closed" by the Greek TS, restricting Turkey to innocent passage even immediately off her coast and denying overflight rights. Beyond Turkey's concerns and the threat to regional stability they suggest, there are NATO and U.S. concerns. Greece has asserted the right to regulate the right of transit through her Aegean islands. That right is rejected by the U.S. and other maritime nations as inconsistent with both the text and the spirit of the LOS Convention.

However, academic rejection of a prospective assertion and active opposition to an enforced one are two different things. A Greek effort to enforce their assertion will bring the U.S. and NATO into confrontation with Greece and will undermine the existing diplomatic relationships. Conflict with Greece would serve no good purpose to the U.S., which relies on Greek support for operations in the eastern Mediterranean and the Balkans.

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INTRODUCTION

The United Nations Convention on the Law of the Sea of 1982 (LOS Convention) establishes 12-nm as the international standard for a coastal State's territorial sea. While Greece has not extended their claimed territorial sea from the existing 6-nm to 12-nm, they have specifically reserved their right to do so, most recently in June 1995 when ratifying LOS Convention.¹ Such a decision would have enormous implications in the eastern Mediterranean as the Turks have often declared that expansion is unacceptable to them and would be a cause for war. Beyond the threat to regional stability implied by the Turkish reaction, there are operational impacts to consider. This paper discusses those impacts resulting from an expanded Greek territorial sea. In doing so, it will identify and briefly review the history of disputed matters between Greece and Turkey, discuss the implications of the potential expanded territorial sea under international law, and evaluate United States practice in the region.

This paper argues that the expansion of the Greek territorial sea to 12-nm will pose a threat to the freedoms of navigation currently enjoyed in the Aegean Sea. An expanded Greek territorial sea will convert approximately 70% of the Aegean to Greek territorial seas. Moreover, under the regime established by the LOS Convention, Greece believes it has the authority to regulate the application of transit passage through the Aegean, including designation of the international straits through which the right of transit passage will apply. Other waters, in Greek eyes, are territorial seas in which the more limited right of innocent passage would apply. This would end overflight and submerged passage throughout the Aegean. Regulation of transit passage will not be accepted by the maritime nations of the world, especially Turkey. Greek efforts to enforce a regulatory regime is likely to splinter NATO, bring Greece and Turkey into conflict, and cause the U.S. to bring our national power to bear to keep the navigational freedoms envisioned by the LOS Convention available.

BACKGROUND ON THE DISPUTES

In 1995 Greece ratified the LOS Convention with the understanding that it could, at its own discretion, expand its territorial sea from the current 6-nm to the Convention-permitted 12-nm.² Turkey immediately, but not for the first time, declared such an act to be a *casus belli*.³ Why does Turkey care if Greece exercises its rights under the Convention? The answer lies in several disputes between the nations, of which the extent of the Greek territorial sea is only one. Most directly relevant for this paper is that the extension of the Greek territorial sea would greatly reduce the area in the Aegean Sea in which Turkish (and those of all other nations) vessels and aircraft would enjoy high seas freedoms of navigation and overflight. Instead, extension would limit vessels to innocent and, perhaps, transit passage throughout most of the Aegean and entirely along their west coast north of Rhodes.⁴

“The essence of Greek-Turkish strategic rivalry is the struggle for physical control of the Aegean . . .”⁵ For Greece the sea is an extension of their mainland, for Turkey the Aegean is the “maritime artery connecting Turkey with the west both on the sea and in the air.”⁶ The conflicts between Greece and Turkey center on three major on-going disputes: Cyprus, the delineation of the continental shelf in the Aegean Sea, and the territorial sea prerogatives of the Greek islands, some of which border within five miles of the Turkish mainland. In Cyprus, Turkey and Greece occupy opposite sides of a UN-enforced “green line.” The island’s population is majority Greek but has always included a substantial Turkish minority. Following independence from Britain in 1959 the island lapsed into civil unrest related to nationalistic demands by the Greek majority. The unrest eventually led to the toppling of the first President, Archbishop Makarios, in 1974. The leaders of the coup supported union with Greece leading Turkey to invade and occupy the northern part of the island. The subsequent occupation continues today.⁷

Greece acquired almost all the 2300+ islands in the Aegean through a series of treaties in the early 1920's and following the Second World War (the primary instruments being the Treaty of Lausanne in 1923, the Montreux Convention of 1936, and the Treaty of Paris of 1947).⁸ Until the Cyprus issues boiled over, none of these treaties were particularly controversial or disputed. Over time, LOS Convention has come to govern the maritime rights of that ownership. The evolution of the extent of the territorial sea (to an accepted 12-nm from a 3-nm norm) and the rights of the coastal State on the exploitation of its continental shelf made ownership all the more valuable. In 1973 oil was discovered in the vicinity of Thasos. While the find was not economically viable, Turkey attempted to capitalize on it by publishing a delimiting line through the middle of the Aegean in an attempt to reap the benefits of the seabed. Today the controversy is over "sovereign rights in the continental shelf *per se*."⁹

The third controversy is the territorial sea question as it relates to the Greek islands. The 2300+ islands in the Aegean range throughout the sea from the north south to the Sea of Crete and coast to coast (west to east). Their density is highest in the southern Aegean in an area bounded by Milos, Samos, Rhodes, and the Greek mainland. Each island is entitled to its own 12-nm territorial sea. Because Greece only claims a 6-nm limit many of the islands do not have overlapping territorial seas and, consequently, include a corridor of high seas between them through which high seas freedoms of navigation and overflight may be exercised. Greece and Turkey have co-existed with this arrangement for over 50 years. But Greece's threat to expand its territorial sea to the limits allowed by LOS Convention, has fueled Turkish fears that she will be vulnerable to total enclosure¹⁰ and that the Aegean would become, in essence, "a Greek lake."¹¹ "The imposition of a 12-nm limit would bring together the Greek territorial waters between the Cyclades and Dodecanese archipelagos, giving Athens hypothetical control over Turkey's vital north-south maritime route, as well as over maritime access to

the Black Sea.”¹² By the numbers Turkish fears are clear, expansion of the Greek territorial sea out to 12-nm would convert 72% of the Aegean into Greek territorial seas (up from the current 35%) and would leave only 19% of the sea as international waters, with similar consequences for airspace.¹³

There are other areas of contention in the Aegean such as the demilitarization of several of the easternmost Greek islands, sovereignty over disputed islands/islets/rocks, and airspace disputes. Each has the potential to act as a catalyst for diplomatic or military conflict between the countries. For example the Greece and Turkey came to the brink of war over the issue of sovereignty over an islet in 1996.¹⁴ This brief identification of the issues is presented solely to acquaint the reader with the myriad of issues separating the two nations today. The cumulative effect of these various, but related, disputes is an atmosphere of mutual enmity between the nations.¹⁵

THE LAW OF THE SEA CONVENTION AND TRANSIT PASSAGE

As discussed above, the issues surrounding the possible extension of the Greek territorial sea center on Turkey’s freedom of navigation. As seen in Figure 1, a 12-nm territorial sea will create a wide band of Greek territorial sea across the entire southern Aegean. In such a situation, Turkey’s concern for navigational freedoms is apparent. All ships travelling westward from her Aegean ports would have to transit Greek territorial waters¹⁶ and her aircraft (and those of others) would be precluded from transiting that band of territorial seas unless the right of transit passage applied. For surface vessels this would mean passage in innocent passage, which grants the vessel a barebone right of passage through territorial waters, but only for the purpose of continuous and expeditious passage. The coastal State is otherwise sovereign in the territorial sea. There is no right of overflight or submerged passage in the territorial sea.

The right of transit passage is a concept first announced in the LOS Convention. It provides for the normal mode of navigation for vessels and aircraft transiting through straits where it is applicable (discussed below). "Normal mode" means vessels can transit as they normally navigate, which means submarines may transit submerged, and aircraft may transit in the air. Transit passage applies throughout the length of the strait and its approaches from baseline to baseline of the bordering land masses.¹⁷ Since transit passage applies in straits with overlapping territorial seas, passage will be within a littoral state's territorial sea. Thus, transit passage is a broad exception to the restrictions of innocent passage. Its creation arose out of the concern by maritime nations to ensure freedom of navigation in the world's choke points for both commercial and military vessels and aircraft.¹⁸ While transit passage is widely applicable it is not universal. The Convention establishes several different regimes of passage for straits, each of them being geographically based.

Articles 37 and 38, LOS Convention, establish the regime of transit passage. The regime applies to "straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone."¹⁹ This is the "normal" international strait and the advent of the LOS Convention caused over 100 straits to fall within its standards.²⁰ At its core, transit passage applies in most situations where the territorial seas of the littoral States bordering the strait overlap. The overlap may be throughout the strait - such is the case in the Strait of Gibraltar - or only in a portion of the strait - such is the case in the Strait of Hormuz. An exception to the right of transit passage is found in cases where the strait is formed by a mainland nation and its own outlying island, and a route of "similar convenience with respect to navigational and hydrographical characteristics" exists to seaward. This the case the Kea Strait in the Aegean.²¹ In this situation the passage regime is non-suspendable innocent passage. This means that the bordering state

may not suspend passage but the transiting vessels are limited to the privileges of innocent passage, i.e., no aircraft overflight and submarines must transit surfaced with their flag displayed.

Article 36 provides that the provisions of Article 37 (transit passage) do not apply to straits used for international navigation where “there exists through the strait a route through the high seas or through an exclusive economic zone” if such route affords similar hydrographical and navigational convenience.

This describes the situation where the territorial seas of the bordering land masses do not overlap. This is the case in much of the Aegean today with the Greek 6-nm territorial sea. In such circumstances transiting vessels and aircraft enjoy high seas freedoms of navigation and overflight so long as they stay within the high seas/EEZ corridor. Aircraft must stay in the corridor since no right of overflight exists in the adjacent territorial seas. Surface ships may conduct innocent passage in the bordering territorial seas, and submarines may transit there subject to the requirements of innocent passage (e.g. surfaced).

Straits whose usage is regulated by “long standing international conventions” also do not come within the transit passage regime, relying instead on the requirement of the governing treaty. This situation applies to the Turkish straits, which are governed by the Montreux Convention of 1936. The final passage regime applicable to straits used for international navigation is set forth in Article 45. It provides that the regime of non-suspendable innocent passage “shall apply in straits used for international navigation: excluded from . . . transit passage under Article 38, paragraph 1; or between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign state.” The latter is the unusual situation where “high seas or exclusive economic zone areas connect with a territorial seas area of one State by means of a strait bordered by one or more other States.”²² The former is undefined but, by its

terms, applies to straits in which the criteria for transit passage do not apply.

THE OPERATIONAL CONSEQUENCES OF “LAKE AEGEAN”

“The Aegean is a geopolitical region of vital interest” NATO’s {and the U.S.} corridor of stability between Europe, the Middle East, and the former Soviet Asian territories.”²³ Unfortunately, despite forming NATO’s southern tier, Greece and Turkey have long been uncertain allies even while members of the same alliance.²⁴ Their periodic outbursts and conflicts have plunged them close to hostilities on several occasions and, once, led to Greece’s withdrawal from NATO.²⁵ Even in today’s environment, tension regarding airspace in the vicinity of Greek islands have impacted military “flight issues such as early-warning borders, command and control areas, and the extent of air maneuvers. {Airspace concerns also} directly affects flight borders for two NATO commands, the south-central in Izmir . . . and the 7th Tactical Air Force in Larisa, Greece.”²⁶ These issues and those above, should they lead to further deterioration of Greek and Turkish relations will directly impact NATO and U.S. operational commanders. Border delineation and enforcement, coalition maintenance, and engagement policies, will become more critical. Continued conflicts have the potential to split the NATO alliance²⁷ at a time when the region is key to NATO/U.S. actions. The Balkans include Greece and (some would say) Turkey, since they each have interests in the region and are historically allied with different parties. Turkey abuts Syria, Iran, and Iraq, is proximate to Israel, and is generally the European gateway to the Middle East. It is, in fact, “the only land bridge that physically connects the three sub-regions of instability situated on two continents, Asia and Europe.”²⁸ The only naval access to the Black Sea is through the Aegean Sea. U.S., British, French and Turkish allies conducted Operation Provide Comfort and currently conduct Operation Northern Watch from Incirlik, Turkey. Should Turkish support for this and other military operations be withdrawn or diminished, U.S. policy towards Iraq will

be severely affected.²⁹ Understanding the importance of Turkey and Greece to NATO and U.S. security interests in the region, let us then examine potential changes in U.S. operations which might result from an expanded Greek territorial sea.

The 2300+ islands that dot the hydrography of the Aegean form countless straits through which international commerce may transit. Under the current 6-nm regime, many of the commonly used straits between the islands are wider than 12-nm and, therefore, have a high seas corridor between them. In such cases, transiting vessels and aircraft may enjoy the high seas freedoms of navigation and overflight by travelling in the corridor (aircraft must of course stay in the corridor since there is no right of overflight in the adjacent territorial seas). Beyond the straits, moreover, are areas of international waters, i.e., waters not in a territorial sea. With its limited territorial sea claim, Greece has ensured greater high seas freedoms in the Aegean. The expansion of the Greek territorial sea will convert many of these existing straits to straits with overlapping territorial seas and will also convert what are currently international waters into territorial seas. At first blush these "new" straits appear to offer the regime of transit passage. But, as discussed above, the regime of transit passage does not apply in all international straits and, from a Greek perspective, the vast majority, if not all, of the Aegean straits (particularly in the southern Aegean), arguably do not fall into the regime of transit passage. If this assessment is correct, the resulting navigation scheme would have profound effects for the United States. Navigation would be limited to innocent passage, meaning no overflight and surface passage only for ships and submarines. Aircraft could not get to and from the Mediterranean and the Turkish straits without Greek permission. This would mean, for instance that military aircraft would not be able to conduct reconnaissance of the approaches to the Turkish straits. Similarly, submarines would be restricted to surface transit almost throughout the Aegean, a fact that impacts their ability to conduct effective

reconnaissance. The limited international waters resulting from the expansion also limit available “launch boxes” for submarine-launched TLAMs. The island density is such that the limitations will be particularly acute in the southern Aegean.

“Most maritime zones are capable of reasonably strict delineation by reference to geographical features, such as the baseline from which the territorial sea is measured. A comparable certainty cannot be applied to the extent of transit passage.”³⁰ This comment identifies the issue that arises if the Greeks expand their territorial sea – where does transit passage begin and end? At both signing and ratification of LOS Convention, the Greeks advocated the right to designate lanes for transit passage in areas with “numerous spread out islands that form a great number of alternative straits which serve in fact one and the same route.” This point was raised but “not directly envisaged” in the drafting of the Convention.³¹ Although Yugoslavia similarly advocated for this right, the delegates to the Convention rejected it.³² Even though the attempt to codify this right failed, the “Convention does not seek to define the extent of a strait used for international navigation. It follows that the area in which transit passage rights can be claimed is therefore left perhaps deliberately vague.”³³ Conversely, the area in which they can be denied is also unresolved. Because there is no provision within the LOS Convention granting the coastal State the right Greece is claiming - to regulate the regime of transit passage - the implication is that the right of transit passage does not attach to the straits to which the Greeks claim authority to regulate. In other words, they must not be international straits contemplated in Articles 37 and 38.

For transit passage to apply “two conditions must be met - one geographical and one functional. The geographical condition is that the strait connects one part of the high seas or an exclusive economic zone with another part of the high seas or an exclusive economic zone. “Straits that do not come within either of these categories . . . come within the scope of article 45.”³⁴ The functional condition is that the

strait is used for international navigation.”³⁵ With regard to the functional condition, the U.S. policy is that the strait must be “susceptible” of international navigation³⁶ But, there is no similarly defined policy for the meaning of the geographical condition. Looking at a map, it is not necessarily a foregone conclusion that many of the straits formed by the Greek archipelago satisfy this two-part test.³⁷ Many of the individual passages between islands connect to Greek territorial waters on at least one end. In that regard, they are arguably loosely analogous to straits formed by a mainland and its own outlying island and to “dead-end” straits governed by Article 45. In both such cases the applicable passage regime is non-suspendable innocent passage, which was the internationally understood passage regime for all international straits prior to LOS Convention. Additionally, the Greek assertion is similar to the passage regime established for juridical archipelagos (of which Greece is not one because it is not a nation made up entirely of islands), wherein the archipelagic State may designate sea lanes for international navigation. The passage through the remaining waters of an archipelago is subject to the regime of innocent passage. The Greek assertion maintains that their right to designate transit passage lanes within the “numerous islands” will, from their perspective, preserve the navigational freedoms the LOS Convention is designed to protect while also protecting Greek security. Acceptance of this position would further limit the freedom of navigation in the region since even the straits, or most of them anyway, would no longer be considered international straits under the LOS Convention. Under this rationale, these waters would merely be waters within Greece's territorial sea and the regime of innocent passage would apply to passage through them. Looking at the map in Figure 1, using this rationale, from Rhodes northward to Samos and westward to the Greek mainland there are no straits under the 12-nm regime which connect two parts of the high seas or exclusive economic zone (EEZ). Efforts by

the U.S. and other national navies and/or air forces to secure a broader interpretation would certainly include freedom of navigation challenges and the potential for a forceful Greek response.

Not surprisingly, the analysis discussed above does not reflect the position of the United States or the other maritime nations. The United States asserts that all the straits susceptible of international navigation fall within the definition of an international strait.³⁸ Additionally, the U.S. rejects, as a nullity, the Greek claim of right to designate transit passage lanes through the islands since LOS Convention does not provide such a right.³⁹ The U.S. argues that Greece repeatedly attempted to obtain this right during negotiations for the Convention but failed.⁴⁰ The U.S. policy does not discuss the meaning of a strait connecting two parts of the high seas/EEZs. It appears that the geographic condition is assumed to exist in the case of every strait.⁴¹ The primary U.S. argument, however, rests on freedom of navigation and the chilling effect of closing parts of the high seas from international passage and overflight would have.⁴² For decades now it has been clearly understood that the routes of international navigation through straits are different from the normal territorial sea. Even prior the LOS Convention, straits enjoyed the greater right of non-suspendable innocent passage rather than the innocent passage regime applicable to other territorial seas. It would be inconsistent with that heritage for Greece to be able to essentially close the Aegean to freedoms enjoyed throughout the world. The freedom of navigation in the straits of the world was clearly a primary concern during the negotiations for the LOS Convention,⁴³ and any Greek effort to regulate transit passage through the islands undermines that premise.

To the operational commander a decision to expand the Greek territorial sea impacts “factor space” dramatically. Factor space are physical characteristics such as size, shape, geography, and any limitations on its use imposed either naturally or through manmade obstacles/ proscriptions on a given

area of operations. The creation of a large area of territorial sea changes the equation for maneuver, mobility, overflight, and operation of submarines. Even an expansive, and accepted, recognition of the right of transit passage would serve merely provide a greater area of normal mode passage without adding to the strategic value of the whole. Narrowly channeled areas of transit passage, which require continuous and expeditious transit, do not lend themselves to strategic mobility. Moreover, transit passage requires continuous and expeditious transit, and severely restricts the conduct of military operations within the strait. If the Greeks seek to enforce their stated assertion, the U.S. will certainly undertake a vigorous freedom of navigation program designed to maximize navigational freedoms in the area. Such efforts will clearly put the U.S. at odds with its erstwhile ally.

While diplomatic issues are not directly the responsibility of operational commanders, the commanders do have to operate within the parameters the diplomats establish. One such parameter might be Greek support to operations in the eastern Mediterranean, Balkans, and the Middle East. Greece has been a primary logistics base of operations for U.S. and NATO operations in the Balkans and during the Gulf War. NATO/U.S. resistance to Greek claims of territorial sea may result in the loss, or curtailment, of that support. More routinely, the area of responsibility (AOR) for the U.S. Commander in Europe (CINCEUR) includes both Turkey and Greece. Tension between the two will impact courses of action available to CINCEUR. Limitations on NATO/U.S. operations, ensuring contacts with each without offending either, participation in exercises, and participation in command structures are all concerns raised by dispute between them.

Turkey, of course, would be the big loser in a Greek decision to expand its territorial sea. Turkish vessels from Izmir, Istanbul, and the other ports north of Rhodes could not enter the Mediterranean without passing through Greek territorial waters. This is unacceptable to Turkey⁴⁴ and her rhetoric

heretofore has declared such an expansion a *casus belli*. Faced with a conflict between Greece and Turkey, CINCEUR would be in a difficult position. Both are allies of the United States and of each other, via NATO. Both would want our support and might be offended by our neutrality (if we go that way). Turkey, in particular, has become increasingly valuable as an ally and coalition partner in operations and exercises, having been defined “as a critical strategic ally whose allegiance is to be cultivated at all costs.”⁴⁵ Conflict between Greece and Turkey will immediately affect NATO/U.S. operations in the Balkans, primarily because they side with adversarial parties in those on-going conflicts.⁴⁶ Maintaining operations in the Balkans and Iraq, managing alliance partners, developing plans to replace basing or overflight rights which might be deprived/withdrawn, responding to challenges posed by Greek enforcement of their claimed territorial prerogatives, conducting other coalition operations, and trying to overcome the loss of space and opportunity for maneuver implicated in the expanded territorial sea, all will keep the operational commander busy.

Of course, Turkey is not the only country interested in the width of the Greek territorial seas and its impact on freedom of navigation.⁴⁷ Both the United States and Russia view with concern any move “susceptible to compromise their strategic interests or maritime mobility in the Aegean region.”⁴⁸ The Aegean is the primary waterway for the Russians to make their maritime (and military) presence known in Europe and a move to limit passage rights in that area will have to be responded to by them. A 12-nm Greek territorial sea would severely limit the area of international waters and airspace available for military operations. More important than the small amount of international airspace is its location. In the southern Aegean there is no area of international airspace. The vast majority of international waters and airspace available following the expansion of the Greek territorial sea is concentrated in the middle of the sea and is surrounded by Greek (and occasionally, Turkish) territorial seas. The result is that

even the 20% of the Aegean which laying outside territorial waters is of little value. Likewise, the small amount of international waters in the Aegean resulting from a Greek expansion of its territorial sea would effectively end the ability of a maritime power to utilize submarines in the area.

U.S ACTIVITY IN THE AEGEAN

Despite the concerns discussed above, it is not clear that United States maritime forces in the Mediterranean will suffer a significant training loss if the Aegean becomes unusable due to a 12-nm Greek territorial sea. The Aegean is a body of water whose primary strategic value is as a gateway to the Black Sea and the ports of the nations therein, particularly Russia. However, even today the relatively small area and the 2300+ islands make naval maneuvers an exercise in geometry. In the past few years, NATO and the United States have conducted few exercises in the area, all of them with the Greeks.⁴⁹ In almost all the cases Greece is the host of the exercise and NATO/US attend as invitee(s).⁵⁰ The U.S. infrequently sends vessels into the Aegean and has not sent a carrier into the area in some time.⁵¹ NATO does not operate in the Aegean and all NATO and U.S. exercises with Turkey have been held in the Eastern Mediterranean.⁵² Thus, we have diminished our presence in the Aegean and any act restricting navigational freedoms there will not be felt as keenly. The decline of Russian maritime presence, along with the disappearance of the international tensions between the United States and the former Soviet Union, means that today the Aegean is less strategically important. It is clear, however, that the primary issues are not daily peacetime operations, but the impact an expanded Greek territorial sea will have on regional stability and freedom of navigation principles.

WHAT ARE THE OPTIONS?

To overcome the difficulties created by the mass of territorial seas resulting from an expanded Greek territorial sea, a consensus will have to be reached about the status of alternative straits passing through

numerous islands all bounded by territorial seas. One approach is international agreement that in such situations the islands are essentially bundled and considered a strait through which transit passage applies.⁵³ This would come the closest to maintaining the status quo but would not satisfy Greek security concerns. Another option would be a developing State practice which identifies a continuous string of straits and accompanying approaches and determine that passing through the successive straits is the same as a single strait. There are potentially many such strings in the Aegean.⁵⁴ This approach is consistent with the Greek assertion, but vessels would still be limited to innocent passage outside the designated sea lanes, just as they are when outside sea lanes in juridical archipelagos. This is, of course, essentially the Greek position – designated lanes. The issue in this case would be agreement on designated lanes. A third approach is that the maritime nations of the world reject the Greek assertion and conduct passage through the Aegean as they believe the LOS Convention provides. This approach could, of course, risk confrontation with Greece. In the end, to be effective, any regime in response to an expanded regime must ensure transit passage freedoms throughout the entire area of territorial sea. Transit passage through a strait is largely meaningless if the strait only leads to another part of the territorial sea and the regime of innocent passage. Indeed, the loss of international waters between and in the vicinity of the straits is the greatest challenge posed by the extension of the Greek territorial sea.

CONCLUSIONS

This paper highlights issues related to the implications of a 12-nm Greek territorial sea. Clearly, any resulting turmoil presents difficult challenges to the United States and CINCEUR. The resolution of these challenges is hard to predict beforehand but will likely include a robust freedom of navigation program to establish U.S. rejection of the Greek assertion, on-going diplomatic efforts at resolution, and a NCA decision regarding who, if anyone, to side with in the inevitable Greek-Turk hostilities.

The expansion of the Greek territorial sea could serve as a catalyst for conflict in the Aegean. A 12-nm territorial sea, enforced in accordance with the Greek assertion of a right to regulate transit passage through the region would constitute an overt threat to Turkey's national security and, if prior declarations are any measure, lead immediately to armed conflict. An outbreak of conflict on account of an expanded Greek territorial sea has no positive implications for the U.S. At a minimum, it is likely that we would be expected by each side to choose a side and, failing to do so, will offend both. Such a circumstance threatens the host nation support that each country provides the U.S. in various operations, especially in the Balkans and over Iraq. CINCEUR will be faced with a loss of mobility in an area of the world where the instability within his AOR is focused. Moreover, he would also lose reconnaissance opportunities as well as other operational benefits. And, he would have to operate in the context of a Greek-Turkish conflict.

But, beyond that conflict are the issues raised by the Greek assertion. The maritime nations may be forced to establish international practice contrary to Greece's position. Such an effort will certainly include military operations in the disputed areas of the Aegean, operations designed to foster freedom of navigation. The requirement to contest a Greek assertion of an innocent passage regime throughout its Aegean islands will put the U.S. and other maritime nations at odds with that ancient nation. Other than vindication of the freedom of navigation (a worthy goal in its own right), no good can come from overtly challenging an important strategic partner or being maneuvered into a war between two allies.

The Greek position asserts a colorable claim under the LOS Convention. Most of the rest of the world disagrees with their assertion but may be forced to register their disagreement under the accepted methods of contesting a nation's claim under international law – courts or through the practice of nations. Resolution may well be diplomatic and if it is the Law of the Sea will be clarified by the

precedent set by the agreement. In the end, “the overriding objective should be to keep the Aegean Sea a safe corridor for international air and sea traffic.”⁵⁵

¹ DOD 2005.1-M, Maritime Claims Manual, p. 247. (1997). In 1983 when signing the LOS Convention, Greece made the following statement about the application of the right of transit passage in its outlying islands,

“in areas where there are numerous spread out islands that form a great number of alternative straits which serve in fact one and the same route, that the coastal State concerned has the responsibility to designate the route or routes, in the said alternative straits, through which ships and aircrafts of third countries could pass under transit passage regime, in such a way as on the one hand the requirements of international navigation and overflight are satisfied, and on the other had the minimum security requirements of both the ships and aircrafts in transit as well as those of the coastal State are fulfilled.”

Reprinted in Scovazzi Tullio, *Management regimes and responsibility for international straits*, Marine Policy, Vol 19, No. 2, 1995, 137-152, 152. This assertion was reaffirmed upon ratification of the LOS Convention in 1995, see DOD 2005.1-M, Maritime Claims Manual, p. 247.

² Ioannou, Kateros M., *The Greek Territorial Sea*, in Greece and the Law of the Sea, ed. Theodore L. Kariotis, 115-152, 118, Kehler Law International, 1997.

³ Schmitt, Michael N., *Aegean Angst*, *The Greek-Turkish Dispute*, Naval War College Review, Summer 1996, Vol. XLIX, No. 3, 42-72, 42.

⁴ Law of the Sea: The End Game, National Intelligence Council, p. 23, Mar 1996.

⁵ Nation, R. Craig, *Greek-Turkish Rivalry and the Mediterranean Security Dilemma*, Mediterranean Security into the Coming Millennium, ed. Stephen J. Blank, Strategic Studies Institute, 1999, pp. 279-313, 283. Available on-line at <http://carlisle-www.army.mil/usassi/welcome.htm>

⁶ Id.

⁷ Schmitt at 47.

⁸ Wilson, Andrew, *The Aegean Dispute*, Adelphi Paper 15, London: International Institute for Strategic Studies, 1979, p. 2-3.

⁹ Id at 5.

¹⁰ Id at 5.

¹¹ Maechling, Charles, *The Aegean Sea: A Crisis Waiting to Happen*, Proceedings, Mar 1997, p. 71-73, 71.

¹² Nation at 287.

¹³ Id.

¹⁴ Maechling at 71.

¹⁵ Nation at 279. For a full discussion of these disputes and current attempts at resolution see: Dotas, Dimitrios, *The Aegean Dispute and its Implications for the U.S. Policy*, Naval Post Graduate School, June 2000.

¹⁶ Schmitt at 42.

¹⁷ Schachte, William L., *International Straits and Navigational Freedoms*, Ocean Development and International Law, Vol. 24, No. 2, 1993, pp. 179-195, 185.

¹⁸ Politakis, George P., *The Aegean Dispute in the 1990s: Naval Aspects of the New Law of the Sea Convention*, in Greece and the Law of the Sea, 294-323, 300; *see also* Schachte at 181-182.

¹⁹ The Third United Nations Convention on the Law of the Sea 1982 (UNCLOS), United Nations Publications, 1983.

²⁰ Schachte at 186.

²¹ Schmitt at 51.

²² Schachte at 184.

²³ Nation at 283.

²⁴ Wilson at 21.

²⁵ Schmitt at 47.

²⁶ Nation at 288.

²⁷ Schmitt at 44.

²⁸ Sezer, Duygu B., *Turkish Security Challenges in the 1990s*, Mediterranean Security into the Coming Millennium, ed. Stephen J. Blank, Strategic Studies Institute, 1999, pp. 261-278, 263. Available on-line at <http://carlisle-www.army.mil/usassi/welcome.htm>

²⁹ Id.

³⁰ Langdon, J.B.R.L., *The Extent of Transit Passage*, Marine Monthly Vol. 14, No. 2, Mar 1990, pp. 130-136, 133.

³¹ The Law of the Sea, Practice of States at the time of the entry into force of the United Nations Convention on the Law of the Sea, United Nations Publications, United Nations, NY, 1994, p 127.

³² Id.

³³ Langdon at 131.

³⁴ Nordquist at 317. Article 45 assigns the regime of non-suspendable innocent passage for straits which are not otherwise regulated by LOS Convention.

³⁵ United Nations Convention on the Law of the Sea, A Commentary, ed. Myron Nordquist, Martinus Nijhoff Publishers, 1985, p. 317.

³⁶ Schachte at 184. The official U.S. position regarding the meaning of the phrase "straits used for international navigation" is that it includes all straits that are or could be used for such navigation, i.e. straits that are capable of being used.

³⁷ Politakis at 301.

³⁸ SECSTATE 031626Z Nov 95, Subj: Greek Declaration on Islands. This message, issued under Secretary of State Warren Christopher's signature, to embassies throughout the world establishes U.S. policy regarding the Greek assertion submitted at the time of Greek ratification of LOS Convention. Secretary Christopher's message is full of bluster regarding the extent of transit passage rights but fails to address the geographical component of the criteria for which transit passage applies.

³⁹ Id.

⁴⁰ Id.

⁴¹ NWP 1-14M (annotated) in an appendix to Chapter 2 lists straits of the world according to width and the divisions created by the LOS Convention. There is no category for numerous alternative straits serving the same route, or for straits that connect parts of the same territorial sea.

⁴² SECSTATE 031626Z Nov 95.

⁴³ Schachte at 181

⁴⁴ Wilson at 5.

⁴⁵ Nation at 307.

⁴⁶ Schmitt at 43.

⁴⁷ Politakis at 296.

⁴⁸ Id.

⁴⁹ Interview with CDR John Nolan, student Naval War College, assigned N74A (exercise planner) for COMSIXTHFLT 1999-2001, 23 Apr 01.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Politakis at 301-302.

⁵⁴ This approach raises another issue, if the straits are enclosed within the territorial sea then transit passage will be of little benefit since innocent passage will follow upon exiting them. Article 53(4), LOS Convention provides that archipelagic sea lanes passage includes passage through the adjacent territorial seas, but is slightly different in that the limit of the territorial sea at the end of the sea lane marks the end of the national waters. In the Greek situation, this may not be the case, leaving a strait will put a vessel in the territorial sea but beyond it may be another strait and territorial sea. But, the concept is analogous enough to allow the development of a similar concept to resolve the situation in the Aegean.

⁵⁵ Maechling at 73.

