

PERCEPTIONS
JOURNAL OF INTERNATIONAL AFFAIRS

September - November 1999

Volume IV - Number 3

A SOLUTION FOR CYPRUS THROUGH STATEHOOD*

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*This paper was presented at a round-table meeting on Statehood and Self-determination at the Institute for Human Rights of Åbo Akademi University, Turku/Åbo (Finland), 28-29 June 1997.

RECOGNITION OF A STATEHOOD AND WORLD PEACE

It took twenty-three years for the German Democratic Republic to be recognised by the Federal Republic of Germany and by the rest of the Western bloc, which had refused such recognition for almost a quarter of a century, considering this state to be an illegal and superficial creation imposed by the Soviet occupation forces.¹

The Constitution of the German Democratic Republic was adopted on 30 May 1949, following the adoption of the Basic Law (Grundgesetz) by the Parliamentary Council of West Germany on the eighth of the same month. The reciprocal recognition of both German states occurred on 21 December 1972 and this led to the recognition of the German Democratic Republic by the whole community of nations.

Students of contemporary European history would admit that the recognition of the German Democratic Republic and the initiation of regular diplomatic relations between the two German states prepared the ground for the success of Ostpolitik, leading gradually to the termination of a political division of a country and finally to the collapse of the whole Cold War confrontation. Such was the outcome of a process that began with the realistic recognition of a situation which, up to a certain moment of history, had been considered to be a fait accompli created by force of arms.

No exact parallel can, of course, be traced between the reunification of Germany and the most effective way of finding a solution in Cyprus, and Cyprus can, in no way, be compared to Germany. But the German case is an example that shows how solutions to seemingly intractable problems may sometimes suddenly emerge when prejudices and the obstinate denial of realities are overcome by a sincere desire to end the deadlocks.

So the key a solution in Cyprus lies perhaps in the recognition of the reality in the North, namely the Turkish Republic of Northern Cyprus, by the other state and by the international community.

And this, at the end of an equally long period of non-recognition, lasting for almost twenty-three years!

THE TURKISH REPUBLIC OF NORTHERN CYPRUS: A LEGITIMATE STATE

Social psychology is an important element of international relations, especially in an era when means of mass communication increase the impact of citizens' moral reactions and inhibitions on the conduct of foreign policy and the behaviour of the decision-makers. The fact that the Turkish Republic of Northern Cyprus

remained so long unrecognised by the international community and labelled a 'so-called state' by its southern neighbour certainly played an important part in the perpetuation of what looked like an intransigent position in negotiations for a solution. No other course of action was left to the leaders of a community whose members were continuously accused of usurpation of territory and property under the domination of an 'occupation' army. Had they obtained the international status of a legitimate state they would certainly have been more conciliatory in a mutual search for a peaceful coexistence in some form of federative governmental structure. Communal pride allowed no such conciliation as long as the denial of a legitimate status continued. This is probably what Evan Luard meant when he wrote in a study of the principle of international order: "That status is significant suggested by the importance attached to sovereign equality by smaller powers."²

The reasons for this deep feeling of frustration lie in the Turkish Cypriots' sincere and generally shared belief in the righteousness of their struggle for existence in their homeland. The denial of legitimacy of a state that is the outcome of that struggle increases the frustration.

Several points going back to the beginnings of the present conflict need to be stressed in this respect.

Before the United Kingdom relinquished its sovereignty over Cyprus, it explicitly recognised in 1956 and 1958 that there are two co-owner peoples sharing the island and that "any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status."³ In fact, the Turkish Cypriot and the Greek Cypriot peoples exercised their separate rights to self-determination and signed the international instruments of 1960 governing Cyprus as two of the five contractual parties, namely Turkey, the United Kingdom, Greece, the Turkish Cypriot people and the Greek Cypriot people. The 1960 state of affairs, created by international treaties governing Cyprus, was established by three Guarantor Powers and the two constituent peoples in Cyprus.

Upon the signing of the 1960 Treaties and the British Parliament's passage of the Cyprus Act of 1960, sovereignty over Cyprus, with the exception of the British Sovereign Base Areas, was transferred from the United Kingdom to the Turkish Cypriot people and the Greek Cypriot people conjointly.

All the basic documents which created the 1960 state of affairs were signed and initialled by the leaders of the two communities and the three Guarantor Powers. In the context of Cyprus, the status of 'Community, as a signatory to international treaties, denotes the cultural, religious, linguistic, social and political identity of each of the two constituent peoples.' Thus the two peoples, by being parties to all the international treaties, became themselves subjects of international law.

The executive power of the newly created Republic of Cyprus ensued conjointly from the President elected by the Greek Cypriot community and the Vice-President elected by the Turkish Cypriot community, both having identical powers.

In line with the state of affairs, the Turkish Cypriots and Greek Cypriots, as the constituent peoples, in the exercise of their sovereign rights, established a functional partnership federation, based on the sovereign equality of the two peoples, each having its own administration in all communal matters with full legislative, executive and judicial powers.

Sovereignty during the three years of partnership after the founding of the Republic, having been exercised conjointly by the two sides, there is no basis on which it could be said that one of the two peoples, or any institution which any one of them has usurped or created, was sovereign while the other was not, or that, one community enjoyed sovereignty or legal control over the other. This state of affairs was deliberately created by the 1960 Treaties in order to prevent either one of the two communities from imposing its political will on the other.

After the Turkish Cypriot partner was expelled by force of arms from the 1960 partnership state, the Greek Cypriot side usurped the title of the 'Republic of Cyprus', and the Turkish Cypriot side was obliged to establish its own administration. It is a fact that since the ousting of the Turkish Cypriot side from the partnership structure in 1963, there has existed in Cyprus two separate independent political entities or administrations based on the will of the two respective peoples. This has also been confirmed in the reports of the United Nations Secretary-General since 1964, as well as the Geneva Declaration of 30 July 1974 after the first Turkish military intervention.

The institutional organisation of the Turkish Cypriot people has developed through the following stages since 21 December 1963, the infamous date when the Greek Cypriot armed onslaught against the Turkish Cypriot community was launched:

a) The formation of a General Committee, headed by the Vice-President and comprising the three Turkish Cypriot ministers of the Republic. Later, after the ousting of Turkish Cypriots from the legislature of the Republic, the Turkish Cypriot members of the House of Representatives together with the Turkish Communal Chamber, constituted the Legislative Assembly of the community.

b) The creation of the 'Provisional Turkish Cypriot Administration' on 28 December 1967, after a massive attack by a combined Greek and Greek Cypriot force on the Turkish village of Kophinou in the Larnaca district.

c) General election of 5 July 1970 for the Legislative Assembly of the Turkish Cypriot administration.

d) The proclamation of the Autonomous Turkish Cypriot Administration on 1 October 1974, following Turkey's military operations in July and August 1974.

e) The proclamation of the Turkish Federated State of Cyprus on 13 February 1975 and the drafting of its Constitution by a Constituent Assembly, the text of the Constitution being put to vote in a referendum on 8 June 1975.

f) The proclamation of the Turkish Republic of Northern Cyprus on 15 November 1983 and popular approval of its Constitution in a referendum on 5 May 1985 by a majority vote of 70.18 per cent.

It is obvious that such a process indicates a genuine effort at state-building and perhaps it is this spontaneous historical process, more than anything else, that entitles the Turkish Cypriots to claim legitimacy for their Republic.

THE STATUS OF THE GREEK CYPRIOT ADMINISTRATION

Against this deep belief of the Turkish Cypriot people in the legality and legitimacy of their government, the international community of nations acted from the very beginning in a manner to enhance the pretension of the Greek Cypriot administration to be the sole representative for the whole island, even after the ousting of the Turkish Cypriots from the institutions of the 1960 Republic. The international community has allowed the Greek Cypriot side to act as if it can impose its political will on the Turkish Cypriot side. The first and main official text that constitutes an internationally approved basis for this unilateral claim came in the UN Security Council Resolution of 4 March 1964. The best expression of the ever-continuing Turkish Cypriot frustration on this subject and the latent paradox of the situation can be found in these words of their President, Rauf Denktaş: "While Turkish Cypriots looked to the Security Council and UNFICYP [UN Forces in Cyprus] for security and justice, the Greek Cypriot leaders maintained that 'peace and normality' could only be achieved if the UN Force helped Greek armed elements to deal with the Turkish Cypriot 'rebels'. Greece naturally propagated the same view."⁴

At the time of the voting of this UN Resolution the Turkish Cypriot side and Turkey were assured that the 'government of Cyprus' meant the constitutional government composed of both Greek Cypriot and Turkish Cypriots elements. This assurance, which was not confirmed by the practice, is at the root of the sense of deception that has prevailed in the Turkish Cypriot community. As to its effect on the search for a solution, it is absolutely true that "such attitudes hardened the Greek Cypriot stand and failed to contribute to an agreed settlement of the Cyprus dispute both then and even now to this day."⁵

On top of this continuous grave political error committed by the United Nations and its member states, with the exception of the Republic of Turkey, came the erroneous interpretation of the legal situation by the international juridical organs such as the European Court in Luxembourg and the European Court of Human Rights in Strasbourg. A recent judgement by the latter sums up this interpretation and shows how wrong international practice stemming from a 'politically motivated' non-recognition gradually leads to an unjust application of international law: "... It is evident from international practice and the various, strongly worded resolutions ... that the international community does not regard the Turkish Republic of Northern Cyprus as a state under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus."⁶

With such a background of politically motivated resolutions and judgements by international organisations and courts, the Greek Cypriot side, also encouraged by the diplomatic and economic benefits of political recognition, lacks the need and the incentive to acknowledge the statehood of the Turkish Republic of North Cyprus. When they refer to the 'sovereignty of the Republic of Cyprus' they actually mean 'Greek Cypriot sovereignty'. This neither conforms with the established equal political status of the two peoples nor with the objective of finding a solution. Experience has shown that a limited interpretation of equality merely at the level of the two communities has failed to lead to a negotiated settlement based on political equality since it has allowed the Greek Cypriot side to pose to the world as if it were the legitimate government for the whole of Cyprus.

RECOGNITION AND STATEHOOD

The relationship between recognition and statehood is an interesting and much discussed chapter of international law. Does recognition have a constitutive, cognitive or declaratory function? Is it of a legal or political nature? Without going into such theoretical discussions, it is safe to note, with Professor Briggs of Cornell University that "... except for the peace settlements of Vienna in 1815 and Paris in 1919 and the Congress of Berlin in 1878, the last one hundred and fifty years reveal few cases in which the creation of new States was ordained or greeted by collective community."⁷

On the other hand, the Convention on the Rights and Duties of States, signed at Montevideo on 26 December 1933 goes even further and affirms that "The political existence of the State is independent of recognition by other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organise itself as it sees fit, to legislate upon its interests, administer the services, and to define the jurisdiction and competence of its courts."⁸

As to the qualifications that a state should possess as a person of international law, the same Convention cites the following: (a) a permanent population, (b) a defined territory, (c) a government and (d) the capacity to enter into relations with other states.

The Turkish Republic of Northern Cyprus possesses all these qualifications, but none of them remains undisputed by the Greek Cypriot Administration.

It has a fairly homogenous permanent population which, despite an exchange of populations agreed by the two sides at the Second Round of Vienna Talks of 5-7 June 1975, is still considered to be in unlawful occupation

of Greek Cypriot territory. This unjustified accusation is being further worsened by the label of ‘colonisers’ used for the members of the Turkish armed forces stationed on the island and for some immigrant workers from the mainland necessarily settled to meet the need for qualified labour in some sectors of agriculture and industry.

The new state has a defined territory which, although practically demarcated by the Green Line of separation between the two zones, is constitutionally speaking from the point of view of the Turkish Cypriot people, considered to be the indivisible territory of the Republic.¹⁰

It has a government that although referred to by the other side as that of a ‘so-called state’ has all the attributes of a genuinely democratic government, responsible before a democratically elected legislature and with a clean record of rule of law and respect for human rights.

As to the capacity to enter into relations with other states, the fact that its diplomatic relations on the basis of mutually exchanged ambassadors is necessarily confined to the Republic of Turkey does not preclude the new state from having ‘recognised’ missions and offices that represent it in many countries and in international organisations such as the United Nations and the European Union. This is a clear indication that the Turkish Republic of Northern Cyprus has the capacity, if not always an accorded possibility to enter into relations with the other states.

The fact that all these elements of statehood are disputed by the other side or remain internationally unrecognised does not, in any way, affect their reality and especially their legitimacy in the eyes of the citizens of the state or hinder its treatment as a subject of international law by the only state that recognises it, namely the Republic of Turkey.

Such a deep and sincere feeling of confidence in the legitimacy of one's own state is an important factor to take into consideration in the search for a mutually acceptable solution. But what seems to be an insurmountable difficulty is the depth of an equally strong Greek Cypriot feeling on the illegitimacy of the Turkish Cypriot state. This may appear to coincide with a frequently invoked principle of international law known as the Stimson Doctrine, which considers that the recognition of a state created as a result of illegal use of force is incompatible with international law.¹¹ This consideration is said to be the main reason behind the United Nations Security Council Resolution 541 adopted on 18 November 1983 and calling upon “all states not to recognise any Cypriot state other than the Republic of Cyprus”.

THE MAIN IMPEDIMENT TO A SOLUTION

There is no doubt that a settlement in Cyprus leading to a lasting and mutually accepted solution can only be achieved on a voluntary basis by the consent and co-operation of the two sides. Especially if one speaks of a federative arrangement for the future of Cyprus, sovereign equality of the two peoples is a must from the outset by virtue of the very concept of federation.

A federation can only be based on the creation of a mutually agreed level of shared authority that results from the transfer of some parts of the sovereignty already possessed by the component political entities. For this new authority to be equally binding and to bear no trace of supremacy of one entity over the other(s), it is absolutely necessary that the partial transfer of power be made by entities that are equally sovereign, equally capable of transmitting part of their sovereignty to the federal authority.

This is not the situation at present in Cyprus where there is an inequality of status between the two entities, the South still being considered by the community of nations as the legitimate Republic of Cyprus, supposedly ruling over the whole island, speaking in the name of the entire population of Cyprus, and the North continuing to be an outcast, recognised only by Turkey.

No solution is possible under such circumstances or, even if a solution is imposed by the coincidence of some conjectural factors, it will not be a lasting and viable one.

Therefore, there is a need for an effort by the South and by the international community for a drastic change of mind concerning the status of the 'entity' in the North. To continue to consider it a 'so-called state' means to deprive it of the legitimate state authority for proceeding, with self-confidence, to any transfer of power to the federal authority.

A SOLUTION ON THE BASIS OF TWO EQUAL PARTNERS

The merit of internationally recognising the statehood of the Turkish Republic of Northern Cyprus resides in providing a solid point of departure towards a workable and lasting solution based on the existence in Cyprus of two equal and sovereign peoples, each with its own respective territory and state. To take into consideration the basic reality of the island by accepting the existence of equally sovereign peoples with different ethnic and religious identities entails a political structure that will ensure a new relationship between the two entities based on mutual respect and political equality. A new start should be made with a view to achieving co-ordination and co-operation on a specified range of functions between the two constituent peoples.

No effort should be spared in making clear the basic fact that the main obstacle preventing resolution of the Cyprus question is the world's unequal treatment of the two sides—in particular, its disregard for the right of self-determination, political and sovereign equality and the right to statehood of the Turkish Cypriot people.

This main impediment blocking the way to a solution in Cyprus must be removed in order to create a more meaningful negotiating process. The international empowerment of the Turkish Cypriot side is the only way to motivate the Greek Cypriots to share power. It should be noted that both sides would bring their separate sovereign rights to self-determination and statehood on their respective territories to the process of settlement.

The necessity of finding a political structure based on the indisputable reality of the island should be independent of the political position of the third parties. The two peoples and their respective states would be engaged in negotiations for a partnership on an equal footing. As sovereign peoples, they have the inherent right to determine their destiny separately and to arrive together at an agreement for the future of Cyprus as a whole. As such, their relationship is not one of majority and minority.

The settlement of any international dispute becomes viable only when the parties' perceived interests dictate a compromise solution. A commitment to certain basic principles, such as the mutual acknowledgement of the other's right to statehood, would help the parties bridge the gap between the uncertainties of the present and their hopes for the future. This acknowledgement must be reciprocal, as well as deliberate and explicit.

The success of future negotiations depends on the international community's willingness and indeed its ability to meet the challenge of having the future phase of the negotiations reflect the equality of the two sides, not only at the level of the two communities, but at the level of the two states.

1 This refusal was an implication of the Hallstein Doctrine, best described by a text tabled before the Bundestag on 1 December 1955 by the then Foreign Minister of the Federal Republic of Germany, von Brentano.

2 Evan Luard, *Conflict and Peace in the Modern International System: A Study of the Principles of International Order*, New York, Macmillan Press, 1988, p. 3.

3 526 Parliamentary Debates, House of Commons (5th series), 1956. pp. 1267-1268.

- 4 Rauf R. Denktaş, *The Cyprus Triangle*, London, Boston, Sydney, K. Rustem and Bro. and George Allen, 1982, p. 30.
- 5 Necati Ertekün, *The Cyprus Dispute and the Birth of the Turkish Republic of Northern Cyprus*, Lefkoşa, K. Rustem and Bro., 1984, p. 19.
- 6 *Case of Loizidou v. Turkey*. 40/1993/435/514, Strasbourg, 18 December 1996, p. 15.
- 7 Herbert W. Briggs, (ed.), *The Law of Nations: Cases, Documents and Notes*, New York, Appleton-Century-Crofts Inc., second edition, 1952, p. 65.
- 8 *Ibid.*, p. 69.
- 9 Ertekün, *op. cit.*, p. 257.
- 10 Article 2/1 of the 1985 Constitution: “The State of the Turkish Republic of Northern Cyprus is an indivisible whole with its territory and people”.
- 11 For a discussion of this doctrine within the context of the Cyprus dispute, see Zaim M. Necatigil, *The Cyprus Question and the Turkish Position in International Law*, London, Oxford University Press, 1989, pp. 282-288.