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BUG IN THE SYSTEM:

KASTELLORIZO AND INADEQUACY OF THE LAW OF THE SEA

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Bug in the System: Kastellorizo and Inadequacy of the Law of the Sea

Recent gas discoveries in the waters of the Mediterranean have revived ancient rivalries, putting the spotlight on unsolved disputes over maritime border delimitations. However, the same discoveries may offer new opportunities for cooperation between regional actors. This paper analyzes the strategic geopolitical importance of the Eastern Mediterranean. After an introduction of the latest developments on security and energy issues in the region, the first section presents the long-lasting conflict between Turkey and Greece, with a specific focus on the tensions related to the recognition of EEZ of Kastellorizo island, underlying the technical aspects as well as the political implications, and the projections that this conflict have on the bilateral relations in the region; the second section reviews the legal practice, analyzing how similar cases have been solved before the ICJ, and examining whether similar solutions could be applied to the controversy between Turkey and Greece; finally, the last section will focus on the regional implications for neighboring countries, investigating the role that these actors, along with the EU, NATO and the United States, may cover as mediators.

Key Words: Eastern Mediterranean, Turkey, Greece, Cyprus, EEZ, gas, EastMed, energy, maritime security, UNCLOS

KEY TERMS

TERRITORIAL SEA: a belt of water extending up to 12 nautical miles from the baseline of a State over which it exercises its sovereignty. However, foreign ships enjoy the right of innocent passage through it.

CONTIGUOUS ZONE: an area adjacent to the territorial sea extending within 24 nautical miles from the baseline. In this area, the coastal state can claim additional law enforcement rights in relation to breaches of its FISC (fiscal, immigration, sanitary or customs) laws.

EXCLUSIVE ECONOMIC ZONE: an area that can extend up to 200 nautical miles from the coastal State baseline, where it exercises rights related to the economic exploitation of resources, including energy production.

CONTINENTAL SHELF: seabed and subsoil of coastal maritime areas considered the natural extension of the emerged land and which extend up to 200 meters from the baseline. It allows the coastal State exclusive sovereign rights over all the resources located therein.

EQUIDISTANCE PRINCIPLE: principle that establishes that, in the event of adjacent States, the maritime borders of a State must conform to a median line that is equidistant from the shores of the neighboring States.

EQUITABLE PRINCIPLE: it expresses the need to adapt the laws in force to the particular case, in order to mitigate, in some cases, the consequences of the application of said laws.

Introduction

The recent discoveries of energy fields in the Eastern Mediterranean boost potential for the region. However, the Eastern Mediterranean is a turbulent region, with several elements of instability and many interests at stake. The countries overlooking the Mediterranean waters share a history of more or less violent disputes and controversies, and the region is undermined by a number of security issues such as jihadist terrorism, proliferation of nuclear weapons, puppet states or even failed states, population flows, authoritarian regimes and territorial disputes. In this context, energy discoveries could pose considerable risks to regional security, especially when countries disagree over border delimitation. One of the major problems in the region is that the maritime jurisdiction is not fully determined. Indeed, in the Eastern Mediterranean there are several overlapping EEZs between countries that have had, and continue to have, territorial disputes, both maritime and at land. Within this framework, thinking of energy

The Eastern Mediterranean region is strongly tied to European energy security.

cooperation that benefits the region as a whole is hard, because the ongoing lack of agreements on the border delimitations could be sparks that ignite disputes with more ancient and deeper causes. These conflicts undermine an effective energy exploration in the Eastern Mediterranean, complicating the geopolitical atmosphere and fueling pre-existing tensions.

Despite being one of the world's largest energy consumers, the European Union faces issues of a high fuel import dependence. The main energy supplier to the EU is Russia, on which the European countries widely depend for supplies of natural gas, oil and coal. However, the EU finds it necessary to implement greater diversification of supply in order to guarantee a more solid energy security, and to have greater bargaining power with its Russian partners. Moreover, the desire to become carbon-free makes the issue of European energy security even more relevant. As a result, over recent years the European Union has been increasingly committed to finding alternative markets for its energy supply. Within this framework, a strategic role has been assigned to Southern European countries, where the transit of gas and oil from the Caspian and from the Eastern

Mediterranean occurs. The Southern Gas Corridor plays a crucial role as an alternative gas route, connecting the Caspian Sea to Europe through Turkey. The significant recent discoveries of gas fields in the Eastern Mediterranean waters in Egypt, Cyprus and Israel also design promising developments for the use of this alternative route, which could become crucial if the price proves competitive.

Over the past few years, Turkey's foreign policy has undergone a number of dramatic changes, moving from the doctrine of "Zero Problems with our Neighbours" to an increasingly interventionist and expansionist posture, where the *Mavi Vatan* doctrine is framed. Mustafa Kemal Atatürk had already set the goal of defending the seas that surround the Anatolian peninsula, and which are projected on two territories of strategic importance - Crimea and North Africa. Starting from Kemalist bases on the need to

The *Mavi Vatan*, meaning Blue Homeland, is a doctrine outlined by Admiral Cem Gürdeniz in 2006, based on the assumption that it is essential for Turkey to protect its interests in offshore waters.

protect Turkish waters, the doctrine turns on the reconstruction of national naval power, taking the Ottoman Empire as a model¹. The Blue Homeland doctrine represents the fulcrum of the Turkish geopolitical strategy, and it mirrors Turkey's interventions in Libya and Syria. The restored Turkish naval military strength and the extension of its projection capacity in the Mediterranean are two of the sharpest political and propaganda weapons in Erdoğan's hands, and form a solid basis on which Turkey has been able to project its claims in the renewed conflict with Greece.

Moreover, Turkey has already widely proven that it is strongly motivated to become a leading country in the region in terms of energy. Last August, Ankara proudly announced the discovery of the Sakarya field, a 311-billion-cubic-meter gas field lying in its EEZ in the Black Sea². Although this discovery will probably not result in Turkey's transformation

¹ Marco Ansaldo, *La Patria Blu nel Mondo Post-Occidentale*. Interview with Cem Gürdeniz, Limes, 07/2020

² Ariel Cohen, *Turkey Finds Enormous Gas Field In The Black Sea — But Tricky Process Ahead*, Forbes, Sep 18, 2020. <https://www.forbes.com/sites/arielcohen/2020/09/18/turkeys-new-natural-gas-find-in-the-black-sea-exciting-but-tricky-process-ahead/?sh=2217fd915a86>

into a natural gas exporter, and although assessments regarding the extraction method need to be carried out, it is nevertheless certain that the Sakarya field will change Turkey's energy security posture. However, it stands unquestionable that the geographical position of the Anatolian peninsula makes it a central hub for the energy transportation from Asia to Europe. Indeed, the energy plans, together with the attribution of the pivotal role assigned by the Blue Homeland doctrine to the navy in common with the land forces, makes clear Turkey's intention to become a maritime power.

The Aegean dispute: technical aspects and regional projections

We were being sent on a mission to Megisti, a remote island in the Aegean. The smallest, the furthest away. Strategic importance: zero.

Thus begins *Mediterraneo*, the Academy Award winning movie by Gabriele Salvatores. However, nowadays this could not be further from the truth. Megisti, also known as Kastellorizo (or Meis, in Turkish), represents the main hub of the dispute between Turkey and Greece for the strategic control of the Eastern Mediterranean waters and resources. With less than 500 inhabitants and 12 square kilometres of surface, Kastellorizo, is the easternmost Greek island, located about 600 km from the Greek mainland and 2 km from the Anatolian coastal town of Kaş. Despite being the smallest of the Dodecanese islands, Kastellorizo has historically attracted the attention of several powers, as it was located at a key point on the maritime trade route between East and West. In the first half of the 20th century, the island was first occupied by the French, and then by the Italians. During the Second World War, it fell under the control of the British, then passed again under Italian rule, and, after September 8, 1943, it was again occupied by Great Britain. Finally, with the Treaty of Paris of 1947, the island was assigned to Greece. However, Turkey did not participate in the Treaty of Paris, and does not recognize its legitimacy.

Nowadays, the geostrategic importance of Kastellorizo is widely recognized, to the point that the island is at the center of the energy claims between Turkey and Greece. The reason lies in the presence of thousands of Greek islands near the Turkish coastline, and Greece's consequent claims that its islands can enjoy the same share of Exclusive Economic Zone (EEZ) and Continental Shelf (CS) as the mainland, namely 200 nautical miles. Greece's claims are based on the Seville map³, which provided 200 nautical miles of EEZ to all the 6,000 Greek islands scattered in the Aegean Sea, and which has been defined by Turkey as unfair and unjust, as it would carve out 150.000 sq. km. of sea from Turkey⁴. Turkey does not recognize the right of islands to EEZ and CS, and did not sign the United Nations Convention on the Law of the Sea (UNCLOS), which is the international convention that defines coastal and maritime boundaries and regulates disputes between states.

Despite owning the longest coastline in the Eastern Mediterranean, Turkey does not seem to be able to enjoy full rights to Mediterranean waters located more than just a few kilometers away from its mainland.

Relations between Greece and Turkey are cooled by unresolved conflicts, which have been protracted since the 1970s. Turkey is a peninsula with 8.333-kilometer-long coastline, and with a potential continental jurisdiction of 462.000 square kilometers. Under the influence of the Blue Homeland Doctrine, Ankara expressively proved to be willing to acquire control of all the maritime space that is due to it. Turkey claims that Greece has been making an attempt at gaining full control over the Aegean Sea by generating a large continental shelf from all the islands of its archipelago, whether they are inhabited or not. In August 2020, Turkey dispatched the *Oruç Reis* seismic research ship near Kastellorizo to conduct energy explorations, igniting Greece's anger.

³The Seville Map was prepared in the early 2000s by Juan Luis Suárez de Vivero and Juan Carlos Rodríguez Mateos from Seville University. The map aimed at clarifying exclusive economic zones (EEZ) of Turkey and Greece in the Eastern Mediterranean and Aegean Sea. It determined Greece's continental shelf based on its islands in the Aegean Sea, and limited Turkey's rights to its territorial waters except from the Gulf of Antalya.

⁴ Admiral Cem Gürdeniz, *The 21 st Century Turkish Marine Geopolitical Landscape in the Eastern Mediterranean*, Retrieved from https://www.academia.edu/42245015/Cem_Gurdeniz_MED (Last Access: 10/02/2021)

Provocative actions from both sides have contributed to the escalation of tensions, resulting in a minor collision between two vessels. As a result, the relations between the two NATO allies are arguably at their worst since decades. However, in January a first step towards reconciliation and averting further military escalation has been undertaken. Indeed, delegations from both countries gathered in Istanbul for a first round of direct talks, with the intention of discussing demarcation of the respective EEZs and CSs.

The recent energy discoveries in the waters of the Eastern Mediterranean make the claims of the two NATO allies fiercer.

Indeed, in the past decade, the world's largest gas discoveries have been found in the Levant Basin, the easternmost area of the Mediterranean Sea, which stretches over

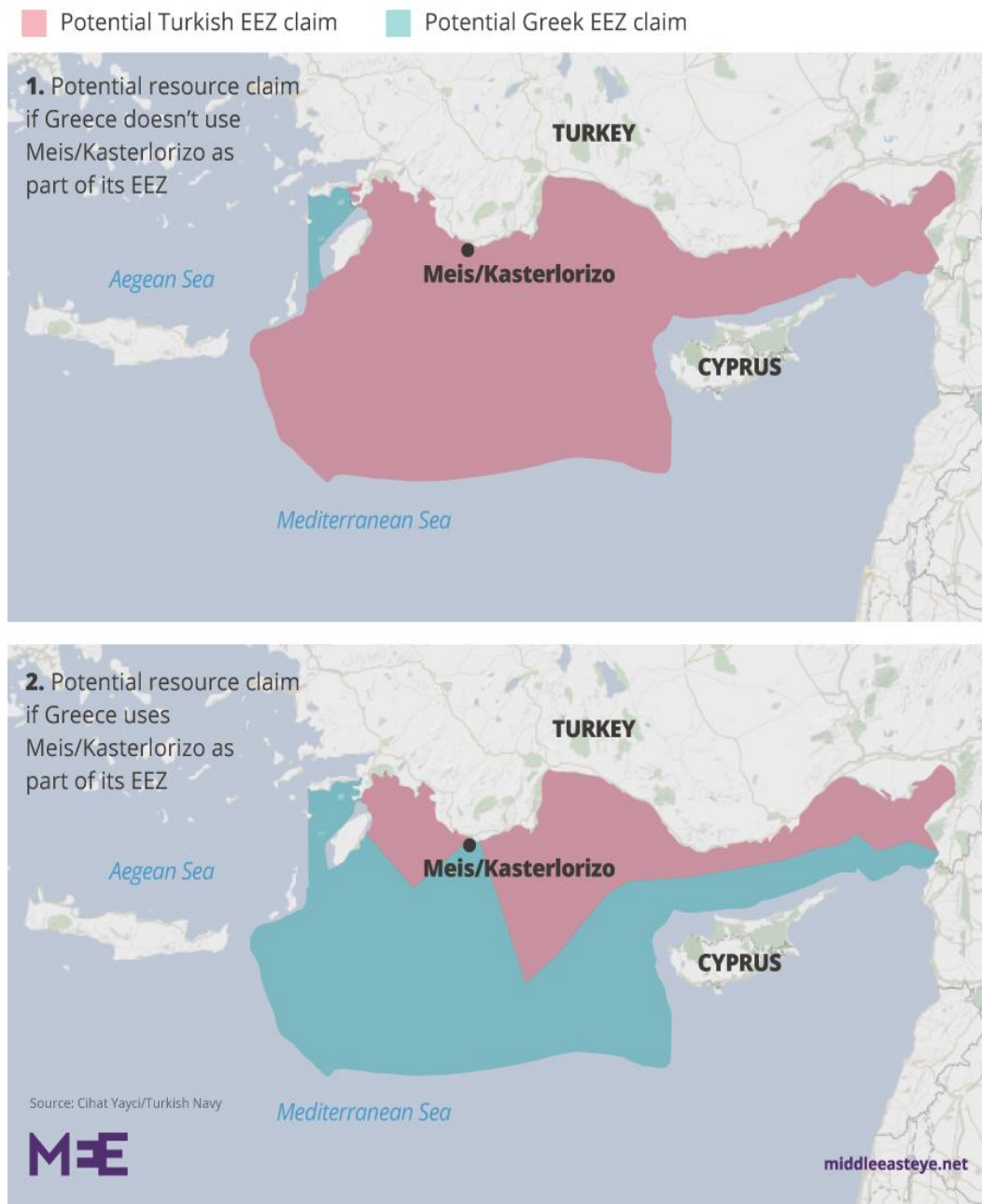
Egypt, the Occupied Palestinian Territories, Israel, Lebanon, Syria and Turkey, and which is estimated to contain more than 3 trillion cubic meters of recoverable natural gas and 1.7 billion barrels of recoverable oil⁵. However, while it was hoped that these discoveries would boost regional cooperation to maximize the benefits of their exploitation, rival blocs led by conflicting national interests have actually emerged. In this context, the historic enmity between Turkey and Greece has been intensifying even more in relation to the control of any energy resources that are expected to be discovered in the waters of the Mediterranean, while the failure to agree on the delimitation of the respective EEZs and CS exacerbates the conflict.

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⁵ United States Geological Survey, "Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean, Fact Sheet 010-3014, March 2010, <http://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>.

⁶ United States Geological Survey, "Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean, Fact Sheet 010-3014, March 2010, <http://pubs.usgs.gov/fs/2010/3014/pdf/FS10-3014.pdf>.

MAP 1: Turkish claims vs Greek claims

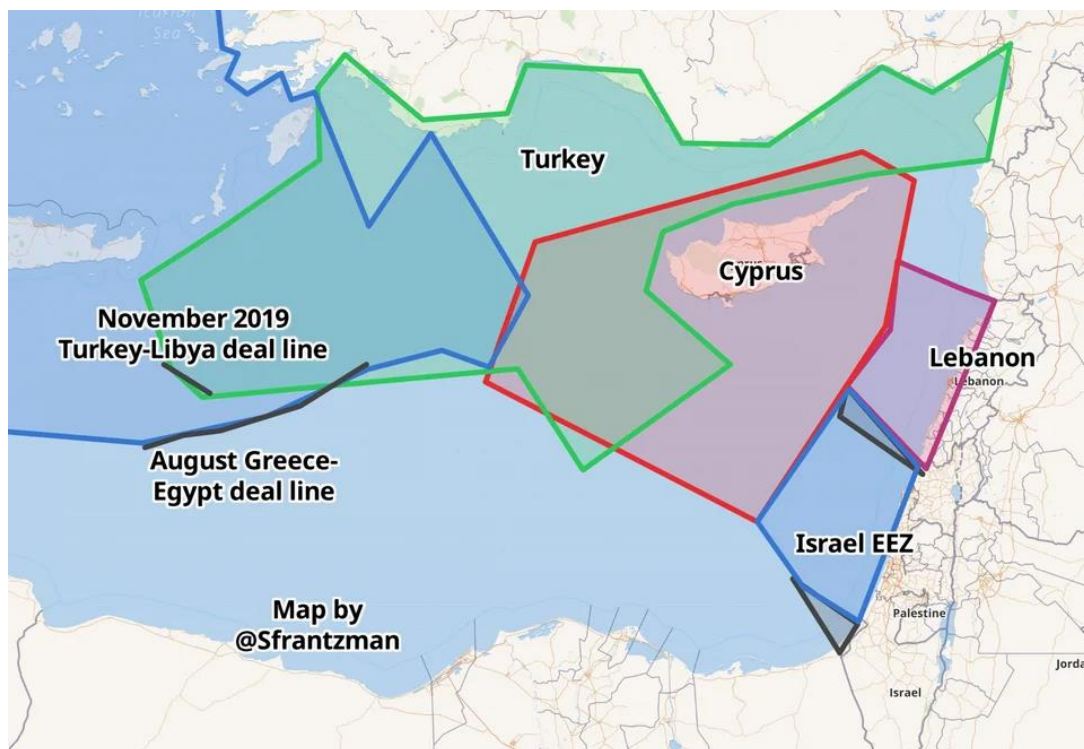


Source: Soyulu, Ragip. "Turkey and Libya sign maritime deal to counter Greek drilling." *Middle East Eye*, 28 November 2019, <https://www.middleeasteye.net/news/turkey-libya-sign-maritime-deal-counter-greek-drillings>. Accessed 19 February 2021.

However, while it was hoped that these discoveries would boost regional cooperation to maximize the benefits of their exploitation, rival blocs led by conflicting national interests have actually emerged. In this context, the historic enmity between Turkey and Greece has been intensifying even more in relation to the control of any energy resources that are expected to be discovered in the waters of the Mediterranean, while the failure to agree on the delimitation of the respective EEZs and CS exacerbates the conflict.

The Aegean dispute inevitably led to the involvement of other countries bordering the Eastern Mediterranean waters. Greece, Cyprus and Israel have established a partnership to transport gas from Israeli and Cypriot fields to Europe via the EastMed Project, a 1,900-kilometer undersea pipeline designed to deliver natural gas to Europe through the island of Crete on to the Greek mainland and into Europe's gas network via Italy by 2025. The three countries have shown to be unwilling to cooperate with Turkey in developing the EastMed pipeline, but until the dispute over contested water and overlapping EEZs between Turkey and Greece is settled, the project will probably fail to be implemented smoothly. In relation to the Kastellorizo question, should Greece's claims prevail, Greece's EEZ would border on that of Cyprus, with which it shares a strong alliance against Turkey, and they could develop the EastMed pipeline to transport gas from the Leviathan fields to Europe without passing through Turkish waters. On the contrary, should Turkey's claims prevail, and therefore should no EEZ be recognized on the island of Kastellorizo, the issue will become much more complex, as Greece and Cyprus would not share their maritime borders. In order to prevent the EastMed pipeline from the strained relations between Turkey and Cyprus additionally contribute to creating an environment of instability and difficult cooperation in the Eastern Mediterranean, and the reason is to be found in the recent history of the island. Cyprus is divided into two parts: the internationally recognized and EU member Republic of Cyprus (RoC), and the self-declared Turkish Republic of Northern Cyprus (TRNC), whose existence is only recognized by Turkey.

MAP 2: Competing EEZs in the Eastern Mediterranean



Source: "Map of competing EEZs in the eastern Med." *Reddit*, 2020, https://www.reddit.com/r/MapPorn/comments/i8ay4y/map_of_competing_eezs_in_the_eastern_med/. Accessed 15 February 2021.

The unresolved conflict between the two sides of the island is related to the presence of two distinct ethnic groups, the Greek Cypriots in the South and the Turkish Cypriots in the North. After one century of British domination, in 1960 Cyprus became independent from Great Britain. However, after becoming a republic, violence erupted in the island between the two communities, leading to the 1974 Greek military coup, aiming at reuniting the island with Greece, and to the consequent Turkish military involvement, which led to the creation of the TRNC. The RoC and the TRNC are now separated by a buffer zone maintained by a peacekeeping mission of the United Nations⁷. In 2011, the Texan Noble Energy, which is licensed to conduct drilling operations off the coasts of Cyprus, discovered the Aphrodite gas field, which is expected to hold 1 trillion cubic meters of gas.⁸ Furthermore, in 2019 ExxonMobil announced that it has made a new gas

⁷ UNFICYP United Nations Peacekeeping Force in Cyprus <https://unficyp.unmissions.org/>

⁸ Brussels International Center (2019), Cyprus Gas Dispute: Turkish Obstinace and European Passivity <https://www.bic-rhr.com/research/cyprus-gas-dispute-turkish-obstinace-and-european-passivity>

discovery offshore Cyprus, believed to store approximately 140 to 225 billion cubic meters of gas⁹, which makes it the biggest gas reserve of the island. However, the

Turkey holds that the Turkish Cypriots are the co-owner of the islands, and that Nicosia should stop its unilateral drilling off the coasts of Cyprus.

situation of division and conflict does not favor the exploitation of the economic and energy potential of the island, preventing it from generating income and undermining the stability of the region. The Turkish Cypriots

offered to set up a joint energy committee to manage the gas discoveries, further proposing the use of Turkish pipelines for the transportation of gas to Europe¹⁰. However, the Greek Cypriots seem not to be willing to accept this deal.

Greece and Turkey are not the only countries in the region that have disputes over contested waters. The major gas discoveries in the Levantine Basin date back to the years between 2009 and 2011, when the Tamar, Dalift and Leviathan fields have been found off the coasts of Israel, and the Aphrodite field off the coasts of Cyprus.¹¹ Although these discoveries could bring enormous benefits in terms of economic and social development and energy security for the countries where the gas fields are located, in reality they have been generating conflicts over the exclusive economic zone to which they belong. Indeed, Lebanon and Israel have overlapping EEZs, making it extremely difficult to extract and manage the resources found in the disputed area. Israel and Lebanon share a long history of hostilities and a military conflict shadowing their bilateral relations. Lebanon does not recognize Israel's legitimacy as a state, and the two sides have never agreed on the delimitation of their maritime borders. Prior to the energy discoveries in the Levantine Basin, Lebanon had no gas and oil fields on its territory, and it still has to import most of its energy needs from other countries, especially Syria and Egypt. The recent discoveries are therefore of strategic importance for Lebanon, which

⁹ ExxonMobil, *ExxonMobil makes natural gas discovery offshore Cyprus*, Feb 29, 2019.

https://corporate.exxonmobil.com/News/Newsroom/News-releases/2019/0228_ExxonMobil-makes-natural-gas-discovery-offshore-Cyprus

¹⁰ The Arab Weekly, *Unresolved Cyprus issue underlies gas dispute in the Eastern Mediterranean*, Feb 09, 2020 <https://the arabweekly.com/unresolved-cyprus-issue-underlies-gas-dispute-eastern-mediterranean>

¹¹ Abu Gosh, Dr. Ehab and Leal-Arcas, Rafael, *Gas and Oil Explorations in the Levant Basin: The Case of Lebanon and Israel* (April 29, 2013). *Oil, Gas & Energy Law Intelligence*, Vol. 11 - issue 3, April 2013, Queen Mary School of Law Legal Studies Research Paper No. 141/2013, Available at SSRN: <https://ssrn.com/abstract=2257727>

could diminish the energy reliance on other countries. As for Israel, it too has long been dependent on energy imports from Egypt. However, following the discovery of the Tamar and Leviathan fields, energy dependence has decreased considerably.

Legal Practice

Legal uncertainties further complicate tensions. There are several reasons why it is difficult to resolve this conflict through international dispute resolution mechanisms. First of all, while Greece is a signatory of the UNCLOS, Turkey always refused to sign it, claiming that the UNCLOS provisions damage its continental shelf and EEZs. It is nonetheless still unclear whether the UNCLOS should be considered as a source of customary law or not, thus being binding for all the countries, regardless of their ratification of the Convention. Moreover, there is no dispute settlement mechanism in the Mediterranean, and the International Tribunal for the Law of the Sea (ITLOS) requires both parties to agree to accept its jurisdiction. However, it is difficult to imagine Turkey accepting the jurisdiction of ITLOS, or any other international court. Finally, the practice shows that the resolution of similar controversies has been solved according to the principle of equity, and not to equidistance, thus providing a relevant precedent supporting Turkey's claims and demonstrating that UNCLOS is too vague for the resolution of specific controversies, regardless of whether it should be considered as internationally binding or not.

The UNCLOS, in force since 1982, defines rights and duties in the oceans. Articles 55 to 75 of UNCLOS refer to Exclusive Economic Zones.

The controversy lies on the interpretation of "baseline"

An exclusive economic Zone is defined as an "*area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention*"¹², where States have sovereign rights in terms of economic exploitation of the resources, and that extends no more than 200 nautical miles from the baseline.

¹² UNCLOS art. 55 https://www.un.org/Depts/los/convention_agreements/texts/unclos/part5.htm

According to Turkey, the baseline has to be measured from the mainland, while Greece argues that also islands have to be included in the measuring of the baseline. The UNCLOS is rather vague in this regard: article 121 tackles the regime of islands, stating that "*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 otherland territory*", and that "*Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf*".¹³

Settlements of maritime disputes are solved either through negotiations or before international tribunals. If they are settled through tribunals, the applicable law constitutes in conventional and customary international law of the sea. From a legal point of view, the main reason for the difficulty for the settlement of the dispute between Greece and Turkey lies in the fact that the two countries did not ratify any bilateral treaty defining the exact delimitation of their maritime borders. Turkey, which has not ratified UNCLOS, bases its requests on the principle of equidistance, which assigns both countries an area of 6 nautical miles for their territorial waters, interpreting the expansion to 12 miles enshrined in the UNCLOS as a *casus belli* eventuality. Indeed, under such circumstances Greece would control 43.5% of the Aegean waters, while Turkey only 7.5%. Greece, a party to the UNCLOS, has been pushing for the application of the current rules of international law, and has tried on several occasions to extend its area of influence to 12 nautical miles, further recognizing its islands jurisdiction over the corresponding Continental Shelf, which would lead to a scenario where 71.5% of the Aegean would be in Athens' hands, while Ankara would have just 8.7% left - and a consequent decrease in international waters from the current 49% to 19.7%¹⁴. However, Article 300 of UNCLOS sets some limits to the application of the rights it enshrines,

¹³ UNCLOS art. 121 https://www.un.org/Depts/los/convention_agreements/texts/unclos/part8.htm

¹⁴ Didier Ortolland, *The Greco-Turkish dispute over the Aegean Sea: a possible solution?*, Diploweb.com, Apr 10, 2009, Retrieved from <https://www.diploweb.com/The-Greco-Turkish-dispute-over-the.html>, last access 07/01/2021.

stating that "*States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.*" The extension of Greece's territorial waters to 12 miles, with total disregard of the particular conformation of the Aegean as a closed sea, would represent an abuse of Greece's rights in so far as it would lead to a disproportionate reduction of Turkey's territorial sea, and a consequent reduction of Turkey's EEZs and Continental Shelf.

International jurisprudence has analyzed controversies that presented similar issues to those of the dispute between Turkey and Greece, and which can offer appropriate lenses of analysis for the case at stake. In 1969, the International Court of Justice delivered its judgement related to the North Sea Continental Shelf Cases. These cases opposed Germany to Denmark and the Netherlands, and were related to the delimitation of their continental shelves. The parties asked the International Court of Justice to state the principles and rules of international law applicable. The ICJ examined the scope of the principle of equidistance enshrined in Article 6 of the Convention on the Continental Shelf¹⁵, which at the time represented the legal basis of reference. Germany refused to adopt the principle of equidistance for the delimitation of its continental shelf, because, under this principle, it would have received a considerably smaller portion of the North Sea continental shelf than Denmark and the Netherlands. The Court's reasoning took place in two moments. At first, it wondered if the 1958 Geneva Conventions on the Law of the Sea had codified an existing customary law, and then it wondered if the principle of equidistance had been enshrined in customary law. Both responses were negative, thus it was established that the principle of equidistance to be adopted in determining the continental shelf in the event that two or more states had overlapping maritime borders could not necessarily be used if one or more warring parties did not ratify the Convention¹⁶.

¹⁵ The Convention on the Continental Shelf was one of the Geneva Conventions on the Law of the Sea (1958)

¹⁶ International Court of Justice, North Sea Continental Shelf Cases, Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands, Judgment of 20 February 1969, Retrieved from <https://www.icj-cij.org/public/files/case-related/52/052-19690220-JUD-01-00-EN.pdf>, last access 16/01/2021

This stance is relevant for the Aegean dispute, because it clarifies that the principles of the UNCLOS can be applied to countries which have not signed the Convention only in the case that those principles have become parts of customary law.

In relations with the legal status of the islands, the Qatar v. Bahrain Case of 2001 constitutes a significant legal precedent. Among other issues, the ICJ defined the maritime borders between the two countries. Even if Qatar did not ratify the UNCLOS, both parties decided to use the principles of international law to solve the disputes, and they agreed that the provisions of UNCLOS reflected the existing customary law. Bahrain is composed of a number of islands, islets and rocks situated off the Eastern and Western coasts of its main island. Among them, Fasht ad Dibal and Qit'at Jaradah are two maritime features situated off the North-Western coast of Qatar, and they lie in Qatar's territorial sea. The Court stated that the determination of the maritime borders between Qatar and Bahrain must be conducted under the principle of the median line. While Qatar requested not to include small islands, islets, rocks and low-tide elevations in the determination of the median line, the Court ruled that all the maritime features needed to be taken into consideration¹⁷. However, the Court opted for the exclusion of Fasht ad Dibal and Qit'at Jaradah from the measuring of the median line, stating that when maritime features are not part of the coastal configuration of a country and lie at a considerable distance from the coast, then they cannot have a territorial sea of their own, nor they could "*generate the same rights as islands or other territory*"¹⁸. This precedent contradicts Turkey's claims to exclude islands from the determination of the boundary line, but it raises the issue of the possibility not to take into account maritime features in the event that they would cause disproportionate effects on the border delimitations of one or more of the warring parties.

¹⁷ Plant, G. (2002). *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*. American Journal of International Law, 96(1), 198-210. doi:10.2307/2686136

¹⁸ International Court of Justice, Case concerning maritime delimitation and territorial questions between Qatar and Bahrain (Qatar v. Bahrain), Judgment of 16 March 2001, Retrieved from <https://www.icj-cij.org/public/files/case-related/87/087-20010316-JUD-01-00-EN.pdf>, last access 18/01/2021

Another case of interest is Romania v. Ukraine, brought before the ICJ and regarding maritime delimitations in the Black Sea. The main issue in the delimitation of the respective borders laid in the Ukrainian Serpent Island, which is located 30 nautical miles from the Ukrainian-Romanian border, and which would have caused significant complications in the delimitation of maritime borders. As both countries were signatories to UNCLOS, the ICJ applied the provisions of this Convention. After defining the relevant coast of both countries and tracing a median between the overlapping EEZs and Continental Shelves, the Court adjusted the delimitation line according to the principle of equity. It is in this context that the relevance of Serpent Island emerged. According to UNCLOS, islands are entitled to their own EEZ, while rocks only have right to territorial sea. Serpent undoubtedly falls into the category of islands, since it has a permanent population residing there despite its small size (it is only 0.17 square kilometers large). However, in its judgment, the ICJ refrained from characterizing it as an island, and referred to it simply as a maritime feature¹⁹. The Court decided not to take Serpent Island into account in determining the line of equidistance, stating that "*Serpents' Island, lying alone and some 20 nautical miles away from the mainland, is not one of a cluster of fringe islands constituting 'the coast' of Ukraine. To count Serpent Island as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine's coastline; the consequence would be a judicial refashioning of geography, which neither the law nor practice of maritime delimitation authorizes*²⁰". The Court then concluded that "*in the context of the present case, Serpents' Island should have no effect on the delimitation in this case, other than that stemming from the role of the 12-nautical-mile arc of its territorial sea*²¹".

Finally, the case of Nicaragua v. Colombia (2012) offers an interesting perspective for the Aegean dispute. The decision, which concerned the delimitation of the EEZs and

¹⁹ Lathrop, C. (2009). *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*. American Journal of International Law, 103(3), 543-549. doi:10.1017/S0002930000019989

²⁰ International Court of Justice, Maritime Delimitation in the Black Sea, Romania v. Ukraine, Retrieved from http://www.worldcourts.com/icj/eng/decisions/2009.02.03_black_sea.htm, last access 20/01/2021

²¹ Ivi.

Continental Shelves of the parties, was reached by the ICJ in light of the conclusions of the aforementioned *Romania v. Ukraine* case. Since Colombia was not part of the UNCLOS, the applicable law was found in the customary international law. Yet, it was established by the Court that Article 121 of UNCLOS, as well as the principle of maritime delimitation enshrined by the Convention, reflected the customary law. After decreeing Colombia's sovereignty over the Alburquerque Islands, East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo, the Court proceeded to delimit the maritime borders of the two countries. These islands are located within 200 nautical miles of the Nicaraguan mainland, at a considerable distance from the Colombian mainland. In addition, Colombia also holds sovereignty over the islands of San Andrés, Providencia and Santa Catalina, which also lie closer to the Nicaraguan coast. The Court excluded most of the islands for which Colombian sovereignty had been decreed by the assignment of EEZs and CS, assigning them only 12 nautical miles of territorial sea due to their small size and their remote location and therefore enclaving them in Nicaragua's EEZs. As for the other islands, since the ratio of the relevant coast of Nicaragua to that of Colombia is 8:1, adjustments have been made in order to respect the principle of equity, and the median line has been shifted so that to grant a ratio of relevant coast in the proportion of 1:3.44 in Nicaragua's favor, assigning to Colombia significantly less maritime entitlements than the ones it had claimed. In its judgement, the Court also mentioned a disparity in the distribution of resources of the EEZs claimed by the two countries, which contributed to the decision to shift the median line. The cases described could offer some perspectives on the impact of the Greek island of Kastellorizo, as well as of the other Greek islands of the Dodecanese, on the continental shelf and EEZs in the Aegean, and allow us to predict what the ICJ's conclusions would be in case the dispute would be settled before it²². First of all, it is clear that the recent judicial practice favors the application of the equity principle and the relevant circumstances rather than the principle of equidistance.

²² Since Turkey is not a party to UNCLOS, the applicable law would reside in international custom which, according to the ICJ reasoning in the case of the North Sea continental shelf and subsequent maritime disputes, still resides in some provisions of the UNCLOS.

Remarks regarding security and resource exploitation factors would also contribute to this shift, since the application of the median line without taking these circumstances into consideration would jeopardize Turkey's maritime rights. Hence, it is likely that Kastellorizo island would not be selected as a base point for the determination of the equidistance line, and that it would be attributed only very limited rights to EEZs. However, jurisprudence has shown that the right to 12 nm of territorial sea can also be attributed to the smallest and most remote

In this context, the considerable disproportion between the Turkish coasts and the island of Kastellorizo would imply a shift of the median line in favor of Turkey.

maritime features. For this reason, it is unlikely that Turkey will decide to agree to resolve the conflict with Greece in front of the CIJ, as this would likely lead to a mandatory decision regarding the territorial sea extension of the Dodecanese islands from 6 nm to 12 nm, significantly reducing the portion of water that Turkey claims to own.

Regional implications

The Aegean conflict does not undermine only the stability of the countries directly involved. The entire Mediterranean region is affected, and consequently there are several actors who have decided to intervene to defend their interests from the escalation of violence in the Mediterranean. Among the countries mainly involved in conflict there are primarily those bordering the waters of the eastern Mediterranean, but also countries that do not belong geographically to the region. The actions undertaken by each of these actors are modulated according to the energy, economic and security needs that fill their respective geopolitical agendas.

Libya

In November 2019, Turkey signed a maritime boundary delimitation agreement with Libya's Government of National Accord (GNA), defining their respective boundaries in the Eastern Mediterranean waters and inaugurating their cooperation in conducting joint maritime energy explorations and drillings. Due to the complicated situation in the Eastern Mediterranean, this move is bound to produce a major geopolitical impact, as it further intensifies competition over natural resources in a region with several overlapping territorial claims. This agreement comes along with the deployment of Turkish military troops in Libya in support of the GNA against General Haftar. It is therefore configured in a wider confrontation where powers clash through proxies in Libyan territory. In particular, in addition to Turkey, Italy and Qatar have lined up on the side of the GNA, while General Haftar is supported by the UAE, Egypt and France. The intervention of Turkey in Libya, planned to last one year, has proven decisive in allowing the GNA to reestablish control over key territories. The agreement has been widely contested by several countries, because it infringes on the continental shelves and exclusive economic zones claimed by Egypt, Cyprus and Greece²³. Indeed, under this agreement, further pipelines cannot be established without the previous consent of Turkey. The agreement challenges Greece's maximalist claims in the Mediterranean, while preventing it from transporting gas and other energy resources from the Eastern Mediterranean to Europe, and it puts at risk the effective functioning of the EastMed pipeline. The European Union also criticized the agreement, declaring it null before the international law and thus unable to produce any legal consequence.

²³ Ariel Cohen, *Turkey-Libya Maritime Deal Upsets Mediterranean Energy Plan*, Forbes, Jan 8, 2020, Retrieved from <https://www.forbes.com/sites/arielcohen/2020/01/08/turkey-libya-maritime-deal-upsets-mediterranean-energy-plan/>, last access 21/01/2021

Egypt

In response to the agreement between Libya and Turkey, Greece signed a maritime delimitation agreement with Egypt, finalizing a strategic alliance between the two countries. The agreement, which covers an area that promises to contain considerable amounts of energy resources, is considered key in maximizing the exploitation of those resources. In this agreement, although Greece managed to ensure that its islands were assigned an EEZ and a continental shelf, it nevertheless had to grant a median line favoring Egypt, and could not extend the borders to the east of the island of Rhodes. This move comes shortly after Turkey's decision to suspend exploration operations near Kastellorizo, and, according to Ankara, it reflects an attempt by Greece to undermine the region's stability at a highly critical time. Turkey immediately declared the agreement null and void, and stated that, in addition to infringing on its territories, it infringes the Libyan territories as well. From its part, Greece explains that the agreement with Egypt is a powerful tool to safeguard the rights of Greece's islands, while proving the decisiveness of Greek and Egypt to block Turkey's aspirations and influence in the region. With regards to Turkey-Egypt relations, they have worsened sharply since 2011, when Turkey, emerged as key supporters of the Muslim Brotherhood government that came to power in Egypt after the 2011 revolution, while the current government is a strong oppose of political Islam. Since both Turkey and Egypt see the energy possibilities offered by the Mediterranean as the key to becoming regional powers, it is clear that the agreements ratified by both countries constitute a factor of insecurity that can further destabilize the region.

European Union

The reactions of some of the EU member states to the escalation of violence in the Eastern Mediterranean put a spotlight on the complexity of the conflict, and, especially, on the difficulty that the European Union faces in finding a common line in foreign policy. The conflict, which involves an European member state, came at a low point of the EU-Turkey relations, due to the increasingly assertive attitude of Turkey following the attempted coup in 2016 and the suspension of the EU accession process of Turkey.

If, on the one hand, EU member states agree in condemning Turkey's unilateral actions in the contested waters of Kastellorizo, on the other hand the course of action to be followed is by no means clear, and the countries disagree on the intensity of the common European reaction against Ankara. The disagreements are mainly due to conflicting economic and geopolitical interests, which mean that some countries prefer a more conciliatory approach, while others, obviously including Cyprus and Greece, opt for greater toughness in the European response.

Even though it does not share any coasts in the Eastern Mediterranean waters, France has been actively backing Greece in the disagreements with Turkey. As tensions between Greece and Turkey arose, France deployed a frigate and fighter jets in the Eastern Mediterranean waters in support of Greece, while urging Europe to assume a united front to respond to Turkey's energy explorations in contested waters. It is not the first time that Macron openly opposed Erdoğan's government. Indeed, Turkey and France have colliding geopolitical interests in several regions. In Syria, Turkey started a campaign to push YPG fighters away from its border. YPG hold control of the North-Western territories of the country, considered a threat to national security due to their alleged close ties with PKK. France strongly opposed Turkey's operation in Northern Syria, and called for the immediate withdrawal of Turkish troops²⁴. In Nagorno-Karabakh, during the Operation Iron Fist, which resulted in Azerbaijan's reclamation of the territories occupied by Armenia, Paris openly sided with Yerevan²⁵, while accusing Ankara of dispatching Syrian jihadists to fight against Armenian troops²⁶. France, which has been co-chairing the Minsk Group, was left out of the ceasefire agreement between Armenia and Azerbaijan, whereas Turkey and Russia played a fundamental role.

²⁴ [Thttps://www.theguardian.com/world/2019/nov/29/macrons-criticism-of-syria-invasion-sick-and-shallow-says-erdogan](https://www.theguardian.com/world/2019/nov/29/macrons-criticism-of-syria-invasion-sick-and-shallow-says-erdogan)

²⁵ Louise Rozès Moscovenko, *Massive French support for Armenians of Nagorno-Karabakh*, Euractiv, Oct 26, 2020, Retrieved from https://www.euractiv.com/section/politics/short_news/massive-french-support-for-armenians-of-nagorno-karabakh/, last access 27/01/2021

²⁶ John Irish, Micel Rose, *France accuses Turkey of sending Syrian jihadists to Nagorno-Karabakh*, Reuters, Oct 1, 2020, Retrieved from <https://www.reuters.com/article/us-armenia-azerbaijan-putin-macron-idUSKBN26L3SB>, last access 27/01/202

In Libya, France gave significant support to General Haftar, who appeared to be the winning part in Libya's civil war until the intervention of Turkey, which has been crucial to the GNA for regaining control over Tripoli. The combination of these events, along with the growing tensions between the French government and the Muslim community in France, led to the deterioration of the relations between Turkey and France. Hence, it is unsurprising that the discussions between Ankara and Paris regarding the Eastern Mediterranean have reached heated tones.

Italy is one of the strongest and most reliable partners of Turkey in the European Union.

Rome and Ankara share common geopolitical views, especially in Libya, where Italy is one of the few Western countries supporting the GNA, even though the Turkish intervention in Libya has worried Italy, which has been

After the outbreak of Eastern Mediterranean tensions, Italy firmly stood against any economic sanctions from the European side against Turkey, displaying a bigger support to Ankara than any other European country.

interested in the new hydrocarbon fields in the region²⁷. Moreover, the economic relations between Turkey and Italy are solid, and they seem likely to further flourish in the middle-term. At the same time, Italy and Greece also share close ties, and Italy took part in a joint military exercise with Greece, Cyprus and France²⁸ as the tensions in the Eastern Mediterranean escalated. Moreover, in June 2020 the Rome and Athens signed a declaration of intent agreeing²⁹ that, should the two countries want to establish an EEZ, this must be based on the coordinates set in the 1977 Italian-Greek agreement, with which it was decided to adopt the border line between the respective areas of the platform continental based on the principle of the midline. Italy is also a member of the

²⁷ ISPI, *Le relazioni tra Italia e Libia: interessi e rischi*, Edited by Eugenio Dacrema, Arturo Varvelli First Edition Jul 2020, Retrieved from https://www.ispionline.it/sites/default/files/pubblicazioni/ispi_paper_italia_libia_2020_0.pdf, last access 25/01/2021

²⁸ Reuters, *France joins military exercises in east Mediterranean*, Aug 26, 2020, Retrieved from <https://www.reuters.com/article/us-turkey-greece-france-idUSKBN25M0UF>, last access 24/01/2021

²⁹ Reuters, *Greece, Italy sign accord on maritime zones in Ionian Sea*, Jun 09, 2020, Retrieved from <https://www.reuters.com/article/us-greece-italy-foreign-idUSKBN23G0X5>, last access 26/01/2020

EastMed Forum, from which Turkey has been excluded. Overall, the Italian approach to the Aegean conflict seems conciliatory and aimed at containing France's aggressive policy, and it can be expected that Rome will not let its relations deteriorate neither with Turkey nor with Greece. Instead, Italy could act as a privileged and impartial interlocutor between the conflicting parties with which it shares the coasts of the *mare nostrum*.

In the Aegean conflict, Germany displayed its standard non-threatening diplomatic approach in holding talks with the warring sides. Berlin, which has been holding the Presidency of the Council of the European Union during the arising of the conflict between Turkey and Greece, called for de-escalation of the tensions, while criticizing Turkey for taking unilateral steps in the contested waters and declaring that Germany would unequivocally side with Greece. However, despite aligning with its European partner, Germany took on a leading role in the mediation between Ankara and Athens, and Chancellor Merkel showed to be willing to give Ankara some incentives in exchange for a return to the dialogue. Berlin also opposed the arms embargo against Turkey proposed by Greece in December 2020, and it pushed for the inclusion of Turkey in an Eastern Mediterranean dialogue to discuss the future of the region. The German position is hardly surprising, considering the historical economic and cultural ties that connect Berlin with Ankara. An exacerbation of the tensions between Turkey and the EU would damage not only Germany, but the European Union as a whole. For this reason, Chancellor Merkel stressed the importance of a return to the dialogues³⁰ without openly standing against Erdogan's stances.

Non-regional powers: Russia and the United States

Russia's interest in gaining access to the Mediterranean waters dates back to the tsarist era. Nowadays, Russia maintains its presence in the Eastern Mediterranean mainly through two strategies, namely the establishment of military bases and ports in the Levant coast, and the participation in joint military exercises with other regional actors.

³⁰ Lefteris Papadimas, Tuvan Gumrukcu, *Germany says Turkey, Greece ready for dialogue on East Med dispute*, Reuters, Aug 25, 2020, Retrieved from <https://www.reuters.com/article/us-greece-germany-idUSKBN25L1DC>, last access 24/01/2021

Indeed, Russia is involved in several energy projects in the region, and, along with Iran, it meets more than 40% of Europe's energy needs. It follows that the EastMed pipeline would constitute an obstacle to Moscow,

Russia's activities in the Eastern Mediterranean go beyond its support to Assad in Syria.

who, however, has shown to maintain a low profile by refraining from taking any maximalist position on the issue. Furthermore, Russia has been aiming to improve its relations with several regional powers, including Turkey, Egypt and Israel. In particular, the strengthening of the relations between Ankara and Moscow, along with the growing distancing of Turkey from its NATO allies, led the former to purchase S-400 defense missiles from the latter, which cost the imposition of sanctions from the U.S. to Turkey in late December 2020. Turkey's rapprochement with Russia could translate, and to a certain extent is already translating, into a lessening of the U.S. influence in the region. Despite the historical rivalry with Europe, Russia now finds itself in the position of a mediator in the Greece-Turkey conflict, attempting to defuse the tensions between them. In fact, the failure of EU-led attempts to restore peace between the two NATO allies, along with the American election rush, are leading Russia to take advantage of the situation and strengthen its influence in the troubled waters of the Eastern Mediterranean.

To the USA, Turkey is a strategic partner in terms of security and defence interests in the Middle East and in Eurasia, and the two NATO allies share several geopolitical

Turkey occupies a crucial geographical position, connecting the Black Sea to the Middle East, a region where the United States traditionally seeks to maintain its dominance.

interests related to the stability of the Eastern Mediterranean. However, the relations between Washington and Ankara have been characterized by continuous ups and downs and they

became increasingly difficult to manage, and, when it comes to specific issues, the two countries often disagree dramatically. For instance, in Syria the USA have constantly been backing the YPG militia, considered a fundamental partner in the fight against ISIS, while for Turkey they represent PKK's right hand, with which Ankara has been struggling for decades. In 2020, the energy dossier enriched relations between the two countries

with new chapters full of tension. While the U.S. has been intensifying its relations with Greece, starting shipyards and new military technologies, the situation is much more problematic with Turkey. After 18 years of AKP rule, Ankara has become increasingly distant from its Western allies. Erdogan's assertive policy has meant that various states in the Mediterranean, including Egypt, Greece and Cyprus, have turned to the United States for a cooperation that also concerns the energy sphere. Washington also applied to participate as an observer member at the East Med Gas Forum, from which Turkey has been excluded. The conflict between Greece and Turkey risks seriously damaging U.S. interests, which need regional stability to advance its energy and security strategy in the Eastern Mediterranean.

The role of NATO

Greece and Turkey both joined NATO in 1952. The premise was that membership in a defense organization would ease the already existing tensions between the two countries. However, it is clear that the hoped-for breakthrough did not materialize, and tensions reached a dramatic level in 2020. The result is that NATO finds itself with two member states that not only do not trust each other, but that periodically give rise to an escalation of violence that jeopardizes the stability of the entire organization and risks paralyzing its activities. During the past decades, NATO has extensively been involved in handling Greek-Turkish disputes in the Aegean Sea, whether over territorial claims, naval exercises, monitoring of illegal migration from Turkey to Greece, or airspace infringements, and has been used to provide innovative solutions for the resolution of said conflicts.

The increasing misalignment of Ankara from the West and its consequent re-approach to the Asian space has raised fears of a possible exit of the country from the trans-Atlantic alliance. However, this scenario is far from coming true, mainly for two reasons. First, if Turkey leaves NATO, it will lose its leverage on the West. Secondly, Ankara is a major ally, and it is too important to be isolated from its Western allies. Consequently, Turkey's membership in NATO should not be questioned, but at the same time the fragility of the

Atlantic alliance in handling the Aegean crisis is evident. One reason for NATO's lack of leadership in resolving the conflict between Greece and Turkey can be found in the failure to address Black Sea security, which is necessary to strengthen relations between Turkey and the West.

In order to try to mitigate the tensions between Turkey and Greece, NATO has established a military de-conflicting mechanism for the two countries, which includes the creation of a hotline. The mechanism was already used in the 1990s in the region, and was effective in helping to provide the space for diplomatic talks between the conflicting parties. However, in order to effectively exercise its leadership, NATO should be able to offer a viable solution that includes ensuring equal access to any energy resources for both sides. In this sense, NATO certainly enjoys a privileged position, as it appears to be the only political platform capable of allowing such a confrontation. NATO could be used by Greece and Turkey as a platform to present their positions and engage in constructive dialogue through the exchange of information and diplomatic communication.

Nevertheless, at the moment it does not seem that the right conditions are in place for this mechanism to be set in motion, and NATO may not be the place to look for such confrontation.

Conclusion

The Eastern Mediterranean is a complex region, where regional balance is extremely vulnerable. The energy discoveries in its waters, along with several emerging crises, have aggravated longstanding tensions. At this stage, not only has the number of countries involved in the Eastern Mediterranean crisis grown, but the scope of the disputes has broadened to include new issues, such as gas exploration and the Libyan crisis. In this context, the ongoing dispute between Turkey and Greece has inevitably exacerbated. Even though the gas discoveries triggered the recent tension, this crisis is essentially political, and it should be solved as such. For its part, Turkey has been adopting a foreign policy posture which appears closer to a securitization strategy than to an addressing of substantial issues. Ankara seems not to be interested in improving its bilateral relations with its neighboring countries, nor in cooperating with them for a shared objective.

Instead, it has been pursuing a policy aimed at exploiting the leverage that it has gained for other political purposes. In the Eastern Mediterranean, this leverage appears to be even stronger than elsewhere, and it allows Turkey to use its energy strategy to affect energy governance also in this sub-region. As a consequence, while other countries in the region have fostered cooperation, Turkey appears to be increasingly isolated.

If a mechanism that leads to a concrete normalization of relations is not found, the tensions between Turkey and Greece are bound to worsen. The effort to de-escalate the tensions should start by focusing on a resumption of the diplomatic talks between Greece and Turkey. Historically, for Turkey and Greece talks are usually employed for a de-escalation of the tensions, because they allow to move from a military narrative and an aggressive posturing towards dialogue, negotiations and reconciliation. However, the current conditions will probably not provide for a conflict resolution, but rather for a conflict management at best. In this respect, the European diplomatic efforts to de-escalate the crisis could represent a remarkable contribution, but the future prospects of these efforts will necessarily depend upon the reduction of the divergences between Germany and France. It is likewise important to include Turkey in the EastMed Forum, as well as in all the cooperation mechanisms in the region. The decision to exclude Ankara from this Forum *a priori* has certainly not benefited the regional stability, and it has contributed to freeze the dialogues with the Greek side. If this route is not sustainable, a trilateral framework between Turkey, the European Union and the EastMed Gas Forum should be found, in order to treat the issues from a multilateral point of view, involving all the relevant actors and offering them the possibility to negotiate.

Another aspect that should be taken into account is related to the European energy transition and decarbonization goals, which mean that the commercial value of gas will further diminish in the future. Indeed, the strategy adopted by the EU for its energy transition, which finds its roadmap in the European Green Deal, collides with the attempts of discovering more fossil fuel fields. While natural gas, which emits 50% less carbon dioxide than coal, will probably be necessary in the short term to replace coal in the transition to sustainable energy, the European Union already possesses enough gas

from Norway, Russia, Central Asia, and North Africa to meet the current and future demand. In fact, in order to successfully tackle the climate emergency and fight climate change, the European demand for natural gas is expected to shrink in the next few decades, along with a parallel reduction of investments in gas infrastructures.

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