INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

AEGEAN SEA
CONTINENTAL SHELF CASE

(GREECE *v.* TURKEY)

JUDGMENT OF 19 DECEMBER 1978

1978

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU PLATEAU CONTINENTAL DE LA MER ÉGÉE

(GRÈCE c. TURQUIE)

ARRÊT DU 19 DÉCEMBRE 1978

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AEGEAN SEA CONTINENTAL SHELF CASE

(GREECE *v.* TURKEY)

JURISDICTION OF THE COURT

Pursuit of negotiations during judicial proceedings no impediment to exercise of jurisdiction—Existence of legal dispute.

Jurisdiction of the Court—Question of applicability of 1928 General Act for Pacific Settlement of International Disputes and relevance of reservation in Applicant's instrument of accession—Reciprocal enforcement of the reservation in the procedural circumstances of the case.

Interpretation of reservation—Whether single reservation or two distinct and autonomous reservations—Grammatical interpretation—Intention of reserving State having regard to the context—Generic meaning of term "disputes relating to territorial status"—Scope follows evolution of the law—Present dispute regarding entitlement to and delimitation of continental shelf areas relates to territorial status of Greece.

Joint communiqué issued by Heads of Government as basis of jurisdiction—Question of form not conclusive—Interpretation in the light of the context.

JUDGMENT

Present: *President* JIMÉNEZ DE ARÉCHAGA; *Vice-President* NAGENDRA SINGH; *Judges* FORSTER, GROS, LACHS, DILLARD, DE CASTRO, MOROZOV, Sir Humphrey WALDOCK, RUDA, MOSLER, ELIAS, TARAZI; *Judge* ad hoc STASSINOPOULOS; *Registrar* AQUARONE.

In the case concerning the Aegean Sea continental shelf,

between

the Hellenic Republic,

represented by

H.E. Mr. Sotirios Konstantopoulos, Ambassador of Greece to the Netherlands,

as Agent,

assisted by

Mr. Constantin Economides, Legal Adviser and Head of the Legal Department of the Greek Ministry of Foreign Affairs,

as Agent, advocate and counsel,

Mr. D. P. O'Connell, Q.C., Member of the English Bar, Chichele Professor of Public International Law in the University of Oxford,

Mr. Roger Pinto, Professor in the Faculty of Law and Economics, University of Paris,

Mr. Paul De Visscher, Professor in the Faculty of Law, University of Louvain,

Mr. Prosper Weil, Professor in the Faculty of Law and Economics, University of Paris,

Mr. Dimitrios Evrigenis, Dean of the Faculty of Law and Economics, University of Thessaloniki,

as advocates and counsel,

H.E. Mr. Constantin Stavropoulos, Ambassador,

as counsel,

Mr. Emmanuel Roucounas, Professor in the Faculty of Law, University of Athens,

as advocate and counsel,

and by

Mr. Christos Macheritsas, Special Counsellor, Legal Department of the Greek Ministry of Foreign Affairs,

as expert adviser,

and

the Republic of Turkey,

THE COURT,

composed as above,

delivers the following Judgment:

1. By a letter of 10 August 1976, received in the Registry of the Court the same day, the Minister for Foreign Affairs of the Hellenic Republic transmitted to the Registrar an Application instituting proceedings against the Republic of Turkey in respect of a dispute concerning the delimitation of the continental shelf

appertaining to Greece and Turkey in the Aegean Sea, and the rights of the parties thereover. In order to found the jurisdiction of the Court, the Application relied on, firstly, Article 17 of the General Act for the Pacific Settlement of International Disputes of 1928, read together with Article 36, paragraph 1, and Article 37 of the Statute of the Court; and secondly, a joint communiqué issued at Brussels on 31 May 1975, following an exchange of views between the Prime Ministers of Greece and Turkey.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was at once communicated to the Government of Turkey. In accordance with paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. Pursuant to Article 31, paragraph 3, of the Statute of the Court, the Government of Greece chose Mr. Michel Stassinopoulos, former President of the Hellenic Republic, former President of the Council of State, to sit as judge *ad hoc* in the case. The Government of Turkey did not seek to exercise the right conferred on it by that Article to choose a judge *ad hoc*.

4. On 10 August 1976, the same day as the Application was filed, the Agent of Greece filed in the Registry of the Court a request for the indication of interim measures of protection under Article 33 of the General Act of 1928 for the Pacific Settlement of International Disputes, Article 41 of the Statute, and Article 66 of the Rules of Court as adopted on 6 May 1946 and amended on 10 May 1972.

5. On 26 August 1976, a letter, dated 25 August 1976, was received in the Registry from the Secretary-General of the Turkish Ministry of Foreign Affairs, enclosing the "Observations of the Government of Turkey on the request by the Government of Greece for provisional measures of protection dated The Hague, 10 August 1976". In these observations, the Turkish Government, *inter alia*, contended that the Court had no jurisdiction to entertain the Application.

6. By an Order dated 11 September 1976, the Court, after finding that the circumstances were not then such as to require the exercise of its power under Article 41 of the Statute to indicate interim measures of protection, decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute.

7. By an Order dated 14 October 1976 the President of the Court fixed time-limits for the written proceedings on the question of jurisdiction, namely, 18 April 1977 for the filing of a Memorial by Greece, and 24 October 1977 for the filing of a Counter-Memorial by Turkey. By a further Order dated 18 April 1977, at the request of Greece these time-limits were extended by the President to 18 July 1977 and 24 April 1978 respectively. The Memorial of the Government of Greece was filed within the extended time-limit fixed therefor, and was communicated to the Government of Turkey. No Counter-Memorial was filed by the Government of Turkey and, the written proceedings being thus closed, the case was ready for hearing on 25 April 1978, the day following the expiration of the time-limit fixed for the Counter-Memorial of Turkey.

8. On 24 April 1978, the date fixed for the filing of the Counter-Memorial of Turkey, a letter dated the same day was received in the Registry from the Ambassador of Turkey to the Netherlands, in which it was stated, *inter alia*, that it was evident that the Court had no jurisdiction to entertain the Greek Appli-

cation in the circumstances in which it was seised thereof, and that consequently the Government of Turkey did not intend to appoint an agent or file a Counter-Memorial.

9. On 25 April 1978, the Court, taking account of a request by the Government of Greece, fixed 4 October 1978 as the date for the opening of the oral proceedings on the question of the jurisdiction of the Court. On 11 September 1978, a request was made by Greece that the opening of the oral proceedings be postponed for a substantial period. The Court, after taking into account the views of both interested States and the course of the proceedings since the Application was filed, considered that such a postponement was not justified and that the hearings, being limited to the question whether the Court had jurisdiction to entertain the dispute, did not affect the issues of substance dividing the parties, which were the subject of negotiations between them. Consequently, the Court decided to defer the opening of the oral proceedings only until 9 October 1978.

10. On 9, 10, 11, 12, 13, 16 and 17 October 1978, public hearings were held, in the course of which the Court heard the oral argument, on the question of the Court's jurisdiction, advanced by Mr. Sotirios Konstantopoulos, Agent of Greece, Mr. Constantin Economides, Agent, advocate and counsel, and Mr. Daniel O'Connell, Q.C., Mr. Roger Pinto, Mr. Paul De Visscher, Mr. Prosper Weil and Mr. Dimitrios Evrigenis, counsel, on behalf of the Government of Greece. The Turkish Government was not represented at the hearings.

11. The Government of Burma requested that the pleadings and annexed documents in the case should be made available to it in accordance with Article 48, paragraph 2, of the Rules of Court. Greece and Turkey having been consulted, and no objection having been made to the Court, it was decided to accede to the request.

12. In the course of the written proceedings, the following submissions were presented on behalf of the Government of Greece:

in the Application:

"The Government of Greece requests the Court to adjudge and declare:

(i) that the Greek islands referred to in paragraph 29 [of the Application], as part of the territory of Greece, are entitled to the portion of the continental shelf which appertains to them according to the applicable principles and rules of international law;

(ii) what is the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to Greece and Turkey in the Aegean Sea in accordance with the principles and rules of international law which the Court shall determine to be applicable to the delimitation of the continental shelf in the aforesaid areas of the Aegean Sea;

(iii) that Greece is entitled to exercise over its continental shelf sovereign and exclusive rights for the purpose of researching and exploring it and exploiting its natural resources;

(iv) that Turkey is not entitled to undertake any activities on the Greek continental shelf, whether by exploration, exploitation, research or otherwise, without the consent of Greece;

(v) that the activities of Turkey described in paragraphs 25 and 26 [of the Application] constitute infringements of the sovereign and exclusive rights of Greece to explore and exploit its continental shelf or to authorize scientific research respecting the continental shelf;

(vi) that Turkey shall not continue any further activities as described above in subparagraph (iv) within the areas of the continental shelf which the Court shall adjudge appertain to Greece."

in the Memorial:

"... the Government of Greece requests the Court to adjudge and declare that, whether, on the basis of Article 17 of the General Act for the Pacific Settlement of International Disputes, 1928, read with Articles 36, paragraph 2, and 37 of the Statute of the Court, or on the basis of the joint communiqué of Brussels dated 31 May 1975, the Court is competent to entertain the dispute between Greece and Turkey on the subject of the delimitation of the continental shelf appertaining to the two countries in the Aegean Sea".

13. At the close of the oral proceedings, the following written submission was filed in the Registry of the Court on behalf of the Government of Greece:

"The Government of Greece submits that the Court be pleased to declare itself competent to entertain the dispute between Greece and Turkey on the delimitation of the respective areas of continental shelf appertaining to either country in the Aegean."

14. No pleadings were filed by the Government of Turkey, and it was not represented at the oral proceedings; no formal submissions were therefore made by that Government. The attitude of the Government of Turkey with regard to the question of the Court's jurisdiction has however been defined in its communications to the Court of 25 August 1976, 24 April 1978, and 10 October 1978. The last-mentioned communication was received in the Registry on the morning of the second day of the public hearings, and was transmitted to the Agent of Greece by the Registrar later the same day. In these circumstances account can be taken of its contents only to the extent that the Court finds appropriate in discharging its duty, under Article 53 of the Statute, to satisfy itself as to its jurisdiction to entertain the Application.

* * *

15. It is to be regretted that the Turkish Government has failed to appear in order to put forward its arguments on the issues arising in the present phase of the proceedings and the Court has thus not had the assistance it might have derived from such arguments or from any evidence adduced in support of them. Nevertheless, the Court, in accordance with its Statute and its settled jurisprudence, must examine *proprio motu* the question of its own jurisdiction to consider the Application of the Greek

Government. Furthermore, in the present case the duty of the Court to make this examination on its own initiative is reinforced by the terms of Article 53 of the Statute of the Court. According to this provision, whenever one of the parties does not appear before the Court, or fails to defend its case, the Court, before finding upon the merits, must satisfy itself that it has jurisdiction. Before proceeding further, however, the evolution of the main events leading to the bringing of this dispute before the Court must be outlined.

* * *

16. Towards the end of 1973 the Turkish Government granted licences to carry out exploration for petroleum in submarine areas of the Aegean Sea, including areas which encroached upon the continental shelf which, according to the Greek Government, appertains to certain Greek islands. By a Note Verbale of 7 February 1974, the Greek Government, basing itself on international law as codified by Articles 1 *(b)* and 2 of the 1958 Geneva Convention on the Continental Shelf, questioned the validity of the licences granted by Turkey, reserved its sovereign rights over the continental shelf adjacent to the coasts of the said islands, and contended that the continental shelf required to be delimited between the two States on a basis of equidistance by means of a median line. The Turkish Government replied, by a Note Verbale of 27 February 1974, that "the Greek Islands situated very close to the Turkish coast do not possess a [continental] shelf of their own", and disputed the applicability of the principle of equidistance; while reserving its rights, it stated that it considered it appropriate to seek by means of agreement a solution in conformity with the rules of international law. In its reply of 24 May 1974, the Greek Government indicated that it was not opposed to a delimitation based on the provisions of present day positive international law, "as codified by the 1958 Geneva Convention on the Continental Shelf"; the Turkish Government in its turn, on 5 June 1974, stated that it was the duty of the two Governments to use every endeavour to bring about agreed solutions of the various problems arising by reason of the fact that they were neighbours in the Aegean Sea; it expressed readiness to enter into negotiations for the delimitation of the continental shelf between the two countries.

17. On 29 May 1974 the Turkish vessel *Candarli* began a programme of exploration in waters which were wholly or partly superjacent to the continental shelf in the Aegean Sea which, according to the Greek Government, appertains to Greece. The Greek Government, in a Note of 14 June 1974, observed that this exploration was a breach of Greece's exclusive sovereign rights and lodged a vigorous protest. The Turkish Government, in its reply of 4 July 1974, refused to accept the Greek protest. Another protest in respect of further licences for exploration was made by Greece

on 22 August 1974; Turkey refused to accept it on 16 September 1974, and repeated the suggestion of negotiations.

18. On 27 January 1975 the Greek Government proposed to the Turkish Government that the differences over the applicable law as well as over the substance of the matter be referred to the International Court of Justice, and it stated that, without prejudice to its right to initiate Court proceedings unilaterally, it saw considerable advantages in reaching jointly with the Turkish Government a special agreement for reference to the Court. On 6 February 1975 the Turkish Government answered expressing the hope that the Government of Greece would "agree, with priority, to enter into negotiations . . . on the question of the Aegean Sea continental shelf", adding that in principle it considered favourably the proposal to refer the dispute jointly to the Court. To this effect it proposed talks between the two Governments at ministerial level. On 10 February 1975 the Greek Government agreed that talks should be held in order to draft the terms of a special agreement.

19. On 17-19 May 1975 the Ministers for Foreign Affairs of Greece and Turkey met in Rome and gave initial consideration to the text of a special agreement concerning the submission of the matter to the International Court of Justice. On 31 May 1975 the Prime Ministers of the two countries met in Brussels and issued the joint communiqué relied on as conferring jurisdiction in this case, the terms of which will be examined in detail later in the present Judgment. They also defined the general lines on the basis of which the subsequent meetings of the representatives of the two Governments would take place and decided to bring forward the date of a meeting of experts concerning the question of the continental shelf of the Aegean Sea.

20. In a Note of 30 September 1975 the Turkish Government reiterated the view it had advanced at the meeting in Rome, that it would not be in the interest of the two countries to submit the dispute to the Court without first attempting meaningful negotiations. It recalled that in Rome it had also expressed the view that delimitation negotiations should take place parallel with the preparation of a special agreement, and that it had been agreed that those issues which could not be resolved by negotiations would be jointly submitted to the Court. In a Note of 2 October 1975 the Greek Government contended that it had been agreed in Brussels on 31 May 1975 that the issue would first be formally submitted to the Court and that talks with a view to an eventual agreed solution were not excluded to follow.

21. In a Note of 18 November 1975 the Turkish Government disputed this interpretation and invited the Greek Government to conduct meaningful negotiations for an agreed equitable settlement, as well as for considering joint submission of unresolved but well-defined legal issues, if necessary, to the Court. In a Note of 19 December 1975 the Greek

Government expressed the view that since negotiation was in any case necessary in order to proceed with the drafting of the special agreement, it was understood that if in the course of that negotiation proposals were made for the elimination of points of disagreement concerning delimitation, those proposals would be given appropriate consideration. In accordance with the views expressed in the above communications, meetings of experts took place in Berne from 31 January to 2 February and on 19 and 20 June 1976, but no agreement was reached.

22. On 13 July 1976 a Turkish Government press release was issued concerning researches that would be undertaken by the Turkish seismic research vessel *Mta-Sismik I* in the Turkish territorial sea and the high seas, and in a statement on Turkish radio on 24 July 1976 the Turkish Foreign Minister indicated that these researches would be carried out in the areas of the Aegean claimed by Turkey, and could extend to all areas of the Aegean outside the territorial waters of Greece. When the vessel pursued its researches into areas where, in the view of the Greek Government, the continental shelf appertains to Greece, that Government made a diplomatic protest to the Turkish Government in a Note Verbale dated 7 August 1976, and on 10 August 1976 referred the matter simultaneously to the International Court of Justice and to the Security Council.

23. On 25 August 1976 the Security Council adopted resolution 395 (1976) to which the Court has referred in its Order of 11 September 1976. The operative part of the Security Council resolution called on the two Governments "to resume direct negotiations over their differences" and appealed to them "to do everything within their power to ensure that this results in mutually acceptable solutions" (para. 3). Paragraph 4 of this resolution invited:

> ". . . the Governments of Greece and Turkey in this respect to continue to take into account the contribution that appropriate judicial means, in particular the International Court of Justice, are qualified to make to the settlement of any remaining legal differences that they may identify in connection with their present dispute".

24. While the present case was pending before the Court, Greece and Turkey resumed their negotiations, in accordance with the Security Council resolution. Their Ministers for Foreign Affairs met in New York on 1 October 1976 and agreed that the question of the delimitation of the Aegean continental shelf should be the subject of negotiations between the two Governments with the aim of reaching a mutually acceptable settlement. There followed a meeting in Berne between representatives of the two Governments from 2 to 11 November 1976, which outlined the procedure for future negotiations. It was also agreed that the negotiations would be confidential.

25. The subsequent meeting of Ministers for Foreign Affairs of the two States in Brussels ended in a Joint Communiqué published on 11 December 1976 which expressed satisfaction with the previous meeting in Berne. At their next meeting on 29 January 1977 at Strasbourg, the two Ministers for Foreign Affairs exchanged views on the subject of the negotiations relating to the question of the continental shelf which were to begin in London on 31 January 1977. The Ministers met again at Strasbourg on 28 April 1977 and decided to continue negotiations on the subject of the delimitation of the continental shelf, fixing a meeting of their experts, which took place in Paris at the beginning of June 1977. Again on 9 December 1977 the Ministers agreed in Brussels that there should shortly be a meeting of the experts on the question of the continental shelf. This meeting took place in Paris in mid-February 1978.

26. The Prime Ministers of Greece and Turkey met at Montreux on 10-11 March 1978 and at Washington on 29 May 1978; they decided that a meeting between the Secretaries-General of the Foreign Ministries of Greece and Turkey should take place in Ankara on 4-5 July 1978. These officials, after their meeting in July, decided to meet again in Athens in September 1978. In Athens they agreed that "the bilateral talks related to the continental shelf question should be resumed at the appropriate level on or about the 1 of December 1978".

* * *

27. In his letter of 24 April 1978 to the Registrar, the Ambassador of Turkey to the Netherlands stated *inter alia*:

> "It should, in the view of the Government of Turkey, be recalled that that Application was filed although the two Governments had not yet begun negotiations on the substantive issue, as is clearly apparent from the contents of the Notes exchanged by the two Governments. It was however always contemplated between them that they would seek, through meaningful negotiations, to arrive at an agreement which would be acceptable to both parties."

The letter recalled that the Security Council, by its resolution 395 (1976), called upon both Governments "to settle their problems primarily by means of direct negotiations in order that these might result in mutually acceptable solutions". It argued that it was in pursuance of that resolution that the Berne Agreement of 11 November 1976 provided in Article 1 that:

> "The two Parties agree that the negotiations shall be frank, thoroughgoing and pursued in good faith with a view to reaching an agreement based on their mutual consent with regard to the delimitation of the continental shelf as between themselves."

28. After recalling the 10-11 March 1978 meeting at Montreux between the Prime Ministers, the letter claimed that:

> "The necessary conditions for the conduct of frank and serious negotiations, and the spirit which should motivate the parties concerned, with a view to the settlement of their problems by such negotiations, are not reconcilable with the continuation of international judicial proceedings."

Furthermore, in a Note Verbale to the Greek Government of 29 September 1978 concerning the Greek request for a postponement of the beginning of the oral proceedings in the case, the Turkish Government objected to the postponement, and expressed the opinion that:

> ". . . the discontinuance of the proceedings and the removal of the case from the list of the International Court of Justice would be more conducive to the creation of a favourable political climate for an agreed settlement".

29. The Turkish Government's attitude might thus be interpreted as suggesting that the Court ought not to proceed with the case while the parties continue to negotiate and that the existence of active negotiations in progress constitutes an impediment to the Court's exercise of jurisdiction in the present case. The Court is unable to share this view. Negotiation and judicial settlement are enumerated together in Article 33 of the Charter of the United Nations as means for the peaceful settlement of disputes. The jurisprudence of the Court provides various examples of cases in which negotiations and recourse to judicial settlement have been pursued *pari passu.* Several cases, the most recent being that concerning the *Trial of Pakistani Prisoners of War* (*I.C.J. Reports 1973,* p. 347), show that judicial proceedings may be discontinued when such negotiations result in the settlement of the dispute. Consequently, the fact that negotiations are being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function.

30. The above-mentioned observations of the Turkish Government might also be interpreted as making the point that there is no dispute between the parties while negotiations continue, so that the Court could not for that reason be seised of jurisdiction in this case. As the Court recognized in its Order of 11 September 1976, the existence of a dispute can hardly be open to doubt in the present case. Counsel for Greece correctly stated that there is in fact a double dispute between the parties:

> "There is a dispute about what the continental shelf boundaries in the Aegean Sea should be, and there is a dispute as to the method whereby this first dispute should be settled—whether by negotiation

alone or by submission to a tribunal competent to exercise jurisdiction in the matter, either following upon negotiations or even in the absence of them."

31. Again, in the Turkish Ambassador's letter of 24 April 1978, the further argument is advanced that the dispute between Greece and Turkey is "of a highly political nature". But a dispute involving two States in respect of the delimitation of their continental shelf can hardly fail to have some political element and the present dispute is clearly one in which "the parties are in conflict as to their respective rights". Greece has asked the Court to pronounce on its submissions "in accordance with the . . . principles and rules of international law". Turkey, for its part, has invoked legal grounds in reply to the Greek claim, such as the existence of "special circumstances". It is clear from the submissions in the Greek Application and Memorial, as well as in the observations in the various Turkish diplomatic communications to Greece, that Greece and Turkey are in conflict as to the delimitation of the spatial extent of their sovereign rights over the continental shelf in the Aegean Sea. Thus there are certain sovereign rights being claimed by both Greece and Turkey, one against the other and it is manifest that legal rights lie at the root of the dispute that divides the two States. The Court therefore finds that a legal dispute exists between Greece and Turkey in respect of the continental shelf in the Aegean Sea.

* * *

32. The Court will now proceed to the consideration of its jurisdiction with respect to this dispute. In paragraph 32 of the Application the Greek Government has specified two bases on which it claims to found the jurisdiction of the Court in the present dispute. Although it is said in paragraph 3 of the Greek Memorial on the question of jurisdiction that these two bases "mutually strengthen each other", they are quite distinct and will therefore be examined separately.

33. The first basis of jurisdiction is formulated in paragraph 32 (1) of the Application as follows :

> "Article 17 of the General Act for the Pacific Settlement of International Disputes, 1928, read together with Articles 36 (1) and 37 of the Statute of the Court. Respectively on 14 September 1931 and 26 June 1934, Greece and Turkey acceded to this instrument, which is still in force for both of them. The texts of these accessions were accompanied by declarations which are irrelevant to the present case."

34. Article 17 of the General Act of 1928 forms part of Chapter II of the Act, entitled "Judicial Settlement", and reads as follows:

> "All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice."

The Article thus provides, under certain conditions, for the reference to the former Permanent Court of International Justice of disputes with regard to which the parties are in conflict as to their respective rights. Article 37 of the Statute of this Court, however, states that:

> "Whenever a treaty or convention in force provides for reference of a matter to ... the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice."

The effect of that Article, as this Court emphasized in the *Barcelona Traction, Light and Power Company, Limited, Preliminary Objections,* case (*I.C.J. Reports 1964,* at pp. 31-39) is that, as between parties to the Statute, this Court is substituted for the Permanent Court in any treaty or convention in force, the terms of which provide for reference of a matter to the Permanent Court. Accordingly any treaty or convention providing for reference of any matter to the Permanent Court is capable as between the parties to the present Statute of furnishing a basis for establishing the Court's jurisdiction in regard to a dispute, on condition that the treaty or convention applies to the particular matter in question and is in force as between the parties to that dispute. Clearly, Article 17 of the General Act of 1928, here invoked by Greece, contains a jurisdictional clause which does provide for reference to the Permanent Court of certain specified matters, namely, "all disputes with regard to which the parties are in conflict as to their respective rights". It follows that, if the 1928 Act is considered to be a convention in force between Greece and Turkey and applicable to the "matter" which is the subject of the present dispute, the Act, read in combination with Article 37, and Article 36, paragraph 1, of the Statute, may suffice to establish the Court's jurisdiction in the present case.

35. The General Act came into force in accordance with its terms on 16 August 1929, and Greece became a party to the Act by depositing an instrument of accession on 14 September 1931, subject to certain reservations. Turkey likewise became a party to the Act by depositing an instrument of accession on 26 June 1934 which, also, was subject to certain reservations. In consequence, the General Act undoubtedly became a convention in force as between Greece and Turkey on the ninetieth day following the deposit of Turkey's instrument of accession, in accordance

with Article 44, paragraph 2, of the Act; nor is there any record of either Greece or Turkey having notified the Secretary-General, in conformity with Article 45, paragraph 3, of its denunciation of the Act. The Greek Government maintains that, in these circumstances, the General Act must be presumed to be still in force as between Greece and Turkey, in virtue of paragraph 2 of Article 45, under which the Act is expressed to remain in force for "successive periods of five years in the case of Contracting Parties which do not denounce it at least six months before the expiration of the current period". It further maintains that neither the reservations in Greece's own instrument of accession nor those in the Turkish instrument have any relevance to the present dispute, and that Article 17 of the General Act accordingly constitutes a valid basis for the exercise of the Court's jurisdiction in the present case under Article 36, paragraph 1, of the Statute.

36. The Turkish Government, on the other hand, in the observations which it transmitted to the Court with its letter to the Registrar of 25 August 1976, contested the Greek Government's right to invoke Article 17 of the General Act in the present case on both counts. It there took the position that the General Act is no longer in force and that, whether or not the General Act is in force, it is inapplicable as between Greece and Turkey. In this connection, the Turkish Government has emphasized "that at no time during the exchanges of documents and discussions concerning the continental shelf areas of the Aegean Sea has any Greek representative made any mention of the General Act of 1928".

*

37. In 1948, the General Assembly of the United Nations undertook a study of the text of the General Act of 1928 with a view to restoring its full efficacy, since this had been impaired in some respects as a result of the dissolution of the League of Nations and the disappearance of its organs. On 29 April 1949, the General Assembly adopted resolution 268A-III, by which it instructed the Secretary-General to prepare the text of a "Revised General Act for the Pacific Settlement of International Disputes" incorporating the amendments which it had adopted, and to hold it open to accession by States. Explaining the reasons for this instruction, the Preamble to the resolution, *inter alia,* stated:

> "*Whereas* the amendments hereafter mentioned are of a nature to restore to the General Act its original efficacy;
>
> *Whereas* these amendments will only apply as between States having acceded to the General Act as thus amended and, as a consequence, will not affect the rights of such States, parties to the Act as established on 26 September 1928, as should claim to invoke it in so far as it might still be operative."

The Secretariat, in a memorandum of 4 May 1948, had provided a list of the States which up to 31 July 1946 had acceded to the 1928 Act and that list included both Greece and Turkey. The publication *Multilateral treaties in respect of which the Secretary-General performs depositary functions—List of signatures, notifications, accessions, etc., as at 31 December 1977* lists Greece and Turkey.

*

38. The question of the status of the General Act of 1928 as a convention in force for the purpose of Article 37 of the Statute of the Court has already been raised, though not decided, in previous cases before the Court. In the *Nuclear Tests* cases Australia and New Zealand each took the position that the 1928 Act continues in force for States which have not denounced it in conformity with Article 45 of the Act, whereas France informed the Court that, as a result of the dissolution of the League of Nations, it considered the Act to be no longer in force (*I.C.J. Pleadings, Nuclear Tests,* Vol. II, p. 348). Similarly, in the *Trial of Pakistani Prisoners of War* case, Pakistan invoked the 1928 Act as a basis for the exercise of the Court's jurisdiction in that case, whereas in a letter to the Court, the respondent State, India, stated that the 1928 Act "is either not in force or, in any case, its efficacy is impaired by the fact that the organs of the League of Nations and the Permanent Court of International Justice to which it refers have now disappeared" (*I.C.J. Pleadings, Trial of Pakistani Prisoners of War,* p. 143). The Court also has cognizance of the fact that on 10 January 1974 the Secretary-General of the United Nations received a communication from the Government of the French Republic reaffirming its view as stated above, and notifying him that, with respect to any State or any institution that might contend that the General Act is still in force, the letter was to be taken as constituting a denunciation of the Act in conformity with Article 45 thereof. The Court is further aware that in a letter to the Secretary-General, received on 8 February 1974, the United Kingdom, after referring to the fact that doubts had been raised as to the continued legal force of the General Act, gave notice of its denunciation of the Act in accordance with Article 45, paragraph 2, in so far as it might be considered as still in force, and that by a notification of 15 September 1974 India informed the Secretary-General that it had never regarded itself as bound by the Act since its independence, whether by succession or otherwise. At the same time, the Court observes that a considerable number of other States, listed by the Secretary-General as at 31 December 1977 as having acceded to the Act, have not up to the present date taken steps to denounce it nor voiced any doubts regarding the status of the Act today.

39. Although under Article 59 of the Statute "the decision of the Court has no binding force except between the parties and in respect of that

particular case", it is evident that any pronouncement of the Court as to the status of the 1928 Act, whether it were found to be a convention in force or to be no longer in force, may have implications in the relations between States other than Greece and Turkey. Moreover, in the present proceedings the question has also been raised of the actual relevance of the General Act as a potential source of the Court's jurisdiction with respect to the subject-matter of the present dispute. In paragraph 32 (1) of the Application, the text of which has already been set out in paragraph 33 above, the Greek Government itself, when invoking the General Act, drew attention to the fact that both the Greek and Turkish instruments of accession to the Act were accompanied by declarations, and categorically affirmed that these declarations "are irrelevant to the present case". These declarations contained reservations to the Act made respectively by Greece and Turkey, which are for the most part without relevance to the present dispute. But this is not the case in regard to reservation *(b)* contained in the declaration which accompanied Greece's instrument of accession; for in its observations of 25 August 1976 the Turkish Government unequivocally took the position that, whether or not the General Act is assumed to be still in force, it is subject to a clause, i.e., reservation *(b),* which would exclude the Court's competence with respect to the present dispute. The Turkish Government there declared that in conformity with Article 39, paragraph 3, of the Act, "Turkey opposes reservation *(b)* to the Greek Application". In its further letter to the Registrar of 24 April 1978 the Turkish Government informed the Court that it maintained its view that the Court has no jurisdiction to entertain the Greek Application for the reasons which it had explained in its earlier letter of 25 August 1976.

40. The Court is thus confronted with a situation in which, even if the General Act is to be considered a convention in force, its whole relevance as a potential source of the Court's jurisdiction in a matter concerning a coastal State's sovereign rights over the continental shelf is contested by the Turkish Government. Clearly, if the Turkish Government's view of the effect of reservation *(b)* on the applicability of the Act as between Greece and Turkey with respect to the subject-matter of the present dispute is found by the Court to be justified, a finding on the question whether the Act is or is not a convention in force today ceases to be essential for the Court's decision regarding its jurisdiction to entertain the present Application. As was pointed out by the Court in the *Certain Norwegian Loans* case, when its competence is challenged on two separate grounds, "the Court is free to base its decision on the ground which in its judgment is more direct and conclusive" (*I.C.J. Reports 1957,* p. 25). Accordingly, taking account of the nature of the issue raised in the present proceedings concerning the General Act, the Court will at once address itself to the effect of reservation *(b)* on the applicability of the Act with respect to the subject-matter of the present dispute.

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41. The Greek Government has advanced the contention at the public hearings that reservation *(b)* should, in any event, be left out of consideration altogether by the Court because the question of its effect on the application of the General Act with respect to the present dispute was not raised by Turkey as a preliminary objection in conformity with Article 67 of the Rules of Court. Consequently, in its view, since Turkey has not filed a preliminary objection in accordance with the conditions laid down in Article 67 of the Rules, it cannot be regarded as having "enforced" the reservation in conformity with Article 39, paragraph 3, of the General Act.

42. The Greek Government recognizes that "the Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law" (*Mavrommatis Palestine Concessions, P.C.I.J., Series A, No. 2,* at p. 34); and also that in previous cases where the respondent has not appeared, the Court has taken into account all the elements before it, including those supplied by extra-procedural communications from the respondent, for the purpose of satisfying itself as to whether its jurisdiction was established. It further recognizes that, even when the respondent has not informed the Court of its attitude, the Court has *proprio motu* enquired into the possible objections to its jurisdiction in the case. It maintains, however, that in previous cases the Court has never gone further than to take account of "objections", "legal arguments" or "contentions" advanced by the respondent or conceived of by the Court (cf. *Fisheries Jurisdiction, I.C.J. Reports 1973,* at pp. 7-8; *Nuclear Tests, I.C.J. Reports 1974,* at pp. 257 and 461). It then asks whether, in a case like the present, the Court can go so far as to substitute itself for the absent government by enforcing *proprio motu* in place of that government the reservation of the Applicant, thus assimilating the extra-procedural expression of a desire to take advantage of the reservation to the procedural expression of a decision to enforce it. To do so, the Greek Government suggests, would be to take liberties with the provisions both of Article 39, paragraph 3, of the General Act and of Article 67 of the Rules.

43. The procedural objection advanced by Greece to reservation *(b)*'s being taken into consideration does not appear to the Court to be convincing. According to the information before the Court, no mention was made of the General Act during the negotiations, so that the first mention of the Act by Greece in the present dispute was in its Application filed on 10 August 1976, with which it also filed a request for interim measures of protection. It was only then that the Turkish Government had occasion to consider its position regarding the application of the General Act to the present dispute. On 18 August 1976, the Greek and Turkish Governments were informed, in conformity with Article 66, paragraph 8, of the Rules of Court, that public hearings would open on 25 August 1976 to afford the parties the opportunity of presenting their observations on the Greek request for the indication of provisional measures. On 23 August the

Registrar, at the direction of the Court, informed the Turkish Ambassador to the Netherlands that his Government had the right to address to the Court in writing any observations that it might have on the Greek request. It was in these circumstances that, by its letter of 25 August 1976, the Turkish Government transmitted to the Court the document entitled "Observations of the Government of Turkey on the request by the Government of Greece for provisional measures of protection dated The Hague, 10 August 1976". In those observations the Turkish Government specifically referred to the right conferred upon it by Article 39, paragraph 3, of the General Act to invoke Greece's reservation *(b)* on the basis of reciprocity, and then stated: "In conformity with this provision, Turkey opposes reservation *(b)*." In the view of the Court, that formal statement, made in response to a communication from the Court, must be considered as constituting an "enforcement" of the reservation within the meaning of, and in conformity with, Article 39, paragraph 3, of the Act.

44. The Turkish Government, it is true, was not represented at the public hearings on Greece's request for the indication of provisional measures, and did not afterwards file a preliminary objection or take any steps in the proceedings. But there is no provision in the Rules of Court which excludes the submission of written observations on a request for provisional measures; nor is there any provision which excludes the raising of questions of jurisdiction in written observations submitted in proceedings on the indication of provisional measures. On the contrary, in view of the urgency of a request for provisional measures, written communications not submitted through an agent but either directly or through the Ambassador in The Hague have invariably been admitted by the Court; while one of the very purposes of such communications has commonly been to raise questions as to the competence of the Court with respect to the particular case (*Anglo-Iranian Oil Co., I.C.J. Reports 1951,* p. 91; *Fisheries Jurisdiction, I.C.J. Reports 1972,* pp. 14 and 32; *Nuclear Tests, I.C.J. Reports 1973,* pp. 100 and 136-137; *Trial of Pakistani Prisoners of War, I.C.J. Reports 1973,* p. 329).

45. In the present case, the Turkish Government's observations were immediately communicated to the Greek Agent, and they were referred to by counsel for Greece during the hearings concerning the request for interim measures. Indeed, counsel for Greece then expressly recognized that by reason of the title given to the document the Turkish Government had placed itself "within the context of Article 66, paragraph 8, of the Rules of Court", adding:

> "Thus, not only has an opportunity of presenting observations been given to Turkey, but Turkey has in fact, in the letter which it has sent to the Court and in the document, availed itself of that opportunity of presenting observations."

46. The Court itself, in its Order of 11 September 1976 took due notice of the Turkish Government's observations (*I.C.J. Reports 1976,* p. 5, paras. 7 and 8). It also called attention to the invocation by Turkey of reservation *(b)* in Greece's instrument of accession, and set out the text of the reservation (*ibid.,* p. 8, para. 19). In that Order, moreover, the Court expressly stated that, "having regard to the position taken by the Turkish Government in its observations communicated to the Court on 26 August 1976, that the Court has no jurisdiction to entertain the Greek Application", it was "necessary to resolve first of all the question of the Court's jurisdiction with respect to the case" (*ibid.*, p. 13, para. 45). Accordingly, after giving its finding on the request for interim measures, the Court went on to decide that the present proceedings should be addressed to "the question of the Court's jurisdiction to entertain the dispute".

47. In the procedural circumstances of the case it cannot be said that the Court does not now have before it an invocation by Turkey of reservation *(b)* which conforms to the provisions of the General Act and of the Rules of Court. Nor can it be said that the Court substitutes itself for the Turkish Government if it now takes cognizance of a reservation duly invoked *in limine litis* in the proceedings on the request for interim measures. It would not discharge its duty under Article 53 of the Statute if it were to leave out of its consideration a reservation, the invocation of which by the Respondent was properly brought to its notice earlier in the proceedings. It follows that the Court has now to examine the scope of reservation *(b)* and its application to the present dispute.

* *

48. The text of the reservations in Greece's instrument of accession reads as follows :

> "Sont exclus des procédures décrites par l'Acte général, sans en excepter celle de conciliation visée à son chapitre I:
>
> *a)* les différends nés de faits antérieurs, soit à l'adhésion de la Grèce, soit à l'adhésion d'une autre Partie avec laquelle la Grèce viendrait à avoir un différend;
>
> *b)* les différends portant sur des questions que le droit international laisse à la compétence exclusive des Etats et, notamment, les différends ayant trait au statut territorial de la Grèce, y compris ceux relatifs à ses droits de souveraineté sur ses ports et ses voies de communication."

[Translation]

> "The following disputes are excluded from the procedures described in the General Act, including the procedure of conciliation referred to in Chapter I:

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

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

49. The Greek Government maintains on various grounds that reservation *(b)* cannot be considered as covering the present dispute regarding the continental shelf of the Aegean Sea. One of those grounds consists of a contention that, when read correctly according to its terms, reservation *(b)* does not cover all disputes relating to the territorial status of Greece but only such as both relate to its territorial status and at the same time concern "questions which by international law are solely within the domestic jurisdiction of States". On this basis, it argues that, as the delimitation of the continental shelf cannot be considered a question "solely within the domestic jurisdiction of States", the subject-matter of the present dispute is not covered by reservation *(b)*. Since this ground is based on an essentially grammatical interpretation of the reservation, the Court will examine it first.

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50. The grammatical argument hinges upon the interpretation of the words "*et, notamment,*" ("and in particular") which precede the reference to "*les différends ayant trait au statut territorial de la Grèce* (disputes relating to the territorial status of Greece)". Those words are said by the Greek Government to make it plain that the reference to "disputes relating to the territorial status of Greece" was not intended to designate an autonomous category of disputes additional to the category of disputes concerning matters solely within domestic jurisdiction. The effect of those words, according to the Greek Government, is to show that in reservation *(b)* "disputes relating to the territorial status of Greece" are included within the description of disputes concerning matters solely within domestic jurisdiction, and are there mentioned merely as a particular example of such disputes which it was desired to emphasize.

51. In support of this interpretation of the words "*et, notamment,*" the Greek Government invokes the authority of Robert's *Dictionnaire alphabétique et analogique de la langue française* (Vol. IV) which explains "*notamment*" as meaning "*d'une manière qui mérite d'être notée*" (in a way which deserves to be noted), and adds in brackets: "*sert le plus souvent à attirer l'attention sur un ou plusieurs objets particuliers faisant partie d'un ensemble précédemment désigné ou sous-entendu*" (most often used to draw attention to one or more particular objects forming part of a previously

designated or understood whole). Particular stress is then laid by the Greek Government on the phrases given by Robert to illustrate the use of the word *notamment,* in the majority of which the word is preceded by the word *et,* but still denotes merely a particular instance of a wider genus or category. The Greek Government also cites similar examples of this use of "*et notamment*" given in the *Dictionnaire de l'Académie française* and in Littré, *Dictionnaire de la langue française.* On the basis of this linguistic evidence, it maintains that the natural, ordinary and current meaning of this expression absolutely precludes the Greek reservation from being read as covering disputes regarding territorial status in addition to, and quite separately from, disputes regarding matters of domestic jurisdiction.

52. The grammatical interpretation of reservation *(b)* advanced by Greece leads to a result which is legally somewhat surprising. Disputes concerning matters of "domestic jurisdiction" and disputes relating to "territorial status" are different concepts which, in treaty provisions, including Article 39, paragraph 2, of the General Act, and in reservations to treaties or to acceptances of jurisdiction under Article 36, paragraph 2, of the Statute, have been kept quite separate and distinct. Furthermore, the integration of "disputes relating to territorial status" within the category of disputes concerning matters of "domestic jurisdiction", largely deprives the former of any significance. Consequently, only if the grammatical arguments were compelling and decisive would the Court be convinced that such is the effect which ought to be given to the words "*et, notamment,*" in reservation *(b).* But those arguments do not appear to the Court to be so compelling as has been suggested.

53. In the first place, the grammatical argument overlooks the commas placed both before and after "*notamment*". To put the matter at its lowest, one possible purpose of these commas might have been to make it clear that in the phrase "*et, notamment, les différends*" etc., the word "*et*" is intended to be a true conjunctive introducing a category of "*différends*" additional to those already specified.

54. Another point overlooked by the argument is that the meaning attributed to "*et, notamment,*" by Greece is grammatically not the only, although it may be the most frequent, use of that expression. Robert's *Dictionnaire* itself goes no further than to say of the word *notamment* that it is "most often" used to draw attention to one of several particular objects forming part of a collectivity previously indicated or implied. The question whether in the present instance the expression "*et, notamment,*" has the meaning attributed to it by Greece thus depends on the context in which those words were used in Greece's instrument of accession and is not a matter simply of their preponderant linguistic usage. Even a purely grammatical interpretation of reservation *(b),* therefore, leaves open the possibility that the words "*et, notamment, les différends ayant trait au statut territorial de la Grèce*" were intended to specify an autonomous category of disputes additional to those concerning matters of domestic jurisdiction,

which were also specifically "excluded from the procedures described in the General Act".

55. In any event, "the Court cannot base itself on a purely grammatical interpretation of the text" (*Anglo-Iranian Oil Co., I.C.J. Reports 1952,* p. 104). A number of considerations of a substantive character point decisively to the conclusion that reservation *(b)* in fact contained two separate and autonomous reservations. One is that the making of reservations to the General Act was expressly authorized and regulated by Article 39, which allowed only the reservations "exhaustively enumerated" in paragraph 2 of the Article, namely:

> "*(a)* Disputes arising out of facts prior to the accession either of the Party making the reservation or of any other Party with whom the said Party may have a dispute;
> *(b)* Disputes concerning questions which by international law are solely within the domestic jurisdiction of States;
> *(c)* Disputes concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories."

When a multilateral treaty thus provides in advance for the making only of particular, designated categories of reservations, there is clearly a high probability, if not an actual presumption, that reservations made in terms used in the treaty are intended to relate to the corresponding categories in the treaty. Nor does the fact that the instrument of accession includes in a single paragraph two categories of disputes which are listed in the treaty as separate categories, by itself, in any way diminish that probability. When making reservations under the General Act, States have not, as a rule, meticulously followed the pattern of reservations set out in Article 39, paragraph 2; and they have not infrequently grouped together in one paragraph two or more reservations listed separately in the Act.

56. In the present instance, the very structure of reservation *(b)* hardly seems consistent with an intention to make "disputes relating to the territorial status of Greece", which are placed by the General Act in one category, merely an example of disputes concerning questions of domestic jurisdiction, which are placed by the Act in a quite different category. If that had been the intention at the time, it would have been natural for those who drafted Greece's instrument of accession to put the words *y compris* (including) where the words *et, notamment,* (and in particular) in fact appear in reservation *(b)* and the words *et, notamment,* where the words *y compris* are now found. But that is not how reservation *(b)* was drafted.

57. A further consideration is that Greece's declaration accepting compulsory jurisdiction under the optional clause of the Statute of the Permanent Court contained a provision which, indisputably, was an autonomous reservation of "disputes relating to the territorial status of Greece". That declaration, made on 12 September 1929, only two years

before Greece's accession to the General Act, was stated to be subject to two reservations:

> "*(a)* disputes relating to the territorial status of Greece, including disputes relating to its rights of sovereignty over its ports and lines of communication;
> *(b)* disputes relating directly or indirectly to the application of treaties or conventions accepted by Greece and providing for another procedure".

It can hardly be supposed that Greece should at the same time have intended to give a scope to its reservation of "disputes relating to the territorial status of Greece" which differed fundamentally from that given to it both in the General Act and in its declaration under the optional clause. That Greece should have had such an intention seems all the more improbable in that in 1934 and again in 1939 it renewed its declaration under the optional clause without modifying in any way the form of its reservation of "disputes relating to the territorial status of Greece".

58. The Greek Government has suggested that an improvement in the political climate of the time enabled Greece to dispense with an autonomous reservation of disputes relating to its territorial status, and to content itself with the integration of those disputes into its domestic jurisdiction reservation. But this would not explain why Greece should then have maintained an autonomous reservation of disputes relating to territorial status in its acceptance of the optional clause. Another difficulty is that accession to the General Act involved an even wider risk of claims than acceptance of the optional clause; for the pacific settlement procedures of the General Act are not limited to the judicial settlement of legal disputes. They also provide for conciliation with respect to disputes "of every kind", and even for the possibility, under certain conditions, of arbitration of political disputes on the basis that the arbitrators may decide *ex aequo et bono*. It hardly seems likely, therefore, that Greece should have intended to have curtailed the protection given by its reservation of disputes relating to territorial status, when subjecting itself to the wider range of procedures contained in the Act.

59. Equally unconvincing is a suggestion that, although the scope of the "territorial status" reservation was reduced by its incorporation in the reservation of questions of domestic jurisdiction, Greece thereby obtained a "reinforced barrage", a "qualitatively enhanced protection" and a "doubly-bolted" door against the claims which it was particularly concerned to guard against. This suggestion takes no account of the legal implications of incorporating "disputes relating to territorial status" into a reservation of questions of "domestic jurisdiction", as these had been explained by the Permanent Court in 1923 in its Advisory Opinion on the *Nationality Decrees Issued in Tunis and Morocco (P.C.I.J., Series B, No. 4)*. The

Permanent Court there observed that the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question and depends upon "the development of international relations". It pointed out that a matter which is not, in principle, regulated by international law and is thus a matter within the State's domestic jurisdiction, will cease to be such if the State has undertaken obligations towards other States with respect to that matter. Consequently, and in the light of historical circumstances now to be described, it is hardly conceivable that Greece intended to reduce the scope of its "territorial status" reservation by integrating it into its "domestic jurisdiction" reservation.

60. Greece's main preoccupation in the years following the First World War, so the Court was informed, was to guard against the revival of Bulgarian aspirations to recover direct access to the Aegean Sea which it had lost as a result of the territorial changes effected by the peace treaties. By the Treaty of Neuilly of 27 November 1919, Bulgaria had renounced all its rights and titles over areas of Thrace, but the Principal Allied and Associated Powers at the same time "undertook to ensure the economic outlets of Bulgaria to the Aegean Sea" (Art. 48). Article 4 of the Treaty of Sèvres of 10 August 1920 relating to Thrace, put into force by Protocol XVI of the Lausanne Conference, provided that Greece "in order to ensure to Bulgaria free access to the Aegean Sea" recognized her freedom of transit "over the territories and in the ports assigned to Greece under the present Treaty". The expectation that Bulgaria might seek to secure a revision of this territorial settlement was the source of Greece's preoccupation and, also, as will be shown shortly, its motive for inserting in its declaration under the optional clause a reservation of disputes relating to its territorial status. In the present connection, however, what needs to be emphasized is that the territorial settlement, against the revision of which Greece's "territorial status" reservation was designed to provide a safeguard, consisted essentially of a complex of rights and obligations established by treaties. Consequently, having regard to the implications of the *Nationality Decrees* Opinion, that territorial settlement was by its very nature one which could not legally be considered as capable of falling within the concept of questions of domestic jurisdiction. It follows that, by integrating its territorial status reservation into its reservation of questions of domestic jurisdiction, Greece would automatically have deprived itself of the protection which the former reservation would otherwise have given it against attempts to use the General Act as a means of effecting a revision of the territorial settlement established by the peace treaties.

61. This basic objection to the Greek Government's way of interpreting reservation *(b)* is not removed by another suggestion made in the public hearings. This was that the series of treaties connected with the territorial arrangements and the treatment of minorities provided their own special procedures for the settlement of disputes, which had priority over those of

the General Act under Article 29, so that an autonomous reservation of disputes relating to territorial status was not really indispensable to Greece. The difficulty with this suggestion, however, is that these procedures by no means covered all possible claims relating to territorial status and to rights of sovereignty over ports and lines of communication. It is true that the Treaty of Neuilly provided for recourse to the Permanent Court or to other methods of pacific settlement on questions relating to minorities and certain other matters, but special procedures were never established for the settlement of disputes concerning the parts of the Treaty dealing with Bulgaria's economic outlet to the Aegean Sea.

62. The Court is not, therefore, convinced by the several explanations which have been put forward to account for the difference between Greece's territorial status reservation in its declaration under the optional clause and that in its instrument of accession to the General Act, if the latter instrument is given the meaning contended for by Greece. It also appears significant that no support for any of these explanations can be found in the contemporary evidence placed before the Court relating to the making of Greece's declaration under the optional clause in 1929 and to the deposit of its instrument of accession in 1931. This evidence will now be examined.

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63. During the public hearings on its request for interim measures, the Greek Government submitted to the Court a document referred to by counsel as "the *travaux préparatoires* of the reservation". This was a letter addressed by M. Politis to the Greek Foreign Minister on 9 September 1928, setting out the reservations which he recommended that Greece should make to its acceptance of the Permanent Court's jurisdiction under the optional clause. M. Politis was at that time the Rapporteur for the drafting of the General Act which was then nearing completion, and in that letter he said, *inter alia*:

> "I think that it would be wise to safeguard ourselves against an eventual application of Bulgaria on matters related to our territorial status, to the access (of Bulgaria) to the Aegean and to the protection of Bulgarian-speaking minorities in Greece."

He went on to suggest a possible text of a declaration to give effect to his recommendation which contained the following three reservations:

(a) disputes relating to the territorial status of Greece;
(b) disputes relating to its rights of sovereignty over its ports and lines of communication;
(c) disputes for the settlement of which the treaties signed by it provide another procedure.

64. That letter confirms in the clearest manner the Greek Government's explanation of its motive in introducing a "territorial status" reservation into its declaration under the optional clause. But it also shows that this reservation was originally conceived of and formulated as a specific and autonomous reservation. In the actual declaration the second reservation, "disputes relating to its rights of sovereignty over its ports and lines of communication", was tacked on to, and specifically "included" in, the first reservation of "disputes relating to territorial status". The reason, no doubt, was that the disputes covered by the second reservation were realized to be cases of "disputes relating to the territorial status of Greece". At any rate, this change in the presentation of the first and second reservations only served to emphasize both the generic and the autonomous character of Greece's reservation of disputes relating to its "territorial status". Another point which may be deduced from M. Politis's letter is that he clearly did not think a reservation of disputes for the settlement of which treaties provided another procedure would necessarily cover all disputes relating to Greece's "territorial status"; otherwise, he would not have recommended the inclusion of two separate, autonomous reservations to cover specifically each of these two categories of disputes.

65. In response to a question put by the Court on 9 October 1978, the Greek Government submitted certain internal documents relating to the preparation of Greece's instrument of accession to the General Act. These documents included a first draft of the *projet de loi* to be presented to the Greek Chambre des députés for ratification of the instrument of accession, the text of the *projet de loi* as finally presented, and the *exposé des motifs* explaining the *projet de loi* to the Chambre des députés; all of the documents being accompanied by certified translations into the French language.

66. The Court considers that the intention to make an autonomous reservation as to matters relating to territorial status is put beyond doubt by the explanation of the reservation which was given by the Government to the Chambre des députés in the *exposé des motifs* accompanying the *projet de loi.* The final paragraph of this document stated:

> "We have judged it necessary to proceed to that accession subject to certain reservations. The latter are those enumerated in Article 2 of the *projet de loi* submitted, and consist, on the one hand, of the repetition of one of the two reservations we formulated when we accepted the compulsory jurisdiction of the Permanent Court—reservation *(b)*—the other being established in Article 29 of the Act; and, on the other hand, of the reservations enumerated in Article 39 of the Act."

As the Greek Agent confirmed in reply to a question put by the Court, the words "the repetition of one of the two reservations which we formulated when we accepted the compulsory jurisdiction of the Permanent Court" refer unequivocally to the reservation of "territorial status" already used in Greece's declaration under the optional clause and thus already known to the Chambre des députés. The *projet de loi* was approved without discussion and without change, so that reservation *(b)* must be presumed to have been included in Greece's instrument of accession on the basis of the explanations given in the *exposé des motifs.*

67. Accordingly, when the Chambre des députés authorized the deposit of Greece's instrument of accession to the General Act, it could only have believed that Greece was making its accession subject to precisely the same reservation of disputes relating to its territorial status as the Chambre had previously authorized for its declaration under the optional clause. It seems reasonable to assume that, if any change had been intended in the scope of the "territorial status" reservation, to which particular importance was attached by Greece, some indication and explanation of that change would have been included in the *exposé des motifs.* But there is no evidence of such a change of intention either in the *exposé des motifs* or in any other contemporary document before the Court.

68. Having regard to the several considerations which have been mentioned by the Court, as well as to the explanation of reservation *(b)* given in the *exposé des motifs,* the Court feels bound to conclude that the wording of reservation *(b)* did not have the effect of integrating the reservation of disputes relating to territorial status into the reservation of disputes concerning questions of domestic jurisdiction. On the contrary, the Court finds that reservation *(b)* comprises two reservations, one of disputes concerning questions of domestic jurisdiction and the other a distinct and autonomous reservation of "disputes relating to the territorial status of Greece, including disputes relating to its rights of sovereignty over its ports and lines of communication". Accordingly, it is on this basis that the Court will now consider the application of reservation *(b)* to the present dispute. Moreover, as only this autonomous reservation of disputes relating to territorial status is relevant in connection with the present dispute, any further reference to reservation *(b)* by the Court will be exclusively to the second part which concerns disputes relating to Greece's territorial status.

* * *

69. The Greek Government maintains that a restrictive view has to be taken of the meaning of the expression "disputes relating to the territorial status of Greece" in reservation *(b)* by reason of the historical context in which that expression was incorporated into the reservation. In this

connection, it invokes the jurisprudence of this Court and the Permanent Court concerning the interpretation of unilateral declarations of acceptance of the Court's jurisdiction (*Anglo-Iranian Oil Co., I.C.J. Reports 1951,* p. 104; *Rights of Minorities in Upper Silesia, P.C.I.J., Series A, No. 15,* p. 22; *Phosphates in Morocco, P.C.I.J., Series A/B, No. 74,* pp. 22-24). According to this jurisprudence it is indeed clear that in interpreting reservation *(b)* regard must be paid to the intention of the Greek Government at the time when it deposited its instrument of accession to the General Act; and it was with that jurisprudence in mind that the Court asked the Greek Government to furnish it with any available evidence of explanations of the instrument of accession given at that time.

70. The Court has already referred to M. Politis's letter to the Greek Foreign Minister of 9 September 1928 setting out the reservations which he recommended Greece should make to its declaration under the optional clause of Article 36 of the Statute. One of his recommendations concerned "disputes relating to the territorial status of Greece" and another "disputes relating to its rights of sovereignty over its ports and lines of communication". The Greek Government is therefore justified in asking the Court to conclude that it was the same motive which inspired their inclusion also in reservation *(b)* of Greece's accession to the General Act. It goes further, however, and asks the Court to interpret reservation *(b)* in the light of that motive, so as to restrict its scope to matters of territorial status connected with attempts to revise the territorial arrangements established by the peace treaties of the First World War. Moreover, in support of this interpretation of reservation *(b),* the Greek Government has also laid stress on the general historical context in which reservations of questions relating to territorial status had come into use in the League of Nations period.

71. Disputes concerning territorial status were expressly mentioned in Article 39, paragraph 2, of the General Act as an example of the "clearly specified subject-matters" in regard to which reservations to the Act were to be permitted. Consequently, it is reasonable to presume that there is a close link between the concepts of territorial status in the General Act and in Greece's instrument of accession to it; and that presumption is all the stronger when it is recalled that M. Politis was the Rapporteur for the drafting of the General Act as well as the author of the letter of 9 September 1928 which prompted Greece's recourse to a reservation under the optional clause relating to territorial status. Thus, the meaning with which the expression "territorial status" was used in Article 39 of the General Act may clearly have a bearing on its meaning in Greece's instrument of accession.

72. Counsel for Greece went into the historical evidence in detail more especially the use of the expression in the numerous bilateral treaties of

pacific settlement of the inter-war period, and in the proceedings of the League of Nations connected with the drafting of the Locarno Protocol. The propositions which they advanced on the basis of that evidence were, briefly, as follows. First, the reason for the appearance of expressions such as "territorial status", "territorial integrity", "territorial situation", "maintenance of frontiers" in treaties of the period, whether in the context of reservations to pacific settlement provisions, or of territorial guarantees, was a prevailing apprehension of attempts to modify the post-war settlements. Secondly, although the actual expressions used might vary, their meaning was essentially the same, namely territorial situations or régimes established by treaties. Thirdly, when the expression "territorial status" occurred in reservations to treaties of pacific settlement, what the States had in mind was "disputes which were likely to arise out of territorial claims by neighbours dissatisfied with existing solutions". Indeed, it was said that the term "territorial status" in those reservations was simply "a 'code-word' for intangibility of the frontiers and territorial statuses established by the international instruments in force". The general conclusion which the Greek Government then asked the Court to draw from that evidence was that:

> "Everything that is known of the contemporary understanding of such terms as 'territorial status', 'territorial situation' and 'territorial integrity' in the 1920s indicates that *these expressions are to be given a restrictive interpretation limited to the maintenance of the status quo established by treaties, normally as the result of post-war settlement.*" (Emphasis added.)

73. In the view of the Court, the historical evidence may justifiably be said to show that in the period in question the *motive* which led States to include in treaties provisions regarding "territorial status" was, in general, to protect themselves against possible attempts to modify territorial settlements established by the peace treaties. But it does not follow that they intended those provisions to be confined to questions connected with the revision of such settlements. Any modification of a territorial "status" or "situation" or "frontier" is unpalatable to a State; and the strong probability is that a State which had recourse to a reservation of disputes relating to territorial status, or the like, intended it to be quite general. Article 39 of the General Act, it is true, was designed to regulate the formulation of reservations and to exclude vague or subjective reservations. But in making express mention of disputes relating to territorial status as an example of disputes concerning a clearly specified subject-matter, Article 39 said nothing of this example being exclusively directed against attempts to revise the territorial settlements established by the peace treaties.

74. In the opinion of the Court, the historical evidence adduced by Greece does not suffice to establish that the expression "territorial status" was used in the League of Nations period, and in particular in the General Act of 1928, in the special, restricted, sense contended for by Greece. The evidence seems rather to confirm that the expression "territorial status" was used in its ordinary, generic sense of any matters properly to be considered as relating to the integrity and legal régime of a State's territory. It is significant in this regard that in the analysis of treaty provisions made in the *Systematic Survey of Arbitral Conventions and Treaties of Mutual Security,* published in 1927 by the Secretariat of the League of Nations (one of the documents used in connection with the drafting of the General Act), reservations of disputes relating to "territorial integrity", "territorial status" and "frontiers" were examined together as having the same or a very similar meaning. The *Systematic Survey of Treaties for the Pacific Settlement of International Disputes 1928-1948* prepared by the Secretariat of the United Nations and published in 1948, also groups together, under the title "Disputes relating to territorial status", provisions concerning "territorial status", "territorial questions", "territorial integrity", "present frontiers". As to the legal writers of the League of Nations period, the Greek Government itself laid stress on the fact that they consistently linked together treaty provisions excepting questions relating to "territorial status", "territorial integrity" and "existing frontiers".

75. It follows that for the same reasons the Court is unable to accept the contention advanced in the Memorial that if the authors of the General Act, or of the arbitration treaties containing a territorial status reservation:

> "had contemplated excluding any disputes concerning the spatial delimitation of State jurisdictions, they would not have failed clearly to mention the familiar category of frontier disputes rather than resort to the term of territorial status which was a very specific one in the practice of the time" (Memorial, para. 236).

In the view of the Court, the term "territorial status" in the treaty practice of the time did not have the very specific meaning attributed to it by the Greek Government. As the nature of the word "status" itself indicates, it was a generic term which in the practice of the time was understood as embracing the integrity and frontiers, as well as the legal régime, of the territory in question. This is implicit in the very wording of reservation *(b)* itself which treats disputes relating to Greece's "rights of sovereignty over its ports and lines of communication" as *included* in its reservation of disputes relating to its "territorial status". These disputes by their nature related to the interpretation and application of existing treaties rather than to their revision.

76. Accordingly, the expression "relating to the territorial status of

Greece" in reservation *(b)* is to be understood as a generic term denoting any matters properly to be considered as comprised within the concept of territorial status under general international law, and therefore includes not only the particular legal régime but the territorial integrity and the boundaries of a State. It is therefore in accordance with this interpretation of the words "disputes relating to the territorial status of Greece" that the Court is called on to determine whether reservation *(b)* does or does not have the effect of excluding the present dispute from the scope of Greece's accession to the General Act of 1928.

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77. The Greek Government, however, has advanced a further historical argument by which it seeks to convince the Court that there can be no question of the applicability of reservation *(b)* with respect to the present dispute. This is that the very idea of the continental shelf was wholly unknown in 1928 when the General Act was concluded, and in 1931 when Greece acceded to the Act. It also refers in this connection to the arbitral award in the *Petroleum Development Ltd.* v. *Sheikh of Abu Dhabi* case (*International Law Reports 1951,* p. 144 at p. 152), where the arbitrator held that the grant of a mineral oil concession in 1939 was not to be understood as including the continental shelf. In appreciating the intention of a party to an instrument there is an essential difference between a grant of rights of exploration and exploitation over a specified area in a concession and the wording of a reservation to a treaty by which a State excludes from compulsory procedures of pacific settlement disputes relating to its territorial status. While there may well be a presumption that a person transferring valuable property rights to another intends only to transfer the rights which he possesses at that time, the case appears to the Court to be quite otherwise when a State, in agreeing to subject itself to compulsory procedures of pacific settlement, excepts from that agreement a category of disputes which, though covering clearly specified subject-matters, is of a generic kind. Once it is established that the expression "the territorial status of Greece" was used in Greece's instrument of accession as a generic term denoting any matters comprised within the concept of territorial status under general international law, the presumption necessarily arises that its meaning was intended to follow the evolution of the law and to correspond with the meaning attached to the expression by the law in force at any given time. This presumption, in the view of the Court, is even more compelling when it is recalled that the 1928 Act was a convention for the pacific settlement of disputes designed to be of the most general kind and of continuing duration, for it hardly seems conceivable that in such a convention terms like "domestic jurisdiction" and "territorial status" were intended to have a fixed content regardless of the subsequent evolution of international law.

78. The Greek Government invokes as a basis for the Court's jurisdiction in the present case Article 17 of the General Act under which the parties agreed to submit to judicial settlement all disputes with regard to which they "are in conflict as to their respective rights". Yet the rights that are the subject of the claims upon which Greece requests the Court in the Application to exercise its jurisdiction under Article 17 are the very rights over the continental shelf of which, as Greece insists, the authors of the General Act could have had no idea whatever in 1928. If the Greek Government is correct, as it undoubtedly is, in assuming that the meaning of the generic term "rights" in Article 17 follows the evolution of the law, so as to be capable of embracing rights over the continental shelf, it is not clear why the similar term "territorial status" should not likewise be liable to evolve in meaning in accordance with "the development of international relations" (*P.C.I.J., Series B, No. 4,* p. 24). It may also be observed that the claims which are the subject-matter of the Application relate more particularly to continental shelf rights claimed to appertain to Greece in virtue of its sovereignty over certain islands in the Aegean Sea, including the islands of the "Dodecanese group" (para. 29 of the Application). But the Dodecanese group was not in Greece's possession when it acceded to the General Act in 1931; for those islands were ceded to Greece by Italy only in the Peace Treaty of 1947. In consequence, it seems clear that, in the view of the Greek Government, the term "rights" in Article 17 of the General Act has to be interpreted in the light of the geographical extent of the Greek State today, not of its extent in 1931. It would then be a little surprising if the meaning of Greece's reservation of disputes relating to its *"territorial* status" was not also to evolve in the light of the change in the territorial extent of the Greek State brought about by "the development of international relations".

79. Furthermore, the close and necessary link that always exists between a jurisdictional clause and reservations to it, makes it difficult to accept that the meaning of the clause, but not of the reservation, should follow the evolution of the law. In the present instance, this difficulty is underlined by the fact that alongside Greece's reservation of disputes relating to its "territorial status" in reservation *(b)* is another reservation of disputes relating to questions of "domestic jurisdiction", the content of which, as the Court has already had occasion to note, is "an essentially relative question" and undoubtedly "depends upon the development of international relations" (paragraph 59 above). Again, the Court can see no valid reason why one part of reservation *(b)* should have been intended to follow the evolution of international relations but not the other, unless such an intention should have been made plain by Greece at the time.

80. Having regard to the foregoing considerations, the Court is of the opinion that the expression in reservation *(b)* "disputes relating to the territorial status of Greece" must be interpreted in accordance with the rules of international law as they exist today, and not as they existed in

1931. It follows that in interpreting and applying reservation *(b)* with respect to the present dispute the Court has to take account of the evolution which has occurred in the rules of international law concerning a coastal State's rights of exploration and exploitation over the continental shelf. The Court is, therefore, now called upon to examine whether, taking into account the developments in international law regarding the continental shelf, the expression "disputes relating to the territorial status of Greece" should or should not be understood as comprising within it disputes relating to the geographical–the spatial–extent of Greece's rights over the continental shelf in the Aegean Sea.

* *

81. In order to determine whether the present dispute falls within the scope of reservation *(b),* the Court must first clarify the question that calls for decision. The question is not, as Greece seems to assume, whether continental shelf rights are territorial rights or are comprised within the expression "territorial status". The real question for decision is, whether the dispute is one which *relates* to the territorial status of Greece. Accordingly, a linguistic argument presented by the Greek Government, and based on the definitions of the words *"statut"* (status) and *"territorial"* in the *Dictionnaire de la terminologie du droit international,* appears to the Court to be only of marginal interest. No doubt, it is true the expression territorial status is commonly used in international law with reference to a legal condition or régime of a territory; but although the expression, as Article 39, paragraph 2, of the General Act itself indicates, denotes a category or concept covering clearly specified subject-matters, it is not an expression which can be said to have rigid legal connotations. On the contrary, the Court considers it to be a generic expression which comprises within its meanings various legal conditions and relations of territory. The answer to the question whether any given matter is properly to be considered as relating to the territorial status of a State must, therefore, depend on the particular circumstances of the case.

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82. The subject-matter of the present dispute, as appears from the first two–and principal–submissions in the Application, would require the Court to decide two questions:

(1) whether certain Greek islands in the Aegean Sea "as part of the territory of Greece, are entitled to the portion of the continental shelf which appertains to them according to the applicable principles and rules of international law";
(2) what is "the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to Greece and Turkey in

the Aegean Sea in accordance with the principles and rules of international law which the Court shall determine to be applicable to the delimitation of the continental shelf in the aforesaid areas of the Aegean Sea".

In maintaining that the subject-matter of the dispute embraced by Greece's submissions does not fall within the scope of reservation *(b)*, the Greek Government puts its case in two ways. First, it contends that the dispute concerns the *delimitation* of the continental shelf boundary between Greece and Turkey, and that delimitation is entirely extraneous to the notion of territorial status (Memorial, para. 236); and, secondly, it contends that, the continental shelf not being part of the territory of the coastal State under the applicable rules of international law, the present dispute regarding rights over the continental shelf cannot be considered as one relating to "territorial status".

83. The contention based on the proposition that delimitation is entirely extraneous to the notion of territorial status appears to the Court to encounter certain difficulties. Above all, it seems to overlook the basic character of the present dispute, clearly stated though it is in the first submission in Greece's Application. The basic question in dispute is whether or not certain islands under Greek sovereignty are entitled to a continental shelf of their own and entitle Greece to call for the boundary to be drawn between those islands and the Turkish coast. The very essence of the dispute, as formulated in the Application, is thus the entitlement of those Greek islands to a continental shelf, and the delimitation of the boundary is a secondary question to be decided after, and in the light of, the decision upon the first basic question. Moreover, it is evident from the documents before the Court that Turkey, which maintains that the islands in question are mere protuberances on the Turkish continental shelf and have no continental shelf of their own, also considers the basic question to be one of entitlement.

84. Quite apart from the fact that the present dispute cannot, therefore, be viewed as one simply relating to delimitation, it would be difficult to accept the broad proposition that delimitation is entirely extraneous to the notion of territorial status. Any disputed delimitation of a boundary entails some determination of entitlement to the areas to be delimited, and the historical evidence adduced by the Greek Government itself shows that in the treaty practice in the League of Nations period, the notions of "territorial integrity", "frontiers" and "territorial status" were regarded as closely associated.

85. The dispute relates to the determination of the respective areas of continental shelf over which Greece and Turkey are entitled to exercise the sovereign rights recognized by international law. It is therefore necessary to establish the boundary or boundaries between neighbouring States, that is to say, to draw the exact line or lines where the extension in space of the sovereign powers and rights of Greece meets those of Turkey. Whether it is

a land frontier or a boundary line in the continental shelf that is in question, the process is essentially the same, and inevitably involves the same element of stability and permanence, and is subject to the rule excluding boundary agreements from fundamental change of circumstances.

86. The second contention mentioned in paragraph 82 above does not put the question to be decided in its correct context. The question for decision is whether the present dispute is one "relating to the territorial status of Greece", not whether the rights in dispute are legally to be considered as "territorial" rights; and a dispute regarding entitlement to and delimitation of areas of continental shelf tends by its very nature to be one relating to territorial status. The reason is that legally a coastal State's rights over the continental shelf are both appurtenant to and directly derived from the State's sovereignty over the territory abutting on that continental shelf. This emerges clearly from the emphasis placed by the Court in the *North Sea Continental Shelf* cases on "natural prolongation" of the land as a criterion for determining the extent of a coastal State's entitlement to continental shelf as against other States abutting on the same continental shelf (*I.C.J. Reports 1969,* pp. 31 *et seq.*); and this criterion, the Court notes, has been invoked by both Greece and Turkey during their negotiations concerning the substance of the present dispute. As the Court explained in the above-mentioned cases, the continental shelf is a legal concept in which "the principle is applied that the land dominates the sea" (*I.C.J. Reports 1969,* p. 51, para. 96); and it is solely by virtue of the coastal State's sovereignty over the land that rights of exploration and exploitation in the continental shelf can attach to it, *ipso jure,* under international law. In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State. It follows that the territorial régime—the territorial status—of a coastal State comprises, *ipso jure,* the rights of exploration and exploitation over the continental shelf to which it is entitled under international law. A dispute regarding those rights would, therefore, appear to be one which may be said to "relate" to the territorial status of the coastal State.

87. The particular circumstances of the present dispute have also to be taken into account. The basic question at issue, as the Court has already mentioned, is the one formulated in the first submission in the Application, and it requires the Court to decide whether certain named Greek islands in the Aegean Sea, "as part of the territory of Greece", are entitled to a portion of continental shelf. Earlier in the Application, under the heading "The Subject of the Dispute", it is explained that in 1974, when the Greek Government in a diplomatic Note asserted its claim to continental shelf rights in respect of these islands, the Turkish Government retorted that the islands "do not possess a [continental] shelf of their own". The two

Governments, as appears from the Application, maintained their respective positions in the diplomatic negotiations which followed, and in a Note of 22 May 1976 the Greek Government recalled that it had emphasized as two of the fundamental legal points in the dispute: *(a)* "the territorial and political unity of the continental and insular parts of the Greek State"; *(b)* "the existence of a continental shelf appurtenant to the [Greek] islands concerned". In the same Note, it had also recalled and rejected the Turkish Government's reference to the islands as "mere protuberances on the Turkish continental shelf" having no continental shelf of their own. Summarizing its legal position in paragraph 29 of the Application, the Greek Government names the islands concerned and reaffirms its contention that they "are an integral part of Greek territory which is entitled to the portion of [the] continental shelf which appertains to them". It then expressly rests its claims to continental shelf in respect of those islands upon "the territorial and political unity of Greece".

88. It follows that the claims and contentions advanced by Greece in its first submission directly relate to its territorial status as this was established by the various treaties through which was constituted the corpus of the territory of the Greek State today. These claims and contentions, as appears from the Application and the diplomatic correspondence, are directly contested by Turkey and form the very core of the present dispute. Consequently, it is difficult to escape the conclusion that, on this ground alone, the present dispute is one which "relat[es] to the territorial status of Greece".

89. In the present case, moreover, quite apart from the question of the status of the above-mentioned Greek islands for the purpose of determining Greece's entitlement to continental shelf, the Court notes that during the hearings in 1976 the Greek Government referred to a certain straight base-line claimed by Turkey which is, however, contested by Greece. Although it recognized that the resulting discrepancy between the Greek and Turkish views of the limits of Turkey's territorial sea in the area is not great, it observed that the discrepancy "obviously affects the question of the delimitation of the continental shelf". The question of the limits of a State's territorial sea, as the Greek Government itself has recognized, is indisputably one which not only relates to, but directly concerns territorial status.

90. Having regard to the various considerations set out above, the Court is of the opinion that the present dispute is one which "relat[es] to the territorial status of Greece" within the meaning of reservation *(b)* in Greece's instrument of accession to the General Act. It accordingly finds that Turkey's invocation of the reservation on the basis of reciprocity has the effect of excluding the present dispute from the application of Article 17 of the Act.

* * *

91. In examining the application of the General Act to the present dispute, the Court has not overlooked a suggestion that the Act has never been applicable as between Turkey and Greece by reason of the existence of the Greco-Turkish Treaty of Friendship, Neutrality, Conciliation and Arbitration signed at Ankara on 30 October 1930 (*League of Nations, Treaty Series,* Vol. 125, No. 2841). This Treaty provided for a general system of procedures for the pacific settlement of disputes between the two countries similar to, but in some respects different from, those provided in the General Act. It entered into force by exchange of ratifications on 5 October 1931, and under Article 28 was expressed to continue in force for successive periods of five years, unless denounced. The length of these periods was extended to ten years by an "Additional Treaty" of 27 April 1938, which at the same time provided that "the mutual engagements, bilateral or plurilateral", which the parties had contracted should "continue to produce their full effect irrespective of the provisions of the present Treaty" (*League of Nations, Treaty Series,* Vol. 193, No. 4493). By these Treaties and by the General Act, therefore, Greece and Turkey appear, prima facie, to have provided for two parallel systems of pacific settlement, for so long as the 1930 Treaty and the General Act might continue in force, and both Greece and Turkey have stated that they consider the 1930 Treaty still to be in force.

92. Consequently, if the question of the effect of the 1930 Treaty on the applicability of the General Act as between Greece and Turkey had called for decision in the present proceedings, the Court would have been confronted with the problem of the co-existence of different instruments establishing methods of peaceful settlement, a question discussed in the *Electricity Company of Sofia and Bulgaria* case *(P.C.I.J., Series A/B, No. 77).* In that event it might also have been necessary to examine the relation between the obligations of the two States under the 1930 and 1938 Treaties and those under the General Act in the light of the pertinent provisions of those instruments—a point which was the subject of a question put by two Members of the Court during the hearings.

93. However, the fact already established by the Court that, by reason of Turkey's invocation of reservation *(b)* to the Greek accession, the General Act is not applicable to the present dispute, and the fact that the 1930 Treaty has not been invoked as a basis for the Court's jurisdiction in the present proceedings, dispense the Court from any need to enter into these questions.

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94. In paragraph 32 (2) of the Application the Greek Government specified as the second basis on which it claims to establish the Court's jurisdiction:

"The joint communiqué of Brussels of 31 May 1975, which followed previous exchange of views, states that the Prime Ministers of Greece and Turkey have decided that the problems dividing the two countries should be resolved peacefully 'et, au sujet du plateau continental de la mer Egée, par la Cour internationale de La Haye'. The two Governments thereby jointly and severally accepted the jurisdiction of the Court in the present matter, pursuant to Article 36 (1) of the Statute of the Court."

95. The Brussels Communiqué of 31 May 1975 does not bear any signature or initials, and the Court was informed by counsel for Greece that the Prime Ministers issued it directly to the press during a press conference held at the conclusion of their meeting on that date. The Turkish Government, in the observations which it transmitted to the Court on 25 August 1976, considered it "evident that a joint communiqué does not amount to an agreement under international law", adding that "If it were one, it would need to be ratified at least on the part of Turkey" (para. 15). The Greek Government, on the other hand, maintains that a joint communiqué may constitute such an agreement. To have this effect, it says, "It is necessary, and it is sufficient, for the communiqué to include–in addition to the customary forms, protestations of friendship, recital of major principles and declarations of intent–provisions of a treaty nature" (Memorial, para. 279). Counsel for Greece, moreover, referred to the issue of joint communiqués as "a modern ritual which has acquired full status in international practice".

96. On the question of form, the Court need only observe that it knows of no rule of international law which might preclude a joint communiqué from constituting an international agreement to submit a dispute to arbitration or judicial settlement (cf. Arts. 2, 3 and 11 of the Vienna Convention on the Law of Treaties). Accordingly, whether the Brussels Communiqué of 31 May 1975 does or does not constitute such an agreement essentially depends on the nature of the act or transaction to which the Communiqué gives expression; and it does not settle the question simply to refer to the form–a communiqué–in which that act or transaction is embodied. On the contrary, in determining what was indeed the nature of the act or transaction embodied in the Brussels Communiqué, the Court must have regard above all to its actual terms and to the particular circumstances in which it was drawn up.

97. The relevant paragraphs of the Brussels Communiqué read as follows:

"In the course of their meeting the two Prime Ministers had an opportunity to give consideration to the problems which led to the existing situation as regards relations between their countries.

They decided *[ont décidé]* that those problems should be resolved *[doivent être résolus]* peacefully by means of negotiations and as

regards the continental shelf of the Aegean Sea by the International Court at The Hague. They defined the general lines on the basis of which the forthcoming meetings of the representatives of the two Governments would take place.

In that connection they decided to bring forward the date of the meeting of experts concerning the question of the continental shelf of the Aegean Sea and that of the experts on the question of air space."

98. In presenting the Communiqué as constituting a definitive agreement between the Prime Ministers to submit the present dispute to the Court, the Greek Government places particular emphasis on the word "*décidé*" and the words "*doivent être résolus*" in the original–French–text of the second paragraph. These words, it says, are words of "decision" and of "obligation" indicative of a mutual commitment on the part of the Prime Ministers to refer the dispute to the Court. Specifically, it claims that the "agreement" embodied in the Communiqué "is more than an undertaking to negotiate" and directly "confers jurisdiction on the Court" (Memorial, Part 2, Section III, Heading A). It likewise claims that the Communiqué "commits the parties to conclude any implementing agreement needed for the performance of the obligation" (*ibid.*, Heading B), and that the refusal by one party to conclude such an agreement "permits the other party to seise the Court unilaterally" (*ibid.*, Heading C). In its view, moreover, no implementing agreement is required by the Communiqué which, it says, "enables the parties to resort to the Court by Application no less than by special agreement" (*ibid.*, Heading D). Finally, if it is considered that "a complementary agreement is a legal prerequisite for seisin of the Court", it maintains that "the two parties are under obligation to negotiate in good faith the conclusion of such an agreement" (*ibid.*, Heading E).

99. The Turkish Government, in the observations transmitted to the Court on 25 August 1976, not only denies that the Communiqué constitutes "an agreement under international law" (para. 15) but also maintains that in any event the two Governments cannot be said to have thereby "jointly and severally accepted the jurisdiction of the Court in the present matter" when they have never agreed on the scope of the "matter" to be submitted to the Court (para. 14). Examination of the text, it maintains, shows that the intention was quite different, and that the Communiqué was "far from amounting to agreement by one State to submit to the jurisdiction of the Court upon the unilateral application of the other State" *(ibid.)*. According to the Government of Turkey:

"... it is clear that there was no commitment to submit to the Court without a special agreement because the following paragraph said in this connection that the two Prime Ministers had decided to accelerate the meeting of the experts concerning the question of the continental shelf of the Aegean Sea" *(ibid.)*.

This means, in its view, that "priority was given to negotiations" on the substance of the question of the continental shelf, and nothing was said in that connection "even about the negotiation of a special agreement" to submit the question to the Court *(ibid.)*. It also points to the subsequent efforts of Greece to secure the negotiation of such an agreement as confirmation of the correctness of Turkey's interpretation of the Communiqué (para. 16).

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100. This divergence of views as to the interpretation of the Brussels Communiqué makes it necessary for the Court to consider what light is thrown on its meaning by the context in which the meeting of 31 May 1975 took place and the Communiqué was drawn up. The first mention of the Court, according to the evidence, was in a Greek Note Verbale of 27 January 1975, that is some four months before the meeting of the two Prime Ministers in Brussels. In that Note the Greek Government proposed that "the differences over the applicable law as well as over the substance of the matter" should be referred to the Court, adding:

> "Indeed, the Greek Government, without prejudice to their right to initiate Court proceedings unilaterally, would see considerable advantage *in reaching jointly* with the Turkish Government a special agreement . . ." (Application, Ann. II, No. 9, emphasis added.)

101. Replying on 6 February 1975, the Turkish Government referred to "meaningful negotiations" as "a basic method for the settlement of international disputes" and said that, because of the absence of such negotiations, "the issues relating to the disputes have neither been fully identified nor elucidated". It then continued:

> "However, in principle, the Turkish Government favourably considers the Greek Government's proposal to refer the dispute over the delimitation of the Aegean continental shelf *jointly* to the International Court of Justice. To this effect and to elaborate the terms under which the matter shall be referred to the said Court, Turkey proposes high level talks to be initiated between the two Governments . . ." (*Ibid.*, Ann. II, No. 10, emphasis added.)

On 10 February 1975, commenting on the Turkish reply, the Greek Government noted with satisfaction that "the Turkish Government accept in principle their proposal that the question of the delimitation of the continental shelf of the Aegean Sea be submitted *jointly* to the International Court of Justice in The Hague" (*ibid.*, No. 11, emphasis added). It also agreed that "following suitable preparation, talks should be held in order to draft the terms of the special agreement *(compromisum)* required to that effect" *(ibid.)*. This led the Turkish Prime Minister, when explaining

the matter to the Turkish Grand National Assembly on 3 March 1975 to say:

> "The Greeks have answered positively to our proposal concerning talks prior to our going to The Hague. These [talks] did not start yet. The object of the talks will be the special agreement *(compromis)* which will define the basis of the case." (Memorial, para. 268.)

102. According to the information before the Court, those were the respective positions which the two Governments had taken up a short time before their Foreign Ministers met in Rome on 17-19 May 1975 to discuss, *inter alia,* the question of the continental shelf in the Aegean Sea. Furthermore, in the light of the diplomatic exchanges, the Greek Government can hardly have been left in any doubt as to the nature of the proposal regarding the Court which the Turkish Government would understand to be the subject of the discussions at the Rome meeting: namely, a *joint* submission of the dispute to the Court *by agreement.*

103. Reference is made to the proceedings at the Rome meeting in a later Greek Note Verbale of 2 October 1975, from which it appears that the Greek delegation submitted a draft text of a *compromis* for negotiation, but the Turkish delegation said that they were not yet ready to discuss it and needed more time to prepare themselves. The meeting ended with the issue by the two Foreign Ministers on 19 May 1975 of a brief Joint Communiqué, which included the following statements:

> "The questions relating to the continental shelf of the Aegean Sea were discussed and initial consideration was given to the text of a special agreement concerning the submission of the matter to the International Court of Justice . . .
>
> It was agreed that the meetings between experts would be continued in the near future." (Application, Ann. III, No. 1.)

According to the above-mentioned Note Verbale of 2 October 1975, a committee of experts was to meet at the earliest possible date "to negotiate the special agreement", and to explore a Turkish idea in regard to joint exploitation. The Turkish Government also referred to the Rome meeting, in a Note of 18 November 1975. It there spoke of the Greek delegation having:

> ". . . agreed to seek a negotiated settlement of the differences, bearing also in mind the Turkish proposal for joint exploration and exploitation of resources, and to try to prepare, if necessary, a draft special agreement for the joint reference to the International Court of Justice of those aspects of the situation which, they might agree, were the points of genuine disagreement between the two sides" (*ibid.,* Ann. IV, No. 3).

104. The Court can see nothing in the terms of the Rome Communiqué of 19 May 1975, or in the subsequent accounts of the meeting given by the two Governments, which might indicate that Turkey was then ready to contemplate, not a joint submission of the dispute to the Court, but a general acceptance of the Court's jurisdiction with respect to it. On the contrary, the positions of the Greek and Turkish Governments on this point appear to have been quite unchanged when, only a few days later on 31 May 1975, the two Prime Ministers began their meeting in Brussels.

105. Consequently, it is in that context—a previously expressed willingness on the part of Turkey jointly to submit the dispute to the Court, after negotiations and by a special agreement defining the matters to be decided—that the meaning of the Brussels Joint Communiqué of 31 May 1975 has to be appraised. When read in that context, the terms of the Communiqué do not appear to the Court to evidence any change in the position of the Turkish Government in regard to the conditions under which it was ready to agree to the submission of the dispute to the Court. It is true that the Communiqué records the *decision* of the Prime Ministers that certain problems in the relations of the two countries should be resolved peacefully by means of negotiations, and as regards the continental shelf of the Aegean Sea by the Court. As appears however from paragraph 97 above, they also defined the general lines on the basis of which the forthcoming meetings of the representatives of the two Governments would take place and decided in that connection to bring forward the date of the meeting of experts. These statements do not appear to the Court to be inconsistent with the general position taken up by Turkey in the previous diplomatic exchanges: that it was ready to consider a *joint* submission of the dispute to the Court by means of a *special agreement.* At the same time, the express provision made by the Prime Ministers for a further meeting of experts on the continental shelf does not seem easily reconcilable with an immediate and unqualified commitment to accept the submission of the dispute to the Court unilaterally by Application. In the light of Turkey's previous insistence on the need to "identify" and "elucidate" the issues in dispute, it seems unlikely that its Prime Minister should have undertaken such a commitment in such wide and imprecise terms.

106. The information before the Court concerning the negotiations between the experts and the diplomatic exchanges subsequent to the Brussels Communiqué appears to confirm that the two Prime Ministers did not by their "decision" undertake an unconditional commitment to submit the continental shelf dispute to the Court. The two sides, it is true, put somewhat different interpretations upon the meaning of the Communiqué, the Turkish side insisting upon the need for meaningful negotiations on the substance of the dispute before any submission to the Court, the Greek side pressing for the case to be taken directly to the Court. From the

first, however, the Turkish side consistently maintained the position that reference of the dispute to the Court was to be contemplated only on the basis of a joint submission after the conclusion of a special agreement defining the issues to be resolved by the Court. Even the Greek Government, while arguing in favour of immediate submission of the dispute to the Court, referred to the drafting of a special agreement as "necessary" for submitting the issue to the Court (Notes Verbales of 2 October and 19 December 1975, Application, Ann. IV, Nos. 2 and 4). It is also significant that nowhere in the diplomatic exchanges or in the negotiations between the experts does the Greek Government appear to have invoked the Joint Communiqué as an already existing and complete, direct title of jurisdiction. Furthermore, although in a Note Verbale of 27 January 1975, before any Joint Communiqué existed, the Greek Government expressly reserved its "right to initiate Court proceedings unilaterally" (presumably having in mind the General Act), the Court has not found any mention by Greece, prior to the filing of the Application, of the possibility that the dispute might be submitted to the Court unilaterally on the basis of the Joint Communiqué.

107. Accordingly, having regard to the terms of the Joint Communiqué of 31 May 1975 and to the context in which it was agreed and issued, the Court can only conclude that it was not intended to, and did not, constitute an immediate commitment by the Greek and Turkish Prime Ministers, on behalf of their respective Governments, to accept unconditionally the unilateral submission of the present dispute to the Court. It follows that, in the opinion of the Court, the Brussels Communiqué does not furnish a valid basis for establishing the Court's jurisdiction to entertain the Application filed by Greece on 10 August 1976.

108. In so finding, the Court emphasizes that the sole question for decision in the present proceedings is whether it does, or does not, have jurisdiction to entertain the Application filed by Greece on 10 August 1976. Having concluded that the Joint Communiqué issued in Brussels on 31 May 1975 does not furnish a basis for establishing the Court's jurisdiction in the present proceedings, the Court is not concerned, nor is it competent, to pronounce upon any other implications which that Communiqué may have in the context of the present dispute. It is for the two Governments themselves to consider those implications and what effect, if any, is to be given to the Joint Communiqué in their further efforts to arrive at an amicable settlement of their dispute. Nothing that the Court has said may be understood as precluding the dispute from being brought before the Court if and when the conditions for establishing its jurisdiction are satisfied.

* * *

109. For these reasons,

THE COURT,

by 12 votes to 2,
finds that it is without jurisdiction to entertain the Application filed by the Government of the Hellenic Republic on 10 August 1976.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of December, one thousand nine hundred and seventy-eight, in three copies, of which one will be placed in the archives of the Court and the others transmitted to the Government of the Hellenic Republic and to the Government of the Republic of Turkey respectively.

(Signed) E. JIMÉNEZ DE ARÉCHAGA,
President.

(Signed) S. AQUARONE,
Registrar.

Vice-President NAGENDRA SINGH and Judges GROS, LACHS, MOROZOV and TARAZI append separate opinions or declarations to the Judgment of the Court.

Judge DE CASTRO and Judge *ad hoc* STASSINOPOULOS append dissenting opinions to the Judgment of the Court.

(Initialled) E. J. DE A.

(Initialled) S. A.