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**Book Review**

**THE REPUBLIC OF CYPRUS:  
A STUDY IN INTERNATIONAL LAW**

by Kypros Chrysostomides, The Hague,  
Martinus Nijhoff Publishers, 2000, pp. 627.

**ZAİM M. NECATİGİL**

Zaim M. Necatigil, formerly the Attorney-General of the TRNC, is a lawyer and legal consultant at the Ministry of Foreign Affairs and Defence, Turkish Republic of Northern Cyprus.

Dr Kypros Chrysostomides' work is the most recent and comprehensive addition by a Greek Cypriot author to the bibliography on the various aspects of the Cyprus Question. The developments in Cyprus since December 1963 have, over the years, provoked a steady stream of academic and official publications, most of which, like the present one, tended to support the Greek Cypriot position. The Greek Cypriot side, due to the recognition accorded to it and its diplomatic missions abroad, has always been in a more advantageous position than its counterpart, the Turkish Cypriot side, in having its case heard. The latter has, moreover, always been afforded far less opportunity in international forums and resolutions have been taken behind its back. Dr Chrysostomides' work is aimed at giving up-to-date and detailed legal support to already widely publicised Greek Cypriot views. However, it cannot be described as a fully objective and unbiased account of all the relevant facts of the Cyprus problem or a balanced diagnosis and evaluation of all the legal issues involved.

The main theme of the book is the continuous existence of the Republic of Cyprus as the only state on the island. In the author's view the same state, which was created in 1960, preserves its unaltered continuity within the international legal order and is represented by its sole legal government, that is, the Greek Cypriot administration. The northern part of Cyprus, according to the author, is under Turkish "belligerent occupation," which prevents the lawful "government of Cyprus" from exercising its sovereignty and authority over this area. In the author's view, the Turkish Republic of Northern Cyprus (TRNC) is a "puppet state" and a "nullity" in international law and, therefore, it cannot be considered as a unit of self-determination; the Turkish Cypriot community cannot be described as a "people" but the two communities in the island constitute one single "people" of Cyprus. The Turkish Cypriots are usually described throughout the book as a "community" and occasionally, as a "minority". One should point out from the outset that Turkish Cypriots regard such hard-line assertions as, not only unfounded, but also very offensive.

Though the author uses ingenious legal arguments to support his views, it is apparent that the main thrust of the work centres on 'recognition' and conclusions are drawn from this concept by equating 'recognition' with 'legality'. In other words, the basis of the assumption of legality is the international

community's recognition of the Greek Cypriot administration as the government of Cyprus; since that administration is recognised as such, it is assumed to be the legal government of the Republic of Cyprus. The author simply disregards the fact that that administration is merely composed of Greek Cypriots despite the provisions of the 1959 settlement and the now moribund 1960 Constitution, which provided for the partnership and co-founder status of the two communities, the bi-communality of the state and the dichotomy of functions and powers between the state and the communities. Moreover, the author ignores the fact that, since 1963, the recognised government of Cyprus has repudiated the Basic Articles of the Constitution, which were entrenched in the Zurich and London Agreements as unchangeable fundamental provisions underpinning the Republic of Cyprus, thus endowing the Republic with only limited sovereignty. However, in the author's view, the doctrine of 'necessity' justifies such changes because the doctrine must be read into the provisions of the written Constitution of Cyprus.

The author's views are indeed controversial. There are conflicting views as to the continued existence of the Republic of Cyprus and its representation in the international community. The international community (except Turkey) has recognised the Greek Cypriot Republic as the Republic of Cyprus and, consequently, its representation by that administration. However, the undeniable fact is that the Republic of Cyprus as envisaged by the Treaties and the Constitution no longer exists, as the state of affairs envisaged by those instruments has not prevailed since December 1963. What today presents itself as the government of Cyprus is, therefore, in fact the Greek Cypriots' administration and represents only the Greek Cypriot community. Similarly, the government of the TRNC represents only the Turkish Cypriot community. However, international law has refused to keep abreast of developments and realities on the island by continuing to recognise only the Greek Cypriot administration as the government of Cyprus despite the de facto character of that administration, in that it is not the bi-communal Republic that the Treaties envisaged and it is not governed by the basic provisions of its Constitution. These serious and substantial defects in the title of the so-called government of Cyprus are glossed over in Dr Chrysostomides' book.

Turning to more specific comments about the book, it is not difficult to notice that it contains a rather selective and highly tendentious account of Cyprus' recent history. There is, for instance, hardly anything about the Greek Cypriot struggle for enosis (union of Cyprus with Greece) before and after the compromise independence of 1960, particularly as to how that movement affected the fate of the country and relations between the two communities in the running of the affairs of the Republic. Nor is there much about the Greek Cypriot side's attitude towards the Treaties and constitutional provisions relating to the bi-communal participation of the two communities. There is no credible explanation as to how and why the Turkish Cypriots were excluded from participation in all the organs of the Republic. There is no direct reference to the Greek Cypriot administration's human rights violations against the Turkish Cypriots and the degrading conditions under which these people had to subsist in the enclaves where they had to take refuge for their safety. There is no mention of that administration's 'ethnic cleansing' of the Turkish Cypriots - including the fate of 211 missing Turkish Cypriots abducted after the events of 1964 by the Greek Cypriot police and military elements. There is no mention of EOKA-B and its activities during the 1964-74 period; the attacks on Turkish Cypriot areas such as the Nicosia suburb of Omorphita (K. Kaymaklı) in December 1963, Tylliria (Erenköy) in 1964, and Kophinou (Geçitkale) and Ayios Theodoros (Boşaziçi) in 1967; and there is nothing about the activities of the Greek officered National Guard nor of the thousands of Greek troops that were allowed clandestinely to come to the island. The author has completely avoided dealing with the real causes of the collapse of the bi-communal partnership on the island.

Nothing is said about the Greek Cypriot parliament's 26 June 1967 enosis resolution (which has not been withdrawn), confirming that, despite adverse consequences, it would not suspend the struggle for union with Greece, being conducted with the support of all Greeks; and Law No. 48 of 1987 of the same parliament which accorded legal recognition to the 'national struggle' (enosis) and its organisation (EOKA).

In the face of the very strong defence of the doctrine of necessity the author puts up, it may suffice to refer here to the 1987 report of a Select Committee of the British House of Commons, where it is stated,

"Although the Greek Cypriot Government had been claiming to have been merely seeking to operate the 1960 Constitution, modified to the extent dictated by the necessities of the situation, this claim ignores the fact that both before and after the events of December 1963, the Government of Archbishop Makarios continued to advocate the cause of enosis and actively pursued the amendment of the Constitution and the relevant Treaties to facilitate this ultimate objective. In February 1964, for instance, Archbishop Makarios declared, 'The Agreements have been dead and buried'."

On the issue of self-determination, the author asserts that the "people of Cyprus" exercised the single right of self-determination in 1960 by opting as a whole for an "independent state" and that, through the exercise of this right, "This people as a whole acquired at the same time 'internal sovereignty'." However, in view of the Greek Cypriot side's well known assertion that the colonial power handed down and imposed the 1960 Constitution with threats to allow Greek Cypriots and Turkish Cypriots the separate exercise of the right to self-determination (which would mean partition of the island), the argument as to the exercise of self-determination "by the people of Cyprus as a whole" is, in the this reviewer's opinion, untenable. On the contrary, the statements made in the British House of Commons before the 1960 settlement was achieved, as well as the manner in which independence was granted (that is, not by a unilateral act of the British government but by the consent of the two communities whose leaders signed all the documents that established the bi-communal Republic), would suggest that, if in 1960 there was an exercise of the right to self-determination, it was not exercised by the "people of Cyprus" as a whole but separately by the two. In this respect, Cyprus is a unique case. One should also recall the oft-repeated words of Archbishop Makarios: "The agreements created a state but not a Cyprus nation."

Moreover, in view of developments within the United Nations and the Organisation for Security and Co-operation in Europe, self-determination is a right of peoples that can be exercised in conformity with international law any time when the legal conditions exist for its exercise. Any settlement that the process of negotiations between the two parties may achieve has to be an agreed solution and would necessarily have to be submitted for the approval of the two politically equal peoples by way of separate referenda. This will also necessitate the making of a new constitutional arrangement. Therefore, this reviewer is not in agreement with the author's proposition that the sovereignty of the future republic, which will be established on the basis of the agreement of the two negotiating parties, should be derived solely from one of them - the present 'Republic of Cyprus' (i.e. the Greek Cypriot administration) - as the allegedly sole legal Republic entitled to the exercise of sovereignty, and not from the two peoples organised in their respective states. The author's suggestion that this should be so for purposes of state succession, citizenship and other matters, is far from convincing.

The author describes the Turkish intervention of 1974 as a "belligerent invasion and occupation" of the northern part of the island. However, there is no sufficient account in the book of the Greek coup

d'état of 1974, which prompted the Turkish action or of the chain of events that led to the coup, its aims and effects, as Archbishop Makarios expressed to the UN Security Council - that the Greek military regime had openly violated the independence of Cyprus, had extended its dictatorship to the island and that this amounted to an invasion from the effects of which both Greeks and Turks would suffer. The author has completely ignored the Turkish intervention's *raison d'être*, which was to put an end to Greece's invasion, to protect Turkish Cypriots from imminent attacks and to help to restore bi-communal partnership on the island that would depend on negotiations between the two Cypriot parties. The contention that the Treaty of Guarantee was invalid from the beginning is in contradiction, not only with the position of the UN which has persistently referred to the Agreements, but also to the position of eminent Greek Cypriot leaders who have strongly criticised the UK for failing to intervene in 1974. If the application of the Allies' massive force against Iraq can be justified as collective self-defence and, if the NATO member states' intervention in the Kosovo crisis without Security Council authorisation can be described as humanitarian intervention, it is indeed difficult to understand why the Turkish intervention of 1974 is condemned as a "belligerent occupation."

The author asserts, "The TRNC is *ab initio* a nullity in international law, which cannot be rectified." In this respect, he relies strongly on the UN Security Council resolution adopted in the wake of the declaration of statehood. However, that resolution was taken under Chapter VI of the UN Charter, which means that it is not legally binding on the member states of the UN unless such states adopt it through the usual legal procedure, in contrast to resolutions under Chapter VII, which authorise the imposition of sanctions. Moreover, the Turkish Cypriot authorities did not bow to the relevant resolution and the declaration of the TRNC has not been withdrawn. By the passage of time, the resolution has lost its rigour and the talks between the two Cypriot parties were commenced under UN auspices on an equal footing. Furthermore, the resolution did not negate, and could not nullify, the state that was born and the TRNC continues to exist as a reality. To say, as Dr Chrysostomides has done in his book, that an existing state, like the TRNC, is a "nullity" in international law, is untenable. The author has to be reminded in this respect of principles developed by international law relating to unrecognised, and therefore, *de facto* states.

The author has drawn considerably from reports and judgements of the European Commission and Court of Human Rights, as well as, from judgements of the European Court of Justice. It is a fact that the judicial organs of the Council of Europe have generally attributed, under certain circumstances, 'jurisdiction' and 'responsibility' to Turkey under the European Convention in respect of northern Cyprus. However, the findings in those cases have generally been based on the concept of non-recognition of the TRNC. These judicial organs have, as a rule, refrained from deciding on the status of the TRNC or on the legality of the Turkish intervention of 1974. Even though some conclusions have been drawn from the Turkish 'military presence' in northern Cyprus for purposes of 'responsibility' under the Convention, this in no way gives support for the author's scenario of a puppet state. The so-called 'examples' cited for this proposition are, in the opinion of this reviewer, totally out of place and have no analogy with the TRNC.

In the book under review, a chapter is devoted to the negotiations between the two Cypriot parties, focusing attention particularly to the stages of the process after 1974. Though the book contains useful information in this respect, it generally tends to put the blame for lack of progress on the Turkish Cypriot party. However, the author fails to refer to those various instances when the atmosphere of the talks was seriously disrupted due to the Greek Cypriot side interrupting the process to resort to international forums, which tended to undermine the agreed parameters thereof.

One serious gap in this chapter is its silence about the Turkish Cypriot side's acceptance of the UN Secretary-General Perez de Cuellar's comprehensive proposals for a federal solution presented to the parties in New York in January 1985 after tireless efforts within the process of proximity talks, and the Greek Cypriot's rejection of it. This rejection had various political repercussions on the island, and the Turkish Cypriot side, who from November 1983 had in good faith frozen its constitution-making and the holding of a referendum on the constitution, decided to finalise the TRNC Constitution and submit it to a referendum in May 1985. The author refers to "strong disagreement within the Greek Cypriot community" to Perez de Cuellar's later document submitted in July 1989. Reading between the lines, the impression created is that, even today, a definite majority of the Greek Cypriot community is against a federal solution of the Cyprus problem.

Another chapter is devoted to relations between 'Cyprus' and the European Union (EU), as well as, the prospects for the country's accession to the Union. In the author's view, even without a settlement, Cyprus should enter the EU with its entire territory and that the extension of European law to the North of the island in case of a solution would be automatic. The author produces counter arguments against the Turkish Cypriot side's position - namely that the Greek Cypriot administration cannot legally make such an application on behalf of Cyprus as a whole and that Cyprus cannot, under the Treaties and its Constitution, enter into an economic or political association with other states in which both Greece and Turkey are not members. In support of this view, the author adopts the gist of an opinion - which the Greek Cypriot administration procured - of three international lawyers to the effect that Article 50 of the Constitution (which refers to the veto powers of the Turkish Cypriot Vice-President) is no longer "applicable" as the Vice-President is not presently holding that office. This ignores completely the fact that the right to veto was a mechanism by which the Turkish Cypriot community could be assured that the Republic would not join an organisation of which Greece alone was a member (and vice versa). It is very cynical of the Greek Cypriot side, which wrecked the bi-communal partnership Republic, now to argue that the Turkish Cypriot entrenched rights of co-determination no longer apply. That right of co-determination would also necessitate the consent of both communities for Cyprus' accession to the EU, to be expressed through separate referenda, as the Ghali Set of Ideas acknowledged.

The German analogy about accession to the EU is also misconceived. When the Federal Republic of Germany became a member of the European Community, it made no claim that the territory of membership should extend beyond the area under its control. It did not claim to represent East Germany for purposes of membership. In contrast, the Greek Cypriot unilateral application purports to cover the whole island, including the TRNC's territory, and, more significantly, aspires to acquire membership for the whole of the island, even without a settlement of the islands' problems and achievement of a customs union between the North and the South. Another relevant factor in this respect is that there are no examples of the reconstitution of multiethnic societies after these have broken up into separate ethnic components. True, the international community is currently trying hard to reconstruct multiethnic societies in Bosnia and Kosovo, but the results have been meagre as it is very difficult, if not impossible, to turn the flow of history. There are very serious doubts as to whether the EU can integrate the two peoples of Cyprus before a political settlement is achieved. On the contrary, the EU's acceptance of Cyprus before a settlement would likely help to widen the rift and division in the island.

Dr Chrysostomides' seemingly scholarly work is overlain with legalistic abstractions and artificial labels. The work tends therefore to suggest a highly 'legal' approach to the many complicated political and factual aspects of the Cyprus Question. This approach reflects the Greek Cypriots' long obsession with the concept of recognition. In this reviewer's opinion, if progress in the inter-party

talks is really desired, there is a need, more than ever, to give due consideration to the exigencies of political realities - to the realpolitik - before it is too late and before another instance is added to the list of missed opportunities.

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