

REGIONAL AND GLOBAL ORDER

ALBANIA - GREECE: OPPORTUNITY TO UNLEASH POSITIVE ENERGIES

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The visit of the Greek Prime Minister would be good to be accompanied by the repeal of the absurd law of the war that Greece still maintains in force against Albania. This would also be read as a concern for the Greek national minority, as long as the legal act is in force, which keeps the properties of the Albanian state, Albanian citizens, including those of Greek nationality, under sequestration.



The division of maritime spaces constitutes one mutual strategic interest. Determination of these spaces for two states that are part of the Convention on the Law of the Sea Montego Bay allows them to exercise full sovereignty in an area clearly defined by coordinates and full use of natural resources.



Albania and Greece are included in one interactive process from which to draw up a joint document for the subject that will be subject to judgment. The results of the year's negotiation process 2018 can and should serve as one good basis for drafting the document that will be subject to judgment in the Hague.

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The visit of the Greek Prime Minister on the eve of the end-of-year holidays in Himara and in the areas where the Greek national minority has traditionally lived, is one of those political and diplomatic events of special importance. In the historical context, it is the first visit of a Greek Prime Minister to one of the most discussed Albanian cities in bilateral relations, due to the bilingualism of its inhabitants.

The Greek national minority has lived in two municipalities, Dropulli and Finiq, which have historically been recognized as minority zones, although the concept of minority zone is no longer applied in Albania, in accordance with international standards of freedoms and basic human rights. Albania has a developed legal and institutional framework regarding the respect and protection of the rights of national minorities. Albania has recognized the status of the Greek national minority since 1922. While Greece has only temporarily recognized the Albanian national minority in Greece, under the government of Theodoros Pangallos in 1926, who in the official statement before the League of Nations recognized the Albanian national minority in Greece, no longer considering Muslim Albanians as Turkish population. But his government was short-lived. Subsequently, Greece has historically denied the status and existence of the Albanian national minority in Greece, located mainly in the border areas.

Seen in the historical context, but also in the light of international standards, the statements of the Greek Prime Minister regarding the respect of the rights of the Greek national minority from Himara, were spelled out in the wrong place, and do not reflect reality. That being said, the work to meet the standards of national minorities in Albania is a work in progress. However, the precedent of the visit to Himare raises a number of political questions, the most important of which is how it will affect bilateral relations. And more specifically, in addressing the issues that still remain pending between us.

It remains to be seen whether the Greek side will enable the Albanian Prime Minister a visit to the border areas, where the Albanian community has historically lived in

Greece, or whether the right of commemoration for those who died during the Second World War and visits to the properties and houses will be made available to representatives of the Cham community. The visit of the Greek Prime Minister would have been accompanied with the repeal of the absurd law of war that Greece still maintains in force against Albania. This would also be read as a positive message for the Greek national minority, as long as the legal act which is in force, holds the properties of the Albanian state, Albanian citizens, including those of Greek nationality, under sequestration. Hoping that exchanges of visits at high levels will bring concrete results and unleash positive energy in Albanian-Greek relations with a view towards the future, let's analyze the progress achieved and some of the issues that need to be addressed.

A FOREIGN POLICY ORIENTED BY THE SEA

Winston Churchill used to say that in foreign policy I am always oriented by the sea. Although in the British context, because of the Commonwealth, this means the supremacy of the sea in relation to the continent, countries that have access to the sea are lucky. This is our case, being locked in the Balkans, but open in the Mediterranean. However, luck is not enough. It must be accompanied by strategic discipline and patriotism, because the sea is a common good that brings development, in addition to superiority in the exercise of foreign policy.

During the period of communist isolation, our coastline was underutilized, while the geopolitical circumstances and the division into blocs of Europe were accompanied by paranoid actions. However, in the last period of communism, the criteria defined by the international law of the sea for maritime zones were respected. This was dictated by the progress of international law of the sea with the adoption of the Montego Bay Convention in 1982 and certainly due to our Mediterranean belonging.

After the fall of the Berlin Wall, even though our interests in the region have been mainly interrelated to Italy and

Greece, whenever the issues of maritime zones are discussed with neighbours, the fury of hypocrisy erupts, reminding us of Goethe's saying: "He who acts is always unfair. The only one who is righteous is the one who observes."

Although geographically in front of us is Italy, and on our two sides we have Greece and Montenegro, it must be admitted that the process of delimitation of maritime zones with Greece is brought at the epicenter of public opinion, a feature of the Balkan style of a love-hate relationship. To this day, there is a lack of public discussion that would encourage the finalisation of the half-finished process with Italy since the time of communism, or to start the delimitation process with Montenegro.

SHOULD ALBANIA BE INVOLVED IN A DELIMITATION PROCESS WITH GREECE?

This question is posed not because of any dilemma. However, there are public voices that claim that the issue of the delimitation of maritime zones does not exist, since this issue is addressed by the Florence Protocol of 1925, concluded between Albania and Greece.

Albania and Greece are coastal states, next to each-other. The delimitation of maritime zones constitutes a mutual strategic interest. The delimitation of maritime zones for two states that are part of the Montego Bay Convention on the Law of the Sea enables them to exercise full sovereignty over a clearly defined area with coordinates and full use of natural resources. According to the definitions of the Convention, the maritime zones between states consist of three main components: a) Territorial Sea, the space of internal waters of a state, which extends up to 12 miles from the straight baseline or natural water line (Article 3) ; b) Continental Shelf, the bottom of the sea to the depths of technical exploitation that extends up to 200 miles; its calculation limit is taken as the 12th mile of the territorial sea limit (Article 76); c) The Exclusive Economic Zone, which is located on the Continental Shelf extends up to 200 miles; its calculation limit is the 12th mile of the territorial sea limit. The Exclusive Economic Zone extends from the bottom of the sea to the surface of the water (Article 55). Usually, the Continental Shelf and the Exclusive Economic Zone overlap each other. According to the Convention, maritime zones between states are defined by agreement or by court decision. This must be translated into geographic coordinates of an maritime map internationally recognized.

The agreement must be deposited to the United Nations. Contrary to what is claimed, the Florence Protocol has only defined the land border between Albania and Greece. Meanwhile, from Pyramid 79, which is also considered the pyramid where the land meets the sea, the future maritime delimitation line between our two countries should have its starting point. Until today, there is no agreement to define the Territorial Sea, Continental Shelf and Exclusive Economic Zone in geographical coordinates.

For the delimitation of maritime zones, it is important that the states determine the basic straight line, which can be normal, straight or combined, in accordance with the Convention. This helps in the construction of the delimitation line, to which modifications can be made, taking into consideration special elements such as the geography of the land, historical titles and equitable distribution. Therefore, engagement in this process is essential. Although we are late, its finalization creates opportunities for the use of maritime zones and natural resources.

RETURNING TO THE NEGOTIATING TABLE AND ADDRESSING ISSUES IN A PACKAGE

While there should be no doubts about the need to finalize this process, the way we should approach not only it, but all the unresolved issues with our neighbour remains essential. By mistake, public opinion is focused on this issue alone, leaving out of the attention of communication and elaboration equally important issues in bilateral relations that need to be addressed.

The decision of the Constitutional Court that declared incompatible with the Constitution, the agreement signed on April 27, 2009, is a manual that must be followed carefully. In terms of substance, three elements of this decision should not be forgotten: (i) Failure to apply the basic principles of international law for the delimitation of maritime zones between the two countries, in order to achieve a fair and honest solution. In other words, applying only the principle of strict equidistance for all zones instead of corrected equidistance, which would lead to an equal and fair solution; (ii) Not taking into account the islands and the geographical configuration in general as special circumstances in the delimitation of maritime zones; (iii) Incompatibility between the content and the title of the agreement as well as the violation of international law by Albania.

For example, Article 2 of that agreement expressly recognized the width of the territorial sea of Greece

of 12 nautical miles, when in fact this matter does not have to be the object of bilateral agreements or negotiations, as it is an internal matter of the states themselves that is regulated by the Convention of the Law of the Sea.

Likewise, in procedural terms, we must not forget the conclusions of the Constitutional Court for: (i) the failure to equip the negotiating group with full powers by the President of the Republic for conducting negotiations and concluding the agreement; (ii) the non-determination before the start of the negotiation process of the maritime zones that would be under the delimitation process; (iii) disregarding previous precedents of bilateral agreements related to state borders.

In this way, the Constitutional Court has set the red lines that should not be crossed in the conclusion of agreements of this nature, without providing a path how to conclude a new agreement. However, based on the above, it can be said that: (i) The delimitation of 2009 was the most minimal result that Albania could achieve; (ii) A new agreement based on the principle of equidistance with correction is needed, due to the geographical configuration; (iii) The application of the above principle brings benefits in the maritime zones of Albania. Although in the meaning of the Vienna Convention on the Law of Treaties, the 2009 agreement, due to its non-ratification, is not considered as a concluded agreement, it was not at all easy to sit down again at the table of discussions and then negotiation with Greece, with the aim of reaching a new agreement. Equally important was the discussion of all unresolved issues of a historical nature between our two countries, based on established principles of international law.

Presenting all issues in a systematic and continuous manner is always easier than exploring acceptable solutions, but it is necessary as a process, to precede the definition of a framework for addressing them. For this reason, after exploratory talks at the diplomatic and technical level with the Greek side, we moved on to the exchange of positions on the unresolved issues between us. Issues, which are about 85 years old, from the law of war by Greece against Albania, up to the current issues.

Likewise, we set up a permanent bilateral mechanism at the diplomatic level, which preceded the political dialogue at the level of foreign ministers and then prime ministers. In other words, step by step, we built a process of trust, analyzing mutual interests, instruments at our disposal and mapped out the way and the calendar for addressing all bilateral issues, including the delimitation of maritime zones, with the aim of a fair and honest result.

The negotiation of the new agreement on the delimitation of maritime zones, which followed the process described above, was based on Law 43/2016 "On International Agreements in the Republic of Albania", which in itself reflects the decision of the Constitutional Court in relation to the way how Albanian institutions interact in such cases.

While this process was not crowned with the conclusion of an agreement on the delimitation of maritime zones, the novelty lies in the finding of a common language between the negotiating teams of Albania and Greece for: i) the principles on which the delimitation is carried out (considering the straight line basis and the corrections made to it for special geographical circumstances); ii) the methodology of building the delimiting line; iii) the inclusion of the Florence Protocol, which defined the land border between Albania and Greece (Pyramid 79 where the land meets the sea, as the starting point of the future delimitation line); iv) reducing the specific weight of the islands in the Territorial Sea, Continental Shelf and Exclusive Economic Zone, which produces a fair delimitation.

The above stated elements can and should serve as the basis of any future process between the parties. Meanwhile, some of the issues that were part of the package were concluded. Addressing the issue of toponyms eliminated the obstacles in the cross-border movements of our citizens. Greece removed the reservation for the use of the apostille stamp, saving the pockets of our citizens about 5 million euros per year for various documents. The removal of the reservation for the apostille seal paves the way for the issuance of certificates from our consular offices in Greece, which would be a great relief for our citizens.

About 150,000 Albanian citizens benefited from the solution to the problem of registering children born in Greece from one or both parents who do not have a residence permit in Greece. Driving licenses were recognized. About 800 euros cost Albanian citizens in Greece the procedure of recognizing the driving license. We resumed work on the revision of the textbooks, based on the 1998 agreement, exchanging reports on the findings in the respective textbooks on issues of concern to each side.

For the implementation of the 2009 agreement on the search, exhumation, identification and reburial of Greek soldiers fallen in Albania, during the Italo-Greek war of 1940-1941 and the construction of a resting place for them in the territory of the Republic of Albania, several

technical protocols were concluded with the aim of: (i) determining the number of Greek casualties; (ii) specifying the areas where excavations should be carried out; (iii) the method of identifying the fallen; (iv) ensuring the presence of all relevant institutions during the exhumation process and the accompanying documentation of the process.

SIGNALING OUT MARITIME ZONES

Political changes in Greece in mid-2019 brought back to government New Democracy, which was in government when the agreement with Albania was signed in 2009. For New Democracy, the 2009 agreement was considered Greece's greatest strategic achievement in foreign policy. This political change in Greece was accompanied by a different approach on the package of unresolved issues between our two states, on how it was signaled out from the package and how the issue of the delimitation of maritime zones will be addressed.

For example, the package also contained draft agreements for the administration of pyramids and border signs as well as that of cross-border cooperation. Although not related in the legal sense of the word, the conclusion of these agreements, in parallel with that of the delimitation of maritime zones, finally closes the border issues between Albania and Greece, and at the same time buries any territorial claim of the extremist circles. Despite several years of efforts for the issue of the delimitation of the maritime zones to remain at a bilateral level, for the first time, this bilateral issue became part of the Negotiating Framework document that will guide the process of Albania's membership talks in the European Union.

Although there are EU member states, which have not yet found a way to resolve with each other the issues of delimitation of maritime zones, due to the lack of a European standard, Greece's insistence to include this issue as part of the European agenda of Albania, unfairly increases the pressure on Albania.

TOWARDS THE HAGUE

Today we are faced with the declared fact that Albania and Greece will go to the International Court of Justice for the delimitation of maritime zones. This is a demanding process that requires knowledge, serious preparation and time. It should be noted that we are not dealing with the transfer of responsibilities on addressing this issue, but with the expression of the readiness of the parties to accept the verdict of the International Court.

Basically, this process is prepared by the parties, while the decision-making belongs to the Court. In bilateral negotiations, the parties act on the basis of their objectives and requirements. They control the product of the negotiation. When the parties turn to the Court, the latter is the guardian of precedents established by international law. Consequently, insensitive to the objectives of the parties.

Albania and Greece are involved in an interactive process, from which they must draw up a joint document for the issue that will be subject to judgment, where the common points and differences between the parties must also be highlighted, for which the court must express. The results achieved during the 2018 negotiation process can and should serve as a good basis for the drafting of the joint document that will be subject to judgment in The Hague.

According to the International Court of Justice, the process of delimitation of maritime spaces follows this procedure: (i) Presentation and analysis of the international and domestic legal basis of the parties; (ii) Analysing the geography of the terrain in the maritime zones where the delimitation will be carried out and the determination of the basic points from which the construction of the delimiting line will begin; (iii) Construction of a provisional delimitation line, each point of which is equidistant from the base points on the respective coast of the parties; (iv) After the construction of the provisional delimiting line, the correction of this line to the Territorial Sea is made, for special circumstances (the role and weight of rocks, shallows, marine installations) and historical titles (maritime areas declared and known as such), for the Continental Shelf and the Exclusive Economic Zone, for a fair division (due to geography, the islands receive less importance in the delimitation compared to the continental land). At the end of this process, a nautical map is produced with the coordinates of the delimiting line between the parties.

THE NEW CIRCUMSTANCES THAT SHOULD BE CONSIDERED

Greece's decision to expand its territorial sea to 12 miles in the Ionian Sea is a clear political message that reflects changes in recent years. This expansion, the first since the end of the World War II, came immediately after the conclusion of agreements on the delimitation of maritime zones with Italy and Egypt; the resumption of exploratory discussions with Turkey; and the public declaration that the delimitation of maritime zones with Albania will be carried out at the International Court of Justice.

Although this step by Greece only affects the expansion of territorial waters in the Ionian Sea, Greece stated that it is within its right to expand territorial waters whenever and wherever it chooses, including south of Crete and elsewhere. This position is based on the declaration accompanying the ratification of the Montego Bay Convention on the Law of the Sea by Greece, where it accepts the temporary application of the 6-mile width of the territorial sea, enjoying the right to expand it to 12 miles, at any moment of suitable.

However, in the conditions where Turkey considers any expansion in the Aegean a *casus belli*, it is clear that we are facing a change in the traditional stance of Greek foreign policy, which has always aimed to start the expansion of the Territorial Sea first from the Aegean. So, this change of attitude aims to differentiate the treatment of delimitation of maritime zones with Turkey, compared to other countries, but, at the same time taking advantage as much as possible from the precedents that are established. The other change is related to the abandonment of the traditional Greek position to give the islands the maximum weight in delimitation in front of the continental land.

This change is clearly evident in the conclusion of the agreement on maritime zones with Italy and Egypt. On May 24, 1977, Italy and Greece signed the agreement on the delimitation of the Continental Shelf between them. Giving an incomplete effect to the Greek island of Othonoi has caused a modification of the line with equal distances, in order to achieve a fair solution. In other words, the parties have agreed on a reduction of the weight of the Greek island of 3.5% compared to the Italian mainland. As for the Territorial Sea, for this island, the parties have automatically accepted the width of 12 miles, because the distance between these two countries is greater than 24 miles.

On June 13, 2020, Italy and Greece signed the agreement on the delimitation of the Exclusive Economic Zone, which confirms the delimitation line of the 1977 agreement. This agreement allows the respective fishing fleets to navigate beyond the delimitation line of the Exclusive Economic Zone, but without entering the respective territorial waters, in accordance with the EU *acquis*. The delimitation of the Exclusive Economic Zone enables both countries to exercise sovereign rights to use wind energy, submarine communication cables, conduct scientific research as well as the marine life.

Despite its main focus on the Aegean, Greece continued to engage in maritime delimitation agreements with other neighbors. Initially with Italy, with which they share the

same policy in the field of fishing, as EU member states. To then continue with Egypt, with the signing of the agreement on the delimitation of the Continental Shelf and the Exclusive Economic Zone, on August 6, 2020. It is interesting that the delimitation line that the parties have built in this agreement is partial. The issue that is not closed is the sea area in front of the inhabited Greek island of Kastelorizo, which is located only 2 km from Turkey.

The complete non-closure of the Greece-Egypt delimitation line comes as a result of not having a Greece-Turkey agreement that would determine the effect Kastelorizo Island would have on the Continental Shelf and the Exclusive Economic Zone. Kastelorizo Island also affects: (i) the possibility of having a delimitation of maritime areas between Turkey and Egypt; (ii) Turkey-Cyprus maritime delimitation line; (iii) the Greece-Cyprus delimitation line. The agreement between Greece and Egypt has a direct effect on the memorandum signed between Turkey and Libya, reflecting the geographical reality. Hence, the Greece-Egypt delimitation line is built by starting the measurement from Crete and the surrounding islands of Karpathos, Kufonisi, Kristi, whose existence in the Turkey-Libya memorandum is not taken into consideration. In the agreement between Greece and Egypt, the weight of the Greek islands in the delimitation, both for the Continental Shelf and the Exclusive Economic Zone, has been reduced to 10% compared to the mainland land of Egypt.

Since the distance between Greece and Egypt is much greater than 24 miles, the Greek islands automatically have the full effect of the width of the Territorial Sea, i.e. 12 miles. Egypt has accepted a partial agreement while maintaining its neutrality towards the Greece-Turkey dispute. Meanwhile, Greece has given up its traditional position for the maximum effect of the islands, in order to secure an agreement that de-factorizes the Turkey-Libya memorandum. Although this memorandum has been deposited at the UN, after being signed by the parties on November 27, 2019, as an expression of their political will, it does not have the same legal value as an international agreement.

The Decree no. 107, dated December 25, 2020 of the Greek President "On the closure of the bays and the construction of the straight baseline in the maritime area of the Ionian Islands to the Peloponnese" must be read in the light of the above mentioned developments. Under present circumstances where Albania and Greece are going to The Hague for the delimitation of maritime zones, Greece's new approach to the exercise of the law of the

sea and the established precedents should serve as a lesson for us, for a better orientation, with goal of achieving a fair and honest maritime delimitation in the Ionian Sea.

It should not be forgotten that the 2009 agreement between Albania and Greece ignored the precedent established in 1977, for reducing the weight of Othonoi Island on the Continental Shelf in front of the continental land. This precedent was also confirmed in the recent Italy-Greece and Greece-Egypt agreements.

The above mentioned agreements are valid to understand that regardless of the internal legislation on the width of the territorial sea, the international law of the sea always takes precedence and the reflection of the principle of 12 miles in the relevant geographical terrain.

Greece shares the Territorial Sea only with Albania and Turkey, because the distances between the coasts are less than 24 miles. Consequently, unlike the above cases with Italy and Egypt, where the 12-mile principle is automatically applied from the Montego Bay Convention on the Law of the Sea, without the need to define a delimitation line for the Territorial Sea, in the Albania-Greece cases and Greece-Turkey, the delimitation lines in the Territorial Sea must also be defined.

The established precedents, especially in the region, are indicative of the expectations and results of the judicial process that will take place with Greece for the delimitation of the maritime zone. Therefore, a systematic approach of our institutions is needed to work continuously for the conclusion of the delimitation processes with Italy and Montenegro, as a strategic priority and why not create precedents from our side. Finally, the exercise of the law of the sea must reaffirm the importance of the Mediterranean dimension of our foreign policy.

THE LAST DANCE

Having into account what is analyzed above, it should be emphasized that the exercise of foreign policy requires a strategic discipline. Greece is a strategic partner in the region, with which we still have important unresolved issues, including the delimitation of maritime zones. This does not mean that we should view it with paranoia or inferiority. A serious discussion is needed that is guided by the state reason and the national interest, and that ensures at the same time, the widest possible political and social understanding, for dealing with unresolved issues with the neighbour according to the objectives determined by the foreign policy.

We have managed to put all bilateral issues on the negotiating table. Some of them, as elaborated above, have been addressed. The way forward for addressing all the issues is not easy. Even more so when the issue of the delimitation of maritime zones, from a bilateral issue, due to Greece's insistence, has become part of Albania's European agenda. Therefore, we must show persistence in addressing all issues, not forgetting that with Greece we have intertwined interests and an interdependent economy. As two of the oldest nations in this corner of Europe, the Albanian-Greek relationship has all the potential to unleash positive energy for the entire region. Therefore, let's try the "last dance" in addressing the unresolved issues, and rewrite the new Treaty of Friendship and Cooperation with a view to the common future.

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persistence in addressing all issues, not forgetting that with Greece we have intertwined interests and an interdependent economy. As two of the oldest nations in this corner of Europe, the Albanian-Greek relationship has all the potential to release positive energy for the entire region. Therefore, let's try for



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