LEGAL INTERPRETATIONS OF STATEHOOD IN CYPRUS: AN OBJECTIVE VIEW AND IMPLICATIONS FOR THE EU

INTRODUCTION

Since the days of Herodotus, the affairs of the Greek and Turkish Cypriots have been closely intertwined, and it is likely that they will continue to be, given the prevailing geopolitical and demographic circumstances. Cyprus is a case of a single small island being shared by two very different populations of unequal size. The attempt to give the island a properly functioning single unitary state failed, first because of a Greek-initiated move and then because of a Turkish military response in 1974. The result is an island ruled by two de facto entities, roughly divided along Greek-Turkish ethnic lines.

Despite the length of time that has passed, the precise legal status of the two entities defining themselves as 'states' remains uncertain. The legal issues seem to have become further complicated by the fact that one of them has applied for EU Membership on behalf of the whole island. Even though the developments in Cyprus since December 1963 have, over the years, provoked a steady stream of academic publications, the very complex Cyprus issue has almost always been approached in terms that tended to support the official interpretations of either side without much alteration.

The purpose of this research is to throw new light on the legal issues through a detailed analysis of the merits of both the Turkish and Greek arguments, a discussion that fills an important vacuum in the jurisprudence on Cyprus. The thrust of my opinion is that although the Greek attacks on the Turkish Cypriot community between 1963-1974 led to the separation of the two communities under two administrations, neither of which had the right to speak for the other, the legal personality of the Republic of Cyprus nevertheless survived as a common shell to the two entities. Seen in this light, the Turkish

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Cypriot secession in the post-1974 period through the declaration of independence is incompatible with the constitutional framework of the Republic of Cyprus and is therefore illegal.

As will be seen in paragraph 2 of this article, the Turkish Cypriot community has no right to external self-determination nor does the entity that they established have the necessary characteristics of statehood envisaged in the 1933 Montevideo Convention. Consequently, according to the Stimson Doctrine, the Turkish Cypriot entity is "null and void" in the eyes of international law. Given that the Greek Cypriot Administration is now left as the sole legitimate entity under the Republic of Cyprus framework, it can act as the successor to the Cypriot State established in 1960 after the British colonial rule came to an end and can therefore speak for the whole island in the international arena – a result that they could not have achieved through resort to force.

However, the status quo does not provide an excuse for the non-observance of the limitations that the multi-party treaties (the basis of independent Cyprus) imposed on the country’s sovereignty. This limitation has been ignored in the case of the unilateral Greek Cypriot application to the EU (see paragraph 3). Therefore, in the absence of a new agreement that dispenses with the said limitations, the Cypriot membership of the European Community is in contravention of international law.

1 STATEHOOD IN CYPRUS (1960-1974)

1.1 Birth of the Republic: A partnership of Greek and Turkish Cypriots

The Republic of Cyprus was established in 1960, after the granting of independence by the United Kingdom following the 1959 London and Zurich Agreements. Given the necessary recognition, after the bloodshed in 1955-1958, of the uneasy relationship that existed between the two main national groups (divided deeply by religion, language and culture), special constitutional arrangements had to be made. By virtue of the Treaty of Guarantee signed on the Independence Day, Greece, Turkey, the Republic of Cyprus and the UK agreed to guarantee their continued respect for the state of affairs thereby created.

The Constitution provided for a "Presidential" system of government, but, in fact, it called for the Greek President and Turkish Vice-President to share executive powers on an almost equal basis.1 Both of the chief executives were empowered to return any decision of the Council of Ministers or any law of the House of Representatives for reconsideration.2

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1 Article 1 of the 1960 Constitution.
2 Articles 36-60.