JEAN MONNET EUROPEAN CENTRE OF EXCELLENCE
NATIONAL AND KAPODISTRIAN UNIVERSITY OF ATHENS

SECURITY AND ENERGY ISSUES IN THE EASTERN MEDITERRANEAN SPACE

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HELLENIC REPUBLIC
National and Kapodistrian University of Athens

2023

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ISBN 978-618-86114-1-2

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ATHENS

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Acronyms and abbreviations

AKP	*Adalet ve Kalkınma Partisi* - Justice and Development Party
BRICS	Brazil Russia India China South Africa
CDU	Christian Democratic Union
CESM	Center of Strategic Studies of the French Navy
CFSP	Common Foreign and Security Policy
CoP	Conference of the Parties
CSDP	Common Security and Defence Policy
DOALOS	Division for Ocean Affairs and the Law of the Sea
EC	European Community
EEAS	European External Action Service
EEZ	Exclusive Economic Zone
EMGF	East Mediterranean Gas Forum
EMSA	European Maritime Safety Agency
ENP	European Neighbourhood Policy
ESS	European Security Strategy
EU	European Union
EUGS	European Union Global Strategy
EUOAG	European Union Offshore Oil and Gas Authorities Group
FDI	Foreign Direct Investment
FIR	Flight Information Region
FRUS	Foreign Relations of the United States
GNA	Government of National Accord (Libya)
GNU	Government of National Unity (Libya)
HoR	House of Representatives (Libya)
HTS	*Hay'at Tahrir al-Sham*
IMO	International Maritime Organization
IS	Islamic State
KU	Koç University
KUDENFOR	Koç University Maritime Research Forum
LAAF	Libyan Arab Armed Forces
LNA	Libyan National Army
LNG	Liquified Natural Gas
MAP/BARCON	Barcelona Convention for Protection of the Mediterranean Sea against Pollution – Mediterranean Action Plan

MENA	Middle East and North Africa
MFA	Ministry of Foreign Affairs
MoU	Memorandum of Understanding
MSP	Maritime Spatial Planning
NATO	North Atlantic Treaty Organization
NAVTEX	Navigational Telex
NOTAM	Notice to Airmen
OPEC	Organization of the Petroleum Exporting Countries
OPRC	International Convention on Oil Pollution Preparedness, Response and Co-operation
PYD/PKK	Kurdistan Workers' Party
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
ROC	Russian Orthodox Church
ROMPE	Regional Organization for the Protection of Marine Environment
SAR	Search and Rescue
sq.km.	Square kilometer
TAF	Turkish Armed Forces
TANAP	Trans-Anatolian gas Pipeline
TcF	Trillion Cubic Feet
TPAO	Anonymous Turkish Petroleum Corporation
"TRNC"	"Turkish Republic of Northern Cyprus" (self-proclaimed)
UAE	United Arab Emirates
UCAVs	Unmanned Combat Aerial Vehicles
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNSC	United Nations Security Council
UNSMIL	United Nations Support Mission in Libya
UOC	Ukrainian Orthodox Church
US	United States
USD	United States Dollar

About the Jean Monnet European Centre of Excellence of the National and Kapodistrian University of Athens

The Jean Monnet European Centre of Excellence of the National & Kapodistrian University of Athens (NKUA) was founded in 2000, by formal agreement between the NKUA and the European Commission and since then it has been operating without interruption.

The research and educational activities of the Centre contribute to the international promotion and increased standing of the University of Athens and play a significant role in the improvement of the position of the NKUA in international evaluations (given the importance given to the Centres of Excellence in such procedures).

In the last five years, five research and education project proposals have been selected for co-financing by the EU Education and Culture Executive Agency (EECEA) under the Erasmus+ Jean Monnet Projects. Five of them have been successfully completed ('Promoting European Values and Citizenship in Multicultural Classrooms', 2016-2018 – 'European Governance in Key Sectors for Greece's Recovery: Agriculture, Tourism and Maritime Policies', 2014-2017 – 'Learning EU at Schools', 2014-2016 – 'European Governance of Migration: The External Dimensions', 2017-2020 - 'EU Policies towards its East Mediterranean Maritime Space: Energy and Security', 2019-2022). The Centre is currently implementing the project 'Specialization of Strategic Tourism Plan Actions & Strategic Study of Human Resources Development in the Tourism Sector', funded by a private company (from 2015 onwards).

In 2022 the Centre launched the -approved by the EECEA- Jean Monnet project 'Migration Challenges from Eastern and Central Mediterranean: EU Policies & New Responses' (2022-2025). The Centre also carries out two training programmes of the NKUA Centre for Lifelong Learning, in the fields of immigration and of foreign policy and security, respectively. In the past five years, the Center has offered another 12

educational programmes in addition to those co-funded by EU funds, (https://jmce.gr/portal/courses/)

During the more-than-twenty-year operation of the Center, 3,360 students of all levels, university graduates and researchers attended our educational programs and the 30 conferences, seminars, workshops, lectures and public debates. The Centre's scientific network includes 197 academics and other specialists who contribute to the implementation of the Centre's educational programmes and research activities.

The publications of the Centre include 5 books (in collaboration with Athens publishers), 12 papers in the series 'The Athens Jean Monnet Papers' and 4 in the series 'National Strategy Papers'. For the above series, there is a peer review committee at the Center, with internal and external (non-NKUA) judges. Furthermore, the Centre publishes in a special section of its website, the 'Researchers' Tribune', research papers by postgraduate students, doctoral candidates and young scientists, prepared in the framework of the Center's research programmes. The papers published in the 'Researchers' Tribune' are currently more than 90.

The Centre cooperates on a permanent basis with the Hellenic University Association for European Studies, the European Public Law Organization (EPLO), the Jean Monnet Chairs in Greek Universities, the W. Martens Center for European Studies in Brussels, the Zurich Elite Business School (ZEBS), the Anna Lindh Foundation, the Kalliopi Koufa Foundation for the Promotion of International and Human Rights Law, as well as with other Universities, think tanks and public entities in Greece and abroad, but also with international and local businesses (Google, PriceWaterhouseCoopers Business Solutions, *etc*.).

Introduction

In the framework of its European Governance Programme, the Jean Monnet European Centre of Excellence (Centre) of the National and Kapodistrian University of Athens (NKUA) expands its activities on the study of European Union's (EU) policies towards its Eastern Mediterranean maritime space, as part of the external aspects of the EU's energy and security policies, two fields identified to be particularly underrepresented at present in the academic community in Greece.

In this connection, the Centre submitted a project proposal titled 'EU Policies Towards its East Med Maritime Space: Energy & Security' (Erasmus+ Jean Monnet Activities 2019 Call for proposals), which was selected by the Education, Audiovisual and Culture Executive Agency of the European Commission (EU-EMES project, reference number 611501-EPP-1-2019-1-ELEPPJMO-PROJECT), and the respective grant agreement was signed in October 2019.

The overall aim of EU-EMES is to promote reflection and enhance knowledge on the subject matter of the project, by forming and supporting a scientific team, comprised of excelling academics, researchers from the NKUA and other universities and research institutes in Greece and abroad, as well as persons with professional expertise and interest (*e.g.*, policy makers, business and civil society representatives) in the study fields of the project.

In this respect, the Centre has built the key staff of the project by mobilising its own resources (academic staff and researchers) and involving academics and researchers from other departments of the NKUA, other Greek universities, universities in Egypt, France and Turkey, as well as the Geneva Centre for Security Studies (Athens Hub). Key staff members have been selected based on their academic and research excellence in the fields of study relevant to the EU-EMES topics of interest, and also based on their record in promoting European ideas and values in their respective countries.

Furthermore, in order to expand the team of experts involved in the implementation of the project, the Centre reached out to additional universities, institutes and think tanks in Greece and abroad. From these contacts, the Centre secured the participation from academics of higher education institutions and think tanks from

the Republic of Cyprus, Egypt, France, Greece, Germany, Israel, Libya, Spain, Turkey, the UAE and the US. The academics, as well as other researchers who joined the project team at the stage of its implementation, draw their expertise from various disciplines, such as international relations, political science, European studies / Europeanisation, law, environmental studies, political economy, security studies, energy, energy security and business, regional studies *etc*.

Moreover, throughout the implementation of the project, the Centre held consultations with policy makers and prominent journalists in Greece, other EU Member States and the USA to collect their views on the issues with interest for the project and take them into account in the organisation of the two project events. For the same purpose, project key staff members consulted with incumbent and former officials of EU Institutions, EU Member States and non-EU countries of the East Mediterranean region. The input of the policy makers and the analytical community has been extremely valuable, in particular, for the preparation of the 'Policy Conference on Energy and Security in the East Med Maritime Space: The role of the EU'; an important number of persons belonging to the above groups accepted the invitation to participate as speakers, moderators and discussants in the Conference.

Thus, for the meaningful preparation of the events envisaged in the project and its other outputs, the Centre organized in January and February 2020, in Athens, two brainstorming sessions, one on the energy and security policies of the EU with focus on the East Mediterranean region and the other on law and policy on maritime issues in this sea basin, in particular maritime delimitation issues, offshore activities (exploration, drilling, exploitation, pipelines) and regulation under international and EU law. In these brainstorming sessions, closed to the public, participated, along key staff members, selected policy makers, analysts and business representatives. During these brainstorming meetings, the participants identified the major issues and challenges for the EU and its Member States in the Eastern Mediterranean space as well as the implications and impact of the EU on the developments in this space through its various policies, in particular in the fields of energy and security. A second objective of these sessions was to help the Centre organise the two events of the project, as the detailed topics, draft programme, potential speakers and participants in the conference and the cross-fertilization workshop were agreed upon at the brainstorming sessions. Furthermore, the outcomes of the brainstorming provided valuable food-for-thought for

further elaboration for the policy conference and the present electronic book on EU's Eastern Mediterranean Maritime Space - Energy & Security Policies and the Policy Report on Perspectives for Academic Cooperation in the Eastern Mediterranean Maritime Space.

The two events of the project were the Cross-fertilisation workshop on EU Policies on Energy and Security in the East Med for young researchers, and the Policy Conference on Energy and Security in the East Med Maritime Space.

Ahead of these events (and of the brainstorming sessions) the Centre prepared and disseminated in November 2019 a concept paper entitled 'An Outline for the preparation of the Events to be organised for the Implementation of the EU-EMES project' (uploaded to the project webpage on the Centre website).

The Cross-fertilisation workshop took place virtually (between 15/11 and 6/12/2021) and was addressed to young researchers and doctoral students from universities in Greece and abroad. The workshop provided a selection of lectures by the key staff and invited experts on EU Governance & Integration, EU Foreign Policy and CSDP, European Neighbourhood Policy, EU policies addressing Maritime Security and Hyber/Cyber Threats and EU Energy and Environmental policies.

The Policy Conference was a two-day policy-oriented conference which took place in Athens (3-4/11/2022) in a hybrid form. It brought together key staff and other members of the scientific team of the project along with policy makers from Europe, US and other East-Med countries, who discussed energy security, hard and soft security issues affecting EU and its Member States, and the role of East Mediterranean countries in this context, including maritime delimitations as well as the options for EU and the other actors in the Eastern Mediterranean space, and the policy tools for the successful implementation of EU policies in the region.

This cross-fertilisation project aimed at boosting existing knowledge on the subject, and at analysing recent geopolitical developments in the Eastern Mediterranean. In this context, the implementation activities were focused on EU's actorness in the region (EU as a force of stability), implementing multi-disciplinary approaches in relation to political, economic, security, migration and institutional cooperation aspects in the Eastern Mediterranean. In this way, the project activities

contributed to enhancing EU orientation of the teaching and research activities of the academic and research institutions involved in the project implementation.

In addition to the academics and other experts, the project has attracted over one hundred young researchers from EU Member States and countries of the East Mediterranean region, thus reinforcing the European dimension in their research. It has also increased interest in understanding the functioning of the European Union. In parallel, it has significantly promoted Greek researchers' understanding and knowledge and increased their interest in EU policies with relevance to/impact on the Eastern Mediterranean region and countries. Moreover, it has supported involved staff, professors, researchers and PhD students in their research and teaching of the subject, increasing opportunities for academic staff in terms of professional and career development. Furthermore, the project, by providing an EU micro-institutional environment, significantly contributed to the (EU) socialization of East Mediterranean academics, researchers and experts, which resulted in a long-lasting Europeanisation impact.

The project activities addressed Europeanisation mechanisms, in terms of (a) establishing a common terminology/ontology amongst participants, (b) role-setting (common) comprehension amongst participants, (c) developing of EU institutional skill set and understanding to (d) create fertile ground for EU governance policies to be materilazed.

In these aspects, the project promoted active European citizenship and dealt with the role of the EU in its Eastern Mediterranean neighbourhood and the challenges ahead, enhancing awareness of the Union and facilitating future engagement and people-to-people dialogue across European regions.

To recap, as a cross-fertilization project, the EU-EMES:

- Contributed to the understanding, advanced existing knowledge and enhanced the dynamic of a multi-disciplinary and international scientific team at the Jean Monnet European Centre of Excellence of the NKUA, following a specific need to improve Greece's research in the subject (EU Policies towards its Eastern Mediterranean Maritime Space in Energy and Security).

- Facilitated participating institutions in examining the issue of the organization of further common academic activities and the preparation of relevant supporting tools (including through Erasmus Mundus Joint PhD Degrees, and/or joint consortia for other schemes of European funding).

- Promoted synergies in the Eastern Mediterranean region, by removing artificial and conceptual boundaries through better understanding of existing and new aspects of the Eastern Mediterranean dynamics in terms of energy security and EU Energy Strategy.

- Aimed at jointly-developed content and co-teaching for selected doctoral students and researchers from the involved universities, in subjects related to several aspects of EU Governance, including political, economic, social, business, environmental, maritime and energy security.

The ideas, conclusions and recommendations presented below are the output of the cross-fertilizartion Workshop (seven online sessions held from 15 November to 6 December 2021) and the policy-oriented International Hybrid Conference, held in Athens on 3 and 4 November 2022. Both activities were organized and animated by the Centre in the framework of the EU-EMES project. Centered around the general theme of EU Policies towards East Mediterranean: Energy and Security, the Workshop and the Conference brought together dozens of academics, top experts, researchers, policymakers, students and civil society from Cyprus, Egypt, France, Germany, Greece, Israel, Libya, Spain, Turkey, the UAE, and the US, and engaged them in constructive dialogue and exchange of views.

More particularly, on the first day of the Conference two study groups, comprising academics and top experts (with no audience participation), delved into the issues of Energy and Security in the East Mediterranean Sea. On the second day, the broad audience participation (both in-person and virtual) made evident the relevance of the issues discussed. The topics were first presented by the speakers, and then thoroughly examined in context from various perspectives. After expressing their own views and opinions, the speakers concretized them by making specific recommendations and policy proposals, suggesting indicated course of action in order for their ideas to materialize in tangible solutions. What is more, after discussing and

debating on certain controversial issues, they converged on some of them, while questions from the audience enabled productive interaction and nuanced approaches.

The following presentation of conclusions and recommendations originate from (and encapsulate) the presentations and debates during the above two formal events and preparatory meetings. They cannot be assigned in their totality to one or more of the participating academics and researchers, nor to the Jean Monnet European Centre of Excellence of the NKUA.

The present electronic publication contains specific papers on concrete issues affecting EU policies and action towards the East Mediterranean region. These papers were elaborated in the framework of the research activities of the EU-EMES project and were orally presented and discussed in the events organized by the European Centre of Excellence of the NKUA for the implementation of the project (cross-fertilization workshop, policy conference and in the meetings held for the preparation of the Workshop and Conference). These papers focus on particular issues and shed light on challenges EU Institutions and Member States are faced with in the crucial neighbouring space of the East Mediterranean Sea.

An Introduction to Eastern Mediterranean Security after 2/24: The elephant in the room

Petros Savvides[*]

Abstract

The Russian invasion of Ukraine is a consequential moment in world history that challenges existing notions of global peace and security, while its undetermined end poses a critical threat to international stability. This introductory study examines the impact of the ongoing war on the security of the Eastern Mediterranean and identifies variables that may spoil the present security architecture of cooperation in the region. The initial part investigates the contributing role of the West in enhancing Russian strategic assertiveness, in the first two decades of the century, that facilitated the Kremlin's hybrid occupation of Crimea in 2014, its unanticipated engagement in the Syrian civil war in 2015, and, eventually, its invasion of Ukraine since 24 February last year. It then examines the redistribution of balance of power in the Middle East, after the consolidation of the Russian-Iranian-Turkish axis, and the effort of establishing a pro-West geopolitical arc of influence, at first through the Greek-Cypriot-Israeli plus US alignment and, recently, with the Israeli-Arab normalization of relations. The latter part focuses on the elephant in the room, Turkey – lately 'Turkiye' – that, under the authoritarian rule of President Recep Tayyip Erdogan, has been transformed into a rogue state. Analysis interprets Turkish involvement in regional conflicts and Ankara's aggressive foreign policy in the last decade, which aims at expanding its hegemonic influence, using military coercion, intimidation, misinformation, and threats of military force. It also examines the growth of Turkish animosity against Greece over the Aegean and the Easter Mediterranean as well as Ankara's militarization of the Cypriot energy exploration program, in defiance of international and customary law. The concluding remarks assess challenges to global stability due to the continuing Russian-Ukrainian conflict and potential threats in the Eastern Mediterranean, under the recently announced 'Century of Turkey' vision.

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The prelude to the invasion of Ukraine

The continuing Russian invasion of Ukraine – since February 24, 2022 – has turned into a critical landmark in European history and global geopolitics, with worldwide security implications and severe financial repercussions. The post-2/24 era unfolding today, increased significantly the instability and unpredictability characterizing the asymmetric multipolarity of world order, which has been evolving since the beginning of the new century.

Russia's invasion of Ukraine has not been a sudden thunder in geopolitical sunshine. While, undoubtedly, the responsibility for the war – 'special military operation' according to Moscow – lies in the authoritarian regime in the Kremlin, the roots of today's precarious security situation in Europe, may be identified in two major factors: the pronounced failures of American strategy in the Middle East as well as the European hesitation to acknowledge the complexity of contemporary threats and acquire strategic autonomy as a global actor, beyond the accommodating shadow of Washington.

The Bush doctrine of Primacy (Jervis, 2003), which inspired disastrous military campaigns in Afghanistan and Iraq, followed by the Obama doctrine of Offshore Balancing and the withdrawal of United States (US) forces from the Middle East (Layne, 2009) and Washington's rebalancing towards Asia and Pacific (The White House, 2015), created, predictably, a security gap in the unstable, energy-rich, region that encouraged unforeseen challenges and deadly threats. The resulting Middle East mess and the consequent Arab Spring, that offered fertile ground for sectarian violence and Islamic fundamentalism (Islamic State – IS) – in the context of growing global and regional autocratic powers (Russia, China, North Korea, Iran) – created conditions that, eventually, facilitated unanticipated actions by Moscow. Initially, the hybrid invasion and unobstructed occupation/annexation of Crimea in February-March 2014 and then its military intervention in the Syrian civil war in September 2015.

The Russian expansion in Crimea and the strategic descent/consolidation in the Middle East were an indirect consequence of institutional weaknesses in Washington and Brussels. Primarily, the superficiality of US analysis regarding the complexity and depth of Middle Eastern affairs and Moscow's ambitions, that, in consequence, led to extraordinary intelligence failures in foreseeing the day after in the Middle East and

predicting Russian strategic planning. Then, the entrapment of the European Union (EU) (Ikani and Meyer, 2022) in the role of a bureaucratic economic giant, rather than a global actor capable of projecting the Union's strategic interests abroad and providing for autonomous European security. This critical deficiency, encouraged by the European misconception of US/NATO security protection, is reflected in the obsoleteness of the European Security Strategy (ESS) of 2003, the consequent lack of adequate European forces and the absence of robust security determination in Brussels to protect European soil. Similarly, the European Union Global Strategy (EUGS) introduced in 2016, after Crimea, was another theoretical, non-binding, document emphasizing different concepts, such as 'resilience', 'integrated approach', 'pre-emptive peace' and 'strategic autonomy', without a pragmatic analysis of global realities (European External Action Service/EEAS, 2016). Uncoincidentally, this security vagueness in Europe, including the role and commitment of NATO, was reflected in President Trump's threat for US withdrawal from NATO in 2016 and 2019 (New York Times, 2019) as well as President Macron's bold acknowledgment of NATO's 'brain death' and the need for Europe to 'wake up' (Economist, 2019). It was only the Russian invasion of Ukraine that, eventually, opened European eyes regarding the severity of global threats and the need to reconsider European defence obligations and capabilities. This strategic awakening is reflected in the latest strategic document entitled 'A Strategic Compass for Security and Defence', published after the beginning of the Russian invasion (EEAS, 2022).

Redistribution of power balance in the Middle East

Exploiting western vulnerabilities, increasingly assertive Moscow succeeded in imposing de facto conditions on the ground – Crimea, Donetsk and Luhansk in eastern Ukraine, and Syria – that encouraged the direct engagement of other rogue states in the Middle East. Iran, a theocratic Islamic 'republic' possessing significant offensive capabilities that include an arsenal of ballistic missiles (Taremi, 2005) and a nuclear program, jumped at the opportunity to expand and solidify its influence in the Middle East. Turkey, an authoritarian Islamic regime with expansionist, hegemonic, ambitions and a strong defence industry – that envisions, as the Iranian and North Korean models, the development of a ballistic arsenal and the discreet initiation of a nuclear program (Ophir, 2021; Vlassis, 2021) – invaded northern Syria with the objective of weakening

the Kurdish forces in Syria, fighting the Islamic State, and becoming a major stakeholder in the conflict.

Western preoccupation with the destruction of the Islamic caliphate – based on the vital contribution of local proxy forces, such as the Kurdish Peshmerga in Iraq and the Kurdish YPG and YPJ in Syria – encouraged Russia, Turkey and Iran, and their local proxies, to form a strategic alignment, establishing a northern geopolitical arc of influence in the Middle East, extending from Iran, Iraq, and Syria to Lebanon (Hezbollah), Gaza (Hamas), and Yemen (Houthis).

Moscow's deployment of ground, air, and naval forces in Syria, at the request of Damascus, led to the formation of a permanent Russian footprint in the region, the strengthening of Iranian-Russian cooperation, and the establishment of a strong naval presence in the Eastern Mediterranean, under the protection of an aerial and naval Anti-Access/Area Denial (A2/AD) umbrella (Altman, 2016). Tehran, taking advantage of the civil war, deployed forces in Syria in support of the Syrian regime, causing uneasiness to Jerusalem, which perceived the presence of Iranian forces and weapons at its northern borders as a severe threat. Ankara, under the pretext of security concerns, allegedly the spill of the conflict on its soil, invaded Syria in August 2016 and, through consecutive military operations, set part of northern Syria under military occupation and embarked on a policy of Turkifying the occupied area (Al-Hilu, 2021).

The restructuring of the security architecture in the Middle East, in favour of Russia, Iran and Turkey, caused the concern of the West – in reality, Washington – and Jerusalem, which realized that the de facto situation established in the Middle East, threatened vital Western and Israeli security interests in the region.

The first opportunity for the formation of a pro-West counter-arc in the Middle East appeared with the discovery of significant hydrocarbon resources in the Eastern Mediterranean by Egypt, Israel and Cyprus. With the encouragement of Nicosia, the delimitation of the Exclusive Economic Zones (EEZs) between the three actors – according to the principles of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) – and common interests, gradually cultivated close relations among them and with Greece (Ioannides, 2021). Initially, in the energy sector – such as the formation of the Eastern Mediterranean Gas Forum (EMGF) – that gradually expanded to security cooperation and multilateral military exercises, with the participation of

forces from energy stakeholders in the region, such as the US, France and Italy, and other friendly nations.

The strategic alignment between Greece-Cyprus-Israel, with the participation of Egypt and Jordan, enjoying the close support of the United States, was considered significant for the security of the Eastern Mediterranean, and turned into a catalyst for establishing a pro-West, southern arc in the Middle East to counter the Russian-Iranian-Turkish axis. Washington, considering that the solidification of the tripartite-plus-US axis could become the cornerstone for the expansion of strategic alignment in the Middle East, encouraged an extraordinary breakthrough in 2020, the Abraham Accords. The ensuing Arab-Israeli normalization of relations, initially of Israel with the United Arab Emirates and Bahrain and later with Morocco and Sudan, was accompanied by the discreet warming of relations between Jerusalem and Riyadh, which, both, face a common adversary, Tehran (Mekay, 2021). Joint air exercises in Greek and Middle Eastern air space, between the Hellenic Air Force and the Israeli Air Force or with the Royal Saudi and the United Arab Emirates (UAE) Air Forces, are indicative of the potential depth of the evolving axis, which could stretch from the Persian Gulf to the Mediterranean.

While the tripartite-plus-US partnership is steadily evolving in the Eastern Mediterranean – last year Washington lifted the arms embargo to Cyprus – and the building of bilateral bonds between Greece, Cyprus and Israel with the Arab states is gradually increasing, the recent indications of a shift in Saudi foreign and energy policy have caused alarming concerns in the West. In the midst of a global emergency in Ukraine, Riyadh's decision to follow OPEC+ in reducing oil production, the strengthening of relations between Moscow and Riyadh, reports about Saudi and UAE interest – Turkey is also interested – to join BRICS (Brazil, Russia, India, China, South Africa) (Al-Asoomi, 2021), and the recent visit of Chinese President Xi Jinping in Riyadh, signal the possibility of a dramatic shift in global power politics to the detriment of Western interests (Fontenrose, 2022).

The elephant in the room

Taking advantage of the security gap in the Middle East, Turkey, under the despotic regime of Recep Tayyip Erdogan, embarked on an aggressive strategy of expanding its hegemonic influence in the region, by combining coercive diplomacy and intimidation with disinformation, and the use of military force and the threat for war.

Since the rise into power of the Islamic Justice and Development Party (*Adalet ve Kalkınma Partisi* – AKP*)* in November 2002, the political conception about the Turkish state and its geopolitical role in global affairs, has passed through different stages, which range from the doctrine of 'Strategic Depth' in the early 2000s to the 'Century of Turkey' vision today. The methodic transition from the pro-West Kemalist era (1923-2002) to the Turco-Islamic Erdoganist era of the last two decades (Sullivan, 2018), was founded on two pillars. Initially, the systematic cleansing of the secular Kemalist foundations in state institutions (armed forces, security forces, intelligence service, judiciary, *etc*.) and their replacement with a conservative Islamic ideology that envisions the revival of Ottoman grandiose. Then, the control of the economy and the mass media by pro-AKP corporations with the simultaneous oppression of social dissent, and the silence of political opposition, under the pretext of state security and anti-terrorist legislation.

During the first decade, AKP, under Erdogan, consolidated itself into power by projecting a progressive Western profile, while, at the same time, silently sanitized – Islamized– all state institutions and the economy from Kemalist influence. When the Arab Spring emerged in 2011, Ankara projected the 'Turkish model' of a successful, secular, modern state with roots in political Islam and a flourishing economy that could serve as an example for the Arab World. Soon, though, the concept – to the disappointment of the Americans and Europeans that were fond of Turkey's geopolitical importance – started to collapse, when it was rejected by the Arabs themselves, who detested Ankara's neo-Ottoman ambitions for the Middle East, and Erdogan began showing publicly the real face of his regime (Ulgen, 2011; Tugal, 2016).

Crushing violently the Taksim Gezi Park protests, in the summer of 2013, Erdogan, who began appearing in European magazine covers as 'the dictator' (The Economist, 2017; Le Point, 2018), started to impose, internally, oppressive measures and, externally, an aggressive foreign policy agenda. Already the *Mavi Marmara*

incident in May 2010, which led to the rupture of Turkish-Israeli relations, as well as Ankara's policy of military coercion in Cypriot EEZ, following the beginning of the Republic of Cyprus energy exploration program in 2011, signaled a clear deviation from foreign minister/prime minister Ahmet Davutoglu's 2001 doctrine of 'Strategic Depth' and 'zero problems with neighbours' (Davutoglu, 2010), that was eventually sacked from office by Erdogan in May 2016.

The failed military coup of 15 July 2016, broadcasted live on Turkish and international television, has been a pivotal moment in Erdogan's despotic rule and Ankara's revisionist ambitions. Amidst official accusations for a foreign (US) involvement and public hatred against the military, peculiarly the Turkish armed forces which staged the coup, were ordered, a month later, by the AKP government to invade northern Syria. Considering the history of alleged coup plans, according to Erdogan by a 'terrorist parallel state', against the AKP government –*Ergenekon* (a mythical place in the Altay Mountains) of 2007 and *Bayloz* (Sledgehammer) of 2010 – the question remains today: was the military coup a real attempt or, according to opposition leader Kemal Kilicdaroglu, a 'controlled coup' to strengthen the regime of an autocrat (Gultsasli and Rettman, 2019)?

Since the Turkish invasion of Syria in August 2016 (Op. Euphrates Shield), Ankara expanded its military control over Syrian soil, through consecutive operations in January-March 2018 (Op. Olive Branch), October-November 2019 (Op. Peace Spring), and February-March 2020 (Op. Spring Shield). Amongst reports for nebulous Turkish cooperation with the Islamic State – oil trade, medical treatment of wounded members, transfer of terrorists to Europe (Bozkurt, 2022) – and the recruitment of Syrian paramilitaries against the pro-West Kurdish forces fighting the Islamic State (Sanders and Salameh, 2020), the unchallenged and unopposed – by international institutions – Turkish invasion and military occupation of Syrian soil, was considered, by increasingly assertive Ankara, as a green light for its unilateral engagement, and its use of military force, in other regions.

Taking advantage of the Libyan civil war, Turkey, seeking to expand its hegemonic influence in North Africa and the Mediterranean, became actively engaged in the conflict (Lund, 2022), by providing weapons, such as unmanned combat aerial vehicles (UCAVs) Bayraktar TB2, military equipment and advice to the paramilitary

forces of the Government of National Accord in Tripoli that also enjoyed the support of Qatar. Ankara's intervention in Libya, successfully shifted the balance of power against the Libyan National Army, representing the House of Representatives in Benghazi, that benefited the active support of Egypt and UAE. Turkish military ambitions in Libya, including the deployment of Hawk anti-aircraft missiles that were mysteriously destroyed in a strike by an unidentified air force (Guesmi, 2020), and the prospect of Turkish air (Al-Watiya) and naval bases (Misrata and Zuwara) on Libyan soil, were considered as a security threat by neighbouring Egypt as well as Greece and France among others. Ironically, Operation EUNAVFOR MED IRINI implemented, since March 2020, by the EU in enforcement of the United Nations arms embargo to Libya, was provocatively challenged multiple times by Ankara, when Turkish Navy frigates escorting suspicious cargo ships, not only refused inspections but often threatened or harassed EU naval vessels participating in the operation, causing embarrassment to Brussels (Conley and Ellehuus, 2020).

Ankara's next active involvement in a conflict, after its unopposed military engagement in northern Syria and western Libya, was the Nagorno Karabakh war, between Armenia and Azerbaijan, in the Autumn of 2020. Turkish Air Force F-16 jets were secretly deployed in Azerbaijan before and during the war (Trevithick, 2020), while Turkish military advice and the use of Bayraktar TB2s, operated by the Turkish military, became a battlefield game-changer for Baku, while the effectiveness of Turkish UCAVs attracted international attention, turning Ankara into 'a drone power' (Kinic and Celik, 2021).

The Russian invasion of Ukraine offered another opportunity for Turkey to appear as a global influencer in an international conflict. Re-adopting its infamous Second World War role of 'the evasive neutral' (Weber, 1985), the AKP government sought to exploit the situation. On one hand, by supplying UCAVs to Ukraine, closing the Black Sea to incoming Russian warships, and facilitating meetings between the adversaries and other actors. On the other hand, pompously defying Western sanctions, it deepened its political relations and economic ties with Moscow, significantly increased its imports of cheap oil and gas from Russia, turning into a safe haven for Russian companies and oligarchs (Wall Street Journal, 2022). While the Russian invasion caused the mobilization of the West, including the EU and NATO, Turkey – which joined the North Atlantic Alliance in 1952 – is the only member that

provocatively refused to close its airspace to Russian airplanes and implement international sanctions against Moscow. While the voices of concern, regarding Turkish loyalty and commitment to the Alliance (Cook, 2022; Bandow, 2022), are increasing, Ankara is the last member, along with Budapest, that intentionally delays the urgent accession of Sweden and Finland to the Alliance, demanding the extradition of Turkish citizens, allegedly terrorist suspects, from Sweden (Ashford and Kroenig, 2023).

Military coercion and war threats against Greece and Cyprus

Turkish animosity against Greece over the Aegean Sea began with the Greek discovery of offshore oil reserves in the island of Thasos, in the northern Aegean, in early 1974 (Foreign Relations of the United States / FRUS, 2007, pp. 126-130). Already, on 1 November 1973, Ankara issued, unilaterally, irregular exploration licenses for the Anonymous Turkish Petroleum Corporation TPAO to the West of the Greek-Turkish maritime border, within the Greek continental shelf, between the islands of Samothrace, Limnos, Agios Efstratios, Lesvos, Chios, and Psara. Illegitimate Turkish efforts to impose de facto conditions in the Aegean, reemerged on 18 July 1974, when new irregular licenses were issued to TPAO, based on an alleged median line between the Greek and Turkish mainland coasts, ignoring the sovereignty of the Greek islands and Greek sovereign rights in Eastern Aegean (Greek Ministry of Foreign Affairs/MFA, 2022, map 4). Since then, Ankara continues the issuing of irregular exploration licenses and, under different pretexts and illegitimate technicalities, various Navigational Telexes (NAVTEX) and Notices to Airmen (NOTAM) for the Aegean and the Eastern Mediterranean, in an effort to question Greek sovereign rights and distort the legally assigned jurisdictions of Greece in the Athens Flight Information Region (FIR); both in the air, regarding aviation safety, and the sea, over search and rescue (SAR) operations (Greek MFA, map 5).

Since the Turkish invasion of Cyprus in 1974, Ankara's aggressive strategy over the Aegean and the Eastern Mediterranean is consistently founded on six pillars of action.

1. Invention of 'bilateral problems': Turkey's long-term ambitions are founded on the imaginative creation of various 'issues' or 'questions' against the targeted country (Greece or Cyprus) that are gradually manipulated into bilateral 'problems', such as the Greek SAR jurisdiction, the supposed non-entitlement of sovereign rights for Greek

islands, alleged gray zones in the Aegean, or the suggested demilitarization of Greek islands.

2. Disinformation: Ankara's next move is the implementation of high-profile media campaigns of disinformation for the promotion of these unsubstantiated 'problems', with the intention of deconstructing, through false claims, the legality and rightness of Greek positions, and of conditioning international public opinion about alleged Turkish rights.

3. Legalistic cover: Turkish government's claims are always accompanied by a legalistic effort to legitimize its groundless allegations, by the twisting and manipulation of international and customary law, the signing of non-valid agreements with other parties (*i.e.,* the non-recognized 'Turkish Republic on North Cyprus', the Government of National Accord in Libya), the publication of maps with the Turkish perspective, as in the case of the 'Blue Homeland', and the submission of documents with Turkish claims to international bodies, such as the UN Security Council, the EU and NATO.

4. Package negotiations: The use of Anatolian bazaar bargaining tactics, by the simultaneous projection of multiple 'problems' with the targeted state, to complicate bilateral relations and exercise pressure on the adversary for package negotiations for real bilateral issues or imaginative 'questions'.

5. Military coercion: The support of political 'claims' with military coercion – such as provocative air-naval exercises, military overflights of Greek islands, military intimidation in the air and the sea, heavy naval escorts of Turkish research vessels in areas of alleged Turkish jurisdiction – that threaten the peace and carry the risk of an accidental or intentional 'hot incident'. This tactic is accompanied by direct threats for the use of armed violence as well as indirect or open threats of war (*casus belli*).

6. Avoidance of international arbitration: The constant refusal of Ankara to join Greece in seeking a solution to individual problems through the jurisdiction of the International Court of Justice at The Haque.

The evolution of Turkish claims in the Aegean and the East Mediterranean may be distinguished in three phases:

The initial phase between 1973 and 1995, uncoincidentally, unfolded after the Turkish invasion of Cyprus in 1974, which encouraged, in the following decades, an aggressive posture by Ankara over its claims in the Aegean. Greece and Turkey were brought three times to the brink of war, when Ankara initiated illegal exploration activities in the Greek continental shelf of the Eastern Aegean under heavy naval escorts (Schmitt, 1996). The first crisis erupted in May 1974 with the exodus of the Turkish Navy hydrographic ship *Candarli*, followed by a second crisis in August 1976 – during bilateral talks for the Aegean – when Ankara send *Hora* to the Greek continental shelf between the islands of Chios, Samos, and Ikaria. In March 1987, the eruption of a new crisis over the heavily escorted mission of *Sismik*, was responded decisively by Athens, when the Andreas Papandreou government appeared willing to use military force against Turkish provocations (Dimitrakis, 2007).

An intermediate phase may be identified between 1996 and the 2000s, when the two countries were brought to the brink of war, for the fourth time, over the sovereignty of the Imia islets in January 1996 (Limberis, 2014). Ankara, considering that, after the strong Greek reaction of 1987, a new research mission in the Aegean might have led to war, tried to challenge Greece in the Aegean, through daily violations of Greek national airspace by Turkish jets, the questioning of Greek search and rescue jurisdiction in Athens FIR, provocations at sea, and other artificial ‘questions’. The introduction of alleged ‘grey zones’ in the Aegean by Ankara, regarding the sovereignty of Greek islands in the Aegean, was intended to exercise pressure on Athens and to impose concessions (Greek MFA, 2022, map 6).

The present phase, since the early 2010s, is characterized by raw aggression, intimidation, and war threats against Greece and Cyprus. Ankara’s unopposed militarization of the Cypriot exploration program was not limited to the harassment of exploration activities, such as the illegal and provocative blocking, by Turkish Navy vessels, of Eni-chartered drillship *Saipem 12000* from drilling in Cypriot block 3 in February 2018 (Maritime Executive, 2018). Since the initiation of the Cypriot exploration program in 2011, with the blessings of Brussels and Washington, Western reaction to Turkish provocations has been pale, confined to theoretical condemnation without meaningful action, in the form of political pressure and strong sanctions. This posture by the West, encouraged, initially, the conduct of unauthorized seismic missions, by Turkish research vessels *Barbaros Hayrettin Pasa* and *Oruc Reis*, in the

Cypriot EEZ, including the 13 blocks of the delimitated zone, and, from 2019, illegal drillings by Turkish drilling ships *Fatih* and *Yavuz*, in Cypriot block 6 (target 'Guzelyurt-1', 7 (target 'Selcuclu-1') and 8 (target "Lefkosa-1').

The absence of any significant reaction to the de facto intrusion of Turkey in Cypriot EEZ, opened that way for intimidating action against Athens. Ankara's economic growth and G-20 membership, the manipulation of regional conflicts, the substantial development of the Turkish defence industry and the strengthening of the Turkish armed forces (especially the Turkish Navy), inspired an unprecedented campaign of aggression against Greece. The Evros Crisis emerged on 28 February 2020, when the Turkish government transferred tens of thousands of irregular migrants to the Greek-Turkish border and Erdogan announced the unilateral opening of the borders to Greece. During the following two months, repeated waves of irregular migrants attacked the Greek border, while thousands were sent in small boats from the Turkish coast to the Greek islands of the Eastern Aegean. The next crisis began on 21 July 2020, when Ankara suddenly issued a NAVTEX regarding exploration activities by research ship *Oruc Reis* in the Geek continental shelf, east of Rhodes and south of Kastellorizo. In the following months, the Turkish vessel, under heavy naval escort, carried out seismic research in this area, while the Greek armed forces were on full mobilization, bringing the two countries on the brink of war for the fifth time. The crisis eventually ended with the withdrawal of the Turkish ship and its naval escort from the region in November, under considerable pressure from Washington and Berlin, which was holding the presidency of the European Council at the time.

Concluding remarks

The ongoing 'European war' in Ukraine, with distinct characteristics of a proxy conflict between Russia and the West, is a consequential moment in world history. The turn of the Ukrainian battlefield into a slaughterhouse, in the heart of Europe, without any decisive interest by the international community for the end of bloodshed and destruction, is a dark stain in the third decade of the 21st century, with potentially dangerous global consequences.

The first critical question concerns the undetermined way of ending the conflict, taking into consideration that both adversaries are willing to fight to the bitter end, for Ukrainian liberty and Russian pride. Kiev, with the support of the West, may continue

fighting for a long time, with heavy loss of human lives and devastating effects on cities and infrastructure. But the indefinite continuation of the war for Moscow, which already suffers significantly in the battlefield – taking, also, into consideration its political and economic isolation as well as indications of internal dissent – may bring the Putin regime into a severe test that is questionable whether it can handle. Desperation may lead to hazardous decisions for unconventional acts, in order to save Putin's face and Russian national pride.

The second critical question pertains to the growing assertiveness of Asian powers and the potential evolution of an Eastern axis between China, Russia, India, North Korea, Iran, and Turkey, to challenge Western domination of global affairs. Notable signs such as, the strengthening of Russian-Chinese relations, the Russian turn towards Asian suppliers of arms and ammunition for its struggle in Ukraine, increasing interest of Asian powers to join BRICS, and the methodic infiltration of Africa by China, Russia, and Turkey, should be considered as red flags. In the already complex world of multipolar asymmetry, the rise of Asia, and the consequent struggle for global economic domination, may endanger a strategic schism between East and West, with detrimental consequences for international stability and European security.

Power rebalancing in the Middle East, after the strategic descent of Russia and the formation of a Russian-Iranian-Turkish axis of influence – stretching from Iran, Iraq, and Syria to Lebanon, Gaza, and Yemen – has increased the geopolitical importance of the Eastern Mediterranean, which became a vital component for the establishment of a Western counter-axis in the Middle East. Under the despotic regime of Erdogan, Turkey has turned into a rogue state, where human rights and civil liberties are violated, democratic principles are manipulated, free expression is silenced, and dissent is criminalized with the excuse of state security and anti-terrorist legislation. Its revisionist foreign policy is accompanied by military coercion and the threat of force as well as the opportunistic engagement in regional civil wars and conflicts. Turkey's strategic alignment with Russia and Iran, its antagonistic rift with Washington, its questionable membership in the North Atlantic Alliance, its arrogance towards European partners, and its aggressive threats of war against Greece and Cyprus, have turned it into a pariah in the international system.

Brussels has already frozen Turkey's accession process and Washington kicked Ankara out of the F-35 stealth jet program because of its acquisition of the Russian S-

400 air defence missile system. Likewise, bipartisan Congress has expressed serious concerns regarding the potential procurement of new F-16V jets by Turkey due to its aggressive posture against Greece. At the same time, Washington, to the detriment of Ankara, enhanced its strategic alignment with Greece and Cyprus, which are considered reliable security pillars in the Balkans and the Eastern Mediterranean.

Under the present circumstances, the announcement of the 'Century of Turkey' vision regarding the upcoming 2023 centennial for the establishment of modern Turkey after the collapse of the Ottoman Empire (Daily Sabah, 2022), must be perceived with extreme caution. Ankara's proven record of infidelity towards democratic principles and human rights, international treaties and bilateral agreements, security alliance obligations, international and customary law, and good neighborhood practices, cause skepticism and great concern over Turkish strategic ambitions. The growing militarization of Turkish foreign policy, the revisionist character of Turkish national security strategy, Ankara's strategic deviation from the West (NATO and EU), and increasing Turkish alignment with the adversaries of the West, should be considered as red flags for Eastern Mediterranean security and stability.

The pompous statements of Erdogan regarding Islamic greatness have caused more concern about the rationality of Turkish thinking. On 15 November 2014, the Turkish President confidently claimed that 'Muslim sailors reached the American continent 314 years before Columbus, in 1178' (The Guardian, 2014)! Likewise, on 5 July 2015, he asserted that it was not Neil Armstrong that walked first on the Moon in 1969, but a 'Muslim space explorer reached our satellite 334 years before that, in 1635' after 'the famous aviator, Lagari Hasan Celebi, the "Ottoman Rocket Man", who made the first successful manned rocket flight in 1633' (World News Daily Report, 2015).

Erdogan's intimidating rhetoric against Greece, that 'one night we [Turkish armed forces] will come [invade]' the Greek islands in the Aegean and his recent, open, threats for ballistic strikes against Athens with Turkish *Tayfun* short range ballistic missiles (Politico, 2022), are indicative of Turkish tightrope strategy, not only against Greece but also the wider Mediterranean and Middle East. Turkish plans for the development of a ballistic program and Ankara's nuclearization ambitions (Ophir, 2021; Vlassis, 2021) pose a major threat for Western interests in the Mediterranean and the Middle East, and potentially for European security.

The geographic position of Turkey, in the crossroads of three continents, has been a critical factor in the security conception of Western thinking, especially during the Cold War, even though, in critical moments, Ankara bargained its cooperation in exchange for financial compensation and other benefits. In 2003, it refused the use of its territory as a staging area for US forces against Iraq, despite Washington's generous offer of $ 6 billion in grants and almost $ 24 billion in loans (The Washington Post, 2003). Today, despite the ongoing Russian invasion in Ukraine, it refuses the urgent accession of Sweden and Finland to NATO, unless Sweden submits to its demands.

For decades Greece and Cyprus – suffering Turkish aggression, invasion and occupation, and threats of war – were, further, victimized by the American and European security perceptions about Turkey's geographical position and its alleged role in Western collective security. Today, Washington, Brussels, and European capitals seemed to have realized the fateful reality. The question, though, is not about mere realization but about the wise and timely prediction of the future, considering that they have failed to foresee and change the strategic path of North Korea and Iran.

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Assessing the EU's International Role in the Eastern Mediterranean: Europeanisation Limitations and Opportunities

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Abstract

The end of the Cold War and the emergence of a new global security and economic environment (Biscop, 2008, p. 10), provided a window of opportunity for establishing and designing the European Union's (EU) security institution (Weiss, 2012, p. 657). Thus, what was initially considered farfetched after the 1992 Maastricht Treaty[1], entered a new phase, which included perception transformation, to be gradually incorporated into daily discourse. Hence, the 2003 'European Security Strategy', the 2010 'Internal Security Strategy', and later the 2016 'Global Strategy' reflect Member States' perception of transformation and their belief that the EU needs a Common Security and Defence Strategy approach. Considering these documents, which seem to reflect significant integration and institutional reform, this analysis investigates the forces behind the emergence of Common Security and Defence Policy (CSDP) while shedding light on the dynamics of this institution when it comes to the operational phase. More specifically, this analysis examines the EU's 'real operational dynamics' or capacity to act, given the Eastern Mediterranean and Aegean Sea security challenges raised –mainly- by Turkey's revisionist militarized foreign policy (ongoing negotiations based on migratory flows and claims over Greek and Cypriot islands and sea).

Considering that Greece's borders are also the EU's external borders, Turkey's revisionist policy has a profound impact both at the EU and Member-State levels. EU's capacity to act and Europe's role is in question, while Member States' governments face a significant rise in nationalism due to the 2015 migratory flows. Solana considered the 'incident driven' approach as instrumental in terms of revealing high-impact factors, such as availability of resources, joint presence with like-minded actors during agenda setting, access to top-level political resources on account of their political prestige and access to international networks (Dijkstra, 2012, pp. 457, 458, 467). In this prospect, exploratory/next-day scenarios are being examined regarding Lisbon Treaty Article 42.7 invoking and concerning similar historical incidents.

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[1] The Maastricht Treaty (1992). The Maastricht Treaty - Treaty on the European Union, Maastricht: European Union.

Introduction

The end of the Cold War and the emergence of a new global security and economic environment (Biscop, 2008, p. 10) provided a window of opportunity for establishing and designing the EU's security institution (Weiss, 2012, p. 657). Already, at that time, European Member States were experiencing a long period of peace amongst themselves, which resulted in the 2012 Nobel Peace Prize award in recognition of the EU's contribution 'to the advancement of peace and reconciliation, democracy and human rights in Europe' (Nobel Prize Museum, 2012).

This climate has been facilitated by the 'Europeanisation' effect, which could be viewed as a significant contributing factor for conflict resolution amongst Member States and candidate Member States (*e.g.*, Turkey). However, the 2015 migratory crisis, the ongoing immigration flows to European territory (Greece, Cyprus, Spain, Italy), the provocations in the Eastern Mediterranean, and the external interventions in Libya raised questions regarding the effectiveness of Europeanisation and EU's actorness as well.

This analysis objective is to investigate the EU's capacity to act and identify the reasons for Turkey's adverse impact on Europeanisation as well as to investigate the role of Turkey as a force for divergence in the process of Europeanisation (Europeanisation in Reverse Gear / De-Europeanisation) (Radaelli, 2000; Radaelli, 2004; Radaelli and Salter, 2019). Furthermore, for the needs of this analysis, this paper will investigate the EU's institutional responsiveness and the 'lessons learned' resulting from EU – Turkey negotiations (ongoing negotiations based on migratory flows and claims over Greek and Cypriot islands and sea).

Considering that Greece's borders are also the EU's external borders, Turkey's bazaar-type ongoing negotiations have a profound impact both at the EU level and at the Member-State level resulting in questioning the EU's capacity to act and Europe's role. This question is significant because Member States' governments faced a significant rise in nationalism and energy issues due to the Russia-Ukraine war.

In this challenging environment, the EU's coherency and aspiration of having a common or joint response are being tested. This struggle is twofold: EU's military incapacity due to sharing and pooling of forces and Member States' preference for their direct negotiations with other non-EU countries versus collective negotiations and

gains. This situation reflects the EU reality, which constitutes a balance between intergovernmentalism and supranationalism, indicating that Radaelli's theoretical approach seems most appropriate for this analysis.

Europeanisation and Europeanisation in Reverse Gear Theoretical Frameworks

Radaelli's fundamental theoretical framework and Violakis' 2019 approach to Europeanisation are considered more appropriate than others because although they contain elements of European Integration, they differ from European Integration theories as they focus on the common/joint result. Europeanisation follows a different path than European integration: European integration is related to the political and policy development at the supranational level, while Europeanisation is related to the results of this process (Bulmer and Lequesne, 2005, p. 12). Thus, Europeanisation's success is based on the fact that it reintroduces domestic politics into the process of European integration, 'without assuming that the balance of power between the state and European institutions is being tilted in one direction or another' (Radaelli, 2004, pp. 3, 4). This aspect is significant, especially for the Member States who face a post-migratory crisis related to the rise of nationalism and the energy crisis.

Member States' belief and support to achieve common or joint results, which constitutes Europeanisation, remains a precondition for the EU's continuation. According to Radaelli, 'Europeanisation consists of processes of construction, diffusion, and institutionalization of formal and informal rules, procedures, policy paradigms, styles, ways of doing things and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic discourse' (Radaelli, 2004, pp. 3, 4). This approach seems to be realized at various levels amongst EU Member States, per each government's political agenda and priorities.

Simplifying Radaelli's approach, there are five key steps necessary for Europeanisation to take place: (i) decision-making at the EU level; (ii) incorporation of domestic political rhetoric; (iii) creation of legal framework/laws; (iv) creation of infrastructures; and (v) incorporation into domestic discourse (Violakis, 2019, p. 65). Especially, steps from two to five (ii, iii, iv and v), may be viewed as a means to formulate an EU identity related to learning, where political rhetoric is a critical factor for all steps realization and attribution of gains to the EU. On the other hand, the lack

of gains attribution for EU participation in political rhetoric reflects a different learning process which may result in not understanding EU participation benefits, which in turn may result in opt-outs and eventually EU-Exit (such as United Kingdom / UK Brexit and Turkey's distance from EU values).

Saurugger, based on the work of Knill, Lehmkuhl, and Caparaso, recognizes learning as 'one of the main mechanisms of Europeanisation' (Saurugger, 2005, p. 297). Sabatier and Smith emphasize that external events can significantly enhance learning (Sabatier, 1988). Levy argues that 'Simple learning of new information leads to a change in means but not to goals, while complex learning leads to a conflict of values and a modification of goals and means' (Levy, 1994, p. 286). These arguments and Radaelli's definition explain why simple European-related learning is weak compared to complex learning based on sudden change, fear, anger, and hate speech (migration influx, fear/anger about the lives of Muslim brothers everywhere, cultivating an anti-Western climate - emotions). Bennet and Howlett link the need for change and its associated policies with learning by identifying governments as the driving force (Bennet and Howlett, 1992, p. 277). In this light, learning is linked to understanding and perception, while understanding enables further learning. Hall links the learning process to external changes coming from society (social learning) and the political arena (ideas in politics) (Hall, 1993, pp. 288, 289). Accordingly, external political changes and ideas constitute a learning process linked to understanding and perception.

This is also the case in Turkey, where the benefits resulting from EU candidacy[2] seemed much more critical than the end result of EU full Membership. This claim is verified by the fact that Turkey's European identity was a priority for only 24.4% of the public (Atlı, 2016), while only a small percentage of Turkish opinion (15.3%) believe that the EU treats Turkey's candidacy fairly (Atlı, 2016). These figures seem inappropriately low for a country wishing to become a member of the EU. Therefore, one may conclude that, for Turkey, EU-Turkish relations are mainly based on economic grounds and that EU identity building –despite Turkey's candidacy- is not high on the agenda of President Erdogan. The 2021-2022 survey indicated an increase in trust in the EU (from 40,4% was raised to 47,7%) and in the EU Court of Human Rights (from 32% was raised to 39.4%) (Ünlühisarcıklı, Tastan and Canbilek, 2022). Regarding

[2] EU-Turkey trade relations are based on an Association Agreement from 1963 and a Customs Union agreement, which entered into force on 31 December 1995.

Turkey's EU membership, the percentage who viewed it as positive for Turkey increased from 55,9% to 58,6%, with a significant positive impact of 72.8% on the younger population aged 18-24 (Ünlühisarcıklı, Tastan and Canbilek, 2022).

Although the Turkish approach at that time, before the coup, seemed to distance itself from Europeanisation and instead focused on building an alternative identity from the EU, the latest information indicates opposition to Turkey's government approach, which is reflected in the increase of the positive percentage for the EU. However, this situation may also result from the 2021-2022 soaring inflation and the collapsing Turkish currency (Askew, 2022).

Radaelli argues that such cases reflect a situation where Europeanisation and de-Europeanisation happen simultaneously (Radaelli and Salter, 2019). Thus, while in general International Relations / EU Relations, Turkey seemed (initially) to follow a Europeanisation rhetoric approach (despite the inertial result), when it comes to the so-called «internal rhetoric» (rhetoric addressing Turkish citizens / Muslims in Turkey and all over the world), there seems to be an anti-European, anti-Western rhetoric distancing more and more from the EU values and normative framework.

Although the EU's success is linked to European integration, Europeanisation, and other essential factors, under the principle that: '(total) profits must go beyond losses' (Ojanen, 2006), this does not give the right to abuse this relationship from a candidate Member State who already enjoys some of the EU benefits. It is well known that the European Community (EC) and later the EU was built upon economic cooperation foundations (EUROPA, 2022), and in terms of promoting a 'liberal interdependent' political and economic intergovernmental bargaining (Keohane and Nye, 1987, pp. 728-729; Moravcsik, 1993, p. 473). Economic incentives are considered equally important as security in educating the role of force amongst states (Keohane and Nye, 1987, p. 730). In financial terms, these incentives are achieved through 'economies of scale'[3], which result in 'gains of scale'. The EU institutional

[3] Economies of scale are cost advantages companies have when production becomes efficient. This is achieved through larger amounts of produced goods. As a result, larger companies will have more cost savings and higher production levels. This has a two-fold reading: (a) for the production line and (b) for the consumption of goods or services. Meaning that (a) countries with cheaper labour may host bigger production lines and therefore be more attractive to larger companies to invest and collaborate and (b) countries with a big population are viewed as consumption countries. Hence, the countries that combine both of these aspects are more attractive and have higher negotiation impact with EU Member States.

environment aimed to facilitate this kind of cooperation amongst Member States, where EU collaboration ‘gains of scale’ prevail over national gains. Hence, EU Member States would have closer interdependence.

However, this hypothesis may prove problematic for small Member States, such as Greece, to Turkey. Since its pre-candidacy time, Turkey aimed to harvest significant financial opportunities (including economies of scale) when applying for EU candidacy. A country that voluntarily sought candidate status is expected to acknowledge and accept the EU idea set, the ‘EU way of doing things’, and gradually (during the candidacy period) comply with EU values and policies. President Tayyip Erdogan's statement (Oxford in May 2004) reflected this approach: ‘the Greek-Turkish rapprochement was based on common ground on which common perceptions are generated more accurately. This common ground is the EU’ (University of Oxford, 2004). This good climate between the EU and Turkey was also verified by the Eurobarometer (Eurobarometer, 2004, p. 5) and by the Commission's 2003 report, which recorded significant progress (Commission of the European Communities, 2003). These facts indicated the beginnings of institutional reform and political support for and civilian acceptance of such reform. It should be noted that Turkey was already in customs union with the EU (since 1995) and had significant financial gains. Until then, Europeanisation seemed to be a significant contributing factor to the normalization of Greece – Turkey relations, two countries with a history of tensions.

But what prompted Turkey to change its attitude since that time? Even though the migration issue was not new for Turkey, the 2015 refugee influx was the biggest since the Syrian crisis began in 2011. As a result, by 2015, Turkey had already spent approximately $8 billion to host 2.1 million Syrian refugees (Akmehmet, 2015). Thus, the initial anticipation of a positive impact of migration labor on growth turned out to be premature; migrant inflows led to increased unemployment and suspension of existing wages (Del Carpio and Wagner, 2015). Furthermore, the ongoing Syrian war, and Turkey's deeper engagement in this war, resulted in the significant 2015 refugee influx, which seems to have reversed Turkey's Europeanisation progress in security and illegal migration. The situation deteriorated through Erdogan's (initial) unwillingness to control migration flows to Europe, with hundreds of thousands of immigrants entering Greek territory to reach Germany and other northern Member States.

One central point emerges from Turkey's behavior in the period prior to the Joint-Action Plan: Turkey's (initial) unwillingness to control migratory flows may be seen as a Turkish negotiations' ploy (Korteweg, 2016) to capture benefits (€6 billion to support the refugee camps) and to eliminate Visa requirements for the entry of Turkish citizens into the EU. Also, Turkey's unwillingness to control migratory flows significantly negatively impacted the EU member states' relations. As a result, despite the EU Commission's ten-point action plan (European Commission, 2015), each Member state acted independently (Kingsley, 2015; Scrutton and Pollard, 2015).

There are several reasons for this divergence amongst the EU Member States, namely: Some Member States decided to confront the issue on their own (closed borders); Some Member States had good (Economic / Trade Balance / Large Scale Investments) relations with Turkey - some still do; Some Member States were not affected by the migratory flows (were not the destination for Migrants); Some Member States wanted migrants; This climate was smoothened after the activation of the EU - Turkey Joint-Action Plan until 2019-2020 just to come to the fore (once again) with the migratory flows from all over Turkey trying unsuccessfully to pass Evros / Greece, (Greece's External land borders with Turkey). These ongoing ‘weaponizing migration’ incidents were viewed as hybrid warfare operations against Greece (Bärwaldt, 2020; Hall, Fleming and Shotter, 2021; Tsailas, 2020).

Migration-related threats already in the EU Security Strategy

What seems odd in this case is that this situation was known and captured in EU official documents many years earlier: Both in the 2003 European Security Strategy and its 2008 review, as well as in the Internal Security (2010), illegal migration is associated with: organized crime, terrorism, the collapse of the legal order, collapse of society and ultimately collapse of the state (Failed State) (EUROPA, 2003, pp. 4, 5; European Council, 2008, p. 32). As noted in the 2008 review, ‘Such actions devalue both the rule of law and social cohesion’. Therefore, as stated by the European Council in 2008, ‘the main objective was to prevent and manage a possible crisis as well as to develop the capacity for early diagnosis of the crisis’ (European Council, 2008). According to the 2008 revision, the Mediterranean region was highlighted as an area of utmost importance due to its complex challenges related to insufficient political reformation and illegal migration (European Council, 2008, p. 18).

These significant remarks in crucial EU documents verify Solana's argument. Solana considered the ‘incident driven’ approach as instrumental in terms of revealing high-impact factors, such as availability of resources, joint presence with like-minded actors during agenda setting, access to top-level political resources on account of their political prestige and access to international networks (Dijkstra, 2012, pp. 457, 458, 467). As a result, although the migratory threat was captured in crucial EU documents, the actual 2015 migratory flow (the incident) led the EU to take measures and reach an agreement with Turkey.

This case seems significantly downsizes the Europeanisation progress, EU Institutionalism, Member States' perception transformation, and their belief that the EU needs a Common Security and Defence Strategy approach, as reflected in the 2003 ‘European Security Strategy’, the 2010 ‘Internal Security Strategy’ and later the 2016 ‘Global Strategy’ (EUROPA, 2003; European Commission, 2010; European Commission, 2014; European Council, 2008). All these documents, as noted earlier, have put migration-related threats high on the EU agenda since 2003.

Post-2015-Migration Turkey

When it comes to the Turkish objectives and the decision to distance itself from the EU normative framework, these may be better comprehended with reference to the: (a) 2015 Turkish public opinion (analyzed earlier) and (b) Turkey's significant reforms, which initiated before the 2016 coup.

However, it should be noted that after the activation of the Joint-Action Plan (EU - Turkey plan for migration control), a majority of the Turkish public (61.8%) remained in favor of joining the EU (as compared to the 2015 figure of 47.5%), mainly due to the prospect of economic benefits (Atlı, 2016). According to Europeanisation theoretical framework, EU identity building has four steps: Incorporation of domestic political rhetoric; Creation of legal framework / laws; Creation of infrastructures; and Incorporation into domestic discourse (which are the four out of five Europeanisation steps / All five steps, including decision making at EU level, represent Europeanisation) (Violakis, 2019). However, instead of EU identity building, Erdogan was building a new-Ottoman Identity, accompanied by significant reforms, based on Islam and hate rhetoric (to the West / EU). This became evident after the June 2016 failed coup (Cumming, 2016), which seems to have accelerated Erdogan's planning. Hence,

Erdogan's pre- and post-Coup policy shift, toward a bazaar-type negotiation, for the handling of regular flows in conjunction with his quest for a new political identity based on Ottomanism implies the existence of an alternative plan, which does not necessarily include EU values.

The construction of an Ottoman-based shared-belief framework constitutes a bottom-up approach to Neo-Ottomanism, with the use of Public Diplomacy tools, which is facilitated and enhanced by the pursuit of national objectives (Turkish National Oath / 1920) (Baykent, 2016). The driving force is the Turkish foreign policy and memories (nostalgia) of the Ottoman empire. Cambridge dictionary describes anachronism as ‘a person, thing, or idea that exists out of its time in history, especially one that happened or existed later than the period being shown, discussed’ (Cambridge Dictionary, 2017).

During the early 2000s, Erdogan built his Neo-Ottoman anachronism through the rhetoric of hate and significant structural state reforms to reshape citizens' values and beliefs. A significant element in this process here is that Erdogan's audience is not limited to Turkey but aims through soft power to reach Turkish and Muslim people all over the world (Pan-Turkism) to disseminate the ‘Great Turkey’ narrative. This behavior reflects a different reading of history, which distances from the Westphalian state and Pax-Romana in an attempt to revitalize Turkey's hegemony and re-establish the ‘Pax – Ottomana’ (Violakis and Stathakopoulos, 2020).

In contrast to other Muslim States which embrace openness, Erdogan's objectives utilize an Islamic belief framework enhanced through the solution of day-to-day problems, which contributed to the learning process of all citizens, creating a new state of mind (significantly different from EU / Western way of thinking), which includes: Neo-Ottoman identity, the concentration of powers, control of press / media, control of judicial system, Muslim-polarization rhetoric, re-introduction of Ottoman language in high schools and others.

Erdogan's re-Ottomanization of Turkey may be identified as an incremental process re-orienting the direction and shape of politics to the degree that Ottomanism political and economic dynamics become part of Turkey's organizational logic. This process officially ended Turkey's Europeanisation / Westernization process, which started with the 1923 establishment of the modern Turkish state. It is noteworthy that

Turkey's westernization efforts go back several years in time. The first signs of Turkey's westernization were observed after the defeat of the Ottoman army by the Russians in 1792, with the introduction of a series of reforms known as Nizam-I Cedid (new order) (Camyar and Tagma, 2010, p. 37; Shaw, 1965, p. 292) as a means 'to restore the purity of old institutions and practices and make them operate in the manner which had brought greatness to the empire' in the past (Shaw, 1965, p. 292). The second wave of significant reforms came with the Tanzimat movement (1839-76), aiming to 'bring the Ottoman Empire fully into the modern world for the first time' (Shaw, 1965, p. 292). These reforms were a means for salvaging the Ottoman Empire either through gaining foreign support or through averting foreign intervention (Zurcher, 2004, p. 56). Kemal Ataturk's (3rd wave) reforms derived from his belief that 'the formation of a solid Turkish nation and state were prerequisites of Westernization' (Grigoriadis, 2006, p. 148). Ataturk viewed the West as the appropriate model for Turkey's transformation (Aybey, 2004, p. 20). Hence, Turkey's application for EU membership in 1987 reflected a 'conscious political decision which goes back even before the foundation of the Republic of Turkey' (Çakar, 1998). However, Turkey's major historical reforms have been introduced to strengthen the country's international position and/or preserve the status quo. Considering this, the Turkish bid for membership may be viewed as a strategic move to counter Greece's accession to the EU in 1981 (Camyar and Tagma, 2010; Cerami, 2011, p. 19). This project was perceived as 'an integral part of the modernization process' of Turkey (Camyar and Tagma, 2010). Therefore, Turkey's compatibility with EU values and institutions appears to be a secondary goal rather than a strategic choice (Aybey, 2004).

Hence, the policy changes President Erdogan introduced aim to re-establish the neo-ottoman identity under a new narrative based on a non-linear understanding of history and the Pax-Ottomanica, instead of the 'declining' Westphalian state (Uzuner, 2014, pp. 139-140). In the same vein, Kalin also argued that Turkey should overcome the 'Eurocentric notions of history and society' and follow a new geographic imagination by producing their own concepts and building new vocabulary (Kalin, 2011, pp. 5, 6). As is well expected, the tools for implementing the neo-Ottoman identity public diplomacy and public policy (Kalin, 2011), reach various audiences inside and outside Turkey, *e.g.*, the large Turkish community in Germany. Considering all these, we may conclude that this policy reflects a Neo-Ottoman learning process in

relation to other structural changes Erdogan introduced, aiming at restoring Ottoman institutions and practices. However, such institutions and behavior are incompatible with EU institutions and practices.

Turkey's different conceptualization of border security and management, the country's moderate levels of institutional Europeanisation, and the revisionist behavior indicate the existence of institutional incompatibility in security and defense between the EU and Turkey. This incompatibility could be related to President Erdogan's unwillingness to accept institutional control over his powers implicit in the political autonomy of EU institutions (March and Olsen, 1984, p. 734). Kramer argues that this incompatibility is attributable (at least in part) to the general philosophy of Turkish foreign policy, 'according to which the territorial boundaries of the republic have been established once and for all by the Treaty of Lausanne' (Kramer, 1991, p. 64). This argument accounts for Erdogan's attempt to dispute many clauses of the Lausanne Treaty (NOVINITE, 2016; eKathimerini, 2016a; eKathimerini, 2016b). This became evident through a series of sovereignty disputes between Turkey, Greece, Cyprus, and, lately, Libya and Egypt (Tanchum, 2022). Turkey's ongoing violations of Cyprus EEZ and Greece's airspace, as well as the ongoing war threats, are evidence of this attitude (Kokkinidis, 2022; Kouparanis, 2020; Stamouli, 2022; The Associated Press, 2022). These disputes and threats represent a different interpretation of international law and UNCLOS[4] and simultaneously reflect Turkey's strategic choice to enforce revisionist policies by militarizing foreign policy (Adar and Toygür, 2020).

The abovementioned reforms, claims, aggressiveness, and presidential rhetoric of hate for the West, may be viewed as the means for Turkey to become 'a great nation, a great power' that dominates the Middle East (Fradkin and Libby, 2013). However, Albert Einstein wisely observed: 'The significant problems we face today cannot be solved at the same level of thinking we were at in which we created them' (Renesch and Chawla, 1995, p. 229). Reversing Einstein's quote, Erdogan's objectives may seem logical as he aims to 'create the same level of thinking and circumstances (old Ottoman Empire) to reinstate Ottoman Empire's power'. However, these circumstances, which

[4] Türkiye doesn't accept the 1982 United Nations Conference on the Law of the Sea (UNCLOS) result for the Aegean Sea. The UNCLOS reflects a progressive development of international law, which has been signed or ratified by 168 parties. Türkiye is between the 16 UN Member and Observer States that have neither signed nor ratified the UNCLOS.

are needed to realize Erdogan's vision and constitute an anachronism, facilitate the re-creation of the cultural-religious collision scheme of the 1500s.

Given the abovementioned information, two critical questions may be raised: (a) If and to what extent president Erdogan's political rhetoric could create a new conceptional order for Turks, where actions and thinking of (especially young) people globally, could be affected enough to result into violent reactions. (b) Considering Erdogan's arguments that ‘freedom and democracy have no value in Turkey’ (Dearden, 2016) and that ‘democracy is like a train; you get off once you have reached your destination’ (The Economist, 2016), could such rhetoric facilitate perceptional diversification and result to social distance instead of cohesion of Turkish minorities to Member States' cultural and ethical framework.

European Union Key Reactions

All these post-2015 migratory flows and revisionist behavior have put into test the EU's ‘real operational dynamics’ and limited its capacity to act in relation to the CSDP establishment and Lisbon Treaty Article 42.7.

Starting from the 2015 Migratory Crisis, it should be noted that the European Committee reacted immediately to the migratory crisis (20 April 2015), before the Action Plan (29 November 2015), with the introduction of the ‘10 Point Action Plan on Migration’ (20 April 2015) (European Commission, 2015). A few years later, in late response to Turkey's revisionist agenda against two Member States, the European Parliament Strongly Condemned Turkey's offensive behavior through an adopted text on 15 January 2020: For ‘seeking to assert power through a combination of unilateral diplomatic posturing, shifts in alliances, destabilizing activities of a primarily hybrid nature and increasing military build-ups’; For ‘overall destabilizing behavior, including its illegal activities within Cyprus's exclusive economic zone (EEZ) / continental shelf, which violates international law and good unneighborly relations, and threatens peace and stability in an already fragile region’; (European Parliament, 2020). As Turkey's revisionist agenda and International Law/Law of the Sea dispute continued aggressively, the European Parliament responded with the 14.9.2020 Resolution, which also Strongly Condemned Turkey's dangerous escalation and its role in the Eastern Mediterranean:

> ‘*Strongly condemns Turkey's illegal activities on the continental shelf and in the EEZs of Greece and Cyprus, which run counter to EU interests, and calls on the Turkish authorities to cease these activities, act in a spirit of good unneighborly relations and respect the sovereignty of Cyprus and Greece in accordance with international law; Welcomes the invitation from the Governments of the Republic of Cyprus and Greece to Turkey to negotiate in good faith the maritime delimitation between their respective coasts; notes that both governments have proven to remain fully committed to a good faith dialogue in accordance with international law and the UNCLOS’* (European Parliament, 2020).

In the 2022 report on Turkey's progress, the EU identifies the importance and challenging partnership with Turkey as an ally for the United States (US) and North Atlantic Treaty Organization (NATO) (Directorate-General for Neighbourhood and Enlargement Negotiations, 2022, p. 126). However, in the same document, the EU highlights Turkey's unilateral foreign policy as being at odds with the EU's Common Foreign and Security Policy (CFSP) priorities and criticizes its support for military actions in Libya, Syria, Iraq, and non-alignment to Russia sanctions (Directorate-General for Neighbourhood and Enlargement Negotiations, 2022, p. 126). More specifically for Libya, Turkey despised the EU by questioning the legitimacy, purpose, and impartiality of the EUNAVFOR MED IRINI, which is operating under the EU Council's Decision, and the United Nation Security Council (UNSC) Resolution, by denying eight times inspections of vessels under the Turkish flag heading to Libya (Assad, 2022; Stribis, 2022; The Libya Update, 2022).

This situation is evident in the intensity of the geopolitical competition and tension between Turkey and the rest of the Eastern Mediterranean actors. It also exposes the EU's role and limitations by showing that the EU, as a deterrence power, is limited to institutional and economic sanctions (Council of the EU, 2021; Financial Mirror, 2022). This limitation is related mainly to the fact that the EU lacks an autonomous military structure from the main western defense system, NATO, which also constitutes a delimitation of Europeanisation in that the US strategic interests shift to the pacific region (Litsas, 2020, pp. 127, 134, 146, 184).

Conclusion

At this point, one may question why the Europeans failed to comprehend Turkey's policy change on time. There are several ongoing discussions on that, but financial interdependence seems to have an important role, which creates political interdependence. Hence, EU Member States' economies that rely heavily on the Turkish economy seem much more tolerant when Turkey threatens and violates other Member States' sovereignty.

Given the Neo-Ottoman approach in the international relations of Turkey, Europeans need to: re-link ideas and strategy (western / EU) with the actual findings – results. At the same time, Europeans should avoid projecting their values and beliefs when negotiating with Turkey. Thus, Turkey's strategic decision to shift towards 20th-century politics and strategic thinking, where hard power prevails over diplomacy, should be considered. The fact that European states remain still under the belief that Turkey's regional influence is related to its EU perspective (Kaya and Tecmen, 2011: 19; Klinke and Bassin, 2018), keeps them from seeing the fundamental strategic shifts in Turkey's foreign policy.

Furthermore, it should be strongly highlighted that Turkey despises EU warnings and threats because they are not supported with hard power. This also accounts for the EU's institutional delays or inaction, which are viewed as a weakness and a window of opportunity for Turkey's illegal operations. More specifically, the inaction and the insufficient EU policies regarding the protection of outer EU borders have resulted in the emergence of Turkey's mimics, who believe that they can rip benefits from regulating migratory flows. These are the mimic cases of Spain, Italy, and Cyprus, where migration has been intensified (Brito and Parra, 2021; Hadjicostis, 2021; The Arab Weekly, 2021).

Regarding EU sanctions, more legal measures against Turkish individuals and companies should be considered, while special attention must be paid to Visas. Abolishing visas for Turkey should be strongly reconsidered (downgraded) because of individuals/organizations with Terrorist listing status by the EU using Turkish passports (*e.g.*, HAMAS) (Gumrukcu, 2020).

Considering that strategy is mainly about prioritization and that EU Treaties will not change, the EU needs to update strategic priorities and implementation plans

according to the new threat landscape. In these priorities, the EU has to tackle Turkish Public diplomacy and misinformation campaigns addressing Turkish citizens within EU territory. A more determinist approach is needed, such as 'on-hold' sanctions against Turkey, which would transmit a message to all candidate member states which abuse EU's relations and good neighborhood policies.

Last but not least, and given the new security environment in the Mediterranean, the EU should be able to guarantee Member States' security and defense. This can only occur by clarifying Lisbon Treaty Article 42.7 in terms of putting a plan which may include the formulation of volunteer military coalitions to establish a permanent military assistance mechanism for Member States in need.

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The Eastern Mediterranean – a success story: what's next?

Michael Harari[*]

A political-strategic analysis of the developments in the Eastern Mediterranean reveals that the last decade has been an impressive regional success, and admittedly, surprising too. The discoveries of natural gas in the region, combined with the consequences of the dramatic developments in the Middle East, with an emphasis on the events of the Arab Spring, led to the promotion of regional cooperation in a format we had not seen before. Several countries in the region, led by Israel, Greece, Egypt, and Cyprus, have recognized, each from their own point of view and interests, the window of opportunity facing them. Turkey looked at the dramatic developments in the Arab world in a different way and recognized in them an opportunity to strengthen its position and its political agenda, political Islam. The results of the Arab Spring led in a different direction. This is not the place to analyze these results in detail, but from the point of view of many actors in the Eastern Mediterranean, the fear of the strengthening of political Islam led to the enhancement of cooperation between them, and to a considerable extent, to the creation of a kind of front against Turkey

After a little more than a decade, we can conclude that the Eastern Mediterranean has become a distinct sub-region in the international system, and the energy discoveries have become, especially since the war in Ukraine, attractive to the West, even if it is not a potential game-breaker. Furthermore, the regional fabric has manifested in bilateral and trilateral cooperation mechanisms leading to the establishment of the regional gas forum (East Mediterranean Gas Forum-EMGF) in January 2019. The latest fascinating expression, perhaps, is the Israeli - Lebanese agreement to determine the maritime border between them. A number of unique factors contributed to this in both countries, but it is obvious that the new regional map in this part of the Mediterranean played a significant role.

What are the lessons that can be drawn from the situation described above? Several main points can be emphasized:

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- Energy potential can be a trigger for agreements or a settlement of ad hoc disputes: the gas discoveries in the region increased the tension on the one hand and sharpened existing conflicts (the Cyprus problem and the Greek-Turkish dispute), but also illustrated on the other hand how they can be a trigger for strengthening regional cooperation, which did not exist before. Beyond that, they emphasized how it was possible to reach an agreement, though concrete and limited, between two countries in a state of war (Israel and Lebanon), with the (active, one should say) participation of a non-state actor (Hizballah which is still defined by a large part of the international community as a terrorist organization).

- Mediation: prolonged disputes require, in the vast majority of cases, a third party to mediate between the conflicting parties. Usually, a powerful player is required, like the US, who has influence and the ability to pressure both sides, or a relevant multilateral player, such as the European Union in our region. The mediating actor within the Israeli Lebanese agreement was the US. The main lesson in this matter concerns the necessity for effectiveness of the mediator, not necessarily the question of his objectivity in the eyes of the parties. Moreover, joint interests between the parties to the conflict and the mediator are of importance and essential.

- The role of International Energy Companies: much has been written regarding the global energy market, about the central role, and some have even said the political role, of the international companies. The Israeli Lebanese agreement illustrated as such, that sometimes, international companies can provide a solution to a political minefield, for example, the issue of recognition of one side by the other. As a reminder, the agreement stipulates that the French energy company "Total" will manage the contacts with Israel regarding its possible share in a gas field shared by both countries.

- The centrality of the political aspect: the enormous importance of the political aspect is known and acknowledged. However, in our case and in the face of the known conflicts in the region, enormous weight has been given over the years to the legal level, to the Convention on the Law of the Sea and practices concerning it. It should be emphasized that it should be so. An international legal basis is required to resolve disagreements and conflicts. At the same time, sometimes we might miss the understanding, that conflicts are resolved through political negotiations, which as

mentioned, rest on a legal basis, but also on meetings of interests, between the parties to the conflict and beyond it, relevant actors, and stakeholders.

- Turkey -the elephant in the room: a prominent and influential regional player, absent from the regional action described above, and not without reason, is Turkey. We noted above that the regional architecture built in recent years in the Eastern Mediterranean 'exploited' Ankara's absence from these regional moves, and to a significant extent, was even intended to place a 'firm front' in front of it, which would balance the powers in the region. Turkey, it must be admitted, recognized quite belatedly the regional mechanisms that have developed. Moreover, its regional policy, which was seen as destructive by most of the players in the region, strengthened their interest to tighten cooperation between them. Only in the last two years has Ankara internalized that the regional system has isolated it to a significant extent and is trying to maneuver to find ways to integrate, in one way or another, in regional affairs, and mend fences with its adversaries.

Where does this lead us? What are the policy conclusions resulting from this?

First, it must be admitted and recognized that the regional system that has been built, although still in progress, should increase the **self-confidence** of its components. The positive changes brought by the 'Abraham Accords' should be added to the Eastern Mediterranean regional fabric. After all, the main players - Israel, Egypt, Greece and Cyprus - have a close and good relationship with most of the Gulf countries, especially those that are parties to the agreements.

Secondly, the regional system was built and deepened to a large extent in view of Turkey's absence from it, and even in a kind of creation of a "solid front" ahead of Turkey. In this way, they expressed, in one way or another, the dissatisfaction and fear of the members of the regional system, with the Turkish policy. The latter recognized, but only lately, the regional challenge placed before it, and began to address this challenge. Practically speaking, it recognizes the isolation in which Ankara finds itself in the Eastern Mediterranean.

Thirdly, the war in Ukraine increased, albeit under tragic circumstances of losses of life, the attractiveness of the region in view of the (proven) energy potential in its waters. It is true that these are not game-breaker quantities, but they are sufficient,

it seems, to arouse Western, American-European, interest in this region. The window of opportunity for this is limited in time, both politically-strategically and energetically.

The political - strategic conclusion: the countries in the region should take advantage of the strategic window of opportunity to launch a necessary political move. Its purpose: formulating ways for the integration of Turkey in regional action, in a way that will help settle conflicts in the region. It is essential to use reason and diplomacy at the current opportunity. A major sense of emphasis should be put on the increased self-confidence of the players facing Ankara. The new balance of power, that has been developed in recent years in the region, could and actually should enable them to take part in a new formula for dialogue with Turkey. Ankara should acknowledge that a new reality has been established in the region and respond to it with constructive diplomacy. Clearly, this may be initiated only the day after the elections that are taking place in the coming few months in Cyprus, Turkey and Greece. Still, now is the time to think and circulate new and creative ideas.

(In)security in the East Mediterranean Sea and the case of Turkey

Cengiz Aktar[*]

The sub-region has been prone to a variety of critical security threats since decades. The creation of the State of Israel in 1948, the invasion of northern Cyprus by Turkey in 1974, the 1979 Iranian revolution, the invasion of Iraq and their consequences being the most prominent ones. Nevertheless, these threats have doubled with the division as well as the invasion of Syria and the emergence of 'New Turkey', as its sponsors like to name it, as a novel security threat affecting several of its neighbors.

Turkey was, until *circa* 2013, part of the security architecture of North Atlantic Treaty Organization's (NATO) south-eastern flank as well as of European Union's (EU) eastern Mediterranean border. Due to a major paradigm shift proclaiming an "independent" foreign policy decoupled from the West, opportunistically philandering with whom it may concern and opening up to the whole world, Turkey has become more and more visible and assertive.

In 2013 İbrahim Kalın, one of the closest aides to Erdoğan and the deputy head of the top decision-making body on foreign affairs and security, located at the presidential palace (see *infra*), has qualified the new foreign policy postures as pertaining to an 'ethical loneliness'. Over years it turned out that the ethical part of the idiom became increasingly unethical, demonstrating once again that ethics is none of the international relations' concern.

Motives, assumptions and *modus operandi* of the new foreign policy

Regarding the motives of the new foreign policy, the narrative of the regime has changed drastically compared to the old motto 'peace at home, peace in the world' attributed to Mustafa Kemal Atatürk. Ankara is openly pretending to regional -if not world- supremacy through hard power which it doesn't really possess.

The second set of motives pertains to the prevention of delusional 'security threats against Turkey' which are incidentally coupled with the appetite for fossil fuels.

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There is frequently a policy mix in there, which is obvious in Turkey's endeavors towards Cyprus, Greece, Iraq and Libya.

For instance, regarding the endless provocations and crises concerning the seabed exploration, although fossil fuel search and exploitation is usually done with leased vessels, Turkey has purchased six vessels: four deep drillships, Fatih, Yavuz, Kanuni and Sultan Abdülhamid Han, as well as two seismic research vessels, Barbaros Hayreddin Paşa and MTA Oruç Reis.

Within the same framework, the official formula 'Turkish or grey zone islands in the Aegean Sea occupied by Greece' nonsense on the one hand, and the uninterrupted strengthening of Ankara's influence and presence in the northern part of Cyprus on the other, seem to fit with the motives. Turkey is reportedly building two large naval bases in the northern Cypriot coastal towns of Morphou and Iskele.

In Syria and Iraq when Islamic State (ISIS) was conducting a proxy war mainly against Kurds, shadow Turkish companies were, as reported in United Nations Security Council (UNSC) reports, acting as intermediaries between the terrorist organisation and buyers of stolen oil. Post-ISIS illegal oil smuggling apparently continues with the complicity of Turkey's top local ally, the Barzani clan.

In Libya, where the stakes are getting higher by the day, the Defence Minister Hulusi Akar who is the de facto Chief of General Staff, keeps repeating that Turkish Armed Forces (TAF) aren't foreign forces. At the same time Turkey continues to provide its proxy government of Dbaiba with arms, in breach of United Nations (UN) Resolutions, and signs oil and gas deals, however unrealistic.

The basic assumptions of Ankara's new foreign policy consist of a series of assertions such as 'we are at home', 'we are threatened' or 'we have inalienable rights'. Politics, History, Geography and Ethnicity are the driving forces there. There is a rhetoric mix which applies to all conflicts and theatres of operations.

The most significant example is the so-called 'Mavi Vatan' (Γαλάζια Πατρίδα), or the Blue Homeland, which now became a national doctrine.

The doctrine was first uttered in 14 June 2006 by a then active admiral Ramazan Cem Gürdeniz, at a symposium held at the Turkish Naval Forces Command Center. A typical anti-Western and ultranationalist soldier, Gürdeniz, is obsessed with the

maritime supremacy of Turkey in its Blue Homeland and eventually beyond (triangle formed by 'Anadolu Barracks' in Somalia, Qatar TAF Base and the aborted Sudanese Suakin Island deal).

The self-declared maritime jurisdiction areas include, according to him, the territorial waters, the continental shelf and the exclusive economic zones (EEZs) in the Black Sea, the Mediterranean and the Aegean. 'The surface of this homeland, its water body, its seabed and the subsoil under the seabed are ours. The size of this homeland is equal to half of our landmass.' Indeed, it corresponds to 462,000 (square kilometres (sq.km.). The present status quo is described as a second Treaty of Sèvres, this time on the Blue Homeland, enacted by Greece and lately Cyprus since the 1930s.

Gürdeniz published a 528-pages book entitled 'Mavi Vatan Yazıları' (Writings about Blue Homeland), prefaced by Bilsay Kuruç, a retired economics professor and a radical Kemalist. It is a collection of various articles, all about the crucial importance of sea supremacy. Gürdeniz was a regular columnist in ultrafascist Aydınlık newspaper until March 2013, when he was convicted of military plot (Balyoz) and put in Silivri jail. He was then offered an opinion column to fight against the Gülenists and develop his 'revolutionary' ideas about Blue Homeland. He also headed a research center at the highly respected Koç University (KU) that belongs to the biggest private conglomerate, the Koç Group. Created in December 2015, it is called KU Maritime Forum (KÜDENFOR). Following his recent fall into disgrace, Gürdeniz had to resign from this position but the Forum perdures.

According to Gürdeniz, there are three security dimensions in Turkish geopolitics in the Mediterranean: 'Greek/EU challenges over Turkish maritime jurisdiction areas, the potentiality of an independent Kurdistan with free access to the Mediterranean, and the future of north Cyprus with geopolitical implications for Turkey especially on guarantee rights.'

In late February 2019, Turkish naval forces conducted a first-ever military exercise in the Eastern Mediterranean tagged 'Blue Homeland' and the Minister of Defence, Akar, mentioned, for the first time, the doctrine in his address on the occasion of 30 August 2019 Victory Day. In September 2019, Erdoğan visiting the University of National Defence, created after the masterminded *coup d'état* of July 2016, delivered a speech in front of the Blue Homeland map.

Gürdeniz criticizes the old elite as too generous towards Greece and Cyprus, as they failed to respond adequately to what he calls '*faits accomplis* since the 1930s'.

As for the *modus operandi*, the most common justification is the 'self-defense against threats to Turkey', through an abusive usage of Article 51 of the UN Charter that defines the exercise by Member States of the right to self-defense.

In practice, gunboat diplomacy, constant threats, accusing the adversary of own wrongdoings, *faits accomplis*, disregard towards the agreed international principles, rulelessness if not lawlessness exactly like at home, form the policy tools. And this is the power mix.

Conflicts with partners France, Greece but also Poland/Baltics (blocking until 2020 Eagle Defender, unless NATO recognizes the Kurdistan Workers' Party-PYD/PKK as a terrorist entity); hybrid threats like unleashing refugees towards Evros; Tripoli-Ankara sea border deal bypassing Crete as a landmass; military build-up in the north of Cyprus and opening the UN-sealed city of Varosha are all examples of rulelessness.

As for what remains of diplomacy and dialogue, it rather looks like a monologue whereby Ankara asserts its point of view. Erdoğan systematically utters: 'We will not allow moves aimed at usurping the Eastern Mediterranean's natural resources to the exclusion of our country and the Turkish Republic of Northern Cyprus. Just as we taught terrorists in Syria a lesson [he has Kurds in mind, not ISIS], we will not cede ground to the bandits in the sea.' Or his scandalous 'we may suddenly come one night' which threatens whomever is deemed necessary to target, and not only Greece. Such foreign policy position is repeated *ad nauseam* by Foreign Minister Mevlut Çavuşoğlu and Akar.

Ankara's irrational foreign policy and Turkey's growing isolation

Knowledgeable diplomats have either been sent on early retirement or resigned. The most mediocre ones pledged allegiance to the regime. For some time now, final decisions on foreign policy have been -and are currently- made by advisers sitting in the Security and Foreign Policy Board located in the presidential palace. These are Aygün Attar (of Azeri origin), Mesut Hakkı Caşın, İlnur Çevik, Mustafa Çırak, Burhanettin Duran, Çağrı Erhan, Nurşin Ateşoğlu Güney, Mehmet Akif Kireççi,

İbrahim Kalın, İsmail Safi and Seyit Sertçelik. Adnan Tanrıverdi, a retired one-star general, founder of the paramilitary group SADAT, had to resign because of his very activities. The Board is, of course, headed by Erdoğan.

Turkish foreign policy makers remain unchecked internally. There is neither parliamentary monitoring, nor counterbalancing diplomatic knowhow, nor any meaningful internal opposition. The Parliamentary Committee on foreign affairs is closely controlled by the regime. In any case, the opposition, be it parliamentary or public, when it comes to bellicose foreign policy decisions, ranks and files.

Let's hear what the presidential hopeful Kılıçdaroğlu said recently: 'Bahçeli also suggested leaving NATO. NATO is necessary for Turkey, but I would like to see how sincere they are as a government. The US filled Greece with bases. Their goals are clear. Let them bring the closing of the US military facilities in Turkey to the Parliament, we will support it with the spirit of *kuvayi milliye* (nationalist forces during the 1920s liberation war).' He continued to reiterate his party's policy in a written answer to Erdoğan's question: 'Our stance is very clear. It is imperative that we increase the pressure in the Mediterranean and the Aegean. I took the ship, I pulled it back, and I wish Biden would call me, this is not the way. If you have a heart, take a step on the occupied and armed islands. We will support you!'

The 'independent foreign policy' which is in full swing now, is ambitious and overconfident but clumsy, confrontational and doesn't necessarily have the means to fulfil its ambitions. And it can even become counterproductive as seen in the collective defensive response created by a 'salubrious' belt which gathers Cyprus, Egypt, France, Greece, Israel, Saudi Arabia, the United Arab Emirates (UAE) and the United States (US).

It is quite clear that the more Ankara acts alone and in the ways it does, meaning constant muscle-flexing and threats, the more it becomes isolated, nervous and one should say, dangerous… as Erdoğan keeps repeating. Its isolation is the consequence of its sovereign decision, and no ally is pushing Turkey around or out, provided that it plays by the shared principles and values. Quite the contrary, NATO's Western members are ever ready to 'understand' Ankara's bellicose moves in Eastern Mediterranean and Syria, labelling them -enigmatically so- as 'legitimate security concerns', to keep Turkey within the Organization at all costs. But it is Ankara that

seems to be pushing itself out. The purchase of S-400 Russian missile systems, upping the ante with Greece, double playing Russia and the West on Ukraine aggression, blocking the membership of Finland and Sweden for reasons that hold no water, are all sovereign choices.

West's futile appeasement policy and the Russian 'worst practice'

The 'crusader' is fundamentally unchecked externally. This, does not only allows for, but also encourages disregard of its international and regional obligations. The West is, all things considered, quite powerless in the face of Turkish unilateralism and double-play.

It's been years since we first started witnessing a typical appeasement policy, based on four concerns.

First, to preserve Turkey's presence within NATO and so to limit its Russian temptations, at any cost.

Second, not to jeopardize especially European economic stakes. Of the registered 180 billion euros of foreign direct investment (FDI) in Turkey, some 75 percent are of EU origin. EU companies are by far the largest investors in Turkey. There are 22,000 foreign companies entirely or partially controlled by European capital operating in Turkey -7,000 of which are German, 3,000 British and 2,800 Dutch. One should add to them the juicy arms deals mainly benefitting Germany, Italy and Spain.

Third, to secure Ankara's refugee policing task enshrined in the refugee deal of March 2016, which consists of keeping the refugees in Turkey.

Fourth, the fear of an implosion which would lead to colossal disruptions and mass movements affecting mainly Europe.

Yet, the similarities between Russia and Turkey today, as well as between the strongmen who have shaped them, draw an obvious and ominous parallel that Western leaders should take note of.

Topping the list of citizen complaints before the European Court of Human Rights, the systems Erdoğan and Putin have formed, disregard rule of law and supersede it with one-man rule surrounded by oligarchs and yes-men. Both countries are

undemocratic, and their elections are neither free nor fair. Both regimes launch narratives and concretize them into actions that are irredentist, revisionist and bellicose.

In both Russia and Turkey, the opposition -or what remains of it- is systematically hounded and repressed, its leaders attacked or jailed, as in the cases of Alexei Navalny and Selahattin Demirtaş. And there exist large crowds who recklessly support 'their beloved' regimes.

In Europe, Germany has played a central role in appeasing these dictators over the years. And while the country's elite has started some timid soul-searching about its policy toward Russia in the wake of Ukraine's invasion, it sticks to its typical appeasement and engagement policy towards Turkey.

During her time in office, former Chancellor Angela Merkel developed a Faustian pact with Erdoğan, paying ten visits to Turkey, three times only in 2016 when the country was politically and morally devastated. That was a record among Western leaders. As Merkel continued to visit and welcome Erdoğan in Germany, neither the authoritarian drive at home, nor Turkey's aggressive moves in Eastern Mediterranean, Iraq, Libya, Syria, or its UN-documented sponsorship of jihadi terrorism have lessened - and they haven't deterred Merkel's unconditional support, including arms sales, either- just as her country did with Russia.

Since 2015 the EU has been following the appeasement policy initiated and led by Merkel. Ankara's pro-Union EU utterances, its empty rhetoric on reforms, its tactical retreats from confrontation were systematically taken for granted by the pro-Ankara axis.

Alas, appeasement is not the adequate answer to none of these concerns, as seen in the Russian textbook case! The more the EU and the West in general appease, the more brazen and entrenched Erdoğan becomes, and the more insolent and dangerous he is for others. Exactly like Putin!

There are remarkable similarities between Russian arrogance toward Ukrainians and Turkish high-handedness toward the Kurds. Ankara targets anything that sounds or looks Kurdish -inside or outside the country. Both Erdoğan and Putin see it as their historic missions to 'civilize' these 'substandard' and finally 'non-existing' nations.

Politically, the right to self-defence and preventive strike against Nazis (for Russia) and terrorists (for Turkey) who otherwise would have attacked 'peace-lover' Russia or Turkey, is invoked by both dictatorships.

When it comes to the rules of 'war' -a proscribed term in both countries-, their armies outdo others in terms of war crimes against civilians. Putin targets Ukrainian grain warehouses, energy infrastructure, schools, hospitals, Erdoğan bombs indiscriminately, steals the olive oil of Syrian Kurds; both cut water supply. Forced relocation and ethnic cleansing have been common practice in both countries since long. In Turkish-occupied northern Syria, the Kurdish language is banned and replaced by Turkish, much like in occupied Ukrainian lands, where Russia has ousted the Ukrainian and Turkish Tatar languages.

Despite the disastrous consequences of its pre-invasion policy toward Russia, the West continues to indulge in illusions about Turkey. For instance, Westerners continue to allow open threats by Turkey against its NATO ally, Greece, and naively think that if Turkey doesn't translate its threats into action, it is because of its alliance with NATO, whereas the only thing that Ankara takes into consideration is the disastrous military and financial consequences of such a move. Appeasers refuse to understand that these regimes don't feel bound by Western standards, values and principles which these regimes simply regard as obstacles to their 'smooth' functioning.

In another theatre of operations, in Mesopotamia, Ankara remains an open security threat contrary to the commonly accepted clichés. A case illustrating the security threat posed by Turkey in this region is Ankara's association with ISIS. Recently, the US forces have eliminated Maher al-Agal, ISIS leader in Syria, as well as one of his close aides. The operation took place in Syria's Jinderes town located in the since 2018 Turkish-occupied Afrin province, where Al-Agal had obviously taken up residence and worked.

Similarly, Abu Ibrahim al-Hashimi al-Qurashi, branded as the second caliph of ISIS, who was living and working in Turkish-occupied Idlib Governorate of Syria, blew himself up when his house was surrounded by anti-ISIS coalition forces. Following the elimination of al-Qurashi, on 3 February 2022, the UN-listed (QDi.426) ISIS leader, Amir Muhammad Sa'id Abdal-Rahman al-Salbi, was killed in a counter-terrorist

operation led by the US in Atmah, Syria, a town in the Idlib Governorate that is supervised by Turkey.

And in 2019 Abu Bakr al-Baghdadi, the caliph of ISIS, was eliminated at his headquarters in the town of Barisha in the Idlib Governorate, a few hundred meters away from the international border between Turkey and Syria.

The complaisance of the West towards Ankara's overt or covert support to ISIS and other UN-listed terrorist groups such as Hay'at Tahrir al-Sham (HTS) is not new. Already in 2013 international observers had coined the "jihadi highway" to term the facilities provided by Turkey for ISIS fighters who were opportunely using it as a rear base thanks to the 877 km-long border with Syria. That year it was reported that some 30,000 jihadi fighters used Turkey to cross in and out of Syria.

A report by the UN Secretary General states in paragraph 40: 'Migration routes remain under scrutiny by relevant European State authorities, as illustrated by the arrest in Bulgaria in November 2021 of a Belgian-Moroccan foreign terrorist fighter returning from Turkey, who had been an associate of Abdelhamid Abaaoud, the "mastermind" of the 2015 Paris attacks directed by Da'esh.' Western intelligence services surely have ample information of the kind. Despite well documented evidence, Ankara has never been finger-pointed by its Allies.

Another example of Western tolerance towards Turkey, concerns Ankara's belligerence in its neighborhood. Ankara is involved in wars of conquest and influence in Syria under the cover of anti-terrorist actions which actually target Syrian Kurds who are the driving force in the fight against ISIS in Mesopotamia. Ankara now holds big chunks of territory in northeastern Syria following its three incursions in 2016, 2018 and 2019, always playing major powers Russia and US, present in the field, against each other. The dreadful consequences of Ankara's invasion are duly documented in the reports of the Independent Commission submitted to the UN High Commissioner for Human Rights. One can add to the above an often-omitted fact: Ankara's actions in Syria and Iraq are among the main causes of the lasting refugee situation in the sub-region. And presently Ankara is bombarding and again threatening to invade Syria's free towns.

Ankara's military ventures also comprise illegal operations in northern Iraq where since 2018 Baghdad has recorded 22,700 breaches to its sovereignty by Turkey.

No appeasement tactic works in the long run, and a West who is sowing the wind, shall reap the whirlwind. Same goes for Russia! Thus, these countries cannot be engaged through values and rules-based approaches, but need to be treated exactly as they are: as security threats.

Finally, a word on Turkey's nuclear ambitions: Rosatom is building the Akkuyu Nuclear Power Plant in a well-known seismic zone and with a new type of untested reactor VVER 1200. In addition to the risks posed by the reactor, and what is more in a zone prone to seismic activity, there are rumours on Ankara's desire to take an Iranian-style track to become in due course a military nuclear power.

Today we are faced with the following paradox: the more NATO closes its eyes to Ankara's anti-NATO and anti-West drives in order to keep Turkey in the alliance, the more it jeopardizes its security. So much so that some of the security threats described in NATO's newly ratified Strategic Concept are drafted as though to designate Turkey, without naming it.

Third-party Involvement in Greek-Turkish Affairs: Germany's Evolving Role

Ronald Meinardus[*]

German governments have traditionally played a hands-on role in Greek-Turkish affairs due to their privileged relations to both countries. Still, over the years, German policies in the crisis-ridden region on the Southeastern edge of Europe have been anything but static.

Developments on various levels determine Berlin's strategy: The political situation in Germany and the composition of the federal government are one crucial factor. Regarding policies towards Turkey, more so than policies towards Greece, Germany's major political parties hold differing positions. Furthermore, of importance for understanding German policies are developments in the region, concretely the ups and down on the 'front' of Greek-Turkish relations. Finally, German policy is influenced by political developments in the wider region and the geostrategic environment. On all three levels of analysis, we have seen significant shifts in 2022, the period that is the focus of this research brief.

Russia's war of aggression against Ukraine has led to a markable strategic upgrading of Turkey. This, in turn, has not been without effect on the behavior of Ankara toward its neighboring countries. At the level of Greek-Turkish relations, we have observed a 'radicalization' of Turkish government statements concerning Greece and an upsurge of violations of Greek sovereignty, especially in the airspace over the Aegean Sea.

Meanwhile, Germany has seen a change of government in late 2021. After 16 years at the helm, Angela Merkel of the right-of-center Christian Democratic Union (CDU) handed power to the Social Democrat Olaf Scholz. In the "traffic light coalition" (*Ampelkoalition*), three parties form the government with the Green Party holding the position of foreign minister. The quest for a values-based foreign policy has been a

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hallmark of Germany's Greens. More than other parties, the Greens have spoken out in clear terms on issues related to the state of human rights and the rule of law in Turkey. This said, policy adjustments were to be expected in this field[1].

Berlin's interests in the region

German policies are guided by varying interests not always easy to align. As Europe's leading economic power, Germany has considerable economic interests in both Greece and Turkey. Berlin's policy towards Ankara is guided by the objective of preventing Turkey from drifting further away from Europe and the West. Russia's aggression against Ukraine has elevated the strategic importance of Turkey and, at the same time, increased tensions and the alienation between Ankara and her traditional Western partners.

Not to be overlooked in considerations of German policy toward Turkey is the presence of a large Turkish diaspora community in Germany. To my best knowledge it has not been systematically researched, to what extent this group has played a role as a lobby on foreign policy decision-making in Berlin, especially in the context of the Greek-Turkish question[2].

As a leading power in the European Union (EU), it may be assumed that Germany plays a decisive role in the formulation of European policies on Greek-Turkish issues. The exact role Berlin plays in the EU's collective decision-making is difficult to determine. We know that Chancellor Merkel, who has acted as a mediator between Athens and Ankara on various occasions, has favored a conciliatory approach in dealing with Ankara and prevented sanctions against Turkey.

Germany's policy in Greek-Turkish relations is multilayered: In addition to the multinational dimension primarily in the EU and North Atlantic Treaty Organization (NATO) (and occasionally the United Nations), Berlin pursues a national foreign policy with targeted initiatives and interventions of its own. This duality is a constant of Germany's foreign policy making coordination in the EU framework a permanent concern.

[1] See Ronald Meinardus: Turkey in Germany's 2021 Elections. Political Party manifestos and their view on Germany, ELIAMEP Policy Paper Nr. 82 (September 9, 2021).
[2] Sinem Adar: Eine Neubetrachtung der politischen Einstellungen türkischer Migranten in Deutschland, SWP-Studie 2020/S06 (April 1, 2020).

High-level Diplomacy and Germany's shift towards Greece

In mid-March 2022, Chancellor Olaf Scholz made his inaugural visit to Ankara. Shortly before, Russian troops had invaded Ukraine. Little wonder that Russia's aggression dominated the German-Turkish summit like no other topic. Strengthening the Western alliance and unity against Moscow was the main concern of Scholz. In this context, the German Chancellor also praised the talks between the Turkish president and the Greek prime minister[3].

At that time, trans-Aegean harmony was intact. This ended abruptly when the Turkish President suddenly changed tone in April. Ever since hardly a day has gone by without polemic rhetoric accompanied by violations of Greek sovereign rights in the Aegean.

Throughout 2022, the German government went on record with a number of statements on the Greek-Turkish disputes. A convergence with Greek positions cannot be overlooked. Not surprisingly, this has led to irritations in Ankara and German-Turkish relations.

One cause of Turkish annoyance was the clear position taken by the German foreign minister in the dispute over the militarization of East Aegean islands. The differences between Athens and Ankara on this issue are not new and go back far into the past century. What is new, however, is that Ankara is openly questioning Greek sovereignty over the islands in connection with the militarization issue. Here, the German government – in tandem with the European Union - has clearly sided with Greece: 'Greek islands are Greek territory and no one has the right to question that', the German foreign minister said in Athens before heading on to Turkey.

Earlier, the Chancellor's spokesman had called on Turkey to show restraint toward Greece. The background to this formal appeal from Berlin were a series of violations of Greek airspace over the Aegean Sea by Turkish fighter jets: 'Invading Greek airspace and flying over Greek islands is not okay, it seems counterproductive and against the spirit of the alliance'[4], the chancellor's spokesman said in early June 2022.

[3] Die Bundesregierung, March 14. 2022, 'Bundeskanzler Scholz in der Türkei'.
[4] Reuters, June 1, 2022.

A third example of an unambiguous German stance has been Berlin's position on the Turkish-Libyan memorandum. The agreement between the internationally recognized interim government in Tripoli and Ankara on the delimitation of the respective Exclusive Economic Zones (EEZ) violates international maritime law and Greek sovereign rights. This is not only the official Greek position, but also that of the Berlin government: 'It is a principle of international law that two states may not conclude an agreement to the detriment of a third state', said the Foreign Office spokesman in early November.

A few days earlier, the same official had spoken out against Turkish President Erdogan's bellicose threats against Greece: 'We always say that we do not consider threats and unfriendly statements against neighboring countries the proper thing to do', the spokesman said late October.

Turkish radicalization and German solidarity

The official statements by German government officials attest to Berlin's 'solidarity' with Athens in the dispute with Turkey. In this frequency and clarity, Germany's backing for Greece on key points of the conflict is unprecedented.

The statements should be viewed as a reaction to the equally unprecedented 'radicalization' of Turkey's policy toward its neighbor. One could argue that in view of the polemic threats against its NATO and EU- partner Greece, the German government has hardly a choice but to back Athens politically and diplomatically.

The dynamics of this policy, which I have termed reactive in the sense that they are a reaction to the Turkish threats - were summed up by German Ambassador to Athens Ernst Reichel as follows: 'The more threatening the rhetoric from the East and the more openly the Turkish government questions international law and Greek sovereignty, the clearer Berlin's public rejection of these positions.'[5]

Throughout 2022, Ankara has on more than one occasion criticized Germany - and the European Union - for its statements on Greek-Turkish issues and accused the West of being unbalanced. For the Turkish government, which had over the years grown accustomed to a relationship of trust with Angela Merkel, the harsh words of

[5] Speech of Ambassador Dr. Ernst Reichel at the Reception on the occasion of Germany's Unification Day in Athens on October 5, 2022.

criticism came as a shock: 'Germany acted as an honest broker in the past. It had a balanced attitude', said Turkish Foreign Minister Mevlut Çavuşoğlu after his meeting with his German counterpart in July 2022. 'But lately, we see that this balance is unfortunately being lost.'[6]

It would be a simplification to accuse Berlin of non-critical philhellenism. During her visit to Athens, the German foreign minister voiced criticism of Greece's refugee and asylum policy. Ms. Baerbock also rejected the long-standing Greek demand for reparations for the crimes of the German occupation during World War II. The same goes for the Greek demand to stop the delivery of state-of-the-art German submarines to Turkey. This has been a time-old concern of the Greeks, who fear for the military balance in the Aegean. While Greek Foreign Minister Nikos Dendias raised this point publicly with Ms. Baerbock in the summer, the submarine issue played no role in the public communications of Greek Prime Minister Kyriakos Mitsotakis when he met Olaf Scholtz in late October.

Germany mediates behind the scene

Against the backdrop of the seemingly endless verbal attacks from Turkish government officials against Greece, it came as a surprise to many observers that Ankara agreed to a - secret - Greek-Turkish meeting initiated by the German government in December 2022. 'It is a miracle that they sat down in the same room', a German diplomatic source in Athens commented[7].

Secret diplomacy has always had a firm place in relations between Greece and Turkey. In some cases, the public does not learn what is taking place behind closed doors, or only many years later from the memoirs of politicians and diplomats or historical archives. The situation is similar for the most recent German mediation.

Only very scanty information has leaked to the public about the meeting of Prime Minister Mitsotakis' and President Erdogan's confidants that took place before Christmas. We only know that Anna-Maria Boura, the director of the Greek Prime Minister's Diplomatic Office, and Ibrahim Kalin, President Erdogan's top foreign policy advisor, met in mid-December following the European Union summit in Brussels. The

[6] The Associated Press, July 29, 2022.
[7] See Ronald Meinardus: Hinter den Kulissen: Geheime Vermittlung Berlins im Konfliktdreieck Athen, Ankara, Nikosia, in: Griechenland Zeitung, Athen, Jahrgang 19, Ausgabe 858 (January 31, 2023), p. 3.

meeting took place in the premises of the German representation to the EU. It is also known that Jens Plötner, the German chancellor's chief foreign policy adviser, was at the table. Plötner served as German ambassador to Athens from 2017 to 2019 and still has excellent contacts in the Greek political scene. No group photo was released of the meeting in Brussels, nor was an official statement issued. The Greek and Turkish press merely stated the meeting had taken place on the initiative of the German side with the aim of exploring the possibilities of reviving the frozen bilateral communication channels.

The spokesman of the German government also did not reveal further details: 'The content of the talks is secret and that is logical', the spokesman said. He added the politically significant sentence, 'The Greek prime minister and the Turkish president reacted very positively to the German inquiry whether such a meeting would be useful'. The government spokesman also revealed further talks would follow, but that everything else was confidential[8].

German mediation is not limited to bilateral Greek-Turkish relations in the narrow sense; importantly, it also involves Cyprus. In 2022, we have seen an intensification of diplomatic traffic between Berlin and Nicosia, which is unprecedented in this form. In late November, Cypriot President Nikos Anastasiadis visited Berlin. A few weeks earlier, German Defense Minister Christine Lambrecht was in Cyprus, showing that German-Cypriot relations also have a military dimension. In January 2023, Cypriot Foreign Minister Ioannis Kasoulidis traveled to Berlin on an official mission.

'Dividing the island cannot be a solution', the German foreign minister said at a joint press conference in Berlin[9]. Ms. Baerbock added that Berlin – 'will continue to do its utmost for de-escalation'. She added that Cyprus could rely on German solidarity.

That these are not empty words was confirmed by no less than Foreign Minister Kasoulidis who in unusual frankness elaborated on the mediating role of Germany: "Germany is in a position to talk to Turkey on a friendly basis and on a give-and-take basis", the minister said in an interview with Deutsche Welle. He was not going to go into details, Kasoulidis went on, but in 2022 Turkey did not enter the Exclusive

[8] Deutsche Welle, Greek Program, December 19, 2022.
[9] Reuters, January 9, 2023.

Economic Zone (EEZ) of Cyprus, nor did it undertake new actions in Varosha, although the Turkish and Turkish Cypriot sides had announced this. That all this did not happen in 2022, the minister from Cyprus said verbatim, 'is partly due to Germany'[10].

The words of the Cypriot minister are extraordinary because they illustrate with clarity the concrete results of the secret mediation and diplomatic initiatives of the German government towards Turkey.

It is unlikely the Greek - or the Turkish - government will be similarly transparent about their confidential talks, which are taking place behind the scenes with the political support from Germany.

[10] Deutsche Welle, Greek Program, January 10, 2023.

Russia's Strategy in the Eastern Mediterranean: Between revisionism and pragmatism

Andrew N. Liaropoulos[*]

Introduction

At the crossroads of three continents, Europe, Asia and Africa, the Eastern Mediterranean, has always been an arena of great power politics[1]. Being the birthplace of three major world religions, Christianity, Islam and Judaism, and the meeting point between the East and the West, this region has historically experienced continuous geopolitical antagonisms between great powers that aimed to control it. From the Hellenistic period to the Cold War, Greeks, Romans, Byzantines, Arabs, Ottoman Turks, and Europeans have largely shaped the rich history of this heterogeneous area.

The Eastern Mediterranean presents long-term security dilemmas for many regional states, including Greece, Turkey, Cyprus, and Israel. Nevertheless, over the last decade, the region has gone through a process of rapid transformation. The sociopolitical upheavals that were triggered by the Arab Spring, the withdrawal of the United States (US) from Iraq and the rise of Islamic State (ISIS), have produced regional insecurity and political uncertainty. Adding to that, the refugee crisis that affected Greece, the civil wars in Syria and Libya, the new hydrocarbons findings off the coasts of Israel, Cyprus and Egypt and the escalation of Turkish revisionism, have all created new geopolitical dynamics in the region (Litsas and Tziampiris, 2019; Tziarras, 2019).

It is in this context that Russia's Eastern Mediterranean strategy deserves closer attention[2]. Over the past years, Moscow has taken advantage of the power vacuum created by the US partial disengagement from the region. Russia has emerged as an important military and political force in the region and as a competitor of the US and

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[1] For the present analysis, the regional subsystem of the Eastern Mediterranean includes the states of Greece, Turkey, Cyprus, Syria, Lebanon, Israel, Egypt, and Libya.

[2] Note that the present analysis refers to developments prior to the 2022 Russia-Ukraine war.

the European Union (EU). The purpose of this paper is to unfold Moscow's policy over the last decade and explore the geopolitical interests of Russia in the Eastern Mediterranean. In terms of structure, the paper will first review the motives behind Russia's renewed engagement in the region and in a latter phase analyze the economic, security and diplomatic interests that Moscow has advanced. The goal is to explore Russia's strategy, in a region that is volatile, torn by division, mistrust and external interventions.

Explaining Russia's renewed engagement in the Eastern Mediterranean

Historically, the Eastern Mediterranean has never been one of Russia's strategic priorities, compared to Europe or Central Asia. In sharp contrast to other powers, Russia had no colonies in the region and Moscow never considered it as a sphere of influence (Kortunov, 2018, p. 76). During the Cold War, the Eastern Mediterranean was part of the bipolar confrontation between the Western and the Eastern blocs. Both parties had a military presence and established alliances in the region. After the end of the Cold War, due to Russia's political instability and economic decline, the region was dominated by the West, who exercised great influence with initiatives like North Atlantic Treaty Organization's (NATO) Mediterranean Dialogue and the EU's Euro-Med Partnership (Lutterbeck and Engelbrecht, 2009, p. 385). In the 1990s, under President Boris Yeltsin, Russia was more of a spectator, having no military presence and loose diplomatic ties with most of the countries on the southern part of the region.

Over the last decade though, Russia has reemerged as a significant player in the warm waters of the Mediterranean. Russia, under the leadership of Vladimir Putin, has demonstrated a growing interest in the region, especially in the areas of military and energy cooperation. Regarding natural gas, Russia is the single largest supplier of natural gas to the EU, while the EU is Russia's largest gas export market. The oil-and-gas rich countries of the Eastern Mediterranean offer to European countries the potential to reduce dependence on Russian energy exports (Lutterbeck and Engelbrecht, 2009, p. 403). Approximately 2.56 trillion cubic meters of natural gas have been discovered beneath the waters of the Exclusive Economic Zones (EEZs) of Cyprus, Israel and Egypt (Tsakiris, 2017, p. 288). Russia on the other hand, aims to maintain or even strengthen its position as the main energy supplier of the EU. Apart from securing a hegemonic position as a traditional energy supplier, Moscow also aspires to become

an alternative security provider. The enhanced defense cooperation with Egypt and Turkey and the military involvement in Syria and Libya vividly illustrate this ambition (Stergiou, 2017). There is no doubt that Russia's growing activism has raised concerns for the US and many European countries. As a result, a growing geopolitical competition between Russia and the West is taking place in the eastern part of the Mediterranean. Before examining in detail Russia's pivot in the Eastern Mediterranean, it is critical to elaborate on the incentives behind Moscow's strategy. One can identify a variety of motives, ranging from the desire for great power status, to the promotion of authoritarian stability (Siddi, 2020).

The most common argument for Russia's renewed interest in the region is the aim to restore its status as a great power. Afterall, in March 2014, during the Ukraine crisis, President Barack Obama, characterized Russia as a 'regional power'. The Eastern Mediterranean and the broader Middle East and North Africa region offer Moscow the opportunity to increase its influence and promote the idea of a multipolar system. The Syrian crisis enabled Russia to project its power outside the post-Soviet space and gain a seat at the table as a mediator in the regional context (Blank, 2017; Trenin, 2018). The unwillingness of either NATO or the US to deal with the Syrian crisis in its early phase, offered Russia the window of opportunity, to exit its isolation and participate in eliminating the ISIS threat (Litsas, 2016, p. 59). Adding to that, one cannot ignore the fact that Russia's involvement followed the gradual decline of the US in the region during the Obama administration. The fall of the regimes in Tunisia and Egypt after the Arab Spring, raised various concerns regarding the (in)actions of Washington in the region. The fact that Washington abandoned a long-time ally, President Hosni Mubarak of Egypt, sent a clear message to the region that they could not rely on the support of the US (Khlebnikov, 2020, p. 231). In sharp contrast, where the US abandoned its ally in Egypt, Russia supported President Bashar al-Assad in Syria. The prestige of the US suffered a major blow, whereas Russia proved to be a reliable partner and increased its credibility (Litsas, 2016, pp. 61-62).

At this point we should stress that Russia's military presence in the Eastern Mediterranean serves two goals. The first and most obvious one, is that due to Russia's involvement in Syria and Libya and the renovation and expansion of its naval base in Tartus, Syria, Moscow is in a position to threaten the southeastern flank of NATO and thereby global supply lines and trade in the broader region. The Russian navy has

reinforced its Mediterranean squadron over the past years, which is nowadays a sizable threat. Adding to that, the placement of S-400 missile defense systems in Syria, has transformed the latter into an A2/AD (anti-access/area denial) area for NATO (Capsakis, 2022, pp. 7-8; Gorenburg, 2019). Despite the superiority of the US Sixth Fleet, NATO perceives Russia's naval presence in the area, as a constraint to its operational capabilities (Shlykov and Koldunova, 2022, pp. 4-5).

The second goal is that by maintaining a threatening presence in the Eastern Mediterranean, Moscow is forcing NATO to withhold significant resources in the area and thereby have a limited presence in the Black Sea. The latter is obviously vital to Russian coastal defense and the fact that the Montreux Convention constrains the naval presence of non-Black Sea powers, hinders NATO from having a bigger fleet in the Black Sea (Capsakis, 2022, pp. 7-8; Gorenburg, 2019).

In line with the argument of attaining a great power status and challenging the US/West in the region, it can be argued that Russia might gain influence by acting as a mediator in several regional conflicts. Apart from its military involvement in Syria and Libya, Moscow enjoys relatively good relations with all local players, Sunnis and Shias, Israelis and Palestinians as well as Turks and Kurds. Moscow also has good relations with Fathah, Hamas and Hezbollah (Katz, 2018, p. 2). In the Russian narrative, this portrays Moscow as a legitime actor that aspires to design a new power balance in the region, whereas Washington had a destructive role after the 2003 intervention in Iraq (Barmin, 2018; Stepanova, 2020).

Apart from the geopolitical motive that emphasizes on the role of the US/West in Russia's foreign policy, it is also useful to consider other drivers and interests that triggered the shift in Moscow's policy in the Eastern Mediterranean (Siddi, 2020, p. 166). This will enable us to perceive recent developments beyond the mainstream Russia vs the West paradigm. To begin with, several scholars have pinpointed the role of the Arab Spring in altering the Russian mindset. While the Arab Spring was embraced in the West as a sign of democratization, Russia viewed it as the launch of chaos and destabilization in the wider area of the Middle East and North Africa. Moscow had legitimate concerns regarding a possible spillover effect of the Arab Spring in its near abroad. Afterall, the sociopolitical upheavals that swept the region, served as a painful reminder of the so-called 'colored revolutions' that broke out across

several post-Soviet states in the first half of the 2000s (Barmin, 2018). The social protests and regime changes that took place resembled the uprisings in Ukraine, Georgia and Kyrgyzstan, which overturned pro-Russia regimes in favor of pro-western governments (Roussos, 2019, p. 351).

Russia did not enthusiastically endorse the Arab uprising, simply because it did not interpret it through the prism of western liberalism. There was indeed great skepticism in Moscow regarding the democratic potential of the revolutions. That skepticism should not be perceived as support for the ruling secular Arab regimes. Afterall, these regimes have ruled for far too long, they became corrupted and failed to serve the needs of their societies. Russia viewed the Arab Spring more as a return to traditional values that incorporated an Islamic identity and less as a turn towards Western-style democracy. For Moscow, the Arab Spring brought about the Islamization and not the democratization of the region (Dannreuther, 2015, pp. 80-81). Russian suspicions regarding the radical changes in the region were grounded on the belief that the so-called export of liberal democracy would eventually lead to conflict, state disintegration and chaos. For Moscow, the Arab Spring offered the opportunity to the West to engage, once more, in regime change (Dannreuther, 2015, p. 82). Russia's suspicions were confirmed when the Muslim Brotherhood came to power in Egypt and when the United Nations voted to establish a no-fly zone in Libya and began a bombing campaign that led to the demise of Muammar Gaddafi.

The West portrayed the Arab Spring as a clash between authoritarianism and democracy. Whatever served the latter should be encouraged, whatever contributed to the former, should be opposed. Russia on the contrary argued that the dilemma between democracy and authoritarianism was irrelevant and chose to frame the developments in the region in terms of chaos and order[3]. According to Moscow's narrative, authoritarian regimes, despite their shortcomings offered stability and order, both domestic and in the wider region, whereas the swift and uncontrolled path to democracy resulted in uncertainty and chaos (Kortunov, 2018, p. 78). An example that confirms this point is Russia's willingness to sell weapons in Syria and Egypt, without regard for human rights issues (Katz, 2018, p. 2). Although the argument for autocratic stability that

[3] On the other hand, the absence of political opposition, attempts to limit judicial oversight, a weakened civil society and online censorship are signs of authoritarian fragility, rather than stability.

Russia projects is biased and self-serving, it appealed to the conservative regimes in the region, in the aftermath of the revolutionary movements[4].

Last, but not least, one can spot domestic factors that have driven up to a point Russia's policy in the region. One factor that has been cited, is the presence of Russian-speaking fighters in the ranks of ISIS and the concern that these fighters-terrorists might return soon in Russia (Sibbi, 2020, p. 167). Another factor relates to the protection of Christian communities in the region. The notion of 'Christianophobia' was mobilized by the Russian Orthodox Church who praised the Syrian campaign as a holy duty to protect Christian minorities (Roussos, 2019, p. 352; Sibbi, 2020, p. 168). The popular theme, that Vladimir Putin needed another military campaign - after the Second Chechen War, the war in Georgia and the annexation of Crimea - in order to boost his popularity and divert attention away from the international economic situation, has also been cited by scholars (Sibbi, 2020, pp. 167-168). Although popular, such explanations seem to be of secondary importance, compared to the geopolitical motive.

Russian policy in the Eastern Mediterranean

Having established a firm grasp of what drives Moscow's renewed engagement in the region, it is time to reveal how and where Russia has advanced its interests in the Eastern Mediterranean, but also identify the constraints in its policy.

1. Exerting influence in the Greece - Turkey - Cyprus triangle

Greece, Turkey and Cyprus are perceived by the Kremlin as fertile grounds for Russian political exploitation in order to undermine the cohesion of NATO and the EU. They are considered as the most receptive states to Russian influence operations. The reasons vary from common cultural and religious legacies, to energy independence and opportunistic leaders. Relations between Moscow and Ankara are a puzzle, since they are both partners and competitors. Indicative of Russian pragmatism is the fact that in 2016, despite the strained relationship between the countries after Turkey had shot down a Russian military airplane over the Syrian-Turkish border, Moscow offered intelligence and diplomatic support to the Turkish government in the aftermath of the

[4] Two examples that seem to confirm Russia's thesis on authoritarian stability are Turkey and Egypt. President Recep Tayyip Erdogan used the attempted coup in July 2016 as an excuse to establish a strict authoritarian rule and likewise President Abdel Fattah El Sisi exploited the fight to eradicate extremism in the Sinai, and rules in an authoritarian manner.

attempted military coup (Gasimov, 2022, p. 474). The two governments cooperate in terms of pushing back Western human rights criticism and collaborate in energy projects like the Blue Stream and TurkStream gas pipelines and the construction of the Akkuyu nuclear power plant by Rosatom (Litsas and Tziampiris, 2019, p.185; Stronski, 2021). Ankara's decision to acquire the S-400 missile defense system, made Turkey the only NATO member that operates a Russian high technological arms system (Shlykov and Koldunova, 2022, p. 5). Turkey's decision to purchase these air defense systems has caused friction within the Alliance. On the other hand, Russia and Turkey have conflicting interests in Syria and the South Caucasus and operate as competitors in Libya and Ukraine. Their relationship is unstable and lacks strategic depth. Moscow and Ankara have little to share when it comes to values or culture and the future of their relationship is dependent on the two countries' authoritarian leaders (Shlykov and Koldunova, 2022, pp. 6-7).

Over the past decade, Greece experienced a financial and migration crisis that weakened the political system and boosted populist politicians. The harsh austerity measures triggered instability and led to the rise of euroscepticism. This was the environment that enabled Russia to exercise its influence (Polyakova *et al.*, 2017, pp. 5-10). In Greece, Russian infiltration has taken mainly the form of soft power and attempts to establish closer links with the mass media and the Greek Orthodox clergy (Litsas and Tziampiris, 2019, p.184). In 2016, the former Prime Minister Alexis Tsipras argued that the anti-Russian sanctions posed by the EU should be lifted (Gasimov, 2022, p. 469). Nevertheless, the Kremlin's unwillingness to truly provide financial assistance, demonstrated the limits of its approach. Adding to that, Gazprom's bid for the state's controlled natural gas company, DEPA, did not materialize. Despite Moscow's attempts to exploit cultural and historical ties and the narratives about Orthodox brotherhood, Athens soon turned back to the EU and the United States. The Turkish-Russian rapprochement forced Greece to intensify its military ties with the US (Shlykov and Koldunova, 2022, pp. 10-11).

For Russia, Cyprus serves as an offshore financial center and potentially a logistics center for its naval operations. In 2015 Russia and Cyprus reached an agreement allowing limited port calls for Russian naval ships. On the other hand, although Cyprus used to be a consistent buyer of Russian arms in the 1990s, over the past decade, Nicosia decided to diversify its arms suppliers and strengthen its military

ties with France, Israel and the US. In order to boost its economy, Cyprus launched the golden visa program that provided Cypriot and thus EU citizenship to foreigners who invested 2 million euros in real estate. Many Russian oligarchs made extensive use of this program, thus raising legitimate concerns regarding money laundering. In October 2020 the government ended the golden passport program after corruption allegations came to light. In common with Greece, despite the fact that Russian companies are quite active in the tourism and real estate sectors and the existence of religious ties, the Kremlin's influence is rather limited in the island (Shlykov and Koldunova, 2022, pp. 11-13).

2. Military presence in Syria and Libya

Russia had close ties with Syria and Libya for decades, but it was the western apathy to the internal conflicts of both countries that opened the window of opportunity for Moscow to intervene and establish a military presence in the region. In Syria, Moscow modernized its support facilities in Tartus and transformed it into a self-sufficient naval base that can deploy 11 warships, including nuclear powered vessels. Likewise, Russia acquired the Hmeymin air base in Latakia, close to the capital of Damascus, that can accommodate 1000 troops and 50 military aircrafts. The Hmeymim air base has been used also for the military raids in Libya (Gasimov, 2022, p. 473; Litsas and Tziampiris, 2019, p.183). Another example of Russia’s flexibility and pragmatism, is the fact that Russia managed to cooperate in Syria with both Iran and Israel, despite their conflicting interests, but also with Turkey, by tolerating its zone of influence in the northern provinces of Syria, along the borderline. Libya is not of vital interest for Russia, but then again it offers Moscow a secure way to sub-Saharan Africa and an opportunity to project power on the southern flank of NATO. Moscow has openly supported with money, arms and experienced Wagner Group fighters from Syria, the general Khalifa Haftar, leader of the Libyan National Army, in its fight against the jihadists. At the same, in another exercise of pragmatism and cynicism, Moscow has also established relations with Fayez Al-Sarraj the Libyan Prime Minister and the de jure recognized authority of the Libyan state by the United Nations (Litsas and Tziampiris, 2019, p.183).

3. Energy cooperation

Over the past decade, energy projects, like the gas pipeline EastMed and the Southern Gas Corridor, both supported by the US and the EU, aimed to promote the diversification of Europe's gas suppliers, and thereby reduce its dependency on Russian gas. In terms of energy, the Eastern Mediterranean is important for Moscow for two reasons. First, because the region could provide Russia alternative routes for oil and gas transportation to Southern Europe, bypassing Ukraine. This is the case with the TurkStream gas pipeline, which crosses the Black Sea and reaches Turkey. The second involves the participation of Russian oil and gas companies in regional energy projects, in order to reduce the risks from the EU's strategy of diversification (Shlykov and Koldunova, 2022, p. 6). In order to influence the extraction of local raw materials, Moscow managed to secure participation in regional energy projects. In 2017, Rosneft acquired a 30% stake in the Egyptian Zohr gas field and Russian companies have also won land contracts for the extraction and exploration of oil and natural gas in Libya and Syria (Legucka, 2020, pp. 1-2). In 2017, Egypt also signed a deal with Rosatom to build four reactors. Moscow offered a loan of $25 billion with a 3% annual interest rate to finance the construction of the El Debaa plant (Litsas and Tziampiris, 2019, p.185; Nakhle, 2018, p. 34). In 2018, Novatek, Russia's largest non-state gas company, joined a consortium with French Total and Eni to carry out geological exploration on the Lebanese coastal shelf (Shlykov and Koldunova, 2022, p. 6).

4. Arms sales and economic constraints

Over the past decade, Russia increased its arms sales in the region. After all, Russian military operations in Syria, conducted since 2015, demonstrated to potential customers the capabilities of Russian fighter planes, combat helicopters, cruise missiles and means of radio-electronic warfare. During the period 2010-2020, Syria bought Russian arms worth United States Dollar (USD) 2.1 billion and Egypt purchased military systems worth USD 4.2 billion. It is noteworthy, that by 2021 Russian arms sales to Eastern Mediterranean countries constituted more than half its arms export and equaled USD 6 billion annually (Shlykov and Koldunova, 2022, p. 5). Nevertheless, Russia's trade and investment in the area is restricted in the energy and defense sectors. Russia's economic presence lags behind both the US and the EU (Stepanova, 2018, p. 51). Russia though has little to offer to the region's societies, which need stability, political reforms, and

economic modernization. Moscow is not offering much in terms of enhancing local resilience and stabilizing the region. Military interventions and arms sales cannot achieve such ends on their own. In other words, even if Russia is on the winning side in the cases of Syria and Libya, it cannot win the peace, since it lacks the necessary resources to launch the post-conflict reconstruction.

5. The Christian Orthodox card

It is no secret that Russia has utilized religion to win the hearts and minds of the local population, exercise influence and thereby advance its geopolitical interests. There is a strong link between the Russian Orthodox Church and the Russian Ministry of Foreign Affairs. According to the narrative of the former, and in accordance with the latter, Russia's mission in the Eastern Mediterranean is to protect Christians, but also to provide a peace settlement and build a new regional order (Curanović, 2019, p. 259). In the case of Syria, the Russian Orthodox Church, sustained domestic support by framing the campaign as a holy mission to rescue persecuted Christians, ensured high-level morale within the Russian military ranks by resembling Russian soldiers to Orthodox peace-makers, and engaged foreign leaders, international organizations and Christians worldwide in order to legitimize Moscow's policy (Adamsky, 2019). Russian monasteries and churches have been sending humanitarian aid to Syrian congregations and the Patriarch of Antioch has expressed numerous times his gratitude for saving one of the world's oldest Christian communities (Adamsky, 2019, p. 54).

Apart from exercising ecclesiastical diplomacy in Syria, Moscow via Orthodox Christianity 'targets the believers' in Greece, Cyprus, Lebanon, Syria and Egypt and projects Russia as the protector of the faith in the broader region. The end goal is the primacy of World Orthodoxy. Indicative of the above is the fact that the Russian Orthodox Church, along with the Patriarchate of Antioch, the Church of Bulgaria and the Church of Serbia, abstained from the Pan-Orthodox Council held in Crete in June 2016. Russia abstained from the most historic Synod of the Orthodox Christianity in order to send the message that it does not accept that the Ecumenical Patriarchate is the head of the Orthodox World (Litsas, 2016, p. 67). Finally, the schism between the Russian Orthodox Church (ROC) and the Ukrainian Orthodox Church (UOC) revealed the limit of the Orthodox brotherhood narrative. Both the Greek and the Cypriot Church

backed the Constantinople patriarch in recognizing the independence of the UOC (Shlykov and Koldunova. 2022, pp. 11-13).

Conclusion

For a quarter-century after the breakup of the Soviet Union, Russia was in many ways a spectator and not a protagonist in the Eastern Mediterranean. Over the last decade, the Eastern Mediterranean is once again a terrain of great power rivalries. Today, Russia is a key player, with a considerable military presence and good relations with many of the state and non-state actors in the region. Russia is an active participant in the geopolitical chess match that involves the Eastern Mediterranean. The region has borne witness to how Russia has raised its status in the international arena. But is Russia's political and military activism enough to consider Moscow as a power broker in one of the most complex and unstable regions of the world? The above analysis has demonstrated both the advantages and the limitations of Russia's engagement in the region.

In the military and security field, Russia has actively intervened in the cases of Syria and Libya and strengthened its naval presence in the region. Despite the geopolitical gains of power projection and increased arms sales, Russia's capabilities in the Eastern Mediterranean are modest. It has been well established that the economic and financial base of its policy in the region is still lacking for a state that aspires to be a great power. Russia's low record in the financial and foreign trade sectors, limits its influence in the Eastern Mediterranean. Russia's fragile economy limits its global ambitions and thereby its ability to counter western influence in the region.

For the time being, Russia has enhanced its position in the region and demonstrated to all actors that they need to take into consideration Moscow's interest. In the near future, Russia has to plan a long-term strategy about the region and its role in it. Such a strategy needs to address among others, the role of Russia in the final settlement of the conflicts in Syria and Libya, the development of strategic partnerships with Turkey, Israel and Egypt and the extent to which Moscow wishes to maintain its role in the region, in case the US decides to return and reclaim its role as the key player. There is no doubt that Russia is back in the region. But in order to stay relevant in the coming years and increase its capabilities, Moscow needs to balance between the risks and opportunities and envision a coherent regional policy.

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Challenges of the World Ocean in a Changing Strategic and Energy Security Context: The Case of the Eastern Mediterranean

Aris Marghelis[*]

In a period of world-scale restructuration of strategic relations and reorganization of energy routes, the long-standing importance of the maritime space gains new momentum. In this context, the Eastern Mediterranean holds a particular position.

It is an area of rivalry but also of cooperation between its coastal States, and a key region located on a key maritime route. Therefore, it also involves the strong interests of extra-regional powers. In particular, it is a region that is pivotal for Europe's security. This is especially the case with regard to energy security, that has been propelled to the top of the European agenda following Russia's war on Ukraine. Accordingly, the security architecture that will prevail in the Eastern Mediterranean is of decisive importance.

Given these elements, this region offers an excellent case-study of the dynamics and challenges - both traditional and new - that apply to the maritime area, while highlighting the need of an integrated European strategy towards it.

I. The strategic importance of the maritime space in power politics: a timeless beauty

A. Between permanence and change

Starting with a truism is rather inevitable when it comes to the strategic importance of the seas with regard to power politics. History teaches that who aims to evolve into a regional or world power needs to develop competitive naval capabilities. That was the case of Great Britain in the 18th century, of the United States (U.S.) after 1945, of the Soviet Union in the 1960s, of China since the 2000s. Today, countries like India and Turkey are striving to secure a place on the world naval map so as to confirm their eruption on the international arena. This historical phenomenon is consubstantial with

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the importance of the seas in world trade: it is generally acknowledged that the latter is seaborne up to 90%, although this statistic depends on the method of calculation (weight, value, volume)[1].

However, another dimension has been emerging in this traditional equation, since the high seas – understood as the maritime area located beyond national sovereignty – have specific characteristics that vest them with a particular role in a context of global-scale balance of power shift.

The World Ocean is one of the humanity's three common areas, along with the outer space and the cyberspace. In this area, the notions of sovereignty, of borders, and of legality are not as rigid and clear as onshore; this means that military and technological superiority will provide to its holder a prominent positioning in the process of shaping any future rules. In strategic terms, this renders the oceans a privileged area to exert competition, to contest rules and/or establish new ones, including through hybrid means and low-intensity coercion. This allows upsetting balances without resorting to open conflict or to actions that would uncontestably justify an immediate and direct military response on the behalf of the challenged actor(s). In other words, the sea offers the ability to display intentions, to contest a certain order, to express claims, and to gradually impose new realities at a relatively low cost, by crossing *orange*, rather than red lines. This may prove to be a very tricky strategy, as it could trigger an overreaction on the behalf of the challenged actor(s), ending thus in burdening the latter with the responsibility of the escalation.

Besides, and due to the fact that the freedom of navigation applies to it, the World Ocean also offers greater *anonymity*. As a result, illegal actions perpetrated on the high seas cannot be easily tracked and, subsequently, cannot be indisputably attributed to a state actor so as to engage its responsibility. This makes the oceans even more conducive to indirect strategic contestation. The destruction of the gas pipeline Nord Stream 2 is an edifying example of this phenomenon: it is difficult to prove that this act of sabotage has been perpetrated by one State or another, while, when the scenario was evoked that it might have been committed by a 'pro-Ukrainian group'[2],

[1] For recent statistics and the importance of seaborne trade in a nutshell, see: UNCTAD Handbook of Statistics 2022 - Maritime transport. [Online]. Available at: https://unctad.org/system/files/official-document/tdstat47_FS13_en.pdf (Accessed: 30 April 2023).

[2] Sabbagh, D., Oltermann, P. and Tondo, L. (2023). 'Officials believe pro-Ukraine group may have sabotaged Nord Stream – reports', The Guardian, 8 March. [Online]. Available at:

Ukraine (as a State) immediately denied any involvement[3]. The multiplication of attacks on oil tankers with drones (which, as a weapon, allows a high degree of anonymity as well) is also a manifestation of this trend.

Undoubtedly, as long as we remain in a dynamic of developing rivalry between great powers (or aspiring great powers), the World Ocean will steadily continue to evolve into an area of contestation, of competition and of potential confrontation. This increases the strategic pressure exerted on the seas and explains the massive development of the naval capabilities of the state actors resorting to such strategies, and of those willing to counter them. To give only an example, between 2013 and 2017, China added to its naval power the equivalent of the whole French Navy in number of ships and submarines[4]. The French Navy, on its side, has recently operated a fundamental doctrinal shift. It is, henceforth, getting prepared for a high intensity engagement on the oceans[5], a scenario that was virtually not taken into consideration anymore after the end of the Cold War.

B. Using the maritime space as a ground for contestation and subversion: the example of the 2020 Turkish 'Grand Strategy' in the Eastern Mediterranean

Turkey's 2020 Eastern Mediterranean 'Grand Strategy' is a striking case study of the strategy consisting in using the sea to contest existing rules and establish new realities by using hybrid means. Indeed, Turkey attempted to take over the strategic control of the Eastern Mediterranean by performing a resolute hybrid strike that led to a crisis between Greece and Turkey, but also between France and Turkey.

https://www.theguardian.com/world/2023/mar/07/officials-believe-pro-ukraine-group-sabotage-nord-stream-pipelines (Accessed: 30 April 2023).

[3] Cursino, M. and McGarvey, E. (2023). 'Ukraine denies involvement in Nord Stream pipeline blasts', BBC, 8 March. [Online]. Available at: https://www.bbc.com/news/world-europe-64877979 (Accessed: 30 April 2023).

[4] According to the former French Navy Chief of Staff, during his audition before the Commission of National Defense and Armed Forces of the French National Assembly, 26 July 2017. [Online]. Available at: https://www.assemblee-nationale.fr/dyn/15/comptes-rendus/cion_def/l15cion_def1617009_compte-rendu (Accessed: 30 April 2023).

[5] See, for instance: Admiral Vandier, P. (2022). 'The hypothesis of naval combat is thus back on the agenda and the French Navy is getting ready to face it.', Marine & Oceans, 15 June. [Online]. Available at: https://marine-oceans.com/en/interview-with-admiral-pierre-vandier-chief-of-staff-of-the-french-navy-2/ (Accessed: April 30, 2023).

The objectives and means of the 2020 Turkish 'Grand Strategy'

The main objective of the 2020 Turkish 'Grand Strategy' being to acquire the strategic control of the Eastern Mediterranean, this required to break the two main obstacles to its designs: international law and rival naval power.

In July 2020, following the legally and politically controversial Turkish-Libyan maritime delimitation agreement of November 2019, Turkey launched a campaign of 'exploration activities' on the continental shelf on which Greece claims exclusive rights. The seismic survey ship *Oruc Reis*, that conducted until late November 2020 this 'exploration', was escorted by warships. This left few doubts as to Turkey's real intentions and to the fact that exploration and drilling activities served primarily an expansionist agenda in the Eastern Mediterranean. By simultaneously exerting military pressure on Greece and creating *faits accomplis* in what concerns exclusive rights of exploration, Turkey hoped to force its neighbour to negotiate the issue of maritime delimitation in the framework of the balance of power (which Ankara considers as being in its favour), rather than in the framework of international law. And it is a fact that international law of the sea does not provide the necessary legitimacy to Turkey's maritime designs as reflected in its maritime geopolitical doctrine. This is precisely the reason why Turkey has not adhered to the Law of the Sea Convention and has opted for the militarisation of its regional strategy and foreign policy, especially towards Greece and Cyprus. In short, in 2020, the objective was to proceed to a unilateral and *de facto* appropriation of the sea by using a hybrid strategy mixing military and non-military power. Besides, should Greece had obtempered, such a situation would have ended in creating a new reality that would have been extremely difficult to reverse. This has been a long-term Turkish strategy, but it reached a peak in 2020 because Greece was starting to recover from its 10-years financial crisis. Turkey apparently assumed that this crisis had seriously impaired the operational capabilities of the Hellenic Navy, as virtually no investments had been made for a decade. Accordingly, it was considered as the right moment to strike, before the Greek military's recovery started. Nonetheless, the decades-long Greek-Turkish strategic rivalry and the constraints caused by the financial crisis contributed, slowly and rather discreetly, to the development of a certain resilience of the Greek armed forces and of their ability to absorb – with the available means – the constant Turkish strategic and operational pressure, without giving up sovereign rights though. This element was manifestly underestimated by Turkey in

2020, while this Turkish strategy finally resulted in pushing Greece to engage in a quick and massive modernization of its military capabilities.

In parallel with the attempt to break Greece's military and legal 'maritime backbone', Turkey also tried to override the last significant obstacle to its strategic designs in the Eastern Mediterranean: France. Indeed, along with its survey activities in Greek-claimed maritime zones, Turkey was conducting a weapon-smuggling operation in Libya so as to consolidate its position there and create viable conditions for the strategic control of the Eastern Mediterranean. In other words, the seismic survey activities in the Greek-claimed maritime zones and the weapon-smuggling activities in Libya were the two sides of the same coin. This weapon-smuggling activity took place in gross violation of the United Nations Security Council resolution 2292 (2016), prompting the control of suspect cargo ships in the framework of the North Atlantic Treaty Organization (NATO) operation *Sea Guardian*. It is in this context, that a Turkish frigate escorting such a cargo aggressed a French frigate (*Courbet*) while the latter was about to perform her control tasks.

The Turkish tactics and state of mind

In this context, two incidents are characteristic of the state of mind that prevailed in the Turkish Navy and of how, from an operational point of view, Turkey tried to reach its objectives.

The first is the above-mentioned incident between the French frigate *Courbet* and a Turkish frigate off Libya in June 2020, when the latter performed what is a called a 'target illumination', which is an *objectively* hostile action, as it is the last stage before firing a missile. More than to produce an immediate operational result – which made little sense when one looks at how the warships were positioned at the very moment of the incident[6] – the objective was to demonstrate determination and to threaten the French Navy, which is the only navy (besides the Hellenic Navy) capable and *willing* to shadow the Turkish naval power in the region. In fact, defeating mentally a navy through intimidation equates almost to a military victory at sea. In such a scenario, Turkey would have practically remained the only sizable naval power in the Eastern

[6] Marghelis, A. (2021). 'The French Military's Perception of the Turkish Military and Turkey's Expansion in the Eastern Mediterranean', Études de l'Ifri, Ifri, November, p. 21. [Online]. Available at: https://www.ifri.org/sites/default/files/atoms/files/marghelis_france_turkey_eastern_mediterranean_2021_.pdf (Accessed: 30 April 2023).

Mediterranean, paving thus the way for imposing *de facto* its framework and rules. To take the words of a high-ranking French military source who was referring to the Eastern Mediterranean, '*If we disappear from the area for 2-3 years, we will not enjoy the same rights and these rights will be very difficult to recover when we go back. The rules will have changed* de facto. *At sea, nothing is guaranteed like onshore. You have to be present in order to defend your lawful interests and international rules*'[7]. Put another way, should France had shown hesitance and left Turkey succeed in its designs, any navy (beyond the U.S. Navy) aiming to sail and operate in the region would have quickly ended up in doing so in Ankara's shadow. Consequently, the balance of power in this critical region would have been durably upset at the expense of Greece, France and, in the end, Europe.

The second incident was the collision between a Greek and a Turkish warship in August 2020 in the area south of the small Greek archipelago of Kastellorizo, located off the southern shores of Turkey. According to a high-ranking Greek military source who was closely involved in the management of the 2020 Greek-Turkish crisis[8], the order was given to the Greek frigate *Limnos* to move closer to the Turkish seismic survey ship in order to better monitor the latter's activity. The Turkish frigate *Kemal Reis*, that belonged to the *Oruc Reis*' escort flotilla, apparently misunderstood the move, presuming that the *Limnos*' objective was to harass the survey ship. As a result, the *Kemal Reis*, in an unprofessional move, suddenly deviated from her route in the direction of the *Limnos*, which was located on her right. According to the regulations for preventing the collisions at sea, the *Limnos* had the priority. Hence, the *Limnos* continued her route and, as a result, both ships collided, with the much younger and modern Turkish vessel suffering important damage from the collision she caused.

Obviously, the objective was to force the Greek vessel to stop and/or change her course, that is to say, to *retreat* before the Turkish commander's will. In the same way as the incident involving the French frigate off Libya, it should not be exclusively understood in its immediate and local context. It is also to be apprehended through the prism of the short-tempered state of mind prevailing in Ankara (and, respectively, in the Turkish Navy) at the very moment, that was stemming from a mix of 'strategic overheating', of overconfidence, and of deep conviction that the country was

[7] *Ibid*., p. 26.
[8] Exchange took place in April 2023.

performing a strategic breakthrough of historical importance for its greatness. And, assuredly, should Turkey had succeeded in its objective to take over the strategic control of the Eastern Mediterranean within a few weeks, this would have been a milestone with regard to the region's future, and beyond. However, like the *Courbet*, the *Limnos* did not get intimidated and she behaved according to the rules and not according to the Turkish commander's will.

Precisely because at sea, where everything is more volatile than onshore, showing consistency and determination is of crucial importance for the establishment of a *de facto* order. Concretely, had the *Limnos* shown hesitation, or opted for 'security' in order to avoid escalation, this would have happened at the price of humiliation, while it would have sent a very wrong message to allies and potential allies with respect to Greece's determination and aptitude to defend its rights, as well as to its reliability as a partner. Accordingly, this could have contributed to impair its ability to conclude strategic and defence cooperation agreements, a policy that has evolved into a major pillar of its regional strategy right after the 2020 Greek-Turkish crisis. And a milestone of this policy is the Greek-French strategic cooperation and mutual defence agreement of September 2021.

At the crossroad of diplomacy, power and the rule of law: how Greece and France forestalled the 2020 Turkish 'Grand Strategy'

First, Greece, by shadowing the Turkish activities with its navy, made clear that it would not silently acquiesce in any *fait accompli*. Should Greece had remained passive by fear of escalation - and given the mindset prevailing in Ankara at the very moment - this would have been understood by Turkey as a green light to proceed to the next step: drilling. Drilling is a stage above exploration without physical contact (such as the one performed by the *Oruc Reis*, that used cables and did not touch the seabed), and a stage under exploitation. It justifies, on the behalf of the challenged actor, a harsher response than in the case of exploration activities performed without physical contact. This is due to the potential damage that physical contact may cause to the resources on which the challenged State claims *exclusivity*. Thus, it was crucial to obstruct the Turkish strategy at the stage of exploration conducted without physical contact. Otherwise, in case of drilling, the escalation would have eventually gone out of control, as core interests would have been at stake.

Second, the French operational and military synergy with Greece[9] – along with clear messages from Egypt, the United Arab Emirates[10] and later Saudi Arabia[11] – had a dissuasive effect on Turkey. France and Greece's objective was to send an unambiguous signal that intimidation and *faits accomplis* would not work and that they are not the appropriate way to solve any dispute in the region. The opposite would have opened Pandora's Box with regard to the region's stability, as it would equate to the *de facto* consecration of the use of military power as an efficient and acceptable tool to impose a certain order in a part of Europe.

Third, the Greek-French diplomatic coordination finally drew the necessary attention on the behalf of European Union (EU)[12] and NATO[13] partners regarding the Turkish behaviour. This put into question what Ankara long considered as an

[9] See, for instance: Deutsche Welle (2020). 'France to increase Mediterranean presence amid Turkey row', 13 August. [Online]. Available at: https://www.dw.com/en/france-turkey-military-gas/a-54544925 (Accessed: 30 April 2023).

[10] See, for instance: Mathews, S.(2020). 'UAE joins Greek, Egyptian naval exercise in Eastern Mediterranean', Al-Monitor, 1 December. [Online]. Available at: https://www.al-monitor.com/originals/2020/12/uae-greece-defense-agreement-turkey-eastern-mediterranean.html (Accessed: 30 April 2023); Egypt Today (2020). 'Egypt conducts joint military exercises with France in the Mediterranean', 15 July. [Online]. Available at: https://www.egypttoday.com/Article/1/90083/Egypt-conducts-joint-military-exercises-with-France-in-the-Mediterranean (Accessed: 30 April 2023); Iddon, P. (2020). 'UAE Dispatches Fighter Jets To Support Its Allies Against Turkey', Forbes, 26 August. [Online]. Available at: https://www.forbes.com/sites/pauliddon/2020/08/26/uae-sends-fighter-jets-to-support-allies-against-turkey/ (Accessed: 30 April 2023).

[11] Panoutsopoulou, M. (2021). 'Saudi Air Force jets arrive in Greece for joint drill', Anadolu Agency, 15 March. [Online]. Available at: https://www.aa.com.tr/en/europe/saudi-air-force-jets-arrive-in-greece-for-joint-drill/2175860 (Accessed: 30 April 2023).

[12] See, for instance: European Commission (2020). Key Findings of the 2020 Report on Turkey, 6 October. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/country_20_1791 (Accessed: 30 April 2023); European Parliament (2020). European Parliament resolution of September 17 2020 on the preparation of the special European Council summit focusing on the dangerous escalation and the role of Turkey in the Eastern Mediterranean. [Online]. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0230_EN.html (Accessed: 30 April 2023); European Council (2020). Special meeting of the European Council (1 and 2 October 2020) – Conclusions. [Online]. Available at: https://www.consilium.europa.eu/media/45910/021020-euco-final-conclusions.pdf (Accessed: 30 April 2023); European Council (2020). European Council meeting (10 nd 11 December 2020) – Conclusions. [Online]. Available at: https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf (Accessed: 30 April 2023); Statement of the Members of the European Council, 25 March 2021. [Online]. Available at: https://www.consilium.europa.eu/media/48976/250321-vtc-euco-statement-en.pdf (Accessed: 30 April 2023); Ajaccio declaration after the 7th Summit of the Southern EU countries (MED7) (10 Sept. 2020). [Online]. Available at: https://www.diplomatie.gouv.fr/en/french-foreign-policy/europe/news/article/ajaccio-declaration-after-the-7th-summit-of-the-southern-eu-countries-med7-10 (Accessed: 30 April 2023); Declaration of the 8th summit of the Southern European countries, Athens, 17.9.2021. [Online]. Available at: https://www.pio.gov.cy/assets/pdf/newsroom/2021/09/17092021_EUMED%20Joint%20Declaration.pdf (Accessed: 30 April 2023).

[13] Emmott, R., Irish, J. and Gumrukcu, T. (2020). 'In parting shot, Pompeo rebukes Turkey at NATO meeting', Reuters, 3 December. [Online]. Available at: https://www.reuters.com/article/turkey-usa-nato-int-idUSKBN28D1YJ (Accessed: 30 April 2023).

indisputable *acquis*: the fact that, because of its particular weight as an economic and strategic partner, it will always be more costly for the EU and NATO members to rebuke Turkey in case of improper behaviour, than to close their eyes.

In other words, as a result of a well-tuned multiscale strategy involving diplomacy, balanced military projection and operational synergies, Greece and France succeeded in their main objective: to jam the Turkish strategy and to raise for Turkey the cost of its actions.

Lessons for Europe from the 2020 Eastern Mediterranean crisis

The first conclusion that can be drawn is that this crisis is a *textbook case* of the use by a state actor (in this case, Turkey) of the maritime space to upset balances and impose new realities and rules without resorting to *open* conflict or to actions that would *lawfully* trigger an immediate and full-scale military response on the behalf of the challenged actor (in this case, Greece). It is a typical case of crossing an *orange* (although deep orange), rather than a red line.

The second conclusion is that, following Greece's and France's well-calibrated answer and coordination, Turkey's strategic hyper-engagement ultimately failed in attaining its very objective. Both countries' efficiency resulted from their clear understanding of Turkey's objectives, strategy and state of mind. Indeed, as maritime nations, Greece and France have a well-rooted maritime culture and tradition that irrigate their civil and military decision-making structures, and guide their behaviour at sea. As a result, not only Turkey made no concrete gains, but it paid a certain diplomatic cost in its relations with the EU, NATO and other regional and extra-regional state actors. Accordingly, Turkey did not revert to its behaviour[14], despite declarations in 2021 on its intention to do so[15] and an unprecedently aggressive rhetoric in 2022[16]. To the contrary, it engaged in survey and drilling activities only in *uncontested* waters, off

[14] As of mid-2023.
[15] Reuters (2021). 'Turkey could expand drilling in eastern Mediterranean amid territorial dispute', 24 May. [Online]. Available at: https://www.reuters.com/world/middle-east/turkey-could-expand-drilling-eastern-mediterranean-amid-territorial-dispute-2021-05-24/ (Accessed: 30 April 2023).
[16] See, for instance: Fiedler, T. (2022). 'Erdoğan repeats threat against Greece during G20', Politico, 16 November. [Online]. Available at: https://www.politico.eu/article/recep-erdogan-turkey-threat-against-greece-g20/ (Accessed: 30 April 2023); Stamouli, N. (2022). 'Erdoğan warns Greece that Turkish missiles can reach Athens', Politico, 11 December. [Online]. Available at: https://www.politico.eu/article/erdogan-warns-greece-that-turkish-missiles-can-reach-athens/ (Accessed: 30 April 2023).

the city of Alaneia[17] while, following the disastrous earthquakes of February 2023 (and as of mid-2023), it has refrained from displaying an aggressive posture in the Aegean and the Eastern Mediterranean at all levels.

The third conclusion is related to the EU and NATO. As the sea continues to gain importance in the world's strategic equation, a sound understanding of the maritime domain's strategic particularities and the way it is integrated into global power politics is essential. This is especially the case for the EU, if it really wishes to become a credible geopolitical player on a more and more competitive international scene on which law is increasingly shadowed by power. In this respect, the EU and NATO – including Turkey – may also start to see the potential extension of the Greek and Turkish territorial waters up to the legal distance of 12 nm in the Aegean Sea as a strategic asset, rather than as a headache. And there are some reasons for that, as the strategic context in which both organizations are called to operate is quickly evolving. In a situation of unrelenting rivalry with Russia, such an extension of territorial waters would reinforce Europe and NATO's strategic posture in the Eastern Mediterranean – where the Russian navy is active – in many ways:

It could help better monitor Russia's maritime flows, as any ship coming from – or going to – the Black Sea would necessarily cross Greek and/or Turkish territorial waters. Additionally, by decreasing the Aegean high seas, there will be less space left for the Russian shadow fleet (see II. A.) to operate, and this reduces the security – and even doctrinal – issues associated with potential operation on the high seas designed to counter this new phenomenon.

It would contribute to weaken the hybrid and quite efficient maritime-continental ring, patiently built by Russia. This ring starts from the Sea of Azov and goes through the Black and the Aegean Seas, the Eastern Mediterranean, the 'Russia–compatible' countries of Syria, Iraq and Iran, the Caspian Sea, and back to the Azov and the Black Seas through the Russian river system (the Volga-Don canal). This ring is designed to provide Russia with some of the maritime geostrategic depth it lacks, and this also explains the importance given by Russia to the transformation of the Sea of

[17] Agenzia Nova (2022). 'Turkey: the most advanced drilling vessel starts gas exploration activity in the eastern Mediterranean', 9 August. [Online]. Available at: https://www.agenzianova.com/en/news/turchia-la-piu-avanzata-nave-da-perforazione-avvia-lattivita-di-ricerca-del-gas-nel-mediterraneo-orientale/ (Accessed: 30 April 2023).

Azov into a Russian lake and, accordingly, the violence of the battle for Mariupol in spring 2022.

By shrinking the area of high seas in the Aegean, there will also be less available space for strategic adversaries to operate sabotage. This is particularly relevant in a context of growing vulnerability of energy infrastructure in the high seas, and of increasing importance of the Eastern Mediterranean for Europe's energy security (see II).

In sum, we are in a context in which the security integration *inside* the Western strategic community is getting deeper and the *external* limits of each geopolitical aggregate (including the Western) become bolder. Therefore, the extension of the maritime area under the *sovereignty* of a member of that community – especially when located in such a critical area where Western interests come across increasingly antagonistic dynamics – should be seen as meeting the collective interest. As such, not only should it be endorsed by the community, but requested by it. In what concerns the Turkish objections that the legitimate extension of the Greek territorial waters would impair the freedom of navigation in the Aegean, everyday practice demonstrates that they are groundless. These objections are rather designed to make Turkey's stance more audible to Western partners (especially the U.S.), who are very sensitive to anything related to the freedom of navigation. In fact, a simple look at the two main maritime routes connecting the Black Sea to the Western and Eastern Mediterranean is enough to observe that, in some areas, these routes pass through the current 6-miles Greek territorial waters without any obstruction. In any case, the freedom of navigation issues have been legally settled long ago with the right of innocent and of transit passage. Greece, as an EU and NATO member, and as a maritime nation, has neither the will nor the diplomatic and political capability to impair this freedom in the Aegean Sea or anywhere else. This would be particularly unwelcomed by both allies and rivals, while it wouldn't serve Greece's interests. In reality, the Turkish objections proceed from the fact that such an extension would significantly decrease the portion of high seas in the Aegean and, consequently, the maritime area available for performing contestation strategies towards Greece. In other words, Turkey would lose strategic leverage against Greece. But this remains relevant only to the extent Turkey persists in seeing its most stable and predictable neighbour, Greece, as a potential strategic satellite and perseveres in its ambivalence towards NATO. Put it differently, if Turkey leaves its strategic

ambiguity and begins to project itself as a regular NATO member – and, therefore, to see Greece as an ally –, it will also start to contemplate the extension of the Greek and of its own territorial waters in the Aegean as a win-win situation.

In this respect, a last conclusion can be drawn in relation to the Ukrainian conflict. It is only following Russian actions in Ukraine that the EU members finally understood that it is the *lack* of determination and of military power that brings instability and conflict, and not the opposite. If Turkey 'took its chance' in 2020 in the Eastern Mediterranean (and in other areas such as Libya, the Caucasus and Syria), it is because it assumed that it was surrounded by a 'military desert' in which nobody could really match its military power and counter its determination. Accordingly, if it finally failed in its designs, it is exactly because it got from Greece, France and other regional and extra-regional actors – but not from many important EU members – the unequivocal message that this was not the case. It is precisely the moment after which actions started to be replaced by rhetoric. Admittedly very aggressive and unacceptable rhetoric, but still rhetoric. This is also corroborated by the fact that Turkey does in the Cypriot maritime zones what it can't do in the Greek maritime zones, that is to say *drilling*. And this is because Cyprus is militarily weak and is not a NATO member. This means that escalation in Cyprus is less costly for Turkey, while it is more difficult for Greece to deploy there the same strategy it deployed in 2020 in its own maritime zones, although its rearmament program suggests that it intends to acquire the military means to project power in a much larger area than the Aegean, *i.e.* in the area extending from southwest Crete to Cyprus. It is probably not coincidental that the first of the three frigates that Greece ordered from the French Naval Group will be named after Kímon, the 5th century BC Athenian admiral who faced the Persians in Cyprus and restored the strategic bond between the island and mainland Greece.

Put another way, as long as Turkey perseveres in considering military power as a regular foreign policy tool, opposing convincing military power is the only guarantee of stability. Even more, jamming Turkey's ability to use its military machine to impose in the Eastern Mediterranean realities that are incompatible with fundamental principles of international and maritime delimitation law is, actually, the only way to bring Turkey to consider seriously the legal and pacific means to resolve issues. As long as Ankara's calculus remains that ignoring international law and militarizing regional relations is more beneficial than the respect of international law and pacific approaches to regional

issues, a solution is not likely. For that reason, it is crucial that disrespect of international law is costly enough and its respect attractive. Only a pacific and legal way to resolve issues and build the Eastern Mediterranean security architecture can make this architecture efficient and sustainable in the long run. A regional order built on *faits accomplis* sustained by the threat of use of force will only create resentment and acrimony that will, sooner or later, undermine this regional order. Turkey's statements following the 2023 Vilnius NATO summit seem to go in this direction, although it remains to be seen if this is a real change of mindset with regard to the Eastern Mediterranean, or a tactical retreat due to a temporary inability to persevere in its previous strategy.

II. The issue of energy security: where are we heading to?

A. Changing patterns in the world energy flows: manifestations and challenges

Following Russia's war on Ukraine, we have entered a phase in which Western countries have opted to inject more flexibility in the global energy transportation network. This takes place by using liquefied natural gas (LNG), ships and geographically disseminated reception, stockage and re-gasification units (that might be also floating and, therefore, mobile). This is even true for Russia, which seems to have accepted the LNG challenge[18] (although it is not an easy task)[19] , despite the fact that the reorganization of European energy flows targets precisely the dependance on Russian gas. Indeed, the conflict in Ukraine has promptly reshuffled world energy routes, leading to a process of 'de-continentalization'[20] and, accordingly, of 're-maritimization' of Europe's energy flows. According to the Center of Strategic Studies of the French Navy (CESM), from July 2021 to July 2022, Russian gas and oil exports

[18] For instance, according to the Russian economic newspaper Kommersant, in 2022, the LNG exports of the Russian company Novatek to Europe by ship increased by 13.4%, the exports of Gazprom through pipelines shrunk by 46%, while the portion of LNG in Russian gas exports – that has long been insignificant - reached 25%. See: Kommersant (2023). 'Russian LNG settles in Europe', 16 January. [Online]. Available (in Russian) at: https://www.kommersant.ru/doc/5772310 (Accessed: 30 April 2023). See also: Staalesen, A. (2023). 'Chinese investors could finance Murmansk LNG', The Barents Observer, 7 June. [Online]. Available at: https://thebarentsobserver.com/en/arctic-lng/2023/06/chinese-investors-could-finance-murmansk-lng (Accessed: 8 June 2023).

[19] Palti-Guzman, L. and Eyl-Mazzega, M.-A. (2023). 'The Strategic Repositioning of LNG: Implications for Key Trade Routes and Choke Points', Études de l'Ifri, Ifri, April 2023, p. 21-23. [Online]. Available at: https://www.ifri.org/sites/default/files/atoms/files/palti-guzman_eyl-mazzega_lng-traderoutes_2023.pdf (Accessed: 30 April 2023).

[20] On this, see, for instance: *Ibid*. See also: Mazzucchi, N. (2022). 'La France et l'Europe face à la décontinentalisation des flux énergétiques', Revue de Défense Nationale, No 853, Octobre 2022, pp. 19-24.

to the EU *via* land-based pipelines decreased by 70% and 20.3% respectively, while LNG exports increased by 142.5%[21]. At the same time, EU's LNG imports from the U.S. increased by 197.8%, from Algeria by 41.8%, from Norway by 48.5% and from the Gulf States by 185.3%[22].

Injecting flexibility in the energy transportation network provides greater ability to reorganize this network quickly, avoiding thus an excessive reliance on a single actor that may turn into a rival in such an instable geopolitical, security and economic landscape. As long as Europe depends mainly on pipelines that do not enable rapidly switching from an energy provider to another, it remains impossible to reach the degree of resilience and swift decision-making required in an increasingly challenging international environment[23].

Additionally, by operating a transition from a 'vertical system' based on pipelines to a 'network system' based on shipping and on a net of LNG reception, stockage and re-gasification units disseminated along its coasts and connected to its hinterland, Europe enhances the security of its energy *infrastructure*. Undoubtedly, it is more difficult to inflict a *critical* blow to an extensive, dispersed and mobile network, than to a static pipeline. This is particularly relevant in a context of increasing rivalry and insecurity on the high seas, as any static infrastructure located beyond territorial waters becomes a potential target and is, thus, vulnerable. The sabotage of the Nord Stream 2 undersea pipeline in September 2022 is probably the most revealing example of this challenge. The destruction of a single part of this pipeline was enough to render highly improbable any hypothetical resume of Russian gas deliveries to Germany through this vector. This growing uncertainty regarding the security of fixed energy infrastructure located in the common area that is the World Ocean - in which the freedom of navigation and operation entails the risk of facilitating potentially unclaimed

[21] Brèves Marines CESM (2023). 'La décontinentalisation des flux énergétiques en Europe', No 274, April 25. [Online]. Available at: https://www.defense.gouv.fr/sites/default/files/cesm/BM_274_Décontinentalisation.pdf (Accessed: 30 April 2023).
[22] *Ibid*.
[23] According to the IMF, in 2020, 42% of the gas imported in the EU was coming from Russian pipelines, 30% from non-Russian pipelines and 28% was LNG. See: Di Bella, G., Flanagan, M., Foda, K., Maslova, S., Pienkowski, A., Stuermer, M. and Toscani, F. (2022). Natural Gas in Europe. The Potential Impact of Disruptions to Supply, Working Paper No 2022/145, 19 July, IMF Working Papers. [Online]. Available at: https://www.imf.org/en/Publications/WP/Issues/2022/07/18/Natural-Gas-in-Europe-The-Potential-Impact-of-Disruptions-to-Supply-520934 (Accessed: 30 April 2023).

and/or unattributable acts of sabotage - has already been identified as a new challenge for Western societies[24].

Interestingly enough, while Europe and China face a similar need - that of diversifying both energy providers *and* routes - they seem to adopt opposite strategies. Like Europe, China depends at a high degree on its energy imports, especially in order to feed its industrial activity, and these imports arrive mainly by sea. Hence, in parallel with its maritime strategy that aims to temper the - still - uncontested Western strategic primacy in the oceans, China seeks also to temper its heavy dependance on maritime energy flows by developing its land-based energy supply routes. After the Power of Siberia land pipeline that began delivering Russian gas in late 2019, the plan for a second gas pipeline reaching China through Mongolia (Power of Siberia 2) seems to gain a new momentum following the Chinese leader's visit to Moscow in March 2023[25]. Should it be realized, this would be a significant milestone in the world's energy routes reorganization process. It will considerably reinforce the direct connection between one of the world's biggest energy producers and one of the world's biggest industrial powers and energy consumers, in a scheme that is isolated from any possibility of Western interference.

Therefore, while Europe proceeds to a 'de-continentalization' and a 'maritimization' of its energy flows, China resorts to a partial 'de-maritimization' and 'continentalization' of its own energy flows. In both cases, it is the vivid illustration of the opposite trends in the evolution of their relations with Russia. In this respect, China's growing synergy with Russia is crucial and seems, henceforth, to fit the interests of both powers. Although, for a long time, Russia was cautious about feeding with energy the gigantic Chinese industry by fear of being overwhelmed by its imposing neighbor, souring relations with what Moscow calls the 'Collective West' seem to have

[24] See, for instance: Defense News (2023). 'Europeans wade into fighting seabed threats with drones and sensors', 9 January. [Online]. Available at: https://www.defensenews.com/global/europe/2023/01/09/europeans-wade-into-fighting-seabed-threats-with-drones-and-sensors/ (Accessed: 30 April 2023) ; Chuter, A. (2023). 'British naval forces get specialized vessel for seabed operations', Defense News, 20 January. [Online]. Available at: https://www.defensenews.com/global/europe/2023/01/20/british-naval-forces-get-specialized-vessel-for-seabed-operations/?utm_source=sailthru&utm_medium=email&utm_campaign=dfn-dnr (Accessed: 30 April 2023); The Maritime Executive (2023). 'NATO Confirms Risk of Russian Attack on Subsea Infrastructure', 4 May. [Online]. Available at: https://www.maritime-executive.com/article/nato-confirms-risk-of-russian-attack-on-subsea-infrastructure (Accessed: 5 May 2023).

[25] Russian Presidency (2023). 'Press statements by President of Russia and President of China', 21 March. [Online]. Available at: http://en.kremlin.ru/events/president/news/70750 (Accessed: 30 April 2023).

lifted the remaining skepticism. Yet, energy deliveries from the sea will remain critical for China, especially given that most of its biggest cities are ports and that most of the world's largest ports are Chinese[26].

In other words, the importance of the sea in the global – and particularly the European – energy security is expected to increase, and so are likely to increase the economic, geopolitical and military challenges associated to this new reality. It cannot be excluded that this situation leads to the progressive establishment of rival frameworks in the common area that is the World Ocean, in which most of the basic rules were consensual until now. Russia and Iran appear to be at the heart of this new development. We may mention (non-exhaustively) early but increasingly frequent signs of such a trend:

- The multiplication of attacks on - and seizure of - oil tankers[27].

- The decision of Panama to withdraw from its vessel registry 136 Iran-linked ships[28].

- The creation of a Russian 'shadow fleet' to bypass Western economic measures[29]. The activities of this shadow fleet already trigger the reaction of several coastal States[30], with some of them deciding to expand their legislation in waters located beyond their sovereignty[31]. At the same time, calls to oppose what is becoming a new maritime reality in the high seas are already being made in the West[32].

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[26] Among the ten biggest ports of the world, seven (Hongkong included) are Chinese.

[27] To take the latest example: The Maritime Executive (2023). 'Report: Iran Seized Tanker in Retaliation for US Oil Seizures', 28 April. [Online]. Available at: https://maritime-executive.com/article/report-iran-seized-tanker-in-retaliation-for-us-oil-seizures (Accessed: 30 April 2023).

[28] See, for instance: Moreno, E. (2023). 'Panama has canceled registry to 136 Iran-linked vessels', Reuters, 18 January. [Online]. Available at: https://www.reuters.com/business/energy/panama-has-canceled-registry-136-iran-linked-vessels-2023-01-18/ (Accessed: 30 April 2023).

[29] See, for instance: Sheppard, D., Cook, C. and Ivanova, P. (2022). 'Russia assembles "shadow fleet" of tankers to help blunt oil sanctions', Financial Times, 2 December. [Online]. Available at: https://www.ft.com/content/cdef936b-852e-43d8-ae55-33bcbbb82eb6 (Accessed: 30 April 2023).

[30] See, for instance: The Maritime Executive (2023). 'Report: Singapore Sees Dramatic Jump in Detentions Due to Shadow Fleet', 1 June. [Online]. Available at: https://www.maritime-executive.com/article/report-singapore-sees-dramatic-jump-in-detentions-due-to-shadow-fleet (Accessed: 2 June 2023).

[31] See, for instance: The Maritime Executive (2023). 'Spain Tries to Regulate Ship-to-Ship Tanker Transfers in Int'l Waters', 28 March. [Online]. Available at: https://www.maritime-executive.com/article/spain-tries-to-regulate-ship-to-ship-tanker-transfers-in-int-l-waters (Accessed: 30 April 2023).

[32] See, for instance: Stavridis, J. (2023). 'Russia's Ghost Fleet of Oil Tankers Is a Floating Time Bomb', Bloomberg, 30 March. [Online]. Available at: https://www.bloomberg.com/opinion/articles/2023-03-30/russia-s-ghost-fleet-of-oil-tankers-is-a-floating-time-bomb?accessToken=eyJhbGciOiJIUzI1NiIsInR5cCI6IkpXVCJ9.eyJzb3VyY2UiOiJTdWJzY3JpYmVyR2lmdGVkQXJ0aWNsZSIsImlhdCI6MTY4MDE3NTc3NiwiZXhwIjoxNjgwNzgwNTc2LCJhcnRpY

- The Russian-Iranian project aiming at creating an alternative trade route from Russia to India through the Caspian Sea, Iran and the Arabian Sea. Its objective is to bypass all the straits along the maritime routes connecting the Baltic and Black Seas to the World Ocean, in a context of Western economic measures on both Moscow and Tehran that are expected to last[33]. In general, both States intent to substantially expand their maritime cooperation[34] so as to decrease what they perceive as the ability of the West to interfere – at least indirectly – in their activities.

This is suggestive of a fear that, in the long run, vehemence and harsh rivalry between great powers and their respective network of friendly countries may lead some parts of the World Ocean to be *de facto* inhospitable for one or the other, contrarily to what prevails today.

B. The Eastern Mediterranean and Europe's energy security

Why the Eastern Mediterranean is crucial to Europe's energy security?

Since it is connecting Asia and the Middle East / Northern Africa (MENA) region to Europe, the Eastern Mediterranean could not remain unaffected by the changing dynamics related to the role of the maritime space in the energy security. Unmistakably, it steadily evolves into a pivotal region for Europe's energy security, for three main reasons.

First, the Eastern Mediterranean is an *energy transit* area. Following the conflict in Ukraine, Europe's free access to the Eastern Mediterranean, the Gulf and the Indo-Pacific has become critical for its energy security. In this respect, the harmful strategic consequences for Europe of Russia's war on Ukraine should not be miscalculated. Even at a high price, Russia seems to succeed in one of its core objectives: to stimulate a world-scale reshuffle of influence to the detriment of the West. This is clearly visible in the Gulf, where Russia confirms its influence, China erupts as an honest regional broker in the long-standing Iranian-Saudi row, Syria rapidly restores ties with its Arab fellows, while Western influence undergoes a rebalancing process with uncertain

2xlSWQiOiJSU0JGNTBUMEFGQjQwMSIsImJjb25uZWN0SWQiOiIxODJBRTAzNUY2NDc0ODkwODhEM0VCRUVGRUUzQkJFMiJ9.TIsTt_V55hUkexR6gSo76WepyEzLf28G4h3Bz9r_2y8&utm_campaign=dfn-ebb&utm_medium=email&utm_source=sailthru&STOverlay=2002c2d9-c344-4bbb-8610-e5794efcfa7d (Accessed: 30 April 2023).

[33] See, for instance: Tirone, J. and Motevalli, G. (2022). 'Russia and Iran Are Building a Trade Route That Defies Sanctions', Bloomberg, 21 December. [Online]. Available at: https://www.bloomberg.com/graphics/2022-russia-iran-trade-corridor/ (Accessed: 30 April 2023).

[34] See, for instance: TASS (2023). 'Moscow, Tehran mulling joint shipping company — Ambassador to Russia', 14 July. [Online]. Available at: https://tass.com/economy/1647073 (Accessed: 15 July 2023).

outcomes[35]. The potential long-term consequences of this tendency should not be underestimated, since the Gulf is a region of high importance for Europe's energy security. On the one hand, it contributes to the diversification of energy suppliers: in 2022, Saudi Arabia and Iraq exported respectively 52.21% and 15.8% more oil to Europe compared to 2021; the United Arab Emirates exported some 53,000 barrels of crude oil (compared to zero in 2021); Qatar increased its natural gas exports by 53.42%[36]. On the other hand, the Gulf States are located on the route to the Indo-Pacific, which is also gaining in importance for Europe's energy security, especially considering India's upgraded role as an energy supplier, and despite accusations that New Delhi re-exports Russian oil[37].

In other words, energy flows from the Gulf and the Indo-Pacific are increasing in importance for Europe, and they transit mainly through the Eastern Mediterranean in order to connect to the European energy network. Such a connection point is the Greek port of Alexandroupolis, which is evolving into a significant energy knot for the Balkans and Eastern Europe. This new reality has upgraded Greece's role in Europe's energy security, an evolution that has not been welcomed by Turkey, which sees any regional energy development to which it is not directly associated as to be obstructed.

Second, the Eastern Mediterranean is important for Europe's energy security due to its *energy production* capacities. Since 1999, some 90 trillion cubic feet (Tcf) of gas have been discovered in the Eastern Mediterranean, and new discoveries are ongoing[38]. As a comparison, in 2021, the EU consumption was around 15 Tcf. According to a report of the Centre on Global Energy Policy of the Columbia

[35] See, for instance: Szuba, J. (2023). 'US not notified yet of UAE's withdrawal from Gulf maritime coalition', Al-Monitor, 31 May. Available at: https://www.al-monitor.com/originals/2023/05/us-not-notified-yet-uaes-withdrawal-gulf-maritime-coalition?utm_medium=email&utm_campaign=daily%2053123%20May%2031%202023%20240&utm_content=daily%2053123%20May%2031%202023%20240+CID_676f1011c3fff739d3084747b88b6238&utm_source=campmgr&utm_term=US%20not%20notified%20yet%20of%20UAEs%20withdrawal%20from%20Gulf%20maritime%20coalition (Accessed: 1 June 2023).

[36] 'La décontinentalisation des flux énergétiques en Europe', *op. cit*.

[37] See, for instance: Narayan, M. and Verma, N. (2023). 'Fuels from Russian oil gets backdoor entry into Europe via India', Reuters, 6 April. [Online]. Available at: https://www.reuters.com/business/energy/fuels-russian-oil-gets-backdoor-entry-into-europe-via-india-2023-04-05/ (Accessed: 30 April 2023).

[38] i24NEWS (2023). 'Israel discovers new "significant" gas field off its coast', 31 May. [Online]. Available at: https://www.i24news.tv/en/news/israel/economy/1685546870-israel-discovers-new-significant-gas-field-off-its-coast (Accessed: 1 June 2023).

University[39], if Eastern Mediterranean States – and particularly Egypt, Cyprus and Israel – conduct dynamic investment policies, the region could, by the early 2030s, offer to the international market some 50 Tcf. Nonetheless, it should not be taken for granted that these quantities, even if they prove to be realistic, will be available for the sole EU. Much will depend on the growth of Egypt's domestic consumption[40] and on exports to other regions of the world, as there is no fundamental reason for Egypt and Israel to export their gas *exclusively* or even mainly to the EU. The Memorandum of Understanding signed between the EU, Egypt and Israel in June 2022 explicitly states that this energy cooperation is without prejudice to Egypt and Israel's right to use their gas resources for domestic consumption and for exports to clients other than the EU[41]. Yet, it appears clearly that, based on today's projections, the Eastern Mediterranean is undoubtedly a critical area for Europe's energy security, especially given the high degree of dependence on Russian gas. It shall be recalled that in 2020, the EU imported 84% of its gas, with more than 40% of these imports coming from Russia[42]. From this point of view, it is in the strategic interest of the EU that Cyprus – whose domestic gas consumption is anecdotal compared to Turkey's – retains control on any of its gas-rich maritime zones unlawfully coveted by Turkey, as this gas will be more easily and massively accessible for the EU. Moreover, exploration is still ongoing south of Crete. If sizable and exploitable reserves are discovered in zones under Greek jurisdiction, this will further increase the importance of the Eastern Mediterranean in Europe's energy security.

Third, precisely because the Eastern Mediterranean connects Europe to the MENA region, and is important in terms of energy transit and energy production, it is also an area of critical *energy infrastructure*. The flagship regional energy project has

[39] Dr. Nie, S. and Mills, R. (2023). 'Eastern Mediterranean Deepwater Gas to Europe: Not Too Little, But Perhaps Too Late', Center on Global Energy Policy at Columbia SIPA, March 2023. [Online]. Available at: https://www.energypolicy.columbia.edu/wp-content/uploads/2023/03/East-Med-Gas-CGEP_Report_030923-2.pdf (Accessed: 30 April 2023).

[40] According to the U.S. Energy Information Administration, in 2021, Egypt consumed 87% of the gas it produced: U.S. Energy Information Administration (2022). 'Natural gas production and consumption has increased in Egypt and Israel for 20 years', 29 November. [Online]. https://www.eia.gov/todayinenergy/detail.php?id=54799# (Accessed: 30 April 2023).

[41] 'Memorandum of Understanding on cooperation related to trade, transport, and export of natural gas to the European Union between the European Union represented by the European Commission the Arab Republic of Egypt represented by the Ministry of petroleum and mineral resources the State of Israel represented by the Ministry of energy', 15 June 2022. [Online]. Available at: https://energy.ec.europa.eu/system/files/2022-06/MoU%20EU%20Egypt%20Israel_0.pdf (Accessed: 30 April 2023).

[42] Di Bella, G. *et. al*., 'Natural Gas in Europe. The Potential Impact of Disruptions to Supply', *op. cit*.

long been the EastMed undersea gas pipeline connecting Israel to Cyprus, Greece and the rest of Europe. Nevertheless, serious concerns have been raised in terms of technical feasibility, economic viability and geopolitical acceptability, especially with regard to the part of the pipeline going from Cyprus to Greece. Turkey is its main opponent, while the U.S. withdrew its initial support to the project in early 2022. Although this project has not been officially abandoned and a future revival cannot be excluded, it seems that it is getting adapted to the new context and takes a hybrid form. Israel and Cyprus have now expressed their will to build a pipeline connecting both countries, and the gas arriving in Cyprus will be delivered to the market through LNG ships[43], following thus Europe's general trend. This is not necessarily a negative development for Greece – which, it shall be reminded, has strongly advocated the EastMed pipeline project along with Cyprus – as long as Greek-owned LNG carriers and Greek gas reception, stockage and re-gasification infrastructure are actively involved in this energy planification. Yet, the EastMed pipeline project has also been doubled by two undersea electric power cables projects: the EuroAsia interconnector[44] and the EuroAfrica interconnector[45], both supported by the U.S.[46] The EuroAsia interconnector aims to connect Israel's electric grid to Europe through Cyprus and Crete, and it benefits from a strong support from the EU as well[47]. It will transfer electricity to and from Europe, increasing that way the energy security of all parties. It will also provide Europe with electricity produced in Israel and Cyprus using natural gas and renewable energy sources, contributing, that way, to Europe's energy transition and further disconnection from Russian supplies. The EuroAfrica interconnector will connect Cypriot and Greek power grids to Egypt for the same purposes.

[43] The Maritime Executive (2023). 'Israel and Cyprus Agree on Landmark LNG Gas Export Project', 15 May. [Online]. Available at: https://www.maritime-executive.com/article/israel-and-cyprus-agree-on-landmark-lng-gas-export-project (Accessed: 1 June 2023).
[44] https://euroasia-interconnector.com/ (Accessed: 30 April 2023).
[45] https://www.euroafrica-interconnector.com/at-glance/ (Accessed: 30 April 2023).
[46] U.S. Embassy Spokesperson (2022). 'Statement on East Med Energy Cooperation', U.S. Embassy and Consulate in Greece, 10 January. [Online]. Available at: https://gr.usembassy.gov/statement-on-east-med-energy-cooperation/ (Accessed: 30 April 2023).
[47] European Commission Directorate-General for Energy (2022). 'Commission participates in launch of EuroAsia Electricity Interconnector', 14 October. [Online]. Available at: https://commission.europa.eu/news/commission-participates-launch-euroasia-electricity-interconnector-2022-10-14_en (Accessed: 30 April 2023).

In the light of the above, the key issue for Europe is how to integrate the Eastern Mediterranean into its energy security strategy in the long run, and here comes the issue of Turkey's regional posture.

Discussing the Turkish factor with regard to Europe's energy security

Although transactionalism has long been a distinctive feature of Turkey's foreign policy, under President Erdogan, it has evolved into the main rule, particularly towards Europe. Through this strategy, Turkey aims at extorting geopolitical gain in any occasion and, step by step, to build its regional hegemony and great power status that will come as a *fait accompli*. This method gained momentum in the period 2015-2020, due to a relative introversion of the West. The Brexit, the Greek financial crisis, the election of Donald Trump and subsequent concerns about NATO's future, as well as the reversal of the strategic landscape in Syria and Libya, gave the impression of a certain weakness. Consequently, this opened new spaces for the strategic expansion of rival powers. Turkey efficiently used this opportunity, while the failed coup attempt of 2016 provided the Turkish President with the necessary motive to toughen its stance towards Europe and the U.S.

Towards Europe and the West in general (beyond Greece and Cyprus as specific targets), this Turkish strategy has manifested itself directly *via* three main vectors: the migration issue[48]; Ankara's relation with Russia – especially in the context of the Russian-Ukrainian conflict[49]; the issue of Finland and Sweden's adhesion to NATO, on the occasion of which Turkey's transactionalism probably reached its apogee. Although such a posture could be objectively understandable on the behalf of a non-NATO State, it is certainly more problematic when it comes to a NATO member like Turkey. Yet, this is also the consequence of the West's implicit but *de facto* acceptance of the emergence and consolidation of a Turkish exceptionalism over the years. And this is not without repercussions on the issue of Europe's energy security, as the latter might well evolve into the fourth vector of Turkey's transactional strategy towards Europe.

[48] See, for instance: France 24 (2020). 'Erdogan warns Europe to expect "millions" of migrants after Turkey opens borders', 3 March. [Online]. Available at: https://www.france24.com/en/20200303-erdogan-warns-europe-to-expect-millions-of-migrants-after-turkey-opens-borders (Accessed: 30 April 2023).

[49] TASS (2023). 'Turkey won't take sides in armed conflicts, including in Ukraine — Erdogan', 23 March. [Online]. Available at: https://tass.com/world/1593197 (Accessed: 30 April 2023).

Indeed, in the Eastern Mediterranean, Turkey's actions aim at creating a situation in which it would be *de facto* able to control the maritime routes and to veto any decision regarding the energy exploitation and cooperation in the region. These two elements are the essence of its geopolitical maritime doctrine, which –it shall not be forgotten – is *entirely* consensual among Turkey's elite and society. The situation that would arise from the implementation of Turkey's doctrine would not only be detrimental to Europe's interests, but to the interests of the other non-European coastal States of the Eastern Mediterranean as well. Since Turkey has neither the historical, cultural and ideological legitimacy, nor the political maturity to take over the *leadership* of the region, the only way to satisfy its quest of grandeur is to try to impose its *hegemony* in the region, including through the exhibition and/or use of force. However, this is a risky strategy for Turkey too, as, in case of failure, it may further erode its legitimacy to play a central role in the region's security architecture. It is not a coincidence that Turkey's actions led to the deterioration of its relations with most of the region's key States (beyond Greece and Cyprus), who seem to be well aware what a Turkish hegemony in the region would mean for them in the long run. A certain lull in the Eastern Mediterranean that followed the February 2023 earthquakes is also the result of Turkey's understanding that its strategy of tension has not been as efficient as expected.

In other words, if Turkey was to succeed in its design to acquire a *de facto* right of veto on the developments related to energy (transit, production, infrastructure) in the Eastern Mediterranean, this would give Ankara an unprecedented leverage on Europe's future. This scenario becomes even more realistic if we consider two more elements. First, Turkey's privileged relation with Russia, while the latter is the main challenge when it comes to Europe's energy security. Second, the fact that the TANAP and TurkStream pipelines already transit through Turkey and contribute to Europe's energy security. As a result, a success of Turkish designs in the Eastern Mediterranean would give Turkey the possibility to create a *de facto* and adjustable 'energy condominium' with Russia. And this is precisely Russia's objective, as Moscow knows very well that Turkey's transactionalism – which tends to acquire structural characteristics – provides plenty of opportunities to undermine the Western strategic posture. And this is the essence of President Putin's proposal to create, amid the war in Ukraine, a gas hub in

Turkey – an idea that, unsurprisingly, the Turkish president found attractive[50],as it increases its room for manoeuvre vis-à-vis Europe.

In light of the above, a scenario in which Turkey would retain control over any energy project in the Eastern Mediterranean cannot but happen at Europe's expense, as the EU would practically become a hostage obliged to 'buy' from Ankara energy security at a high political and geopolitical price. This would be extremely compromising for all the EU members, and particularly for Cyprus and Greece, who are EU's gate to the region. In such a situation, the latter would become a remote periphery – and, most likely, an expendable buffer zone – of a Europe increasingly introverted and concentrated on its Carolingian core. This explains Athens' objective – and subsequent diplomatic engagement – to transform Greece into the bridge between an extraverted and confident Europe on the one hand, and the MENA region and Asia on the other, giving thus the possibility to the EU to be directly involved in the security architecture of the Eastern Mediterranean. Actually, if the EU has its say in the region, it is by virtue of Greece and Cyprus' membership, complemented by the ability of the French navy and its local partners to sail and operate in the region.

Put it differently, like any maritime area that is crucial for all types of international flows (trade, energy, data)[51], *the Eastern Mediterranean cannot be subject to any unilateral expansionist geopolitical project*. On the contrary, it requires a balanced and principled cooperation between multiple States sharing common interests, and apprehending international law as the framework of their relations, so as to maintain the region secure and inhospitable to unilateral agendas. This is crucial for Europe's energy security and relations with the MENA region. In this respect, the choices of key European States such as Germany and Italy (henceforth, one may also add Poland) are critical, as it remains unclear how they contemplate Europe's energy security and strategic future in the long run, in particular with regard to their relations with Turkey and to their vision of the Eastern Mediterranean. Although it may

[50] Ljunggren, D. (2022). 'Putin says Turkish gas hub can easily be set up, reveals pipeline damage details', Reuters, 31 October. [Online]. Available at: https://www.reuters.com/world/middle-east/putin-says-gas-hub-can-be-set-up-turkey-quite-easily-2022-10-31/ (Accessed: 30 April 2023).

[51] Suruga, T. (2023). 'Asia's internet cable projects delayed by South China Sea tensions', Nikkei Asia, 19 May. [Online]. Available at: https://asia.nikkei.com/Business/Business-Spotlight/Asia-s-internet-cable-projects-delayed-by-South-China-Sea-tensions?utm_campaign=IC_asia_daily_free&utm_medium=email&utm_source=NA_newsletter&utm_content=article_link&del_type=1&pub_date=20230519190000&seq_num=3&si=20104121 (Accessed: 20 May 2023).

legitimately be considered that the complexity of the regional equation – including due to Turkey's NATO membership – requires a tactful handling, *consistency* cannot but be a key ingredient for a credible and well-grounded long-term EU policy and energy security strategy. Therefore, urging for the respect of *status quo* and international law in the South China Sea[52] while, in comparable situations, not adopting the same stance in the Eastern Mediterranean – and even providing Ankara with the tools of ambitions similar in their essence to those of China[53] – may raise some questions as to the credibility of a common EU vision in terms of energy security in a crucial period.

In this very context, the potential transformation of Turkey into the main interface between Europe on the one hand, and Asia and the MENA region on the other, is a critical issue with regard to Europe's future, as Turkey would gain substantial leverage in fixing the terms of Europe's relations with these key regions. And the debate on the consequences of such a scenario has not been conducted thoroughly enough. In fact, it raises the fundamental question of whether energy security has really become a collective challenge for the EU, or of whether each State should continue to apprehend it primarily in a narrow national dimension.

Conclusion

In a world that requires to further enhance security integration among partners and allies, as well as to develop a long-term common vision and an ability to react quickly to an increasing number of outstanding challenges that determine the viability of this long-term vision, the Eastern Mediterranean appears to be a pivotal region for Europe's future. It encompasses all the strategic and security challenges associated with the growing importance of the sea in power politics and energy security. Moreover, it is practically indissociable from the essence of what is at stake in Ukraine: the terms of Europe's security architecture for the decades ahead.

In this context, a clear, robust and principled – not transactional – European strategy of inclusion of the Eastern Mediterranean in the EU's energy security and

[52] TASS (2023). 'Germany's top diplomat finds unilateral change to status quo in Taiwan Strait unacceptable', 14 April. [Online]. Available at: https://tass.com/defense/1604165 (Accessed: 30April 2023). See also: The Maritime Executive (2023). 'EU's Foreign Policy Chief Calls for Naval Patrols in Taiwan Strait', 23 April. [Online]. Available at: https://www.maritime-executive.com/article/eu-s-foreign-policy-chief-calls-for-naval-patrols-in-taiwan-strait (Accessed: 30 April 2023).

[53] See, for instance: The Economist (2021). 'German submarines are giving Turkey an edge over Greece', 3 July. Available at: https://www.economist.com/europe/2021/07/03/german-submarines-are-giving-turkey-an-edge-over-greece (Accessed: 30 April 2023).

strategic planification for the next decades is needed, in order for Europe to retain the critical ability to fix itself the terms of its relations with the MENA region, the Indo-Pacific and Asia. This is a *sine qua non* condition for its transformation into a 'geopolitical' and autonomous Europe.

The Jurisdictionalization of the East Mediterranean Sea

Nathalie Ros[*]

From a geopolitical standpoint, the East Mediterranean Sea is a very complex and conflicting region; the discovery of offshore resources, and especially huge gas fields, in several different geological areas in this part of the Mediterranean therefore came to superimpose on the more or less latent political and legal conflicts between Greece and Turkey, Israel and Palestine, the Cyprus question, the civil war in Syria and more recently in Libya.

All coastal States in the region would like to take advantage of the hydrocarbons bonanza; in order to realize the associated promises of economic development and energy independence, they can endeavor to cooperate, or on the contrary adopt provocative and conflicting attitudes. The cooperation developed between certain actors can even be considered as a provocation by others, both in its principle and in its results, whether it is a question of sharing maritime spaces and resources, or of organizing the processing of hydrocarbons and their transport.

In that respect, International Law of the Sea is obviously only one parameter, however essential because of its dialectical relationship with offshore energy[1], and because it provides a framework for assessing claims and possibly settling disputes. Given the topography of the East Mediterranean Sea, with a lot of islands in a relatively small basin, with coasts less than 400 nautical miles from one another, the delimitation challenges[2] are unavoidable and International Law of the Sea is thus even at risk of being effectively challenged in the region[3]. Progressively realized in order for the coastal States to secure their sovereign rights over the offshore resources, the dynamic

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[1] Ros, N. (2020). Law of the Sea and Offshore Energy in the East Mediterranean, Jean Monnet Paper N° 10. Athens: Jean Monnet European Centre of Excellence. [Online]. Available at: https://jmce.gr/portal/wp-content/uploads/2021/12/NR-WP-No-12-_Nathalie-Ros.pdf (Accessed: 8 December 2022).

[2] *Cf.* in this book, Ros, N. 'Delimitation Challenges in the East Mediterranean Sea: An International Law of Sea Perspective'.

[3] Ros, N. (2021). 'Le droit international de la mer à l'épreuve en Méditerranée orientale', Annuaire de Droit Maritime et Océanique, Tome XXXIV, pp. 17-53.

can be defined as *a jurisdictionalization initiated by delimitation agreements* (I), and consequently *a jurisdictionalization leading to maritime disputes* (II).

I - A jurisdictionalization initiated by delimitation agreements

As regards delimitation agreements in the East Mediterranean, at first there have been more unsuccessful attempts than successes[4], before the energy prospects that radically changed the situation, with now *three agreements signed by Cyprus* (A), *two agreements signed by Turkey* (B) and *two agreements signed by Greece* (C).

A – Three agreements signed by Cyprus

The delimitation agreements signed by Cyprus fall under the same *model agreement* (1) but they also constitute a real *set of agreements* (2).

1) A model agreement

Three maritime boundary delimitation agreements have been signed by Cyprus, with Egypt in 2003, Lebanon in 2007, and Israel in 2010[5]. All are bilateral agreements for the delimitation of the exclusive economic zone (EEZ), negotiated without prior EEZs proclamation. They are based on the same model and composed of five articles, plus an annex providing the list of the geographical coordinates. The wordings of the Cyprus-Egypt and Cyprus-Lebanon treaties are exactly the same, while the Cyprus-Israel agreement may be considered more precise and includes some differences, mainly related to the fact that Israel is not a Party to the United Nations Convention on the Law of the Sea (UNCLOS) but accepts customary International Law especially as regards EEZ. Corresponding to legally comparable situations, *i.e.* opposite coasts, the three agreements are founded on the median line (Article 1), and take into account the rights of third interested parties, stopping short of tri-points and/or providing for a possible modification of the geographical coordinates. In the occurrence of a straddling deposit,

[4] Israel and Egypt have rejected Turkish proposals that would have deprived Cyprus of an Exclusive Economic Zone (EEZ). Greece had started negotiations with Egypt and Libya, but they later stalled in the new political context of the Arab Spring. Before the civil war, Syria and Cyprus had negotiated in order to conclude a maritime boundary agreement but it has not been possible, particularly due to Turkish influence on Damascus.

[5] Dipla, H. (2011). 'Ressources énergétiques et limites maritimes en Méditerranée orientale', Annuaire du Droit de la Mer, Tome XVI, pp. 63-85, especially pp. 70 and following; Ioannides, N. (2017). 'Maritime Boundary Delimitation Agreements in the Eastern Mediterranean Sea' in Martin, L., Salonidis, C. and Hioureas, C. (eds) Natural Resources and the Law of the Sea: Exploration, Allocation, Exploitation of Natural Resources in Areas under National Jurisdiction and Beyond. Huntington, New York: International Law Institute Series, pp. 67-89.

they call for cooperation between the contracting parties in order to conclude a joint exploitation agreement or a framework unitization agreement (Article 2)[6]. A special form of cooperation is established in the case a contracting party is engaged in negotiations with another State for the delimitation of the EEZ; before reaching a final agreement, it '*shall notify and consult*' the other party, if the extreme points of their boundary are concerned (Article 3). A dispute settlement clause is provided, through diplomatic means or even arbitration (Article 4). The agreements are subject to ratification as well as their entry into force (Article 5).

2) A set of agreements

The first agreement was signed between Cyprus and Egypt on 17 February 2003 and entered into force on 7 March 2004[7]. It was negotiated at the initiative of Egypt[8], which could contribute to explain the choice of a delimitation of the exclusive economic zone rather than an agreement on the continental shelf. Indeed, Egypt was at the same time also in negotiation with Saudi Arabia for maritime delimitation in the Red Sea; in order not to jeopardize its chances of obtaining a delimitation based on the median line in the Red Sea, even though its coast is shorter than that of Saudi Arabia, Egypt was in favor of the application of the principle of the median line with Cyprus, despite its longer coast in the Mediterranean. This solution would have seemed more easily acceptable for the EEZ than for the continental shelf, which is considered to be more closely linked to the landmass, and perhaps even erroneously to the concept of natural prolongation, which is nevertheless no longer relevant up to 200 nautical miles. However, the EEZ option may also be considered a way to circumvent the traditional Turkish position relative to its continental shelf, disregarding the rights of islands including Cyprus. Actually, Egypt has never officially claimed an EEZ; upon its ratification of UNCLOS,

[6] A Framework Agreement Between the Government of the Republic of Cyprus and the Government of the Arab Republic of Egypt Concerning the Development of Cross-Median Line Hydrocarbons Resources has been adopted in its definitive version signed in December 2013, Republic of Cyprus, Government Gazette No. 4196, 25 July 2014, p. 10703. [Online]. Available at: https://www.mof.gov.cy/mof/gpo/gpo.nsf/All/A88D02909DC27F10C2257D20002C1DB5/$file/4196%2025%207%202014%20PARARTIMA%201o%20MEROS%20III%20.pdf (Accessed: 8 December 2022). Cyprus had also entered into negotiation with Israel (and Lebanon) to conclude similar agreements without achieving their adoption.

[7] Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone, 17 February 2003. [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf (Accessed: 8 December 2022).

[8] Doussis, E. (2004). 'L'Accord du 17 février 2003 entre Chypre et l'Egypte sur la délimitation de leurs zones économiques exclusives', Annuaire du Droit de la Mer, Tome IX, pp. 143-156.

on 26 August 1983, Egypt had only stated that it will exercise the corresponding rights[9]. On the other hand, the proclamation of the Cypriot EEZ took place after the adoption and entry into force of the delimitation agreement, under the law of 5 April 2004, with a retroactive effect to 21 March 2003.

The following agreements were based on the same option, delimitating the EEZ rather than the continental shelf, which is supposed to be easier and more functional in the regional context. The second agreement was signed between Cyprus and Lebanon on 17 January 2007, at ministerial level. It was ratified by Cyprus in November 2007, but it has never been ratified by the Lebanese Parliament; thence it is not in force. In August and November 2010, Lebanon, which had not claimed an EEZ before, deposited lists of geographical coordinates with the Secretary-General of the United Nations, in order to define the limits of its EEZ with Israel. In this context, the third agreement was signed between Cyprus and Israel on 17 December 2010 and entered into force on 25 February 2011[10]. Notwithstanding the adoption of this agreement that has legally materialized the dispute between Israel and Lebanon, there were several reasons for Lebanon's refusal to ratify the 2007 agreement: the political and governmental instability; the opposition of Turkey, which had unsuccessfully tried to prevent the conclusion of the agreement and then did everything possible to avoid its entry into force, going so far as to ask Lebanon not to give effect to it; but above all the Lebanese awareness relating to point 1 of the delimitation line, which was the core element of its maritime dispute with Israel.

B - Two agreements signed by Turkey

Turkey has concluded *the 2011 agreement with the "Turkish Republic of Northern Cyprus" ("TRNC")* (1) and *the 2019 agreement with Libya* (2).

[9] [Online]. Available at: http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#Egypt (Accessed: 8 December 2022)

[10] Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone, signed in Nicosia on 17 December 2010 and entered into force on 25 February 2011 [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf (Accessed: 8 December 2022).

1) The 2011 agreement with the "TRNC"

Not unrelated to the previous three agreements, a Continental Shelf Delimitation Agreement was signed on 21 September 2011 between the Turkish Government and the "TRNC", established in 1983; it was ratified by Turkey on 29 June 2012. This agreement has been never published, but the corresponding map makes it clear that the delimitation of the continental shelf is actually founded on equitable principles, according to Turkey's traditional legal position. Cyprus, being an island, is considered to be able to generate a smaller maritime space than Turkey with its longer and continental coast; the delimitation line is thus closer to Cyprus with a more extensive continental shelf for Turkey. In 2014, Turkey submitted a *note verbale* to the Secretary-General of the United Nations setting out the geographical coordinates of its continental shelf in the Eastern Mediterranean, as established by the delimitation agreement, but the submission of Turkey was not listed as an official deposit on the website of the Division for Ocean Affairs and the Law of the Sea (DOALOS).

2) The 2019 agreement with Libya

On 27 November 2019 Turkey signed a maritime delimitation agreement, officially titled 'Memorandum of Understanding Between Turkey and Libya on Delimitation of the Maritime Jurisdiction Areas in the Mediterranean'[11], with the internationally recognized Government of National Accord (GNA), based in Tripoli but exercising control over only a small portion of the Libyan territory. Concluded in order '*to determine a precise and equitable delimitation*', the agreement sets '*the boundaries of the Continental Shelf and the Exclusive Economic Zone*' (Article 1) in the form of an '*equidistance line*' (article 1 § 3). It is correlated with a political deal on enhanced security and military cooperation between the two contracting parties.

As shown on maps, the agreement considers Libya and Turkey as maritime neighbors and traces a corridor between their coasts, according to the principle of the so-called 'diagonal lines'. Thence, the agreement ignores directly the presence of Crete between the coasts of Turkey and Libya, as well as the other Greek islands, especially the Dodecanese chain of islands (Kastellorizo, Karpathos, Kasos), and indirectly the

[11] [Online]. Available at : https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/Turkey_11122019_%28HC%29_MoU_Libya-Delimitation-areas-Mediterranean.pdf (Accessed: 8 December 2022).

entitlement of islands, including Cyprus, to an EEZ. The agreement actually provides the Greek islands only with territorial waters of 6 nautical miles, while the western coast of Cyprus is recognised as having a territorial sea of 12 nautical miles, following the deposit on 13 November 2019 of the List of geographical coordinates concerning the outer limits of Turkey's continental shelf in the Eastern Mediterranean.

The Memorandum of Understanding (MoU) entered into force on 8 December 2019, after ratification by the contracting parties; on 11 December 2019, Turkey addressed a *note verbale* to the Secretary-General of the United Nations setting out the geographical coordinates of its continental shelf in the Eastern Mediterranean, as established by the delimitation agreement between Turkey and Libya, for publication on the website of DOALOS. After ten months of intense diplomatic negotiations, the agreement was finally published in early October 2020, but with the mention of 11 December 2019 as the registration date. The agreement was nevertheless unanimously rejected by the international community, not only by Greece, Cyprus, Egypt, Israel and Syria, but also by the United States (US), Russia and the European Union[12]. The resulting situation has therefore greatly contributed to the revival of the maritime delimitation process, during the summer of 2020.

C – Two agreements signed by Greece

Indeed, Greece adopted a proactive strategy, including outside the Levantine Basin, and successively concluded *the June 2020 agreement with Italy* (1) and *the August 2020 agreement with Egypt* (2).

1) The June 2020 agreement with Italy

On 9 June 2020[13], Greece and Italy signed an Agreement on the Delimitation of their Respective Maritime Zones[14]. As neither of them had proclaimed an EEZ in the Ionian

[12] Jiménez García-Carriazo, A. (2021). 'The Maritime Delimitation between Turkey and the Libya's Government of National Accord: another Concern for the European Union?', Peace & Security / Paix et Sécurité Internationales, No 9. [Online]. Available at: https://revistas.uca.es/index.php/paetsei/article/view/8333/8172 (Accessed: 8 December 2022).
[13] [Online]. Available at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GreeceItalyTreaty.pdf (Accessed: 8 December 2022).
[14] Marghélis, A. (2021). 'The maritime delimitation agreement between Greece and Italy of June 9th, 2020: a preliminary analysis under the light of International Law, national interest and regional politics', Marine Policy, Volume 126, Article 104403.

Sea, the term is not used and the agreement obviously has a prospective dimension[15]; it transposes the limits conventionally agreed for the continental shelf in 1977[16] , in the form of a single line, based on a simplified median line, measured from points on both the mainland coast and the islands; it entered into force on 8 November 2021[17]. The signing of the agreement is in fact part of Greece's proactive diplomacy developed in order to counterbalance the effects of the MoU, by confirming the right of the islands to a continental shelf and an EEZ, as well as the principle of taking them into account in any maritime delimitation process.

2) The August 2020 agreement with Egypt

This strategy, based on International Law of the Sea, is correlative with the relaunch of negotiations with Albania[18] and culminates in the Eastern Mediterranean, with the agreement Egypt and Greece signed on 6 August 2020[19] for the partial delimitation of their EEZ[20]. Entered into force on 2 September 2020[21], this agreement expressly refers to UNCLOS and International Law as the basis for the maritime delimitation between the two parties; in line with the three treaties signed by Cyprus, of which it uses most of the standard clauses, it delimits only the EEZ, notwithstanding the fact that neither

[15] Since then, Italy adopted the Law 14 June 2021, n. 91, Institution of an exclusive economic zone beyond the external limit of the territorial sea. [Online]. Available at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/law9114jun21eez.pdf (Accessed: 8 December 2022); *cf.* Scovazzi, T. (2022). 'The Italian exclusive economic zone', Questions of International Law, Zoom-out 88, pp. 39-56 [Online]. Available at: http://www.qil-qdi.org/wp-content/uploads/2022/01/04_Scovazzi-EEZ-Algeria-2022-FIN.pdf (Accessed: 8 December 2022).

[16] Agreement between the Hellenic Republic and the Italian Republic on the Delimitation of the Respective Continental Shelf Areas of the two States, 24 May 1977. [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GRC-ITA1977CS.PDF (Accessed: 8 December 2022).

[17] It was ratified by Greece on 26 August 2020 and by Italy on 28 May 2021.

[18] The Agreement on the delimitation of their respective continental shelf areas and other maritime zones to which they are entitled under International Law, signed by Albania and Greece on 27 April 2009, has been declared unconstitutional by the Albanian Constitutional Court in its decision of 15 April 2010. The two States resumed negotiations, first unsuccessfully in 2018, and again in the summer of 2020; they finally reached a political agreement, signed in Tirana on 20 October 2020, which aims to negotiate a future referral to the International Court of Justice.

[19] Agreement between the Government of the Hellenic Republic And the Government of the Arab Republic of Egypt On the Delimitation of the Exclusive Economic Zone between the two countries. [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/EGY.htm or https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/GRC.htm (Accessed: 8 December 2022).

[20] Marghélis, A. (2021). 'Les délimitations maritimes Turquie - Gouvernement d'entente nationale libyen et Grèce-Egypte dans leur contexte régional', Annuaire de droit maritime et océanique, Tome XXXIX, pp. 67-100, or Neptunus, Volume 27. [Online]. Available at: https://cdmo.univ-nantes.fr/fr/neptunus-e-revue/annee-2020 (Accessed: 8 December 2022).

[21] It was ratified by Egypt on 17 August 2020 and by Greece on 27 August 2020.

of the two States has so far proclaimed one, and its purpose is clearly the exploitation of offshore resources. The delimitation, between opposite States, is based on the median line, even if it appears to be adjusted; the Greek islands located in the delimited zone, from Crete to Rhodes, were taken into account, but Kastellorizo and a portion of the eastern coast of Rhodes were not included in the partial delimitation, which was deliberately calculated to leave the way open for further negotiations with Cyprus, Libya and Turkey. The agreement nevertheless reinforces the Greek position by enshrining the right of the islands to an EEZ, with an effect in the maritime delimitation depending on the circumstances, and by confirming that their presence in the zone to be delimited cannot in any case be purely and simply ignored.

All these agreements, partially contradictory and based on a different and even divergent interpretation of the International Law of the Sea, obviously contribute to *a jurisdictionalization leading to maritime disputes*.

II – A jurisdictionalization leading to maritime disputes

The East Mediterranean is a conflicting sea; maritime disputes are acute and sometimes seem impossible to resolve, both *along the coasts of the Levant* (A) and *in the heart of the Eastern Mediterranean* (B).

A - Along the coasts of the Levant

In this part of the East Mediterranean, *the dispute between Palestine and its neighbors* (1) has recently crystallized, while *the dispute between Israel and Lebanon* (2) has just been settled.

1) The dispute between Palestine and its neighbors

The dispute between Palestine and its neighbors, obviously Israel but also Egypt, results from Palestine's claims to the maritime areas off its coast, according to UNCLOS. Under the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip[22], the Palestinian Territories only have jurisdiction over the waters lying off the Gaza Strip up to a breadth of 20 nautical miles, including the soil and subsoil, and

[22] Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington, D.C., September 28, 1995, Article XVII and Article XIV of Annex I.

divided into three Maritime Activity Zones[23]; however, since 2015, following its accession to UNCLOS[24], and especially according to the recent Declaration of the State of Palestine regarding its Maritime Boundaries in accordance with the United Nations Convention on the Law of the Sea[25], transmitted to the United Nations (UN) on 24 September 2019[26], there is a new dispute due to the fact that Palestine claims a territorial sea, a contiguous zone, an exclusive economic zone and a continental shelf. Egypt (31 December 2019)[27] and Israel (20 January 2020)[28] have reacted quickly; although for different reasons[29], both consider the Palestinian declaration to be contrary to International Law, and do not recognize it to have any legal effect. For Israel in particular, '*the Palestinian entity*' is not a sovereign State and therefore cannot possess or delimit maritime areas. Israel warns that it will not allow any non-consensual or unauthorized activity, including involving third parties, in its maritime spaces and such a warning, addressed ultimately to companies in the offshore industry wishing to respond to tenders, perfectly places the dispute in its energy context.

2) The dispute between Israel and Lebanon

The maritime dispute between Israel and Lebanon followed exactly the same logic. It had its origin in a combination of elements: Lebanon's non-ratification of the 2007 agreement, Lebanon's submission of geographical coordinates in 2010 in order to define its EEZ with Israel, the conclusion of the 2010 agreement between Cyprus and Israel, its official contestation by Lebanon in 2011, the lists of coordinates

[23] Goy, R. (2005). 'La Palestine et la mer', Annuaire du Droit de la Mer, Tome X, pp. 193-208; Bockel, A. (2008). 'Le statut des espaces maritimes au large de la Bande de Gaza', Annuaire du Droit de la Mer, Tome XIII, pp. 97-110.

[24] [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PSE_2015_Declaration.pdf (Accessed: 8 December 2022).

[25] Ioannides, N. A. (2019). 'Palestine Takes to the Sea: a Commentary on Palestine's Declaration concerning its Maritime Claims', The NCLOS Blog. [Online]. Available at: https://site.uit.no/nclos/2019/11/20/palestine-takes-to-the-sea-a-commentary-on-palestines-declaration-concerning-its-maritime-claims/ (Accessed: 8 December 2022).

[26] [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PSE_Deposit_09-2019.pdf (Accessed: 8 December 2022).

[27] [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/2000145E.pdf (Accessed: 8 December 2022).

[28] [Online]. Available at: https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/ISR_PSE.pdf (Accessed: 8 December 2022).

[29] Egypt disagrees less on the principle than on the location of the maritime boundary claimed by Palestine.

communicated to the UN by Israel, and the new list deposited in reaction by Lebanon in 2011.

The combination of these elements defined an overlapping area between the EEZs claimed by Lebanon and Israel, and thereby a maritime delimitation dispute resulting from divergent points of view relating both to the starting point of the maritime boundary, *i.e.* the end point of the land boundary, and the end point of the maritime boundary. Offshore, Lebanon refuted the relevance of the last point included in the 2010 Cyprus-Israel agreement and initially in the 2007 Cyprus-Lebanon agreement (point 1), and used first in 2011 a point located 9 nautical miles to the south-west, presented as the equidistant point for the three States concerned (point 23), and then in 2020 a new point more southward (point 29).

Since recently, this maritime dispute between Israel and Lebanon was considered to be difficult, if not impossible, to resolve especially by legal means, as it was exacerbated by the political problems and conditioned, not to say poisoned, by the geopolitical and energy context in the East Mediterranean. The overlapping area was characterized by the presence of hydrocarbon deposits, and the line contested by Lebanon left on the Israeli side most of the resources discovered in the region. In the context renewed by the signing of the Turkish-Libyan and Greek-Egyptian agreements, and after three years of American diplomatic efforts, Israel and Lebanon announced on 1st October 2020 the signing of an agreement for talks to be held under the mediation of the United Nations, in order to resolve the dispute between them over their land and maritime borders. Indirect negotiations, via United States and United Nations officials, did begin on 14 October 2020, regarding the maritime dispute, but they quickly stalled before resuming, in the new context resulting from the energy crisis linked to the war in Ukraine, with the announcement of an imminent agreement on 1st October 2022.

US-brokered, the final agreement, referred to as a maritime border deal, was signed separately on 27 October 2022, in the legal form of an exchange of letters, but both Parties recalled it could not be considered as an act of mutual recognition[30]. Section 1 of the text establishes the '*maritime boundary line*' defined via a list of geographical coordinates. Concluded '*without prejudice to the status of the land*

[30] [Online]. Available at: https://www.timesofisrael.com/full-text-of-the-maritime-border-deal-agreed-between-israel-and-lebanon/ (Accessed: 8 December 2022).

boundary', the agreement does not contain any reference to International Law of the Sea principles; it does not refer to equidistance, although it may be assumed it is based on the equidistance method, and is only defined as '*a permanent and equitable resolution of [the] maritime dispute*'. First maritime delimitation between adjacent States in the East Mediterranean, the deal clearly appears to be concluded in order to divide gas-rich offshore waters; under Section 2, Israel keeps control of the Karish gas field, as Lebanon will get the right to develop the Qana gas field, which straddles the line, with Israel receiving proportionate dividend payments for gas withdrawn from the part of the reservoir that sits on its side, directly from the Qana future operator, TotalEnergies[31].

A day after the signing of this agreement, Lebanon and Cyprus agreed to move forward with maritime border talks in order to finalize the delimitation, but Lebanon must first reach an agreement with Syria. Although the two adjacent neighbors have announced a common desire to negotiate their maritime border, the first meeting was nevertheless almost immediately canceled by the Syrian government.

B - In the heart of the Eastern Mediterranean

Beyond the traditional dispute between Turkey and Greece in the Aegean Sea, maritime disputes appear really protean and multifaceted in this part of the East Mediterranean Sea. They stem from *Turkey's contestation of the agreements signed by Cyprus* (1), as well as from the legal consequences of the agreements signed by Turkey, especially *the reactions of the other States after the signing of the MoU* (2).

1) Turkey's opposition to the agreements signed by Cyprus

Turkey had first done everything possible to prevent the conclusion of the agreements signed by Cyprus and then their entry into force. In the case of Egypt, a Turkish influence is evident to explain the adoption, in March 2013, by the Legislative Committee of the Egyptian Upper House, of a bill annulling the 2003 agreement between Cyprus and Egypt and calling for a new delimitation in the presence of Turkey as a third party; the request was based on the argument that the agreement signed by

[31] Yiallourides, C., Ioannides, N. A. and Partain, R. A. (2022). 'Some Observations on the Agreement between Lebanon and Israel on the Delimitation of the Exclusive Economic Zone', EJIL:Talk! Blog of the European Journal of International Law, 26 October. [Online]. Available at: https://www.ejiltalk.org/some-observations-on-the-agreement-between-lebanon-and-israel-on-the-delimitation-of-the-exclusive-economic-zone/ (Accessed: 8 December 2022).

Cyprus and Israel invalidated the 2003 agreement, because Egypt had the right to be present when it was signed, but it was not acted upon. In the case of Lebanon, Turkey openly lobbied to prevent the agreement and then '*it has also been requested that the said agreement was not given effect in any case*' as reported by the Turkish Ministry of Foreign Affairs itself[32]; this must be seen as one of the reasons for the non-ratification, all the more so as there were ongoing negotiations between Turkey and Lebanon, which led to the conclusion of a free trade agreement in 2010. Relations with Israel deteriorated sharply in 2010, as a result of events off the Gaza Strip but also in the context of the adoption of the delimitation agreement.

From a legal standpoint, Turkey objects to the application of the median line, in each of the three agreements, as a matter of principle, since it is the only State in the region, together with Palestine, to be *a priori* in favor of equitable principles, but *a fortiori* because of the insularity of Cyprus. Although formalized in legal terms, most of Turkey's arguments are political; they are related to the partition of Cyprus and Ankara's official position that the Republic of Cyprus is not legitimate to conclude agreements on behalf of Cyprus as a whole, because it does not represent the two communities. Obviously, the conclusion of the 2011 Continental Shelf Delimitation Agreement between Turkey and "TRNC" also pertains to this approach, as well as the subsequent Turkish pretensions to the Cyprus EEZ[33], the overlapping and competing allocations of hydrocarbon concessions, the incursions of Turkish military vessels and drilling attempts in Cypriot waters[34].

2) The reactions of the other States after the signing of the MoU

In addition to the deposit of the List of geographical coordinates concerning the outer limits of Turkey's continental shelf in the Eastern Mediterranean on 13 November 2019, the MoU signed between Turkey and Libya, on 27 November 2019, is a new

[32] Press Release Regarding the efforts of the Greek Cypriot Administration of Southern Cyprus to sign bilateral agreements concerning maritime jurisdiction areas with the countries in the Eastern Mediterranean, 30 January 2007. [Online]. Available at: http://www.mfa.gov.tr/_p_30-january-2007_-press-release-regarding-the-efforts-of-the-greek-cypriot-administration-of-southern-cyprus-to-sign-bilateral-agreements-concerning-maritime-jurisdiction-areas-with-the-countries-in-the-eastern-mediterranean_br___p_.en.mfa (Accessed: 8 December 2022).

[33] Ioannides, N. (2017). Turkish Maritime Claims Offshore Cyprus, Eastern Mediterranean Policy Note, No. 18, 25 September. Nicosia: Cyprus Center for European and International Affairs, University of Nicosia.

[34] Jiménez García-Carriazo, A. (2020). 'Prospecciones turcas en aguas chipriotas, una nueva dimensión del enfrentamiento', Revista Española de Derecho internacional, 72(1), pp. 117-136.

source of disputes in the East Mediterranean, not only directly with Greece, but also indirectly with the other States of the region, especially Cyprus and Egypt, but also Syria. Although the arguments used are thus different, general as regards Syria, more focused on the domestic political situation of Libya in the case of Egypt and on the Law of the Sea for Cyprus and Greece, the four States called on the UN Secretariat to reject the Turkish and Libyan requests to have the MoU registered under Article 102 of the Charter of the United Nations, and the corresponding geographical coordinates published by DOALOS. They declared that the MoU is null and void, and should therefore have no legal effect. Actually, Cyprus is more affected by the legal consequences of the List of coordinates than by the MoU. As regards Law of the Sea arguments, Cyprus reaffirms its sovereign rights to an EEZ and a continental shelf, such as determined on the basis of the median line, and in relation with the exploration and exploitation of natural resources; it also highlights and condemns the development of illegal drilling operations by Turkey within maritime spaces under its jurisdiction. Greece is, of course, the State most directly affected by the conclusion of the 2019 MoU, losing its sovereign rights in the maritime region concerned by the delimitation; thence, Greece's position is by far the most developed under the Law of the Sea, in support of the view that the '*agreement blatantly violates the rules of the international law of the sea on maritime delimitation*'[35].

Beyond the letters and *notes verbales* addressed to the United Nations Secretary-General, the main reaction of the neighboring States remains the conclusion of the EEZ delimitation agreement between Greece and Egypt. The conclusion of the MoU was intended to deprive these two States of the right to conclude such an agreement, and the August 2020 agreement is therefore a logical and direct response. It is a major political act, but also a confirmation of the Greek position founded on the UNCLOS as well as on customary law, since the delimitation line is based on the median line and the islands have been directly taken into account in the delimitation, which thus recognizes their right to an EEZ and ultimately to a continental shelf.

The publication of the MoU, and the coordinates of the maritime spaces it defines, on the DOALOS site, at the beginning of October 2020, was very bad news for

[35] A/74/706, Annex to the letter dated 14 February 2020 from the Permanent Representative of Greece to the United Nations addressed to the Secretary-General, Letter dated 9 December 2019 from the Permanent Representative of Greece to the United Nations addressed to the Secretary-General.

the States of the region, which had deployed intense diplomatic and legal activity to avoid it. But this publication must undoubtedly be understood in the new context created by the signing of the agreement between Greece and Egypt, which was quickly published on the site, since Turkey also develops the argument that it '*does not recognize*' this agreement, '*strongly protests the signing of the said agreement and deems it null and void*'[36]. It is therefore likely that DOALOS preferred to adopt a purely formalistic reading of these agreements, considering the *instrumentum* and not the *negotium*, since the situation was objectively different from the case of the agreement signed in 2011 between Turkey and the "TRNC", where the non-publication was justified because one of the signatories was not recognized at the international level.

The set of arguments developed by Turkey, on the one hand, and by Cyprus, Greece and Egypt, on the other, illustrates the intertwining of maritime delimitation disputes and the complexity of the situation in the region. The Turkish-Libyan agreement is considered by the other States concerned as re-drawing the geography of maritime boundaries within the East Mediterranean Sea. It theoretically deprives Egypt and Greece of the right to conclude a maritime boundary delimitation agreement, and the Greek islands, Kastellorizo, Karpathos, Kasos and Crete, as well as indirectly the western part of Cyprus, of an EEZ and a continental shelf. For its part, Turkey considers that the Greek-Egyptian agreement does not respect the limits of its continental shelf in the East Mediterranean, partly defined in the 2019 MoU, and thus infringes on the rights of Turkey, as well as of Libya, by contravening the principles on which Turkey bases its maritime delimitation, particularly with regard to islands.

As evidenced by the Memorandum of Understanding on exploration for hydrocarbons, signed by Libya and Turkey on 3 October 2022[37], the jurisdictionalization of the Eastern Mediterranean is closely linked to the energy issue and actually originates in the question of the drilling rights, given the lucrative prospects of hydrocarbon and especially gas resources in this part of the Mediterranean Sea.

[36] A/74/997-S/2020/826, Letter dated 21 August 2020 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General.
[37] [Online]. Available at: https://www.agenzianova.com/en/news/libya-turkey-here-is-the-controversial-secret-agreement-on-hydrocarbons-signed-in-tripoli-foto/ (Accessed: 8 December 2022).

Delimitation Challenges in the East Mediterranean Sea: An International Law of the Sea Perspective

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From an International Law of the Sea perspective, the situation in the East Mediterranean Sea is very particular[1]. The first element is the variable geometry definitions of the region, understood as the eastern part of the Mediterranean Sea, in other words the Levantine Basin, also known as the Levant, the Eastern or East Mediterranean. With respect to coastal States, the East Mediterranean Sea includes more often than not Cyprus, Egypt, Greece, Israel, Lebanon, Syria, Turkey, and Palestine, and much more rarely Libya, which recent events have *de facto* integrated into the regional collective of States. The second parameter is related to the fact that of the eight or nine States in the region, including Libya, four are not Parties to the United Nations Convention on the Law of the Sea (UNCLOS) adopted on 10 December 1982: Israel and Turkey, which are among the four States that have voted against the 1982 Convention; Syria, which has neither signed nor ratified; and Libya, which has signed on 3 December 1984 but has never ratified.

Furthermore, International Law of the Sea, as defined in UNCLOS, is often referred to as Ocean Law insofar as it has not been designed for enclosed and semi-enclosed seas, to which the Convention devotes its Part IX. This partly explains why there have always been Mediterranean readings of UNCLOS, and a regional interpretation of the Law of the Sea, which is all the more necessary given the geographical and geopolitical features of this exceptional sea[2]. Inseparable *from the International Law of the Sea framework* (I), delimitation challenges are nevertheless

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[1] Ros, N. (2021). 'Le droit international de la mer à l'épreuve en Méditerranée orientale', Annuaire de Droit Maritime et Océanique, Tome XXXIV, pp. 17-53.

[2] Ros, N. (2020). Law of the Sea and Offshore Energy in the East Mediterranean, Jean Monnet Paper N° 10, Athens: Athens Jean Monnet European Centre of Excellence. [Online]. Available at: https://jmce.gr/portal/wp-content/uploads/2021/12/NR-WP-No-12-_Nathalie-Ros.pdf (Accessed: 8 December 2022).

not unrelated to the energy and security context, which necessarily refers *to Eastern Mediterranean specificities* (II).

I – From the International Law of the Sea framework

Even if the Mediterranean is a semi-enclosed sea, with a lot of geographic and geopolitical particularities, International Law of the Sea as defined by UNCLOS and customary law serves as a global framework. As legal title is the basis for maritime delimitation, *the importance of applicable legal regimes* (A) and *the relevance of maritime delimitation law* (B) are closely interrelated and appear essential in order to better understand Eastern Mediterranean challenges.

A – The importance of applicable legal regimes

In the Levantine Basin, as in the Mediterranean Sea as a whole, the legal regime of maritime areas is a central issue in delimitation challenges, especially with regard to the region's offshore resources and the associated promises of economic development and energy independence: *the dialectic continental shelf/exclusive economic zone* (1) and of course *the legal regime of islands* (2).

1) The dialectic continental shelf/exclusive economic zone

From an International Law of the Sea standpoint, the strategy of the Mediterranean States, especially in the East Mediterranean, appears founded on an opportunistic confusion and/or assimilation of two distinct maritime areas, the continental shelf and the exclusive economic zone (EEZ).

The corresponding dialectic is an issue on which the coastal States were in confrontation during the Third Conference on the Law of the Sea, according to their relationship to the sea[3], and the final wording of Article 76 is an integral part of the global compromise realized by the Convention. It guarantees the legal autonomy of the continental shelf *vis-à-vis* the exclusive economic zone, even if the spatial and legal dissociation does not effectively and fully materialize until beyond 200 nautical miles[4].

[3] Dupuy, R-J. (1979). L'océan partagé. Analyse d'une négociation singulière (Troisième Conférence des Nations Unies sur le Droit de la mer). Paris: Pedone, pp. 104-107.

[4] Article 76 Definition of the continental shelf: '*1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200*

As such the Mediterranean is not concerned because the coasts are nowhere distant of more than 400 nautical miles, with a specific configuration, *a fortiori* in the Eastern Basin, implying that there is neither Area nor extended continental shelf, but a wholly appropriated and shared space. Obviously, the fact that there is no continental shelf that does not correspond to the seabed and subsoil of the exclusive economic zone[5], even potentially, is an essential element to justify that the traditional dialectic results in an opportunistic confusion and even a conceptual assimilation.

The UNCLOS addresses the *Exclusive economic zone* (Part V) and the *Continental shelf* (Part VI) in two separate parts with different, though complementary, legal regimes. According to the International Law of the Sea, a coastal State does not have to proclaim an EEZ to exercise jurisdiction over the soil and subsoil of the sea beyond 12 nautical miles (Article 76); the legal regime of the continental shelf governs the exploration and exploitation of its natural resources (Article 77)[6], while the EEZ is essentially dedicated to fishing activities, and subsidiarily integrates environmental protection and marine scientific research (Articles 56, 61 to 73). However, the proclamation of an exclusive economic zone provides the coastal State with additional competences as regards offshore energy activities; this is especially the case for the organization of resource exploitation, the extraction of hydrocarbons, the transport of oil and gas, the joint management of transboundary deposits, or the authorization, construction and use of platforms. With regard to platforms, the division of competences is extremely ambiguous, between EEZ and continental shelf, according to Articles 56 § 1 (b) (i), 60 *Artificial islands, installations and structures in the exclusive economic zone* and 80 *Artificial islands, installations and structures on the continental shelf*, since the implementation of sovereign rights under the continental shelf ultimately appears to depend on the competences relating to the superjacent waters and the EEZ.

nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance'.

[5] Ros, N. (2014). 'Exploration, Exploitation and Protection of the Mediterranean Continental Shelf' in Cinelli, C. and Vásquez Gómez, E. M. (eds) Regional Strategies to Maritime Security: a Comparative Perspective. MARSAFENET. Valencia: Tirant lo Blanch, pp. 101-132, especially pp. 102-108. [Online]. Available at: https://www.isgi.cnr.it/wp-content/uploads/2017/10/MARSAFENET-Editorial.-Regional-Strategies-to-Maritime-Security.pdf (Accessed: 8 December 2022).

[6] Ros, N. (2020). 'L'Etat côtier et son plateau continental: enjeux et perspectives dans le nouveau droit de la mer' in Enjeux et perspectives Droit international, droit de la mer, droits de l'homme Liber Amicorum En l'honneur de la professeure Haritini Dipla. Paris: Pedone, pp. 109-124.

Not without relation, one of the major delimitation challenges in the East Mediterranean Sea is related to *the legal regime of islands*.

2) The legal regime of islands

One of the essential current International Law of the Sea problems in the Mediterranean, and especially in the Levantine Basin, is the legal regime of islands *lato sensu*[7],*i.e.* including three main issues to be distinguished though they are closely connected: the definition of islands and their legal regime *stricto sensu*[8], as stated in Part VIII and Article 121 *Regime of islands*, with a status of customary International Law[9], and the rights of islands in a maritime delimitation, as '*developed through the case-law of the Court and arbitral jurisprudence*'[10].

A combined reading of Article 121 § 1 and § 3 establishes the definition of the island in International Law, by distinguishing clearly between an island, *i.e.* a natural island, defined as a '*naturally formed area of land, surrounded by water, which is above water at high tide*' (§ 1), an artificial island[11] according to Articles 60 and 80 *Artificial islands, installations and structures in the exclusive economic zone/on the continental shelf*, and '*rocks which cannot sustain human habitation or economic life of their own*'

[7] In the territorial sea, UNCLOS also considers Reefs (Article 6): '*In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State*'; and Low-tide elevations (Article 13): '*1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea. 2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own*'.

[8] Dipla, H. (1984). Le régime juridique des îles dans le droit international de la mer. Paris: PUF. [Online]. Available at: https://pdfs.semanticscholar.org/4961/028d0dfdc4237a8667a7660d885510c40170.pdf (Accessed: 8 December 2022); Doussis, E. (2004). 'Iles, îlots, rochers et hauts-fonds découvrants' in INDEMER, Le processus de délimitation maritime. Étude d'un cas fictif. Paris: Pedone, pp. 134-166; Pichel, C. (2022). Le régime des îles, rochers et hauts-fonds découvrants en droit international. Bruxelles: Bruylant.

[9] '*The Court therefore considers that the legal régime of islands set out in UNCLOS Article 121 forms an indivisible régime, all of which* […] *has the status of customary international law*'; ICJ, Judgment of 19 November 2012, Territorial and maritime dispute (Nicaragua v. Colombia), Reports 2012, p. 674, § 139. [Online]. Available at: https://www.icj-cij.org/public/files/case-related/124/124-20121119-JUD-01-00-EN.pdf (Accessed: 8 December 2022).

[10] ICJ, Judgment of 14 June 1993, Maritime delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway), Reports 1993, p. 62, § 55. [Online]. Available at: https://www.icj-cij.org/public/files/case-related/78/078-19930614-JUD-01-00-EN.pdf (Accessed: 8 December 2022).

[11] Münch, F. (1978). 'Les îles artificielles et les installations en mer', Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, pp. 933-958. [Online]. Available at: https://www.zaoerv.de/38_1978/38_1978_3_4_a_933_958.pdf (Accessed: 8 December 2022).

(§ 3)[12] . These rocks, have to be considered in their '*natural capacity*'[13] and cannot be regarded as islands; thence they '*shall have no exclusive economic zone or continental shelf*' (§ 3), as confirmed[14] by the Arbitral Award of 12 July 2016 in the *South China Sea Arbitration*[15].

The consequence is a distinct legal regime for islands. Article 121 § 2 only applies to natural islands: '*Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory*'. This is obviously confirmed *a contrario* by Article 60 § 8: '*Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf*'.

Since islands are entitled to a territorial sea, but also to an EEZ and a continental shelf, an island cannot in any way be ignored in a maritime delimitation process, whether it is an island State, such as Malta[16] or Cyprus, or an island that is part of a continental State, such as Crete or the other Greek islands, and whether it intervenes on a principal or accessory basis. An island must be taken into account in a delimitation

[12] Karagiannis, S. (1996). 'Les rochers qui ne se prêtent pas à l'habitation humaine ou à une vie économique propre, et le droit de la mer', Revue belge de droit international, pp. 559-624. [Online]. Available at: https://rbdi.bruylant.be/modele/rbdi/content/pdf/files/RBDI%201996/RBDI%201996-2/Etudes/RBDI%201996.2%20-%20pp.%20559%20%c3%a0%20624%20-%20Symeon%20Karagianis.pdf (Accessed: 8 December 2022); Kolb, R. (1994). 'L'interprétation de l'article 121, paragraphe 3, de la convention de Montego Bay sur le droit de la mer: les « rochers qui ne se prêtent pas à l'habitation humaine ou à une vie économique propre… »', Annuaire français de droit international, Volume 40, pp. 876-909. [Online]. Available at: https://www.persee.fr/docAsPDF/afdi_0066-3085_1994_num_40_1_3227.pdf (Accessed: 8 December 2022).

[13] '*The status of a feature is to be determined on the basis of its natural capacity, without external additions or modifications intended to increase its capacity to sustain human habitation or an economic life of its own*'; PCA, Case Nº 2013-19, South China Sea Arbitration, p. 227, § 541. [Online]. Available at: https://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf (Accessed: 8 December 2022).

[14] Gau, M. S. (2019). 'The Interpretation of Article 121(3) of UNCLOS by the Tribunal for the South China Sea Arbitration: A Critique', Ocean Development & International Law, 50(1), pp. 49-69.

[15] PCA, Case Nº 2013-19, South China Sea Arbitration; *cf.* in particular Interpretation of Article 121 of the Convention, pp. 204-232, § 473-553. [Online]. Available at: https://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf (Accessed: 8 December 2022).

[16] ICJ, Judgment of 3 June 1985, Continental shelf (Libyan Arab Jamahiriya/Malta), Reports 1985, p. 13. [Online]. Available at: https://www.icj-cij.org/public/files/case-related/68/068-19850603-JUD-01-00-EN.pdf (Accessed: 8 December 2022).

process[17],but '*the effect to be given to an island in the delimitation of the maritime boundary in the exclusive economic zone and the continental shelf depends on the geographic realities and the circumstances of the specific case. There is no general rule in this respect. Each case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable*'[18]. As the importance of islands in Mediterranean maritime delimitations is crucial[19], this rule must be kept in mind in the Levant, and also refers to *the relevance of maritime delimitation law*.

B – The relevance of maritime delimitation law

Maritime delimitation law is the result of a threefold normative process, with a conventional dimension naturally correlative to the codification of the Law of the Sea, and a customary development '*in*'[20] and '*through the case-law of the Court and arbitral jurisprudence*'[21]; it has to be apprehended *from conventional law* (1) *to jurisprudential custom* (2).

1) From conventional law

The first text relating to maritime delimitation, Article 6 of the Geneva Convention on the Continental Shelf of 1958 refers to '*the median line*' (§ 1) or '*the principle of equidistance*' (§ 2) unless '*special circumstances*', understood in a very restrictive manner, justify another delimitation[22]. But this rule, which is relatively easy to

[17] Rouche, I. (2017). 'L'influence des îles dans le processus de délimitation des frontières maritimes: repousser les limites de la souveraineté étatique', Annuaire du Droit de la Mer, Tome XXII, pp. 129-151.
[18] ITLOS, Judgment of 14 March 2012, Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Reports 2012, p. 86, § 317. [Online]. Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/published/C16-J-14_mar_12.pdf (Accessed: 8 December 2022).
[19] Sefrioui, S. (2016). 'Les îles dans la délimitation maritime en Méditerranée: enjeux de zonage, de délimitation et de développement' in Ros, N. and Galletti, F. (Dir.) Le droit de la mer face aux 'Méditerranées', Quelle contribution de la Méditerranée et des mers semi-fermées au développement du droit international de la mer? Cahiers de l'Association internationale du Droit de la Mer 5. Napoli: Editoriale Scientifica, pp. 35-56.
[20] ICJ, Judgment of 14 June 1993, Maritime delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway), Reports 1993, p. 61, § 51. [Online]. Available at: https://www.icj-cij.org/public/files/case-related/78/078-19930614-JUD-01-00-EN.pdf (Accessed: 8 December 2022).
[21] ICJ, Judgment of 14 June 1993, Maritime delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway), Reports 1993, p. 62, § 55. [Online]. Available at: https://www.icj-cij.org/public/files/case-related/78/078-19930614-JUD-01-00-EN.pdf (Accessed: 8 December 2022).
[22] Article 6: '*1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which*

implement over short distances, for example in the case of the territorial sea[23], proved to be unfair for delimiting the continental shelf and was therefore rejected by many States. This was the case of Germany (FRG), which had refused to ratify the 1958 Convention precisely because it was disadvantaged by the application of equidistance insofar as its coastline was concave and located between two convex coasts (Netherlands and Denmark). It is therefore not accidental that this was the starting point of the jurisprudential process, with the *North Sea Continental Shelf* Judgment delivered on 20 February 1969[24].

Logically the equidistance principle was not reproduced in UNCLOS, which integrated the acquis of the case-law, but above all had to resort to a constructive ambiguity in order to allow the adoption of Articles 74 and 83, respectively dedicated to EEZ and continental shelf. Drafted on the same model[25], these dispositions only required that '*the delimitation* […] *shall be effected* […] *in order to achieve an equitable solution*'[26]. Characterized by a very low normative density, this conventional rule belongs to the material soft law and the development of the so-called fundamental norm of maritime delimitation[27] has been referred *to jurisprudential custom*[28].

is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured. 2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured'.

[23] Lando, M. (2017). 'Judicial Uncertainties Concerning Territorial Sea Delimitation under Article 15 of the United Nations Convention on the Law of the Sea', International and Comparative Law Quarterly, 66(3), pp. 589-623.

[24] ICJ, Reports 1969, p. 3. [Online]. Available at: https://www.icj-cij.org/public/files/case-related/51/051-19690220-JUD-01-00-EN.pdf (Accessed: 8 December 2022).

[25] Articles 74/83 Delimitation of the exclusive economic zone/continental shelf between States with opposite or adjacent coasts: '*1. The delimitation of the exclusive economic zone/continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution*'.

[26] The reference to the finalist requirement of equity ('*in order to achieve an equitable solution'*) was reportedly proposed by the head of the Greek delegation, Constantin A. Stravropoulos; *cf.* Siousiouras, P. and Chrysochou, G. (2014). 'The Aegean Dispute in the Context of Contemporary Judicial Decisions on Maritime Delimitation', Laws, 3(1), pp. 20 and 44, note 42.

[27] Ros, N. (2003). 'Le fabuleux destin de la norme fondamentale' in La Mer et son droit. Mélanges offerts à Laurent Lucchini et Jean Pierre Quéneudec. Paris: Pedone, pp. 551-564.

[28] Ros, N. (1998). La Cour internationale de Justice et les règles du droit international. Contribution à l'étude de la fonction effective de la juridiction internationale permanente. Thèse pour le Doctorat en Droit de l'Université de Paris 1 - Panthéon-Sorbonne, especially pp. 252-254 and 277-279.

2) To jurisprudential custom

After more than 50 years, the jurisprudential law of maritime delimitation[29] is now theoretically well established at least up to 200 nautical miles[30], even if the implementation of the jurisprudential and customary rule is in practice not so easy, in particular in a semi-enclosed sea, with a lot of islands, such as the Mediterranean, and especially its Eastern basin.

On 3 February 2009, in the *Maritime Delimitation in the Black Sea* case, the International Court of Justice generalized its three-step method by not only transposing the methodology based on the equidistance of first step from the case of opposite to adjacent coasts, but also by theorizing the legal process of delimitation[31]. The first stage is to establish a provisional equidistance line, the second to consider whether there are factors calling for the adjustment or shifting of this line in order to achieve an equitable result, and the third stage to proceed to a formal proportionality test[32].

In practice, it is generally the disparity of coastal lengths which justifies a correction, whereas the considerations which condition the exact location of the line and its equitable character are, on the contrary, elements specific to each case; as for the correction, it most often takes the form of a translation or a displacement of the line, or even, more rarely, of a sharing of the overlapping zone.

All these elements incline to apply the International Law of the Sea framework *to Eastern Mediterranean specificities*.

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[29] Kawano, M. (2013). 'International Courts and Tribunals and the Development of the Rules and Methods Concerning Maritime Delimitation', Journal of International Law and Diplomacy, 112(3), pp. 431-457; Ros, N. (2009). 'Les méthodes juridictionnelles de délimitation maritime' in Casado Raigón, R. and Cataldi, G. (Dir.) L'évolution et l'état actuel du droit international de la mer, Mélanges de droit de la mer offerts à Daniel Vignes. Bruxelles: Bruylant, pp. 797-827; Ros, N. (2013). 'El derecho jurisprudencial de la delimitación marítima', Revista Española de Derecho Internacional, LXV(2), pp. 71-115.

[30] Ros, N. (2023). 'Un demi-siècle de droit juridictionnel de la délimitation maritime' in Mélanges d'études de droit international et de droit interne en Hommage au Juge Tafsir M. Ndiaye. Leiden: Brill (forthcoming).

[31] For particularly critical analysis of maritime delimitation case-law, *cf.* Evans, M. D. (2016). 'Maritime Boundary Delimitation: Whatever next?' in Barrett, J. and Barnes, R. (Eds) Law of the Sea UNCLOS as a living Treaty. London: BIICL, pp. 41-79; Olorundami, F. (2017). 'Objectivity versus Subjectivity in the Context of the ICJ's Three-stage Methodology of Maritime Boundary Delimitation', The International Journal of Marine and Coastal Law, 32(1), pp. 36-53.

[32] ICJ, Judgment of 3 February 2009, Maritime Delimitation in the Black Sea (Romania v. Ukraine), Reports 2009, p. 44, § 118, p. 46, § 121 and 122. [Online]. Available at: https://www.icj-cij.org/public/files/case-related/132/132-20090203-JUD-01-00-EN.pdf (Accessed: 8 December 2022).

II – To Eastern Mediterranean specificities

The current development of EEZs in the Mediterranean Sea[33] was initiated with the emergence of *the East Mediterranean EEZs* (A), but the coastal States of the region have joined the global movement in an original way, and once again specific insofar as they have developed *EEZs as an energy strategy* (B).

A – The East Mediterranean EEZs

The evolution *from a Mediterranean exception* (1) *to a Mediterranean implementation* (2) originated in the East Mediterranean Sea, before being later adopted in the western basin.

1) From a Mediterranean exception

For a long time, there has been a Mediterranean exception with regard to the exclusive economic zone[34].Whereas all over the world coastal States made widespread proclamations on the oceans, even in other semi-enclosed seas, Mediterranean States have long adopted a reserved attitude towards EEZs in particular, and jurisdictionalization of the maritime spaces in general; not unrelated, the Mediterranean is one of the regions of the world where the process of maritime delimitation remains least advanced[35]…

The original reluctance of the Mediterranean States can be described as collective, since it was the result of their joint, almost intuitive but uncoordinated attitude. However, gradual evolutions, justified by the needs of the protection of the marine resources and environment, have nevertheless led to individual strategies of

[33] Ros, N. (2016). 'Les nouvelles zones économiques exclusives en mer Méditerranée' in Ros, N. and Galletti, F. (Dir.) Le droit de la mer face aux 'Méditerranées', Quelle contribution de la Méditerranée et des mers semi-fermées au développement du droit international de la mer? Cahiers de l'Association internationale du Droit de la Mer 5. Napoli: Editoriale Scientifica, pp. 7-33.

[34] Ros, N. (2011). 'La mer Méditerranée: cas particulier et modèle avancé de gestion de la haute mer', Annuaire du Droit de la Mer, Tome XVI, pp. 33-62, especially pp. 38-41; Ros, N. (2016). 'Régimes juridiques et gouvernance internationale de la mer Méditerranée' in Doumbé-Billé, S. and Thouvenin, J-M. (Coord.) Mélanges en l'honneur du Professeur Habib Slim, Ombres et lumières du droit international. Paris: Pedone, pp. 205-231, in particular pp. 209-212; Ros, N. (2019). 'La gouvernance de la mer Méditerranée' in Aurescu, B. et al. (Dir.) Actualité du droit des mers fermées et semi-fermées. Paris: Pedone 2019, pp. 109-138, especially pp. 124-131.

[35] Ros, N. (2021). 'La juridictionnalisation postule-t-elle nécessairement la délimitation? La mer Méditerranée, exemple et/ou contre-exemple' in Lanfranchi, M-P. and Mehdi, R. (Dir.) Actualités de la gouvernance internationale de la Mer Méditerranée. Paris: Pedone, pp. 53-69.

appropriation of the superjacent waters[36]. The first initiatives were based on the exclusive economic zone, but have remained at the stage of formal proclamations, in the southern and eastern parts of the Mediterranean (Morocco in 1981, Syria in 2003, Tunisia in 2005, Libya in 2009). Then, in the western part of the Mediterranean, Member States or future Member States of the European Union, have developed unconventional forms of jurisdictionalization of the waters superjacent to their continental shelf, proclaiming functional and fragmentary zones under national jurisdiction, which are dismemberments of the EEZ of which they mobilize only part of the competences[37]: fishing protection zone (Spain in 1997), ecological protection zone (France in 2003-2004, Slovenia in 2005, Italy in 2006), or mixed zone (Croatia in 2003-2004).

But a third and subsequent step led *to a Mediterranean implementation* of the EEZ concept.

2) To a Mediterranean implementation

Indeed, the current situation corresponds to a new evolution, with the implementation of effective but original EEZs[38]. While it has developed also in the Western Mediterranean, especially in the Gulf of Lions, with the proclamation of exclusive economic zones by France (2012) and Spain (2013), and more recently by Algeria (2018)[39] , this conventional movement was initiated first in the East Mediterranean at

[36] Andreone, G. (2004). 'Observations sur la « juridictionnalisation » de la mer Méditerranée', Annuaire du Droit de la Mer, Tome IX, pp. 7-25; Scovazzi, T. (2001). 'Les zones côtières en Méditerranée: évolution et confusion', Annuaire du Droit de la Mer, Tome VI, pp. 95-108; Treves, T. (2003). 'Les zones maritimes en Méditerranée: compatibilité et incompatibilité avec la Convention sur le droit de la mer de 1982', Revue de l'INDEMER, Les zones maritimes en Méditerranée, n° 6, pp. 19-35.

[37] Del Vecchio Capotosti, A. (2008). 'In Maiore Stat Minus: A Note on the EEZ and the Zones of Ecological Protection in the Mediterranean Sea', Ocean Development & International Law, 39(3), pp. 287-297; González Giménez, J. (2007). El mar Mediterráneo: régimen jurídico internacional. De las zonas de pesca a las zonas de protección. Barcelona: Atelier internacional Libros jurídicos; Sobrino Heredia, J. M. (2009). 'L'approche nationale en matière des zones maritimes en Méditerranée', Anuario da Facultade de Dereito da Universidade da Coruña, n° 13, pp. 753-771.

[38] Doussis, E. (2021). 'Le sort imparable des ZEE en Méditerranée: beaucoup de bruit pour rien?' in Lanfranchi, M-P. and Mehdi, R. (Dir.) Actualités de la gouvernance internationale de la Mer Méditerranée. Paris: Pedone 2021, pp. 53-69; Ros, N. (2016). 'Les nouvelles zones économiques exclusives en mer Méditerranée' in Ros, N. and Galletti, F. (Dir.) Le droit de la mer face aux 'Méditerranées', Quelle contribution de la Méditerranée et des mers semi-fermées au développement du droit international de la mer? Cahiers de l'Association internationale du Droit de la Mer 5. Napoli: Editoriale Scientifica, pp. 7-33.

[39] Algeria has established its EEZ under Presidential Decree No. 18-96 of March 21, 2018; the geographical coordinates can be consulted via https://www.algerie-eco.com/2018/04/01/la-zone-economique-exclusive-au-large-des-cotes-algeriennes-instituee-par-un-decret-presidentiel/; *cf.* Sacci, S.

the instigation of Cyprus, and particularly in its conventional relations with Egypt, Lebanon and Israel. Posterior developments in the basin obviously participate of the same logic, partially in the case of the Memorandum of Understanding Between Turkey and Libya signed in 2019 in order to determine the boundaries of the Continental Shelf and the Exclusive Economic Zone, or totally with the Agreement concluded in 2020 between Greece and Egypt on the Delimitation of the Exclusive Economic Zone.

In the geopolitical context of Eastern Mediterranean, in particular as regards energy, and as well as in fact in Western Mediterranean[40], the coastal States do not intend to manage fishing resources, develop marine renewable energies, or even protect and preserve the marine environment, according to Article 56 of UNCLOS. They all favor *EEZs as an energy strategy*, based on offshore activities.

B – EEZ as an energy strategy

Unlike the EEZ, a continental shelf does not need to be proclaimed and endorses the coastal State with sovereign rights providing all the necessary competences and powers to develop offshore energy activities. Notwithstanding, the Eastern Mediterranean coastal States have initiated a strategy based on *EEZ rather than continental shelf* (1) and *delimitation agreements rather than proclamations* (2).

1) EEZ rather than continental shelf

According to Article 77 § 1 of UNCLOS, '*the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources*'. Furthermore, it has also the exclusive right to construct and to authorize and regulate the construction, operation and use of *Artificial islands, installations and structures on the continental shelf* (Article 80), as well as '*to authorize and regulate drilling on the continental shelf for all purposes*' (Article 81). Thus, from the standpoint of International Law of the Sea, a coastal State does not need to claim an EEZ to exercise jurisdiction over the resources of the seabed and subsoil; its sovereign

(2022). 'La zone économique exclusive algérienne: des enjeux énergétiques et environnementaux aux risques de différends maritimes?', Questions of International Law, Zoom-out 88, pp. 7-24. [Online]. Available at: http://www.qil-qdi.org/wp-content/uploads/2022/01/02_Sassi-EEZ-Algeria-2022-FIN.pdf (Accessed: 8 December 2022).

[40] Ros, N. (2014). 'Au-delà de la borne 602: la frontière maritime entre l' Espagne et la France en mer Méditerranée', Journal du Droit international (Clunet), pp. 1099-1141.

rights over the continental shelf provide it with all the necessary competences and powers to develop offshore energy activities[41].

However, in the East Mediterranean, coastal States have initiated a strategy based on the legal concept of exclusive economic zone, but diverting it from its conventional objectives, not to establish fisheries management or environmental protection but to define and enhance the legal framework for the exploration and exploitation of the resources of the continental shelf. The reasons behind such a strategic choice are manifold and difficult to determine precisely. They are due to the political situation in the Levantine Basin, but also to the existence of sovereignty and delimitation conflicts. The legal position of Turkey, as regards the concept of continental shelf and the regime of islands, is obviously relevant *a contrario*, but it seems that some related elements are more circumstantial and specific to the first agreement, signed between Cyprus and Egypt, in order to justify a median line by reference to the distance inherent in the definition of the EEZ. Maybe other reasons are related to the additional competences offered by the EEZ in order to organize the exploitation, for example the transport of gas or oil, or a joint management of the transboundary resources. Actually, the offshore strategy based on the EEZ is also a way to affirm, or reaffirm, sovereign rights that are not only exclusive but also inherent to the concept of continental shelf[42].

In this perspective, Eastern Mediterranean States have also opted for *delimitation agreements rather than proclamations*.

2) Delimitation agreements rather than proclamations

In concrete terms, this appropriative approach was developed in the aftermath of the discovery of the first offshore oil and gas deposits in the region. The claims for EEZs therefore logically seem to be part of an economic sovereignty strategy, focused on offshore energy, and dedicated to the exploration and exploitation of the continental

[41] Ros, N. (2020). 'L'Etat côtier et son plateau continental: enjeux et perspectives dans le nouveau droit de la mer' in Enjeux et perspectives Droit international, droit de la mer, droits de l'homme Liber Amicorum En l'honneur de la professeure Haritini Dipla. Paris: Pedone, pp. 109-124.
[42] Article 77 § 3 of UNCLOS: '*The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation*'.

shelf resources[43]. As long as it is not legally necessary to proclaim an EEZ in order to claim rights and jurisdiction over the resources of the seabed and subsoil beyond 12 nautical miles, the strategy initiated by Cyprus must be understood and analyzed by reference to the desire of the coastal States to secure rights over areas subject to calls for tenders as well as over their potential resources, a strategy likely to reassure oil companies in a region whose stability is uncertain. By ensuring the sharing of offshore resources, and even their joint exploitation, between neighboring States, delimitation agreements fulfil this vital function better than individual proclamations, the legal scope of which could be potentially conflicting, even if two States in the region have at least theoretically subscribed to this logic, namely Syria with its legal act of November 2003 establishing a 200 nautical miles EEZ[44] and Greece with its law of August 2011 proclaiming the right to a potential EEZ[45].

Even if the jurisdictionalization does not necessarily presuppose the delimitation, *a fortiori* in the Mediterranean[46], the process is therefore carried out in a totally atypical legal form; taking into consideration that some of the delimitation agreements are contested by the other States of the region, and are even contradictory and incompatible, this is an essential component of the delimitation challenges in the East Mediterranean Sea and obviously supposes a case by case approach[47].

[43] Ros, N. (2014). 'Exploration, Exploitation and Protection of the Mediterranean Continental Shelf' in Cinelli, C. and Vásquez Gómez, E. M. (Eds) Regional Strategies to Maritime Security: A Comparative Perspective. MARSAFENET. Valencia: Tirant lo Blanch, pp. 101-132, particularly pp. 116-118. [Online]. Available at: https://www.isgi.cnr.it/wp-content/uploads/2017/10/MARSAFENET-Editorial.-Regional-Strategies-to-Maritime-Security.pdf (Accessed: 8 December 2022).

[44] Act No. 28 of 8 November 2003 determines and regulates all Syrian maritime zones, and Article 21 concerns the exclusive economic zone.

[45] Law No 4001/2011, published in the Official Gazette No 179 of 22 August 2011, amends to this effect Law No 2289/1995 on prospecting, exploration and exploitation of hydrocarbons.

[46] Ros, N. (2021). 'La juridictionnalisation postule-t-elle nécessairement la délimitation? La mer Méditerranée, exemple et/ou contre-exemple' in Lanfranchi, M-P. and Mehdi, R. (Dir.) Actualités de la gouvernance internationale de la Mer Méditerranée. Paris: Pedone, pp. 53-69.

[47] *Cf.* in this book, Ros, N. 'The jurisdictionalization of the East Mediterranean Sea'.

Non pactum pactum est, quod vobis lubet: Is the 2019 maritime deal between Turkey and the Government of National Accord of Libya an international agreement?

Ioannis Stribis[*]

In the early Roman comedy *Aulularia* by T. Maccius Plautus, the protagonist Euclio, remonstrating the good faith of his daughter's suitor Megadorus exclaims '*non pactum pactum est, quod vobis lubet*', no agreement is an agreement, as it suits you[1]. This expostulation of the old Athenian miser describes at best the Memorandum of Understanding signed on 27 November 2019 between Turkey and the Government of National Accord (GNA) of Libya 'on delimitation of the maritime jurisdiction areas in the Mediterranean' (Turkey-GNA MoU).

The said MoU aims at setting a boundary of the continental shelf and the Exclusive Economic Zone (EEZ) between Turkey and Libya. It sets an 18.6-nautical mile line in Eastern Mediterranean, between two points (A and B) designated by geographical coordinates (Article I(1)) and shown in a map attached as Annex 1. A second Annex contains the base points coordinates on the coasts of Turkey and of Libya that are used to the purported boundary.

1. A Fundamental Flaw: Legal non-existence of the Turkey-GNA MoU

The Turkey-GNA MoU has, since its conclusion, been vehemently opposed by Greece and Egypt, as the states on whose maritime jurisdiction the said MoU encroaches, several Eastern Mediterranean and Middle East countries, the EU, EU member states and the United States (US)[2]. The reactions were primarily triggered by the MoU's legal

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[1] Titus Maccius Plautus, *Aulularia*, 2, 2, 81, in Plautus, The Loeb Classical Library, Harvard University Press, Cambridge, Mass., 1966 (first print 1916), p. 236.

[2] Indicatively, European Council, Conclusions, Brussels, 12 December 2019, EUCO 29/19, p. 4, para. 19; Vice-President Borrell on behalf of the European Commission, Answer to Parliamentary question - E-004501/2019(ASW), European Parliament, 24.2.2020. [Online]. Available at: https://www.europarl.europa.eu/doceo/document/E-9-2019-004501-ASW_EN.html (Accessed: 25 May 2023); Report of the UN Secretary-General to the UN Security Council on UN Support Mission in Libya,

defects (*e.g.*, nullity, invalidity, inconsistence with international law, infringement on third states' rights). Though each of these irregularities, taken separately, is extremely serious and prevents the Turkey-GNA MoU from having legal effects, in reality the Turkey-GNA MoU is struck by the most radical flaw a purported international agreement can suffer, the lack of this very quality: it is not an agreement governed by international law, in the terms of the 1969 Vienna Convention on the Law of Treaties (*cf.* in particular Article 2(1)(g)).

1.1. Legal non-existence in international law

In general, an act is legally non-existent if it lacks certain elements which are essential to its existence as a legal act that can operate within the normative realm of international law[3]. Paul Guggenheim who has explored in depth the deficiencies of international legal acts in his masterful course in The Hague Academy of International Law[4], resumed the non-existence (or inexistence) of an international legal act as the situation where individuals or legal entities claim to have created a legal act, although the necessary elements of such an act are so lacking that, obviously, there can be no question of it[5]. In order to consider the purported act as legally non-existent, it must lack an 'essential

S/2020/41, 15 January 2020, p. 2; Ayfer Erdoğan, 'The Legal and Political Dimensions of the Eastern Mediterranean Crisis', *Insight Turkey*, Vol. 23, No. 1 (Winter 2021), pp. 77-98; Ángeles Jiménez García-Carriazo, 'The Maritime Delimitation between Turkey and the Libya's Government of National Accord: Another Concern for the European Union?', *Peace & Security – Paix et Sécurité Internationales*, No 9, 2021, pp. 16-20; Dore Gold, 'The Turkish-Libyan Maritime Agreement and the Struggle over the Mediterranean', Jerusalem Center for Public Affairs, December 31, 2019. [Online]. Available at: https://jcpa.org/video/the-turkish-libyan-maritime-agreement-and-the-struggle-over-the-mediterranean/ (Accessed: 20 February 2022); Mira Hamad, 'Chroniques des faits internationaux - Libye-Turquie, conclusion d'un accord de délimitation maritime entre le Gouvernement d'entente nationale libyen et la Turquie', *RGDIP*, 2020, pp. 127-132; Ioannis N. Grigoriadis, 'The Eastern Mediterranean as an Emerging Crisis Zone: Greece and Cyprus in a Volatile Regional Environment', in M. Tanchum (Ed.), *Eastern Mediterranean in Uncharted Waters: Perspectives on Emerging Geo-Political Realities*, Ankara, Konrad Adenauer Stiftung, 2020, pp. 38-46. [Online]. Available at: https://www.jstor.org/stable/resrep28863.7 (Accessed: 15 April 2023); Walid Fahmy, 'The conundrum of delimitation of maritime boundaries in the Eastern Mediterranean: The Greece-Egypt agreement in the face of Turkey-Libya agreement', *Pro Justitia*, Vol. 3, 2020. [Online]. Available at: https://ejournals.lib.auth.gr/projustitia (Accessed: 19 December 2021); Deutscher Bundestag, Wissenschaftliche Dienste, *Seevölkerrechtliche Bewertung der türkisch-libyschen Vereinbarung über die Abgrenzung ihrer maritimen Interessenssphären im östlichen Mittelmeer*, WD 2 – 3000 – 143/19, 17. Januar 2020, pp. 11-18.

[3] PCIJ, *Legal Status of Eastern Greenland*, Judgment, 5 April 1933, Series A/B, No. 53, Opinion diss. Anzilotti, p. 95, 'Un acte juridique n'est inexistant que s'il manque de quelques-uns des éléments qui lui sont essentiels'.

[4] Paul Guggenheim, 'La validité et la nullité des actes juridiques internationaux', *Collected courses of The Hague Academy of International Law* 1949-I, tom. 74, pp. 191-268.

[5] Paul Guggenheim, *Traité de Droit international public*, t.1, 2e éd., Genève, Librairie de l'Université, 1967, p. 183, 'Il y a 'acte inexistant' lorsque des individus ou des entités juridiques élèvent la prétention d'avoir créé un acte juridique, bien que les éléments d'un tel acte fassent à un tel point défaut que, de toute évidence, il ne saurait en être question.'

ingredient' of the legal act it was endeavoured to produce[6]. In such cases, there is an *attempt* to produce the act, the name of which it uses, more accurately it usurps, which creates nevertheless the *appearance* of the purported legal act[7].

As such, a legally non-existent act cannot be valid or invalid: these categories can apply only to legal acts that do not lack a - or certain - elements that are essential to their existence. A legally non-existent act is a legal nothingness[8]. The conditions of existence are not identical to the conditions of validity which apply to a legally existent act (for it is the possibility of nothingness that conditions the affirmation of being[9]).

The distinction between non-existence and nullity of a legal act (in the case below, an arbitral award) has been upheld by the ICJ in its judgment in the case *Arbitral Award of 31 July 1989*, in which it examined, first, the claim that the said arbitral award was 'inexistent' (for alleged lack of real majority who voted in favour of the award) and, second, that the award was 'absolutely null and void' (due to the alleged failure of the arbitral tribunal to fully respect the stipulations of the Arbitration Agreement, in particular to reply to the second question raised by that agreement) [10].

In this regard, it is of paramount importance to avoid the reasoning by terms that are used in domestic legal orders denoting concepts of validity or effectiveness of a legal act that are not clear or consistent. Thus, the deficiencies of legal acts in domestic law give rise to a terminological imbroglio, including the so-called legal doublets, *i.e.* archaic expressions, falsely tautological and in reality *antithetical*, yet largely in use, such as 'null and void' or '*nul et non avenu*', where either word alone would be sufficient for a particular flaw of the act envisaged[11]. Further, in common law systems

[6] Robert Y. Jennings, 'Nullity and Effectiveness in International Law', in D.W. Bowett e.a. (Eds), *Cambridge Essays in International Law: Essays in Honour of Lord McNair*, London - Dobbs Ferry, N.Y., Stevens & Sons - Oceana Publications, 1965, pp. 66-67.
[7] Cf. Vlad Constantinesco, "Note sur l'apparence et la réalité dans le droit de l'Union européenne", in A. Almășan, I. Vârsta, C. Zamșa (Eds), *In honorem Flavius Antoniu Baias: The appearance in law*, București, Editura Hamangiu, 2021, tom. III, pp. 624-634.
[8] Cf. ICJ, *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, 12 November 1991, Diss. Opinion Weeramantry, *ICJ Reports* 1991, p. 155, "The inexistent order is one which is no order at all. … In no circumstance can this so-called 'order' produce any legal consequences whatsoever. It was never a juristic act at all."
[9] See, from a philosophical point of view, J.-P. Sartre, *L'Etre et le Néant*, Paris, Gallimard, 1943, p. 40, "C'est la possibilité permanente du non-être, hors de nous et en nous, qui conditionne nos questions sur l'être."
[10] ICJ, *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment, 12 November 1991, *ICJ Reports* 1991, pp. 53ff.
[11] On the so-called legal doublets, cf. Lenné Eidson Espenschied, *Contract Drafting: Powerful Prose in Transactional Practice*, Chicago, American Bar Association, 2010, pp. 164-165.

are being used terms like *ipso facto* void, void *ab initio*, nullity *ab initio*, absolutely null, voidable; in continental, civil, law systems the array of terms is equally diverse[12]: *nullité absolue*, *nullité de plein droit*, *nullité manifeste*, *nullité radicale*, *annulabilité*; *Nicht-Existenz*, *Nichtigkeit*, *Nullität*, *Anfechtbarkeit*, to limit this indicative assortment in French and German speaking municipal legal orders.

The above terms designate vastly different legal situations[13] and are eminently confusing, so that the attempt to draw analogies useful and practicable in public international law does not lead to workable results[14]. The reasoning with the above categories of municipal law and their application to acts pertaining to relations regulated by international law, not only is it not accurate, but it is also unhelpful. With regard to international law in particular, the lack of uniform nomenclature for the deficiencies of legal acts, due to the fluctuation and indetermination of the vocabulary, has been underscored already during the works of the International Law Commission on the law of the treaties. On this occasion, the desire to achieve (and use) uniform terminology to designate the various situations of flaws of international acts has been expressed[15]. Correctly thus, the 1969 Vienna Convention on the Law of Treaties (VCLT) avoids deliberately the confusion from the import of domestic law categories and uses the *single* term 'invalidity' (Articles 69ff) ('*nullité*', in French, '*nulidad*', in Spanish), as the generic term for the various legal defects that impair an international agreement. The adoption however of the VCLT and the wise choice by its drafters of a

[12] For a quick comparison of various terms in common law and in civil (continental) law, see ICJ, *Arbitral Award of 31 July 1989*, Diss. Opinion Weeramantry, *supra* fn. 8, pp. 153-156. A specific study of comparative law would be desirable in order to fully reveal the existing differences among the various legal orders and the terms used within each one of them.

[13] Jean Chevallier, 'Inexistence, nullité et annulabilité des actes juridiques: Rapport général', *Travaux de l'Association H. Capitant*, t. XIV, Paris, Dalloz, 1965, pp. 513-520; P. Weil, 'Une résurrection: la théorie de l'inexistence en droit administratif', *Dalloz*, 1958, pp. 49-56; Maurice Houlard, *La nature juridique des traités internationaux et son application aux théories de la nullité, de la caducité et de la révision des traités*, Thèse de Doctorat, Faculté de Droit de Bordeaux, 1936, pp. 96ff.

[14] Antonello Tancredi, 'Nullité absolue des traités et inapplication de la Convention de Vienne', in Thierry Garcia, Ludovic Chan-Tung (dir.), *La Convention de Vienne sur le droit des traités: Bilan et perspectives 50 ans après son adoption*, Paris, Pédone, 2019, pp. 77-101; Alfred Verdross, "Anfechtbare und nichtige Staatsverträge", *Zeitschrift für öffentliches Recht*, 1935, pp. 289-299; Walter Pasching, "Allgemeine Rechtsgrundsätze über die Elemente des völkerrechtlichen Vertrages", *Zeitschrift für öffentliches Recht* 1936, pp. 26-61; J. H. W. Verzijl, 'La validité et la nullité des actes juridiques internationaux', *Revue de droit international*, 1935, pp. 284-339.

[15] Sweden, Royal Ministry for Foreign Affairs, Letter of 2 April 1965, *Yearbook of the International Law Commission*, 1966, Vol. II, p. 339.

general term with specific contents in international law, minimized but did not eradicate the confusion in the language of international law[16].

Having in mind the above terminological vagueness, developed primarily with respect to international agreements, non-existence is a flaw that can suffer not only a concerted act, but also any type of act that purports to deploy effects in the international society (unilateral acts, resolutions of international organizations, arbitral or judicial awards)[17].

Non-existence can be due to grounds relating to the capacity of the person(s) who profess to be the authors of a legal act or to the nature or properties of the object the purported legal act seeks to regulate. The latter pertain to acts envisaging to regulate a situation that cannot be apprehended in legal terms, such as a delimitation treaty between states that are not limitrophe or the regulation of navigation in a river that has dried out (non-existence *ratione materiae*). The former censures acts carried out by individuals on behalf of a corporate entity lacking the status of subject of international law or the capacity to conclude international agreements (i.e. treaties governed by international law); or by individuals who do not have the capacity to represent an entity having international legal personality (non-existence *ratione personae*).

1.1.1. Legal non-existence *ratione personae*

In this respect, a necessary condition for the existence of an international legal act performed by a person or an entity claiming to be the government of a state is the effective control of the territory and the population of the said state[18].

[16] *E.g.*, UN General Assembly Resolution 31/6, *Policies of apartheid of the Government of South Africa, A: The so-called independent Transkei and other bantustans*, 26 October 1976, endorsed by UN Security Council Resolution 402(1976), 22 December 1976, para. 2, declared the declaration of 'independence' of the Transkei '*invalid*', while the French and Spanish texts of the resolution use, respectively, the terms '*nulle et non avenue'* et '*invalida*'.

[17] Georges Morange, 'Nullité et inexistence en droit international public', in *La technique et les principes de droit public - Études en l'honneur G. Scelle*, Paris, LGDJ, 1950, t. II, pp. 900-901; Laurent Trigeaud, *La nullité de l'acte juridictionnel en droit international public*, Limal, Anthemis, 2011; Arpad Balasko, *Causes de nullité de la sentence arbitrale en droit international public*, Paris, Pédone, 1938.

[18] James Crawford, 'State Practice and International Law in relation to Secession', *BYBIL*, 1998, pp. 86-87, also 105, 110.

1.1.1.1. Requirement of effective control

The effective control is an aspect of the general concept of effectiveness in the international legal order. The concept of effectiveness - alternatively effectivity or also *effectivité*[19], as the French term is widely used in English texts, in particular by the ICJ[20] – has wider contents encompassing not only the effective control in the field of the legal theory of state (the sense above) but also the effective application of international legal rules in general, and operates in many fields of international law, *inter alia* state sovereignty, acquisition of territory, maritime blockade, international protection of human rights[21]. In its more general understanding effectiveness is the means by which consequences in law are drawn by the facts[22], in 'an inward process whereby facts are integrated in rules, institutions, and narratives as a condition of the operation of law and thus a condition of valid legal reasoning'[23].

In general, the principle of effectiveness lies at the core of the interrelation between facts and rules in the international legal order: it is, in essence, the connecting element between the two[24]. This general principle commands that the actual situation (*e.g.*, the actual possession of power) be taken into account as an inherent characteristic of an international legal norm or an international legal institute. This means that international law is closely linked to factual circumstances and sanctions them legally[25].

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[19] Jean Touscoz, *Le principe d'effectivité dans l'ordre international*, Paris, LGDJ, 1964; Malcolm N. Shaw, *International Law*, 8th ed., Cambridge, Cambridge Univ. Press, 2017, pp. 379-382, 394-395; Giuseppe Ottolenghi, *Il principio di effettività e la sua funzione nell'ordinamento internazionale*, Roma, Athenaeum, 1936.

[20] See ICJ (*Ad hoc* Chamber), *Frontier Dispute (Burkina Faso/Mali)*, Judgment, 22 December 1986, *ICJ Rep.*, 1986, pp. 586-587.

[21] Among many, see Touscoz, *Le principe d'effectivité*, *supra* fn 19; Heike Krieger, *Das Effektivitätsprinzip im Völkerrecht*, Berlin, Duncker und Humblot, 2000; Charles De Visscher, 'Observations sur l'effectivité en droit international public', *RGDIP*, 1958, pp. 601-609.

[22] Alf Ross, *A Textbook of International Law: General Part*, London: Longmans, 1947, p. 138 (Alf Ross, *Lærebog i Folkeret*, København, Forlag Busck 1976 (5th ed.), p. 183); Stephan Verosta, 'Rechtsgeschicthe und Reine Rechtslehre, zugleich ein Beitrag zum Problem des Beziehung zwischen Faktizität und Normativität', in S. Engel, R. A. Métall (Eds), *Law, State, and International Legal Order. Essays in Honor of H. Kelsen*, Knoxville, University of Tennessee Press, 1964, pp. 348-359; Cesare Pinelli, 'Fonti-fatto e fatti normativi *extra ordinem*', *Rivista italiana per le Scienze Giuridiche*, 2010, pp. 252-254.

[23] Jean d'Aspremont, ' "Effectivity" in International Law: Self-Empowerment against Epistemological Claustrophobia', *AJIL Unbound*, 2014-15, Vol. 108, p. 103; see James R. Crawford, *Brownlie's Principles of Public International Law*, Oxford, Oxford Univ. Press, 2012 (8th ed.), p. 49; Tomaso Perassi, 'Teoria dommatica delle fonti di norme giuridiche in diritto internazionale', *Rivista di diritto internazionale*, 1917, pp. 196-211.

[24] See *supra* fn 22.

[25] *Cf.* "die normative Kraft des Faktischen" of Georg Jellinek (*ex factis ius oritur*); for a modern appaisal of the construction of Jellinek, Andreas Anter (Hrgb.), *Die normative Kraft des Faktischen: Das Staatsverständnis Georg Jellineks*, Baden-Baden, Nomos, 2020, 2nd ed. *Cf.* Hans Kelsen, 'Die

In a society like the international one, which is characterized by the absence of a central authority and, as a result, by the spillover of power, effectiveness is the nervous system that sets the legal order in motion. Without effectiveness, international law cannot produce actual results. The vindication (and enforcement, in principle, through peaceful means) of rights in the international legal order as well as the implementation of obligations towards fellow international actors rests with individual international actors, in the first place states. This decentralized structure of international law requires a certain power base in order to be relevant in the society it aims to regulate[26]. Therefore, the effectiveness of international legal rules on states (as well as other international actors), in the above sense (actual power base), is required in order international law to perform satisfactorily as a factor of order in international relations.

In the Westphalian political order, state is a fact, before being an institution[27]. The factual basis is necessary for all the constitutive elements of the state, as an international legal subject, *i.e.*, territory, population and government. With regard to the latter, the factual basis is the effective control over the territory and the population that the institutional apparatus, claiming to be the government of a given state, actually exercises. Therefore, the role of the effective control of a government is of critical importance in the theory of state and its functions under international - as well as public – law[28]. The effective control over a territory and the population residing in it, not only is a necessary[29] requirement, under international law, for the existence of a government that can bind at the international level a state but is an indispensable political principle

Auffassung der Naturrechtslehre', *Zeitschrift für öffentliches Recht*, 1964, p. 153; Anthony Aust, *Handbook of International Law*, Cambridge, Cambridge Univ. Press, 2010 (2nd ed.), p. 25; Janis Grzybowski, 'The paradox of state identification: *de facto* states, recognition, and the (re-)production of the international', *International Theory*, 2019, pp. 241-263.

[26] Hersch Lauterpacht, *The Development of International Law by the International Court*, London, Stevens & Sons, Praeger, 1958, pp. 227ff; Anne Peters, Anna Petrig, *Völkerrecht, Allgemeiner Teil*, Zürich, Schulthess, 2020 (5. Aufl.), p. 103; Crawford, *Brownlie's Principles of Public International Law*, *supra* fn 23, p. 594.

[27] Ross, *A Textbook of International Law*, *supra* fn 22, p. 137; Jean Combacau, Serge Sur, *Droit international public*, Paris, Montchestien, 2001 (5e éd.), pp. 275-276.

[28] Peters, Petrig, *Völkerrecht, supra* fn 26, p. 103, "Ein Staat im Sinne des Völkerrechts liegt nur vor, wenn (u.a.) eine "effektive" Hoheitsgewalt besteht."; Simone Dreyfus, *Droit des relations internationales*, 3e éd., Paris, Cujas, 1987, p. 77.

[29] Though not in all cases sufficient.

of the nature of the state in terms of general political theory[30] (and practice)[31]. It allows the correlation between facts and law, between enactment of law and compliance with the law that lies at the heart of the principle of effectiveness, as exposed. Consequently, effective government means a power apparatus possessing the necessary control on the ground and factual authority to direct a state, to express the will of that state and represent it internationally[32]. In more practical terms, the requirement of an effective government refers to the existence of public power agency with the actual operational capacity to exercise effective control over the territory and the population of the state concerned and to enforce its authority with stability and long-term prospects. This is the criterion that distinguishes real factual power as opposed to powerless or even virtual institutions[33].

The international practice has time and again confirmed the above general principles in concrete situations.

The dispute between Sweden and Finland over the Aaland islands after the 1st World War provided the occasion to highlight the requirement of the effective control in order to ascertain the existence of a government that could bind a state internationally. The dispute arose at the time of the transition of Finland from a grand duchy of the Russian Empire to an independent state (1917-1920), which was marked by a civil war between the authorities of 'White Finland' and of 'Red Finland' (Finnish

[30] See Montesquieu, *L'Esprit des lois*, 1748, chapters IX-XIII. Comp. *Island of Palmas* (Netherlands, USA), Arbitral Award, 4 April 1928, *Reports of International Arbitral* Awards, vol. II, p. 840; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge, Cambridge Univ. Press, 2004, pp. 179, 182.

[31] ICJ, *Western Sahara*, Advisory Opinion, 16 October 1975, *ICJ Rep.*, 1975, p. 63, para. 149; Ian Brownlie, *Principles of International Law*, Oxford, OUP, 2008, 7th ed., p. 72; Patrick Daillier, Alain Pellet, *Droit international public*, Paris, LGDJ, 2002 7e ed., pp. 557-558; Shaw, *International Law*, *supra* fn 19, pp. 160, 162; Olivia Danic, "L'évolution de la pratique française en matière de reconnaissance de gouvernement", *AFDI*, 2013, pp. 511-534; Geoffrey Marston (Ed.), "UK Materials on International Law", *BYBIL*, 1980, pp. 367-368; John Snetsinger, *Truman, the Jewish Vote and the Creation of Israel*, Stanford, Hoover Press, 1974, pp. 108-109; Claude Lazarus, "Le statut des mouvements de libération nationale à l'Organisation des Nations Unies", *AFDI*, 1974, pp. 197-198.

[32] James Crawford, *The Creation of States in International Law*, Oxford, Oxford Univ. Press, 2006 (2nd ed.), pp. 55-56, 128-130; Jan Wouters, Cedric Ryngaert, Tom Ruys, Geert De Baere, *International Law: A European Perspective*, Oxford: Hart, 2019, pp. 311-313; Aust, *Handbook of International Law*, *supra* fn 25, pp. 16, 33; G.E. do Nascimento e Silva, Hildebrando Accioly, *Manual de direito internacional público*, São Paolo, Saraiva, 2002 (15º ed.), p. 103; David Raic, *Statehood and the Law of Self-Determination*, The Hague, Kluwer, 2002, pp. 407-409; Nguyen Quoc Dihn, Patrick Dailler, Alain Pellet, *Droit international public*, Paris, LGDJ, 1994 (5e éd.), pp. 407-408. Comp. *Island of Palmas*, *supra* fn 30, pp. 839, 840, 846, 'actual display of State activities, such as belongs only to the territorial sovereign.'

[33] Anne Peters, 'Statehood after 1989: "Effectivités" between Legality and Virtuality', in J. Crawford, S. Nouwen (Eds), *Select Proceedings of the European Society of International Law*, vol. 3, Oxford, Hart, 2012, pp. 171-183; Combacau, Sur, *Droit international public*, *supra* fn 27, pp. 279-280.

Socialist Workers' Republic) and the intervention by foreign powers, in particular, Britain, Soviet state and Germany[34].

To avoid a new armed conflict in the immediate aftermath of the 1st World War, the British Government, acting under Article 11 of the Covenant of the League of Nations, drew the attention of the League Council to the Aaland Islands case. The Council took up the dispute and appointed a tripartite Commission of Jurists to prepare a report and recommendation on the issue[35]. After fact-finding and study of the relevant issues, the Commission of Jurists noted the disorder existing in Finland from 1917 to 1920 and observed: 'It is therefore difficult to say at what exact date the Finnish Republic in the legal sense of the term actually became a definitely constituted sovereign State. *This certainly did not take place until a stable political organization had been created, and until the public authorities had become strong enough to assert themselves throughout the territories of the State without the assistance of foreign troops*[36].'

In the framework of the UN the question of effective control of a government was raised incidentally in the question of Congo, from 1960 to 1962[37], and directly with regard to Angola in the period 1975-1976. In the wake of the regime change in Portugal in 1974, there remained a deep division in the Angolan nationalist movement. To overcome the split between the fractions, a transitional government was formed (Alvor Agreement, Alvor, Portugal, 10 January 1975). This power scheme, in which participated the three major independentist forces in the country (MPLA, UNITA, FNLA), collapsed within few days after its creation leading to a bloody civil war among Angolan rival power settings, claiming to be the government of Angola, and the

[34] See Tuomas Tepora, Aapo Roselius (Eds), *The Finnish Civil War 1918: History, Memory, Legacy*, Leiden, Brill, 2014; Pertti Haapala, Marko Tikka, 'Revolution, Civil War and Terror in Finland in 1918', in Robert Gerwarth, John Horne (Eds), *War in Peace: Paramilitary Violence in Europe after the Great War*, Oxford: Oxford University Press, 2013, pp. 72-84.
[35] James Barros, *The Aland Islands Question: Its Settlement by the League of Nations*, New Haven, Yale University Press, 1968; Norman J. Padelford, K. Gosta A. Andersson, 'The Aaland Islands Question', *AJIL*, 1939, pp. 465-487
[36] Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question, *LoN Official Journal, Special Supplement*, No. 3, October, 1920, p. 9.
[37] Ioannis Stribis, *La manifestation des lacunes en droit international*, Athènes, Académie d'Athènes, 2009, pp. 331-336.

intervention of a number of foreign powers (US, URSS, Cuba, regional African states, including South Africa) in support of the warring parties[38].

When the government established in the Angolan capital Luanda applied for membership in the UN[39], the US objected to the adhesion of that country[40] due to the lack of effective control by the applying authority over the territory and population of Angola: 'The Angolan Government exercise[d] only tenuous control over much of Angola that still resist[ed] domination by the regime in Luanda. The fact that that regime depend[ed] heavily on Cuban forces for the maintenance of its security cast[] doubt on the degree of popular support which it c[ould] command within the country[41].' Angola did not become a UN member until the end of 1976[42], after the Luanda government had expanded its effective control over the greater part of Angola[43].

1.1.1.2. Factual situation in Libya

In accordance with the above general understanding of the effective control requirement, the competence and capacity of an organ to conclude international treaties on behalf of a state, it claims it represents at the international plane, is decided in international law by virtue of the maxim of effectiveness[44].

The VCLT, in its article (2)(1)(g) provides that 'party [to an international agreement] means a State which has consented to be bound by the treaty and for which the treaty is in force.' The International Law Commission distinguished the case of invalidity of the consent from the occurrence where a person lacks authority to represent the State. In the latter occurrence 'the true legal position was that his act was not

[38] Fernando Andresen Guimarães, *The Origins of the Angolan Civil War*, London - New York, Macmillan - St. Martin's Press, 1998; Victoria Brittain, *Morte da Dignidade: A guera em Angola*, Lisboa, Dom Quixote, 1996; Franz-Wilhelm Heimer, *Der Entkolonisierungskonflikt in Angola*, München, Weltforum Verlag, 1979; Carlos Alberto de Jesus Alves, *Política Externa Angolana em Tempo de Guerra e Paz: Colonialismo e Pós-Colonialismo*, Tese de Doutoramento, Universidade de Coimbra, 2013.
[39] Application of the People's Republic of Angola for admission to membership in the United Nations, UN Doc. A/31/85, S/12064, 30 April 1976.
[40] At a first time the US vetoed the application (23 June 1976) while a few months it abstained (22 November 1976).
[41] UN Security Council, *Official Records*, Thirty-First Year, 1974th Meeting, 22 November 1976, UN Doc S/PV. 1974, p. 20, para. 205.
[42] UN GA Resolution 31/44, 1 December 1976, Admission of the People's Republic of Angola to membership in the United Nations. A vote at the UN General Assembly was necessary, instead of the usual practice of acceptance by acclamation.
[43] Zoraide Portela Silva, 'Guerra Colonial e Independência de Angola: O fim da guerra não é o fim da guerra', *Transversos: Revista de História* (Rio de Janeiro), 2016, pp. 154-184; Heimer, *Der Entkolonisierungskonflikt in Angola*, *supra* fn 38.
[44] Ross, *A Textbook of International Law*, *supra* fn 22, p. 199.

attributable to the State and that, in consequence, *there was no question of any consent having been expressed by it*[45].'

Applying the above (legal and political) premises to the situation in Libya in the critical period during which the Turkey-GNA MoU has been signed, GNA lacked the effective control required in order to possess the legal authority to represent the state of Libya and to consent to conclude international agreements binding upon that state.

The civil war ravaging Libya since 2011 (when started the revolt that ousted Gaddafi and terminated his regime), has caused institutional chaos in that country, with competitive claims by different warring parties, shifting alliances and exercise of power only in parts of the country's territory[46]. Repeated government meltdowns would not allow any generalizations, but, since October 2014, the country has been divided in East (Cyrenaica) and West (Tripolitania) [47], while large areas in the south remain under the control of local tribes' warlords, and clashes between Tabu and Tuareg militias in the south -however intermittent- are nonetheless ongoing[48].

In this extremely complicated political and military landscape in Libya, two competing power apparatuses have emerged creating, at least in the larger part of the country, especially in the northern part thereof, a phenomenon of persisting 'bicephalia' that has not been able to be resolved, internally (Libyan-led process) or through external mediation. As a result, Libya has been living in a civil war climate without unitary or otherwise stable political order since 2011. The practical outcome of this deplorable situation of a 'multi-governed' Libya[49]. At the same time, third-country fighters are

[45] International Law Commission, *Report on the work of its eighteenth session*, *Yearbook of the International Law Commission*, 1966, Vol. II, p. 193, commentary under then draft Article 7 of the Draft Articles on the Law of Treaties (current Article 8 VCLT), italics added.
[46] The literature, both in the press and in academia/analytical community, is extremely vast; for a general account see the Reports of the UN Secretary-General on the UN Support Mission in Libya (UNSMIL) and other aspects of the situation in Libya from 2011 onwards. The UN Secretary-General's Reports that are more relevant for the in-depth description of the political, military, economic and humanitarian situation in Libya are: UN Doc. S/2018/780, 24-8-2018; S/2019/19, 7-1-2019; S/2019/682, 26-8-2019; S/2020/41, 15-1-2020; S/2020/360, 5-5-2020.
[47] Ben Smith, *Libya: deepening conflict*, UK House of Commons Standard Note: SNIA/7023, London, House of Commons Library, 2014.
[48] Tim Eaton, Abdul Rahman Alageli, Emadeddin Badi, Mohamed Eljarh, Valerie Stocker, *The Development of Libyan Armed Groups Since 2014: Community Dynamics and Economic Interests*, London, Chatham House-The Royal Institute of International Affairs, 2020, pp. 35-50; Abu Al-Qasem Ali Al-Rabo, 'Libyan tribes: Part of the problem or a solution?', *Middle East Monitor*, 8 August 2018. [Online]. Available at: https://www.middleeastmonitor.com/20180808-libyan-tribes-part-of-the-problem-or-a-solution/ (Accessed: 10 August 2021).
[49] See fn 46.

deployed and operate all over the country. The subsequent continuous divisions of local potentates and warlords, local and foreign, seem to be the only constant in this volatile, conflictual environment. In this zero-sum game, since 2011 onwards Libya is a deeply divided area where the involved actors (Libyan and international) pursue their goals by whatever means have at their disposal[50]. This was valid, in particular, at the critical point of time of the conclusion of the Turkey-GNA MoU (height of the third Libyan civil war), a circumstance crucial for the legal existence of the Turkey-GNA MoU as an agreement governed by international law.

Recurrent attempts to bridge the sharp divisions among the waring Libyan factions in order to set aside the institutional chaos and obtain deconfliction have been unsuccessful. UN has undertaken multiple efforts in this direction. It has attempted to facilitate a framework of negotiations called Libyan Political Dialogue. This process resulted in the signing, by a majority of the Libyan participants in the UN-facilitated negotiation, of the Libyan Political Agreement (on 17 December 2015 Skhirat, Morocco). This Agreement provided for the establishment of a Libyan Presidency Council and the subsequent creation of 'a Government of National Accord consisting of the Presidency Council and Cabinet supported by the other institutions of state including the House of Representatives and State Council[51].' However, from the outset the 2015 Shkirat agreement was not adhered to by all Libyan factions and did not represent a comprehensive Libyan national consensus[52]. This critical impediment did not prevent the formation of the GNA, ignoring the objections of the authorities of Eastern Libya - or hoping that they will be eventually set aside.

Yet, this hope did not materialize, and, despite considerable international support, the Tripoli-based GNA failed to establish itself as a legitimate government in the interior[53]. A parallel government was established in Eastern Libya, in Bayda. Due

[50] Jesús A. Núñez Villaverde, 'Libya is sinking even further into the abyss', 13 December 2017. [Online]. Available at: https://www.realinstitutoelcano.org/en/blog/libya-is-sinking-even-further-into-the-abyss/; Ali Bensaâd, 'Libye, anatomie d'un chaos', *Hérodote* 2021/3 (N° 182), pp. 7-32.
[51] UN Security Council Resolution 2259 of 23 December 2015, S/RES/2259 (2015), paras 1, 2.
[52] *Ibid*., fifth preambular paragraph; Letter by Aguila Saleh Gouider President of the House of Representatives and Nouri Ali Abu-Sahmain President of the General National Congress, 22 December 2015, annexed to the letter dated 23 December 2015 from the UK Permanent Representative to the UN addressed to the President of the Security Council, UN Doc. S/2015/1018, 23 December 2015.
[53] Mohamed Eljarh, 'The Libyan Crisis: Internal Barriers to Conflict Resolution and the Role of Multilateral Cooperation', in Andrea Dessì, Ettore Greco (Eds), *The Search for Stability in Libya. OSCE's Role between Internal Obstacles and External Challenges*, Roma, Istituto Affari Internazionali, 2018, pp. 47-65; Peter Bartu, 'The Corridor of Uncertainty: The National Transitional Council's Battle

to this rivalry, the competing power settings exercise control in distinct parts of the Libyan territory. The absence of internal legitimacy and the resulting lack of effective control - prerequisites for reaching minimum consensus on the Libyan political agenda - brought to the fore the inability to agree on the amendment of the 2015 Political Agreement, which has been overtaken by developments on the ground and on the international plane, and eventually became obsolete[54].

The Turkey-GNA MoU was signed at a time of intensified conflicts ('the third Libyan civil war' from April 2019 to October 2020) [55], when the major warring parties were the GNA on the one hand, and the House of Representatives of Libya and its ally the Libyan National Army (LNA) or Libyan Arab Armed Forces (LAAF) on the other. There is no doubt that, at the time, none of the warring parties exercised effective, operational control over the Libyan territory as a whole[56]. Not a single state institution, including military and security bodies, was unified. Seen thus from the 'effective control' perspective, at the time when the MoU was signed, neither the GNA nor the House of Representatives and the LNA (or any other *de facto* authority in Libya) satisfied the effectiveness criterion (effective control) in order to qualify as the government of the state of Libya, in accordance with international law. The Turkey-GNA MoU was signed by an authority that lacked the legal capacity to conclude an agreement, binding for the state of Libya, in accordance with international law. For all purposes, GNA was a non-state actor (or at most a para-state) aspiring to become the government of the State of Libya.

for Legitimacy and Recognition', in Peter Cole, Brian McQuinn (Eds), *The Libyan Revolution and its Aftermath*, Oxford, Oxford Univ. Press, 2015, pp. 31-54.

[54] The latest developments in Libya, at the moment this paper was being completed, confirm the persisting political impasse and the division of most of the country between a Tripoli-based Government of National Unity (GNU, led by Prime Minister Dbeibah), backed by UN organs, and an eastern-based Government of National Stability (GNS, led by Prime Minister Hamad) aligned with the House of Representatives (HoR) and the LNA (under the command of General Khalifa), Report of the Secretary-General on UNSMIL, 7 December 2023, UN Doc. S/2023/967.

[55] Since 2011 there have been three periods of heavy armed violence among Libyan factions, February-October 2011, May 2014-December 2015 and April 2019-October 2020; see Wolfram Lacher, *Libya's Fragmentation: Structure and Process in Violent Conflict*, London, Tauris, 2020.

[56] See the statements of UN SC members and the of Mr. Ghassan Salamé, Special Representative of the Secretary-General and Head of the United Nations Support Mission in Libya at the SC meeting ten days before the signature of the Turkey-GNA MoU, Security Council, Seventy-fourth year, 8667th meeting, 18 November 2019, UN Doc. S/PV.8667, *passim*.

1.1.2. Intervention by third parties - Lack of independence

In addition to the lack of effective control of any Libyan power apparatus over the territory and the population of the State of Libya discussed *supra*, the independence of the parties in the armed conflict(s) at the critical time of the signing of the Turkey-GNA MoU (actually until the time these lines are drawn) is anything but beyond question, since they were heavily dependent on external - political and military - support, thus compromising another prerequisite for their effectiveness under international law, *i.e.*, independence from other states.

Since 2011, there has been in Libya, no government accepted and obeyed by the people of Libya universally or by a significant majority. Seizure of power by local groups has been supported or even fuelled by external actors[57], pursuing their own agendas; it is not therefore a surprise that these power settings failed to win the hearts and the minds of the Libyan people and to appear legitimate in their eyes.

The relationship between the legitimacy and effectiveness of the various aspiring Libyan governments is a complex one[58], to which we shall return *infra*. With regard specifically to the independence of GNA from foreign actors, it is crucial to underscore that on the same day and place (Istanbul, 27 November 2019) the MoU on maritime delimitation was signed, GNA and Turkey signed a 'Memorandum of Understanding on Security and Military Cooperation', aimed at officialising the military support by Turkey to the GNA in the Libyan civil war, including the deployment of Turkish military and security personnel[59]. This synchronism was not a

[57] Lisa Anderson, ' "They Defeated Us All": International Interests, Local Politics, and Contested Sovereignty in Libya', *Middle East Journal*, 2017, pp. 229-247; Robert Charvin, 'La question libyenne: ingérences, chaos et décomposition du droit international', *RGDIP*, 2019, pp. 593-617; Yuri Barmin, 'Russia in Libya: From Authoritarian Stability to Consensus Settlement', Alsharq Forum Expert Brief, August 2017. [Online]. Available at: http://www.sharqforum.org/wp-content/uploads/dlm_uploads/2017/08/Russia-in-Lybia-01.pdf (Accessed: 17 December 2022); Ali Bakir, 'The UAE's Disruptive Policy in Libya', *Insight Turkey*, 2020, pp. 157-178.

[58] For a general overview of the issue, see Christian Tomuschat, 'Effectiveness and Legitimacy in International Law - Concluding Observations', *ZaöRV*, 2017, pp. 309-320.

[59] International Crisis Group, 'Turkey Wades into Libya's Troubled Waters', Europe Report nº 257, 20 April 2020. [Online]. Available at: https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/257-turkey-wades-libyas-troubled-waters (Accessed: 2 September 2023); Galip Dalay, 'Turkey's Libya Policy: New Flexibility, New Goals', Italian Institute for International Political Studies, 27 May 2021. [Online]. Available at: https://www.ispionline.it/en/pubblicazione/turkeys-libya-policy-new-flexibility-new-goals-30609 (Accessed: 17 November 2023); Emrah Kekilli, Bilgehan Öztürk, 'Turkey's Position in the Libyan Crisis', *Insight Turkey*, 2020, pp. 53-62; Tarek Megerisi, 'It's Turkey's Libya Now', European Council on Foreign Relations, 20 May 2020. [Online]. Available at: https://ecfr.eu/article/commentary_its_turkeys_libya_now/ (Accessed: 9 October 2023).

coincidence but a testimony to the fact that the maritime delimitation provided for by the Turkey-GNA MoU was obtained in exchange for Turkish military support[60] in a period when the Eastern Libyan forces (LNA/LAAF) were gaining ground near Tripoli and seriously threatened the GNA's foothold even in Western Libya. The political importance of this dual move has been highlighted by Turkey itself: in a pamphlet published by the Turkish Presidency's Directorate of Communications, the two Turkey-GNA MoU are actually linked and qualified as a 'Strategic step in the Eastern Mediterranean Equation[61].'

Foreign control overbearing the decision-making of the entity concerned on a wide range of matters of high policy is a proof of lack of effectiveness of the given entity[62]. There is abundant international practice in this respect: suffice here to cite the Manchukuo puppet state, following the Japanese invasion of China[63], the *bantoustans*, established by South Africa during the *apartheid* period[64] or the presence of Cuban

[60] Alfonso Casani Herranz, Irene Fernández-Molina, 'Repertorios de prácticas en la política turca hacia el conflicto de Libia y la intervención militar de 2020', *Revista de Estudios Internacionales Mediterráneos*, 2022, pp. 87-113; Hamad, 'Libye-Turquie, conclusion d'un accord de délimitation maritime entre le Gouvernement d'entente nationale libyen et la Turquie', *supra* fn 2, p. 131; Gökhan Tekir, 'Russian-Turkish Involvement in the Civil War in Libya', *Türkiye Rusya Araştırmaları Dergisi*, 2020, pp. 190-215.

[61] *Strategic Step in the Eastern Mediterranean Equation: Memorandum Of Understanding Between Türkiye & Libya*, Publications by Presidency's Directorate of Communications, Istanbul, 2022, p. 80; comp. Zekiye Nazlı Kansu, 'An assessment of eastern Mediterranean maritime boundary delimitation agreement between Turkey and Libya', *Science Journal of Turkish Military Academy*, vol 30, no 1, 2020, p. 52; Samuel Ramani, 'Turkey's Evolving Strategy in Libya: A Winning Gambit for Erdoğan?', *Confluences Méditerranée*, 2021, nº 118, pp. 49-64; İsmail Numan Telci, 'Turkey's Libya Policy: Achievements and Challenges', *Insight Turkey*, 2022, pp. 41-54; Hüseyin Bagci, Serdar Erdurmaz, 'Libya and Turkey's expansion policy in Africa', *JANUS.NET e-journal of International Relations* (Universidade Autónoma de Lisboa), 2017-18 (Vol. 8, Nº. 2), p. 50.

[62] Among many others, Brownlie, *Principles of International Law*, *supra* fn 31, p. 72; Combacau, Sur, *Droit international public*, *supra* fn 27, pp. 276-280.

[63] League of Nations, Commission of Enquiry into the Sino-Japanese Dispute, *Situation in Manchuria: Report of the Lytton Commission of Inquiry*, Geneva, League of Nations, 1932; see further, Przemysław Sieradzan, 'Japanese Puppet State of Manchukuo in Northeast China and its Contemporary Legacy', in Joanna Marszałek-Kawa, Kamila Rezmer-Płotka (Eds), *Peculiarities of China's Politics and Culture*, Toruń, Marszałek, 2020, pp. 128-135; Suk-Jung Han, 'The Problem of Sovereignty: Manchukuo, 1932-1937', *positions: east asia cultures critique*, 2004, pp. 457-478; David Turns, 'The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law', *Chinese J. Int'l L.*, 2003, pp. 122-124; *Prasenjit Duara, Sovereignty and Authenticity: Manchukuo and the East Asian Modern*, Lanham, MD., Rowman & Littlefield, 2003, *passim*; Thomas D. Grant, *The recognition of states: Law and practice in debate and evolution*, Westport, CT, Praeger, 1999, pp. 130-131.

[64] *Supra* fn 16; see further, Axel J. Halbach, *Die südafrikanischen Bantu-Homelands - Konzept - Struktur - Entwicklungsperspektiven*, München, IFO-Institut für Wirtschaftsforschung, 1976; Henry J. Richardson, 'Self-Determination, International Law and the South African Bantustan Policy', *Columbia Journal of Transnational Law*, 1978, pp. 185-219; James Ferguson, 'Paradoxes of Sovereignty and Independence: "Real" and "pseudo" nation-states and the depoliticization of poverty', in K.F. Olwig, K. Hastrup (Eds), *Siting Culture: the shifting anthropological object*, Abingdon, Routledge, 1997, pp. 127-130; Abnash Kaur, *South Africa and Bantustans*, Delhi, Kalinga Publ., 1995; Santiago Tazón Serrano, *Apartheid y Estado: Desigualdad ante la ley y fragmentación de población y territorio*, Tesis doctoral,

military in Angola[65]. In a time closer to the factual situation in Libya, the EU's Independent International Fact-Finding Mission on the Conflict in Georgia, examining 'from the perspective of international law' the existence of an effective government in the separatist region of South Ossetia, relied on the lack of independence of the South Ossetian self-proclaimed government to deny its effectiveness: 'Especially the third criterion, effectiveness was not sufficiently present in the case of South Ossetia, as domestic policy was largely influenced by Russian representatives from "within"[66].'

With regard to the GNA, not only was the effective control over the territory and population of the state of Libya lacking in the greater parts of the country, but also, in the area where such control was effective, the GNA lacked the necessary independence from external actors to exercise such control without the clear military support and interference by a third country.

1.1.3. Lack of capacity to fulfil international obligations

In brief, back in 2019 Libya was a failed state, or -at least- an area of limited statehood[67]. An agreement with any of the rival parties in Libya would not be an agreement governed by international law in the sense of Article 2(1)(a) VCLT, because it has been concluded with an entity with no international legal personality and, therefore, no legal capacity to enter into agreements governed by international law. As it has been pointed out during the elaboration by the International Law Commission of the work that eventually lead to the drafting of the VCLT, the issue of the authority of an entity to enter into international agreements, so that Article (2)(1)(g) VCLT ('party' means a State which has consented to be bound by the treaty and for which the treaty is in force)

Universidad de Zaragoza, 2008, pp. 82-114; V.B. Khapoya, 'Bantustans in South Africa: The Role of the Multinational Corporations', *Journal of Eastern African Research & Development*, 1980, pp. 28-49; Laura Evans, 'South Africa's Bantustans and the dynamics of "decolonisation": reflections on writing histories of the homelands', *South African Historical Journal*, 2012, pp. 117-137.

[65] See the discussion in the Security Council in 1976, Security Council, *Official Records, Thirty-First Year*, 1932th Meeting: 23 June 1976, UN Doc S/PV.1932, p. 7; *ibid*., 1974th Meeting: 22 November 1976, UN Doc S/PV.1974, p. 20.

[66] Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG, established by the Council of the European Union, Decision 2008/901/CFSP, 2 December 2008, *Official Journal of the EU* L 323/3.12.2008, p. 66), *Report*, Vol. II, p. 134. [Online]. Available at: https://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf (Accessed: 15 February 2023).

[67] Hamad, 'Libye-Turquie, conclusion d'un accord de délimitation maritime entre le Gouvernement d'entente nationale libyen et la Turquie', *supra* fn 2, pp. 128-130; Alessia Melcangi, Karim Mezran, 'Truly a proxy war? Militias, institutions and external actors in Libya between limited statehood and rentier state', *The International Spectator*, 2022, pp. 121-138; Thomas Risse, 'Limited Statehood: A Critical Perspective', in Stephan Leibfried e.a. (Eds), *The Oxford Handbook of Transformations of the State*, Oxford University Press, 2015, pp. 152–168.

be applied, is not only raised with respect to 'determining which entities purporting to be States shall be deemed to possess statehood', but equally with regard to 'the question which of two rival governments is competent to bind a State under a treaty[68].'

Due to the lack of effectiveness of GNA, no state (as a subject of international law) has consented to be bound by an agreement signed by it. Consequently, the Turkey-GNA MoU is but a theoretical or unrealistic claim to cause to come into being a legal act governed by international law.

A strong demonstration of the lack of GNA to fulfil international obligations is provided by the fact that the Turkey-GNA MoU has not been implemented: not a single step for the actual implementation has been taken since its signature by any authority in Libya. In this connection it is to be underlined that all eighteen points figuring in Annex 2 of the MoU that serve as base points of the purported maritime delimitation lie outside the effective control of the GNA; in fact, they are without exception under the effective operational control of the rival government in the Eastern part of the country. The attempted delimitation is not only theoretical but also fictitious.

2.1. Legal non-existence ratione materiae - *Lack of object*

Furthermore, the Turkey-GNA MoU is objectively non-existent, since it has no physical, material object.

In accordance with Articles 74 and 83 UNCLOS and the customary international law of the sea they reflect, the delimitation of EEZ and continental shelf occurs between states that have opposite or adjacent coasts whose projections overlap, creating thus a common maritime boundary. Yet, the coasts of Turkey and Libya are neither opposite nor adjacent: between them, geography intercalates Greek coasts (Rodos, Karpathos, Kasos, Crete), that prevent any relation of opposition between Libya and Turkey.

The ICJ has rejected a similar claim by the Netherlands and Denmark which attempted to ignore the costs of the Federal Republic of Germany by a bilateral Dano-Dutch agreement of 31 March 1966, in words that apply squarely to the claim embodied in the Turkey-GNA MoU: 'Since, however, Article 6 of the [1958] Geneva Convention

[68] Sweden, Royal Ministry for Foreign Affairs, Letter of 7 October 1963, *Yearbook of the International Law Commission*, 1966, Vol. II, p. 338.

[on continental shelf] provides only for delimitation between "adjacent" States, which Denmark and the Netherlands clearly are not, or between "opposite" States which, despite suggestions to the contrary, the Court thinks they equally are not[69].'

ICJ had the opportunity to underline the effect of the presence of an island under the sovereignty of a third party that interrupts the opposition of coasts of two others states in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*. Noting that in the area claimed by the parties existed the island of Bioko which was subject to the sovereignty of a third state, the Equatorial Guinea which was not a party to the proceedings[70], the Court rejected Cameroon's contention 'on the one hand, that account should be taken of the coastline of the Gulf of Guinea from Akasso (Nigeria) to Cap Lopez (Gabon) in order to delimit Cameroon's maritime boundary with Nigeria, and, on the other, that no account should be taken of the greater part of the coastline of Bioko Island[71]' and ruled that '[f]irst, the maritime boundary between Cameroon and Nigeria can only be determined by reference to points on the coastlines of these two States and not of third States. Secondly, the presence of Bioko makes itself felt from Debundsha, at the point where the Cameroon coast turns south-south-east. Bioko is not an island belonging to either of the two Parties. *It is a constituent part of a third State*, Equatorial Guinea. North and east of Bioko the maritime rights of Cameroon and Equatorial Guinea have not yet been determined[72]. The part of the Cameroon coastline beyond Debundsha Point faces Bioko. *It cannot therefore be treated as facing Nigeria so as to be relevant to the maritime delimitation between Cameroon and Nigeria*[73].'

Consequently, the effect of Bioko Island on the seaward projection of the Cameroonian coastal front was an issue between Cameroon and Equatorial Guinea and

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[69] *North Sea Continental Shelf*, Judgment, 20 February 1969, *ICJ Reports* 1969, para. 36, p. 29; Declaration of Judge Sir Muhammad Zafrulla Khan (as appended immediately after the judgment), *ibid.*, pp. 55-56. 'Denmark and the Netherlands are neither States "whose coasts are opposite each other" within the meaning of the first paragraph of that Article [Art. 6 1958 Convention on continental shelf] nor are they "two adjacent States" within the meaning of the second paragraph of that Article.'

[70] *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment of 10 October 2002, *ICJ Reports* 2002, pp. 421, 443, 446, paras 238, 291, 299.

[71] *Ibid.*, p. 442, para. 291.

[72] Jean Rieucau, 'Bioko (Guinée équatoriale): un espace insulaire stratégique au centre du golfe de Guinée', *Les Cahiers d'Outre-Mer*, 2004. [Online]. Available at: http://com.revues.org/index548.html, (Accessed: 14 December 2022).

[73] *Land and Maritime Boundary between Cameroon and Nigeria*, *supra* fn 70, pp. 442-443, para. 291 (italics added).

not between Cameroon and Nigeria. Logically then, the geographical location of Bioko Island between Cameroon and Nigeria, makes it imperative that the maritime delimitation in this area be performed between Equatorial Guinea and Cameroon, and not between Cameroon and Nigeria.

The principle that islands subject to the sovereignty of third states interrupt the relation of adjacency or opposition between other states, which may seem macro-geographically having neighbouring maritime areas, is followed in the international treaty practice. Characteristic are delimitation the maritime delimitation agreements that acknowledge that the presence of the Danish island Bornholm interrupts the delimitation between Poland and Sweden[74] or that the existence of the Netherlands Leeward Antilles (Aruba, Bonaire, Curaçao) limits the area subject to maritime delimitation between Venezuela and the Dominican Republic[75].

It is then obvious that there can be no maritime delimitation between Turkey and Libya under the customary law of the sea (or by virtue of Art. 74 and 83 UNCLOS, with identical contents), since there exist neither opposite nor adjacent coasts. Consequently, any international agreement on such delimitation is without material object. This blatant disregard of geography (and the ensuing rights of coastal states Greece and Egypt) underpins most of the criticism addressed towards the Turkey-GNA MoU[76].

[74] Agreement concerning the Delimitation of the Continental Shelf and Fishing Zones between the Kingdom of Sweden and the Polish People's Republic, Warsaw, 10 February 1989. [Online]. Available at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/SWE-POL1989CS.PDF (Accessed: 3 October 2023).

[75] Treaty on the Delimitation of Marine and Submarine Areas between the Republic of Venezuela and the Dominican Republic, Santo Domingo, 3 March 1979. [Online]. Available at: https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/VEN-DOM1979SA.PDF (Accessed: 3 October 2023).

[76] Lorenzo Palestini, *La protection des intérêts juridiques de l'Etat tiers dans le procès de délimitation maritime*, Bruxelles, Bruylant, 2020, pp. 381, para. 684, fn 1244, 'un simple coup d'œil sur la carte laisse immédiatement transparaître que l'idée même de l'existence d'un rapport de voisinage entre la Turquie et la Libye est empreinte d'un optimisme quelque peu irréaliste'; equally, Deutscher Bundestag, *Seevölkerrechtliche Bewertung der türkisch-libyschen Vereinbarung*, *supra* fn 2, pp. 11-18; García-Carriazo, 'The Maritime Delimitation between Turkey and the Libya's Government of National Accord', *supra* fn 2, pp. 16-20; Fahmy, 'The conundrum of delimitation of maritime boundaries in the Eastern Mediterranean', *supra* fn 2; Hamad, 'Libye-Turquie, conclusion d'un accord de délimitation maritime entre le Gouvernement d'entente nationale libyen et la Turquie', *supra* fn 2, pp. 127-132; Aris Marghélis, 'Les délimitations maritimes Turquie-Gouvernement d'entente nationale libyen et Grèce-Egypte dans leur contexte régional', *Neptunus, e.revue*, 2021. [Online]. Available at : https://cdmo.univ-nantes.fr/medias/fichier/marghelis-accords-turcolibyen-et-gre-co-e-gyptien_1617389805871-pdf?ID_FICHE=868991&INLINE=FALSE (Accessed: 29 December 2021).

Libya itself, *in tempore non suspecto* has confirmed this state of affairs in its pleadings (with supporting maps) in the case concerning the delimitation of its continental shelf against the Maltese one. In its pleadings in this case, Libya submitted that 'Given the geography, Libya can only look north. […] unlike the other large European States like Italy, Greece or Spain […] which have extensions to east and west, as well as to the south, Libya generally faces only in one direction', *i.e.* to the north. Further, in order to remove any doubt, the counsel of Libya pointed out that Libyan coast 'is, by any common-sense standard, opposite [to] Crete, Greece, Italy and Malta', because 'oppositeness must imply some degree of direct facing: that the two coasts are *en face*[77].'

2. Excursus: False remedies

The parties of the Turkey-GNA MoU, conscious of the fundamental flaw that hinders the qualification of their pact as an agreement in the realm of public international law, sought to found such qualification on the grounds of the recognition by UN organs and several UN member states, of GNA as the legitimate government of Libya, as well as on its registration with the UN Secretariat, pursuant to Art. 102 UN Charter. These points will be discussed successively, in order to consider whether they have an impact on the existence of the MoU as an international agreement governed by international law.

2.1. Recognition

As already exposed, GNA was established following of the UN-facilitated the Libyan Political Agreement of 17 December 2015, which created a Libyan Presidency Council and further provided for the subsequent creation of a Government of National Accord consisting of the Presidency Council and Cabinet supported by the other institutions of state including the House of Representatives and State Council. Following the 2015 Libyan Political Agreement, the UN Security Council decided to support the GNA 'as the sole legitimate government of Libya'[78].

[77] ICJ, *Case concerning the Continental Shelf* (Libyan Arab Jamahiriya / Malta), *Pleadings, Oral Arguments, Documents*, vol. IV, Oral arguments (concluded); correspondence, Public Hearing, 26 November 1984, p. 157. Libya supported these pleadings by the maps it submitted to the Court, ibid., vol. V, Maps, Charts and illustrations, map 38, figure 6, map 40, figure 8, map 41, figure 9.

[78] UNSC Resolution 2259, *supra* fn 51, para. 3, 'Endorses the Rome Communiqué of 13 December 2015 to support the Government of National Accord as the sole legitimate government of Libya, stresses that a Government of National Accord that should be based in the capital Tripoli is urgently needed to provide

The UN SC resolution 2259 (2015), in which the above decision by the SC carries a non-negligible political weight. Yet, the Council itself did not adopt it on the basis of Chapter VII, which would have made it legally binding. In general terms, the UN Security Council act as Registry for states or governments, especially when it is not acting with the authority vested in it by Chapter VII of the UN Charter. Most importantly, since December 2015, when resolution 2259 (2015) was adopted, the situation on the ground in Libya had changed dramatically. The 2015 Libyan Political Agreement had been denounced by various actors, it was not implemented and the UN-led peace process in Libya failed to pacify the war-torn country[79]; notwithstanding the fact that the UN cannot be exclusively held accountable for this failure, the world organization from mediator became a party in the Libyan conflicts[80]. The characterization of the GNA as a 'government recognized by the UN' in 2019 was problematic. Recognition 'by the UN' presupposed, in accordance with resolution 2259 (2015) an agreement between institutions, including the House of Representatives and State Council, within a democratic framework[81], which never occurred.

As a result, the various rival authorities established in Libya were missing not only the effective control over the territory and population of the country but also the internal legitimacy. To make things worse for the GNA, external actors, both states and international organizations, were holding divergent views on the recognition of the waring Libyan factions.

In a very lucid analysis of these developments, Irene Fernández-Molina quite rightly points out[82] that the relationship between the legitimacy and effectiveness of the

Libya with the means to maintain governance, promote stability and economic development, and expresses its determination in this regard to support the Government of National Accord'.

[79] Tarek Megerisi, Emadeddin Badi, 'Libya elections: Has the UN lost the plot?', 21 March 2023. [Online]. Available at: https://www.middleeasteye.net/opinion/libya-elections-un-same-plan-different-results-expects, 'When it comes to Libya, the United Nations appears to have gone insane - at least according to the cliché definition attributed to Einstein.'

[80] Wolfram Lacher, 'Libya: The Gamble That Failed', in Muriel Asseburg, Wolfram Lacher, Mareike Transfeld, *Mission Impossible? UN Mediation in Libya, Syria and Yemen*, SWP Research Paper 2018/RP 08, 15.10.2018, pp. 25-27.

[81] UNSC Resolution 2259, *supra* fn 51, para. 1, 'The SC *Welcomes* the signature on 17 December 2015 of the Libyan Political Agreement of Skhirat, Morocco to form a Government of National Accord consisting of the Presidency Council and Cabinet supported by the other institutions of state including the House of Representatives and State Council'.

[82] Irene Fernández-Molina, 'Relapsing into deadlock: Libya's recurring government splits and international recognition dilemmas', 12 April 2023. [Online]. Available at: https://www.realinstitutoelcano.org/en/analyses/libyas-recurring-government-splits-and-international-recognition-dilemmas/ (Accessed: 15 May 2023).

various aspiring Libyan governments is a complex one, and foreign actors have had to balance between these two types of criteria. In the case of the GNA, after being originally externally enabled, legitimacy became taken for granted and prioritized by the international community, who expected a virtuous circle whereby effectiveness would progressively come to match it. However, from 2016 onwards, the GNA did not become more effective in its rule over Libyan territory and population. Quite the opposite: its rival LNA/LAAF (Eastern Libya's power apparatus) consolidated and expanded its control in the east and some parts in the south of the country. This led international interaction with this anti-GNA rebel to gradually shift from informal engagement to increasingly official diplomatic practices, deflating the exclusiveness of the recognition of the GNA in several respects[83].

At the time the Turkey-GNA MoU was concluded, it was notoriously known to all members of the UN, including Turkey, that GNA lacked effective control of more than half of the country and its population[84]. Recognition in international relations can be, and often is done for opportunistic reasons[85]. As the EU Independent International Fact-Finding Mission on the Conflict in Georgia concluded 'assessment of statehood in international law and in international politics overlaps but differs. The political practice of recognition of states, as a rule, starts out from the objective criteria identified in international law, but may be guided by additional considerations. It is very possible that an entity short of statehood is recognised as a state by another state or states for particular political motives[86].'

This conclusion is valid *a fortiori* with regard to recognition of governments, a field where the discretionary power of international actors is wider and where political

[83] Mohamed Eljarh, 'Libya: Between a civil war and Western intervention', in Abdulwahab Alkebsi, Nathan J Brown, Charlotta Sparre (Eds), *Reconstructing the Middle East*, London, Routledge, 2017, pp. 109-121. [Online]. Available at: https://www.taylorfrancis.com/chapters/edit/10.4324/9781315619569-6/libya-mohamed-eljarh?context=ubx&refId=b558fc76-6b2a-40e2-85bc-ec0a8dc7f798 (Accessed: 15 June 2022); Ekaterina Stepanova, 'Russia's Approach to the Conflict in Libya, the East-West Dimension and the Role of the OSCE', in Andrea Dessì, Ettore Greco (Eds), *The Search for Stability in Libya*, *supra* fn 53, pp. 89-108.

[84] Wolfgang Mühlberger, 'External Actors in Libya: International Organizations at Odds with Global and Regional Players', in Andrea Dessì, Ettore Greco (Eds), *The Search for Stability in Libya*, *supra* fn 53, pp. 67-88.

[85] Combacau, Sur, *Droit international public*, *supra* fn 27, pp. 296-298; Antônio Augusto Cançado Trindade, *Princípios do Direito Internacional Contemporâneo*, Brasília, Fundação Alexandre de Gusmão, 2017 (2ª ed.), p. 100.

[86] IIFFMCG, *supra* fn 66, pp. 128-129.

motives take priority[87]. First and foremost, in contemporary international law recognition has a declaratory character. Furthermore, in the case at hand, important international actors, including the US and European countries, were in *need* of a 'regular' Libyan government as their partner in international cooperation against ISIS, that controlled Syrte and other areas in Libya, and, crucially, in order to tackle migration. UN SC resolution 2259 (2015) specifically 'urges Member States to cooperate with the Government of National Accord, and with each other, including by sharing information about acts of migrant smuggling and human trafficking in Libya's territorial sea, on the high seas off the coast of Libya and rendering assistance to migrants and victims of human trafficking recovered at sea, in accordance with international law'[88].

In these conditions 'recognition by the UN' - less by individual states - cannot remedy the lack of effectiveness of GNA and render the latter an entity that could validly conclude an agreement governed by international law.

Reliance on 'recognition by the UN' through a chapter VI UNSC resolution may expose Turkey, one of the signatories of the Turkey-GNA MoU, to an argument *ad hominem*, or more accurately *ad nationem*: is it not inconsistent to rely on a chapter VI to assert the legitimacy of a power setting, while disregarding binding, *under Chapter VII of the UN Charter*, resolutions on the Government of the Republic of Cyprus, as the sole government on the island? And moreover, taking into account the divergent views of various international actors on the recognition of the various power apparatuses in Libya, while such an issue does not arise with respect to the Republic of Cyprus, recognized as a state and UN Member by all but one UN Member states.

[87] *Cf.* Hersch Lauterpacht, *Recognition in International Law*, Cambridge, Cambridge Univ. Press, 1948, p. 338; Charles De Visscher, *Théories et réalité en droit international public*, Paris, Pédone, 1970, p. 257; Stefan Talmon, 'Recognition of the Libyan National Transitional Council', *ASIL Insight*, vol. 16, issue 16 June, 16, 2011, p. 5; Olivia Danic, 'L'évolution de la pratique française en matière de reconnaissance de gouvernement', *supra* fn 31, pp. 511-534.

[88] UNSC Resolution 2259, *supra* fn 51, para. 15; Daniel Howden, 'The Central Mediterranean: European Priorities, Libyan Realities', *Refugees Deeply*, October 2017. [Online]. Available at: http://issues.newsdeeply.com/central-mediterranean/european-priorities-libyan-realities (Accessed: 18 September 2021).

2.2. Registration

Even less persuasive for the legal existence of the Turkey-GNA MoU is the claim that the latter has been registered with UN Secretariat (Office of Legal Affairs Treaty Section) in pursuance to Art. 102 UN Charter.

Yet, it is a universally accepted legal principle that registration does not prejudge the nature of a text with the pretense of being an international convention. The *Treaty Handbook* for the practice of the UN Secretariat is explicit in this point: 'Where an instrument is registered with the Secretariat, this does not imply a judgement by the Secretariat on the nature of the instrument, the status of a party, or any similar question. Thus, the Secretariat's acceptance for registration of an instrument *does not confer on the instrument the status of a treaty or an international agreement if it does not already possess that status*. Similarly, registration does not confer on a party to a treaty or international agreement a status that it would not otherwise have[89].'

This general principle, that leaves no doubt on the nature and the effects of registration pursuant to Article 102 UN Charter, has been clearly demonstrated on the occasion of a controversy between Equatorial Guinea and Gabon with regard to the registration by the latter in 2004 of a text that Gabon submitted as a bilateral convention demarcating the land and maritime frontiers of Equatorial Guinea and Gabon, signed by the respective heads of State almost thirty years before the Gabonese request for its registration (May 2003) [90].

Upon information on this development[91], Equatorial Guinea protested the registration by the UN Secretariat stating that no Convention existed between Equatorial Guinea and Gabon of 12 September 1974, or of any other date, concerning the land and maritime borders between the two countries, specifying that the Gabonese government did not possess the two original versions in French and Spanish and

[89] UN Office of Legal Affairs, Treaty Section, *Treaty Handbook*, New York, UN Publications, 2013, Revised edition, p. 30 (italics added).
[90] Convention demarcating the land and maritime frontiers of Equatorial Guinea and Gabon, Bata, 12 September 1974; the UN Legal Counsel, issued, on behalf of the Secretary-General, the Certificate of Registration No 50698, dated 25 March 2004, and the 1974 Convention appeared subsequently in the *United Nations Treaty Series*, Vol. 2248, I-40037.
[91] On the underlying territorial dispute between the two African states, see Patrice Moundounga Mouity, 'Frontières maritimes et revendications étatiques dans le Golfe de Guinée: du cas du Gabon et de la Guinée Equatoriale', *Revue juridique et politique des Etats francophones*, 2016, pp. 187-212.

submitted only photocopies of photocopies, barely legible and inconsistent, of a preliminary draft subject to further negotiations and thus not finalised and signed[92].

Despite the Equatoguinean objections, the UN Secretariat proceeded to the registration, but the UN Legal Counsel underlined to the protesting Government of Equatorial Guinea that 'registration does not add or detract from the legality or value of a treaty'[93], a position that consistently holds the UN Secretariat[94]. Consequently, the registration of the Turkey-GNA MoU cannot be used as an argument in favour of the qualification of that instrument as an agreement governed by international law.

* *

Thus, the lack of effectiveness of the GNA over the territory and population of Libya results in the fundamental flaw of legal non-existence under international law of the Turkey-GNA MoU. This subjective deficiency is coupled with the objective inexistence of the substance to be regulated, as there is no opposition (or adjacency) of the costs of Turkey and Libya, due to the interposition of Greek costs between these two states. Moreover, the legal non-existence of that document as an international agreement cannot be remedied by the misuse of institutions that are designed to serve different purposes or other subterfuges incapable to extenuate the original defect of the Turkey-GNA MoU.

[92] See two letters dated 10 March 2004 and 7 April 2004 by the Minister for Foreign Affairs, International Cooperation and Francophonie of Equatorial Guinea to the UN Secretary General and a letter dated 26 April 2004 by the President of the Republic of Equatorial Guinea to the UN Secretary General, registered as subsequent actions relating to the instrument and published in the *United Nations Treaty Series*, Vol. 2248, A-40037, pp. 389, 313-315 and 324-325 respectively.

[93] Letter to a Permanent Representative to the United Nations regarding the registration of treaties pursuant to Article 102 of the Charter of the United Nations, 22 March 2004, *UN Juridical Yearbook* 2004, p. 358.

[94] *Ibid*, p. 357, 'The role of the Secretariat [regarding registration pursuant to Article 102 UN Charter] is purely administrative'.

Eastern Mediterranean Sea Maritime Spatial Planning and Transboundary Cooperation

Juan L. Suárez-de Vivero[*]

Abstract

Political instability, territorial tensions and maritime activities with a global strategic scope are concentrated in the Eastern Mediterranean basin. All of them have a cross-border dimension for whose governance cooperation is essential. This has a strong impact on marine spatial planning, the viability of which is questioned by the scale of the geopolitical challenges. The proposed recommendations aim primarily at capitalizing on existing institutional and policy resources to assist the development of marine spatial planning.

Introduction

In the Eastern Mediterranean circumstances exist that make it necessary to promote cross-border cooperation, including the development of marine spatial plans, while at the same time situations with such a degree of conflict arise that they constitute powerful barriers that prevent the activation of the various actions and instruments designed to govern and manage a regional maritime area of considerable complexity.

The transboundary factor in this part of the basin has an outstanding weight, not only because of the geographical morphology itself -already complex due to the importance of insularity- but also, and in particular, because of the existence of a territorial puzzle associated with an accentuated political conflict.

The process of jurisdictional expansion that has been taking place in the basin in recent years (following a change in strategy by most of the coastal countries that refrained at the outset from declaring exclusive rights) has exacerbated existing territorial conflicts, hindering and deteriorating the already fragile regional marine governance as a result of instability in a large part of the basin.

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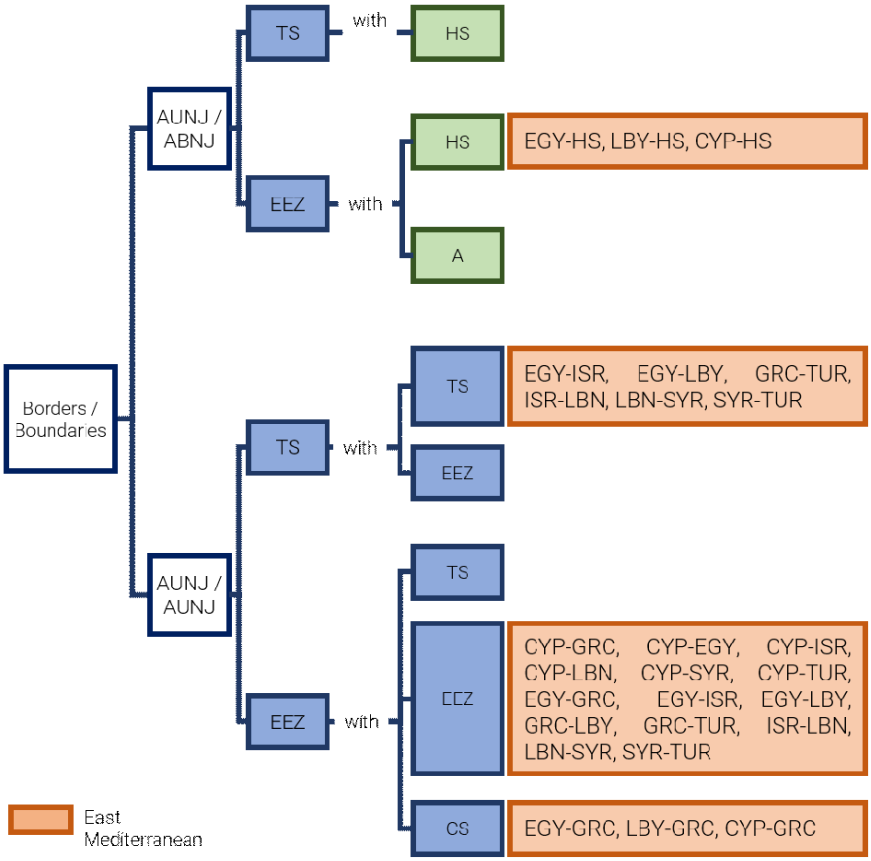


Source: Author

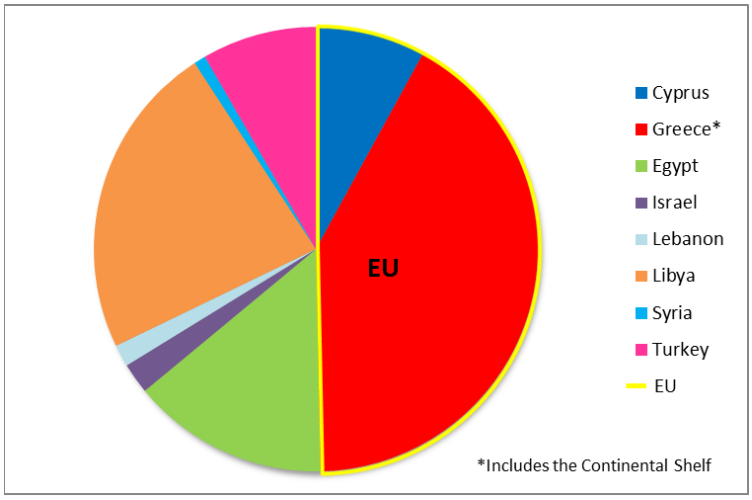
Figure 1. Eastern Mediterranean. Typology of cross-border contacts

Based on a structured presentation of information and indicators that characterise the geographical scope and marine governance, this document explores possible guidelines aimed at boosting cooperation for the development of marine spatial planning (MSP).

This paper has a synoptic structure with synthetic statements and concise analyses. A brief presentation of data and a set of simplified observations that aim to describe the Eastern Mediterranean maritime scenario, point out the relevant conflicts, and set out possible orientations that can support the plans.

The Maritime Scenario

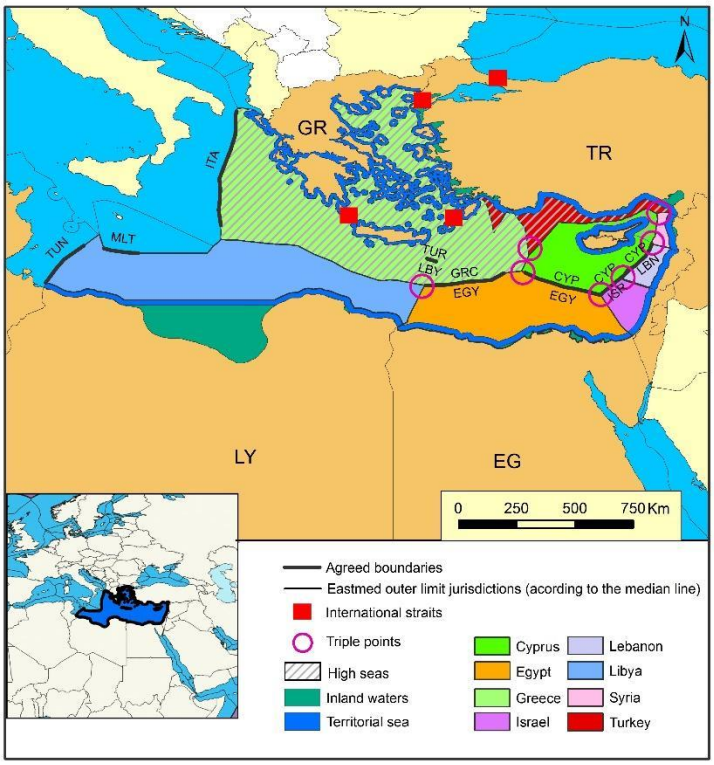
The Eastern Mediterranean basin covers an area of around 1.5 million km^2, with eight coastal states plus the territory of Palestine. Considering the criterion of median lines for the distribution of maritime jurisdictions, there are 14 border contacts with a total border length of 6,246 km. Similarly, based on the median lines, the distribution of spaces under national jurisdiction is led by three States: Greece, Libya and Egypt, which would cover almost 80%. Of the remaining five, none reaches 10%.



Source: Author based on Division for Ocean Affairs and the Law of the Sea (DOALOS)

Figure 2. Maritime jurisdictions by country.

(Calculations are approximate values only).



Source: Author based on DOALOS

Figure 3. Eastern Mediterranean basin

(Calculations are approximate values only)

Borders (median lines)								
Total length (Km)	6,246	Triple Points	7+4					
Number of contacts	14		1. CYP-EGY-GRC 2. CYP-EGY-ISR 3. CYP-GRC-TUR 4. CYP-ISR-LBN 5. CYP-LBN-SYR 6. CYP-SYR-TUR 7. EGY-GRC-LBY			8. *ALB-GRC-ITA* 9. *GRC-ITA-LBY* 10. *ITA-LBY-MLT* 11. *LBY-MLT-TUN*		

****	CYP	EGY	GRC	ISR	LBN	LBY	SYR	TUR
CYP		355	74	112	201		136	630
EGY	355		426	223		223		
GRC	74	426				909		1410
ISR	112	223			157			
LBN	201			157			116	
LBY		223	909					
SYR	136				116			89
TUR	630		1410				89	

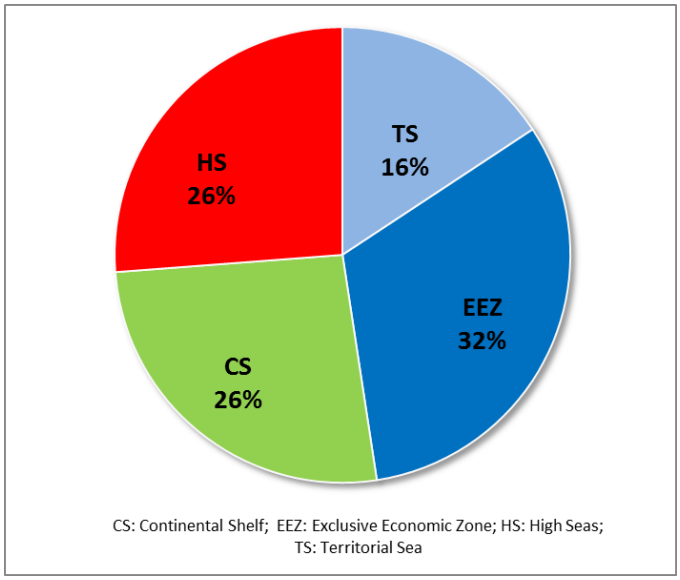
**** Borders measured using the median lines

Source: Author

Box 1. Borders. Median line.

(Calculations are approximate values only)

The high seas are significantly present in the northern half of the Eastern Mediterranean (waters adjacent to the coasts of Greece and Turkey) as neither of these two States has declared exclusive economic zone (EEZ), fisheries protection zone or ecological protection zone with the result that they form a marine area in which the water column is freely accessible with an underlying bed and subsoil under national jurisdiction (continental shelf).



Source: Author based on DOALOS

Figure 4. Distribution of maritime jurisdictions in the Eastern Mediterranean

(Calculations are approximate values only)

Politically, five of the eight states have a fragile state index (The Fund for Peace) above 80: High Warning (3), Alert (1), Very High Alert (1). Economically (World Bank), three states have a High-income level; three Upper middle; one Lower; one Low. Demographically (United Nations), two countries (Egypt and Turkey) represent almost 80% of the total population (231 million), none of the remaining six reaching 10%.

Hot spots and choke points are also important elements in the region. At this end of the Mediterranean basin are located two of the eight global range choke points related to the global energy system (the so-called Turkish Straits and the Suez Canal), with Suez in fourth place (5.5 million barrels/day) and the Turkish Straits in seventh place (2.4 million barrels day) (US Energy Information Administration, 2017; Emerson and Stevens, 2012).

The Middle East in general and some of the Mediterranean coastal states in particular (Middle East and North Africa/MENA region) tend to rank among the areas with the highest level of instability on a global scale, with a relatively small area of the Eastern Basin being concentrated in the conflicts of the Palestinian-Israeli entity, Syria war and Libya State failure. This level of conflict makes inter-State relations permanent

challenge: Libya does not recognise Israel; Palestine has the status of a non-member observer State with its only coastal territory (Gaza Strip) occupied by Israel; Turkey considers the state of Cyprus as the Greek Cypriot Administration and Cyprus does not recognise the so-called Turkish Republic of Northern Cyprus (not recognised by the United Nations).

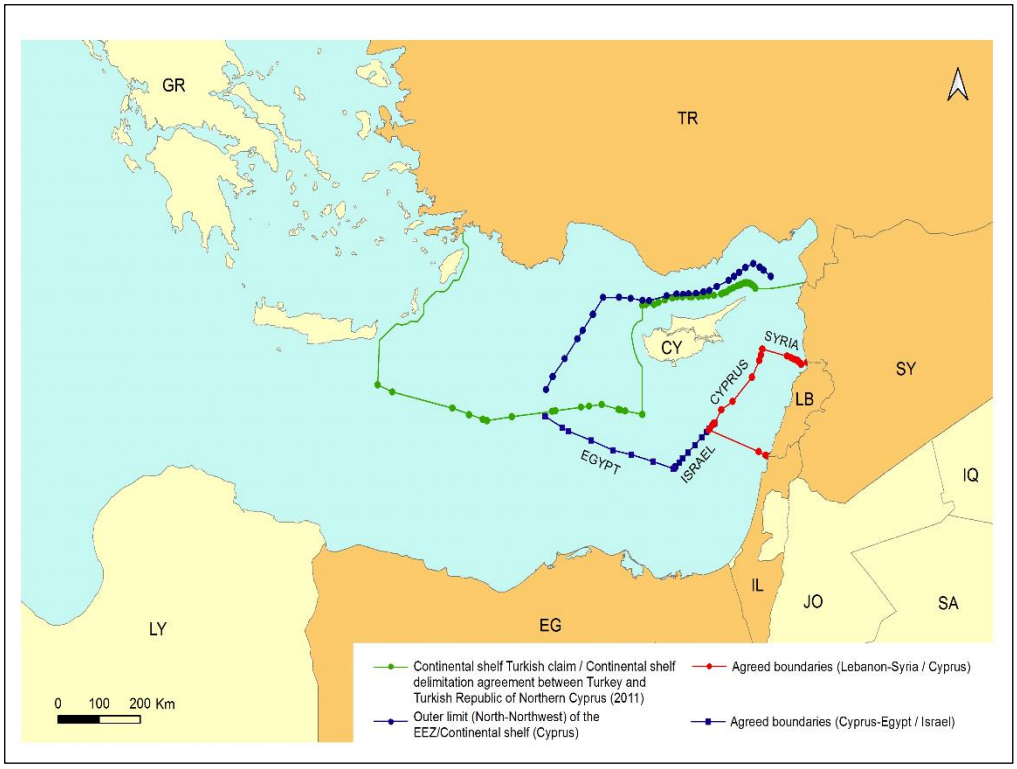
From a maritime perspective, the coastal arc between Turkey and Libya with the island state of Cyprus in the centre contains a number of territorial conflicts of considerable complexity and maritime dimension, most notably: the dispute over the delimitation of the continental shelf between Greece and Turkey; the Turkish occupation of northern Cyprus with its effects on the determination of maritime jurisdictions; the definition of Turkey's continental shelf and its relationship with the occupied territory of Cyprus and Libya, and collaterally the effects on Greece. This sub-basin also contains part of the external border of the European Union (EU) generated by two of its Member States (Greece and Cyprus).

Source: Author based on DOALOS

Figure 5. EU external border

(Calculations are approximate values only)

Associated with this complex jurisdictional puzzle are the initiatives taken by Turkey and Cyprus regarding hydrocarbon exploration and exploitation licenses, with the squares defined by the two administrations overlapping around the island of Cyprus. Overall, the claims and agreements whose main players are Turkey and Cyprus also involve three other states: Libya, Egypt and Israel; in total five of the eight coastal states (not counting Lebanon whose 2007 delimitation agreement with Cyprus has not been ratified).



Source: Author based on DOALOS

Figure 6. Turkey's jurisdictional claims

(Calculations are approximate values only)

From the perspective of marine governance, the Mediterranean Sea is characterized by the existence of a sufficient legal-institutional structure that coexists with weak political integration and marked economic differences. More than 50 international, general and regional treaties can be applied in the Mediterranean Sea, although not all countries are signatories or have ratified them (Suárez and Rodríguez, 2015). These treaties cover a wide range of issues: from fisheries to pollution, biological diversity or different aspects of navigation and transport, to waste disposal (European Commission, 2009). Of the eight coastal states, three are not signatories to the United Nations Convention on the Law of the Sea/UNCLOS (Israel, Syria and Turkey) and one is a signatory but has not ratified (Libya).

Key issues on MSP and cross-border/transboundary cooperation

Maritime activities with a global strategic dimension dependent on exogenous decisions (energy and trade flows, exploration and exploitation of hydrocarbons, naval strategy).

Maritime borders conditioned by a combination of intricate territorial disputes and marked geopolitical instability.

Traditionally based local maritime economies.

Environmental impacts that are difficult for coastal States to control in a marine area with 35 % of the high seas.

Comprehensive multilateral regulatory framework (MAP/BARCON and protocols) with insufficient implementation capacity.

Supranational MSP regulatory framework (two EU states) and significant jurisdictional presence (Greek continental shelf and Cyprus EEZ).

Lack of a North-South regional alliance for economic and socio-political integration.

Box 2. Key issues on MSP and cross-border/transboundary cooperation

Recommendations

The Mediterranean area already has a long history of regional initiatives that have sought to promote coordinated maritime governance in the face of conflicts and issues of a supranational nature. At the same time, the region as a whole, and in particular the eastern sub-basin, has been suffering from constant and permanent crises of extreme seriousness that hinder relations between national actors and international institutions and prevent the development of cooperative actions.

Previous Questions

- Is there a 'Mediterranean way' for MSP and cross-border cooperation? The Eastern Mediterranean has some unusual characteristics which may require differentiated treatment.

- How can progress be made on MSP and cross-border cooperation in a context of regional failure? Instability and planning are difficult to reconcile, although a plan contributes to the construction of a common objective.

- How far can the existing instruments and institutions (UNCLOS, Barcelona Convention-MAP/BARCON) advance? Both have been shown to constitute consistent regulatory structures and can therefore be considered a support point to facilitate the development of MSP.

Box 3. Previous questions

In this context, marine spatial planning, a novel tool, must make way for the use of the experience accumulated in recent decades and the resources already available, which have contributed to marine governance in one way or another. There is hardly room for actions with short-term results and unexpected turns. Similarly, the adoption of guidelines for cooperation in the field of MSP applied in regions with a different geopolitical profile is inadvisable. That is why the following specific guidelines are proposed for this sub-basin, not reiterating general guidelines on participation and data management that are already formulated in documents such as ‘Conceptual Framework for Marine Spatial Planning in the Mediterranean’:

Specific recommendations

- The marine space plan has limited regulatory capabilities, which do not include dispute resolution. However, the plan can be a temporary formula to cover economic developments during periods of transition to dispute resolution.

- Review existing regulatory instruments from a spatial marine planning perspective. The United Nations Convention provides mechanisms for the resolution of disputes and useful normative principles to be inserted in planning initiatives with a transboundary dimension and semi-enclosed basins.

- Assume in the plan the complexity of the border event and adapt it to the conditions and limitations of the jurisdictions and typology of the maritime borders. In the Eastern Mediterranean, different legal regimes coexist and overlap in a relatively limited area.

- Provision of a financial fund by States that undertake campaigns for the exploration and exploitation of energy resources in marine areas where hydrocarbon deposits are located. This initiative can be framed within existing cooperation structures such as the revised European Neighbourhood Policy (ENP).

- The eastern end of the basin and around Cyprus are located six triple points of the existing seven (in the configuration of median lines). This corresponds to the provision of Article 12 of the MSP Directive (Cooperation with third countries) and therefore action with the participation of the EU should be promoted for the drafting of the plan with the inclusion of all the parties concerned.

- Under the conditions of political conflict and territorial tensions, the development of maritime policies that strengthen the regulatory framework of maritime spatial plans appears to be a priority. Substantive issues relating to the uses of maritime space can be more appropriately addressed in the framework of the respective national maritime policies.

- Create a Regional Centre for MSP within the framework of the Mediterranean Action Plan, or assign it to one of the Centres within the existing institutional structure. This would be a way of reinforcing the initiative taken with the document 'Conceptual Framework for Marine Spatial Planning in the Mediterranean'.

Coda

The exceptional nature of the Eastern Mediterranean basin does not mean that no guidelines or general recommendations can be given for observing it in various regional settings. The range of prescriptive actions is limited although the ways in which they are combined can be very diverse and, consequently, ways must be found to adapt them

to the place and the historical moment. The case of the Eastern Mediterranean is perhaps one of the most pronounced challenges for marine governance.

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Legal Regulation of Offshore Energy Activities in the East Mediterranean Sea

Nathalie Ros[*]

In the East Mediterranean Sea, four of the nine States of the region (Israel, Turkey, Syria and Libya) are not Parties to the United Nations Convention on the Law of the Sea (UNCLOS) even if most of the relevant dispositions, *a fortiori* in a semi-enclosed sea, are customary International Law. Furthermore, while all the coastal States are Parties to the Barcelona Convention, but of course not to all of its protocols, with only three Parties to the Mediterranean Offshore Protocol (Cyprus, Libya, Syria plus the European Union/EU), two are also European Union Member States (Cyprus and Greece).

International Law and European Union Law are nevertheless useful frameworks for the regulation of offshore energy, and the Mediterranean is undoubtedly the region of the world where these industrial activities are, at least in theory, the best regulated[1]. Aware that offshore operations can be considered dangerous, *a fortiori* in a semi-enclosed sea, and are thus likely to damage the vulnerable marine environment of the region, especially in the East Mediterranean Sea, coastal States have intended to establish a Mediterranean governance of these activities[2] even before the exploitation

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[1] Ros, N. (2015). 'La réglementation euro-méditerranéenne des activités offshore', Diritto del Commercio Internazionale, pp. 93-136; Ros, N. (2015). 'Problems of Marine Pollution resulting from Offshore Activities according to International and European Union Law' in Caligiuri, A. (Ed.) Offshore Oil and Gas Exploration and Exploitation in the Adriatic and Ionian Seas. MaReMaP-AIR. Napoli: Editoriale Scientifica, pp. 34-42. [Online]. Available at: https://www.assidmer.net/doc/eBook_2015.pdf (Accessed: 8 December 2022); Ros, N. (2016). 'Environmental Challenges of Offshore Activities in International and European Union Law' in Caligiuri, A. (Ed.), Governance of the Adriatic and Ionian Marine Space. Final publication MaReMaP-AIR. Cahiers de l'Association internationale du Droit de la Mer 4. Napoli: Editoriale Scientifica, pp. 203-220.

[2] Ros, N. (2015). 'Quel régime juridique pour l'exploitation offshore en Méditerranée?', Annuaire de Droit Maritime et Océanique, Tome XXXIII, pp. 205-261; Ros, N. (2016). 'Vers une gouvernance régionale de l'offshore en mer Méditerranée?' in Del Vecchio, A. and Marrella, F. (Dir.) International Law and Maritime Governance. Current Issues and Challenges for the Regional Economic Integration Organizations / Droit international et gouvernance maritime. Enjeux actuels et défis pour les organisations régionales d'intégration économique / Diritto Internazionale e Governance Marittima. Problemi Attuali e Sfide per le Organizzazioni di Integrazione Economica Regionale. Cahiers de l'Association internationale du Droit de la Mer 3. Napoli: Editoriale Scientifica, pp. 219-242.

became a reality, first *within the framework of Mediterranean International Law* (I), and then *with the support of European Union Law* (II).

I – Within the framework of Mediterranean International Law

Notwithstanding effectiveness challenges (B), and together with the ROPME (Regional Organization for the Protection of the Marine Environment) Sea Area, which includes the Persian (or Arabian) Gulf and the Gulf of Oman, and the West, Central and Southern African Region, the Mediterranean is one of the three regional seas with a conventional act dedicated to offshore energy activities: *the Offshore Protocol to the Barcelona Convention* (A).

A - The Offshore Protocol to the Barcelona Convention

The Barcelona System is the first and most developed of the regional seas systems of the United Nations Environment Programme (UNEP). As regards offshore energy activities, it is considered *a vanguard regional system* (1) with *a pioneering dedicated convention* (2).

1) A vanguard regional system

One year after the adoption of the Mediterranean Action Plan, the Convention for the Protection of the Mediterranean Sea against Pollution was signed in Barcelona, on 16 February 1976, and entered into force on 12 February 1978. But in the aftermath of the Rio Conference, an amended version was negotiated; the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean was adopted on 10 June 1995 and entered into force on 9 July 2004. The current Mediterranean System has 22 Contracting Parties, including all the coastal States and the European Union; as it is not a political but environmental forum, the Barcelona System provides opportunities for East Mediterranean States to meet and discuss, in a broader regional context. From a legal point of view, it consists of the umbrella-treaty, the Barcelona Convention, and its seven additional and thematic protocols, developing and implementing the objectives and principles of the Convention.

The Barcelona Convention now integrates all the Rio outcomes and addresses the different forms of marine pollution, intending to set up environmental and sustainable governance of the Mediterranean Sea. It refers to '*the precautionary principle*' (Article 4 § 3 a), '*the polluter pays principle*' (Article 4 § 3 b), and to

'*environmental impact assessment*' (Article 4 § 3 c and d), '*integrated management of the coastal zones*' (Article 4 § 3 e), '*best available techniques*' and '*best environmental practices*' (Article 4 § 4 b), and integrates the new requirements in the field of *Public Information and Participation* (Article 15). Its Article 7 is specifically dedicated to *Pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil* and provides that '*the Contracting Parties shall take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil*'. As is common in International Environmental Law, this provision appears very general and flexible from a normative vantage point; nevertheless, the 1995 Convention being an umbrella-treaty, it is supposed to be supplemented and detailed by the additional protocols, several of which are applicable to offshore energy activities, such as the 2002 Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, and the 1995 Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean. But the specificity of the Mediterranean System is the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, *a pioneering dedicated convention*.

2) A pioneering dedicated convention

Nearly thirty years after its adoption, the Offshore Protocol still appears pioneering and ambitious. There is nothing comparable, neither universally nor regionally, where the two other existing treaties do not provide the same level of requirements for States and operators.

The future Offshore Protocol has been actually conceived in a prospective way, as early as 1985[3], before the development of oil and gas operations in the region; aware of the problems specific to semi-enclosed seas, as well as of the extreme vulnerability of the Mediterranean Sea, due to the configuration of the basin but above all to the very low rate of water renewal, the States Parties to the Barcelona Convention wanted

[3] Indeed, it has been at the 4th Ordinary Meeting of the Contracting Parties to the Barcelona Convention (CoP 4), held in Genoa, in September 1985, that the preparation of a dedicated protocol has been first advocated, pursuant to Article 7 of the Convention.

precisely to anticipate future industrial developments and their inevitable environmental consequences. Adopted on 14 October 1994, it has been finalized in order to be fully integrated into the future regional system, in accordance with the environmental principles resulting from the Rio Summit, and given the increase in offshore exploration and exploitation activities of the Mediterranean seabed and its subsoil[4].

The Protocol comprises 32 articles and 7 annexes, and is perfectly integrated into the conventional system. From an institutional point of view, it gives a real operational mission to the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), established in 1976 in order to be the '*Regional Centre*' of the Prevention and Emergency Protocol, especially as regards *Mutual assistance in case of emergency* (Article 18) and *Transboundary pollution* (Article 26 § 3). The Protocol adopts a broad and holistic approach to the exploration and exploitation of the continental shelf, its seabed and its subsoil, and is characterized by its global scope. Spatially, it applies to all areas of the Mediterranean likely to be affected by the consequences of offshore pollution, *i.e.* the entire Mediterranean Sea (Article 2). All the mineral resources of the continental shelf are taken into account, '*whether solid, liquid or gaseous*' (Article 1 c), and the Protocol is therefore potentially applicable beyond conventional oil and gas activities, especially if methane hydrates and rare earths are actually present in the Mediterranean subsoil. As regards the activities (Article 1 d), the Protocol regulates the whole industrial process of exploration and exploitation, including scientific research and the removal of installations (Article 20); the concept of installation is also broadly defined so that not only drilling and production, but also storage and transport are taken into account (Article 1 f).

The 1994 Protocol inevitably includes provisions of material soft law and does not directly incorporate the latest legal and technological innovations, which are nevertheless generally applicable *mutatis mutandis* under the Barcelona Convention[5].

[4] Ros, N. (2014). 'Exploration, Exploitation and Protection of the Mediterranean Continental Shelf' in Cinelli, C. and Vásquez Gómez, E. M. (Eds) Regional Strategies to Maritime Security: a Comparative Perspective. MARSAFENET. Valencia: Tirant lo Blanch, pp. 101-132. [Online]. Available at: https://www.isgi.cnr.it/wp-content/uploads/2017/10/MARSAFENET-Editorial.-Regional-Strategies-to-Maritime-Security.pdf (Accessed: 8 December 2022).

[5] See, for example, Article 15 *Public Information and Participation* of the 1995 Convention.

However, and *notwithstanding effectiveness challenges*, it is still characterized by its high level of requirements as well as by its global normative ambition.

B - Notwithstanding effectiveness challenges

The pioneering dimension of the 1994 Offshore Protocol is still evident, although it cannot be fully effective in the Mediterranean *due to late entry into force* (1) in 2011, and *due to low ratification rate* (2) especially by EU Member States.

1) Due to late entry into force

The legal ambition of the Protocol is still to be underlined, especially in comparison with more recent texts, and first and foremost with Directive 2013/30/EU on safety of offshore oil and gas operations[6]. It provides means for the regulation of offshore energy activities, for example: written authorization for exploration and exploitation (Articles 4, 5 and 6); sanctions for breaches of conventional obligations (Article 7); use of the best available techniques and standards to minimize the risk of pollution (Article 8); environmental impact assessments (Article 5 § 1 a, and Annex IV); mutual assistance in cases of emergency (Article 18); removal of installations (Article 20); insurance and other financial security to cover liability (Articles 5 § 1 i, and 27).

The most emblematic provision is the obligation of insurance or other financial security to cover the operator's liability, established by Articles 5 § 1 (i)[7] and 27 § 2[8]; this *avant-garde* obligation, unique in Public International Law, is generally the provision most criticized by States reluctant to commit themselves, because they do not want to impose such financial obligations on their offshore national industry. This

[6] Final Report *Safety of offshore exploration and exploitation activities in the Mediterranean: creating synergies between the forthcoming EU Regulation and the Protocol to the Barcelona Convention*. [Online]. Available at: http://ec.europa.eu/environment/marine/international-cooperation/regional-sea-conventions/barcelona-convention/pdf/Final%20Report%20Offshore%20Safety%20Barcelona%20Protocol%20.pdf (Accessed: 8 December 2022).

[7] Article 5 *Requirements for authorizations*: '*1. The Contracting Party shall prescribe that any application for authorization or for the renewal of an authorization is subject to the submission of the project by the candidate operator to the competent authority and that any such application must include, in particular, the following: […] (i) The insurance or other financial security to cover liability as prescribed in Article 27, paragraph 2 (b)*'.

[8] Article 27 *Liability and compensation*: '*2. Pending development of such procedures, each Party: (a) Shall take all measures necessary to ensure that liability for damage caused by activities is imposed on operators, and they shall be required to pay prompt and adequate compensation; (b) Shall take all measures necessary to ensure that operators shall have and maintain insurance cover or other financial security of such type and under such terms as the Contracting Party shall specify in order to ensure compensation for damages caused by the activities covered by this Protocol*'.

explains eventually the delay in the entry into force of the Protocol, seventeen years after its adoption, on 24 March 2011.

According to Article 32 § 4, '*this Protocol shall enter into force on the thirtieth day following the date of deposit of at least six instruments of ratification, acceptance or approval of, or accession to, the Protocol*'. The first six ratifications allowing the entry into force were, in chronological order, those of Tunisia in 1998, Morocco in 1999, Albania in 2001, Libya in 2005, Cyprus in 2006 and Syria in 2011.

Until 2011, hence, the Protocol has been considered dormant, a very frustrating situation from a legal and environmental point of view, while some exploration and then exploitation activities were beginning. In the East Mediterranean, the only Contracting Parties to the Protocol are Cyprus, which ratified on 16 May 2006, being a European Union Member State since 1st May 2004, Libya and Syria; Greece and Israel have signed on the day the text was adopted in 1994, but Egypt, Lebanon and Turkey have not even signed the Protocol. Since 2011, the problem is now *due to low ratification rate* in a context renewed[9] not only by the development of offshore energy activities in the Mediterranean, but also by the disaster occurred on 20 April 2010 on the *Deepwater Horizon* platform, operating the *Macondo* well in the Gulf of Mexico[10].

2) Due to low ratification rate

Since the entry into force of the 1994 Protocol, on 24 March 2011, there were only two additional Contracting Parties, with the accession of the European Union on 29 March 2013, entered into force the same day[11], and the ratification of Croatia on 8 February 2018, entered into force on 10 March 2018. However, European Union Member States remain the most fervent opponents of the Protocol.

The European Commission had proposed to the Council to sign the Protocol as early as 1992, *i.e.* before its adoption, but it had so far been neither signed nor ratified,

[9] Schiano di Pepe, L. (2014). 'Offshore oil and gas operations in the Mediterranean Sea: regulatory gaps, recent developments and future perspectives' in Juste Ruiz, J. and Bou Franch, V. (Eds) Derecho del Mar y Sostenibilidad Ambiental en el Mediterráneo. Valencia: Tirant lo Blanch, pp. 363-387, especially pp. 371-375.

[10] Vinogradov, S. (2013). 'The Impact of the Deepwater Horizon: The Evolving International Legal Regime for Offshore Accidental Pollution Prevention, Preparedness, and Response', Ocean Development & International Law, 44(4), pp. 335-362.

[11] Bourrel, M. (2013). 'L'Union européenne adhère au protocole sur les activités offshore en Méditerranée', Droit de l'environnement, pp. 212-216.

and the accident on the *Deepwater Horizon* platform in April 2010 is therefore undoubtedly the real cause of the change in the European Union's attitude. A reflection process was launched in May 2010[12], but the accession of the European Union to the Offshore Protocol was in fact only formalized by the Council Decision of 17 December 2012[13]. The accession automatically implies the integration of the Protocol into the legal order of the European Union; according to Article 216 § 2 of the Treaty on the Functioning of the European Union, the obligations relating to the implementation and application of the Protocol are not only incumbent on the EU, but also on Mediterranean EU Member States, including most of them which have not yet acceded to it.

Obviously, the integration of the Protocol into EU Law does not exempt the Mediterranean Member States from ratifying it, but in practice they continue to be its most fervent opponents and the legal situation remains unchanged, with the exception of the Croatian ratification: Greece, Italy, Malta, Slovenia and Spain have signed the Protocol but without ratifying it; France has neither signed nor ratified. Outside the European Union, the situation is not much more encouraging: Israel and Monaco have signed the text, but Algeria, Bosnia and Herzegovina, Egypt, Lebanon, Montenegro and Turkey have neither signed nor ratified. In the East Mediterranean Sea, where offshore energy activities are already underway, or under development, in waters under the sovereignty or jurisdiction of several of them, Cyprus, Libya and Syria remain the only Contracting Parties to the Protocol, while Greece has a legal obligation, according to EU Law, to transpose the provisions and requirements of the Protocol into its domestic legislation. The regulation of Mediterranean offshore energy activities is thus operated *with the support of European Union Law*.

[12] Ros, N. (2018). 'L'Union européenne et l'encadrement juridique des activités offshore', Revue du droit de l'Union européenne, no. 4, pp. 233-262.

[13] Council Decision of 17 December 2012 on the accession of the European Union to the Protocol for the Protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (2013/5/EU), Official Journal of the European Union, 9.1.2013, L 4/13-14. [Online]. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:004:0013:0014:EN:PDF (Accessed: 8 December 2022).

II – With the support of European Union Law

In addition to the Mediterranean *acquis*, the *applicability of the European Union acquis* (A) establishes a legal framework for offshore activities[14], in the context of the Integrated Maritime Policy[15], such as supplemented by the *contribution of Directive 2013/30/EU* (B).

A – The applicability of the European Union *acquis*

Of course, EU *acquis* is only binding for Member States; in the specific area concerned with energy and oil and gas industrial operations, it obviously includes both *international conventions* (1) and *European Union texts* (2).

1) The international conventions

In addition to the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, three other international agreements can *prima facie* be considered particularly relevant to the exploration and exploitation of the continental shelf and its resources.

Of course, the most important is the United Nations Convention on the Law of the Sea of 10 December 1982. Indeed, UNCLOS devotes its Part VI to the *Continental Shelf*, and defines it as well as its legal regime articulated between rights and obligations of the coastal State[16]. The coastal State has sovereign rights over the continental shelf and its resources, but these rights can only be balanced by the respect of certain obligations, and Part VI should be read in conjunction with Part XII *Protection and preservation of the marine environment*, in particular Articles 208 *Pollution from seabed activities subject to national jurisdiction* and 214 *Enforcement with respect to pollution from seabed activities*. In the absence of any other universal agreement

[14] Ros N. (2022). 'The European Union and the Legal Governance of Offshore Energy Activities' in Flatt, V., Lopez de la Osa, A. and Nzaou-Kongo, A. (Eds) Energy Transition Law and Policy in a Climate-Constrained World. Washington: Westphalia Press, pp. 45-93.

[15] Ros, N. (2017). 'Retos de la Política Marítima Integrada de la Unión Europea frente a las perspectivas de explotación mar adentro' in Carballo Piñeiro, L. (Coord.) Retos presentes y futuros de la Política Marítima Integrada de la Unión Europea. Barcelona: Editorial Bosch, pp. 329-353.

[16] Ros, N. (2020). 'L'Etat côtier et son plateau continental: enjeux et perspectives dans le nouveau droit de la mer' in Enjeux et perspectives Droit international, droit de la mer, droits de l'homme Liber Amicorum En l'honneur de la professeure Haritini Dipla. Paris: Pedone, pp. 109-124.

applicable to these activities[17], the provisions of the Montego Bay Convention are essential, even if they remain very general and may sometimes appear insufficient, especially from an environmental vantage point[18].

The other relevant conventions under the *acquis* are precisely more directly related to the environmental legal order; both have not only a sectoral but also a regional scope, being two agreements first adopted under the auspices of the United Nations Economic Commission for Europe: the Espoo Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991; and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998.

However, the principle of the *acquis* refers above all to *European Union texts*.

2) The European Union texts

The relevant *corpus juris* is relatively large and includes more than twenty European legal acts, directives, regulations and decisions, corresponding to four sectoral areas and two institutions.

The four sectoral areas involved are: environment[19], including marine issues and of course Directive 2008/56/EC of the European Parliament and of the Council of

[17] There is no other universal convention, except in a completely different field, and generally more focused on pollution by ships than by offshore activities, the International Maritime Organization (IMO) Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC).

[18] Kindt, J. W. (1985). 'The Law of the Sea: Offshore Installations and Marine Pollution', Pepperdine Law Review, 12(2), pp. 381-426; Ros, N. (2018). 'La pollution résultant de l'exploitation du sol et du sous-sol: le cas du plateau continental' in Labelle, (F.) and Thierry, D. (Dir.) Droit des sites et sols pollués. Bilans et perspectives. Paris: L'Harmattan, pp. 39-51.

[19] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment; Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC; Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC; Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage; Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive); Directive 2009/147/EC on the conservation of wild birds; Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment; Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive); safety and health of workers and civil protection;[20] industrial safety[21]; oil industry[22].

The two texts developing an institutional dimension are: the Commission Decision of 19 January 2012 creating the European Union Offshore Oil and Gas Authorities Group (EUOAG)[23], a group of experts set up with the mission of promoting effective collaboration between the Commission and national representatives, in particular by disseminating best practices and operational intelligence, by setting priorities for strengthening standards, and advising the Commission on any regulatory reform; and Regulation (EU) N° 100/2013 of the European Parliament and of the Council of 15 January 2013 amending Regulation (EC) N° 1406/2002 establishing a European Maritime Safety Agency[24] that gives a more important role to the European Maritime Safety Agency (EMSA), by doubling its competences. From a material point of view, the 2013 Regulation is precisely in line with the new context of EU action in the field of offshore operations; whereas EMSA was initially created to work on

[20] Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC); Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industry through drilling; Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism; Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC.

[21] Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres; Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances; Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment; Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC; Regulation (EC) N° 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH); Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives; Regulation (EC) N° 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006; Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

[22] Directive 94/22/EC of the European Parliament and the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons.

[23] Commission Decision of 19 January 2012 on setting up of the European Union Offshore Oil and Gas Authorities Group (2012/C 18/07), Official Journal of the European Union, 21.1.2012, C 18/8-10. [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012D0121(01)&qid=1511894391710&from=EN (Accessed: 8 December 2022).

[24] Official Journal of the European Union, 9.2.2013, L 39/30-40. [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0100&from=EN (Accessed : 8 December 2022).

maritime safety and prevention of pollution by ships[25], the new text thus provides an additional mission of the Agency in the field of response to marine pollution caused by oil and gas installations. Potentially most important for the East Mediterranean Sea, the Agency's field of competence is also extended from a geographical point of view, since its services can now benefit not only the Member States of the Union, but also '*States applying for accession to the Union, and, where applicable, to European Neighbourhood partner countries and to countries taking part in the Paris MoU*' (Article 2 § 5, Regulation (EU) N° 100/2013). From a Mediterranean and East Mediterranean perspective, this evolution explains why EMSA therefore appears potentially able to become involved in the implementation of certain aspects of the Offshore Protocol, in collaboration with REMPEC.

However, all these achievements[26] have to be analyzed, taking into account *the contribution of Directive 2013/30/EU*[27].

B – The Contribution of Directive 2013/30/EU

The Directive on safety of offshore oil and gas operations adopted on 12 June 2013 is the core element of the European Union strategy developed in the aftermath of the *Deepwater Horizon* disaster[28]. However, it is characterized by *a limited normative framework* (1) and *a relative legal applicability* (2), *a fortiori* in a Mediterranean and Levantine perspective.

1) A limited normative framework

The initial choice of the Commission was to adopt a regulation as to establish a harmonized European regime, automatically incorporated into the domestic law of all

[25] Regulation (EC) N° 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, 5.8.2002, L 208/1-9. [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R1406&from=EN (Accessed: 8 December 2022).

[26] See also, P8_TA(2016)0478, Liability, compensation and financial security for offshore oil and gas operations, European Parliament resolution of 1 December 2016 on liability, compensation and financial security for offshore oil and gas operations (2015/2352(INI)) (2018/C 224/25), Thursday 1 December 2016, Official Journal of the European Union, 27.6.2018, C 224/157-162. [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016IP0478&from=EN (Accessed: 8 December 2022).

[27] Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC, Official Journal of the European Union, 28.6.2013, L 178/66-106. [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0030&from=EN (Accessed: 8 December 2022).

[28] Juste Ruiz, J. (2014). 'La directive européenne sur la sécurité des opérations pétrolières et gazières en mer', Revue Juridique de l'Environnement, 39(1), pp. 23-43.

EU Member States. However, this initial strategy naturally had to face opposition from States already involved in offshore operations, and the final agreement reached by the Parliament and the Council led to the adoption of a directive, a much disappointing solution because it only establishes the objectives, *i.e.* an obligation of result, but leaves the States completely free as regards the means to implement them, during the process of the necessary transposition.

Therefore, the final result appears far below initial expectations. Indeed, the oil and gas lobbies and the States with a very active offshore industry, such as Denmark, the Netherlands and the United Kingdom, have not only succeeded in transforming the regulation into a directive but also in reducing the normative scope and legal quality of the text. Too many norms are soft law, suffer from a lack of precision or clarity due to an intentionally complex drafting, and provide partial solutions to global problems. Furthermore, no independent supervision for authorization, evaluation and control has been established, especially within the tasks of the European Maritime Safety Agency (Article 10). Actually, the margin of appreciation left to Member States does not promote the effective safety of offshore oil and gas operations, but allows for a mere industrial self-regulation, because the sector is considered to be economically promising. This is all the more so because the Directive is also characterized by *a relative legal applicability*.

2) A relative legal applicability

Although its legal basis is *Environment* (Part XX), the protection of the marine environment appears actually subsidiary, especially because the Directive is developed from an economic perspective; it is essentially centered on industrial safety, and is limited to oil and gas exploration and exploitation activities, with the express exclusion of transport operations (Article 2 § 3). The purpose is the establishment of minimum requirements applicable in the event of major accidents. Indeed, the accidental dimension of the offshore activity is the only one taken into account; operational pollution and its effects remain outside the scope of the Directive, while the improvement of workers' environmental and health conditions is just implicitly considered. Furthermore, the definition of '*major accident*' (Article 2 § 1) and especially of '*major environmental accident*' (Article 2 § 1 d) appears extremely reductive, including necessarily the human element, apprehended by reference to

'*fatalities or serious personal injury*'. This deliberately has a limiting effect, of such a nature as to undermine the applicability of the Directive: assessed in the light of that criterion, accidents such as those of the *Erika* or *Prestige* could not have been regarded as major accidents...

However, the relatively limited applicability of the Directive is above all patent due to the variable geometry of the obligations of transposition (Articles 41 and 42), especially *ratione personae, i.e.* only coastal Member States of the Union, under whose jurisdiction offshore operations are carried out, are required to transpose the entire Directive,[29] and *ratione loci*. As an act of European Union Law, the Directive only applies in marine waters under the sovereignty or jurisdiction of the Member States, *i.e.* in the territorial sea, but in principle not in internal waters, and in the exclusive economic zone as well as on the continental shelf (Article 2 § 2). In other words, it cannot apply outside EU marine waters, on the high seas or in the waters of non-EU Member States, including when operators and owners are registered in the territory of a Member State.

This approach falls far short of what exists in other sectors of the maritime economy, especially fisheries. It also appears paradoxical with regard to the objective of the Directive, due to the transboundary dimension of marine pollution, and because a major accident occurring in an EU Marine Region, but outside EU waters, can of course have serious consequences in the waters of Member States as well as on land… Such a situation could, for example, occur in the Mediterranean Sea, and especially in the Levantine Basin...

[29] Other coastal Member States are only required to transpose the two articles on transboundary emergency situations (Article 32) and penalties (Article 34), as well as Article 20 *Offshore oil and gas operations conducted outside the Union* which can only give rise to a possible report in the event of a major accident (Article 41 § 3).

EU and US Energy and Security Policies toward the Eastern Mediterranean

Michael Rubin[*]

Transcript of the speech made by the author at the Conference "EU Policies towards the Eastern Mediterranean Maritime Area: Energy and Security" (Athens, 3-5 November 2022), and subsequent Q&A session, edited by Dr Michael Rubin. The oral style has been preserved.

Thank you very much. Let me address the issue of policy proposals first directly by stating that, from a US perspective, an honest broker is not always an even broker. We should not accept that arguments voiced by each party have equal validity. Turkey's extralegal maritime arrangements with Libya and its other fanciful claims, for example, have no legal basis.

As we discuss European Union and US Energy and Security Policies toward the Eastern Mediterranean, it is important to appreciate the big picture: Energy policy in the region could be the core of a revitalized European Union defense and foreign policy. It is not the job of the United States to take the lead, but we should be supportive of Europe as European officials formulate and advance this policy.

Both Europe and the United States can now act from experience. The European Union's disastrous experience with dependence upon Russia provides an important lesson: Never give a non-European Union member or autocracy leverage over Europe's energy and economic policies. This applies not only to Russia, but to other revisionist powers like Turkey and Iran.

It is therefore crucial to get indigenous European energy resources on line. This means doubling down on investment in Cypriot and Greek gas. Bringing Israeli and Egyptian resources online will also reduce the power of those seeking to extort Europe. Developing these fields will wean both southeast Europe off Russian gas and reduce the ability of Turkey to blackmail Europe.

Turkey seeks to block Eastern Mediterranean gas developments for a cynical reason: Ankara understands that independent energy sources which bypass its pipeline

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network will hurt Turkey's bottom-line. In effect, Turkey wants to protect its monopoly. Let me give an example: In 2015, I met then-Iraqi Oil Minister Adil Abdul-Mahdi in Baghdad. At the time, the Islamic State insurgency raged cutting off predominantly Kurdish northern Iraq from the rest of the country. Abdul-Mahdi said that, according to longstanding agreements between Baghdad and Ankara, the Iraqi government paid Turkey $30 million per month in transit fees for the oil Iraq shipped from the northern Iraqi city of Kirkuk to the Turkish city (and pipeline terminal) of Ceyhan. The context of Abdul-Mahdi's comments was Baghdad's frustration that they were essentially paying fees for the Kurds, in Baghdad's interpretation, to export illegally oil without returning revenue to the central treasury. But, in the broader context, just imagine the financial stakes for Turkey if one relatively minor pipeline brings in $360 million each year.

European officials should not treat Eastern Mediterranean gas development as just a Greek or Cypriot issue. After all, the roots of the European Union lay in the European Steel and Coal Community that West European states formed in 1952. The European Union evolves constantly. There is no reason why a European Union 2.0 for the 21st century should not organize around its own energy security.

A few policy prescriptions:

First, it is important to denounce and rebuff Turkish challenges to Greek sovereignty. To allow an aggressor to prolong crises not only enables it to change the baseline for diplomacy -consider, for example, Turkey's occupation of northern Cyprus- but, in the short-term, also impacts economic development by raising insurance for companies operating in waters or on islands Turkey chooses to dispute.

Europe and the United States should reject Turkey's push for a two-state solution on Cyprus and explicitly condition continuing economic relations with Turkey on Turkey's and Turkish-Cypriots' committing to the parameters of the Cyprus solution as laid up by UN Security Council resolutions. Here, it is also essential also to differentiate between native Turkish-Cypriots versus the settlers whom Turkey imported are the invasion and occupation; they are two very different populations. The biggest loser in Turkey's policies for Cyprus nowadays is the more moderate Turkish-Cypriot community that would favor a reconciliation with the rest of Cyprus.

Article 42.7 of the Treaty of Lisbon is the European Union's mutual defense clause. It states that when a state faces 'armed aggression on its territory', other member-states have an 'obligation of aid and assistance by all the means in their power'. As Turkey continues to establish itself as a revisionist state, not only Greece and Cyprus but the broader European Union are going to face a test of their mettle. What both Brussels and Washington must recognize is that Ankara will continue its challenges until Turkey experiences significant pushback to and cost for its aggression.

Here, both the European Union and the United States need to lay out a plan for mutual defense and security guarantees. This must happen outside the NATO framework simply because Turkey has veto power within NATO.

The United States can begin by making it very clear that it has no tolerance for harassment of any shipping in Cyprus's Exclusive Economic Zone. Eleven years ago, Egemin Bağış, at the time an advisor to Turkish leader Recep Tayyip Erdoğan but today Turkey's Ambassador to the Czech Republic, threatened American energy sector workers operating in Cypriot waters. Bağış demanded they stop lawful work under Cypriot contract. 'This is what we have the navy for', he stated. 'We have trained our marines for this; we have equipped the navy for this. All options are on the table; anything can be done.' Had Washington made clear 11 years ago how unacceptable such a statement was and how Turkey had crossed a redline, I doubt we would be having such frequent overflights in the Aegean Sea, or nearly constant violations of Cyprus's Exclusive Economic Zone.

It is time to draw a line in the sand. The European Union needs to take the lead, but the United States can take a proactive supporting role. Washington needs to be an honest broker, not an even broker.

Thank you.

(…)

[Prof. Valinakis:

Thank you, Dr Dokos.

Does anyone of the panel want to react on what has been said by other speakers? (…)

Dr Rubin, would you like to add anything as to what has been said?]

Dr Rubin:

No, no. I value the contribution of the speakers. I disagree from time to time with their arguments but I think it would be more interesting to get into the direct questions and answers. I don't have anything for which I need to take up the panel's time.

(…)

[Prof. Valinakis:

Ok, thank you. Is there any question from the audience for our participants?

(…)

In that case I will just ask the last question to the three non-Greek panelists. Is there a real risk of Greek-Turkish tensions escalating to the level of a military clash or even war? What do you think?

Dr Rubin?]

Dr Rubin:

There is a risk. There is an old Russian joke about the difference between an optimist and a pessimist. The Russian pessimist is the one who says: 'Things have never been so bad: Instability, economy, environment, war, what could possibly get worse?' And the Russian optimist is the one who says, 'No, no, no, they can always get worse.'

Unfortunately, many in the international community approach Turkey with a degree of denial. But, with the economic difficulties that Turkey now faces, with looming elections in 2023, and the centenary of modern Turkey, we are nearing a perfect storm.

It is a strawman argument to suggest that there would be a full-scale war. No one is talking about a Turkish assault on Greece being akin to Russia's invasion of Ukraine. But I worry about a deliberate provocation against some of the Greek islands in the Aegean. Erdogan could use such an incident to his advantage to distract from his economic stewardship, to rally Turks around the flag, or to label his political opponents as treasonous if they don't get behind him.

I very much worry that internal Turkish dynamics are going to contribute to a situation where we could have a very difficult period moving forward.

At the very least when I look at the United States, I disagree with Asli a bit. There are constant efforts dating back to the Obama Administration to 'pivot to Asia' but events in the region always seem to draw the US back in.

I am frustrated, as an American policy analyst, that sometimes it doesn't look like we can walk and chew gum at the same time. With such a huge security apparatus, there is no reason why Washington should not be able to monitor and address multiple threats and crises simultaneously.

That said, the fact that we have both been developing Alexandroupolis, which is going to remain important after the Ukraine conflict, and expanding Souda Bay, shows there is a real, bipartisan recognition that eastern Mediterranean is no longer just a region that the US Navy must sail through. Rather, it is where the action will be moving forward.

We just need to be proactive rather than reactive in order to forestall greater trouble down the road.

Thank you.

(…)

Dr. Rubin:

Actually, can I jump back in for a second as long as we are going to have some contention here?

Look, the situation isn't going to be war or peace. What I am worried about is some sort of crisis in which Turkey puts some boots on an island, perhaps even an unmanned island, and dares Europe to act. Unfortunately, in such situations the hope and the optimism which surrounds the idea of diplomacy in Europe and the United States plays into the hands those countries that see diplomacy not as a way to reach a solution but rather an asymmetric warfare strategy in order to avoid accountability.

What I am most worried about, and we have heard this a few times and so I respectfully disagree with Ambassador Harari, is the notion that if everyone has a seat at the table that is automatically a good thing.

We can look at the experience of Ukraine especially with regard to NATO enlargement. Turkey used the possible accession of Sweden and Finland as an

opportunity to extort those countries. In this case, having Turkey have a seat at the table actually did more harm than good.

That said, I am all for giving Turkey a seat at the table so long as others get to set the rules and Turkey doesn't have the ability to change the nature of dialogue.

Otherwise we are empowering and incentivizing such behavior by always giving those who are engaged in a bad behavior a seat at the table. That undermines diplomacy in the long run.

(…)

Concluding Remarks

The East Mediterranean region, strategically situated at the crossroads of three continents, is rapidly acquiring strategic importance for European security. Following the invasion of Ukraine in February 2022, the region was propelled to the foreground because of its rich confirmed reserves and prospective hydrocarbon resources. Being both an energy-producing (and prospected energy-producing) as well as a transit area, it can significantly contribute to EU's energy independence and security by providing diversification of routes and suppliers, as well as to EU's low-carbon transition.

All possible gas export options from the region should be examined and those that are commercially viable and politically feasible should be identified and promoted. Maximizing the development of renewables while exploiting gas resources regionally, alongside conflict prevention and dispute resolution are key to the region's future and the EU's interests.

Indeed, the Eastern Mediterranean is a region where new (hard and soft) security challenges emerge (e.g., increasingly large migration and refugee flows), while old ones are far from being resolved -inter alia, the Cyprus Question, the Palestinian issue and the Syrian and Libyan conflicts. Most importantly, several disputes arise due to conflicting interpretations of maritime zones delimitation, as overlapping claims abound, and many states claim (potential) own rights to have been infringed upon. Thus, large expanses of sea space remain unexplored and undelimited and become apples of discord. East Mediterranean states appear reluctant to have recourse to international judicial organs or mechanisms for solutions that would accelerate exploration and leave no room for future contestations. Lack of legal safety, in turn, deters from hydrocarbon exploration and exploitation enterprises at a time of acute need.

Moreover, the conflict potential of the area has increased partly as a result of Turkey's unilateral definition of "its" maritime zones ("Blue Homeland") in contravention of international law of the sea. Combined with revisionist trends regarding international borders established by WWI and II Peace Treaties (Lausanne 1923, Paris 1947), Ankara's pursuit of territorial / maritime expansion constitutes a

threat to neighbouring EU countries' security, thus posing unprecedented challenges to the Union's external borders, European solidarity and overall policies.

In what follows, a brief overview of the current situation in the East Mediterranean will be given, with reference to the EU's policies related to the region. The rise in importance of the region following the Russian invasion of Ukraine is analyzed based on the interplay between the energy and security parameters. The unfolding strategic environment poses new security challenges to the EU that demand for decisive action, all the more so because successful natural resources exploitation and uninterrupted energy inflow cannot take place in an unstable or unsafe political environment.

All in all, developing energy resources requires careful long-term planning and the EU should adopt an Eastern Mediterranean strategy and take decisive action accordingly. Although commercial considerations tend to drive energy development, political and security considerations play a dominant role in determining whether a region is stable enough to support the exploitation and transport/ use of hydrocarbons. Energy security helps with cooperation when the overall geostrategic framework makes energy/delimitation agreements possible, rather than the other way around.

In order for the Union to bring about more tangible results, its voice should be more clearly heard and become politically more effective and visible in the region in close concertation with the US. It should use its leverage in a systematic and coherent way and capitalize on the unique energy situation to activate bridge-building diplomacy aiming at averting aggressive behaviour and open conflict in the area as a priority. The appointment of a high profile Special Envoy for the East Mediterranean would help to identify the best possible export options, reduce tensions and produce political space for cooperative maritime delimitations (eventually with recourse to international judicial organs or mechanisms in specific issues).

1.The EU and the East Mediterranean Space in a New Geostrategic Era

The EU's overarching aim towards the East Mediterranean is the promotion of stability and security in this volatile region through the furtherance of political, economic and security cooperation between the EU and Eastern Mediterranean non-EU countries. This includes conflict prevention and dispute resolution, the promotion of democracy - human rights - rule of law, regional cooperation, the facilitation of trade and more

recently the creation of viable energy ties with the region. Given that there is no specific Eastern Mediterranean policy as such, the goals are to be achieved at a minimum through the continuation and enrichment of existing policies such as those covering the Mediterranean area -especially CFSP, the European Neighbourhood Policy (ENP) and the Union for the Mediterranean (UfM) “ring of friends". However mediocre the results are so far, the EU should committedly continue the ENP process, because the ENP, apart from being an efficient tool towards building regional security (but whose full potential remains unexploited), is at present more relevant than ever.

A distinct new element in the EU’s approach that has gained importance after the invasion of Ukraine in February 2022, is energy security. As the (mostly Russian) energy sources that provided for EU needs ceased to deliver as a result of the war and the Western sanctions, their substitution in the foreseeable future is not ensured. There emerged the imperative need for the EU to diversify its energy sources, routes and suppliers as soon as possible. In this volatile geopolitical backdrop, the Eastern Mediterranean basin, with its large confirmed reserves and prospective resources, reappeared in the foreground as a new geostrategic area. Due to its geographic proximity with the EU mainland, the existence of working relations with all non-EU -except Syria and to a certain degree Libya- coastal states and political entities (Egypt, Israel, Lebanon, Palestinian Authority and Turkey), as well as due to the fact that two of them (the Republic of Cyprus and Greece) are EU members, it could potentially become a primary region from which the energy mix could flow in uninterrupted, in order for heavy dependence from Russia to be significantly reduced. Thus, exploration, drilling and extraction activities and signing of concessions could be expedited, while the exchange of letters for the maritime delimitation agreement between Israel and Lebanon (and the US as a facilitator) for joint exploitation of offshore fields finally took place in October 2022, after twelve years of sporadic negotiations. However, overlapping claims of maritime zones have become more acute in recent years as a result of Turkey’s unilateral militarastic activism aiming at monopolizing the hydrocarbon resources of the region. Alternative routes are being explored including the somehow dormant EastMed pipeline project, possibly in conjunction with other routes, in the light of recent developments.

In sum, the Eastern Mediterranean littoral states appear more determined in exploiting their offshore energy resources, and Europe should display its readiness to

actively support relevant endeavours that enhance stability in the region and energy security for the whole of the EU. The wide array of fields in which the Union takes action by adopting and implementing policies and instruments in respect of the Eastern Mediterranean will be discussed in the following pages.

2. European Energy and the Eastern Mediterranean Maritime Space

After many years of international indifference regarding the Eastern Mediterranean's gas potential, some interest appeared in 2015, following the discovery and successful development of Egypt's Zohr gas field, along with Israel's Leviathan field, which was discovered in 2010 and began producing gas at the end of 2019. The hydrocarbon findings led to the studying of alternative ways to export them without ignoring regional strategic parameters.

High gas prices as a result of the Ukraine war favor suppliers, but Eastern Mediterranean gas projects require long development timelines and could therefore face shrinking export prospects, as potential markets, especially those in Europe, increasingly shift resources to renewables. Still, according to experts, Eastern Mediterranean gas has a lucrative potential, as Europe is rapidly decreasing dependence on Russian gas and the world assesses the importance of gas in a low-carbon energy mix.

Undoubtedly, the Eastern Mediterranean's geopolitical conflicts jeopardize the full realization of the region's potential to develop and export natural gas. Additionally, the momentous shocks that the oil and gas industry experienced in 2019-2020, combined with the devastating impact of the COVID-19 pandemic on global energy supply and demand, have impeded gas exploitation in the East Med. Lately, most major companies significantly reduced their investments in hydrocarbons and aspire to transform themselves into energy companies with a strong portfolio in renewable energy sources in line with the 2015 launching by the European Commission of its Energy Union Strategy and Climate Change Policy.

The East Mediterranean Gas Forum (EMGF), established in 2019, is one of the most promising developments in recent years, although it suffers, as suggested by some participants, by structural problems, such as Turkey's exclusion as a result of its uncooperative behaviour. Over the past 40 years global natural gas production has

increased by 180% and the trend upwards will continue till at least until 2040, experts say.

One of the most important dimensions of the Energy Union Strategy is energy security, solidarity and trust, which in essence mean diversification of Europe's sources of energy and making better, more efficient use of energy produced within the EU. Decarbonizing the economy and pushing for a global deal for climate change has been part and parcel of this policy. EU plans to use gas as a transitional fuel for the next 30 years, until 2050, while even in the zero-emission scenario for 2050, gas will participate by at least 20%, and gas networks and pipelines are the most effective ways to transport green hydrogen, the fuel of the future.

Energy is also part of the ENP thereby exemplifying the EU's commitment to strengthen dialogue and win-win cooperation with countries in the area towards a resilient Energy Union, but also towards more efficient, competitive and stable economies in the participating neighbouring countries. Key to the achievement of the above are energy independence, energy market reforms and the promotion of sustainable energy production for both the EU and its Eastern Mediterranean neighbours.

Due to its proximity with EU mainland, the fact that the Eastern Mediterranean comprises both energy-producing or prospected energy-producing and transit countries, and large natural gas and renewable energy resources, can largely contribute to Europe's energy security and decarbonization plans, while economic and geopolitical gains will be significant for EU's counterparts as well. Participants underlined that cheap Russian hydrocarbons have impeded a particular focus on the possible gains from this offshore maritime space. At the same time, energy security in Europe was not given enough priority or attention, despite US pressure and although its role has been widely recognized. Diversification of alternative import sources and routes is now widely acknowledged as key to decreasing the region's import dependency on any single supplier, which was Russia.

Within the West and as a result of Putin's invasion of Ukraine, energy has become a priority issue much less dividing than in past years. European consumers are getting natural gas at prices 7 or more times higher than their US counterparts.

Seen from the geopolitical angle, as pointed out by several participants, when EU and US energy and security policies toward the Eastern Mediterranean are discussed, it is important to appreciate the big picture, i.e. that energy policy in the region could be the core of a revitalized European Union diplomatic involvement as part of its CFSP. It is not for the United States to take the lead, but it should be supportive of Europe as it formulates and advances this policy. At the same time, since 2022, Europe and the United States can act from experience: Europe's disastrous dependence upon Russia has provided the West with an important lesson: "do not give a nonEU member (particularly an autocracy) leverage over Europe's energy and economic policies. This applies not only to Russia, but to other powers increasingly acknowledged as revisionist, like Iran and Turkey".

Increased energy insecurity after February 2022 reaffirmed the relevance of the Eastern Mediterranean to the Union and propelled the region among the EU's main potential suppliers of low-carbon hydrogen. Within this framework, several participants argued that it is important for the EU (and its transatlantic partner) to consider with revitalized interest the EastMed pipeline project.

Within the East Mediterranean region, with the exception of Egypt, where exploration started in 1954, and which has since 1958 been feeding both its domestic and international market with oil following an integrated policy on the matter (which at present includes a renewed scheme for the exploitation of its Zhor offshore field), the rest of Eastern Mediterranean countries were lagging behind. The first discoveries off the coast of Gaza were made in 1999, thereby sparking interest in exploration operations which in turn became the driving force behind a series of maritime delimitations in the Eastern Mediterranean during the last two decades.

Greece had a central involvement in the EastMed pipeline project and actively sought to contribute to European energy security: the three pipelines -the Trans-Adriatic Pipeline (TAP), the EastMed and the Gas Interconnector Greece-Bulgaria (IGB)-, with the Alexandroupolis Floating Storage and Regasification Unit (FSRU) infrastructure, the upgrade of Revithoussa LNG station, the underground storage of natural gas in Prinos-Kavala, and the EuroAsia Interconnector, have all been included since 2013 in the Projects of Common Interest (PCIs) for financing. They are potentially useful for national and regional energy security, but also of Europe-wide importance.

The feasibility of the EastMed pipeline was widely discussed among analysts with the majority insisting that the current energy crisis should upgrade the project among the very first priorities not only of Israel, Cyprus, Greece and Italy, but also of the whole European Union since it is the only new route from a new source for providing natural gas to the European economies. However, the proposed pipeline would be 2,000 km long, able to carry up to 21 billion cubic meters and its construction could allegedly be completed within 36 months with a total investment of at least 5.2 billion euros and a life cycle of more than 50 years. It would allow for the transportation of hydrogen, while the synergies with renewables would be available along its route.

Proponents of the project acknowledged that its financing remains a problem, as adequate resources are not available for the time being and with the existing instruments. One expert therefore proposed an ambitious plan, i.e. a modern international treaty, a kind of "Climate Bretton Woods Treaty". Similarly with the respective Bretton Woods agreement after the end of the World War II, a global "Climate Bretton Woods Treaty" could be launched and coordinated by strong economies, at least by the US and European Union.

However, the most crucial impediment for the pipeline project has been Turkey's military activism which has curtailed the potential for meaningful judicial and negotiation processes and regional cooperation in the Mediterranean. The EU and its m-s have been calling on Ankara to abstain from provocative threats and unilateral action, to respect International Law and the Law of the Sea (LoS), act in a spirit of good neighbourly relations, and use peaceful methods of delimitation able to solve issues of overlapping claims.

Energy cooperation should be rules-based to produce stability and security. There is no alternative. Peaceful means are a must for offshore boundary delimitations, and problem-solving. Upgraded cooperation should be the objective of partnerships open to any third neighbour on the prerequisite of respect for International Law and the United Nations Convention on the Law of the Sea (UNCLOS). Greece has already made agreements with neighbouring countries on the delimitation of its Exclusive Economic Zone (EEZ) with Italy and Egypt by applying UNCLOS principles while it has agreed with Albania to have recourse to the International Court of Justice (ICJ).

The Republic of Cyprus also concluded similar agreements with Egypt, Israel and Lebanon.

On the contrary, a delimitation MoU between Turkey and the government in Tripoli signed in 2019 was considered legally null and void since it is based on blatant disrespect for International Law and even geography.

In brief, and insofar energy security in Eastern Mediterranean and the EastMed pipeline are concerned, the project participants stressed that Europe must ensure that all available energy natural resources will be developed so as not to pave the path for repeated and possibly even more acute price surges in the future. It is in this framework that the East Mediterranean area may grow into a new hopeful source of energy supply for the whole European Union. The same applies to projects like the EastMed pipeline as a scheme of wider European relevance, since it could become a promising solution in combination with the two LNG infrastructures in Damietta and Idku in Egypt.

Azerbaijan and other countries could remain natural gas suppliers, but at the same time the EU should start exploiting natural resources in the Eastern Mediterranean neighborhood, which together with the Black and North Seas are three areas that can contribute to EU needs for natural gas. With the addition of LNG from Qatar and the US, the problem of energy security in Europe for the next 20 or 30 years could be solved wiping out the Russian option which no longer exists at least for the foreseeable future.

In terms of alternative routes from the Eastern Mediterranean the Commission has agreed on the basic routing of the EastMed pipeline and to finance it, based on its financial viability. Cyprus, Israel and Greece, on their part, have signed the trilateral agreement and have agreed on the basic trajectory of the pipeline. Turkey, on the other hand has strongly and militarily opposed the project and prefers to explore alternative routes with itself in the centre, possibly as a hub for Russian and Caspian hydrocarbons and/or through a proposed pipeline to Israel, but its tense relations with most of its neighbours have impeded success so far.

Besides the diplomacy of pipelines, the diplomacy of electricity cables have started making another focal point of the energy discussion, as renewables and natural gas will go hand-by-hand for the next 30 years. Natural gas is the basis for hydrogen, and natural gas infrastructure is the basic means for transporting green hydrogen too, while the additional cost for the upgrade of a new natural gas pipeline is no more than

20% of the total cost. The EuropeAsia and Europe-Africa Interconnectors have been portrayed as projects of strategic importance.

Apart from the need for the construction of the EastMed pipeline to be expedited, novel proposals and ideas could also provide answers to compensate for the lost ground regarding energy security, given that there need to be multiple sources of energy security, as reliance on a sole provider has proven to be dangerous.

One such proposal, to which special attention was paid, came from the new Head of the Libyan NOC who suggested (at the 2022 Abu Dhabi International Petroleum Exhibition and Conference) that Libya could join the East Med Gas Forum that involves Greece, Italy, Cyprus and Egypt; he also brought to the fore an older project involving the construction of a pipeline connecting Libya northwards to Greece and eastwards to Egypt, Cyprus, Lebanon and Israel. If drilling activities in the Gulf of Syrte are fruitful and the pipeline -currently at conceptual stage- is constructed, it would ensure energy security for Libyans themselves, obviously, but also for Europe, with Greece becoming a crucial guarantor of energy security for entire Europe.

In sum, in the current challenging geopolitical environment, all-new as well as old plans should be seriously (re)considered, so as for the diversification of sources, routes and suppliers to eventually materialize, leading closer to energy independence and security for the whole EU as well as for its Eastern Mediterranean neighbours.

A knowledgeable American analyst underlined the importance of getting indigenous European energy resources online and suggested “doubling down on investment in Cypriot and Greek gas” and bringing Israeli and Egyptian resources online thereby “reducing the power of those seeking to extort Europe”. Developing these fields “will wean both southeast Europe off Russian gas and reduce the ability of Turkey to blackmail Europe”.

Turkey seeks to block Eastern Mediterranean gas developments out of narrowly defined self-interest. It understands that independent energy sources which bypass its pipeline network will hurt its monopoly and the revenues she wants to protect; for example, according to an experienced analyst, transit fees for the oil Iraq is shipping from Kirkuk to Ceyhan amount to 360 million USD each year. Any energy project circumventing Turkey is therefore bound to encounter Ankara’s disrespect of UNCLOS and ultimately its military intervention.

An American commentator insisted that European officials should not treat Eastern Mediterranean gas development as just a Greek or Cypriot issue. After all, the roots of the European Union lay in the European Steel and Coal Community that West European states formed in 1952 and the EU evolves constantly. There is therefore "no reason why a European Union 2.0 for the 21st century should not organize around its own energy security".

3. Conflicting Interpretations of Maritime Zones: Delimitation Issues

Both energy exploitation and regional security need clearly-cut delimitations of respective maritime zones. The East Mediterranean Sea exhibits certain geographic and geopolitical particularities, which partly account for -real or alleged- overlapping of maritime zones in the region, and subsequent delimitation issues. To start with, there are different geographic definitions of the Eastern Mediterranean, as regards whether it includes Libya or not.

Secondly, four of the eight -or nine- states that surround the Eastern Mediterranean -that is, Israel, Libya, Syria and Turkey- are not Contracting Parties to the UNCLOS, which in its most part constitutes binding customary law nonetheless, thus applicable to all maritime delimitations. The United Nations judicial organ -the ICJ- has consistently pronounced upon the customary binding nature of UNCLOS provisions relating to maritime delimitation, rendering judgements that leave no doubt as to the applicability of these provisions to all maritime delimitations, regardless of the concerned states being Parties to the UNCLOS or not (Territorial and Maritime Dispute, Nicaragua v. Colombia, Judgment, ICJ Reports 2012, para. 139).

Thirdly, -and according to one standpoint- the Convention, which is also referred to as "Ocean Law", is not designed for enclosed or semi-enclosed seas, such as the Mediterranean. However, this standpoint has been flatly rejected by international case-law, and with regard not only to the Mediterranean, but also to other semi-enclosed seas, like the Black Sea and the Caribbean, where the UNCLOS provisions have been fully implemented with no exception (Maritime Delimitation in the Black Sea, Romania v. Ukraine, Judgment of 3 February 2009, ICJ Reports, 2009; Territorial and Maritime Dispute, Nicaragua v. Colombia, Judgment, ICJ Reports 2012).

Additionally, dented coasts less than 400 nm from one another, the large number of islands in a relatively small basin and the abundance of (potential) tripoints make

conflicting readings of the LoS unavoidable. Last, the current energy and security context of the Eastern Mediterranean and in particular unilateral actions are another factor that aggravates the demanding endeavour of maritime delimitation in the area.

More specifically, spatial narrowness does not allow for all maritime zones even in some cases the Territorial Sea- to be extended to the maximum allowable by international law limit. Regarding the legal regime of (natural) islands under the 1982 Convention, and regardless being island states or parts of continental states, they are all entitled to Territorial Waters, Continental Shelf and Exclusive Economic Zone (EEZ). They are also given effect on delimitation, although the quantitative aspect of such effect (full, half, zero) may vary, depending on the geographic realities and circumstances of each particular delimitation. The fact that each delimitation case (including islands or not) is an uniqum gives rise to divergent viewpoints as to how the maritime zones -especially of islands, but also of mainland- should be delimited, and to third country contestations to delimitation unilateral acts or bilateral agreements. In addition, Eastern Mediterranean states appear reluctant to have recourse to international judicial organs -either permanent or ad hoc- for solutions that are binding. Despite the high degree of difficulty of maritime delimitation in the area, and with the exception of Libya that had recourse to the ICJ twice, no judgement or award has been delivered by the ICJ, the International Tribunal for the Law of the Sea (ITLOS), the Permanent Court of Arbitration (PCA) or any other arbitral mechanism. The Eastern Mediterranean states tend to favour bilateral agreements instead, which are often contested by third states claiming own (potential) rights to have been infringed upon. What is more, and as far as tripoints are concerned, there has been so far no trilateral delimitation agreement in the area.

Almost all Eastern Mediterranean countries are signatories to international treaties, have signed bilateral agreements with neighbours, participate in international and regional fora, and have national legislation in place. However, Israel, Syria and Turkey have not signed the UNCLOS and Libya has not ratified it. Nonetheless, they are bound by the Convention, as it is in its most part customary law, and these countries invoke and implement its provisions indeed.

Another characteristic of the delimitation activity in the Eastern Mediterranean, is that all coastal states view EEZs in an energy perspective, based on offshore

activities. The majority of sea zones in the Eastern Mediterranean started being delimited in the 2000s, with the second decade of the century also seeing a spike in maritime delimitations. Of course, maritime delimitation and offshore discoveries of natural resources are interrelated. in 2003 Cyprus and Egypt jointly delimited their EEZs, in 2007 an EEZ delimitation agreement was concluded between Cyprus and Lebanon, in 2010 Cyprus and Israel delimited their EEZs, in 2020 Egypt and Greece signed a partial EEZ delimitation agreement, and in 2022 Israel and Lebanon (with the mediation of the US) exchanged letters on the delimitation of their respective EEZs too.

All the above delimitations were based on the median/equidistant line principle, in full compliance with the LoS. At this point, mention should be made of the 2019 MoU between Libya and Turkey, which -supposedly- delimited the above countries' EEZs, but -in essence- is non-existent, since there is no adjacency or opposition relation connecting the Libyan shores with the Turkish ones. In this way, the MoU directly contravenes LoS, rendering itself null and void, as the LoS provisions referring to maritime zones delimitation reflect customary law, by which all states are bound.

Given the loaded context of the Eastern Mediterranean, offshore discoveries may either pave the way to cooperation and delimitation agreements even between long-standing enemies (e.g., Israel and Lebanon), or put an extra burden on already tense relations (e.g, Cyprus, Greece and Turkey). However, what is seen as cooperation by the two parties involved, can be seen as provocation by third countries, resulting in conflict. The LoS can offer the way out of the afore-described vicious circle, because it can serve as a benchmark for assessing claims and settling disputes. On the other hand, it is the LoS that leads to jursdictionalization by delimitation agreements which may give way to maritime disputes in the first place. All things considered, and despite their insufficiency and failure of enforcement in some cases, international law and LoS in particular are the indispensable stepping stones towards a rules-based, well-regulated sea order, including well-defined maritime borders.

4. The EU and Security Issues in the Eastern Mediterranean

At the crossroads of three continents, the Eastern Mediterranean maritime space is of undoubted strategic importance for the EU, other powers and the littoral states themselves. It offers multiple alternative sea routes -including ones via international straits- and provides entry to two of the world's most important choke points (the

Bosporus/ Dardanelles and the Suez Canal). It is at the same time a region where numerous military drills and aerial/maritime surveillance operations are held, while numerous incidents of seaborne irregular migration exemplify the need for the increasing in number Search and Rescue (SAR) operations. Maintaining vessel safety is by definition a demanding endeavour, as it includes ship protection from various -and seemingly unrelated- factors, such as terrorism, smuggling, unauthorized fishing and pollution.

Article 21 of the Treaty on European Union (TEU) provides on the Union's external action, and sets forth the principles that shall guide EU action on the international scene, while Article 24 TEU provides on the EU Common Foreign and Security Policy (CFSP), explicitly stipulating that Member States should achieve an ever-increasing degree of convergence of action. However, Member States' own political and strategic/economic considerations, special or difficult relations with third countries or alliances, tradition of neutrality for either political or ideological reasons, and fixed stances on certain foreign policy matters are among the factors that impede convergence. This is particularly true of the Eastern Mediterranean where the EU positions at times appear inconclusive, nebulous or even equidistant in cases of disputes between member-states and third powers.

The 2016 Global Strategy for EU's Foreign and Security Policy is intended to be global not only in a geographical sense, but also because its scope is wide, comprising policies, guiding principles and instruments for both internal and external action: chiefly a stable rules-based global order relying on fundamental principles such as the inviolability of international borders, commitment to cooperative regional orders and working partnerships; collective security with partners (especially North Atlantic Treaty Organization/NATO); EU's military capabilities and an enhanced and more structured cooperation in the Common Security and Defence Policy (CSDP) framework are intertwined with all aspects of internal and external security, always in compliance with EU values and principles. Within this framework, the EU strives to establish a European Security Order and aims to forward its own and the member-states' interests, but also make a positive difference in the world by capitalizing on its civilian, economic and normative power, that is to say, on its unique (chiefly soft) power of attraction.

The EU's external action is shaped by "principled pragmatism" and in terms of geographical scope, it takes responsibility foremost in Europe and its surrounding regions and seas. Notwithstanding its inherent limitations to undertaking common action and using "hard power", it is now facing protracted warfighting and blatant Russian revisionism at its eastern borders, with other powers like Turkey and Iran openly advocating a new (antiWestern) world order. Caught off-guard in Ukraine, Europe cannot ignore the lessons learnt from its insufficiently strong deterrence vis-a-vis 21st century invaders and use-of-force proponents; it cannot therefore be absent from its even more immediate Eastern Mediterranean neighbourhood – an area of increasing frictions, a gate/route to Europe for moving populations, but also a well-endowed with natural resources region.

The issue of migration is becoming increasingly intractable, since it is neither occasional nor of geographically regional character. Its seriousness has risen incrementally but it is yet to be fully understood by the EU. The climate crisis, causing the desertification of arable lands in Sahel, droughts and famine in combination with rapid demographic increase in those areas and the political weaponization of migration, are additional factors for increased human flows to Europe through Mediterranean waters.

The Eastern Mediterranean maritime space is an area where novel security risks are generated, and at the same time an area that could provide energy security. However, in order for exploration, exploitation, construction of infrastructure and transportation of hydrocarbons to take place, a safe, conflict-free environment (political, strategic, economic) is a *conditio sine qua non*.

Up to now, the EU has been pursuing resilient states and economies in the Eastern Mediterranean, so as for the security nexus to be amplified in the best interest of both the EU and non-EU countries.

Article 8 TEU provides on the construction of a special relationship with neighbours, founded on the values of the Union and characterized by close and peaceful relations based on cooperation. However, the institutionalization of relations was initiated long before the TEU came into force in 2009. Moving from multilateralism with the 1995 Euro-Mediterranean Partnership (EMP - Barcelona Process, that superseded earlier schemes, such as the Financial Protocols), to bilateralism with the

2003 ENP (last reviewed in 2015) and the albeit intergovernmental- 2008 UfM, the above dates mark landmark events in the functionalist process of "solidarités de fait" between the EU and its neighbours.

However, from the total of sixteen neighbours enjoying the privileged relationship with the EU under the ENP, the East Mediterranean ones have -in general- not made significant gains from it, in terms of both economic prosperity and democracy, human rights, rule of law advancement, which, combined, would lead to stability and security for all. More particularly, the Association Agreements (AAs), despite being in place since long, have had but limited effect on trade and the intended creation of a Deep and Comprehensive Free Trade Area (DCFTA) has yet to materialize.

On the other hand, according to several participants, given that economic development does not by default generate political reform and democratic change, the EU should take a "More for More" approach on the matter, with more economic privileges offered to those who live up to EU values.

Turkey -the only East Mediterranean state with accession prospect, at least on paper - has become a unique and very complicated case. By following its own political choices and autonomous path, its screening process has been halted and it has distanced itself from EU political and economic orientation and underpinning. Since the EU-Turkey Customs Union in 1995, Ankara has largely benefited from the liberalization of the two-way trade in goods, from EU investments and from an increase in trade in services. However, the benefits from the partial market integration do not reflect in the country's difficult economic and financial situation at the moment. In addition, there has been a rampant deterioration in the triptych democracy - human rights – rule of law, and a disregard of EU values -all prerequisites of a Customs Union. There seem to exist no working checks and balances, parliamentary monitoring and meaningful internal opposition. Instead, signs of authoritarian system and non-western orientation are becoming more and more evident.

Some participants pointed out that this non-abidance by EU values and principles could be partly attributed to EU's own weak and ambiguous stance regarding Turkey's violations of EU and International Law, and the lack of sanctions. In this context, they proposed that clearly-stated and strict political conditionality could be used to exercise leverage on the country towards bringing it closer to Europe -rather

than “allowing” it to move to the opposite direction. On the other hand, this does not mean that Turkey should be kept in the “family” at all costs, as this would trigger an equally detrimental “race to the bottom”. In this sense, strict and fair conditionality appears again as the best-suited solution, with “fair” applying to both sides of the equation, as Turkey should not be allowed to take what the Union offers and abuse it for own ends that run counter to the EU. Turkey remains a candidate country and an important partner to other partner-countries in the area, as well as an important actor in the Eastern Mediterranaean. Europe should work closely with Ankara on a number of issues, including migration, mobility and border management and not automatically exclude it from regular ENP fora and funding.

In view of the 2023 presidential elections, the continuation of the accession process with strict and fair conditionality, the revitalization of the country’s democratic institutions and the normalization of Cyprus-Turkey relations will remain EU’s main desiderata, together with the respect of UNCLOS, the nonweaponization of refugees, regional security, the Customs Union and visa liberalization. Since the 2016 coup attempt against R.T.Erdogan, Ankara’s stance has changed distinctly in terms of its relation to the EU following and Turkey’s increasing distancing from European norms and values and basic western principles, including questioning Greece’s territorial integrity.

The Eastern Mediterranean is also heavily impacted by EU policies vis a vis other strategic regions such as the wider Middle East, the Gulf and Africa, areas where the EU has heavily invested in terms of security. All in all, the East Mediterranean Sea acts both as a bridge and a barrier between Europe and these strategic areas.

The EU is an important actor in terms of maritime safety and security in the area with a strong regulatory framework at all levels (national, EU, regional, international), that covers all aspects of maritime activity (fishing, ecological protection, protection of underwater cultural heritage, scientific research, sea commerce, seafaring, military activities, natural resources exploration and exploitation etc). The European Maritime Safety Agency’s (EMSA) is providing roadmaps, projects, technical assistance, capacity-building support and inspection of third countries’ vessels as to standards for seafarers. Furthermore, and due to the Common Fisheries Policy’s (CFP) applicability to all EU-flagged vessels but also in all waters under EU Member States’ jurisdiction,

the EU undertakes relevant action in the Eastern Mediterranean by means of the European Fisheries Control Agency's (EFCA).

To ensure safe marine routes, the sea space needs to be allocated among national jurisdictions, within which the concerned state will be competent to provide security, and will be held accountable in case of breach. The already demanding task of distributing water expanses becomes even more difficult in the case of the Eastern Mediterranean, because of its distinct geographic morphology, spatial narrowness and the presence of numerous islands. What is more, frozen and armed conflicts, heightened tensions, tripoints and transboundary oil and gas blocks add up to the complexity of the puzzle. The most important framework of global significance does exist, as international treaties -and first and foremost the 1982 UNCLOS- bilateral agreements, national legislation and legal instruments are in force, while fora and international organizations provide the venue for cooperation to be enhanced and best practices to be adequately shared. The UNCLOS provides in great detail on all zones that make up the sea space (Territorial Sea, Contiguous Zone, Continental Shelf, Exclusive Economic Zone/EEZ, High Seas).

Above all, the war in Ukraine, a dangerously bleeding wound in the heart of Europe is likely to lead to a new European security order that will extend to its neighbouring seas and the East Mediterranean more specifically. Several participants stressed that the instability generated by the Russian invasion is already negatively impacting regional cooperation; indeed the involvement of uncooperative external actors directly contributes to an unprecedentedly tense situation. For multiple reasons it may be the first time that we face a convergence of highly negative factors of various kinds -inter alia, civil strife and military escalation in many regions -like Syria, Libya, etc., with Russia and Turkey having been main actors in these hotspots. The prospects for diplomatic arrangements and cooperation in this maritime space are also being negatively impacted by developments in the wider Middle East which remains extremely volatile, as well as by destabilization emanating from adjacent areas, like the Horn of Africa and the Gulf.

Two EU Member States, Cyprus and Greece, have a prominent presence in the area, in terms of both significant expanses of waters under their jurisdiction, extensive length of coasts (Greece is 9th in the world) and maritime borders, with the latter

making part of the external EU border - hence the particular interest the EU is taking in the area. This interest is exemplified among other instances- in the high frequency at which European Border and Coast Guard Agency (Frontex) operations are conducted in the area.

Two participants underlined the importance of cyber-security threats as exemplified in the December 2020 new EU Cybersecurity Strategy. It covers among others- the security of essential services, such as energy facilities and recent developments regarding the sabotage of Nord Stream pipelines have brought to the fore new vulnerabilities. Moreover, given that most cybersecurity attacks are cross-border and that, even if intended against one country, they can affect the EU as a whole, the EU has taken a holistic approach on the matter by foregrounding the need to enhance third countries' cyber capacity too, especially those in the EU's immediate neighbourhood. The ENP and UfM formats are suitable for promoting cyber resilience for both the EU and its Eastern Mediterranean counterparts.

Furthermore, most participants addressed the issue of Turkey's new activism. Ankara's bellicose rhetoric is a challenge to the Union's common external borders and, as many participants felt, the EU should display strong deterrent solidarity towards its two member states (Greece and RoC) in the region. Moreover, an experienced analyst proposed that Europe and the United States should reject Turkey's push for a two-state solution on Cyprus and explicitly condition continuing economic relations with Turkey on Turkey's and Turkish-Cypriots' committing to the parameters of the Cyprus solution as laid up by UN Security Council resolutions. It is also essential, he insisted, "to differentiate between native Turkish-Cypriots versus the settlers whom Turkey imported as they are two very different populations. The biggest loser in Turkey's policies for Cyprus nowadays is the more moderate Turkish-Cypriot community that would favor a reconciliation with the rest of Cyprus".

Furthermore, Article 42.7 of the Lisbon Treaty, i.e. the European Union's mutual defense clause, foresees that when a state faces "armed aggression on its territory," other member-states have an "obligation of aid and assistance by all the means in their power." As Turkey increasingly insists on a revisionist stand, the Union is going "to face a test of their mettle. What both Brussels and Washington must

recognize is that Ankara will continue its challenges until Turkey experiences significant pushback to and cost for its aggression".

Several participants from both the European Union and the US underlined "the need to lay out a plan for mutual defense and security guarantees. This must happen outside the NATO framework (simply because Turkey has veto power within NATO) and make clear it has no tolerance for harassment of any shipping in Greece and Cyprus's Exclusive Economic Zones […]. Had Washington made clear how unacceptable [Erdogan's] statements were and how Turkey had crossed a redline, I doubt we would be having such frequent overflights in the Aegean Sea, or nearly constant violations of Cyprus's Exclusive Economic Zone. It is time to draw a line in the sand".

How can the EU and the US contribute to terminating Turkey's hyperactivism? "The European Union needs to take the lead, but the United States can take a proactive supporting role. Washington needs to be an honest broker, not an even broker. We should not accept that arguments voiced by each party have equal validity. Turkey's extralegal maritime arrangements with Libya and its other fanciful claims, for example, have no legal basis".

5. Policy Recommendations for the EU: Taking A Leading Role in the Eastern Mediterranean

The EU policies' overarching aim towards the East Mediterranean is the promotion of economic and political stability in the region, with energy independence and regional security being of utmost importance. The East Mediterranean region has gained attention with the discovery of considerable, potentially rich, oil and gas fields, and the prospect of more discoveries, but was foregrounded after February 2022, as an alternative, affordable and reliable energy provider. At the same time, a combination of internal and interstate conflicts, political instability, demographic explosion, low development rates and large refugee and migration flows in Eastern Mediterranean pose security and policy challenges to the EU that demand for decisive action, all the more so because successful natural resources exploitation and uninterrupted energy inflow cannot take place in an unstable or unsafe political environment.

The ENP is a tool for structural change in the Mediterranean neighbourhood. For the tool to be properly used and its potential to be deployed to the fullest extent,

monitoring mechanisms should be set up, and sanctions imposed on those who consistently do not comply with their undertaken obligations. Thus, the policies' impact will be positive and tangible, while monitoring and sanctions will serve as preemptive and deterring factors from diverging behaviours.

The core of the problem is a crucial factor aggravating the East Mediterranean security context and indirectly threatening the prospect of full exploitation of the region's energy potential at the expense of each and every coastal state.

Unaware of the importance of the time factor, the coastal states continue holding divergent views as to own and others' entitlements to maritime zones, while appearing reluctant -at least some of them- to have recourse to international judicial organs and mechanisms. Manifest disregard of International Law and LoS, in some cases, does not allow for smooth natural resources exploration and exploitation operations, as a well-defined legal status of the sea space is prerequisite for e.g., concession agreements with interested national or international companies that are capable to undertake such operations. In this sense, maritime delimitation challenges could easily result in security challenges and energy complications.

While EU policies and legal instruments in force are sufficient in number and cover a broad spectrum of relevant activities in the area, their impact remains marginal. The marked differences between the EU and non-EU states in the East Mediterranean have not been bridged -if not widened. Turkey in particular makes frequent evidence of a complete disregard of EU values, rules and decisions. The Union on its part, has not made evidence of the same determination to oppose such breaches of international obligations and commonly agreed courses of action. As put by a US participant, "it is important to denounce and rebuff Turkish challenges to Greek sovereignty; to allow an aggressor to prolong crises not only enables it to change the baseline for diplomacy–consider, for example, Turkey's occupation of northern Cyprus–but, in the short-term, also impacts economic development by raising insurance for companies operating in waters or on islands Turkey chooses to dispute".

However, what should be kept in mind at all times, is that the East Mediterranean Policies would account only for a small part of the insecurity context in the area, as the latter results from a combination of multiple factors that make up the precarious security context. The East Mediterranean Policies should be reviewed

nonetheless, but what is more, they should not only be adopted, but also systematically implemented and closely monitored, in order for the set objectives to be attained.

Most participants underlined the need for the EU to take decisive steps to actively reinstate its strategic, political and economic presence in the area in the best interest of both EU and non-EU states, as well as of the EU as a whole. More particularly it should make full use of the ENP and support cooperation schemes (including the UfM), engagement in conflict settlement (Syria, Libya, Israel-Palestinian Authority), normalization of Cyprus – Turkey relations, continuation of Turkey's Customs Union and accession processes but with strict and fair conditionality.

Pipelines and LNG terminals should also be supported, including in particular the EastMed project since it can be considered as one providing for EU needs in a stable and affordable manner, largely contributing to energy efficiency and energy security. Its implementation does not run contrary to other projects, but will supplement them, rendering the EU and its Member States more resilient to energy scarcity or blockade. Novel and eventually cheaper alternative pipelines, such as the Greece - Libya – Egypt – Cyprus – Israel one, should also be examined, especially in the light of recent developments, and the imperative need to diversify routes and suppliers.

In this context, LoS is an indispensable tool for maritime zones disputes settling. If no solution can be reached, the EU should actively use leverage to urge candidate countries and partners to have recourse to international judicial bodies, as judgements and awards delivered by such bodies leave no room for future contestations, leading to legal safety -prerequisite for hydrocarbons exploitation. The admittedly much speedier alternative of mediation could also be explored.

What has been established from the above, is that the EU cannot afford to abandon the East Mediterranean, especially at this critical juncture. However mediocre the results so far, the area is of crucial importance for the whole of the EU. Strategically situated, it is also an energy producing and transit area. Any disruption in energy flow takes an immediate impact on the entire EU, particularly after February 2022 and the subsequent unstable energy mix inflow from Russia. In addition, the destabilization of the area by conflicts and large movements of populations heading to the EU, also affects all EU countries -and not only those whose borders make part of the EU external border.

In order for challenges to be adequately addressed, all actors concerned should be engaged in talks, and urged to participate in cooperation schemes clearly based on conditionality.

All in all, developing energy resources requires careful long-term planning and the EU should take decisive action in the Eastern Mediterranean. Although commercial considerations tend to drive development, political and security considerations play a dominant role in determining whether a region is stable enough to support the exploitation and transport/ use of hydrocarbons. Energy security helps with cooperation when established geopolitical frameworks make energy cooperation possible, rather than the other way around.

In order for the Union to bring about more tangible results, its voice should be more clearly heard and become politically more effective and visible in close concertation with the US. The EU should use its leverage in a systematic and coherent way and capitalize on the unique energy situation to activate bridgebuilding diplomacy aiming at averting aggressive behaviour and open conflict in the area as a priority. The appointment of a high profile Special Envoy for the East Mediterranean would help reduce tensions and produce political space for cooperative maritime delimitations (eventually with recourse to international judicial organs or mechanisms in specific issues).

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ISBN 978-618-86114-1-2