



## Security Council

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### **Letter dated 16 December 2020 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council**

With reference to my letter dated 1 December 2020 issued as document [S/2020/1156](#) and the letter from the Permanent Representative of Germany dated 7 December 2020, I have the honour to transmit herewith the letter from Mevlüt Çavuşoğlu, Minister for Foreign Affairs of the Republic of Turkey, addressed to Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy/Vice-President of the European Commission (see annex).

I would be grateful if the present letter and its annex could be circulated as a document of the Security Council.

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



## **Annex to the letter dated 16 December 2020 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council**

Ankara, 14 December 2020

Thank you for your letter of 4 December 2020. Based on the content and tone of your letter, I feel compelled to bring some further points to your kind attention.

Let me first elaborate on the account of events, leading up to the unlawful boarding of *Roseline A*, to set the record straight. The emails exchanged between my Ministry and the Operation IRINI officials were also transmitted in the recent IRINI report to the United Nations sanctions committee. It is necessary to point out that the method of communication preferred by Operation IRINI is problematic from the outset, namely sending emails to randomly selected addresses of Turkish officials, which do not qualify as official correspondence, instead of making use of the established diplomatic channels, such as contacting the duty officer of the Ministry of Foreign Affairs of Turkey responsible for communication during off-hours and the Turkish Main Search and Rescue Coordination Centre as declared to the International Maritime Organization.

I think that it is important in the course of events, as you described them, to also draw your attention to unmentioned communication that took place.

The first such communication is the message conveyed by the Turkish military attaché in Rome to Operation IRINI at 1440 hours (Turkish time) stating that “no time constraints could be imposed upon Turkey” and that “any inspection requires a response from the authorized officials”.

The second important communication was between my Ministry and the Operation IRINI Legal Department. Shortly before the boarding took place, our Head of Maritime Department informed the Legal Department at 1744 hours (Turkish time) on 22 November that: “Turkey has not issued a declaration of endorsement of the 4 hours’ notice under the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, therefore the boarding cannot be carried out without the clear consent of the Turkish side, as 4 hours’ notice is not applicable as far as Turkish-flagged ships are concerned.”

At 1855 hours, the IRINI Legal Department replied: “Also without the flag-State consent, fulfilling the good-faith efforts, an inspection can be undertaken.” The inspection continued for another 5.5 hours despite the explicit notification that the consent was not granted at 1744 hours.

As soon as our Ministry was alerted by the captain of the ship that the boarding was taking place, we sent a message to the IRINI Legal Department at 0022 hours (23 November) notifying that: “The ship has been boarded despite the objections of the captain, as well as the lack of consent by Turkey. We strongly protest against this unlawful action and request its swift/immediate conclusion. Please note that the right to claim compensation by natural and legal persons for damages, delays and commercial losses due to this unauthorized and forceful boarding remains reserved.”

The IRINI Legal Department responded at 0208 hours that they had “taken note of the request of the Turkish Ministry of Foreign Affairs to conclude immediately the activity, respecting the denial of the flag State” and that they would “now stop any further action related to the inspection.”

In view of those messages, the question that remains is why the IRINI Legal Department did not take into account Turkey’s official message communicated at 1744 hours and boarded the ship without our consent. The correspondence above

clearly shows that the position of the Legal Department vis-à-vis the flag State consent was neither consistent nor compatible with international law.

It is quite interesting to note that the IRINI Legal Department argued first in favour of boarding without flag State consent but, following our protest, changed its position to respect the principle of flag State consent and decided to cease the unlawful boarding. The contradiction in those two messages explicitly demonstrates that it was quite uncertain to the Operation IRINI officials as well whether they indeed could board the ship without the flag State's consent. It seems that they decided to do so, but after our protest they were compelled to respect the principle of flag State consent and attempted to justify their unlawful boarding by ignoring our first written message.

In this regard, it should also be worth recalling that, on 17 June 2020, prior to the *Roseline A* incident, the Minister of State for Europe of Germany, Michael Roth, had explicitly stated in his reply in response to the question of a Member of Parliament regarding the mandate of Operation IRINI that, in accordance with Security Council resolution [2292 \(2016\)](#), the Operation was not allowed to inspect any vessels against the flag State's will. Therefore, the contradicting viewpoints seem to persist among the European Union member States' government officials as well.

As a matter of fact, it may be useful to remember the statements made by individual members of the Security Council upon the adoption of resolution [2292 \(2016\)](#), back in 2016. It is evident through those statements that, in the use of the authorization granted under the resolution, the aim was not to provide a framework for a departure from the prevailing rules of international law and for the violation of the jurisdiction of flag States, in other words, their sovereignty.

On the other hand, you are likely aware that the tactical publication of the North Atlantic Treaty Organization (NATO) on maritime interdiction operations ATP-71 also respects the principle of flag State consent and enumerates the exceptions under international law, those being if a vessel is engaged in piracy, slave trade, unauthorized broadcasting, without nationality or of the same nationality as the warship though flying a foreign flag, or refusing to show its flag. *Roseline A* was not engaging in any of those acts while it was boarded unlawfully.

The aforementioned NATO publication also does not justify the attitude and actions of the boarding party towards the crew of *Roseline A*. The instructions laid out in ATP-71 do not allow the confiscation of cell phones of the crew or the conduct of search and inspection by pointing guns at the crew.

The master and crew of the vessel neither opposed the forcible boarding nor employed any resistance measures that would justify the level of force used against them, as exhibited in the footage and recordings between the master and the IRINI commander, attached for your reference. The notable absence of any hostility or provocation by the crew of *Roseline A* renders the conduct of the boarding party a clear violation of international law.

Operation IRINI claims that both sides in Libya were targets of inspections in an equal manner, which in itself is erroneous since vessels headed towards the legitimate Government in western Libya were particularly put under the spotlight as far as the number of inspected vessels is concerned. Furthermore, it is curious to note that four of the six vessels headed towards western Libya and inspected by Operation IRINI, albeit not Turkish-flagged, had all departed from ports in Turkey. This, coupled with the statement of your spokesperson that the "pattern of navigation" was taken into account, unfortunately raises legitimate questions of discrimination as to the criteria of selection, as well as the reasonability of grounds for inspection, which were not disclosed to us even after we raised clear objections.

It is also quite peculiar that, in the course of other boarding operations conducted by Operation IRINI, it seems that the inspection of only a handful of containers was considered to be sufficient, letting the vessel in question resume its course. However, during the boarding of *Roseline A*, the boarding party made it clear to the crew that they would proceed to inspect all available containers regardless of their declared contents, indicating ulterior motives. For instance, during the inspection of M/V *Medkon Gemlik*, on 2 December, it has been reported that a total of only five containers were opened by the boarding party and that this was deemed satisfactory to determine that the vessel was not transporting any illicit cargo. This stands in sharp contrast to the fact that the boarding party originally declared their intention to sweep through all containers of *Roseline A* and that nine containers had already been searched until Operation IRINI headquarters acknowledged the lack of consent by the flag State. Even after nine containers had been opened, Operation IRINI officials stated that they were not able to determine whether the vessel was transporting illicit cargo or not.

I agree with you on working with good intentions from both sides, but this should not stop us from setting the record straight.

Apart from our well-known position with regard to Operation IRINI, our strong reaction to the *Roseline A* incident comes from a point of international law, in particular the principles of freedom of navigation and flag State consent, which we hold dear in the Aegean and Mediterranean Seas.

That being said, I acknowledge and appreciate your well-intended efforts to contribute to Turkey-European Union relations, which I always strive to support.

(Signed) Mevlüt Çavuşoğlu

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