INTERNATIONAL COURT OF JUSTICE
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**Communiqué**
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Aegean Sea Continental Shelf
(Greece v. Turkey)

The following information is made available to the press by the Registry of the International Court of Justice:

Today, 19 December 1978, the International Court of Justice delivered judgment on the question of its jurisdiction in the case concerning the Aegean Sea Continental Shelf (Greece v. Turkey).

By 12 votes to 2, the Court has found that it is without jurisdiction to entertain the Application filed by the Government of Greece.

The Court was composed as follows: President Jiménez de Aréchaga; Vice-President Nagendra Singh; Judges Forster, Gros, Lachs, Dillard, de Castro, Morozov, Sir Humphrey Waldock, Ruda, Mosler, Elias, and Tarazi; Judge ad hoc Stassinopoulos.

Of the 12 Members of the Court who voted for the decision, Vice-President Nagendra Singh and Judges Gros, Lachs, Morozov and Tarazi have appended separate opinions or declarations.

Dissenting opinions have been appended to the Judgment by Judge de Castro and Judge ad hoc Stassinopoulos.

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The printed edition will become available in February 1979. (Orders should be addressed to the Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10, or the Sales Section, United Nations, New York, N.Y. 10017, or an appropriate bookseller.)

An analysis of the Judgment is given below. This analysis has been prepared by the Registry to assist the press and does not commit the Court in any way. It cannot be quoted against the actual text of the Judgment and does not constitute an interpretation of it.

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## Analysis of the Judgment

Procedure, and Summary of Negotiations (paras. 1-31)

In its Judgment, the Court recalls that on 10 August 1976 Greece instituted proceedings against Turkey in respect of a dispute concerning the delimitation of the continental shelf appertaining to each of the two States in the Aegean Sea and their rights thereover. In a letter of 26 August 1976 Turkey expressed the view that the Court had no jurisdiction to entertain the Application.

Greece requested the Court to indicate interim measures of protection, but in an Order of 11 September 1976 the Court found that the circumstances were not such as to require them and decided that the written proceedings should first be addressed to the question of its jurisdiction to entertain the dispute. Greece subsequently filed a Memorial and presented oral arguments at public sittings, formally submitting that the Court had such jurisdiction. Turkey did not file any Counter-Memorial and was not represented at the hearings. Its attitude was however defined in the above-mentioned letter and in communications addressed to the Court on 24 April and 10 October 1978. (Paras. 1-14.)

While regretting that Turkey did not appear in order to put forward its arguments, the Court points out that it nevertheless had to examine proprio motu the question of its own jurisdiction, a duty reinforced by the terms of Article 53 of its Statute, according to which the Court, whenever a party does not appear, must, before finding upon the merits, satisfy itself that it has jurisdiction (para. 15).

After giving a brief account of the negotiations which have taken place between Greece and Turkey since 1973 on the question of delimiting the continental shelf, the Court finds, contrary to suggestions by Turkey, that the active pursuit of negotiations concurrently with the proceedings is not, legally, any obstacle to its exercise of its judicial function, and that a legal dispute exists between Greece and Turkey in respect of the continental shelf in the Aegean Sea (paras. 16-31).

First Basis of Jurisdiction Relied Upon: Article 17 of the General Act of 1928 (paras. 32-93)

In its Application the Greek Government specified two bases on which it claimed to found the jurisdiction of the Court in the dispute. The first was Article 17 of the General Act of 1928 for the Pacific Settlement of International Disputes, read with Article 36, paragraph 1, and Article 37 of the Statute of the Court.

Article 17 of the General Act 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."

This ....

This Article thus provided for the reference of disputes to the Permanent Court of International Justice. That body was the predecessor of the present Court, which, by the effect of Article 37 of its own Statute, is substituted for it in any treaty or convention in force which provides for reference of a matter to the Permanent Court. Hence, if the General Act is to be considered a convention in force between Greece and Turkey, it may, when read with Article 37 and Article 36, paragraph 1, of the present Court's Statute, suffice to establish the latter's jurisdiction. (Paras. 32-34.)

The question of the status of the General Act of 1928 as a convention in force for the purposes of Article 37 of the Statute was raised, though not decided, in previous cases before the Court. In the present case the Greek Government contended that the Act must be presumed to be still in force as between Greece and Turkey; the Turkish Government, on the contrary, took the position that the Act was no longer in force. (Paras. 35-38.)

The Court notes that Greece drew attention to the fact that both the Greek and the Turkish instruments of accession to the Act were accompanied by reservations. Greece affirmed that these were irrelevant to the case. Turkey, on the other hand, took the position that, whether or not the General Act was assumed to be in force, Greece's instrument of accession, dated 14 September 1931, was subject to a clause, reservation (b), which would exclude the Court's competence with respect to the dispute. (Para. 39.)

The text of this reservation (b) is as follows:

> "The following disputes are excluded from the procedures described in the General Act ...
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> (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."

The Court considers that, if Turkey'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 dispute is justified, a finding on the question whether the Act is or is not in force would cease to be essential for the decision regarding the Court's jurisdiction. (Para. 40.)

According to Greece, the Court should leave reservation (b) out of account because the question of its effect on the applicability of the General Act was not raised regularly by Turkey in accordance with the Rules of Court, so that Turkey could not be regarded as having "enforced" the reservation as required by Article 39, paragraph 3, of the General Act, whereby: "If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party." In the Court's view, Turkey's invocation of reservation (b) in a 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 Article 39, paragraph 3, of the Act. The Court was therefore unable to leave out of its consideration a reservation the invocation of which had been properly brought to its notice earlier in the proceedings. (Paras. 41-47.)

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Greece maintained that reservation (b) could not be considered as covering the dispute regarding the continental shelf of the Aegean Sea and therefore did not exclude the normal operation of Article 17 of the Act. It contended in particular that the reservation did not cover all disputes relating to the territorial status of Greece but only such as both related to its territorial status and at the same time concerned "questions which by international law are solely within the domestic jurisdiction of States". (Paras. 48 and 49.)

This contention depended on an essentially grammatical interpretation which hinged on the meaning to be ascribed to the expression "and in particular" ("et, notamment," in the original French of the reservation). After considering this argument, the Court finds that the question whether that expression has the meaning attributed to it by Greece depends on the context in which it was used in the instrument of accession and is not a matter simply of the preponderant linguistic usage. The Court recalls that it cannot base itself on a purely grammatical interpretation of the text and observes that a number of substantive considerations point decisively to the conclusion that reservation (b) contained two separate and autonomous reservations. (Paras. 50-56.)

One such consideration was that in framing its declaration accepting the compulsory jurisdiction of the Permanent Court under the optional clause of the latter's Statute - a declaration made on 12 September 1929, only two years before the Greek accession to the General Act - Greece included a provision which, indisputably, was an autonomous reservation of "disputes relating to the territorial status of Greece". It can hardly be supposed that Greece, in its instrument of accession to the General Act, should have intended to give to its reservation of "disputes relating to the territorial status of Greece" a scope which differed fundamentally from that given to it in that declaration. That Greece had had such an intention was not borne out by the contemporary evidence placed before the Court relating to the making of the declaration and the deposit of the instrument of accession.

That being so, the Court finds that reservation (b) comprises two distinct and autonomous reservations, one affecting disputes concerning questions of domestic jurisdiction and the other reserving "disputes relating to the territorial status of Greece". (Paras. 57-68.)

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The ....

The Court then goes on to consider what "disputes relating to the territorial status of Greece" must be taken to mean.

Greece maintained that a restrictive view of the meaning must be taken, by reason of the historical context, and that those words related to territorial questions bound up with the territorial settlements established by the peace treaties after the first World War. In the Court's opinion, the historical evidence relied on by Greece seems rather to confirm that in reservation (b) the expression "territorial status" was used in its ordinary, generic sense of any matters properly to be considered as belonging to the concept of territorial status in public international law. The expression therefore included not only the particular legal régime but the territorial integrity and the boundaries of a State. (Paras. 69-76.)

Greece argued 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. But, in the Court's view, since the expression "territorial status" was used in the Greek reservation as a generic term, the presumption necessarily arises that its meaning, as also that of the word "rights" in Article 17 of the General Act, was to follow the evolution of the law and to correspond with the meaning attached to it by the law in force at any given time. The Court therefore finds that the expression "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. (Paras. 77-80.)

The Court then proceeds 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 disputes relating to the geographical extent of Greece's rights over the continental shelf in the Aegean Sea. Greece contended that the dispute concerned the delimitation of the continental shelf, said to be entirely extraneous to the notion of territorial status, and that the continental shelf, not being part of the territory, could not be considered as connected with territorial status. The Court observes that it would be difficult to accept the proposition that delimitation is entirely extraneous to the notion of territorial status, and points out that a dispute regarding delimitation of a continental shelf tends by its very nature to be one relating to territorial status, inasmuch as a coastal State's rights over the continental shelf derive from its sovereignty over the adjoining land. It follows that the territorial status of the coastal State comprises, ipso jure, the rights of exploration and exploitation over the continental shelf to which it is entitled under international law. (Paras. 80-89.)

Having regard to those considerations, the Court is of the opinion that the dispute is one which relates to the territorial status of Greece within the meaning of reservation (b) and that Turkey's invocation of the reservation had the effect of excluding the dispute from the application of Article 17 of the General Act. The General Act is therefore not a valid basis for the Court's jurisdiction. (Para. 90.)

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The Court also takes into consideration a suggestion that the General Act had 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 on 30 October 1930. It finds that it is dispensed from any need to enter into the question of the effect of the 1930 treaty on the applicability of the General Act, because it has established that, by the effect of reservation (b), the Act is not applicable to the dispute, and because the 1930 treaty was not invoked as a basis for its jurisdiction. (Paras. 91-93.)

Second Basis of Jurisdiction Relied Upon: the Brussels Joint Communiqué of 31 May 1975 (paras. 94-108)

The second basis of jurisdiction relied upon by Greece was the Brussels Joint Communiqué of 31 May 1975. This was a communiqué issued directly to the press by the Prime Ministers of Greece and Turkey following a meeting between them on that date. It contained the following passage:

> "They /the two Prime Ministers/ decided that those problems /between the two countries/ should be resolved peacefully by means of negotiations and as regards the continental shelf of the Aegean Sea by the International Court at The Hague."

Greece maintained that this passage directly conferred jurisdiction on the Court, committed the parties to concluding any implementing agreement needed and, in the event of refusal by one of them to conclude such an agreement, permitted the other to refer the dispute unilaterally to the Court. Turkey, for its part, maintained that the communiqué did not "amount to an agreement under international law", and that in any event it did not comprise any undertaking to resort to the Court without a special agreement (compromis) or amount to an agreement by one State to submit to the jurisdiction of the Court upon the unilateral application of the other. (Paras. 94-99.)

In view of these divergent interpretations, the Court considers what light is thrown on the meaning of the communiqué by the context in which the meeting of 31 May 1975 took place and the document was drawn up. It finds nothing to justify the conclusion that Turkey was prepared to envisage any other reference to the Court than a joint submission of the dispute. In the information before it on what followed the Brussels communiqué the Court finds confirmation that the two Prime Ministers did not undertake any unconditional commitment to refer their continental shelf dispute to the Court. (Paras. 100-106.)

Hence the Brussels communiqué did not constitute an immediate and unqualified commitment on the part of the Prime Ministers of Greece and Turkey to accept the submission of the dispute to the Court unilaterally by Application. It follows that it does not furnish a valid basis for establishing the Court's jurisdiction. The Court adds that nothing it 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. (Paras. 107 and 108.)

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For these reasons, the Court finds that it is without jurisdiction to entertain the Application filed by the Government of Greece on 10 August 1976 (para. 109).