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**CYPRUS: POLITICAL AND LEGAL REALITIES\***

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I. The political and legal realities in the Cyprus issue are indeed ignored by the international community:

1) On 18 November 1983, in response to the proclamation of the establishment of the Turkish Republic of Northern Cyprus (TRNC), the United Nations Security Council adopted Resolution 541 (1983), which provides, where relevant, as follows:

“The Security Council ...

1. Deplores the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus;

2. Considers the declaration ... as legally invalid and calls for its withdrawal; ...

6. Calls upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus;

7. Calls upon all States not to recognise any Cypriot State other than the Republic of Cyprus.”

This Resolution was reaffirmed in Resolution 550 (1984), adopted on 11 May 1984 in response to the exchange of ambassadors between Turkey and the TRNC. The Security Council reiterated the call upon all states “not to recognise the purported State of the ‘Turkish Republic of Northern Cyprus’ set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity.”

2) In November 1983, the Committee of Ministers of the Council of Europe decided that it continued to regard the government of the Republic of Cyprus as the sole legitimate government of Cyprus and called for respect for the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus. On 16 November 1983, the European Communities issued a statement in which they rejected the declaration of independence of the TRNC and reiterated their “unconditional support for the independence, sovereignty, territorial integrity and unity of the Republic of Cyprus”. The Commonwealth Heads of Government, meeting in New Delhi, 23-29 November 1983, issued a communiqué endorsing Security Council Resolution 541 and calling for the TRNC’s non-recognition.

II. My contribution to the conference deals with recent developments in the property issues. The property issues constitute one of the most difficult aspects of the Cyprus problem. Better than other examples, the

property issues demonstrate that the pending questions between North and South have to be settled through negotiation within the parameters of a bi-communal and bi-zonal settlement.

1) The factual borderline between the two parts of Cyprus separates a great number of individuals from their property and their former homes. After the establishment of the buffer zone under the control of United Nations forces, normal movement from North to South and vice versa was prohibited and there was a population exchange with the common consent of the Turkish and Cypriot authorities.

The UN-controlled buffer zone on the island is internationally recognised. The buffer zone is the subject of relevant reports of the UN Secretary General. In his reports S/20663 of 31 May 1989 and S/21010 of 7 December 1989, the UN Secretary General, for example, indicated that it was difficult to control the situation and keep the peace on the island if demonstrators violated the status and integrity of the buffer zone. These reports were in reaction to a women's group march (the Women Walk Home movement) in the village of Lymbia near the Turkish village of Akıncılar in northern Cyprus. The aim of the march was to assert the right to return to their homes, passing the United Nations guard post on the way. Following violent demonstrations in the United Nations buffer zone in November 1988, the government of Cyprus gave assurances that it would in future do whatever necessary to ensure respect for the buffer zone. Accordingly, the United Nations Forces in Cyprus (UNFICYP) asked the government in Lefkosia to take effective action to prevent any demonstrators from entering the buffer zone, bearing in mind that such entry would lead to a situation that might be difficult to control. Thanks largely to the manner in which the Turkish Cypriot police dealt with a demonstration of 2,000 women crossing the buffer zone at Lymbia, the march ended without serious incidents. (Similar demonstrations in August 1996 caused the death of two demonstrators and the wounding of two UN soldiers.)

2) State practice, especially within the United Nations, clearly proves that the cease-fire line of 1974 has developed into an international line of demarcation, established by an international agreement to which the North and South of Cyprus are parties or which they are otherwise bound to respect. According to the Friendly Relations Declaration of the United Nations General Assembly, 25 October 1970 (Res. 2625 (XXV)), "every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation." Article 1 of the definition of aggression adopted by the General Assembly in Resolution 3314 (XXIX), 14 December 1974, contains an explanatory note according to which the term 'state' is used "without prejudice to questions of recognition or whether a State is a member of the United Nations".

3) These international documents show that the TRNC has to be treated at the very least as a partial subject of international law.

a) It has not been an infrequent phenomenon that entities have existed for long periods, claiming to be states or governments, which controlled more or less clearly defined territories without being recognised. These entities are called *de facto* regimes. Some examples are the Confederation in the American Civil War, the National Government in the Spanish Civil War, the German Democratic Republic before 1972, North Vietnam before the reunification of Vietnam and Taiwan after the recognition of the Beijing government as the sole representative of the whole of China.

b) The TRNC governs *de facto* and *de jure* a specific territory separated from the Republic of Cyprus by an internationally recognised demarcation line operating as a factual border. The TRNC is no vacuum; there is a sovereign authority with democratic structures. No doubt, there has been a fundamental change in the previously existing political situation due to the Cyprus conflict between the Turkish and Greek communities. This conflict is mainly attributed to the 1974 coup d'état carried out by Greek Cypriots with the manifest intention of changing the political status quo by achieving enosis, union with Greece. After this coup d'état, Turkey intervened to ensure the protection of the Republic of Cyprus and the Turkish communities. Under the terms of a Treaty of Guarantee previously concluded between Turkey, the United Kingdom and Greece, which gave these states the right to intervene separately or jointly, the Turkish military reaction was ultimately required. Following a process of political and administrative evolution, the Turkish Cypriot people established

the TRNC in pursuance of their right to self-determination. Until recently, in international practice the right to self-determination was in practical terms identical to, and indeed restricted to, a right to decolonisation. In recent years a consensus has emerged that peoples may also exercise a right to self-determination if their human rights are consistently and flagrantly violated. Today, the right to self-determination is a tool that may be used to re-establish international standards of human rights and democracy. In this context, the TRNC is a democratic and constitutional state whose constitution was accepted by a referendum. The international community has to realise that bodies tied together by so unnatural a bond of union as mutual hatred are only connected to their ruin.

c) The de facto regime is an important notion in international law. Because of the imperfect nature of international law, no possibility exists of clarifying whether entities like the TRNC have the quality of states although they are not recognised as such. The intercourse that is likely to take place with a de facto regime will not be of the same nature as normal contact between states, but non-recognition is not identical to denying any status under international law. Theories on recognition are purely political and diplomatic in character. Recent practice in the matter favours the approach based on the effectiveness and intrinsic legitimacy of established legal and political systems. From developments in ex-Yugoslavia and in Eastern Europe, we learn that the disappearance of states or the secession of states has been a matter of fact, that the effects of recognition have been purely declaratory.

Since the American Civil War, it is recognised by international law that physical control over a territory, not sovereignty or legitimacy of title, is the basis of state liability for acts affecting other states. During the American Civil War, Lord Russell, the British Foreign Secretary, explained to the United States Ambassador in London:

“Her Majesty’s Government holds it to be an undoubted principle of international law, that when the persons or the property of the subjects or citizens of a state are injured by a de facto government, the state so aggrieved has a right to claim from the de facto government redress and reparation”.

It is in this sense that the effectual and autonomous nature of the TRNC’s administration has been recognised in various court decisions in the United Kingdom. Furthermore, in the finding that the arrest and detention of Greek Cypriot demonstrators by the TRNC were lawful, the European Human Rights Commission and subsequently the Committee of Ministers of the Council of Europe have recognised the relevant laws of the TRNC as valid.

4) Contrary to the position of the European Commission of Human Rights, the majority of the European Court of Human Rights refused to take into consideration at all the status of the TRNC as a stabilised de facto regime. In the recently decided *Loizidou* Case, which arose out of the earlier mentioned violent demonstration at the buffer zone and the cease-fire lines, the Court disregarded not only the existence of the UN buffer zone, but also the effectual and autonomous nature of the legal order and administration in the northern part of Cyprus. The demonstration of 19 March 1989 by *Women Walk Home* gave rise to the application of a Greek Cypriot, Mrs *Loizidou*.

a) Mrs *Loizidou* grew up in Northern Cyprus and claimed to be the owner of plots of land in Northern Cyprus. On 19 March 1989, she participated in the above mentioned march organised by the women’s group, *Women Walk Home*, with the aim of asserting the right of Greek Cypriot refugees to return to their homes. After passing the United Nations guard post on the way, the Turkish Cypriot police force eventually detained her and released her after 10 hours.

b) Mrs *Loizidou* lodged her application on 22 July 1989 and complained that her arrest and detention involved violations of Articles 3, 5, and 8 of the European Convention for Human Rights and that the refusal of access to her property in Northern Cyprus constituted a continuing violation of Article 8 of the Convention and, this is the interesting part, Article 1 of Protocol No. 1. She claimed that there was a permanent state of affairs in the

“Turkish-occupied area”, in violation of her right to return to her home and property. She and the Cypriot Government submitted that in any event Turkey is liable for the violation.

c) The Turkish Government contested this allegation and maintained primarily that the Court lacked jurisdiction *ratione temporis* to examine the application of Mrs Loizidou. Under Article 46 of the Convention it is open to contracting parties to limit, as Turkey has done in its Declaration of 22 January 1990, the acceptance of the jurisdiction of the Court to facts which occur subsequent to the time of deposit. Consequently, in this case, the Court’s jurisdiction only extends to alleged violations after 22 January 1990. The process of the ‘taking’ of property in Northern Cyprus started in 1974 and ripened into a full and irreversible expropriation well before the crucial date of 22 January 1990, by virtue of Article 159 (1) (b) of the TRNC Constitution of 7 May 1985. The question of whether this was justified under the international law doctrine of necessity and Article 1 Protocol No. 1 or not, lies *ratione temporis* outside the jurisdiction of the Court under Article 46 of the Convention.

d) In the judgement on the merits of 18 December 1996, the Court, contrary to the established rule of the *de facto* regime, did not attribute legal validity for the purposes of the Convention to provisions such as Article 159 of the TRNC 1985 Constitution. The Court did not rely on international practice, but took evidence from more or less political resolutions of various international bodies, that the international community does not regard the TRNC as state under international law and that the Republic of Cyprus remains the sole legitimate government of Cyprus. Accordingly, the Court deemed the applicant, Mrs Loizidou, not to have lost her title to property in the TRNC; the alleged violations of her property rights were thus of a continuing nature. By eleven votes to six, the Court found it obvious from the large number of troops engaged in active duties in Northern Cyprus, that the Turkish army exercised effective overall control in the TRNC. In the circumstances of the Case, this entails Turkey’s responsibility for policies and actions of the TRNC. Thus, the denial to Mrs Loizidou of access to property in Northern Cyprus falls within Turkey’s jurisdiction for purposes of Article 1 of the Convention and is imputable to Turkey. The Court explained that the establishment of state responsibility did not require the examination of the lawfulness of Turkey’s intervention in 1974. Since Mrs Loizidou, according to the Court’s findings, remained owner of her land in Northern Cyprus, but since 1974 lost all control, use and enjoyment of it, the continuous denial of access amounts to interference with the property rights under Article 1, Protocol No. 1.

In its judgement of 28 July 1998, the Court awarded Mrs Loizidou the sum of C£300,000 in compensation for the continued violation of her right to peaceful enjoyment of her property, plus legal costs. To date, Turkey has not implemented the decision. In the event that Turkey does not implement the decision, The European Council of Ministers will be required to take steps to ensure its implementation, something that it has never had to do before.

As the German judge, Rudolf Bernhardt, in his dissenting opinion underlined, a unique feature of the Loizidou Case is, that it is impossible to separate the situation of the individual victim from a complex historical development and a no less complex current situation. The Court’s judgement concerns in reality not only Mrs Loizidou, but thousands or hundreds of thousands of Greek Cypriots who have (or had) property in Northern Cyprus. It might also affect Turkish Cypriots who are prevented from visiting and occupying their property in Southern Cyprus. It might even concern citizens of third countries who are prevented from travelling to places where they have property and houses. The factual borderline between the two parts of Cyprus has the deplorable and inhuman consequence that a great number of individuals are separated from their property and their homes.

The case of Mrs Loizidou is not the consequence of an individual act of Turkish troops directed against her property or her freedom of movement, but it is the consequence of the establishment of the borderline in 1974 and its UN-mandated closure up to the present day. The reality of bi-zonality necessitates, as the example of divided countries demonstrates, negotiation within the parameters of bi-zonal, i.e. bi-communal, settlements. Well before the Court’s decision, the Cyprus property issues were discussed throughout the talks under the

auspices of the UN Secretary General, particularly during the efforts to prepare an Overall Framework Agreement. The Set of Ideas, entitled 'Displaced Persons' states:

“The property claims of Greek Cypriot and Turkish Cypriot displaced persons are recognised and will be dealt with fairly on the basis of a time frame and practical regulations based on the 1977 high-level agreement, on the need to ensure social peace and harmony, and on the arrangements set out below.”

The document provides for the exchange of property between the North and the South with compensation in case of a difference:

“Each community will establish an agency to deal with matters related to displaced persons. The ownership of the property of displaced persons, in respect of which those persons seek compensation, will be transferred to the ownership of the community in which the property is located.”

So far, the Loizidou decisions have pre-empted a political settlement based on the agreed parameters and damaged the very legitimate interests of the Turkish Cypriot people in solving the property claims of both sides. Turkey has to consider the best way of meeting the new Greek Cypriot political challenge. It is understood that these decisions are binding on Turkey, as established by Articles 52 and 53 of the Convention. By way of consequence, Article 54 which provides that the “judgement of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution”, lays down no discretion. The only duty upon the Committee is to make sure that the relevant judgement is carried out. There is thus no means by which the responsibility of the Committee may legitimately be circumvented. The execution of the judgement must be unconditional, but the execution is, after all, a political process and the Loizidou Case, the Court's majority completely disregarding the developments on the island since 1964, a highly political one. Turkey appears to be interested in pursuing a political settlement, rather than adhering to its obligations under the decision. The recently proposed establishment of a tripartite commission which would oversee the exchange of property between Greek and Turkish Cypriots could make sense to the majority of the Committee of Ministers, considering the negative implications of the Loizidou judgement and the primary importance of a political solution of the Cyprus question.