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Letter dated 17 September 2022 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Further to my letter dated 30 September 2021 (A/76/379-S/2021/841), and with reference to the letters from the Permanent Representative of Greece dated 25 May 2022 (A/76/846-S/2022/432) and 27 July 2021 (A/75/976-S/2021/684) as well as my letter dated 13 July 2021 (A/75/961-S/2021/651), I would like, upon instruction of my Government, to bring to your attention the following.

Türkiye has carefully studied the latest letter, referenced above, of the Permanent Representative of Greece. In the letter, Greece persists in its position of defending its material breach of the demilitarization provisions of the 1923 Lausanne Peace Treaty (which includes the 1923 Lausanne Convention relating to the Régime of the Straits) and the 1947 Paris Peace Treaty and of seeking to minimize the importance of these obligations. Greece's attempt to downplay its legal obligations and trivialize the demilitarized status of the Eastern Aegean islands is disappointing, to say the least. More than that, however, Greece's acts threaten the stability of the vitally important territorial régimes which were agreed under the Lausanne and Paris Peace Treaties. Breaches of the demilitarization clauses of these régimes could indeed "constitute a threat to international peace, and all countries have an interest in avoiding that".[1]

Türkiye rejects all of the contentions made by Greece, including those in its most recent letter of 25 May 2022. Five of these contentions, however, merit specific refutation from a legal point of view, at the present stage:

First, Greece argues that the "main objective" of the Lausanne Peace Treaty and the Paris Peace Treaty was "to establish permanent boundaries and territorial legal titles to the States concerned". This assertion which is based on an oversimplification can readily be refuted. It is apparent from the titles of the treaties themselves that their overarching objective was much broader than the establishment of permanent boundaries and territorial legal titles. Similarly, the preambles of both instruments demonstrate beyond question that the overall objective of the said treaties was to end

[1] Fitzmaurice, vol. 73, *Recueil des cours*, p. 255, at 262.

the state of war and re-establish general peace and friendly relations. This was to be accomplished through the settlement of a number of essential matters, which included not only the establishment of permanent boundaries and territorial legal titles but also demilitarization which, in the context of both treaty régimes, was vitally important for the achievement of those treaties' main objective.

Second, Greece refers to the meaning and relevance of the principle of stability and finality of boundaries, as set out by the International Court of Justice in the context where "two countries establish a frontier between them" in a boundary agreement.[2] The principle referred to in that jurisprudence is no more than a particular expression, in the context of bilateral boundary agreements, of the more general and fundamental principle that "a territorial régime established by treaty achieves a permanence which the treaty itself does not necessarily enjoy and the continued existence of that régime is not dependent upon the continuing life of the treaty under which the régime is agreed".[3] It is the "territorial régime" as a whole, not merely detached parts of it, that achieves a particular status.

The entirety of the territorial régimes established, in the general interest, by the Lausanne Peace Treaty and the Paris Peace Treaty have thus achieved a permanence, the continued existence of which would not necessarily depend on the continuing life of the treaties that gave rise to them. It is legally misconceived and entirely self-serving for Greece to contend that only one aspect of the territorial régime, i.e. territorial title, would enjoy such permanence and not the demilitarized status of the territories in question.

In fact, the entire interpretation of the Lausanne and Paris Peace Treaties on which Greece has sought to take its stand is defective. It is imperative, in the interpretation of a treaty, to have regard to the treaty as a whole. As it has been observed in connection with the Paris Peace Treaty, a peace settlement must be viewed as a whole, and its clauses as all interrelated.[4] The Permanent Court of International Justice made a similar observation with regard to the interpretation of the 1919 Treaty of Peace with Germany (Treaty of Versailles), underlining that "it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense".[5]

In relation to the Paris Peace Treaty, Greece wrongfully seeks to detach article 14 (1) from the demilitarization provision in article 14 (2). Greece furthermore attempts to detach article 12 of the Lausanne Peace Treaty from the demilitarization provision in article 13 of the same Treaty and from article 4 of the 1923 Lausanne Convention relating to the Régime of the Straits.

The correct legal conclusion in this case is that the cession of territory was made conditional on a fundamental restriction on the territorial sovereignty of Greece: the demilitarization of the islands in question. The demilitarization status, so closely linked with the objective of the treaties and the territorial settlement defined by them as to be itself an integral part of that territorial settlement, is characterized by the same permanence as the cession of territory.[6] In this regard, it is not Türkiye, but Greece, that undermines stability: the stability of the important territorial régimes, enacted in the general interest, to which the Lausanne and Paris Peace Treaties gave rise.

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[2] *I.C.J. Reports 1962*, p. 6, at 34; *I.C.J. Reports 1994*, p. 6, at 37.
[3] *I.C.J. Reports 2007*, p. 832, at 861; *I.C.J. Reports 2009*, p. 213, at 243.
[4] Fitzmaurice, vol. 73, *Recueil des cours*, p. 255, at 262.
[5] *1922, P.C.I.J., Series B, Nos. 2 and 3*, p. 23.
[6] *I.C.J. Reports 2009*, p. 213, at 243–244.

Third, Greece's contention that there are no demilitarization obligations incumbent on Greece as regards Lemnos and Samothrace, because the 1936 Montreux Convention regarding the Régime of the Straits abrogated the 1923 Lausanne Convention relating to the Régime of the Straits, is similarly misconceived. As is well known, Lemnos and Samothrace were among the islands demilitarized in 1914 (Decision taken on 13 February 1914 by the Conference of London). The demilitarized status of these two islands was confirmed by the cession in article 12 of the Lausanne Peace Treaty and also by article 4 (3) of the 1923 Convention relating to the Régime of the Straits. That demilitarized status continues today.

The recital in the preamble of the Montreux Convention to the effect that the States parties had "resolved to replace by the present Convention the Convention signed at Lausanne" ("*résolu de substituer*" in French) refers only to the status of the Turkish Straits. The concerned phrase aimed to make provision for the militarization of the Turkish Straits that was the very objective of the Montreux Conference, a conference that had been called for by Türkiye itself. As with preambles in other treaties, the preambular part of the Montreux Convention constitutes no more than the "*political* basis for the specific *legal* provisions thereafter set out" in the operative provisions of the Convention.[7] The eventual decision, upon consideration of different proposals, to use the word "replace"/"*substituer*", as opposed to a more precise term of art from the law of treaties, or a phrase that would leave no doubt as to the alleged "abrogation", confirms this interpretation of the preamble.

It is apparent from the specific legal provisions of the Montreux Convention and its Protocol, as well as the proceedings of the Montreux Conference and the historical context in which it was held, that the Convention's objective was to release only Türkiye from obligations as to demilitarization. Article I of the Protocol, concluded simultaneously with the Convention, is clear as to the geographical scope of the remilitarization which was intended and agreed upon by the parties. It provides, with reference to the Montreux Convention itself, that: "[Türkiye] may immediately remilitarise the zone of the Straits as defined in the Preamble to the said Convention." There are no provisions as regards any other State or any other area. Indeed, on the eve of the Conference, Mr. Mavroudis, one of the senior representatives of Greece at the Conference, stated publicly that the Montreux Convention would not seek to secure for the Eastern Aegean islands a legal status similar to that which was to be obtained by Türkiye for the Straits (*Vradini*, 19 June 1936). This is apparent from the *travaux préparatoires* of the Montreux Convention (*Actes de la Conférence de Montreux concernant le régime des détroits* (1936)), where there is nothing to suggest a common understanding of the parties to the effect that the Convention would release any other State than Türkiye from demilitarization obligations. With regard to political pledges or statements – in whatever form – that were not reflected in a legal instrument negotiated and eventually agreed upon by the parties, reference is made to the jurisprudence of the International Court of Justice, which favours a cautious and restrictive approach in attaching legal weight to, and interpreting, such pledges or statements.[8]

Furthermore, it must be emphasized that, in any event, there was no abrogation, in 1936 or at any other time, of the legal situation created by the Decision of 13 February 1914, which was formally accepted by Greece on 21 February 1914, and subsequently confirmed in its entirety in article 12 of the 1923 Lausanne Peace Treaty.

Finally, I cannot but point to the clear State practice on this issue, which leaves no doubt as to the international obligations in question: the fact is that it was not until

[7] *I.C.J. Reports 1966*, p. 6, at 34 (emphasis added).

[8] In addition to the references in our previous letter, see Judgment of the International Court of Justice dated 21 April 2022 in *Nicaragua v. Colombia*.

the 1960s that Greece began to militarize Lemnos. For some 30 years, Greece indeed abided by its obligations and, in the subsequent years, in response to Türkiye's official protests, Greece provided formal explanations of how its acts in question did not breach its demilitarization obligations (obligations the existence of which Greece thus confirmed), including with respect to the island of Lemnos. These facts undermine the Greek argument that it was supposedly free from any such obligation already from 1936 onward.

Fourth, Greece contends that Türkiye does not have the right to insist on compliance with the demilitarization provisions in the Paris Peace Treaty, since the demilitarization provision of the Paris Peace Treaty (according to Greece) is not part of a legal régime relating to demilitarization, but is instead only "a separate and ancillary provision". This contention, although an unsurprising concomitant of Greece's continued downplaying of its demilitarization obligations, is without any legal merit.

The Paris Peace Treaty is a prime example of treaties that establish an "objective régime" under international law. The "objective régime" created by this Treaty has conferred on the islands in question a particular international status. Its provisions, including without doubt those related to demilitarization, are of such a character that "every State interested has the right to insist upon compliance with them"; conversely, "any State in possession of the Islands must conform to the obligations binding upon it, arising out of the system of demilitarization established by these provisions".[9]

Instances of demilitarization "obviously fall within the ambit of the *Aaland Islands* decision".[10] This means every State interested, including States that are not parties to the treaty in question, has the right to insist upon compliance with the obligations of the treaty. A wealth of authority confirms that, in common with the Convention of 1856 on the Demilitarization of the Aaland Islands annexed to the 1856 Paris Peace Treaty, the 1947 Paris Peace Treaty is also a treaty that creates such an "objective régime" or "general régime" (in French: "*situation objective*" or "*statut objectif*").[11] The type of treaty that would fall under this rubric was explained in a clear and concise manner by Judge McNair in *Status of South West Africa*.[12] As Greece knows all too well, the 1947 Paris Peace Treaty fits that description perfectly.

It is, moreover, beyond question that the concerned demilitarization provisions were included in the Paris Peace Treaty in order to ensure Türkiye's security. Türkiye is thus fully entitled to invoke the provisions of the demilitarization régime of the Paris Peace Treaty and Greece is legally obligated to conform to them.

Fifth, Greece also contends, if somewhat sotto voce, that article 89 of the Paris Peace Treaty supports its position that the Treaty does not create an objective régime. This contention can be refuted simply by referring to the wording of that provision. Article 89 is a specific provision that concerns the States that are named in the preamble and that have not yet become a party to the Treaty; it has no bearing whatsoever on Türkiye, which is an interested State entitled to insist upon compliance with the Treaty's demilitarization provisions under international law.

In view of the foregoing, as Türkiye has previously had occasion to observe, Greece's violations of its vital demilitarization obligations, consistently protested by Türkiye as illegal acts, inevitably have a bearing on the legal régime governing the

[9] *League of Nations Official Journal*, Special Supplement No. 3, 1920, p. 15, at 18–19.

[10] O'Connell, *State Succession in Municipal and International Law Vol. II*, Cambridge 1967, p. 23.

[11] See, for example, Fitzmaurice, vol. 73, *Recueil des cours*, p. 255, at 262; Reuter, vol. 103, *Recueil des cours*, p. 425, at 449; Kohen and Hébié in *International Law and Peace Settlements*, Cambridge 2021, p. 432, at 440–441.

[12] *I.C.J. Reports 1950*, p. 128, at 153.

sovereignty of Greece over the concerned islands. In this regard, Türkiye, a directly injured State, is entitled, in the legal relationship between Greece and itself, to call into question the opposability vis-à-vis Türkiye of Greece's sovereign title (and maritime entitlements appurtenant thereto) over the islands. This is so because that sovereign title has, since the 1960s, been encumbered with infirmities as a result of Greece's acts of militarization of the concerned islands, in material breach of Greece's treaty obligations.

Türkiye once again calls upon Greece to abide by the demilitarization provisions of the 1923 Lausanne and 1947 Paris Peace Treaties and to reinstate the demilitarized status of the Eastern Aegean islands as it was before the occurrence of Greece's material breaches. This would also ensure that the territorial régimes established by those treaties remain intact in their entirety and are not prejudiced in any manner.

Last but not least, while rejecting them in their entirety, I do not deem it necessary to respond again to the baseless political allegations and agitprops raised in the latest letter, referenced above, of the Permanent Representative of Greece. Instead I would like to refer to our previous letters, in particular those dated 21 June 1995 (A/50/256-S/1995/505), 2 July 2020 (A/74/832-S/2020/350), 21 August 2020 (A/74/997-S/2020/826), 14 October 2020 (A/75/521), 15 June 2021 (A/75/929) and 18 November 2021 (A/76/557-S/2021/961).

Let me conclude by reiterating Türkiye's commitment to the peaceful settlement of its differences with Greece to which the questions of this exchange of letters relate. We stand ready to work towards creating a momentum which will facilitate the resolution of not only one but all long-standing, legally interrelated Aegean disputes in a just and equitable manner in conformity with international law, through the means stipulated in Article 33 of the Charter of the United Nations, on the basis of the mutual consent of the parties. Yet such a momentum in the first place requires sincere, honest and meaningful dialogue rather than employing hostile political rhetoric and escalatory actions almost on a daily basis in total disregard of Türkiye's rights and vital legitimate interests, as also pointed out in Foreign Minister Mevlüt Çavuşoğlu's letter addressed to you dated 30 August 2022.

I would be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda item 72 (a), and of the Security Council, and have it published on the website of the Division for Ocean Affairs and the Law of the Sea, as well as in the next edition of the *Law of the Sea Bulletin*.

(*Signed*) Feridun H. **Sinirlioğlu**
Permanent Representative