STRATEGY AND SECURITY TALKS-2

Outstanding Issues in the Eastern Mediterranean and the Aegean Sea: Turkey’s Views and Policies

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Date: 13 February 2020
Time: 14.30
Venue: TEPAV Building, 3rd Floor Conference Room
4 Enclosed / Semi-enclosed SEAS

- **Mediterranean**
- **Black Sea**
- **Marmara Sea** (internal waters)
- **Aegean Sea**
**Territorial Sea**
Up to 12 n.miles

**Internal Waters**

**Continental Shelf**
Up to 200-350 n.miles

**Contiguous Zone**
Up to 24 n.miles

**Exclusive Economic Zone**
Up to 200 n.miles
Delimited TS, CS & EEZ Boundaries of Turkey in the Black Sea

- Enclosed Sea
- 6 Littoral States
- 12 nm territorial sea limit
- No MBD Dispute
Turkey - Bulgaria
4 December 1997
Delimitation Agreement (CS-EEZ-TS)

Turkey - Georgia
14 July 1997
Delimitation Protocol (CS-EEZ-TS)

Turkey - Ukraine
30 May 1994
Delimitation Agreement (CS-EEZ-TS)

Turkey - USSR
17 April 1973
Delimitation Protocol (TS)

Turkey - USSR
23 June 1978
Delimitation Agreement (CS)

Turkey - USSR
6 February 1987
Delimitation Agreement (EEZ)

All 3 confirmed by Russian Federation on 17 September 1992 officially by a VN
- 2 Littoral States
- Number of interrelated outstanding issues
- 6 nm territorial sea limit.
- No CS delimitation
- No maritime boundary agreement.
- Moratorium (1976 Bern Agreement)
- Exploratory Talks (2002-2016)
AEGEAN ISSUES

Stumbling block for exploiting the real potential & further developing bilateral relations

GREEK POSITION
Only One Issue
Only one means of settlement

TURKISH POSITION
Several Interrelated Issues
More than one means of settlement
**AEGEAN ISSUES**

**GREEK POSITION**
- Continental Shelf

**TURKISH POSITION**
- Breadth of the territorial sea
- Breadth of the national airspace
- Sovereignty of certain insular formations & lack of maritime boundaries
- Delimitation of the CS (& EEZ)
- Delimilitarized Status of EA Islands
- Service Areas (FIR, SAR, NAVTEX)

All peaceful means including ICJ
Why cannot be solved?

Misperception

Lack of Emphaty
Disrespect of Other’s Rights

Lack of Political Will

Domestic Politics

Turkish Demands

AEGEAN

AEGEAN ISSUES

13 February 2020

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1-Territorial Sea

6 NM
HS % 48.9 **TR % 7.5** **GR % 43.6**

12 NM
HS % 19.7 **TR % 8.8** **GR % 71.5**
GR seeks to extend its TS limit to 12 nm.

TR strongly opposes to such extension arguing that this would severely damage its vital and legitimate rights and interests in the Aegean Sea.
- **Turkey would be locked out of the Aegean.**

- **Access to open seas and navigation would be severely hampered.**

- **Traditional fishing areas on high seas would be off-limits for Turkish fishermen.**

- **Greece would automatically acquire CS (almost 30% more)**

- **Same percentage for national airspace.**

- **Turkey’s security interests (i.e. defence related activities, military training and exercises, early warning requirements etc.) would be severely impaired**
**Greece’s Arguments**

- 12 nm has become customary international law which is confirmed by the practice of vast majority of States and by Article 3 of the UNCLOS.

- It is an inalienable right which shall be exercised at a time when Greece considers it appropriate and convenient.

- Practice of Turkey is 12nm in other seas.

**Turkey’s Arguments**

- Special geographic circumstances and unique regional configuration in a semi-enclosed sea.

- Historic practice.

- Equity and equitable delimitation.

- The principle of good faith and prohibition of abuse of rights under international law.

- Unjust enrichment rule in common law.

- The rule of “persistent objector” in international law.
Greek Parliament adopted a motion on 1 June 1995 to entrust the competence to the Greek Government for the unilateral extension of the Greek territorial waters to 12 nautical miles.

Turkish Parliament adopted a motion on 8 June 1995 to reciprocate which underscores the vital interests of Turkey and draws the attention to the negative repercussions of 12 nm ts extention and finally grants the Government all powers, including those that may be deemed necessary in the military field, for safeguarding and defending the vital interests of Turkey in the event of extension.
Greece began its oil explorations in 1963.

Turkey followed suit in 1973.

TR & GR continued prospecting oil until 1976.

GR argued that TR’s explorations took place on its CS

TR argued that the sites constituted the natural prolongation of the Turkish mainland.

OVERLAPPING CLAIMS

Exploration activities raised tensions.

Parties launched negotiations and considered ICJ through a special agreement.

10 August 1976, GR unilaterally took the dispute to UNSC and ICJ seeking Interim Measures of Protection and Judgement.
UNSC in its resolution no. 395 dated 25 August 1976, called both countries to resume negotiations to resolve the issue peacefully and consider taking the dispute to the ICJ.

On 11 September 1976, the ICJ rejected the Greek request for interim measures of protection & also decided that areas beyond territorial sea, were in fact "areas in dispute”

BERN AGREEMENT
11 November 1976
Parties decided to hold negotiations and undertook to refrain from any initiative or act concerning the Aegean continental shelf.
1976 BA is still valid and binding for both countries

Later, in 1978, the Court decided that it did not have jurisdiction to entertain the Greek application on the substance of the question.
TR & GR resumed negotiations between 1976-1981 without any conclusion.

GR stopped negotiations on the continental shelf in 1981 and adopted “one issue, one solution” policy.

In 1987, Greece announced that it intended to drill for oil near the Greek island of Thassos.

The Greek announcement prompted Turkey to send the Sismik-I into disputed waters.

The crisis was defused by US and NATO mediation.
Greece’s Arguments

- Each and every island has a full right to continental shelf.
- Delimitation should therefore be effected between the Eastern Aegean islands of Greece and the Turkish mainland (strict equidistance method).
- Mainland and islands constitute a political, economic and geographic unity.
- The issue is not delimitation but rather entitlement of islands to shelf areas of their own.

Turkey’s Arguments

- Delimitation should be effected on the basis of the applicable international law in accordance with equitable principles, taking into account of all relevant and special circumstances in order to achieve an equitable result.
- “Natural Prolongation” "Non-encroachment", "avoiding cut-off effect, "equal-division", "respect to all relevant and special circumstances" and "proportionality."
- Delimitation should be effected between the mainlands of the Parties. Greek islands lying very close to the Turkish coast on the wrong side of the median line should be enclaved (enclavement method).
The Kardak (Imia) crises in January 1996 led to a dispute between Turkey and Greece over the status of certain islands, islets and rocks in the Aegean Sea to which both countries claim sovereignty.

The dispute is emanating from differing interpretations related to the meaning, scope, intent and legal effect of the territorial provisions of a number of international instruments mainly:

- The Decision of Six Powers of 1914.
- Lausanne Peace Treaty of 1923 (Articles 6, 12, 15 and 16)
- Paris Treaty of 1947 (Articles 14 and 43)
4-Demilitarized Status of Eastern Aegean Islands

1914 Dec. of 6 Maj. Powers
1923 Lausanne P.T. Art.12

1914 Dec. of 6 Maj. Powers
1923 Lausanne P.T. Art.12 & 13

1914 Dec. of 6 Maj. Powers
1923 Lausanne P.T. Art.12
1923 Convention on Straits Art.6

DODECANESE ISLANDS
1947 Paris P.T. Art.14
5-Breadth of National Airspace

INTERNATIONAL AIRSPACE

1931

GREEK NATIONAL AIRSPACE CLAIM

INTERNSATIONAL WATERS

6 NM

4 NM

LAND
VARIOUS SERVICE AREAS which has nothing to do with the “sovereignty of states” but unfortunately considered by Greece as such in the Aegean Sea

- FIR
- SAR
- NAVTEX
- COSPAS-SARSAT
- LRIT
Interception and harassment of state aircraft

FIRs were devised by ICAO in 1950's to provide facilities and services to the civilian aircraft in the international airspace. FIR arrangements solely entail technical responsibility. It does not change the free status of the airspace over the high seas under international law.

Root Cause:
Misconception of Sovereignty
1979 Hamburg Convention on SAR activities stipulates that relevant littorals should co-ordinate and co-operate in overlapping SAR areas pending the delimitation.

Root Cause:
Misconception of Sovereignty
Solution:
Cooperation

- Overlapping SAR areas
- Humanitarian responsibility

Maritime SAR

6-Service Areas

AEGEAN ISSUES
NAVTEX navigational telex service for delivery of navigational and meteorological warnings and forecasts, as well as urgent maritime safety information to ships.
The International Cospas-Sarsat Programme is a satellite-aided search and rescue initiative.
Managing Disputes

- Agree to disagree
- CBMs
- Dialogue
- Negotiate a delimitation
- Litigation, arbitration or conciliation
- Joint development
- Joint management
EXPLORATORY TALKS
2002-2016
60 rounds

Intended to address Aegean Issues

CBMs
1988 Athens-Istanbul MOUs
29 additional measures
COC process

Intended to prevent accidents and incidents (De-escalation) while retaining national positions

OTHER CHANNELS
High-Level contacts-visits
Political Consultations

Overall Bilateral Relations
10 countries / 6-12 nm territorial sea limit / Overlapping Maritime Boundary Claims / Syria-Cyprus-Middle East Issues / Energy Flashpoint
Generally CS/EEZ delimitation issues remain dormant until coastal states compete for off-shore resources (fisheries-oil-gas) in the same maritime region.

Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean

The U.S. Geological Survey estimated a mean of 1.7 billion barrels of recoverable oil and a mean of 122 trillion cubic feet of recoverable gas in the Levant Basin Province using a geology based assessment methodology.
Discovered Natural Gas Fields
How did it all start?

Unilateral actions of GCs before the settlement of Cyprus Issue violating Turkey’s and TCs rights

2003 Delimitation Agreement with Egypt violated Turkey’s CS rights

2007 Delimitation Agreement with Lebanon

2010 Delimitation Agreement with Israel
How did it all start?

A MARITIME BOUNDARY DELIMITATION AGREEMENT BETWEEN THE TWO STATES SHOULD NOT VIOLATE THE RIGHTS AND INTERESTS OF A 3RD STATE

The delimitation line in the agreement should be ended before it reaches the area of overlapping potential claim of a third state.
How did it all start?

BILATERAL MBD AGREEMENT SHOULD NOT VIOLATE 3RD PARTIES RIGHTS

2003 Egypt-GC EEZ Agreement VIOLATED Turkey’s rights

2010 Israel-GC EEZ Agreement VIOLATED Lebanon’s rights
How did it all start?

2006-2007
Launched 2D-3D Seismic Surveys

2007
Draw off-shore blocks
Announced first licencing round

19 September 2011
Started off-shore drilling

Turkey & TRNC objected all of these unilateral actions and asked GCs to cease their off-shore activities until the comprehensive settlement.
Turkey & TRNC reaction

TURKEY-TRNC
CS Delimitation Agreement
21 September 2011

TRNC
Draw off-shore blocks - Licenced TP
22 September 2011
off-shore activities of TCs & GCs be ceased simultaneously until the settlement

OR both sides should determine jointly the future course of off-shore oil/gas activities, including revenue sharing and funding of a possible settlement.
R/V Piri Reis conducted 2D Seismic Survey 27 Sept.-1 Nov 2011.

Turkey & TRNC reaction
MEDITERRANEAN SEA

TURKEY’s & TRNC’s OFF-SHORE ACTIVITIES

Yavuz
18 January 2020

Fatih

Oruç Reis

Fatih

BHP

Yavuz

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Greek Cypriot EEZ/CS Claim
Greek/GC CS-EEZ Claim
Turkey’s CS/EEZ

MEDITERRANEAN SEA
Overlapping CS/EEZ Claims
Legal Framework for MBD and the arguments of the Parties
• **ALL ISLANDS REGARDLESS OF THEIR GEOGRAPHICAL POSITION AND WHETHER THEY SUSTAIN HUMAN HABITATION OR NOT SHOULD GENERATE FULL MARITIME ZONES (CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONE)**

• **MEDIAN LINE SHOULD BE THE ONLY METHOD FOR THE CS-EEZ DELIMITATION**
Regime of islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. 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.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.
DELIMITATION AND ENTITLEMENT ARE NOT THE SAME
(Jurisprudence ICJ and state practice)

THE PRINCIPLE OF EQUITY – EQUITABLE SOLUTION IS THE RULE
(UNCLOS Articles 74/83)

MEDIAN LINE IS NOT THE METHOD FOR CS/EEZ DELIMITATION
(Only for the territorial sea)

Islands
(i) cutting off Turkey’s coastal projection and CS (ii) lying on the wrong side of the median line between mainlands (iii) with minimal coastal lengths comparing to Turkey’s mainland should not generate CS/EEZ.
1. The delimitation of the exclusive economic zone 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.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into **provisional arrangements of a practical nature** and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

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**Agreement**

**EQUITABLE SOLUTION**

**Other Peaceful Means**

**Provisional Arrangements**

**(Joint Development)**

**Median line as a method is not mentioned**
WHAT ARE THE FACTORS TO ASSESS WHETHER A MARITIME DELIMITATION LINE IS EQUITABLE OR NOT?

ICJ Jurisprudence – Special/Relevant Circumstances

**GEOGRAPHICAL CIRCUMSTANCES**
- **Regional Geography ✓**
  (including general characteristics and particular features of the region - ocean, enclosed, semi enclosed sea etc.)
- **Configuration of the Coasts ✓**
  (including adjacency and oppositiness, direction, comparative lengths, concave or convex shape)
- **Basepoints ✓**
  (including presence of ports, roadsteads, bays, river mouths, low-tide elevations, reefs)
- *The presence of islands and rocks ✓*
  (including their size and position in the context of general geographic configuration)

**NON-GEOGRAPHIC CIRCUMSTANCES**
- Geological and geomorphological factors
- Economic factors (Hydrocarbon resources, fisheries)
- **Navigation ✓**
- Socio-economic and demographic factors
- Defence and security
- Environment
- Historical rights ✓
- Presence of Third States ✓

**OTHER FACTORS AFFECTING DELIMITATION**
- Proportionality ✓
- Non-encroachment ✓
- Proximity ✓
There has been a sustained trend in international jurisprudence towards awarding islands a reduced or no effect in maritime boundary delimitation.
Cases - 1977-78 UK-France

Partial Effect

Enclave

Isles of Scilly

Enclavement Study

13 February 2020
State Practice – 1971 Tunisia-Italy Agreement
State Practice – 1969 Iran-Qatar Agreement

State Practice – 1973 Canada-Denmark (Greenland)

State Practice – 1988 USSR-Sweden Agreement

State Practice – 1978 Papua New Guinea and Australia

Australian Islands as close as few miles to Papua New Guinea lying on the “wrong side”

SOLUTION

1978 Torres Strait Treaty
- TS and CS boundary established
- Territorial sea limit fixed for 3NM
- Islands lying on the wrong side encalved
- Agreed on joint fisheries management
- Established a Joint Protection Zone
CONCLUSION

There is no automaticity in claiming that islands generate full maritime jurisdiction areas.

Islands are ignored or given limited effect in maritime boundary delimitation if their location distorts equitable delimitation or if there are other special / relevant circumstances.
UNEQUITABLE CS/EEZ CLAIMS OF GREECE & GREEK CYPRIOTS BASED ON THE ASSUMPTION THAT ALL ISLANDS GET FULL EFFECT IN MARITIME BOUNDARY DELIMITATION
Coastal Lenghts:

- **Meis Island**
  - 10 km²
  - 2 km from Turkish mainland

**Equidistant Line**

- Between Mainlands Turkey & Egypt

**Coastal Lenghts**:
- **Turkey**: 1792 km
- **Egypt**: 1062 km (Total)
- **Turkey**: 969 km
- **Egypt**: 850 km (West of Cyprus)

13 February 2020

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EU’s BIASED APPROACH
EU’s BIASED APPROACH

European Council Conclusions

......intended drilling activities **within the exclusive economic zone of Cyprus**

......Turkey's continued **illegal actions** in the Eastern Mediterranean and the Aegean Sea......

......Turkey's current **illegal drilling activities** in the Eastern Mediterranean..............

...........Turkey must **respect the sovereignty of all EU Member States over their territorial sea and airspace** as well as all their sovereign rights, including inter alia the right to explore and exploit natural resources,

...........**restrictive measures** in response to **Turkey's unauthorised drilling activities** in the Eastern Mediterranean

**NOT A SINGLE REFERENCE TO THE TCS RIGHTS OVER THE OFF-SHORE RESOURCES**
How does the EU let maximalist national maritime claims of its members as its own?

Is this biassed approach compatible with Int. Law & EU aquis?
Can EU qualify Turkey’s off-shore activities illegal under international law?

No especially in the absence of final agreed boundaries.

Does EU have any competence in delimiting maritime boundaries?

No

EU Court of Justice @EUCourtPress · 31 Jan

#ECJ: the Court is not competent to decide on the border issue between #Slovenia and #Croatia – they must work together to find a definitive judicial solution curia.europa.eu/jcms/jcms/Jo2_...
EU’s BIASED APPROACH

EU solidarity to support national boundary claims ???

Is it fair for the EU to take the boundary claim of one side and try to impose it to the other?

NO

What is the EU position vis-a-vis overlapping maritime jurisdiction claims between its members?

Neutrality
EU’s BIASED APPROACH
Turkey is ready to launch maritime boundary delimitation talks with all the neighbouring countries except the Greek Cypriots.

Delimitation in the west of the Island should be effected after the comprehensive settlement of the Cyprus issue (Federal, Confederal or 2 state solution).

TCs’ equal rights as co-owners of the Island should be guaranteed.

TCs’ 13 July 2019 cooperation proposal is on the table and a good basis for a solution.
**Fundamental Principles**

- inherent & equal rights over the off-shore resources of the whole island as the co-owners of the Island
- simultaneous monetary benefit sharing
- joint decision making
- solution will not prejudice legal and political positions
- No licencing & activity in overlapping areas

**Joint Committee**
under UN auspices & facilitation – EU as observer
(2 reps + consensus + upon request of each side) + 2 independent experts

contractual rights of the oil companies shall be protected

**agree on a revenue sharing percentage** on all licence areas
joint Decision on all future activities

**JOINT HYRDOCARBON TRUST FUND**

TP to cease its activities on overlapping TC & GC licence areas unless agreed otherwise
TP should continue its survey and drilling activities in Turkey’s continental shelf. TP should continue its survey and drilling activities in the TRNC licenced areas unless the Turkish Cypriots’ equal rights over the off-shore resources are guaranteed.
We consider the statement made yesterday (29 January) unfortunate especially on the part of Italy.

As we have repeatedly emphasized, the Turkish Cypriots, as the co-owners of the Island have equal rights on the hydrocarbon resources of the Island. Based on these rights, the TRNC Government granted exploration and exploitation licenses to the Turkish Petroleum (TP) in 2011. TP’s ongoing survey and drilling activities in these license areas aim at protecting the rights of the Turkish Cypriots, not Turkey. Until these rights are guaranteed, the TP will continue to operate in these license areas.

These rights can only be guaranteed either by jointly suspending all off-shore activities in the south of the Island until a comprehensive settlement is reached in Cyprus, or by launching a cooperation mechanism by the Greek Cypriots with the Turkish Cypriots in accordance with the 13 July 2019 proposal. Otherwise, Turkey will continue resolutely to protect the rights of the Turkish Cypriots. Therefore, once again, we call on all the EU members, especially Italy to abandon their attitudes which ignore the very presence of Turkish Cypriots and their rights.

As we have also repeatedly stated in the past, the delimitation of maritime jurisdiction areas to the West of the Island of Cyprus will only be possible after the resolution of the Cyprus issue. It is out of question for Turkey to start maritime boundary delimitation negotiations with an entity that does not represent the Turkish Cypriots and usurps the title of the “Republic of Cyprus” since 1963. The only interlocutor of the Greek Cypriots is only the Turkish Cypriots, until the resolution of the Cyprus issue.

We also entirely reject the criticisms against the memorandum of understanding that we signed with Libya on the delimitation of maritime jurisdiction areas. In this context, it is worth mentioning the fact that Italy and other EU member states had remained silent to the delimitation agreement concluded between GCA and Egypt in 2003, which indeed indicates the inconsistency and contrariety of their current policies in the Eastern Mediterranean.

We will resolutely continue to protect our rights and of Turkish Cypriots in the Eastern Mediterranean.
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF TURKEY
AND
THE GOVERNMENT OF NATIONAL ACCORD-STATE OF LIBYA
ON DELIMITATION OF THE MARITIME JURISDICTION AREAS IN THE MEDITERRANEAN

ON BEHALF OF THE GOVERNMENT OF THE REPUBLIC OF TURKEY
SIGNATURE: [Signature]
NAME: Mevlüt ÇAVUŞOĞLU
TITLE: Minister of Foreign Affairs

ON BEHALF OF THE GOVERNMENT OF NATIONAL ACCORD-STATE OF LIBYA
SIGNATURE: [Signature]
NAME: Mohamed Taher SIYALA
TITLE: Minister of Foreign Affairs
Turkey’s CS/EEZ in the Eastern Mediterranean

13 February 2020

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(1) Safeguards not only Turkey’s but also Libya’s rights and interests in the Eastern Mediterranean
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SIGNIFICANCE OF THE MoU

LIBYA’s CS/EEZ ACCORDING TO GREECE

62,523.25 KM²
18,228.86 NM²
SIGNIFICANCE OF THE MoU

LIBYA’s CS/EEZ CLAIM

101,606.67 KM²
29,623.77 NM²
(2) The second delimitation agreement of Turkey in the Eastern Mediterranean
SIGNIFICANCE OF THE MoU

(3) MoU reflects the LEGAL arguments of Turkey & Libya

- Islands do not automatically generate CS/EEZ (entitlement vs. delimitation)
- Principle of equity / just and equitable delimitation
- Coastal lengths facing the area shall be taken into account
- Coastal projection – CS of Turkey cannot be cut-off
(4) MoU defines the western boundaries of Turkey’s maritime jurisdiction areas in the Eastern Mediterranean.
(5) MoU is a strong response to the political – economical initiatives attempting to isolate and encircle Turkey in the Eastern Mediterranean.

- Trilateral mechanisms formed by Greek Cypriot/Greek duo with countries in the region.
(6) MoU may prompt remaining countries in the region to review their agreements made with GCA and/or their respective legal arguments.
POSSIBLE MBD SCENARIOS

- Overlapping Claims
- Agree to Disagree
- Bilateral MBD Agreements
- Third Party Solutions
- Joint Management
- Joint Development