

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

AEGEAN SEA CONTINENTAL SHELF CASE

(GREECE *v.* TURKEY)

REQUEST FOR THE INDICATION OF INTERIM
MEASURES OF PROTECTION

ORDER OF 11 SEPTEMBER 1976

1976

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

**AFFAIRE DU PLATEAU CONTINENTAL
DE LA MER ÉGÉE**

(GRÈCE *c.* TURQUIE)

DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 11 SEPTEMBRE 1976

Official citation:

*Aegean Sea Continental Shelf, Interim Protection, Order of
11 September 1976, I.C.J. Reports 1976, p. 3.*

Mode officiel de citation:

*Plateau continental de la mer Egée, mesures conservatoires,
ordonnance du 11 septembre 1976, C.I.J. Recueil 1976, p. 3*

Sales number

N° de vente:

423

INTERNATIONAL COURT OF JUSTICE

1976
11 September
General List
No. 62

YEAR 1976

11 September 1976

AEGEAN SEA
CONTINENTAL SHELF CASE

(GREECE v. TURKEY)

REQUEST FOR THE INDICATION OF INTERIM
MEASURES OF PROTECTION

ORDER

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

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court,

Having regard to Article 66 of the Rules of Court,

Having regard to the Application by Greece filed in the Registry of the Court on 10 August 1976, instituting proceedings against Turkey in respect of a dispute concerning the delimitation of the continental shelf

appertaining to Greece and Turkey in the Aegean Sea, and concerning the respective legal rights of those States to explore and exploit the continental shelf of the Aegean;

Makes the following Order:

1. Whereas the above-mentioned Application specifies as basis of jurisdiction 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 a joint communiqué issued at Brussels on 31 May 1975, and requests the Court to adjudge and declare:

- “(i) that the Greek islands [specified in 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 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.”

2. Having regard to the request dated 10 August 1976 and filed in the Registry the same day, whereby the Government of Greece, relying on Article 33 of the General Act of 1928 for the Pacific Settlement of International Disputes and on Article 41 of the Statute and Article 66 of the Rules of Court, asks the Court to indicate, pending the final decision in the case brought before it by the Application of the same date, the following interim measures of protection:

“Greece . . . requests the Court to direct that the Governments of both Greece and Turkey shall:

- (1) unless with the consent of each other and pending the final

judgment of the Court in this case, refrain from all exploration activity or any scientific research, with respect to the continental shelf areas within which Turkey has granted such licences or permits or adjacent to the Islands, or otherwise in dispute in the present case;

- (2) refrain from taking further military measures or actions which may endanger their peaceful relations.”

3. Whereas, on the day on which the Application and request for indication of interim measures of protection were filed, a copy of each was handed by the Registrar to the Ambassador of Turkey to the Netherlands, the channel of communication designated by the Government of Turkey generally for communications addressed to that Government by the Court under the Statute and Rules;

4. Whereas, pursuant to Article 40, paragraph 3, of the Statute and Article 37, paragraph 2, of the Rules of Court, copies of the Application were transmitted to Members of the United Nations through the Secretary-General and to other States entitled to appear before the Court;

5. Whereas, pursuant to Article 31, paragraph 3, of the Statute, the Government of Greece chose His Excellency 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; and whereas the Government of Turkey has not sought to exercise the right conferred upon it by the said Article to choose a judge *ad hoc*;

6. Whereas the Governments of Greece and Turkey were informed on 18 August 1976 that the Court would hold public hearings opening on 25 August 1976 to afford the parties the opportunity of presenting their observations on the Greek request for the indication of interim measures of protection;

7. Whereas on 26 August 1976 a letter, dated 25 August 1976, was received in the Registry from the Turkish Ministry of Foreign Affairs enclosing the “Observations of the Turkish Government on the request of the Government of Greece for provisional measures dated 10 August 1976”;

8. Whereas in the said observations the Turkish Government submitted that the Application of Greece is premature; that the Court has no jurisdiction to entertain the Application; and that the interim measures of protection requested are not required for the protection of the rights claimed by Greece; whereas, accordingly, the Turkish Government suggested that the Greek request for interim measures be dismissed and, in view of the lack of jurisdiction, asked the Court to remove the case from the list; and whereas no agent has been appointed to represent Turkey before the Court;

9. Whereas at the public hearings held on 25, 26 and 27 August 1976

there were present in Court the Agents, counsel and other advisers of the Government of Greece;

10. Having heard the oral observations on the request for interim measures on behalf of the Government of Greece presented by His Excellency Mr. Nicolas Karandreas, Professor Constantine Eustathiades, Professor D. P. O'Connell and Professor Roger Pinto and the replies given on behalf of that Government to a question put by the Court and a question put by one of its Members;

11. Having taken note of the written reply given by the Agent of Greece on 28 August 1976 to a question put to him by a Member of the Court;

12. Having taken note that the final submission of the Government of Greece made at the hearing of 26 August 1976 and filed in the Registry was that "Greece maintains the submissions contained in its request of 10 August 1976 for the indication of interim measures of protection" and thus requested the indication of the measures set out in paragraph 2 above;

13. Noting that the Government of Turkey was not represented at the hearings; and whereas the non-appearance of one of the States concerned cannot by itself constitute an obstacle to the indication of interim measures of protection;

14. Whereas the Governments of Greece and Turkey have been afforded an opportunity of presenting their observations on the request for the indication of interim measures of protection;

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15. Whereas the rights which Greece submits as entitled to protection by the indication of interim measures are specified in its request of 10 August 1976 as follows:

- “(i) The sovereign rights of Greece for the purpose of researching, exploring and exploiting the continental shelf appertaining to Greece and adjacent to the islands of Samothrace, Limnos, Aghios Eustratios, Lesbos, Chios, Psara, Antipsara, Samos, Ikaria, and all the islands of the Dodecanese group (Patmos, Leros, Kalimnos, Kos, Astypalaia, Nisiros, Tilos, Simi, Chalki, Rhodes, Karpathos, etc.), hereinafter called the islands, which rights are exclusive in the sense that if Greece does not undertake research on the continental shelf or explore it or exploit its natural resources, no-one may undertake these activities, or make a claim to the said continental shelf, without the express consent of Greece.
- (ii) The right of Greece to the performance by Turkey of its undertakings contained in Article 2, paragraph 4, and Article 33 of the Charter of the United Nations and in Article 33 of the General Act for the Pacific Settlement of International Disputes to

abstain from all measures likely to react prejudicially upon the execution of any judicial decision given in these proceedings and to abstain from any sort of action whatsoever which may aggravate or extend the present dispute between Greece and Turkey.

- (iii) All rights appertaining to Greece under or in consequence of the final decision of the Court in the present proceedings.”

16. Whereas in its Application and request for interim measures the Government of Greece alleges, *inter alia*, that following the granting by Turkey in 1973 of permits to the Turkish State Petroleum Company (TPAO) for exploration for petroleum covering an area which encroached upon the continental shelf claimed by Greece as appertaining to certain Greek islands in the Aegean, there have been diplomatic exchanges and talks in respect of a dispute between Greece and Turkey over certain areas of continental shelf in the Aegean, but no settlement of that dispute had been achieved; that on 13 July 1976 an announcement was made concerning researches which would be undertaken by the Turkish seismic research vessel *MTA Sismik I* in the Turkish territorial sea and in the high seas, and it was stated by official Turkish sources that the vessel would not be accompanied by warships but that nevertheless all necessary measures would be taken so as to detect immediately any attack against the vessel and to respond instantaneously in case of any such attack; that on 6, 7 and 8 August the *MTA Sismik I* was observed engaging in seismic exploration of areas of the continental shelf of the Aegean claimed by Greece as appertaining to it; and whereas Greece contends that the activities of the Turkish vessel constitute infringements of the exclusive sovereign rights of Greece to the exploration and exploitation of the continental shelf appertaining to Greece;

17. Whereas Greece claims that the indication of interim measures of protection is justified in the present case on the following grounds:

- (i) With respect to the protection of the sovereign rights of exploration and exploitation claimed by Greece, and of the right claimed by Greece in respect of the alleged obligation of Turkey to abstain from all measures which might prejudice the execution of any judicial decision, on the basis that Turkey's grants of exploration licences and exploration activity must tend to anticipate the judgment of the Court, and that breach of the right of a coastal State to exclusivity of knowledge of its continental shelf constitutes irreparable prejudice;
- (ii) With respect to the protection of the right claimed by Greece in respect of the alleged obligation of Turkey to abstain from any sort of action which may aggravate or extend the present dispute, on the basis that the activities complained of would, if continued, aggravate the dispute and prejudice the maintenance of friendly relations between the two States;

18. Whereas the Government of Turkey, in its observations communicated to the Court on 26 August 1976, contends that the interim measures requested are not required and ought not to be indicated on the grounds, *inter alia*, that the exploration activities by Turkey complained of cannot be regarded as involving any prejudice to the existence of any rights of Greece over the disputed areas; that even if it were admitted that Turkey's explorations did cause harm to the rights of Greece, there would be no reason why such prejudice could not be compensated or could affect the execution of any judgment the Court might give; and, with reference to the request for an indication by the Court that both parties should "refrain from taking further military measures or actions which may endanger their peaceful relations", that Turkey has no intention of taking the initiative in the use of force;

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19. Whereas the Greek Government bases its request for interim measures of protection not only on Article 41 of the Statute of the Court but also on Article 33 of the above-mentioned General Act of 1928; whereas however the Turkish Government has communicated to the Court its view that the General Act of 1928 is no longer a treaty in force between Greece and Turkey; and alternatively that, even if it were so in force and applicable, the matters submitted to the Court in the Application fall within the terms of reservation (b) to Greece's instrument of accession to the Act, dated 14 September 1931; and whereas this reservation excludes from the procedures described in the General Act "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"; and whereas Turkey accordingly contends that it is entitled to consider the matters comprised in the Application as excluded from the scope of the Act;

20. Whereas Greece asks the Court to consider the said Act as presumptively in force between Greece and Turkey, and maintains that the subject-matter of its Application of 10 August 1976 does not fall within the terms of the said reservation (b) contained in Greece's instrument of accession;

21. Whereas it is not necessary for the Court to reach a final conclusion at this stage of the proceedings on the questions thus raised concerning the application of the 1928 Act as between Greece and Turkey, and it will therefore examine the request for the indication of interim measures only in the context of Article 41 of the Statute;

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22. Whereas the power of the Court to indicate interim measures under Article 41 of the Statute has as its object to preserve the respective rights of either party pending the decision of the Court; and whereas, in the present case, this power relates essentially to the preservation of the rights which are invoked in Greece's Application;

23. Whereas the several claims formulated in the submissions of the Greek Government in the Application are either different aspects or different incidents of its general claim to exclusive sovereign rights of exploration and exploitation in certain areas of the continental shelf of the Aegean Sea; and whereas, therefore, it is essentially the preservation of those alleged rights of exploration and exploitation which concerns the Court in examining the present request for the indication of interim measures of protection;

24. Whereas with respect to those alleged rights Greece requests the Court to direct that the Governments of both Greece and Turkey shall "unless with the consent of each other and pending the final judgment of the Court in this case, refrain from all exploration activity or any scientific research" in certain designated areas of the continental shelf; and whereas, in support of this request, Greece points to the above-mentioned grant by Turkey of exploration licences in respect of the said areas of continental shelf and to seismic exploration activity therein undertaken by or under licence from Turkey;

25. Whereas the power of the Court to indicate interim measures under Article 41 of the Statute presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute in judicial proceedings and that the Court's judgment should not be anticipated by reason of any initiative regarding the matters in issue before the Court;

26. Whereas, in this regard, the Greek Government contends that the concessions granted and the continued seismic exploration undertaken by Turkey in the areas of the continental shelf which are in dispute threaten to prejudice the exclusive sovereign rights claimed by Greece in respect of those areas; and whereas it further contends that Turkey's seismic exploration threatens in particular to destroy the exclusivity of the rights claimed by Greece to acquire information concerning the availability, extent and location of the natural resources of the areas; that the acquisition and dissemination of such information without the consent of Greece prejudices its negotiating position in relation to potential purchasers of exploitation licences, thereby permanently impairing its sovereign rights with respect to the formulation of its national energy policy;

27. Whereas, on the basis of the foregoing considerations, the Greek Government maintains that the continued Turkish seismic exploration in the disputed areas constitutes a threat of irreparable prejudice to the rights claimed by Greece in its Application; that it threatens to prevent the full restoration of those rights to Greece in the event of its claims being upheld by the Court; and that the Court's power to indicate interim measures ought to be exercised when "the parties' rights might not be

restored in full measure in the event of a judgment if that judgment is anticipated”;

28. Whereas the areas of continental shelf in which the activity complained of by Greece took place are *ex hypothesi* areas which, at the present stage of the proceedings, are to be considered by the Court as areas in dispute, and with respect to which Turkey also claims rights of exploration and exploitation;

29. Whereas, moreover, it is clear that neither concessions unilaterally granted nor exploration activity unilaterally undertaken by either of the interested States with respect to the disputed areas can be creative of new rights or deprive the other State of any rights to which in law it may be entitled; whereas in representations made on 7 February 1974, 24 May 1974, 14 June 1974, 22 August 1974, 21 and 23 July 1976, and 7 and 9 August 1976, the Greek Government has persistently protested against what it considered as Turkey's infringements of its rights in the continental shelf areas in question; whereas in a statement to Radio Ankara on 24 July 1976 the Turkish Foreign Minister recognized that seismic research “cannot establish rights in the areas where this research is carried out”; and whereas the Government of Turkey, in its observations communicated to the Court on 26 August 1976, declared that:

“Exploration by Turkey of the kind of which complaint is made by Greece cannot be regarded as involving any prejudice to the existence of any possible rights of Greece over continental shelf areas in the Aegean Sea. The sovereign rights over the continental shelf (including the exclusive right to exploration) that may exist are not taken away or diminished by exploration.”

30. Whereas, according to the information before the Court, the seismic exploration undertaken by Turkey, of which Greece complains, is carried out by a vessel traversing the surface of the high seas and causing small explosions to occur at intervals under water; whereas the purpose of these explosions is to send sound waves through the seabed so as to obtain information regarding the geophysical structure of the earth beneath it; whereas no complaint has been made that this form of seismic exploration involves any risk of physical damage to the seabed or subsoil or to their natural resources; whereas the continued seismic exploration activities undertaken by Turkey are all of the transitory character just described, and do not involve the establishment of installations on or above the seabed of the continental shelf; and whereas no suggestion has been made that Turkey has embarked upon any operations involving the actual appropriation or other use of the natural resources of the areas of the continental shelf which are in dispute;

31. Whereas seismic exploration of the natural resources of the continental shelf without the consent of the coastal State might, no doubt,

raise a question of infringement of the latter's exclusive right of exploration; whereas, accordingly, in the event that the Court should uphold Greece's claims on the merits, Turkey's activity in seismic exploration might then be considered as such an infringement and invoked as a possible cause of prejudice to the exclusive rights of Greece in areas then found to appertain to Greece;

32. Whereas, on the other hand, the possibility of such a prejudice to rights in issue before the Court does not, by itself, suffice to justify recourse to its exceptional power under Article 41 of the Statute to indicate interim measures of protection; whereas, under the express terms of that Article, this power is conferred on the Court only if it considers that circumstances so require in order to preserve the respective rights of either party; and whereas this condition, as already noted, presupposes that the circumstances of the case disclose the risk of an irreparable prejudice to rights in issue in the proceedings;

33. Whereas, in the present instance, the alleged breach by Turkey of the exclusivity of the right claimed by Greece to acquire information concerning the natural resources of areas of continental shelf, if it were established, is one that might be capable of reparation by appropriate means; and whereas it follows that the Court is unable to find in that alleged breach of Greece's rights such a risk of irreparable prejudice to rights in issue before the Court as might require the exercise of its power under Article 41 of the Statute to indicate interim measures for their preservation;

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34. Whereas the Greek Government, in terms already set out in paragraph 15 (ii) above, also invoked its right to the performance by Turkey of the latter's obligations under Article 2, paragraph 4, and Article 33 of the Charter of the United Nations as a right in respect of which it asks the Court to indicate interim measures of protection; and whereas it specifically requests the Court to direct the Governments of both States to refrain from taking further military measures or actions which may endanger their peaceful relations; whereas, however, the right so invoked is not the subject of any of the several claims submitted to the Court by Greece in its Application; whereas it follows that this request does not fall within the provisions of Article 41 of the Statute;

35. Whereas, at the same time, the Court must observe that the mutual obligations of Greece and Turkey under Article 2, paragraph 4, and Article 33 of the Charter are clearly imperative in their mutual relations, and in particular in regard to their present dispute concerning the continental shelf in the Aegean;

36. Whereas, independently of its request regarding the preservation of its rights, Greece requested the Court during the public sittings to indicate interim measures of protection in order to prevent the aggravation or extension of the dispute; whereas, before this request could be entertained, the Court would have to determine whether, under Article 41 of the Statute, the Court has such an independent power to indicate interim measures having that object; whereas, however, for the reasons now to be explained, the Court does not find it necessary to examine this point;

37. Whereas the Court has cognizance of the fact that, simultaneously with the proceedings before it in respect of the request for interim measures of protection, the United Nations Security Council also has been seised of the dispute between Greece and Turkey regarding the Aegean Sea continental shelf; whereas, on 10 August 1976 (the day on which the Application and request for interim measures were filed), the Permanent Representative of Greece to the United Nations wrote to the President of the Security Council requesting an urgent meeting of the Council in view of "recent repeated flagrant violations by Turkey of the sovereign rights of Greece on its continental shelf in the Aegean"; and whereas the Security Council discussed the question at meetings held on 12, 13 and 25 August 1976, with the participation of the representatives of Greece and Turkey;

38. Whereas on 25 August 1976 the Security Council adopted by consensus a resolution (resolution 395 (1976)) by which, *inter alia*, the Security Council urged the Governments of Greece and Turkey "to do everything in their power to reduce the present tensions in the area so that the negotiating process may be facilitated", called on Greece and Turkey "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";

39. Whereas, in the recitals to the above-mentioned resolution, the Security Council has recalled to the Governments of Greece and Turkey "the principles of the Charter of the United Nations concerning the peaceful settlement of disputes, as well as the various provisions of Chapter VI of the Charter concerning procedures and methods for the peaceful settlement of disputes"; and whereas it has also recalled the need for them "to respect each other's international rights and obligations and to avoid any incident which might lead to the aggravation of the situation and which, consequently, might compromise their efforts towards a peaceful solution";

40. Whereas the Foreign Minister of Greece stated in the Security Council following the adoption of resolution 395 (1976) that he trusted that the resolution would "clear away the obstacles to a resumption of the dialogue [with Turkey] and lead to the solution of the problem of the continental shelf by peaceful means"; and whereas the Foreign Minister of Turkey stated, following the adoption of the resolution, that the paragraph of the resolution calling for a resumption of direct negotiations

was “fully in accord with the policy that has been consistently pursued by Turkey”;

41. Whereas both Greece and Turkey, as Members of the United Nations, have expressly recognized the responsibility of the Security Council for the maintenance of international peace and security; whereas, in the above-mentioned resolution, the Security Council has recalled to them their obligations under the United Nations Charter with respect to the peaceful settlement of disputes, in the terms set out in paragraph 39 above; whereas, furthermore, as the Court has already stated, these obligations are clearly imperative in regard to their present dispute concerning the continental shelf in the Aegean; and whereas it is not to be presumed that either State will fail to heed its obligations under the Charter of the United Nations or fail to heed the recommendations of the Security Council addressed to them with respect to their present dispute;

42. Whereas, accordingly, it is not necessary for the Court to decide the question whether Article 41 of the Statute confers upon it the power to indicate interim measures of protection for the sole purpose of preventing the aggravation or extension of a dispute;

43. Whereas, under Article 66, paragraph 5, of the Rules of Court, a decision of the Court not to exercise its power under Article 41 of the Statute to indicate interim measures of protection “shall not prevent the party which has made [a request] from making a fresh request in the same case based on new facts”;

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44. Whereas, in order to pronounce on the present request for interim measures of protection, the Court is not called upon to decide any question of its jurisdiction to entertain the merits of the case; and whereas the decision given in these proceedings in no way prejudices any such question, or any question relating to the merits, and leaves unaffected the rights of the Greek and Turkish Governments to submit arguments in respect of any of these questions;

45. Whereas, 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 is necessary to resolve first of all the question of the Court’s jurisdiction with respect to the case;

46. Whereas, having regard to the foregoing, the Court cannot, at the present stage of the proceedings, accede to the request of the Turkish Government, in its observations communicated to the Court on 26 August 1976, that the case be removed from the list,

Accordingly,

THE COURT

Finds, by 12 votes to 1, that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate interim measures of protection;

Decides that the written proceedings shall first be addressed to the question of the jurisdiction of the Court to entertain the dispute;

And reserves the fixing of the time-limits for the said written proceedings, and the subsequent procedure, for further decision.

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

(Signed) E. JIMÉNEZ DE ARÉCHAGA,
President.

(Signed) S. AQUARONE,
Registrar.

President JIMÉNEZ DE ARÉCHAGA, Vice-President NAGENDRA SINGH and Judges LACHS, MOROZOV, RUDA, MOSLER, ELIAS and TARAZI append separate opinions to the Order of the Court.

Judge *ad hoc* STASSINOPOULOS appends a dissenting opinion to the Order of the Court.

(Initialled) E. J. de A.

(Initialled) S. A.
