

INTERNATIONAL LAW IN CYPRUS PROBLEM

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ÖZET

24 Nisan 2004 tarihinde Annan Planı Kuzey ve Güney Kıbrıs'ta referanduma sunuldu. Kıbrıslı Rumlar planı reddettiler ve Kıbrıs'ta olağandışı durumun sona ermesini ve yeni bir düzenin kurulmasını engellemiş oldular. Fakat, 1 Mayıs 2004 tarihinde adanın tümü "Kıbrıs Cumhuriyeti" adı altında, Kıbrıslı Rumlar tarafından temsil olunarak Avrupa Birliği'ne tam üye olarak kabul edildi.

Uluslararası toplumun Kıbrıslı Rumları Kıbrıs'ın tek temsilcisi olarak, meşrulaştırmak için yaptıkları hukuken savunulmaz girişimler çelişki yaratmaktadır. Bu bildiri uluslararası hukuk ve Avrupa bağlamında Kıbrıslı Türklerin anayasal yetki ve haklarını ortadan kaldıran BM ve AB'nin yanlış kararlarını içermektedir. Böylece, politikanın nasıl uluslararası hukuk kurallarını geçersiz kıldığını da ortaya koymaktadır.

Anahtar Kelimeler: Kıbrıs, uluslararası hukukta şiddet, Türk kökenli Kıbrıslılar, BM Barış Gücü, AB üyeliği.

ABSTRACT

On 24 April 2004, the Annan Plan was put to separate referenda in the north and south of Cyprus. The Greek Cypriots refused to accept the Annan Plan, and they have prevented the establishment of a new state of affairs in Cyprus and the termination of the abnormal situation. However, on 1 May 2004, The Republic of Cyprus, represented by the Greek Cypriot administration, with its entire territory, was accepted as full member into European Union.

The contradiction lies in the international community's legally untenable attempt to legitimize the Greek Cypriot administration as being the sole representative of Cyprus. This paper presents examples of ill founded decisions of the UN and the EU, abrogating the Constitutional rights and entitlements of Turkish Cypriots, within international law and in the context of Europe. Thereby, it also displays how politics can overrule the principles of international law.

Key Words: Cyprus, violation of international law, Turkish Cypriots, UN peacekeeping force, EU membership.

INTRODUCTION

Under international law, states establish rights and obligations by ratifying treaties amongst each other. In principle, international treaties are foreseen as legally binding norms in international law, at least for the parties concerned when they are put into practice. The widely acknowledged principle of international law concerning treaties is "pacta sunt servanda"- pacts should be respected. According to the 1969 Vienna Convention on the Law of Treaties, a treaty is defined as an international agreement concluded between states in written form, and governed by international law. It applies whether it is embodied in a single instrument or in two or more related instruments, and irrespective of its particular designation.

Consideration of international law does play a crucial role in governmental decision making processes during times of international crisis. There is undeniable relevance of international politics to international law, specifically to those situations of high politics where a state's vital national interest is at stake. Unfortunately, no clear cut border line between international law and politics exists. Central considerations behind the acts of states are mainly based on the political interest and considerations, rather than international law. Regularly, abiding to the provisions of international law is a tactical matter for a state in order to legitimize its actions (West, 1986: 1005). In some cases, lack of political opposition or insufficient legal enforcement against violation of international law creates a status quo through legitimization of such an act of a state.

This paper's primary focus is on ill founded decisions of the UN, and the EU in the matters of the Cyprus conflict, hereby constituting infringement of provisions set forth in the London/Zurich Accords, displaying a striking example of how high politics can override international law.

I. Brief Political History of Cyprus

In 1960, the Republic of Cyprus (ROC) was founded under the Treaty of Establishment, the Treaty of Guarantee, and the Treaty of Alliance. These treaties, which are also known as the London/Zurich Accords, signed by the ROC, Turkey, Greece and UK (Çarkoğlu&Sözen, 2004:124). The principles set forth in the London/Zurich accords in the 1960 Constitution of the Republic of Cyprus; each community, Greek and Turkish Cypriots, was co-founder and co-partner of the Republic on the grounds that both hold political and legal equality despite disproportionate population rates. The structure of the ROC was designed as a bi-communal partnership which was not based on territorial separation (Tocci, 2007: 58). Seemingly, the ROC was driven by a presidential system in which both the Greek Cypriot president and the Turkish Cypriot vice-president had veto power in certain issues concerning foreign affairs, defense, and security. Moreover, the executive power; the House of Representatives consisted of 35 Greek Cypriot and 15 Turkish Cypriot delegates. Similarly, the

House of Representatives ratio of 7: 3 was put in practice for formation of the Council of Ministers, and selection of public service staff (Çarkoğlu&Sözen, 2004:123). In line with the principle of political and legal equality, it was set forth in the 1960 Constitution that the Communal Chambers of each of the communities had separate autonomy and executive authority in numerous areas such as education, religion, and culture. That is to say, issues such as municipalities, education, culture, and religious affairs have always been within the competence of Turkish Cypriot authorities and the Greek Cypriot authorities disjointedly since 1960. The Constitution of the ROC clearly enumerated these areas within the competence of community chambers (see Art. 87, 1960, The Constitution of the Republic of Cyprus).

The inter-communal conflicts in Cyprus between 1963 and 1974, led to the collapse of the partnership Republic, based on 1960 Constitution that was designed to unite the Greek and Turkish Cypriots under a single flag. At the end of 1963, president Makarios proposed 13 amendments for the 1960 constitution which intended to weaken the position of Turkish Cypriots, and caused the loss of their definite rights to participate in the government. Turkish objection to those amendments sparked violence against Turkish Cypriots and the events turned into an inter-communal fight between the armed radicals of the two communities. Consequently, the island split geographically into north and south, where Turkish Cypriots were forced to live in enclaves. Since then, Turkish Cypriots have found themselves excluded from the mechanisms of the state. In 1974, the Greek Cypriot armed forces, backed by the Greek junta, overthrew the president Makarios with the aim of ENOSIS; unification of Cyprus with Greece hereupon, Turkey invoked its rights under the Treaty of Guarantee and ordered two military interventions in Cyprus in order to protect Turkish Cypriots against Greek Cypriot armed forces, which were backed up by the military junta of Greece (Zervakis, 2003: 23-24) Although the first intervention geographically separated the island as north and south, it was met with general approval of the international community, whereas the second intervention created a negative impact on world opinion in opposition to Turkey (Heinze, 1997: 183)

Although Turkey's intention was to achieve reconciliation and restore the constitutional order on the island, Turkish presence continued on the island over the years. Following the Turkish peace operation, the UN took initiative to form concrete steps towards a solution. In 1975 the leaders of the two communities agreed on transfer of 140-160, 000 Greek Cypriots from the north and 60, 000 Turkish Cypriots from the south. (Tocci, 2007: 61). This was the beginning of the visible division; the island was split off into north and south. Meanwhile Turkish Cypriots unilaterally declared the establishment of the Turkish Federated State of Cyprus, February 1975, and 8 years after that the Turkish Cypriots declared their independence from the Republic of Cyprus and established the Turkish Republic of Northern Cyprus (TRNC) (Pearce, 2004:187).

II. Un Involvement in Cyprus

In 1964, after the resolution of UNSCR 186, UN Peacekeeping Forces (UNFICYP) deployed in Cyprus in order to end the violence and to normalize the conditions on the island. The UN Security Council resolution 186 (1964), paved the way for creation of a UN Peace Keeping Force in Cyprus after the collapse of the Republic. Initially, a fundamental mistake was made in the context of the UN Security Council, resolution of 186 (1964), regarding the deployment of the UN Peace keeping forces on the island to restore law and order. According to the principles of international law, in order to send UN troops to a country, which could be interpreted as intervention in the domestic affairs, prerequisite consent of the relevant state was essential. With Cyprus' case, the distinct approval of representatives of both parties should have been obtained for the resolution for UN engagement, (due to the bi-communal structure of the 1960 Constitution based on power-sharing arrangements between the two communities) however, the UN Security Council undervalued the fact that the Turkish Cypriots were driven away from all governmental bodies by force and decision making processes of the ROC was usurped by the Greek Cypriots. In other word, the ROC was now under "occupation" of the Greek Cypriots, and it was "cleansed" from Turkish Cypriots. Thus, UN officials sought the approval of the now Greek-Cypriot-run-ROC to send UN troops to the island, Separately approval of the Turkish Cypriot authorities, co-partners of the ROC, was not obtained. This act of the UN in 1964, a gigantic blunder, marks the beginning of the era of the recognition of the Greek Cypriot administration, as the "legitimate government of the ROC" (Latif, 2003: 95).

However, the foremost reason for the presence of UN Peace keeping forces in Cyprus was the aggression of the Greek Cypriots, the terrorism and killings to deprive the Turkish Cypriots of their political rights, and place them in a minority status rather than as partner of the republic; this indeed was in order to annex the island with Greece through aggressive force. This was possible since there was no question about the Greek Cypriot administration's responsibility for breach of the partnership in 1963 and how it came about that they had sole representative right to speak on behalf of the entire island. Any members of the Security Council had to have perceived these factors. Despite the fact that Turkey was not member of the Security Council, as a guarantor power, it had attended the meetings at UN in observer status, but for unknown reasons kept silent, without objections, during the passage of the unfortunate resolution.

A decade after this decision, the Cyprus problem remained impenetrable. Following the Turkish intervention, which took place after the coup d'état in November 1974: the UN General Assembly passed the resolution 3212 which indicated the need to initiate negotiations for a mutually adequate solution to bring a new status quo for Cyprus. This resolution was approved unanimously in the General Assembly, which meant Turkey also voted in favor of the

resolution. It is contradictory for Turkey to grant approval of a resolution which refers to the independence and sovereignty of ROC, as to Turkish assertions based on non-existence of the ROC was in doubt (Hakkı, 2006, 55). Nonetheless, the Greek Cypriot administration kept on using the usurped ROC title since 1964. Regardless of the liability of the Greek Cypriots in breakout of the inter-communal fights, despite the absence of Turkish Cypriots from the organs of the defunct ROC, the international community continued, and still continue, to recognize the Greek Cypriots as the ROC, the sole legitimate authority of the entire island. (Tocci, 2007:59).

To reach a comprehensive solution in Cyprus, both sides began negotiations in 1968 under auspices of the UN. However, all the attempts to come to a mutual agreement resulted in a failure. Unfortunately, all efforts to find a new status quo for Cyprus failed. Hereon after, Turkish Cypriots first declared the Turkish Federated State of Cyprus (1975), and later established the TRNC in 1983. This resulted in two UN Security Council resolutions; UNSCR 541(1983), calling upon all states not to recognize any Cypriot state other than the Republic of Cyprus, and UNSCR 550(1984), which reiterated the call upon all states not to recognize the purported state of the TRNC set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity (See UNSCR 541&550). Therefore, the TRNC has not been recognized internationally, excluding Turkey. Thereon after, since 1983, two autonomous administrations; one de facto and one de jure have existed on the island (Çarkoğlu&Sözen, 2004: 124). Obviously, the legal grounds for non-recognition of the TRNC is a direct result of the policy set forth by the UN; it is clear that the main aim of UNSCR 541 and 550 is to prevent any secessionist acts, and the recognition of the Turkish Republic of Northern Cyprus. However, these resolutions do not constitute legal ground for ignoring or denying either the existence, or the right of self-determination of the Turkish Cypriot Community, as one of the two co-founders of the Republic of Cyprus, based on the London and Zurich Accords of 1959 and the 1960 Constitution of the Republic (Pearce, 2004:150). As a consequence of international non-recognition of the TRNC, Turkish Cypriots have been struggling to overcome the problems caused by the isolation and exclusion. The Turkish Cypriot community, exercising its right to self-determination and sovereignty, has evolved administratively into a de facto, independent, democratic entity.

III. The Annan Plan

Since then, none of the inter-communal talks between 1983 and 2004 resulted in a compromised peace plan for a comprehensive settlement in Cyprus. In 2002, the UN Secretary General, Kofi Annan compiled the most comprehensive proposal for a solution in Cyprus. Consequently, both parties started negotiations under the UN umbrella. The main incentive of this attempt was to accept a unified Cyprus into the EU before the deadline for the EU enlargement wave; May 2004. In April 2004 Annan Plan, the referenda was laid

down to both sides of the island simultaneously. In the case of a “double yes” from both sides, a new state would have been established based on the principles of the Foundation Agreement and its annexes, the basic document of the Annan Plan. In the April 2004 referenda on the Annan Plan, 65% of the Turkish Cypriots voted “yes” while 76% of the Greek Cypriots said “no” (Sözen, 2005: 465).

On May 1, 2004, the Greek Cypriot-run Republic of Cyprus became a full member of EU, without establishing a new state of affairs and without correcting the blunder UN made in 1964 resolution. Moreover, since it has recognized the right of Turkish Cypriots and Greek Cypriots to determine the future state of affairs on the Island upon an equal footing, and has accepted the two sides’ separate inherent constitutive powers as confirmed by separate simultaneous referenda, the UN and the European Union are now acting inconsistently by granting Greek Cypriots the privilege to act as the sole legal player in current state of affairs (Özersay, 2005:382). To this effect, accepting the Greek Cypriot administration as sole representative of whole island of Cyprus, and assuming that Turkish Cypriots do not exist, is against the international law. On the other hand, the acceptance of the Greek Cypriot administration as the legal government of the Republic of Cyprus has long been based on the argument of “state of necessity,” referring to the abnormal situation on the Island (Özersay, 2004: 70) Since the 2004 referendum, the Greek Cypriot administration’s arguments based on the doctrine of state of necessity, do not constitute a legal or ethical ground or justification for disregarding the participatory rights of Turkish Cypriots. An institution cannot claim a state of necessity as the basis for its actions if the institution contributes to the continuation of the abnormal situation (Hoffmeister, 2006:30). The Greek Cypriot people, as well as the Greek Cypriot administration refused to accept the basic framework for a comprehensive settlement of the Cyprus problem in the referendum (April 2004), and in so doing, they have prevented the establishment of a new state of affairs on the island and the termination of the abnormal existing situation. The Turkish Cypriot people have no alternative but to exercise their right of self-determination, the numerical superiority of Greek Cypriots notwithstanding, as a politically equal partner of the Republic of Cyprus. Since the “common will” of Cypriots has been exercised separately, the international community must find ways to avoid the subjugation of the Turkish Cypriot will to the Greek Cypriot will.

IV. The Membership of The Republic of Cyprus in EU

One week after the referenda in Cyprus, May 1st 2004 the Greek Cypriot administration, considered as the representative of the whole island, had been accepted as full member to the European Union, despite the “no” vote given by the Greek Cypriots in referenda. However, the EU had made the necessary arrangements to accept only the Greek Cypriot administration to complete the EU expansion via inclusion of Cyprus. Although the Cyprus issue remained

unresolved; the EU signed the Treaty of Accession with the Greek Cypriot administration on 16 April 2003. According to Protocol 10 of the Treaty of Accession, as the basic legal document on Cyprus with regard to EU law, the application of the EU *acquis* in north Cyprus was suspended pending a comprehensive solution. This regulation was made on the grounds that the Greek Cypriot administration does not exercise effective control in the north. As such, the Cyprus problem has been imported into the EU.

Another important point is that, the accession of Cyprus into the European Union constituted an infringement of international law in the absence of Turkey's membership into the EU. According to article I of the Treaty of Guarantee, the ROC cannot be annexed by any state and, should not participate, in whole or in part, in any political or economic union with any State. Moreover, its establishment law prohibits any activity likely to promote, directly or indirectly, either union with any other state or partition of the island. (Hoffmeister, 2006: 83). In other words, Cyprus cannot join in any union in which all parties to the London-Zurich accords are not involved. Article II of the Treaty of Guarantee provides that the UK, Greece, and Turkey had competence to disallow such an action of the ROC as part of a union. Under the current principles of international law concerning the concept of state sovereignty, the EU membership of the ROC is exactly the type of "union" which the London/Zurich accords prohibits participation of the ROC.

V. Continued Isolation of Turkish Cypriots and The TRNC

It is well known that the Turkish Cypriots did not start the Cyprus conflict. They have been deprived of their rights, since 1964, subjected to discrimination, suffered from ethnic cleansing in the hands of Greek Cypriots from 1963-74, and kept in isolation as if they were the guilty party. All this happened in violation of their rights and in violation of international law. Prior to 2004 referenda, the world community, the UN and the EU, made explicit promises to correct the violation of international law, and end the isolation and suffering of the Turkish Cypriots.

Despite the constructive attitude that the Turkish Cypriots demonstrated pre and post referenda towards a comprehensive solution of the Cyprus problem, the international community has not yet lived up to its promises of breaking the isolation of North Cyprus. After the referenda, the EU institutions have expressed their support for the economic development of Turkish Cypriots and for the reduction of economic disparities between the two sides in Cyprus with the intention of facilitating and contributing to an enduring solution in response to constructive approach of Turkish Cypriots as brought up by 65% "yes" vote. In this regard, the European Council stated in its Proposal for a Council Resolution on 26 April 2004, the necessity to put an end to the isolation of the Turkish Cypriot community. In response to the invitation of the Council, the Commission proposed a legal instrument for encouraging the economic

development of the Turkish Cypriot community (“**Aid Regulation**”) and the regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control (“**Direct Trade Regulation**”).

Unfortunately, the EU failed to fulfill their commitments of lifting the embargoes on the Turkish Cypriots. The Commission submitted these regulations to the EU Council for approval, but these regulations were blocked in the EU Council by the Greek Cypriot administration. Although the aid regulation was approved in February 2006 after long deliberations, the direct trade regulation, which will be the key to ease the economic isolations imposed on the Turkish Cypriots, is still pending for approval in the EU Council due to the Greek Cypriot obstruction. Blaming the Greek Cypriots is not the true way to solve this crisis, because this was predictable in the European context. Before making such commitments, the EU officials should have considered that, in EU legal order, decisions on such issues requires unanimous vote for approval. This means the Greek Cypriot administration’s “negative vote” or “absence” technically has “veto” power. Despite the fact that Article 3 of the Protocol 10 of the Accession Treaty provides that “nothing in this Protocol shall preclude measures with a view to promoting the economic development of” North Cyprus, the EU refrains from exercising the article above and has not passed the Direct Trade Regulation which is vital for the development of North Cyprus.

CONCLUSION

The Greek Cypriot administration, having the usurped title of the Republic of Cyprus, albeit unlawfully, is still the only recognized administration in Cyprus. Further, they have been accepted into the EU as the sole representative of the entire island, although the Republic of Cyprus does not exercise effective control in the territory of northern Cyprus. The UN and the EU choose to ignore the unique constitutional conditions of Cyprus and override the legally enshrined rights—separate and autonomous legislative competence—granted to Turkish Cypriots and their representative authorities by the London/Zurich accords and the 1960 Constitution of the Republic of Cyprus.

Non-recognition of the Turkish Cypriots and their institutions in the international fora, has been based only on perceived implications of UN resolutions and suspension of the *acquis*. In reality, it is due to the endless lobbying by Greek Cypriots, harassing the international community to protect their loot, i. e., the usurped title of the Republic of Cyprus. Such recognition is in violation of the international law.

The beginning of this fatal error goes back to the UNSC resolution 186 (1964), which recommended the establishment of a UN peacekeeping force in Cyprus, based on only the consent of the Greek Cypriots on behalf of the Government of Cyprus. As such, the Greek Cypriots and the international community preferred to ignore provisions of relevant international treaties and principles of the constitution of the ROC. Rather they applied it according to their political

interests. Finally, the European Union repeated the same mistake by accepting Cyprus into the EU irrespective of the violation of international law.

The recognition of the Greek Cypriots as the legitimate government of Cyprus and accession into the EU, both constitutes violations of the international provisions set forth in London/Zurich accords. Once again the power of politics gained the upper hand against the just declaration of international law. On the other hand, regardless of what has been revealed in recent decisions given by the UN and the EU concerning lifting the embargoes imposed on the Turkish Cypriots, the UN and the EU have no legal capacity to secure this problem unless the political parameters are amended.

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