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Dear Readers,

The main subject of this issue is the “Cyprus Problem”.

A brief look at its history is in order. After being ruled by the Ottomans for more than 300 years, the island was occupied by Britain in 1878 but nominally remained under Ottoman sovereignty. Britain annexed the island in 1914 and declared it as its colony in 1925.

Starting from the 1950s, Greek Cypriots organized themselves under the National Organization of Cypriot Combatants (EOKA) which started a guerrilla movement against the British Crown in 1955. The main target of this movement was the idea of unification with Greece (Enosis). In 1960, the Greek and Turkish communities agreed on a constitution. This Constitution envisioned a sharing of the governmental power between Turkish and Greek Cypriots. This agreement and the London Treaty signed by Turkey, Greece, and Britain was the starting point for the independence of Cyprus. London Treaty gave each party a right to intervene under certain conditions. Shortly after the declaration of the Republic of Cyprus, problems arose. The Turkish Cypriots thought that Archbishop Makarios, the first President of the island, did not treat the two communities equally and justly. In fact, he was blamed for using his powers in favor of Greek Cypriots and proposing constitutional changes which would abrogate the prior power-sharing arrangements. So, the Turkish Cypriots felt betrayed and pushed away by the Makarios Government. The activities of certain Greek Cypriot groups led to the eruption of inter-communal violence in 1963 during which many Cypriots were killed. As a result, the Turkish side withdrew from the government and a United Nations (UN) peacekeeping force was formed.

In 1974, the supporters of Makarios and EOKA started to fight with each other. Makarios defended the independence of Cyprus whereas the other side, backed by the military junta in Greece, aimed for unification with Greece. Because of the contention between the two groups, the Turkish Cypriots were in a great danger, and Turkey used its right to intervene granted by the London Treaty. Turkish Republic and Turkish Cypriots did not consider this as an occupation. It was a humanitarian intervention and a self-defence against the violence of EOKA supporters.

In 1975, after many unsuccessful peace talks, Turkish Cypriots established an independent administration with Rauf Denktas as the president. Eventually, Turkish Cypriots proclaimed the Turkish Republic of Northern Cyprus in 1983 which has been recognized only by Turkey.

Ever since, the Turkish Republic of Northern Cyprus has been excluded from the European system. As an example, European Court of Justice ruling in 1996 listed a range of goods, including fruit and vegetables, which were not eligible...
for preferential treatment when exported by the Turkish Cypriot community directly to the EU.

In December 2002, the EU Copenhagen Summit offered an invitation for Cyprus to join the Union in 2004 provided that the two communities agree to a UN plan by early spring of 2003. Without reunification, only the internationally recognized Greek Cypriot part would gain membership. The result, as we all know, was that the Greek Cypriots turned down the UN Reunification Accord drafted under the supervision of Secretary-General Annan and gained EU membership alone without the Turkish Cypriots on their side.

The decision of the European Union is a good example of what could be perceived as a double standard. This problem has two sides and both parties are responsible for what happened.

The Annan Unification Plan created hopes for a peaceful existence of both communities on the Island. Turkish Cypriots endorsed the plan; but unfortunately Greek Cypriots overwhelmingly rejected it.

Even after the endorsement of the Plan by Turkish Cypriots, the European Union still did not end the isolation of the Turkish Cypriot community.

Thus, after the end of the twin referendum, the United Nations Secretary-General Annan expressed his hope that the members of the UN Security Council “can give a strong lead to all States to cooperate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development.”

In addition, following the outcome of the referenda, the European Council stated that “The Turkish Cypriot community has expressed their clear desire for a future within the European Union. The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. The Council invited the Commission to bring forward comprehensive proposals to this end, with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU.”

Turkish Cypriots are still waiting for these promises to be fulfilled…

Shortly, both Turkey and the Turkish Cypriots are sincere followers of Atatürk’s maxim: “Peace at home, peace in the world”, and we also believe that, “the future is long.”

See you in our next issue.
Best regards.

V. Ahsen Coşar
President of Ankara Bar Association
From the Editor

■ by Ece Yılmaz

This latest issue of the ABR includes fourteen articles by academic, international, and local authors debating the legal system and status of Cyprus and its repercussions on Turkey and beyond. I believe this special issue will be of interest not only to lawyers but also to many other professionals and concerned individuals seeking to grasp the subject thoroughly.

Rauf Raif Denktaş has been the key figure in the Turkish Cypriots as a veteran politician for more than 50 years. He was the founder and the first president of the Turkish Republic of Northern Cyprus (TRNC). As Rauf Denktaş is an indispensable actor of the history of TRNC, the ABR’s Special Cyprus Issue would be unthinkable without his contribution. I would like to extend my utmost gratitude for his article titled “The Failed Test of Legality”.

When analyzing the subject of Cyprus and its status in the international arena, the fundamental question comes into the scene: what is the role and the responsibility of Turkey in Northern Cyprus? This question strictly linked to the fact that TRNC is independent from the Turkish State and can deem itself internationally responsible from its actions. However vigorously we may argue that TRNC is an autonomous, distinct and legitimate subject of the international law, on the contrary, as examined by Ms. Akgün in her article “The Case of TRNC in the context of Recognition of States under International Law”, some argue its dependence on the Turkish state. Mr. Turhan analyzes the period of formation, development and the change of the Turkish Cypriot legal system from a historical perspective in his article entitled “The Turkish Cypriot Legal System from a Historical Perspective”.

Property disputes are one of the most complicated issues of the decades-long Cyprus problem that affects not only the Greek and Turkish Cypriots but also other citizens of the Island. Landmark
legal cases such as Orams, Loizidou, Xenides-Arestis, Hasan Hüseyin Çakartaş, Nejla Çağış, Mümin Çakartaş, and Gökçen Bayer have been the major milestones in a historic phase of the Cyprus dispute, which serve as an important precedent for judgments in the international arena. Mr. Hakkı defines the “Property Wars in Cyprus: The Turkish Position according to International Law”; Mr. Yener studies “Turkish Foundations in Cyprus” whereas Ms. Aksu evaluates the “Human Rights Violations faced by Turkish Cypriots”. Furthermore, Mr. Pertev comparatively examines the policies conducted by both parties on the property issues in his article titled “Misgovernance as an Impediment to Peace: The Political Misuse of Property in Cyprus”.

As the history has shown several times, the “My way or No way” kind of approach is hardly acceptable in an international bargaining process and has adverse effects for all parties. Ignoring the history of the Island and the responsibilities of all the relevant parties, strongly criticizing the Annan plan, characterizing those who support this Plan as traitors and calling the Plan as a compromise or selling out the country have not contributed to the solution of the Cyprus issue. Indeed, it worsens the current situation. Mr. Lüle comparatively evaluates the aspects of the current political stance by saying “If I were Christofias” and “If I were Talat” in his intriguing article. Mr. Erhürman argues about the “New Set of Negotiations in the Cyprus Problem: Federation for a Stable Democracy”. Moreover, Mr. Enotiades seeks for the answer to the question of “Can the Cyprus Problem be Resolved?” and Mr. Hasgüler and Mr. Özkaleli jointly examines the problem in their article titled “Analyzing Cyprus Accurately: Legal Aspects of a Political Matter”.

As the negotiations for full membership to the European Union have been continuing slower than expected, it is no secret that the European Union will not turn on the green light for Turkey unless a reasonable solution is reached regarding Cyprus. As it is well known, the Cyprus problem has been used as an excuse to partially suspend the full membership negotiations of Turkey. The EU claims that the problem continues, this might have negative repercussions on the negotiation process, unless topics such as the recognition of the Southern Cyprus by Turkey, opening ports and airports to Greek Cypriot ships and planes and withdrawal troops are solved. Mr. Yılmaz examines the close ties between the EU membership and Cyprus conflict, in his article titled “A Partitioned State that is in the European Union: the Case of Cyprus” whereas Mr. Oğuzlu analyzes the problem in his article, “Turkey and the Cyprus Dispute: Pitfalls
Undoubtedly, it would be naive to solve a deeply-rooted political problem in a relatively short period of time, unless some fundamental steps for a solution are taken in the Cyprus issue. As indicated in the report of the Parliamentary Assembly of the European Council, “If Cypriots, whether Greek or Turkish, could stop looking to the past and draw a line across the page, progress might be made, but when the media is constantly reminding people of the horrors of the past and even schoolchildren are taught to hate and fear “the other side”, what hope can there be?”

All in all, I would like to thank all contributors for their invaluable assistance in preparing this special issue.

I sincerely wish that 2010 will be the year in which this deeply rooted problem will be solved.

With best wishes from the ABR team to all of our readers.

Ece Yumer
The Case of TRNC in the context of Recognition of States under International Law

■ by Cansu Akgün*

INTRODUCTION

International society is basically, although not solely, made up of states. Besides the objective elements required for the formation of a new entity – i.e. territory, population and sovereign authority – the question of under which procedures this legal and political entity has gained the qualification of being a “state” in international society, is referred as the “recognition of states” in international law.¹

The main reason behind the complicacy of the issue of recognition is that in international law, there are not any organized legal provisions which oblige existing states to recognize a new entity when certain conditions are met. There have been attempts by commentators to try to institutionalize the process of recognition of states but the process of collective recognition as such in international law does not exist; however there is an important body of theory regarding state practice on the recognition of states, although they are far from coherent.²

The recent history of the island of Cyprus within the framework of the principles of international law relating to statehood and recognition as well as their application to the issue at hand constitutes one of

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those examples of state practice. Numerous articles and books have been written on aspects of the “Cyprus problem” since the violent events of 1963 and especially, since the Turkish military interventions in 1974. The Turkish Republic of Northern Cyprus – TRNC, which declared its independence in 1983 after a sad and complex sequence of events possesses all the criteria of statehood – a clearly defined territory with a population and a government with full internal autonomy and independence in its external relations – but it has not been accorded recognition, except by one state, Turkey, on the grounds that recognition of a state created as a result of illegal use of force is incompatible with the principles of international law.3

In the context of all these facts, the aim of this article is to shed light on the principle of recognition in conjunction with the problem of the TRNC and the grounds and motives of its non-recognition in the international community.

A) Brief Historical Background

The island of Cyprus, because of its location and size,4 is still of considerable strategic importance for the Mediterranean powers. Thus, at various times it has drawn the attention of many nations, including the Egyptians, Persians, Romans, and Greeks. Cyprus was under Turkish sovereignty between the years 1571-1914, and under the English sovereignty between the years 1914-1960. In this regard, the attempt to annex the island by Greece, despite the opposition of Cypriot Turks and Turkey, created the struggle and disputes called the “Cyprus Conflict” between Turks and Greeks on the island and between Turkey and Greek outside the island. After a long period of conflicts between these two communities on the island, Cyprus became an independent republic on 1960; however, it did not receive its independence by a unilateral act but rather its independence was the result of a series of negotiations between Greece, Turkey and the UK.5 In this period, three interdependent documents: the Treaty of Guarantee, the Treaty of Alliance and the Basic Structure of the Republic of Cyprus (BSRC), which are also known as the London/Zurich Accords, were signed by the Republic of Cyprus (ROC), Turkey, Greece and UK.6 The principles set forth in the London/Zurich accords were embodied 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

4 Cyprus is the third largest island in the Mediterranean Sea and lies 40 miles south of Turkey, 650 miles south-east of Greece.
6 According to these documents, the basic articles of the Cypriot constitution were unamendable and the Constitution itself, as well as the independence, security and territorial integrity of the island were guaranteed by Greece, Turkey and the UK. Britain was allowed to retain sovereignty over two military bases and Greece and Turkey were each allowed to station limited numbers of troops on the island. Partition and union with any other state were prohibited. For the documents see http://www.kypros.org/Cyprus_Problem/treaty.html, last visited: 04 December 2009.
the grounds that both would hold political and legal equality despite disproportionate population rates.\(^7\)

The solution generated by these treaties envisaged the establishment of an independent federal republic based on the participation of the two communities with the collaboration of Turkey and Greece.\(^8\) The BSRC set forth the principal articles of the 1960 Constitution of Cyprus. The Constitution would accept the rights of both communities to set the general will and maintain national composition in accordance with the numerical data of existed population. It would provide for a presidential regime, the President being a Greek Cypriot and the Vice-President being Turkish Cypriot, both of whom would have veto power over certain issues concerning foreign affairs, defense and security. It would also provide for the participation of the two communities in the central government. Thus, the legal arrangement of the 1960 treaties would solidify the presence of two separate and equal communities in Cyprus. By these treaties, a state which had to be administered by the collaboration of two communities in Cyprus had been founded, and by the Constitution, the national integrity, independency and security of this state were guaranteed in the international arena.

Later on, uneasy years followed because the Greek side argued that this Constitution was imposed upon Cyprus from outside and that its provisions were inherently unworkable. They also believed that it was undemocratic since it provided for veto by a minority government. On the contrary, for the Turkish Cypriots, the Constitution was an innovative document which could have worked if there had been sufficient cooperation between the two communities.\(^9\) In reality, many of the terms of the 1960 Constitution were never implemented and it was not simply a numerical question of 70:30 ratio; Greek and Turkish Cypriots had strong differences of opinions over things like the composition of the civil service and the armed forces and the proper structuring of municipal government. The tension became stronger in 1963, when Greek President Makarios declared that since the Constitution conferred rights on the Turkish Cypriots in addition to what was intended only to protect them, “he was forced to disregard or seek revision of existing provisions of the Constitution”\(^10\) and later on, he proposed 13 amendments for the 1960 constitution which would have repealed the vice president’s veto power, abolished the requirement for separate majorities for the passage of certain laws and called for the removal of separate municipalities and the Turkish public service quotas.\(^11\)

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\(^7\) According to the census of 1960, population of Cyprus was 573,566, out of which 70 percent were Greek and about 30 percent were Turks. See Zaim M. NECATİGİL, supra, p. 1.

\(^8\) Sevin TOLUNER, “Kıbrıs Türk Federe Devleti’nin Milletlerarası Hukuki Statüsü”, Milletlerarası Hukuk Açısından Türkiye’nin Bazı Dış Politika Sorunları, İstanbul 2000, p. 151.

\(^9\) Scott PEGG, supra, p. 101.

\(^10\) Majid KHADDURI, Major Middle Eastern Problems in International Law, American Enterprise Institute for Public Policy Research, Washington DC, p. 123.

\(^11\) Zaim M. NECATİGİL, supra, pp. 21-22.
Turkish Cypriots refused to go along with these proposed constitutional changes and violence between the two communities broke out further on.

Consequently, the events turned into an inter-communal fight between the armed radicals of the two communities. Twice in 1964, the Turkish military threatened to invade Cyprus on the basis of Article 4 of the Treaty of Guarantee unless all attacks against the Turkish Cypriot community stopped. In March 1964, the UN Security Council unanimously passed Resolution 186 authorizing the deployment of the UN Peacekeeping Force in Cyprus (UNFICYRP) but this force could not stop the violence. Contrarily, by 1965 the Turkish Cypriots found themselves excluded from the mechanisms of the state. In 1965, a special representative of the Secretary-General of the UN was informed that the “Cyprus Government” no longer recognized the leader of the Turkish Community as vice president and that the Turkish Cypriot members no longer had legal standing in the House of Representatives. Similarly, Resolution 186 referred to the Cyprus Government in such a way as to recognize the exclusively Greek Cypriot administration as constituting the legitimate government of the Republic. Thus, as a result of these ongoing violent acts on the island despite various attempts to stop them, the Turkish Cypriots proclaimed the establishment of the “Temporary Turkish Administration” in 1967.

In 1974, the Greek Cypriot armed forces, backed by the Greek junta, deposed the government of President Makarios with the aim of Enosis, i.e. unification of Cyprus with Greece. Thereupon, Turkey, citing the 1960 Treaty of Guarantee as a legal basis for its actions, sent troops to Cyprus for the first time to protect Turkish Cypriots from the Greek Cypriot armed forces, which were backed up by the military junta of Greece. In the following days, the UN called for all parties to cease fire. However, things did not end at this point. The sides could not establish peace and in August 1974, the second invasion of one-

13 The said Article states that: “In the event of any breach of the provisions of the present Treaty, Greece, the United Kingdom, and Turkey undertake to consult together, with a view to making representations, or taking the necessary steps to ensure observance of those provisions. In so far as common or concerted action may prove impossible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs established by the present Treaty.”
14 ARSLAN and GÜVEN, supra, p. 3.
15 Secretary General’s Report on Recent Developments in Cyprus, UN Document S/6569, 1965, p. 3.
16 Security Council Resolution 186, 4 March 1964, paras 1, 2 and 6. Also see Scott PEGG, supra, p. 103.
17 Sevim TOLUNER, supra, p. 155.
19 Similarly, with the efforts of UN and the peace making diplomacy, the Geneva Declaration of 30 July 1974 were held between the foreign ministers of Turkey, Greece and UK and according to this Declaration, the two sides were to exchange prisoners and hostages and Greek and Greek Cypriot forces were supposed to evacuate the Turkish Cypriot enclaves that they had occupied.
20 Although Turkey officially refers to its action as a “peace operation”, the Greek Cypriots and much of the international community refer to it as an “invasion.”
third of Cyprus was launched by the Turkish Army - again on the basis of Article 4 of the Guarantee Treaty - which expanded the amount of territory under Turkish control and led to the partition of Cyprus that still exists today.\textsuperscript{21}

Although the first intervention was met with general approval from the international community, the second one created a negative impact on world opinion in opposition to Turkey, which still exists. The position of UN on the issue before and afterwards the invasion gains importance in this respect.

\textbf{B) UN Position In Cyprus Problem and the \textit{Loizidou} Case}

The UN, with its peacekeeping forces and political power, has been – and still is – closely concerned with inter-communal tensions and conflicts in Cyprus since the collapse of the Republic in 1964. According to most Turkish authors, Resolution 186 of the UN, that was adopt ed in 1964, “has been ever since a cornerstone of the Cyprus problem and a turning point, the dimensions of which created an obstacle to a final and just settlement.”\textsuperscript{22} Notwithstanding that this Resolution called upon members to refrain from action or threats likely to worsen the situation, it also recommended the creation of a UN peacekeeping force in Cyprus, but with the consent of the 'Government of Cyprus,' which as a term refers only to the Greek Cypriots.\textsuperscript{23} From the view of the Turkish Cypriots, and Turkey, the Republic of Cyprus ceased to exist after this Resolution where – according to the Turkish opinion – the UN accepted the Greek Cypriots, who took exclusive control in Cyprus\textsuperscript{24} as the only legal representative of both communities. Subsequently, upon the appearance of Turkish army flights over Cyprus skies, the Security Council asked for “the stop of bombardment and military power exertion” in its Resolution 193, and thus implicated that any “external” intervention in Cyprus would not be approved.\textsuperscript{25} Similarly, both in Resolution 353, which the Security Council passed just before the Turkish intervention in 1974,\textsuperscript{26} and in Resolution 360, that was passed in response to the Turkish intervention,\textsuperscript{27} it requested “the withdrawal without delay from the Republic of Cyprus of foreign military personnel present” and emphasized “its formal disapproval of the unilateral military actions undertaken against the Republic of Cyprus.” Therefore, it can be generally said that the Security Council resolutions in the period 1964-1974 deplored the change in the status,

\textsuperscript{21} Scott PEGG, \textit{supra}, p. 103.
\textsuperscript{23} Ahmet C. GAZIOĞLU, \textit{supra}, p. 1.
\textsuperscript{24} Because the Greek Cypriot, which since 1963 had attempted to overthrow the 1960 Constitution, pretended to be the “Government of Cyprus”.
\textsuperscript{25} Security Council Resolution 193, 9 August 1964.
\textsuperscript{27} SC Resolutions 357 and 358 \texttt{http://www.greece.org/cyprus/UNRes357-360.htm}, last visited: 04 December 2009.
which had been established by the 1960 Constitution, by the use of force and military intervention. They mainly emphasized that the new state should be “demilitarized.”

Besides these military issues, the UN Security Council has also discountenanced Turkish and the Turkish Cypriot attempts at political and diplomatic actions. Right after the declaration of the establishment of the Turkish Federated State of Cyprus (TFSC) on 1975, the Security Council passed its Resolution 367, where it regretted this unilateral decision and requested that the two communities and other parties refrain from any attempt to partition the island or its unification with any other country. Although the language was not as strong as in Resolution 541, it caused the TFSC to be dead from the beginning.

The Security Council adopted the same approach when the TFSC Assembly unanimously approved the declaration of independence and establishment of the TRNC in 1983. The Security Council responded by passing the well-known Resolution 541 which considered the declaration of the TRNC to be legally invalid, thus calling for its withdrawal, and called upon all states not to recognize any Cypriot state other than the Republic of Cyprus on the grounds that the new formation was in contrary to the Treaty of Guarantee. This Resolution also stated that the BSRC and the TRNC were established by the unlawful use of force of Turkey. Therefore, the TRNC has not been recognized internationally, except by Turkey.

Here, it can be deduced that the overall policy of the UN as discussed above also constitutes the main reason for the non-recognition of the TRNC by the international community. In this sense, as Joseph S. Joseph, an Associate Professor at the University of Cyprus indicated, “the lack of international support for the Turkish attempts at the legalization of the partition of Cyprus is largely due to the successive condemnations of the General Assembly and the Security Council. Apparently, no country has been willing to take political and moral risks involved in the recognition.”

Non-recognition of the TRNC was also dealt with in the Loizidou judgment of the ECHR. The subject of the case was to apply the European Convention on Human Rights, the aim of which is to secure the public order in Europe based on human rights, individual civil rights and the rule of law, to the Cyprus problem and in this way to

29 Scott PEGG, supra, p. 105.
30 SC Resolution 541, 18 November 1983, http://www.argyrou.eclipse.co.uk/Res541.htm, last visited: 04.12.2009. Also in the same year the SC adopted the Resolution 550 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.
31 Although he is partial in his opinions instead of looking from a disinterested point of law, his statement deserves some consideration.
33 “The Convention”. 
decide on the legal status of the TRNC. In this sense, the Court took note of the abovementioned Security Council Resolution 541, declaring the proclamation of the establishment of the TRNC to be legally invalid and calling upon all States not to recognize any Cypriot State other than the Republic of Cyprus. Thus, the ECHR reiterated that only the Cypriot Government was recognized internationally as the Government of the Republic of Cyprus in the context of diplomatic and treaty relations and the work of international organizations. In this respect, “it was evident from international practice and the various strongly worded resolutions referred to above that the international community did not regard the TRNC as a State under international law and against this background, the Court could not attribute legal validity, for purposes of the Convention, to such provisions as Article 159 of the TRNC Constitution, and Mrs. Loizidou, the applicant, who had been prevented from gaining access to her properties in Northern Cyprus as a result of the presence of Turkish forces in Cyprus, could not be deemed to have lost title to her property.”

With this judgment, besides countenancing the non-recognition of the TRNC and the UN Resolutions, the Court refused to take into consideration at all the status of the TRNC as a stabilized de facto regime. Thus, it disregarded the effectual and autonomous nature of the legal order and administration in the northern part of Cyprus. If this would not be the case, the Court would have found that the people of North Cyprus have been governing themselves in an orderly manner in accordance with democratic standards, in particular, as laid down in Article 3 of the First Protocol to the Convention, and that there existed in fact an administration (executive) and a judiciary, as well as, a legislature capable of making laws.

Therefore, although not accepted by the ECHR in the Loizidou case, since 1983, two autonomous administrations: one de facto and one de jure have existed on the island. Basically, by freezing a particular status quo, i.e. by preserving cease-fires on the island for such a long time, UN peacekeeping forces, as an unintended consequence, gave rise to the creation or maintenance of Turkish Cyprus as a de facto state.

C) TRNC as a De facto State

The so-called de facto regime is an important notion in international law which cannot be neglected at all. Although not many in number and generally small in size, there exist some examples of these kind

34 Loizidou case, supra, para 44.
36 ARSLAN and GÜVEN, supra, p. 3.
37 Scott PEGG, supra, p. 165.
of regimes throughout the world, of which the TRNC constitutes one with regard to the following conditions.

First, the Turkish Cypriot territorial claim, although not strong\textsuperscript{38} from a legal perspective, is based on two main factors. One of them is the belief that since the Greek and Turkish Cypriots cannot live together peacefully, in order to ensure their communal safety, the Turkish Cypriots require a separate territory of their own. The second claim, which is more logical, is that the Turkish Cypriots, although illegitimate and not recognized, have had their own separate territory in the northern part of the island since 1974.\textsuperscript{39} Thus, the extent of territory that they control has remained constant for more than 30 years now. Similarly, its existence in this sense was recognized with the 1974 Geneva Agreement, signed by the Foreign Ministers of Greece, Turkey and the UK in the period between the two Turkish invasions, which noted the “existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community.”\textsuperscript{40}

Second, with regard to democratic accountability and governing capability, it could be concluded that the TRNC lacks democratic accountability on the grounds that its territory was created after an outside military invasion and is maintained by thousands of foreign troops; that its creation produced more than 100,000 Greek Cypriot refugees and that it is externally dependent on Turkey, particularly in military and economical aspects.\textsuperscript{41} However, from an internal perspective, the TRNC has a government which in practice is able to exercise effective and exclusive control of its own territory and has a constitution which grants its citizens an extensive range of civil and political liberties. According to Article 1 of the TRNC Constitution, the state is a secular republic based on the principles of democracy and the supremacy of law.\textsuperscript{42} In terms of its governing capability, the TRNC clearly meets or exceeds any plausible criteria for effective governance. Although the TRNC officials who are active in the decision-making process consult closely with their Turkish counterparts on a number of matters, and despite the fact that the TRNC has kept adapting economic policies in its history in line with Turkish direction or control in important matters,\textsuperscript{43} in broader terms it does maintain effective territorial control of a given area over which it provides governance services.

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\textsuperscript{38} The word “not strong” is used here in the sense that the Turkish Cypriots cannot point to some certain parts of the island that they have historically occupied because the two communities lived together in different parts for such a long time.

\textsuperscript{39} Scott PEGG, supra, p107.

\textsuperscript{40} Zaim M. NECATIGİL, supra, p. 60.

\textsuperscript{41} Scott PEGG, supra, pp. 108-112.

\textsuperscript{42} For the Constitution of Turkish Republic of Cyprus, see http://www.mahkemeler.net/cgi-bin/anayasa/kifidana.doc, last visited: 04 December 2009.

\textsuperscript{43} The Court in its December 1996 ruling supports this statement. According to this judgment, “It was obvious from the large number of troops engaged in active duties in northern Cyprus that the Turkish Army exercised effective overall control there”. See the judgment, ECHR, Louzidou v. Turkey, supra.
The Case of TRNC in the Context of Recognition of States

and has sovereign authority with democratic structures. On the other hand, it has relations with other foreign countries for the time being on only a limited basis, because the establishment of full diplomatic relations would amount to official recognition.\(^{44}\) Its effectiveness, though, has failed to translate into widespread international recognition and it can thus be considered to be a \textit{de facto} state.\(^{45}\) As a result of the international community’s recognition of the Greek Cypriot government as the sole legitimate sovereign authority for the entire island, the TRNC has not attained a more legitimate status than \textit{de facto} statehood.

Consequently, the effectual and autonomous nature of the TRNC administration has been recognized in various court decisions in the United Kingdom, such as in \textit{Hesperides Hotels and Another v. Aegean Holidays and Another}.\(^{46}\) Similarly, in the finding that the arrest and detention of Greek Cypriot demonstrators by the TRNC were lawful, the European Human Rights Commission in the \textit{Chrysostomos} case\(^{47}\) attributed legal validity and effect to the legislation of the TRNC, whose constitution was deemed as ineffective by the ECHR in \textit{Loizidou} case as explained above.

In this point, another judgment of the ECHR, this time obviously contrary to its \textit{Loizidou} judgment, attracts notice. It is mentioned above that international law acknowledges as a matter of necessity that \textit{de facto} regimes, despite non-recognition, may be regarded to some extent as having powers of administration and judiciary in the area under their control. In the case of \textit{Cyprus v. Turkey}, the ECHR, by referring to the legal status of the TRNC, reiterated this statement with the following words: “Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the \textit{de facto} authorities, including their courts; and, in the very interest of the inhabitants, the act of these authorities related thereto cannot be simply ignored by third states or by international institutions, especially courts, including this one (…)”\(^{48}\)

As can be seen, the TRNC as a \textit{de facto} state enjoys only limited acceptance from international society. Although most countries support the isolate and embargo strategy towards the TRNC, the case is not that clear-cut. In some cases, the TRNC is allowed to maintain non-diplomatic representative offices, and for some countries contacts with TRNC officials are possible, although limited to resolving the Cyprus dispute. Moreover, the UN’s recognition of the two Cypriot communities participating in negotiations on an “equal footing” also allows TRNC officials to have full, albeit non-diplomatic access to the UN.

\(^{44}\) Zaim M. NECATIGİL, \textit{supra}, p. 281.

\(^{45}\) Scott PEGG, \textit{supra}, p. 113.


\(^{48}\) \textit{Cyprus v. Turkey, supra}, para. 96.
D) Arguments of Greek and Turkish Cypriots with regard to the Decision of Non-Recognition of TRNC

As mentioned above, recognition of an entity as a state that is created by the unlawful use of force is forbidden under international law. Similarly, since the TRNC was created as a result of Turkish military intervention, it is this principle of prohibition of the use of force that prohibits its recognition. In this respect, the two sides of the island bring their arguments, which are most of the time far from objectivism, forward to blame the other side and to justify themselves.

From the perspective of the Turkish Cypriot community, the Turkish intervention of 1974, coming after the crisis that erupted in the island, was not an illegal intervention because it is based on Article 4 of the Treaty of Guarantee under which Turkey, as one of the guarantor powers, had a right and obligation to intervene, reestablish the status quo and protect the Turkish Cypriots. Therefore, they argue that the Turkish intervention was in response to prior Greek interventions. Besides, it is argued that the TRNC was not established as a result of the Turkish intervention but some nine years after it, in 1983 by the Turkish people of Cyprus in the exercise of their right to self-determination. Moreover, the overriding principle of respect for the territorial integrity of states, as also enunciated in the Declaration of Friendly Relations, is subject to such states having representative governments. At the time of the declaration of statehood in North Cyprus, the island was already divided into two sectors and therefore the Republic of Cyprus did not actually have a representative government. In summary, they assume that it was not the Turkish Cypriots who started the Cyprus conflict. They have been deprived of their rights since 1964, subjected to discrimination, suffered from ethnic cleansing at the hands of Greek Cypriots from 1963-74, and were kept in isolation as if they were the guilty party and all this happened in violation of their rights and in violation of international law. Thus, by using force, Turkey’s intention was to achieve reconciliation and restore the constitutional order on the island; this action was granted to it by the Treaty of Guarantee and so it cannot be the legal basis for the non-recognition of the TRNC.

Greek Cyprus, on the other hand, contests these arguments from some different viewpoints. First, as a legal claim, they argue that Article 4’s use of the word “action” does not authorize the use of force or military action. Even if it did, the Treaty of Guarantee could not take precedence over Article 2(4) of the UN Charter; if Article 4 is construed as authorizing the use of force, it is inconsistent with the

49 Zaim M. NECATİGİL, supra, p. 285.
50 Zaim M. NECATİGİL, supra, p. 285.
51 Zaim M. NECATİGİL, supra, p. 286.
52 ASLAN and GÜVEN, supra, p. 7.
UN Charter and consequently void ab initio under Article 103 of the Charter. According to their viewpoint, the Treaty only provides for action to restore the status quo ante and this had been done by the first intervention of Turkish army while the second one clearly established a new situation which cannot be considered to be legal in accordance with international law. Therefore, the Greek Cypriot side believes that a unitary “Government of Cyprus” still exists and that the Greek-Cypriot administration is that Government, which is the internationally-recognized government of all Cyprus in the eyes of the UN and the EU.

CONCLUSION

Neither of the sides has been able to achieve what they wanted or what they argued for and no comprehensive solution has been reached in Cyprus. 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. Non-recognition of this entity as an independent sovereign state precludes intergovernmental cooperation as well as the cooperation that requires the existence of diplomatic relations. This lack of international acceptance of the TRNC limits its ability to participate in international affairs. It thus cannot turn to the UN or any other international organization for verbal or material assistance in the case of crisis. Opposition to the TRNC as a state in the international community through the use of embargoes and sanctions has hurt its economy since no country other than Turkey participates in its markets.

Although recognition in international law is deemed to be of a declaratory effect, an unrecognized state is not considered competent to act in international relations and does not have the same status as the recognized states in international community. Thus, recognition itself is not only the acknowledgement of the existence of the legal criteria in a present case, but also there is an external factor, which forms part of the criteria. As Crawford states, “(…) where an entity is widely recognized as a state, where such recognition has been accorded on non-political grounds, that is strong evidence of the statehood of that entity.”

On the other hand, the fact that recognition is a voluntary act instead of an obligation for states to recognize an entity as a state as they take into account purely political considerations, cannot overshadow the general rules and principles of international law. In this respect, when the emergence of the new entity contravenes the general principles of international law, states shall refuse to recognize this entity.

53 Scott PEGG, supra, p. 104.
54 ARSLAN and GÜVEN, supra, p. 5.
56 Michael SCHOISWOHL, supra, p. 10.
with the aim of applying sanctions and preventing the consolidation of an illegal situation under the “theory of non-recognition.”

The prohibition of threats or use of the force in international relations is one of the most fundamental rules of international law under Article 2(4) of the UN Charter which also constitutes the reason why the TRNC has not been recognized.

On this point, arguments of the Turkish authorities and the Turkish Cypriots are partially right, in the sense that the Turkish Cypriot enclaves had been occupied and they were subject to human rights abuses by Greek Cypriots in the 1960s and the Turkish Cypriots wanted to exercise their right to self determination – as historical sources point out – however, the use of force and occupation by the Turkish army is an unacceptable solution even in these conditions.

As a result, there is no international recognition for Northern Cyprus. Despite this non-recognition, the TRNC as a *de facto* state still exists with its population living on its territory which is governed by its own democratic government. Two different administrations exist on the island, one *de jure* and one *de facto*, and the two communities are living on the island together but uncomfortably. Therefore the problem of Cyprus needs more attention from foreign governments and from international organizations while the island waits for a permanent solution at long last.
Human Rights Violations faced by Turkish Cypriots*

■ by Aslı Aksu**

The Question of Property

The right to hold property is considered to be of equal value as the “right to live” in the European Convention on Human Rights (hereinafter “ECHR”). Therefore, the violation of the right to hold property is deemed to be a violation of human rights. The property rights of Turkish Cypriots have been violated since 1975. There have been material and immaterial losses stemming from the violation of these rights. Turkish Cypriots, like other people, have the right to litigate these losses. However, a great majority of them are not informed of the extent of their litigation rights; material and immaterial compensation cases and accompanying restitution of property cases may be filed at the European Court of Human Rights (hereinafter “the Court”) by Turkish Cypriots having real property on the Greek (southern) part of Cyprus. They only need to be aware of which effective legal remedies to resort to.

Despite all obvious facts, it has been constantly questioned as to why no applications have been filed at the ECHR against the Greek Cypriot Administration for the violations of human rights against Turkish Cypriots between 1964 and 1974, including the right to life. These topics have been brought to the attention of the public, especially after Commission or Court decisions against Turkey were announced, and there have been complaints over the inaction of the Turkish side. The reasons for failure to file applications are discussed below.

The right to make a personal application at the European Human Rights Commission has been recognized by the Greek Administration on behalf of Cyprus since January 1, 1989. Therefore, prior to this date,

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persons did not have the right to resort to the Human Rights Commission against the Greek Administration. Furthermore, there is a 6 month statutory limitation for applications to the ECHR. An application may only be filed after all administrative and judicial remedies have been exhausted and within 6 months of the final verdict. This limitation may only be bypassed in case of an ongoing violation, where no statutory limitation is applicable.\footnote{Zaim NECATİGİL, *Kıbrıs Uyuşmazlığı ve AİHM kıskacında Türkiye*, Turhan Kitabevi, Ankara, 2005, pp. 25–49.}

It may be inquired as to why there has not been any state application, since a signatory state may always file an application against another, on the grounds of treaty violation, despite the fact that Turkish Cypriots had been unable to file personal applications at the Commission until 1989 based on the grounds of violation of human rights to which they were subject between 1964-1974.

The difficulty here stems from the fact that Turkey had not recognized the Greek Administration. Turkey could not possibly face a country in a litigation process that she has not recognized. Therefore in my opinion, given the conditions of the period, the decision was a sound one.

Firstly, the difficulties should be addressed in making property, regarded as part of the human rights, subject to applications. The primary difficulty in filing an application is the prerequisite of the exhaustion of domestic remedies. In order for a complaint to be found meritorious (for both state and individual complaints), this condition is of primary priority in comparison to other conditions.\footnote{M.Şezgin TANRIKULU, *Bireysel Hak Arama Girişimleri*, 2. Basım, İstanbul Barosu CMK Uygulama Servisi, pp. 19-27.} This is the fundamental prerequisite for an application under the provisions of the European Convention on Human Rights, which the Greek Administration has signed, ratified, and became a party to. The foremost issue in any application arises when domestic remedies are exhausted or cannot be – or need not be - exhausted.

**Application filed at the ECHR when domestic remedies cannot be or need not be – exhausted:** In some cases, due to the Guardian Act in force in the Greek Administration, domestic remedies do not necessarily need to be exhausted.

According to the Guardian Act, the Greek Administration has not banned the Turkish Republic of Northern Cyprus (hereinafter “TRNC”) citizens from owning real properties on the South side since 1975 from using these properties on their own behalf, but has blocked the transfer or rental of such properties with a parliamentary decision based on the provisions of the Guardian Act. As a result of this Act, even if a TRNC citizen files an application with the judicial or administrative bodies for the return of his real property on the Greek side, any award issued at the end of the proceedings cannot be executed. Therefore, due to the non-functionality of the condition of the exhaustion of domestic remedies, any application for the return of property may directly be filed at the ECHR without having the obligation to exhaust domestic remedies.
Application filed at the ECHR when domestic remedies need to be exhausted: In these cases, applicants face a great number of issues.

In order to file a suit on the Greek side, a person foremost needs capacity to sue. In order to meet this criterion, one must work in cooperation with an attorney registered at the Greek Cypriot Bar Association. In this circumstance, a Greek Cypriot attorney will not be able to retain his/her neutrality under political pressure from the Greek Administration.

Moreover, Greek Cypriots attorneys will probably choose not to be in a situation of defending the Turkish side in such a case. As no similar situations have been recorded, it is unknown how an exit may be based on a state of necessity. In my opinion, in an application based on the violation of property rights, since the exhaustion of domestic remedies is not compulsory, a Turkish Cypriot applicant will not possibly face such a problem.

In light of the above explanations, the grounds of defense will vary depending on the status of the real properties, in applications and suits both with and without meeting the precondition of the exhaustion of domestic remedies. Therefore firstly, the land registry entries of the properties in question should be examined and their current status should be determined.

Real properties unchanged since 1974: It is highly important to determine whether these properties are being used as farmland, residences, or for business centers. Thereby, the amount of damages and the loss of value will be more easily determined.

Expropriated properties: Expropriations were irregular and improper, since no compensation for the expropriations was transferred. Therefore these expropriations will need to be annulled and indemnity will be in order.4

Occupied properties:

Properties occupied by the Greek Administration of Southern Cyprus:

There may be properties used by state departments, hospitals, military institutions, or energy plants – such is the legal status of the property in a suit filed in January by a Turkish Cypriot resident in the Turkish Republic of Northern Cyprus, where there is an energy plant on the property.

1- Properties occupied by Greek Cypriot citizens:

Greek Cypriots may have constructed buildings on the properties, or if they are farmlands, they may be currently farmed by Greek Cypriots.

2- Properties Confiscated without Expropriation:

Two possibilities are immediately apparent:

1- The administration may be forced to formally expropriate the property (with an administrative application), or

4 Zaim NECATİGİL, Kıbrıs Uyuşmazlığı ve AİHM Kısacında Türkiye, Turhan Kitabevi, Ankara, 2005, pp. 82-83.
2- An action of trespass may be brought.

The statistical facts resulting from these legal assessments reveal that any action needs to be brought without delay.

There are 40.1 hectares of land in Southern Cyprus, belonging to Turkish Cypriots, that has been intentionally left inactive by the Greek Cypriot Administration since 1974. As can be seen, some parts of these lands were confiscated without expropriation and some parts have been occupied by Greek real persons.

Official registers show that 36 out of the 40.1 hectares of these lands are being used without the consent of Turkish Cypriots. This consequence is obvious evidence of serious neglect of duty and failure to fulfill an obligation on the part of the Service for Management of Turkish Cypriot’s Land Properties, established under the Greek Cypriot Ministry of Interior.

Due to the serious neglect of duty, the Greek Cypriot side should be required to pay enhanced compensation. Therefore it is imperative that Turkish Cypriots with real estate on the Greek Cypriot side who have not waived their rights should pursue their rights through lawsuit.

Each and every application to the Court filed after the exhaustion of domestic remedies or demonstration of the non-functionality thereof, will help the Court make objective rulings; as the number of applications increase, the Court will have to issue decisions more rapidly.

Applications at the Committee of Real Estate Compensation show that Greek Cypriot citizens have demanded 889,000 British Pounds compensation for 1 decare of real estate. Hereafter, the applications of the Turkish side should be made urgently with an accurate strategy.

In light of those facts, an application was made to the Greek Cypriot Ministry of Interior’s Service for Management of Cypriot Turk’s Landed Property, on behalf of real estate owner Perican Bayar, which I deemed to be the most promising out of the requests made to me. This application was an administrative action and this administrative action had the purpose of questioning both the current situation and the possible actions in the event of a demand of disposition of 22 decares of vineyard and the office building, which contain 15 office and residences in the city center of Limasol. An application will be made to the Court following the recent receipt of the reply from the Greek Cypriot administration; the constitutional response period was 30 days for this application. As a matter of fact, the reply received indicated that the properties that are owned by Turkish Cypriots but which are in Greek Cyprus, are being administered by trustees appointed by the Service and this administration will continue until the resolution of the the real estate ownership rights for the property of Greek Cypriots that is located in Northern Cyprus. This situation is proof of the non-functionality of any domestic remedies that

6 Ibid.
could be pursued on the Greek Cypriot side. Henceforth, the limitation period for an application is 6 months for applying directly to the Court on the grounds of non-functionality of exhaustion of domestic remedies. All application documents for Perican Bayar have been completed; both the material indemnity for the loss of use since the year of 1975 and the symbolic moral indemnity for discomfort and grief have been determined. As of now, all work is in the final stage and the application will be directly made to the Court.

Public opinion research and protests related with the issues of ownership and breach of human rights, which will be done before or after the application is filed, will have a significant impact on the application to the Court. On a relevant note, the support of the Greek Government and Greek media for the Loizidou decision should be highlighted, which was decided against the Turkish side.

Initially, the Loizidou case was not brought before the Court solely as a property case. Titina Loizidou and her friends had been going regularly to a church in Kyrenia over the years, and on the day of the incident, they started to conduct protest activities with hand signs after the worship services. They claimed that they were manhandled and maltreated by unarmed Turkish Soldiers as well as being illegally detained. Then, an application was filed at the Court due to alleged breaches of the related provisions of European Convention of Human Rights based on the incident, where the claim of ownership was added to the application. The other alleged breaches were rejected but the claim of ownership was accepted by the Court and the claim of ownership passed the stage of admissibility. 7

During all legal processes, Greek media never left the Loizidou case alone; the material and moral difficulties, which Titana had had since 1975, were overstated by the printed and visual media and were used to influence the Court. When the assumed value of the real estate and claimed (and awarded) compensation are taken into consideration, it is obvious that the awarded compensation was unconscionably high in comparison with the true value of the real estate. However, efficient legal advocacy and accompanying efficient public support set the stage for this result in the case.

Moreover, it should not be forgotten that the TRNC was treated as an entity – subordinate local administration – of Turkey by the Court and Turkey has been held responsible for the breaches of international treaties regarding property rights in the TRNC.8 As an extension of this judicial opinion, the ECHR tends to legitimize, as part of the Turkish domestic legal mechanism, any structure that is formed within the Turkish Cypriot legal system, which itself is based on an unsound foundation. The aim of this view is to allow for the enforcement of a property right in specific and development of an effective legal mechanism to prevent

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treaty breaches regarding property rights in general. In terms of law, all of our arguments about Cyprus are extremely strong, including the one on ownership. However, heretofore, all operations have been aimed at the political platform of the Cyprus issue. The only grounds for discussions of a political nature should be political platforms, not legal ones. These circumstances have constrained the remedies for the related issue on the legal platform and these circumstances pushed the legal remedies into the background. Due to the abandonment of this area of the law to the Greeks, many consecutive decisions against Turkey were made by the Court, since no legal progress have been made on that issue. The Cyprus issue, which is only discussed now in the political arena, and has not been addressed in legal arena, has become a diplomatic failure for Turkey. However, each and every political issue has four different dimensions: political, operational, economic, and legal. At the present time, there is no other open question in the world with a more justifiable case than that of the Turkish Cypriots. Turkish Cypriots, having been subject to all sorts of human rights abuses in Cyprus from 1950 to 1974 have not been able to bring these abuses to the Court. This situation cannot be justified henceforth.

It is possible that this first application that would be made will not pass the admissibility criteria. However, if subsequent applications are made, the Court will come under pressure to accept some. Due to the fact that the Court would have to reconsider its decisions and begin to accept applications, the legal basis for the Turkish view of the Cyprus issue would be strengthened.

In addition to the all these explanations, it should be indicated that, should my application fail to pass the admissibility stage, this result would not be a deterrent but should result in an increase of other applications. It is obvious that if the European Court of Human Right rejects one of the applications due their acceptability criteria, the Court will have to accept another application eventually. Otherwise, the Court will encounter the difficulty of explaining such bias to the international public opinion. On that point, the importance of Turkish public opinion will again gain currency. Therefore, with each and every rejection of the European Court of Human Right of a case on the breach of the property rights of Turkish Cypriots, the difficulty that the Court will face in explaining such bias to the international public opinion needs to be pointed out.

The right of Turkish Cypriots “to life, liberty and the pursuit of Happiness” as stated in the US Declaration of Independence has been denied to them by several resolutions of the UN Security Council starting from March 1964. Greek Cypriot attempts to subjugate and exploit Turkish Cypriots by denying their fundamental human rights have been endorsed by the UN Security Council by refusing to put a proper, impartial diagnosis on the so-called Cyprus problem, which has been occupying the agenda of the UN since 1954 with only a short break between 1958 and 1960, when the partnership Republic of Cyprus was declared to be an independent state and accepted as a full member of the UN and its deliberate destruction by the Greek Cypriot partner in December 1963.

Since then international public opinion has been treating the Greek Cypriot partner, elected by solely Greek Cypriot voters, as “the legitimate Government of Cyprus” in contravention of the 1960 International Agreements and all norms of justice and fair play.

That this so-called Government of Cyprus had ceased to represent the Turkish Cypriot people, who had separate rights to elect their own representatives, and consequently had no right to represent Turkish Cypriots on Cyprus until a new partnership structure is agreed by the

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two sides. The glaring fact that the 1960 partnership, now unlawfully usurped by the Greek Cypriot partner, had become destructive of the vested rights of the Turkish Cypriot people to live in peace and dignity under the multilateral 1960 Agreements and hence the right of the Turkish Cypriot people to decide their own destiny was unquestionable but was never considered by all those who were involved in helping Cyprus to achieve peace and justice.

The principle adopted by the UN General Assembly in Resolution 1514 at the 15th meeting on 14 December 1960, just a week before the deliberate destructions of the partnership state, was not applied to Turkish Cypriots all throughout those 46 years of the Cyprus problem.

According to the above-referenced UN resolution “All peoples have the right of self determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development”, but apparently UN Security Council members feel that the “Turkish” Cypriot people, who have been accepted as one of the co-founder peoples of the Republic of Cyprus, and who are constantly described by the Secretary General as “one of the two equal peoples, whose relationship is not that of minority and majority” have no such right!

What Then is This Cyprus Problem?

A short historical survey shows that the island of Cyprus was under Ottoman Rule from 1571 to 1878 until when the British were given the lease of the island in return for military aid against Russia. When the Ottomans entered the First World War on the side of the Axis in 1914, Britain unilaterally annexed the island. All Turkish inhabitants became alien enemies overnight. All leaders were taken into custody, thus losing their position of superiority in all fields of life while Britain offered the island to Greece in order to entice her to join the Allies in the ongoing war. Greece rejected the offer although she did enter the war towards the end. The young Turkish Government, under the guidance of Kemal Atatürk, settled the disputes arising out of the war at the Treaty of Lausanne in 1923 and Cyprus was ceded to Great Britain. Thus Turkey and Greece had come to a very sensitive balance of power between them.

Until 1954, which is when Greece took “the Cyprus problem” to the UN General Assembly, seeking “union of the island with Greece through the right of self-determination of the people of Cyprus”, Turkey had no Cyprus problem, but this attempt by Greece, if successful, would make nonsense of the Treaty of Lausanne. Cyprus, only 60 miles from the southern shores of Turkey, was very important for Turkey’s security; furthermore, for historical and strategic reasons Turkey could not afford to have a take over of the island by Greece. As one of the
ex-presidents of Turkey, Mr. Korutürk put it: "if Turkey abandons her rights over Cyprus, then Turkey will not be a country open to the seas."

The Greek request to unite the island with Greece was turned down by the UN. Within a few months, on April 1, 1955, the Greek Cypriot terrorist organization EOKA became active. “Enosis (union with Greece) and only Enosis” became the cry and this lasted until the end of 1958 when Greece realized that Turkey was serious in her stand to keep the Treaty of Lausanne intact; otherwise Cyprus should revert to Turkey for historical, geographical, and geopolitical reasons and for the protection of Turkish Cypriots who were hit very hard by EOKA and had no chance of survival under Greek domination. The unfortunate fate of the Turkish population on the island of Crete was a constant reminder to Turkish Cypriots “of the things to come” if the island was ceded to Greece. Makarios was on record that he was applying the model of Cretan struggle in which no Turk was left on the island of Crete.

The result of consultations between Turkish and Greek Foreign Ministers was the Zurich Agreement of 1959 followed by the London Agreement which the two Cypriot sides also attended for the signature ceremony. Under these agreements, it was decided to set up a partnership state by the two sides by (1) outlawing the cause of the conflict, namely Enosis and its Turkish antidote, partition, and (2) by preventing domination of one people by the other. Separate elections, vested veto rights in order to prevent discrimination by one towards the other; separate communal governments; and the effective participation of Turkish Cypriots in the administration of the island were the fundamental elements of this agreement. According to international law experts, this set-up, guaranteed by Turkey, Greece and Great Britain, was a functional federation.

But it was doomed to failure from the beginning because Archbishop Makarios had declared that this independence should be used as a spring-board for Enosis. Accordingly, Greek youths were secretly armed and trained by the time Makarios put forward his “13 point plan” in 1963 for amending the constitution, well knowing that the Turkish side could not accept such an offer as it would take away most of their vested rights of equality and partnership. We rejected the plan and the well prepared Akritas Plan was activated on 21 December 1963, Makarios offering “double Christmas” to his people in expectation of the collapse of Turkish Cypriot resistance within a few days.

We are now in the 46th year of that resistance and talks for a peaceful settlement, which had begun in 1968, continue on and off to this day between the two sides, one of which (the Greek Cypriot side) is still regarded as the legitimate Government of Cyprus, while the Turk-
ish Cypriot partner of the 1960 partnership Republic is regarded as a secessionist “break-away state.” It is this unequal treatment of the two legally and politically equal parties which has prevented a fair settlement so far but those responsible for this unfair, unjust treatment of the Turkish Cypriots, namely the USA, Guarantor Great Britain and now the EU countries, have left no reason for the Greek Cypriot side to settle the problem, which was created in order to take over the rule in Cyprus. No motivation now exists for the Greek Cypriot side to agree to settle the problem on the basis of an equal partnership as they prefer the “Government of Cyprus” title to any formula which would recognize the political equality of the Turkish Cypriots.

It will be a waste of time to go into a detailed account of “the talks” which started in 1968 and continued until 1974 on the basis of local autonomy for both communities under the umbrella of the 1960 partnership set up. Makarios, although advised by Greece and his own negotiator Mr. Glafcos Clerides to accept this deal, refused to do so on the ground that Turkish Cypriot side will still retain the status of co-founder partner as political equal and the real aim of the onslaught against Turkish Cypriots, namely the removal of the Guarantee Agreement, could not be achieved.

All proposals of the UN Secretary General from 1974 onwards have been rejected by the Greek Cypriot leadership on similar grounds. For them, the retention of the title of “the Government of Cyprus” is preferable to any settlement which will make Turkish Cypriot people an active, equal member of such a government and will entail the continuation of the guarantee system of 1960 which gives Turkey the right of intervention in case the Turkish Cypriot partner is endangered or a move is made in the direction of Enosis.

Today, in the 46th year of “the problem,” Greek Cypriot leader Christofias, who carries the false title of “the president of Cyprus”, states clearly that he is following the footsteps of Archbishop Makarios and that he takes his inspiration from EOKA fighters who also show him the way to go! The Greek Cypriot side has eliminated the 1963-1974 years from their memories and history books. For them, history begins with 1974 when Turkey intervened under the 1960 Agreements and put an end to the ongoing attempt to annihilate the Turkish Cypriot people on the way to achieving Enosis.

Today 60% of the people in the South and 77% of the people in the North, a majority of the Greek and Turkish Cypriots, who remember the bloodshed of the 1963-1974 years, prefer a two-state settlement to re-unification under a bi-zonal, bi-communal federal system which is the subject of the current talks as they were in the talks in 1977-79 until the 2004 Annan Plan, all of which had been rejected by the Greek
Cypriot side because of their preference for the title of “the legitimate Government of Cyprus, now an EU member” although neither that o-called Government’s sovereignty nor the acquis of EU covers the lands of the Turkish Republic of North Cyprus.

Impartial people who know the history of Cyprus and the Greek Cypriot policy of converting the island into a Graceland as from the 1800s do subscribe to the theory that a two-state solution is the answer to this problem. The North Cyprus parliamentary group in November 1987 issued a paper in the British parliament, part of which reads:

_In principle there is nothing inherently wrong in bizonality as an answer to the problem of how two separate and antipathetic peoples should co-exist when they share a common homeland. Ideally it is no doubt better if they can manage to tolerate one another and live integrated together. But sometimes that is not possible. Peoples cannot be forced into tolerant co-habitation at close quarters with one another._

_The real objection to bizonality is not in principle but in practice. If history has left intermingled two peoples who find themselves incapable of living together, their physical separation may be the only answer, short of having one dominate, and perhaps in time squeeze out, the other. But how to bring about their separation if they cannot do it by mutual consent? Then the cost in terms of human suffering has to be set against – and may well outweigh – whatever advantages are foreseen in separating them._

_Once however separation has taken place, albeit at the cost of injustice and suffering, the nature of the argument changes. For better or worse the separation has happened and the question then is whether it can or should be reversed. The objection of practicability no longer applies against separation and may indeed now lie against trying to reimpose integration. The best course may then be to accept the fait accompli of separation and to concentrate on trying to ensure that the form it takes is as fair as possible to both sides. That may become the only practicable course as time goes by._

And in July 1991 the following motion was tabled in the British parliament

_A: “This House recalls that when independence was granted to Cyprus in 1960, sovereignty was transferred to the Turkish Cypriots and Greek Cypriots jointly as political equals; recalls that the 1960 Constitution broke down in 1963 and is now defunct; notes that the U.N. Secretary General has stated that the relationship between the two communities in Cyprus is not one of majority and minority but one of equals; further notes that UN Security Council Resolution 649 calls upon the two peoples of Cyprus to co-operate on an equal footing; believes that the Greek Cypriot side’s reluctance to recognize the equal_
political status of the Turkish Cypriots side is obstructing the way to a federal solution since federations can be formed only between political equals; and therefore calls upon Her Majesty’s Government to treat the two peoples of Cyprus and their respective leaders on a basis of complete equality without any further delay.”

And now, in 2009, Lord Maginnis on 03 December made this powerful statement in the House of Lords:

"In the short time still available to me, I turn to what I consider to be the greatest and ever enlarging blot on the character of our nation and an area studiously and consistently avoided by this Government; that is, the Government’s persistent obduracy in respect of our obligations, as a guarantor power, to the island of Cyprus, our acquiescence in the 45-year denial of human rights to the Turkish Cypriot community and our mendacity in respect of our fellow guarantor and long-time ally, Turkey.

I will pose a number of questions that I hope the Minister will be more courageous in answering than has been the case in response to my Written Questions.

Is J. D. Bowers, the international authority and respected American professor of genocide studies at Northern Illinois University, correct when he openly confirms that Greek Cypriots and EOKA-B, under the leadership of Nikos Sampson, were guilty of the genocide of Turkish Cypriots within the 1963 United Nations definition of “genocide”? Did the Akritas and Ifestos 1974 plans not spell out the means and methodology for that genocide? Was Turkey justified in its intervention in 1974 that brought an end to the killings, when we had turned our backs on our treaty obligation? Have the Greek Cypriots rejected every potential settlement for the past 35 years? Did the Blair promises of 2004 to Turkish Cypriots, following their acceptance of the Annan Plan, run totally and completely into the sand? Unless the Government and the EU face up to the truth of these questions no progress will be made and we will have to face up to a two-nation island; perhaps that is inevitable.

Finally, did not the Defence and Foreign Affairs Ministers snub those 371 of our troops who died during the Cyprus emergency of 1955-59, their families and comrades, by failing to attend the unveiling of the memorial to them—more than 300 of them travelled to Cyprus for the occasion—on Armistice Day this year? I acknowledge and appreciate that the high commissioner attended, but it was unforgivable that no Minister attended this unique occasion—and we all know why.

If the answers to my questions are in the affirmative—and they must be—will the Minister at least tell us why Prime Minister Brown even considered signing a Memorandum of Understanding with Greek-
Cypriot President Christofias on 5 June 2008, in the midst of the Cyprus talks process? It was a memorandum that further fuelled and underpinned the aggression of the Greek Cypriots towards the Turkish Cypriots.

The Minister may not like it, but she will know that every word I have uttered is true. Otherwise, let her say so now. In the final analysis, I have to ask; is there any honour left in my country or are there any values left worth defending? Which is more important to this Government – the next election or the next soldier who dies in the belief that this nation is worthy of his sacrifice?

These are the bare truths of the so-called Cyprus problem! Greece and Greek Cypriots have been trying to take over the island in complete disregard of the fact that Turkey and Turkish Cypriots have a stronger say in this matter not only because of the proximity of the island to Turkey, but also because historically and geopolitically the island is part of the Anatolian mainland. The protection of the Turkish Cypriots, as proved by the events of 1955-58 and 1963-1974, is an absolute must for the mainland Turks! The attempt to settle this self-created settlement in complete disregard of the vested legal and political rights of Turkish Cypriots as well as of Turkey has failed so far. It is high time, as the majority on both sides want, to start from the existing realities (two sovereign equal people with the right of self-determination; two states; and continuation of the guarantee system until Turkey also enters the EU) by putting bridges of cooperation between the two sides, by encouraging mutual trade etc. rather than forcing upon them a new agreement which will again collapse within a few years and do more damage to the peace in the area.

Prof. Metin Tamkoch, in his book “The Turkish Cypriot State” on page 31, writes.

If a State is made up of different national groups, each with separate identity, it is exceedingly difficult to keep such a heterogeneous entity intact unless each national group is allowed to participate equally in the political process. Demand for national self-determination may involve equal participation in the political process or secession. A prolonged equal participation in the political system by various national groups may bring about a feeling of togetherness, common aspirations, and, ultimately, a degree of homogeneity. In such a case, the State serves as a melting-pot of different people and brings about a new national entity. If this does not happen each national group of multinational States must be granted the right to secede, and if this demand is not granted, the multinational States becomes an illegal State.

A multi-national partnership state has been destroyed by the Greek Cypriot partner. The problem is that Greek Cypriot partner has no right
to take over the island. Turkish Cypriot partner has managed to stand up and defend its rights from 1963 to 1983, hoping to re-establish, on a better basis, a new partnership. This has not happened because of the treatment of the Greek Cypriot partner as the fully-fledged legitimate Government of Cyprus. That this Government has no right to extend its rule beyond argued boundaries has to be accepted by all concerned, because Greek Cypriots, in the long history of Cyprus, never had the right to rule Cyprus as its sole ruler and certainly they never had the right to rule Turkish Cypriots. Hence two nation-states living side by side, under agreed terms with possibility of better united action under the EU when Turkey also becomes a member, is surely, more reasonable and advisable then putting, what Greek Cypriots see as a useless minority in an unwanted partnership, to interfere with in the administration of the majority? Can peace survive on the foundation of illegality.
For a problem to be resolved, one has to examine its historical roots and try to identify the real causes.

The problem between the Greek and Turkish communities dates back to the mid-1950s when the Greek Cypriots took up arms against the colonial British rule. The Greek Cypriots demanded the right to self-determination and ultimately Enosis (union) with Greece. Faced with the animosity of the Greek Cypriots, the British brought into play the notorious ‘divide and rule’ policy. They used Turkish Cypriots to set up anti-riot police squads which were subsequently used to disperse riots by Greek Cypriots. This inevitably led to a hostile relationship between the two communities. The Enosis movement of the Greek Cypriots was counteracted by a nationalist movement, TMT, of the Turkish Cypriots which advocated for the partition of the island.

In 1960, Cyprus rid itself of the colonial rule and became an independent country. Its independence and constitutional order were guaranteed by three countries: Britain, Greece and Turkey. In 1963, following President Makarios’ attempt to change the constitution by submitting the notorious 13-points to the guarantor countries, violence erupted between the two communities. The infamous Green Line was set-up by the British, dividing the capital Nicosia into two regions. This in fact was the first unofficial attempt by the British to partition the island. Following these events the Turkish Cypriots, who held the post of the Vice-President as well as ministerial posts in the government and seats in the House of Representatives, withdrew from the government and the legislature. The demographic, social and political rift between the two communities was a fact. From that point onwards, the Turkish Cypriots followed an isolationist policy, creating their own

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enclaves. Contact between Greek and Turkish Cypriots was thus limited.

The crucial question at this point is: How did the two communities, which had co-existed on the island for so long, grew apart and became enemies? There is no doubt of the key role played by the British.

However, the period in question, from 1955 to 1963 was marked by the emergence of nationalist extremists amongst both communities who committed violent crimes against members of the other community. These crimes scarred the two communities and created feelings of fear and insecurity. It was becoming apparent that the Greeks and Turks on the island could no longer live together as before. The nationalist extremists had achieved their goal which was to lead the two communities to a de facto partition.

The period of 1964-1967 was equally turbulent. Although intercommunal talks were taking place under the auspices of the UN, both the Greeks and Turks on the island were making military preparations to defend themselves against the other community. In 1967, the democratically-elected government of Greece was overthrown by a group of nationalist extremists and a military junta formed a government. From 1967-1974, President Makarios and his government were more pre-occupied with surviving their undermining by the Greek junta. The intercommunal talks between the two communities on the island were making relative progress. In 1974, the Greek Cypriot nationalist extremists led by the Greek junta overthrew President Makarios. Turkey, in its capacity as guarantor of the constitution of Cyprus invaded. Since then it illegally occupies 40% of the island’s territory.

In 2004, following intensive talks the UN presented the two communities with a proposed solution, the so-called Anan Plan. It was not an agreed solution since it was the outcome of arbitration and strenuous timetables. Simultaneous referenda held in April 2004 resulted in a rejection of the proposed solution by the Greek community. The Turkish community voted in favour of the solution as it feared that it would be excluded from Cyprus’ upcoming accession to the EU in May of the same year.

Today, thirty five years after the war of 1974, the leaders of the two communities, Dimitris Christofias and Mehmet Ali Talat, are making honest efforts through intensive negotiations to reach a lasting solution of the Cyprus problem. They are committed to reaching a mutually-agreed solution which will be decided upon by both communities in simultaneous referenda. Once more national extremists on both sides of the island are undermining these efforts.

If peace in Cyprus is going to have a fair chance the two communities must isolate these extreme elements. They should be bold to admit their mistakes, forgive each other for crimes committed in the past and look forward into the future.
New Set of Negotiations in the Cyprus Problem: Federation for a Stable Democracy*

by Asst. Prof. Dr. Tufan Erhürman**

Introduction

The official talks starting from 2008 which aimed at a comprehensive settlement between Dimitris Christofias and Mehmet Ali Talat, have been promising a new era to the “Cyprus Problem” which has been continuing since 1963. Different from the preceding leaders who were commissioned at the negotiations, Christofias and Talat had defended a formula of a “federation” as the most convenient solution to this problem all through their political careers. This preference separates them from the preceding leaders: With the preference of a federation, Christofias is separated from Greek Cypriot leaders whose first choice is a “unitary state” and Talat is separated from Turkish Cypriot leaders who prefer “two separated states” or at least a “confederation”¹. Even if the leaders’ tone was toughened because of the theses developed by the preceding leaders in years during the negotiation process, both of them defend the same form of state as the solution to the problem. Defending the same form by both leaders created a belief in both communities and international society that these leaders would be the only ones to find a solution or the solution could never be attained.

* This article was originally written in Turkish and translated by Nursel Atar, Esq and Ebru Metin (a trainee lawyer at Ankara Bar Association).

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¹ For the theses which are defended by Turkish and Greek Cypriots from 1975 to 2000s and “confederation” criticisms made by Greek Cypriots and “unitary state” criticisms made by Turkish Cypriots, See Tufan ERHÜRMAN, 100 Soruda Kıbrıs’ta Federasyon, Lefkoşa, İşlık Kitabevi Yayınları, 2009, pp. 24-32.
In this article, I will analyze how the leaders formed a framework for comprehensive negotiations continuing so far, what type of a federation was reflected on the negotiation table and which preferences made by leaders were the most suitable to the facts and realities of Cyprus.

1. The General Framework agreed upon by Talat and Christofias

Both leaders were involved in important talks on March 21\(^2\), May 23\(^3\), July 1\(^4\) and July 25\(^5\) in 2008. At the end of these talks, they formed a general framework for comprehensive negotiations to begin. Leaders reconciled the preceding leaders’ stance and agreed on the form of the united Cyprus state to be a “federation” before everything else and they set the following main parameters for this form:

a) Principle of bi-zonality.

b) Principle of bi-communality.

c) Principle of political equality.

d) Single international identity.

e) Two constituent states of equal status named the Turkish Cypriot Constituent State and the Greek Cypriot Constituent State.

f) Single sovereignty and citizenship.

g) Settlement issues to be reconciled upon by two leaders shall be presented separately and simultaneously to both communities to be voted in two referendums.

Actually the main parameters above are composed of the principles which were created by the Turkish Cypriot Leadership, Greek Cypriot Leadership and United Nations as part of the attempts started with the 1977 Denktaş – Makarios Summit Agreement, continued with the 1979 Denktaş – Kiprianou Summit Agreement, the 1986 de Cuellar Draft Framework Agreement on Cyprus, the 1992 Ghali Set of Ideas and the 2002 Annan Plan to find a lasting solution to the Cyprus problem. However, even though most of the parameters were set by the preceding leaders of both communities, both Talat and Christofias have been severely criticized about these parameters by some political groups in their own societies. The criticisms aimed at Talat within the Turkish Cypriot community are about the approval of the principles of a “single international identity, single sovereignty and single citizenship”. However, it is a well known fact that in a federation, a

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constituent state does not have a different international identity from that of the federation in terms of international law.⁶ Also obtaining single sovereignty and single citizenship in the international arena are natural results of being a federation. In spite of this, it is not difficult to understand the nature of the criticisms made. Even if the discussions were always made within the federation thesis in the presence of the UN, there have been two commanding theses as “two-separate states” and “confederation” on the Turkish Cypriot side. “Single international identity”, “single sovereignty” and “single citizenship” principles are sine qua non principles for a federation but it cannot be said that these principles are in line with the “two-separate states” thesis or “confederation” thesis. The reasons for these criticisms, aimed at Talat, are probably because the critics do not actually accept directly a “federation” as a form of solution.

The most serious criticism about the general framework within Greek Cypriot community and aimed at Greek Cypriot leader Dimitris Christofias, was the approval of the two separate constituent states to be in the federation which will be established as in the form defined in the Annan Plan. Despite the widely known principle of federations being composed of more than one federated states, Christofias received severe criticisms by some political parties in the Greek Cypriot Administration of Southern Cyprus (GCASC). He made the following statements probably under the influence of these criticisms: Firstly, he stated that a “bi-zonal and bi-communal federation” is a “difficult and painful settlement that has been made truly as a progress by Archbishop Makarios in order to save the country from the occupation and reunite Cyprus”. By saying this, he mentioned of “federation” not as a preference but as a “difficult and painful settlement”⁷. Again at the shadows of the severe criticisms, Christofias preferred to use the terminology of “two autonomous regions” instead of “two constituent states”⁸ in his speech made in the 64th Assembly of the UN General Assembly on September 24, 2009.

Despite different titles for the constituent states in a “federation” such as a “state”, “canton”, “country” “region”⁹ etc., there is no doubt of the facts that all “constituent states” have their own constitutions, legislative, executive and judicial organs and powers defined under the separation of powers framework in the constitution of the federation and the fact that federal government does not have any authority or power over the constituent states. For this reason, the criticisms aimed at Christofias were not directed against the concept of the “two con-

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⁹ For different terminology used in different countries referring to states in a federation, See GÖZLER, a.g.e., p. 152.
constituent states” but were directed at the preference of “federation” thesis. In the presence of the UN, discussions were always made within the “federation” thesis, despite the fact that the commanding thesis at the Greek Cypriot side has been the thesis of a “unitary state”. Thus, some political parties at the GCASC criticize Christofias for deviating from the hidden agenda of “seeming to be negotiating the federation principle, and actually insisting on the thesis of a unitary state”; with this deviation, it is believed by the critics, Christofias have started to discuss an option of a real “federation”.

2. Preferences of Talat and Christofias about of the Power Sharing Principles in the Constitution of a Federation

As it was mentioned above, despite the fact that Talat and Christofias have been defending the “federation” thesis all through their political careers, their ideas of the federation were as close as possible to the commanding theses of their own communities. Thus, even though Talat suggested a federation based on strong constituent states which is the closest model to the commanding thesis of the “two-separate states or confederation,” and even though Christofias suggested a federation with a strong federal government which is the closest model to the thesis of a “unitary state”, they had been under serious attacks and pressures of the defenders of the commanding theses which had been developing for thirty years of the history of negotiations between the leaders of both communities. The preferences about the form of the federation can be clearly seen especially at the power sharing principles to be enacted in the federal constitution. While the Greek Cypriots would like to grant the utmost powers to the federal government, Turkish Cypriots would like to develop a model in which the constituent states are more autonomous and have more regulatory powers than the federal government. There are also differences of opinions when it comes to the relations with the outside world (especially with the European Union). While the Greek Cypriot side would like constituent states to be able to establish relationships only through the federal government, the Turkish Cypriot side would like constituent states to be able to have direct relationships (including the signing of international agreements). Thus, while Greek Cypriots feared of a government with strong constituent states, Turkish Cypriots feared of a strong federal government and wanted limited federal government powers.

Compared to the former positions of the parties within these discussions, the most important amendment was made by Talat on behalf of the Turkish Cypriots. The President of Turkish Republic of Northern Cyprus made statements both at the negotiation table and to the public that the only way to agree on the empowerment of the federal government to a certain extent is to increase the representation of the Turkish
Cypriots at the federal government level. According to him, the rotating presidency model should be accepted and the rotation should be at frequent intervals. Also within this model, the number of the ministries to be owned by the states should be equal or at an acceptable level. Furthermore, in order to have the approval of Turkish Cypriots to a strong federal government model, Turkish Cypriots should be represented in federal administration in a numerical equality or at least with the closest numerical balance. However, Greek Cypriots, counting 80% of the country’s whole population, would prefer the “majoritarianism” which asserts that a majority of the population is entitled to a certain degree of primacy in society, and has the right to make decisions that affect the society. Thus Talat’s suggestion of “numerical equality” was perceived as a refusal of the federation model to the defenders of “majoritarianism” among Greek Cypriots.

3. The Best Federation Model Considering the Specific Facts of the Island: Strong or Limited Federal Government?

Today, there are different federation models in different countries and these models differ in terms of the powers of a federal or constituent state governments. I argue that the success of any model stands at the right level of harmony between the chosen model and the specific circumstances of each country or community. Thus, the specific facts and circumstances about the island should be taken into account when finding a solution to the “Cyprus problem”. So, some of the most important specific facts and circumstances of the Island are listed below;

a) Both communities in Cyprus have not been living under the same political umbrella since 1963.

b) There have been disputes, including armed conflicts, in the history of the Island between two communities.

c) Greek Cypriots’ population is roughly four times the Turkish Cypriot community’s population.

d) There is a serious imbalance between the two communities’ economies and Greek Cypriot economy is well advanced than the Turkish Cypriot one.

e) The Greek Cypriot community has been living under the political umbrella of the “Republic of Cyprus” which is a member of European Union on behalf of all Cyprus since 2004. On the other hand, Turkish Cypriot community did not attend the membership negotiations with EU and has not been implementing the *acquis communitaire*.

f) The social structure, where the united Cyprus will be established, will probably never be homogeneous because of historical rea-
sons\textsuperscript{10} but it will be more likely to be a plural society\textsuperscript{11} composed of different communal fragments.

While thinking and negotiating the form of the state structure in the Island, which will provide a stable, peaceful and democratic atmosphere for both communities, these facts should be taken into consideration. Bringing two communities, living separately for years and having serious conflicts between them, under a strong federal government will bring a dominant position and many advantages to the Greek Cypriots whose population is greater and economy is crushingly stronger than Turkish Cypriots. Furthermore, a strong central/federal government will make Turkish Cypriots to feel that they encounter the dilemma of making a preference between being assimilated or sidelined from the central system. In addition to this, because of the fragmented social structure, it is natural that the Turkish Cypriot community as the numerical minority will need a system which protects its autonomy against assimilation and any misuse. Both communities need to use the powers granted to their constituent states in the federal constitution without any interference from the federal government and a sound mechanism, to provide participation rights in the decision making process effectively within the federal government, is also needed. Otherwise, as the numerical minority, Turkish Cypriots will feel insecure and fear of being suppressed and assimilated by the numerical majority. Such a situation will destroy all the efforts spent until today to have two different communities living in a peaceful, stable and democratic island and will just complicate the Cyprus problem even more may be to an extent of no-solution stage.

\textbf{Conclusion}

Different than the preceding leaders, Talat and Christofias did not bring a confederation model or a “unitary state” under the name of “federation” to the negotiation table and this increases the possibility of them being successful at the end of the negotiations to solve the Cyprus problem. However, as it was mentioned before, even though defending “federation” as the form of government, both leaders, under the influence of the respective commanding theses insist on two different forms of “federation” models: Turkish Cypriots argue for a federation based on strong constituent states and Greek Cypriots argue for a federation based on a strong federal/central government.

Once again, to be able to reach a lasting and fair solution, the specif-
ic facts and circumstances of the island should be taken into consideration sincerely and the commanding theses of both communities should not be taken into consideration dogmatically. Establishing a centrally strong federal government will risk sustainability of the new state, stable democracy and peaceful life together because the Island does not consist of a homogeneous society because of historical, ethnical and political reasons. Thus, the ideal formula to be found shall provide “unity in variety” as the main principle of federalism. For a successful formula of federation, the following conditions should be achieved:

a) Constituent states should be empowered to make decisions effecting their own community and zone,

b) The constituent states must be strong and must have the right to use the residual powers (i.e. the powers not vested in the federal government by the constitution) and sovereignly,

c) The constituent state with a weaker economy should be protected against the suppression of the constituent state with a stronger economy (especially during long transitional periods),

d) All necessary measures should be taken to provide effective participation to both communities in the decision-making process at the federal level, and

e) Turkish Cypriots should be given the opportunity of being a subject of the international arena after long years of isolation.

A federation model dominating one community over another should not be the goal of these negotiations and certainly is not a solution to the Cyprus problem. The goal should be to create a fair and balanced system in which both communities will be able to live together peacefully in the Island under a long lasting stable democracy.
Property Wars in Cyprus:  
The Turkish Position according to International Law

by Murat Metin Hakki*

Introduction

"The Cyprus dispute" is a phrase that has been widely used in international affairs since the 1950s. In the beginning it was identified as a conflict between the people of Cyprus, an island in the eastern Mediterranean Sea, and Great Britain – the colonial ruler. At the core appeared to be a demand for self determination by Greeks that constituted the majority of the population. They wanted to exercise this right through Enosis (union) with the Hellenic motherland. The Turkish Cypriot minority population bitterly resisted Enosis. Britain gradually shifted the "Cyprus Dispute" from a colonial dispute to an ethnic conflict between the Turkish and Greek inhabitants of the island although Britain had, in 1914, denounced the 1878 agreement between itself and Turkey over Cyprus by annexing the island.¹

Since the proclamation of a republic in 1960, the problem has involved Turkey, Greece, the United Kingdom (UK), the United States (US), the United Nations (UN) and recently the European Union (EU). For most of the time that has passed since the resumption of bi-communal troubles in 1963, the issue occupied the top priority in Turkey’s foreign policy agenda. It also had a huge impact on Turkish domestic

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policy in the 1960s and the 1970s. His failed attempt to intervene militarily in Cyprus in the summer of 1964 de-stabilized Ismet Inonu’s government in Turkey that was not able to survive beyond February 1965. After the 1974 military intervention (the “intervention”) when Turkey intervened in Cyprus to protect the Turkish Cypriot minority as a reaction to the overthrow of President Makarios by the junta in Athens, Turkey entered a period of international isolation. It took a coup d’état in 1980 to halt the economic and political turmoil that thereby ensued.

In the last 35 years that followed, the UN buffer zone which cuts across Cyprus has created a physical and social barrier between the Greek and Turkish Cypriot communities. It also separates the internationally-recognized administration in the South from the Northern part that is under Turkey’s military protection. The Turkish Cypriot community formally declared its independence in 1983 through the Turkish Republic of Northern Cyprus (TRNC), but this move was immediately condemned by UN Security Council Resolutions as null and void. Currently the Turkish Cypriot state is recognized only by Turkey.

It is estimated that 40% of the Greek population of Cyprus, as well as over half of the Turkish Cypriot population, was displaced following the intervention in the summer of 1974. The figures for internally-displaced Cypriots vary. The United Nations Peacekeeping force in Cyprus (UNFICYP) estimates 165,000 Greek Cypriots and 45,000 Turkish Cypriots are displaced. The United Nations High Commissioner for Refugees (UNHCR) registers slightly higher figures of 200,000 and 65,000 respectively, being partly based on official Cypriot statistics which register children of displaced families as refugees.2

Before the Turkish military intervention, more than 70% of the island’s infrastructure, industry and overall wealth was located in the areas that later came under Turkish control. The year 1974 was a political and financial disaster for the Greek Cypriots. However, for the other major ethnic group the reverse was true. On August 2, 1975, in Vienna, the two parties reached the Voluntary Exchange of Population Agreement, implemented under UN auspices. In accordance with this arrangement, Turkish Cypriots remaining in the South moved to the North and Greek Cypriots remaining in the North moved to the South, with the exception of a few hundred who preferred to reside in the North. After that, the separation of the two communities via the UN-patrolled Green Line prohibited the return of all internally-displaced people.

Between 19553 and 1974, the main actors in the “Cyprus Dispute”

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3 1 April 1955 is the date when the first wave of enduring violence erupted in Cyprus as E.O.K.A. (National Organization of Cypriot Fighters) began its terror spree against the British authorities.
resorted to weapons in order to pursue interests or to defend their rights. Way into the second half of the 1990s, the international community feared that a war could resume between the two communities that would ultimately engulf both sides of the Aegean, i.e. Greece and Turkey. However, from the 1990s onwards, the ‘battle of weapons’ has been eclipsed by a ‘battle of books.’ Losing faith in military means to force Turkey’s troops out of Cyprus, the Greek side began placing more emphasis on international law in order to emphasize to Turkey’s elite the economic and political costs of maintaining the status quo. As will be demonstrated below, the property issue may turn out to be the Achilles heel for the Turkish side.

Loizidou v. Turkey was a landmark legal case regarding the rights of Mrs. Titina Loizidou in wishing to return to her former home in Kyrenia. The Court (ECHR) ruled that she, and persons like her, have the right to return to their former properties and that, despite all the laws passed in the TRNC, they continue to retain title to their former lands. The ECHR ruled that Turkey was responsible for the violation of Mrs. Loizidou's human rights, that she should be allowed to return to her home and that Turkey should pay substantial damages to her, inter alia, for the loss of enjoyment of her home. After several years of protests, Turkey agreed to pay more than one million US dollars to Mrs. Loizidou, just for the ‘loss of use’ of her house.

The case has served as a precedent for dozens of cases that have been concluded in a similar fashion. That the Turkish Cypriots were in general not as economically aggrieved as the Greeks after 1974 may explain the reason why most of the applications emanating from Cyprus have been directed against Turkey. Starting from 2004, the Greek side opened another front at the European Court of Justice (ECJ) through the case Meletis Apostolides v. David Charles Orams and Linda Elizabeth Orams.

Compensating thousands of Greek Cypriot refugees may ultimately make Turkey foot a bill running up to tens of billions of US dollars. Uncertainty as to the ownership of claimed Greek Cypriot-owned land in North Cyprus has had a negative impact on the Turkish Cypriot economy and may ultimately cripple it. ‘Property’ and the ‘right to return’ appear to be one of the, if not the most, intractable issues during the peace talks currently being held by Mehmet Ali Talat and Demetris Christofias, the leaders of the two communities. It can perhaps rival only the issue of military guarantees. Despite their earlier successes in

4 (Application no. 15318/89), main judgment delivered on 18 December 1996.
6 See, for example Demades v Turkey (Application no. 16219/90).
the ‘battle of weapons,’ the ‘battle of books’ is being lost by the Turkish side. Will this trend continue? Will any such continuation eventually undermine Turkey’s resolve over Cyprus and make a compromise easier like the Greek side is hoping?

The aim of this article is to shed more light on the issues inherent in these questions. In this respect, regard will be given to the developments taking place at the ECHR and the ECJ in the last five years.

**Developments at the ECHR**

In the years following the famous *Loizidou* ruling, more than 1,000 applications were filed against Turkey in Strasbourg. In order to control this flood of litigation, the TRNC authorities passed Law No. 49/2003 and set up a property compensation commission. It was hoped that following this development, the ECHR would require the pending cases to be channeled to this body in the name of “exhausting local remedies” first. Still, the Court initially refused to give its blessings to this commission while finding the *Xenides-Arestis v. Turkey* application admissible.8 In the text of the relevant judgment, the following points could be highlighted:9

i) The rejection of the Annan Plan by the Greek Cypriot community has not altered the legal situation affecting property rights in land on the island;

ii) North Cyprus is still under the effective (military) control of Turkey and the latter continues to remain legally accountable for the human rights violations occurring therein;

iii) Most members of the commission are inhabiting property still legally owned by Greek Cypriots;

iv) The terms of compensation do not allow for the possibility of restitution for the property withheld. Although compensation is foreseen, this cannot be considered to be a complete system of redress regulating the basic aspect of the inferences complained of; and

v) The law that set up the commission has failed to address how it may provide effective remedies for potential violations of Article 8 and 14 of the European Convention of Human Rights that concern the rights to private life and freedom from discrimination.

Having said this, I would like to elaborate further on the last point and explain the international law norms that the Turkish Cypriot authorities have failed to comply with while addressing issues of the properties that had to be abandoned by Greek Cypriots in 1974-75.

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9 See pp. 18 - 45.
Property Wars in Cyprus: The Turkish Position

Expropriation criteria based on ethnicity is disallowed. Compensation may need to be accompanied by restitution

Even though an entity defining itself as a ‘state’ has not received international recognition, some of its domestic acts may be given legal effect. Traces of such an approach to international law could be found in a judgment delivered by Lord Wilberforce of the UK House of Lords. In Carl Zeiss Stiftung v. Rayner & Keeler (No.2). He famously stated:

“In the United States some glimmerings can be found of the idea that non-recognition cannot be pressed to its ultimate logical limit, and that where private rights, or acts of everyday occurrence, or perfunctory acts of administration are concerned (the scope of these exceptions has never been precisely defined) the courts may, in the interests of justice and common sense, where no consideration of public policy to the contrary has to prevail, give recognition to actual facts or realities found to exist in the territory in question”.

The International Court of Justice (ICJ) appeared to approve of this stance in its Advisory Opinion on Namibia.

Article 159(1) (b) of the TRNC Constitution that came into force in 1985 lays down the provision that all properties that were deemed ‘abandoned’ on 13 February 1975 (the date when the Turkish Federated State of Cyprus - forerunner of the TRNC - was founded) belong to the State. Nearly all of the properties in Northern Cyprus that fell into this category on that date had Greek Cypriot title. Seen in that light, Article 159 (1) (b) can be considered to be aimed at expropriation based solely on ethnicity criterion.

The relevant sections of the 1948 UN Universal Declaration of Human Rights, the 1966 Convention on Civil and Political Rights, and the 1965 Convention on Racial Discrimination outlaw all forms of discrimination based on ethnicity and racial background. This view was reiterated by the ICJ in the Barcelona Traction Case. The US courts have expressed the view that this norm can now be considered jus cogens from which no derogation is permissible. Having said this, the foregoing provision of the TRNC Constitution appears to therefore violate international law and could not be considered valid under any circumstances. Yet, can this be taken to mean that all of the Greek Cypriot refugees should have a right to return? Is the ECHR effectively planting dynamite in the foundations of a bi-zonal solution to the Cyprus Dispute?

13 Articles 1, 2 and 7.
14 Articles 2 and 26.
16 Siderman de Blake v Republic of Argentina, 965 F2d. 699 (9th Cir.1992).
How different is the treatment by the Greek Cypriot authorities of the properties in Southern Cyprus left behind by up to 65,000 Turkish Cypriots? An institution called The Guardian of Turkish Cypriot properties was set up by the Greek authorities, under Law 139/1991 as the caretaker of properties belonging to Turkish Cypriot refugees due to the extant circumstances i.e. the continuing division of the island. According to the law, the Guardian takes over the property until the Cyprus Dispute is resolved; then ownership is handed back to its legal owners in its original state. However, Turkish Cypriot refugees can reclaim possession and use of their real property in the south part of the island only if they have resided in areas controlled by the Greek Cypriot Administration for a continuous period of six months.

This arrangement is a far better attempt to comply with international law. However, there are many instances where Turkish Cypriot land was utilized for public purposes without going through the formal acquisition procedure enshrined in Law 15/1962. So far, very few Turkish Cypriots have decided to take action on these irregularities. This can be attributable to: (i) a lack of state guidance for the aggrieved individuals; (ii) a lack of expertise amongst the Turkish lawyers on such technical matters; (iii) general mistrust of Greek Cypriot lawyers to vigorously defend Turkish Cypriot interests in South Cyprus courts or elsewhere; and (iv) mistrust of the courts of the South staffed by Greek Cypriots.

In the case of Cyprus, the right of return can be founded on: (i) UN resolutions concerning the island, (ii) international human rights law and (iii) past examples.

The 1907 Hague Convention obliged its signatories to endeavor to preserve the legal and social status quo in territories that may come under an occupying power’s control following a military conflict. Throughout the two world wars, not many states purported to adhere to this rule. In recent history, property and population exchange following a war was first implemented in the 1919 Treaty of Neuilly signed between Bulgaria and Greece. As a result, 46,000 Greeks and 96,000 Bulgarians had to abandon their properties. A similar solution was adopted by the 1923 Lausanne Treaty, to which Turkey and Greece are signatories. In both cases, the governments confiscated the real properties of the original owners and used them for the settlement of arriving refugees.

By the end of the 1940s, this formula had become so popular that it was also adopted during the partition process of India and the re-location of Germans expelled from several countries in Eastern Europe.

the 15 million Germans who had to leave their homes, 2 million perished in the process. In the second half of the 20th century, a ‘Neuliyi-type’ solution for mass dislocations gradually fell into disfavor.

Annexes 4 and 7 of the 1995 Dayton Accords for Bosnia gave almost all refugees the right of return. UN Security Council Resolutions No. 361 and 365 (on Cyprus) 385 (on Namibia), 971 (on Abkhazia), 999 (on Tadjikistan) and 1009 (on Croatia) have been passed, based on this philosophy. UN General Assembly Resolutions No. 3212 (XXIX) and 3395 (XXX) also repeated the view that all Cypriot refugees should be allowed to return to their homes. On the other hand, several Security Council resolutions have given the green light to a solution to the Cyprus Conflict modeled on bi-zonality.

Despite the authorities just cited, the leading scholars are still divided on whether international law is clear on the precise scope of a potential right to return. Some professors like Eyal Benvenisti argue that international law is not yet ripe on this point. On the other hand, their views are contradicted by such academics as Eric Rosand. While hearing a case concerning Asians expelled by the Idi Amin regime in Uganda, the late Lord Denning went so far as to say that the issue of mass expulsions was not covered by international law. In a similar fashion, Jagersiold defended the view that dislocations on a large scale could only be addressed by a political solution. Rosalyn Higgins is of the view that a Bosnian-style solution is evolving into a norm of customary international law. Christian Tomuschat argues that such evolution has already taken place.

This uncertainty will no doubt give the Turkish side some room to maneuver in any peace talks or in international courts. Making use of the lack of global consensus on the extent of right to return, the Turkish side had to work to ensure that the ‘restitution’ requirement would be interpreted in the least rigid manner possible by the ECHR. Above all, one must also give consideration to the position of bona fide investors or Turkish Cypriot refugees. Finally, the European Convention on Human Rights is expected to be given a constructive and dynamic interpretation as laid down under the 1969 Vienna Convention on the Law of Treaties.

19 BENVENISTI and ZAMİR, Private Claims for Property Rights in the future Israeli-Palestinian Settlement, 89 AJIL 295.
21 R v Secretary of State for the Home Department, ex parte Thakrar [1974] 1 QB 694.
24 For a general brief on how customary international law norms evolve and become binding on states, note the following I.C.J. judgment: North Sea Continental Shelf: Federal Republic of Germany/Denmark, Federal Republic of Germany/Netherlands, I.C.J. Reports 1969, at p. 3.
Soon after the fall of the Berlin wall in 1989 and the German unification that followed thereafter, the issue of German properties in various Eastern European countries was once again raised in different forums. While Vaclav Havel, the last president of the then Czechoslovakia, admitted that the nature of German expulsion in the 1940s was both unethical and immoral, the so-called Benes Orders that triggered the fait-accompli confiscation of German properties were not withdrawn. The 1990 Re-Unification Treaty referred to above stated that the expropriations undertaken by the Soviet occupation forces in East Germany between 1945-49 would be recognized while confirming that the primary remedy to be afforded to the aggrieved individuals would be compensation. It was stated that restitution would be refused on one of these grounds: (i) a return would be impossible or impractical or unjust; (ii) the land concerned is a source of major revenue for the society, or (iii) the property is in the hands of a bona fide purchaser who, at the time of purchase, was not aware of a possible violation of East German laws or administrative principles.

In order to accommodate international law and ease the pressure from Strasbourg, the Turkish Cypriot authorities, on 22 December 2005, enacted a revised "Law for the Compensation, Exchange and Restitution of Immovable (Real) Properties" (Law No. 67/2005). The authorities subsequently enacted a By-Law, which entered into force on 20 March 2006. A commission (the "Immovable Property Commission") was set up under Law No. 67/2005 to examine applications under that law and decide on whether restitution, exchange of properties or payment of compensation is appropriate. It is composed of five to seven members, two of whom are foreign members, Hans-Christian Krüger and Daniel Tarschys. There is also the remaining ability for subsequent appeal to the TRNC High Administrative Court and thereafter to the ECHR in Strasbourg.

In the last four years, the property regime in North Cyprus has been revised on different parameters and the right to a restitution of property has been limited on more objective grounds than ethnic background. The more recent law survived a challenge at the Supreme Court of the TRNC that upheld its validity. At the time of writing, the Grand Chamber of the ECHR was deliberating on the effectiveness of the new mechanism for applications on which admissibility decisions are yet to be reached. Since the TRNC is not a recognized member of the Council of Europe, the upgraded Immovable Property Commission will still be evaluated as an ‘emanation of Turkey.’

Despite this, if the Court finally agrees with the Turkish proposi-
tion that the Greek Cypriot applicants should first resort to the potential remedies available in North Cyprus this will be a huge sigh of relief for the Erdoğan government. This is because a verdict along these lines would delay the process of more than 1,400 Greek Cypriot claims for up to 5 or 7 years, giving Turkey more breathing space to reach a political solution to end court litigation for good. Regardless of the ruling the Grand Chamber is expected to deliver by early 2010, the ECHR will continue to hear around two dozen applications which it has already declared admissible. Failure to honor Strasbourg orders to pay compensation may create some unforeseen consequences for Turkey.

**Non-payment of judgments to Greek Cypriots may result in a Turkish Airlines plane being seized after landing at Charles de Gaulle Airport in Paris**

It may be a fair generalization to make that the Strasbourg judgments are binding upon the respondent states ‘in honor only.’ Normally, compliance with rulings is monitored only by the Committee of Ministers at the Council of Europe and the sanction of getting expelled from the Council has been considered to be an extreme outcome that has so far not materialized. However, a new formula which certain leading foreign lawyers are working on may make possible the execution of ECHR awards against commercial assets of the Turkish states situated in practically any other part of the world.

The case of *The Schooner Exchange v McFadden* confirmed that the assets of a foreign state are immune against enforcement of a judgment or award rendered against the relevant state. There, the judgment creditor sought to seize a ship belonging to France after the debtor state defaulted in the re-payment of loans made to it. Yet, international law has moved on from this rigid principle since the 1920s. Now the immunity of states has been considerably undermined, especially where ‘commercial investments’ are in issue. In the U.S. and the UK, this adaptation is visible in the US Foreign Sovereign Immunities Act of 1976 and State Immunity Act 1978, respectively.

It is a well-established principle of corporate law that a company maintains a legal personality distinct from its shareholders. Accordingly, the Republic of Turkey and such internationally known enterprises as Turkish Airlines ought to be regarded as separate entities and the judgments rendered against Turkey should not have an impact on the assets of such corporations. Nevertheless, the so-called ‘corporate veil’ can be lifted in appropriate circumstances. Similarly, in early

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26 Rumlardan Türkiye’ye haciz tehdidi, Milliyet Newspaper, 12 October 2009.
27 11 U.S. 7Cranch 116 (1812).
1990s the ECJ held that state-owned companies like the British Gas could be evaluated as an ‘emanation of the state.’

The inventors of the aforementioned formula want to frame ECHR decisions as an ‘award’ in the sense envisaged by the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) so that they can be enforced in the state signatories to the New York Convention. It is the author’s submission that ECHR judgments cannot be put into the same categories as arbitral awards. Hence, the idea in question has no applicability. Still, the field of law does not recognize many limitations to the imagination, or more truly, the interpretation of legal instruments.

A new battlefront in Luxembourg

In 1974, Meletis Apostolides, a Greek Cypriot architect, and his family were displaced from their property in Lapithos as a result of the Turkish intervention under the 1960 Treaty of Guarantee and subsequent population exchange arrangements.

In 2002, David Charles Orams and Linda Elizabeth Orams, from Hove, Sussex, England, invested £160,000 of their retirement fund to acquire the land from a third party (a Turkish Cypriot) and to construct a villa on the premises. The third party claimed to have acquired the property from the TRNC authorities in exchange for the land he left in the South. The Orams used the property in Cyprus for vacations and kept a separate property in the UK. A year later, the authorities of Northern Cyprus eased crossing restrictions along the ceasefire line giving displaced Greek Cypriots the opportunity to visit their old properties. Mr. Apostolides visited his property and confirmed the construction of the house occupied by the Orams.

He thereafter promptly instituted proceedings in the Nicosia District Court in South Cyprus, demanding the immediate vacation of his property by the English couple. His case centered on the argument that although the government of Cyprus had lost effective control over the northern part of the island following the intervention, its laws still applied and he maintained title to the relevant land in west Kyrenia, i.e. Lapithos. This was even if the laws were not practically enforceable.

In November 2004 the Court claimed to have jurisdiction over land located in Kyrenia (North Cyprus) ordered the Orams to:

i) demolish the villa, swimming pool and fencing which they had erected on Mr Apostolides’ land;

ii) deliver to him free possession of the land;

iii) pay the Plaintiff various sums by way of special damages and monthly rental charges (including interest) until the judgment was
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iii) refrain from continuing with the unlawful intervention on the land, whether personally or through their agents, and

iv) pay various sums in respect of the costs and expenses of the proceedings (with interest on those sums).

The Orams appealed this decision, which was heard at the Greek Cypriot Supreme Court. The appeal was dismissed.

Due to the island's division, the judgment reached by the Cypriot court was not enforceable in Cyprus and Mr. Apostolides resorted to the EU *acquis communautaire* to have it registered at the High Court of England and applied against the Orams' assets in the UK. The procedure for the enforcement of judgments between Member States of the European Union is provided by Regulation No 44/2001. The combined effect of Articles 34, 35 and 36 of the Regulation is that enforcement of a judgment can be refused only if it can be shown that this would run counter to the ‘public policy’ of the Member State where recognition and enforcement is sought.

Since Cyprus is a member of the Commonwealth, UK Foreign Judgments (Enforcement) Act of 1933 could also have been relied on as the legal basis for such an attempt, but reliance was placed on an instrument that had EU-wide applicability.

The Orams were represented in the English courts by Cherie Blair, an action criticized by the then Greek Cypriot president Tassos Papadopoulos. He argued that due to its political nature, the wife of an acting prime minister (Tony Blair) should not be involved in such a case. In September 2006, the High Court of Justice ruled in favor of the English couple holding that since the application of *acquis communautaire* was suspended in North Cyprus, EU laws could not be relied on for an issue concerning land in the TRNC. Mr. Apostolides appealed the decision at the Court of Appeals which in turn referred the case to the ECJ in Luxembourg for a preliminary ruling under Article 234 of the EC Treaty.

The case was heard by the Grand Chamber as Case No. C*420/07*. A panel of judges ruled on April 28, 2009 that British courts must enforce the judicial decisions of South Cyprus. This was even if a judgment concerned territories where EU laws had been suspended in conformity with Article 1(1), Protocol No. 10 of the 2003 Accession Treaty. At the time of writing, the English Court of Appeals is holding hearings to decide how to act following the ECJ ruling. The

31 "Landmark court ruling means Britons could be forced to return homes in Northern Cyprus", The Daily Telegraph, 29 April 2009.
matter, too, is likely to be settled in early 2010. The Turkish Cypriot leadership is hoping that the English court may exercise the residuary discretion mentioned in Article 34 of Reg. (E.C.) 44/2001 and refuse enforcement on public policy grounds. Nevertheless, such an outcome is unlikely because ECJ decisions are superior to those of domestic courts\textsuperscript{32} and in this case it is a fact that the Grand Chamber has adopted a very rigid interpretation of the concept ‘public policy,’ rendering its chances of relevance to the facts of the Orams case being very slim.

**Implications**

The case has been described as a landmark test case as it sets a precedent for other Greek refugees to file similar actions in the courts. If upheld, the assets of people possessing Greek Cypriot properties in the North could be targeted anywhere in the EU in this manner. The importance of the case is illustrated by the fact that the Orams defense was funded by Turkish property developers and the Turkish government while Mr. Apostolides was supported by Greek-Cypriot interests\textsuperscript{33}.

Both the British High Commission in Cyprus and the Foreign and Commonwealth Office have issued warnings regarding the purchase of property in Northern Cyprus.\textsuperscript{34} Around 70\% of the land in the North had title held by Greek Cypriots before 1974.\textsuperscript{35} The Orams ruling may have the effect of terrorizing foreign investors and Turkish Cypriots alike investing in property where there may be a claim of Greek Cypriot ownership. The problem may become even more acute if the Greek Cypriot administration’s threats come to fruition about issuing ‘European Arrest Warrants’ against those foreigners and Cypriots engaging in what they call unauthorized dealings with land in the North that is subject to those claims.\textsuperscript{36}

**Final remarks**

In the last 35 years that has passed since the intervention, reaching a peaceful and comprehensive settlement to the “Cyprus Dispute” has proven to be impossible. Presently, there is a ‘cease-fire’ within the territory of Republic of Cyprus that continues to maintain a legal personality and recognition in international relations. International law summarizes the position of the island using these terms.

During the time that has passed, the Turkish side has achieved certain diplomatic victories on the international plane. In 1975, the population exchange agreement referred to above was signed. Between

\textsuperscript{32} Costa v ENEL: Case 6/64 1964 ECR 585.
\textsuperscript{33} "Couple win right to keep Cyprus holiday home". The Daily Telegraph, 7 September 2006.
\textsuperscript{35} Turkish Cypriot press, 29-30 April 2009.
\textsuperscript{36} See the EU Framework decision 2002/584/JHA adopted on 13 June 2002.
1977 and 1979, this was followed with two ‘High Level Agreements’ that envisaged a bi-zonal and federal solution to the Cyprus Dispute. Each of these three documents were painful concessions made by Glafkos Clerides, Archbishop Makarios III and Spiros Kyprianou that rocked the domestic politics of South Cyprus.

Nevertheless, none of these instruments would be sufficient to overturn several UN resolutions and European judgments. In essence, this is because of the fact that they do not have the status of a ‘treaty’ signed between states and deposited with the UN Secretariat in conformity with Article 102 of the UN Charter. They can at most be considered ‘memoranda of understanding’ signed between two communal leaders which do not have conclusive binding effect. Seen through this angle, their status is analogous to phrases written on ice. The wording of certain UN Security Council resolutions ‘favoring’ the idea of a bi-zonal settlement in the island cannot be used to render impotent certain individual rights concerning return. The relevant resolutions are not crowned by a political solution having legal implications.

On the other hand, a long-term continuation of the status quo may result in snowballing Arestis, Loizidou and Orams-type litigation. This can have the effect of further diluting or neutralizing the limited diplomatic gains made by the Turkish side in recent decades. A permanent settlement founded on the principle of bi-zonality and ‘severely limiting’ the right of return would retrospectively ratify, to a great extent, certain administrative irregularities concerning the Greek Cypriot-claimed land in North Cyprus. Such an arrangement would be in harmony with Articles 25 and 103 of the UN Charter and not run counter to the jus cogens norms of international law. Thus, no issues under Article 53 of the Vienna Convention on the Law of Treaties, 1969 would likely arise.

The successful conclusion of Cyprus’ accession talks that led to full EU membership on 1 May 2004 has had a negative impact on the balance of power in the region as the Greek side can now legitimately count on the political support of a 27-member EU in the further stages of peace talks. The progress of Turkey’s own accession talks will inevitably trigger a gradual de facto Turkish recognition of a government dominated exclusively by Greeks as the sole representative of Cyprus as a whole. This is a concern shared by most Turkish Cypriots. However, major European powers, like France and Germany, that are sceptical of the idea of a full Turkish integration into the Union may increasingly rely on the Cyprus issue to slow down the process.

Future developments are likely to be intertwined with many un-

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predictable political calculations. The degree of intra-European integration and the strategic importance of Turkey in reducing European dependence on Russian energy resources in an era of a resurgent and increasingly authoritarian Putin-Medvedev regime will influence the way developments will be shaped. There are still too many unknowns at this stage. What the future will bring remains to be seen!
Analyzing Cyprus Accurately:
Legal Aspects of a Political Matter*

by Asst. Prof. Dr. Mehmet Hasgüler** & Dr. F. Murat Özkaleli***

The “Cyprus Problem” is a political matter but the legal aspects of this matter are the most important side of it and can even be stated as a “front.” The Greek side makes their own political moves by using the legal arena to try to legitimize their actions. The politicization process of law is one of the strongest reasons that causes the Cyprus problem to become inextricable. The following are the milestones that has been encountered as a result of the crossing of a political conflict and law. Starting with the Founding Treaty of the Republic of Cyprus of 1960, continuing resolutions of UN Security Council – first Resolution 186 dated March 4, 1964 which led the UN Peace Force to come to Cyprus and second Resolutions 541 and 550 which prevented the recognition of TRNC, the Resolution of the Court of Justice of the European Communities dated 1994 which brought limitations to property purchases and lastly the Orams Case, which subverted all parameters designated at the negotiations of the settlement process of the “Cyprus Problem” that were brought within the 2008 resolution of the Court of Justice of the European Communities. The Court’ decisions which changed the whole countenance of the “Cyprus Problem” should be

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added to this list certainly. It can be particularly stated that as a result of the Louzidu and Arestis cases, the Turkish side abandoned the Cyprus (partition) policy and came to support the Annan Plan.

It is clear that the political aspect of the “Cyprus Problem” is also demonstrated by the losses or gains at the legal front of the problem; therefore each position of this “front” is worth careful examination.³

**Founding Treaty of 1960: Guarantors**

The first position of the legal front of the “Cyprus Problem” is the founding treaties and the Guarantorship Agreement since they opened the way for an independent state to be on the Island.⁴ The “Republic of Cyprus” was established as a bi-communal state composed of Turkish and Greek peoples and placed under the guarantorship, as kind of a wardship, of the Republic of Turkey, United Kingdom and Greece.⁵ Because of a right granted in this guarantorship agreement, the Republic of Turkey was able to intervene after the coup was staged in Cyprus. On the other hand, the Greek side always questioned the Turkish intervention and launched an effort against the “military action and subsequent de facto partition” as an infringement of the 1960 Treaties at every international event which succeeded in a way. The guarantorship in the Founding Treaties should be considered to be an essential issue in terms of the legitimacy of the 1974 Peace Operation. Maybe if there had not been such a treaty, Turkey could still intervene with a military action in order to “prevent the genocide of its blood brothers” within the frame of a humanitarian intervention doctrine, for example. However, it is open to discussion whether such agreement would have been favored in the mid-1970s, the second Cold War period. So the Founding Treaties, and specifically the Guarantorship Agreement, are the primary and most essential points of the intersection of law and politics.

**Resolution 186: Installation of UN Peace-Keeping Force in Cyprus**

As is well-known, for the installation of a peace-keeping force in a state, the authorization of the state is obligatory. After the ethnic conflicts broke out in 1963, the authorization of “Cyprus” for the deployment was needed. However, an essential question emerged as “of whom is the “State of Cyprus” composed?” After Makarios, who provided the basis for the 1963 conflicts with the amendment of 13 articles of the constitution which removed Turkish Cypriots from Cypriot state

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⁵ For the limitations of Republic of Cyprus to sign agreements, become a party to international organizations and engage in warfare, see Murat SARICA, Erdoğan TEZIC ve Özer ESKİYURT, Kıbrıs Sorunu, İstanbul, Fakülteler Matbaası, 1975, pp. 36-37. Furthermore see, Seha MERAY, Uluslararası Hukuk ve Örgütler: El Kitabı, Gözden Geçirilmiş 2nd ed., Ankara Üniversitesi SBF Yayınları No: 430, Ankara, 1978, pp. 66-68.
bodies and caused Republic of Cyprus to become a Greek State. But Turks had already lost all their effectiveness in the governing powers of the state when this came up at the UN in 1964.

As a matter of fact, the Republic of Cyprus was composed of only Greeks after the “Bloody Noel.” So the authorization for the deployment of a peacekeeping force was given by the government of “Republic of Cyprus,” which was composed of Greeks representing the communities temporarily. So with the help of the UN, the representation of Cyprus was given to the Greek Cypriot community. At the end of this period, the Republic of Cyprus, which was established as a bi-communal federation with an international agreement under the wardship of three NATO member states, became a unitary Hellenistic nation-state by way of the UN Security Council. Many times the Republic of Turkey criticized the process whereby Cyprus essentially became the Hellenistic Republic of Cyprus because of Turkey failing to object to this resolution. Supposing that today Greeks were to have a relative political vantage, the origin of this can be stated as Resolution 186 (dated 4 March 1964) and the complementary Resolutions 541 and 550 of the UN Security Council, to provide a monopolized state where Greeks had the single-handed and absolute jurisdiction.

**Resolutions 541 and 550: Declaration of the TRNC as “Illegal”**

If Resolution 186 of UN Security Council is defined as the basis for the political glory of the Greeks, Resolutions 541 and 550 of the same UN body can be defined as the climax. On 15 November 1983, the Turkish Republic of Northern Cyprus (TRNC) was unilaterally declared by the Turkish Cypriots. Right after this, the UN Security Council gathered and passed Resolution 541 on 18 November 1983, which aimed at the non-recognition of the TRNC. On 11 May 1984, UN Security Council passed also Resolution 550 which strengthened the political approach for non-recognition of the TRNC by the UN. This is the violation of the right to self-determination (self-governance) for the Turkish Cypriots. If the events that occurred right after the declaration of the TRNC are deeply analyzed, the embodiment of the effect of the law-politics conflict on the essence of the UN Charter

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6 Mehmet HASGÜLER, *Kıbrıs’ta Enosis ve Taksim Politikalarının Sonu*, Yenilenmiş ve Genişletilmiş Beşinci Baskı, Alfa Yayınları, 2007, pp. 247-248. For an analysis of the amendment proposal of the Constitution’s 13 articles which caused the alienation of Turkish Cypriots from the Republic of Cyprus and institutions of the Republic, the coup staged and emerging developments based on this proposal, see p. 245 (f.n. 71). After the Makarios coup (after 1963), it could be stated that the Republic of Cyprus died in terms of “law” or that the “first Republic” ended. On the contrary, Seha MERAY emphasized that the general rule in international law as “governmental changes within the constitution whether lawful or not won’t affect the state’s legal personality.” So, despite the alienation of Turkish Cypriots, the legal personality of the Republic of Cyprus stands still under the scope of the principle of “continuance of legal personality and uniformity of the state, but the legitimacy of the structure after 1964 is open to discussion. See Seha MERAY, *Devletler Hukukuna Giriş*, Cilt I, Gözden Geçirilmiş İkinci Baskı, AÜ SBF Yayınları, Ankara, 1960, pp. 233-34.

7 For an assessment made during that period, see DERVIS, MANIZADE, “Gövenlik Konseyi Kararları ile Kıbrıs Meselesi Halledilebilebilir mi?”, Türk Silahlı Kuvvetleri Malüller Dergisi, No 48, March 1964, pp. 13-16.

8 For texts of Resolutions 541 and 550, see HASGÜLER, *supra*, pp. 398-399 (541), pp. 400-402 (550).
can be clearly seen.⁹ There are two principles that drew attention in the essence of UN Charter: the first principle is the right to self-determination (self-governance).¹⁰ This principle, in the UN Charter, allows every people having their own state and is a reflection of the nation-state idea that originated in the French Revolution. The other principle is to protect the independence and territorial integrity of member states.¹¹ As a center belief of international politics, this principle represents actually an attitude in favor of the maintenance of the status quo. In other words, the intention herein is the protection of states. However, these two principles are inevitably in conflict because every people do not has its own state. This situation is difficult especially for countries embodied by more than one ethnic group. It is clear that at some point people who desire self-determination will act against the political independence and/or territorial independence of the state they are living in. As a result, people or communities will be in conflict as elements of establishing the power of such a state.¹²

Cyprus was an old colony of the United Kingdom which declared independence in 1960. Herein the territorial integrity was not the central issue but it was the right to self-determination of the Cypriots. Because of the existence of two communities in desire of self-determination, the Republic of Cyprus was established with a social agreement between the Greek and Turk communities as undivided wholes but not between individuals. In other words, the composing element of the state was the communities, not the individual. Keeping this in mind, it can be said that the 1960 Agreement favored the Turkish Cypriots in terms of self-determination. On the other hand, territorial integrity became the subject for discussion after the establishment of the Republic of Cyprus. Besides this, Resolution 186 resulted in the Greeks representing the Republic of Cyprus because they had all the governing powers. As a result of this Resolution, the declaration of TRNC was interpreted as a separatist movement by the UN and a series of Security Council Resolutions were passed in order to prevent the recognition of TRNC as a separate and independent state in the international arena.

This discussion shows us the conflicts between de facto and de jure sovereignty as well as internal and external sovereignties.¹³

¹⁰ The principle of “To develop friendly relations based on the equality of rights of peoples and respect to self determination” is stated in the section of UN Charter where the aims of the Organization listed (Art. 1, par. 2).
¹¹ The principle of “All members shall prevent all illegitimate threat of use of force and use of force which are against other states territorial integrities and political independence that is in conflict with the purposes of UN” is stated in Art.2, Par. 4 in the UN Charter.
¹² For a liberal point of view, see Will KYMLICKA, Çoçukültürlü Yurtaçlık Azınlık Haklarının Liberal Teorisi, (Ayrıntı Yayınları), 1998.
If we define *de facto* sovereignty as the highest authority that has all legal means to establish control over an area of land at the extent of Weber approach,\(^\text{14}\) the TRNC is the *de facto* sovereign in Northern Cyprus.

In terms of the simplest expression, the legal police force is the Turkish Cypriot law enforcement department. On the contrary, Resolutions 541 and 550 left all the *de jure* sovereignty to the Republic of Cyprus under the control of the Greeks. As a result, even if the local control is in the hands of TRNC authorities, it is actually (legally) in the hands of the Greek-led Republic of Cyprus according to international law. This conflict can be explained with the concepts of internal and external sovereignties. If we accept sovereignty as the monopoly of actual control, the problem is to find a way to legalize this. Legalization of such a monopoly can be done in one of two different ways: first, people living on the affected land could establish their own state mechanism and set up their own monopoly by using the means of legal control. Mostly states are essentially established this way. However with the founding of the UN in 1945, the international dimension of legitimacy and sovereignty came up. The main legal action herein is “recognition.” Since 1945, a political authority still has been able to establish a legitimate state by using monopolized legal means but that is not sufficient. In order to complete the process of being a state, it is necessary to be recognized externally.\(^\text{15}\)

The TRNC is an exemplary state with its democratic structure in terms of internal sovereignty. However, the TRNC has not yet completed the process of being a state, because of the non-recognition in terms of external sovereignty. This is the result of Resolutions 541 and 550 of the UN Security Council. Because the UN has prevented the recognition of the TRNC, Turkish Cypriots are unable to act within their right to self-determination. The TRNC which merged at the end of a democratic process with the result that the right to self-determination, which is an essential principle granted by the UN, were unable to escape from the situation of being a legal state not recognized externally as being imposed by the UN Security Council, including its five permanent members, the USA, UK, Russia, France and China. So it can be stated that, as a political problem, Cyprus actually is an example of manipulation of politics by legal means.

**Resolutions of ECJ Judgements: Economic Embargo and Property**

There are two decisions of the European Court of Justice (ECJ) which can be pointed out as political victories for the Greek side in the


\(^{\text{15}}\) Actually resources refer to an interesting recognition doctrine before 1945. For an old but ageless discussion, see Cemil BILSEL, *Devletler Hukuku, Birinci Kitap*, İstanbul Üniversitesi Hukuk Fakültesi Yayınevi, 1941, pp. 57-73.
legal “front” of Cyprus problem. First, a decision from 1994 prevents commercial sales from the TRNC to the EU and the second decision came at the end of the Orams case. Instead of giving details of these decisions, it would be better to state the importance of these decisions and relations between law and politics in Cyprus. First of all, the most important point is the negotiation process that has been carried out by the Greeks with the EU on the behalf of the “Republic of Cyprus” and the full membership status they gained beginning on 1 May 2004. The Constitution of the Republic of Cyprus created a system that Cyprus could never be compelled by international organizations to sign agreements which Turkey and Greece are not parties to. From this point of view, it is clearly contrary to the Constitution of the Republic of Cyprus that Republic of Cyprus is a member of the EU although Turkey is not; this can be considered to be the consequence of UN Resolutions 186, 541, and 550. The second point is that the EU had legally linked the Cyprus problem with the ECJ decisions, which is actually a political problem. The ECJ is actually an EU institution and it is obvious that both the restriction brought to the sales of Northern Cypriot goods and the ECJ decisions, as decisions taken by an EU institution related to the property market in North Cyprus, would never contribute to the solution. The third point is that the decisions given by the ECJ are not judicial in character, but are political. This decision restricted the sales of goods from North Cyprus to EU members and consequently the sales of citrus fruits collapsed as a vital branch of the economy of North Cyprus. The Turkish side was very weak at the Cyprus negotiations because of an economic crisis at the time. Since 1994, the people of the TRNC have been seeing, or they have been made to see, EU membership as a salvation because of that economic recession. Without mentioning the details of the Orams case, it is important to explain the relationship between this case and the sovereignty discussion. This matter should not be considered in European Union countries as simply as a law suit filed by the previous Greek owner of the property (before 1974) against an English couple who own the house today within the TRNC and the implementation of a decision rendered at the end of the case by the Southern Cypriot Court. The essential issue is that the court rendered the judgment about proprietorship.

The Greeks, on behalf of the “Republic of Cyprus,” took up the prevailing objections to the sales of estates in the TRNC through this
case and tried to prevent the TRNC from exercising the right to self-governance as the most essential right to be exercised on their land after recognition of this will by the EU. Because of these intentions, it can be stated that the Orams case is not just a legal matter but also a political issue. Of course, this is same for the decision of the European Court of Justice. In 1994, the ECJ became a party to the Cyprus problem with its decision against an economic embargo, which was in favor of the Greeks. Likewise the Orams case was destructive in nature to the construction market of the TRNC, which was on the rise after the Annan Plan. Ultimately, law once again politicized with this decision.

Decisions of ECHR: Whose Sovereignty?

It is certain that the Court (ECHR), bound to the Council of Europe, is the only place where politics and law crosses negatively in Cyprus. After the Peace Mission in 1974, the Greeks filed many lawsuits against Turkey and within years they were granted many rights as a result of these cases. Particularly after Turkey enabled individual applications to the Court, Greeks filed for lawsuits with the support of their government. The most famous ones of these cases are the Louizidu and Arestis cases. In the following part the political results of these cases will be assessed.20

The most important result of the lawsuits which were filed about Cyprus in the ECHR is that Turkey became the “occupant” party to this problem with its military presence in Cyprus. All criticisms were directed to these political theses because Turkey was in a position to represent all the infringements of human rights and be the addressee for these political issues without regarding TRNC’s position. Also the tragedies experienced during war time were used politically through legal means. The ECHR decisions caused Turkey to defend itself in the international arena against the EU and other countries that also created an economic burden of millions of Euros regarding estate issues. In addition to this, especially after 2002, Ankara had to revise its approach towards and policies about the Cyprus problem because of the economic burden caused by cases and the other political obstacles which Turkey to become a member of EU as a result of not implementing ECHR decisions.

The ECHR created a situation where the TRNC’s sovereignty was not even considered. It is important to highlight the political results but not the legal characteristics of this matter.

20 For an expert analysis of these cases, see Ali Nechet BOZLU, “Kıbrıs’ta Mülkiyet Sorunu ve AİHM Kriterleri”, Mersin Barosu Dergisi (22), Ömer FAZLI OĞLU, “AİHM’in Xenides-Arestis Kararı ve Kıbrıs’ta Mülkiyet Sorunu”, TEPAV/EPRI Dış Politika Etütleri Programı.
Doctrine of Political Matter

It is beneficial to remind ourselves of the doctrine of “political matter” that is accepted in the US when the relationship between law and politics in the Cyprus problem is discussed. According to this doctrine, a court may refuse to hear a case if one of these situations exists: first the case may impermissibly intertwine the powers of the government regarding foreign policy which is considered sole the province of the executive branch, second the standards which will be implemented by the court may be inefficient and last the court may agree not to intervene as the best option. Of course, this doctrine is accepted in US law to protect the fair implementation of doctrine of the separation of powers and maybe it is not correct to apply this doctrine to the Cyprus problem, which is an international problem. This cautious approach is agreed upon, but Cyprus as a completely politicized problem should be evaluated in terms of this doctrine because of the involvement of high courts such as the ECJ and the ECHR. These courts are involved politically in this matter by giving decisions in favor of the Greek side and these decisions have helped the Greeks to be at a political advantage. However, these courts may agree not to render a judgment because of the fact that Cyprus is an international political power where a settlement could not be provided and also the courts could consider the negative effects of lawsuits on peace negotiations. If the courts were to decide not to render a judgment, this would not provide an advantageous situation to the Turkish side because if there were no court decisions, both sides would attempt to find a settlement vigorously by keeping their political attitudes to themselves. However, the Greek side protracts all the official talks with their negotiation strategy and prefers to wait for new court decisions which oppress Turkey. In other words, the Greek side prefers the oppressive circumstances where Turkey has to make concessions because of the ECHR and ECJ decisions, in spite of settling this issue with finding solutions.

Conclusion: Legal Politics or Political Law

How legitimate is international law? This is a question that should be considered essential. We are not lawyers but are instead international relations experts, so we have to be contented with just asking. But whatever the conclusion is, Cyprus should be determined to be a problem where law becomes a means to politics. With their decisions, the UN, EU and ECHR have become parties to this problem, not legally, but in a way which concludes in favor of the Greek side. Herein, we have to state that all legal means are depleted and international politics prevailed. One of the most essential aims of the international

players is the strategy of balancing the power of Turkey. Being on the side of the Greek Cypriots is not a legal preference and it is not for justice but is a matter dictated by the “international code of politics.” Also, it can be said that the Greeks got over the things they lost in war and found the way to regain them with legal means. On the other hand, it must be taken into consideration that the Turkish side has not been punished by UN Security Council since July 1974 despite all the efforts of the Greek Cypriots. However as the Greek side mentioned for many times, the UN would able to impose many alternative sanctions on Turkey. Herein lies the fact that a Turkey that has been criticized severely and torn apart but not penalized fully is because of Turkey’s role in balancing the strong powers like Russia at past and Europe today.

In addition to all these, there were many human rights violations and illegal armed conflicts back in the 1963 – 1974 period in Cyprus but Turkey never sought legal remedies. Long before the Greeks, Turkey would be able to appeal to the European legal institutions by an international application. One year after the Republic of Cyprus had signed the European Convention on Human Rights, the crisis that started in December 1963 oppressed and blockaded the Cypriots. It must be considered that while both Cyprus and Turkey was parties to these agreements, Turkey never made a complaint to the European Human Rights Commission for the suppressive and racist policies of the Republic of Cyprus, while between 1964 - 67 Turkish Cypriots had very hard times. If Turkey had ever made an appeal like this, the negotiation process between Cyprus and European Economic Community would be affected for sure. However Turkish diplomats and the Turkish Ministry of Foreign Affairs had probably not predicted the possible effects of this mechanism and never needed to use this. As a result, the inclusion of Cyprus into the EEC continued fast. Also during the same period, the “both communities of Cyprus shall be represented at the same time” decision was taken within the representation from the House of Representatives of the Republic of Cyprus in the Council of Europe’s Parliamentary Assembly. Turkey objected to this decision and as a result of this objection, the representation of the Republic of Cyprus was prevented in the Council of Europe’s Parliamentary Assembly from 1965 to 1983. So it can be said that the Turkish government would be able to oppress the Makarios government and make people to be emphatic to the Turkish Cypriots case, by exercising the legitimate right granted to Turkey in European Convention on Human Rights. Turkey did not exercise this right probably because of the fol-

lowing reasons: the hatred against Greek Cypriots continued to grow while Greeks oppressing Turkish Cypriots. Second the loyalty to the Republic of Cyprus weakened because of the emerging developments. Third the solidarity between the Turkish Cypriot community became stronger. As the final reason, the expectations of the decision-making body in Ankara were the extensification of consciousness of being Turk at first and becoming alienated of being Cypriot.23

If I were Christofias*

by Zeynel Lüle**

I am not Christofias, although I have decided to think as if I were he.

First of all, I would be the most vehement opponent of the position of France against Turkish entrance into the European Union. I would regard France as a country undercutting my cause, not supporting it, because my trump card as the Greek Cypriot communal leader is the prospective Turkish EU membership.

As the leader of the Republic of Cyprus, a member of the EU, I have the leverage to use the European platform in order to impose a sanction against, or even threaten, Turkey. This can, however, only happen against a particular backdrop where Turkey’s membership is not otherwise questioned.

I would not, by turning to Turkey, point fingers at her and say: “well, if you do not contribute to a solution, forget about the EU membership,” because I would clearly see how meaningless this sentence would be.

I would envision the following response coming from Turkey and feel ashamed of my words: “Cypriot hindrance of my full membership does not make it any worse at all, since France is already doing that.”

If I were Christofias, I would feel so bad each and every time President Sarkozy says “Turkey is not a European country.” And also I would cry foul when Pierre Lelouche, EU Affairs Minister, remarks

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* An earlier version of this article was published on Referans, a nation-wide newspaper, on 13.11.2009 and translated by Cemâl Dursun.

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that EU enlargement will not go beyond the Balkans, even I could not sleep because of my sorrow.

**Amity, not enmity**

If I were Christofias, I would not get carried away with the idea of France being supportive of me. I would never think for a second that France is there throwing her weight behind me in the EU. I would realize that my trump card is taken away when France states her view that “Turkey cannot be a EU member,” and naturally I would try to woo Paris away from pursuing such a policy.

I would even go so far as to ask if she has anything against me, and I would tell her in the strongest terms that “with this attitude, you do not strengthen me, but instead weaken me a great deal.”

I would most definitely advance the idea that not only does France eliminate my influence, but also that she prevents me from having the backing of the EU, and I would constantly remind myself of an old saying: A good enemy is a better person than a false friend.

I would pick myself up, dust myself off and soon realize that a Turkey without the prospect of full EU membership would not be that willing, if at all, to work towards any kind of Cyprus “solution.”

**Land acquisition**

If I were Christofias, I would do everything to obtain an expeditious solution, because I would know that I can find a long-lasting comprehensive solution only with Mehmet Ali Talat on the side of the Turkish Republic of Northern Cyprus (aka TRNC). What is more, I would not labor under the illusion of “pressuring” Turkey; by the same token I would not get the EU involved in the first place.

I would weep with joy hearing that in case of a solution the British would voluntarily give three percent of their land away. And I would also know that any solution would cause the TRNC to return eight percent of the land they control. I would certainly envisage that a solution would bring about acquisition of eleven percent of the island’s land by Greek Cypriots, and I would tell this to my fellow countrymen in a victory parade on the streets of Nicosia.

If I were Christofias, I would make a hasty effort to shake hands with Talat, and I would make sure that TRNC joins the EU under real terms.

If I somehow were Christofias, I would not be so naive as Christofias himself.
If I were Talat*

■ by Zeynel Lüle**

Last time around, I started off as “if I were Christofias,” then went on to point out that by attaching significance to his “conciliatory” character, Mehmet Ali Talat, with whom Christofias sat down around a table for a solution, is “the only person on the island”. I concluded by saying that “if I were Christofias, I would shake hands with Talat sooner rather than later, and I would not include the EU in the talks all the time.”

Right after my piece of writing, the EU left Christofias stranded, did not throw its weight behind him, and his expectations of Turkey being sanctioned turned out to be anything, but empty. Christofias wasted his energy in the corridors of Brussels, and went back to his meeting with Talat a drained man and with his mind back in Brussels. In this particular respect, what would I do if I were Mehmet Ali Talat?

Let me tell you...

I could not deliver on two promises

First thing, I would not even dare to consider running for presidency in April 2010. At least when I sit down around a table with Christofias, I would not think about the upcoming election while I negotiate a long-lasting solution, so that I would have the upper hand.

The people of my community elected me for two reasons. I should always be acutely aware of that. Firstly, I was to re-unite Cyprus; secondly I was to have made all Turkish Cypriots EU citizens. But I could not accomplish both. On the contrary, I created a community who eventually

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* An earlier version of this article was published on Referans, a nation-wide newspaper, on 18.12.2009 and translated by Cemal Dursun.

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brought nay-sayers into power.

If I were Talat, I would sit across Christofias with the following mindset: “I have nothing to lose. Quite to the opposite, a solution would be my biggest gain ever.”

I would always have the upper hand

Yes, I would always have the upper hand. Provided that political equality is preserved, I would show flexibility in many areas. I would not regard a federal solution from the viewpoint of secession, which is a policy dearly pursued by Rauf Denktaş and Mümıtaz Soysal; instead I would rather take the view of a “centre-powered” policy. Simply because, a centrally-powered federal system would be in favour of a community in securing political equality as minority.

Walloons in Belgium take the centre-powered structure dearly. What accounts for that is the fact that in only this way do they see themselves as more powerful as compared to richer and population-wise stronger Flemish.

I would not stick with Annan Plan all along

If I were Mehmet Ali Talat, I would not treat the Annan Plan as a biblical script. I would sympathise with the aversion that the Greek Cypriots have about that, thus I would not see Annan Plan as the Ten Commandments.

If I were Talat, I would approach many items on the table with the rapprochement in the back of my mind except for acquisition of political equality and imposing it on the Greek Cypriots as such.

I would approve of the idea for a rotating presidency as put forward by the Greek Cypriots, and I would straight away support the system which envisages a presidential office being occupied by a Greek Cypriot for 4 years followed by a Turkish Cypriot for 2 years.

Also I would love the idea thrown around by the Greek Cypriots that the Turkish Cypriots would have a sway on the elections held on the Greek Cypriot side by 20%, and vice versa. By doing so, I would think of the Turkish Cypriots impacting the elections held on the Greek Cypriot side by 20%, and I would grab it preciously.

I would do away with the idea of losing oranges there if I were to give away Güzelyurt (Morphou). I would not be much preoccupied with that; rather in return for a comprehensive solution of the property question, I would be fine with making concessions by acceding at least 8% of the land to Greek Cypriots, or even more.

I would not turn a blind eye to the benefits that my country would get in return from a “federal solution.”

As a first course of action, I would work out the property problem,
If I were Talat

the most problematic of all to make headway, by compromising on land. I would enjoy having Christofias and his opponent Anastasiadis as my counterparts sitting right before me today as “pro-solution leaders”, and therefore would always be mindful of the fact that in the south of island, a “no-way person” like Papadopoulos might well be sitting across the table tomorrow. When it comes to acting, I would not deny the fact that if there were to be a solution, that dream would not come true without Christofias.

If I were Talat, I would try to sympathise a little bit with the concerns Greek Cypriots have.

I would never forget that in case of a solution, the Republic of Turkey would always stand behind me no matter what, and I would say that considering myself as a key person in all this, I would be the one who would get the most out of a possible solution.

If I were Talat, I would firmly cling to the idea of political equality, and for issues other than that, I would be as flexible as possible and solve this problem in just 15 days.
Turkey and the Cyprus Dispute: Pitfalls and Opportunities*

■ by Assist. Prof. Dr. Tanık Oğuzlu**

As the Cyprus dispute continues to damage Turkey’s relations with the European Union, Turkey urgently needs to define its strategy in case the ongoing inter-communal talks on the island fail to produce a comprehensive settlement soon. Both the prospects of Turkey’s membership in the EU and the institutional relationship between the EU and NATO will be at risk so long as the stalemate on the island continues. How should Turkey behave in response to EU’s demand that Ankara opens its ports and airports to Greek Cypriot vessels and aircrafts? How should one read the emerging Turkish position that the talks on the island cannot last forever and the two communities should reach a settlement by the spring of 2010? What can (should) the international community do in order to facilitate the final solution? Are there enough reasons on the ground to suggest that a final settlement regarding the island is just around the corner? These are timely questions and require urgent responses.

The Cyprus dispute continues to occupy a place on the agenda of Turkey’s foreign policy, since the continuation of the deadlock on the island slows down Turkey’s European aspirations and impairs the institutional relationship between the EU and NATO. Turkey’s decision to close its ports and airports to Greek Cypriot vessels and aircraft until the time the EU keeps it promises of easing the trade sanctions on

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the Turkish Republic of Northern Cyprus, led the EU to partially suspend the accession negotiations on eight chapters in December 2006. Ankara holds that the adoption of the Additional Protocol in July 2005 does not imply that Turkey recognizes the Republic of Cyprus as the only sovereign authority on the island. On the other hand, the EU expects Turkey to implement the Additional Protocol to the Association Agreement and normalize its relations with the Republic of Cyprus as soon as possible. From the EU’s perspective, Turkey is under an obligation to extend its Customs Union with the EU to the island.

While this particular issue is still dividing the parties concerned, the two communities on the island began a negotiation process in late 2008 aimed at reaching a comprehensive settlement. Assuming that the parties on the island reach a settlement soon, Cyprus will likely drop out as an obstacle to Turkey’s EU membership process. That said, it is important to ascertain the possibility of the latest inter-communal negotiations to result in a comprehensive settlement. More important is to formulate Turkey’s policies in case the talks fail to produce a desired outcome.

Developments since 2004

In referendums held in April 2004, sixty-four percent of Turkish Cypriots voted for the Annan Plan, whereas the overwhelming majority of Greek Cypriots vetoed it. This has led to the emergence of the idea that the real impediment to the solution of the dispute was not the Turkish side, as has heretofore been vociferously argued by the Greek Cypriots, but the intransigent Greek Cypriot position on the unification of the island under a strong federal structure. Despite the fact that the international community, most notably the European Union, has not done anything concrete to help ease the pain of the Turkish Cypriots since then, the Turkish side has for the first time begun to gain the moral high ground in international arenas. Numerous reports published by the United National Secretary General make it very clear that the Turkish Cypriots do no longer deserve to be punished because of their cooperative stance on the Annan Plan. In line with this emerging understanding, it has gradually become difficult to keep the status quo on the island.

2 The declaration the EU announced in response to Turkey’s declaration in July can be reached at http://www.auswaertiges-amt.de/diplo/en/Europa/Erweiterung/TuerkeiErklaerung.pdf.
4 For example, see the Report of the Secretary-General on his mission of good offices in Cyprus, released on 28 May 2004. The Secretary General states that “(...) The decision of the Turkish Cypriots is to be welcomed. The Turkish Cypriot leadership and Turkey have made clear their respect for the wish of the Turkish Cypriots to reunify in a bi-communal, bizonal federation. The Turkish Cypriot vote has undone any rationale for pressuring and isolating them. I would hope that the members of the Council can give a strong lead to all States to cooperate both bilaterally and in international bodies, to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development (...)”
Following the Greek Cypriot accession to the EU, calls for settlement have once again intensified. Turkey has been particularly interested in seeing that the conflict no longer casts a shadow on its accession process with the Union. To this end, Turkey has in the recent past proposed some new initiatives for solution. On the other hand, the Greek Cypriot administration has wanted to dispel the perception that Nicosia holds the primary responsibility for the failure of attempts to reunite the island and sees EU membership from an instrumental perspective with a view to extracting as many concessions as possible from Turkey and the TRNC.

The first concrete attempt at leading the way to a settlement in the post-Annan Plan era was the so-called ‘July 2006’ process, which began with the meeting of the two communal leaders, Mehmet Ali Talat and Tasos Papadopoulos. Despite the fact that the two leaders decided to set in motion a comprehensive negotiation process soon, nothing came out of it. For such intense negotiations to begin, observers had to wait to see that Dimitris Christofias won the presidential elections against Tasos Papadopoulos in February 2008.

Following the election of Christofias to the Greek Cypriot Presidency, the two leaders came together on March 21st and decided to start a process that would result in a comprehensive settlement. Negotiations started on 3 September 2008 with the common understanding that the final text would be put to public referendums. Negotiations are still conducted in four different issue areas: territory, security, property and governance. In addition to numerous confidence-building measures adopted through this process, the leaders have also “reaffirmed their commitment to bi-zonal, bi-communal federation with political equality, as defined by relevant Security Council resolutions. This partnership will have a Federal Government with a single international personality, as well as a Turkish Cypriot Constituent State and a Greek Cypriot Constituent State, which will be of equal status.”

However, a comprehensive settlement looks far from being achieved soon, mainly because there are still strong disagreements among the parties concerning the status of Turkish armed forces on the island, the continuation of Turkey’s guarantor status, the administrative structure of the new state, the internal boundaries of the constituent states, the property rights, the number of Greek Cypriots who would settle in the north of island following the settlement, etc. Both sides still assume that time is on their side.

5 For example, Turkey announced an action plan in January 2006 with a view to contributing to the lifting of all restrictions on the two communities of the island. One can reach the text of the action plan to this effect at http://www.mfa.gov.tr/data/DISPOLITIKA/KIBRIS/S-2006-48-Ingilizce.pdf.
6 One can see the numerous measures agreed by Mehmet Ali Talat and Dimitris Christofias as part of CBM in the following text http://www.cyprus.gov.cy/moi/pio/pdf/AIJA789E09192363C8C2257494003DC1453F26-2208708.doc.
While the Turkish Cypriots do still favor a loose bi-zonal/bi-communal federal arrangement in which they would be able to experience politically equal relations with the more populous Greek Cypriots, the Greek Cypriots do not appear to have given up their goal of seeing the island united under a strong federal government in which the Turkish Cypriots would have enhanced minority status at best. While the Turkish Cypriots seem to agree that they might have to give up their existing state in the name of a new state, possibly called the United Cyprus Republic, that would come into existence following a final settlement, the Greek Cypriots want to see that the existing Republic of Cyprus continues to exist as a sovereign entity yet the Turkish Cypriots be incorporated into the administrative structure through agreed arrangements.

Public opinion in both communities is also highly pessimistic about the possibility of reaching a comprehensive settlement soon and seems to believe that endless talks would finally lead to the recognition of the current status quo as the final solution. Some recent polls indicate that what the Turkish Cypriots understand by solution does radically differ from what the Greek Cypriots understand by solution. Public perceptions on the details of any final agreement vary significantly across the communities.8

The Role of External Actors

Today, it is neither the United Nations nor the United States that could play the most influential third party role in the solution process of the Cyprus dispute. It is the European Union. Two reasons for this stand out. First, the Greek Cypriot administration would not likely agree to Turkey’s membership so long as the status quo on the island remains unchanged. Second, Turkey would not likely feel encouraged to take further steps on the solution process unless the prospects of its accession to the EU increase credibly.9

Besides, the continuation of the deadlock on the island hampers the institutional cooperation between the EU and NATO, particularly within the framework of the Berlin Plus arrangements. Under the current terms of agreement between the EU and NATO, Cyprus is not allowed to take part in meetings between these two and Turkey does not allow the EU to have access to NATO’s military capabilities in non-Berlin Plus contingencies.10 While Turkey thinks that all institutional

8 See Alexandros LONDON, Erol KAYMAK and Nathalie TOCCI. 2009. A People’s Peace in Cyprus Testing Public Opinion on the Options for A Comprehensive Settlement. Brussels: Center for European Policy Studies. The writers conducted numerous polls on the island in order to measure the extent to which two people of the island converge on the fundamentals of any comprehensive peace settlement, particularly concerning security, property, governance, rights and freedoms, territory and settlers. The results reveal that two sides hold highly diverging positions on these issues.

9 This dilemma is well noted by David HANNAY in his briefing note on Cyprus. David HANNAY. 2009. Cyprus: The Cost of Failure. London: Center for European Reform.

relationships between the EU and NATO should be based on the Berlin Plus arrangements, the EU counter-argues that the institutional relationship between the two institutions cannot solely be defined on the basis of the Berlin Plus arrangements. In the eyes of the EU, Turkey should not object to the idea that Cyprus becomes a part of the institutional relationship between the EU and NATO even though Cyprus is not a part of NATO’s Partnership for Peace Initiative. In response to Turkey’s blocking of Cyprus’s participation in such meetings, Cyprus vetoes Turkey’s participation in the European Defense Agency as well as signing any security agreement with the EU. So long as the Cyprus dispute remains unresolved, the EU will not be able to secure NATO’s military protection in Afghanistan and Kosovo.

Looking from Turkey’s perspective, there exists a dilemma. On the one hand, Turkey aspires to join the EU but on the other denies the EU the right to have access to NATO’s capabilities. Turkey is quite discontent with the EU’s decision to exclude itself from the decision-making process in the realm of European Security and Defense Policy. This appears to have led Ankara to conclude that as long as the prospects of accession to the EU are low, Ankara would rather see its veto power within NATO as a bargaining chip in EU-NATO relations. The way Turkey acts on this issue suggests that Turkey does not believe that the EU would soon let Turkey in. The irony is that the longer Turkey appears to be blocking EU-NATO cooperation, the more reluctant the EU becomes towards the idea of Turkish accession.

Turkey’s position on this issue has lately become difficult to maintain given that the current Obama administration has now developed a more favorable approach to EU-NATO cooperation and strengthening of the ESDP than its predecessor. The assumption on the part of the Obama administration is that a more capable EU would help NATO relieve some of its responsibilities in Europe and Europe’s peripheries. The change in US position on this issue might pressure the parties to reach a settlement on the island as soon as possible.

Against the panoply of such problems, one wonders if the EU would demonstrate strong leadership in the resolution of the Cyprus dispute. However, the signals coming from Brussels are not so encouraging as to lead the parties to change their incentive matrixes. First, despite the fact that the European Union promised to ease the trade sanctions on the Turkish Cypriots if the latter would vote for the Annan Plan, the EU has thus far fallen short of keeping its promises. In this, the EU membership of the Greek Cypriot Administration appears to have played the key role. However, one should also make it clear that many EU members have simply found it easy to hide behind the Greek Cypriots of the Obama administration has now developed a more favorable approach to EU-NATO cooperation and strengthening of the ESDP than its predecessor. The assumption on the part of the Obama administration is that a more capable EU would help NATO relieve some of its responsibilities in Europe and Europe’s peripheries. The change in US position on this issue might pressure the parties to reach a settlement on the island as soon as possible.

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riots to mask their unwillingness to reward the Turkish Cypriots and facilitate Turkey’s accession process. The continuation of the stalemate on the island has been mentioned in many EU documents as one of the major obstacles before Turkey’s accession. Turkey and the Turkish Cypriots adopted a cooperative stance but they have been held hostage to Greek Cypriots machinations inside the Union.

Second, the EU is suffering from the latest enlargement round and member states are still far away from ironing out their differences on the institutional make-up of the Union as well as the future direction of the integration process. The Irish have just approved the Lisbon Treaty. It will take a long time to see what kind of an international actor the EU will turn out to be in the aftermath of the Lisbon Treaty.

Third, the Europeans find it now difficult to spend some time on the problems arising from the continuation of the Cyprus dispute while they have been very much involved in the process of mitigating the negative consequences of the latest financial crisis on their economies.

The most the EU could do in this process would be to absorb any final settlement into the EU community law. Due to the Greek Cypriot membership in the EU, the latter would unlikely develop a neutral solution proposal and ask the parties to accept it. High level visits from EU member states to the island, including the north part of the island, might offer a boost to the inter-communal talks. Assuming that the EU would not be able to fully implement the Direct Trade Regulation, which foresees the possibility that Turkish Cypriot goods are directly exported to European markets, due to the Greek Cypriot veto, the EU would be well advised to increase the amount of financial aid to the north of island as well as cover the possible costs of final settlement. Worth mentioning in this context is the growing realization inside the EU that the membership of the Republic of Cyprus before the settlement of the Cyprus dispute has been a strategic mistake. It would have certainly been a better if the EU had asked the Greek Cypriots to first get rid of their territorial problems. Such a move on the part of the EU would have allayed Turkey’s concerns that the EU could never play a credible third party role.

Another actor that can possibly play an important role in this context is the United States. However, the impact of US involvement will be mainly limited to the shaping of incentives of the parties concerned. The United States has thus far made it very clear that a possible solu-

12 The latest of such documents is the EU Commission Yearly Progress Report on Turkey, which was released on 14 October 2009. Please see pp. 31-32.
13 Lisbon Treaty is important because it demonstrates the resolve of the EU members to reform the EU’s institutional structures in such a way that the EU could now act efficiently and with one voice and play a global power role after the latest enlargement processes. It is important that the EU soon develops a global strategic vision that values Turkey’s cooperation and eventual accession. Hoping that the Lisbon arrangements lead to such an outcome soon, then the EU will likely intensify its efforts to contribute to a final settlement on the island. A strategically myopic EU, devoid of capabilities to play a global power role, will likely remain as an effective third party on the solution of the dispute.
tion of the problem should be looked for within the framework suggested by the United Nations and supported by the European Union. As long as the parties agree on a mutually satisfactory arrangement and this is endorsed by the EU, the US would likely support it.

That said, the recent developments in Turkey’s relations with the United States suggest that the United States will find it hard to support any settlement that would seriously compromise Turkey’s key concerns on the island. Given that bilateral relations have recently improved, particularly following the coming to power of President Obama in Washington, none of the parties would tolerate any downward spiral in this process due to a crisis on Cyprus. With the Obama Administration replacing the Bush administration, the US has come closer to Turkey’s views on many issues concerning the war on terrorism and regional politics in the Middle East. Of particular points to note in this context are the increasing need on the part of the US administration to secure Turkey’s cooperation on Iran, the withdrawal of American soldiers from Iraq safely, the establishment of stable Iraq in the post-American period, the transmission of gas and oil to the western markets, the success of the NATO-led war in Afghanistan, etc.

Besides, American companies do now want to get involved in oil excavation business in the Eastern Mediterranean region.\(^\text{14}\) This puts a pressure on the US government to nudge the parties to reach a settlement as soon as possible. So long as the parties in and around the island continue to quarrel over the sharing of the natural resources of the Eastern Mediterranean region, this area will remain closed to investment. Given that Turkey has now become a key energy hub in the Eastern Mediterranean region, playing a vital role for the easing of the EU’s dependency on the Russian oil and gas resources, one can expect that neither the EU nor the US would risk Turkey’s cooperation on this issue by wholeheartedly supporting the Greek Cypriot claims to the ownership of raw materials in the Eastern Mediterranean region.

**Turkey’s Options and prospects for the future**

Looking from Turkey’s perspective, one point is quiet clear – given that the possibility of the Greek Cypriot Administration to come closer to Turkey’s understanding of what an optimum solution\(^\text{15}\) would look like is very low, the best course of action to follow on Turkey’s part would be to take the lead in the settlement process within the well-established UN parameters. That Turkey backed the Annan Plan back in 2004 has been quite telling in this regard. The international community not only applauded Turkey’s cooperative stance but also seri-

\(^{14}\) http://www.gpotcenter.org/dosyalar/Press%20Scan%2012-6-2009.pdf, particularly pages 10-12 are important.

\(^{15}\) In Turkey’s view the optimum solution would become the establishment of a bi-zonal/bi-communal loose federal arrangement respecting the political equality of the Turkish Cypriots with Greek Cypriots as well as the continuation of Turkey’s guarantorship rights emanating from the 1960 Agreements.
ously began wondering if the real impediment before any long-lasting solution in the island could be the Greek Cypriots.

Adopting a proactive stance on the solution of the dispute would bring Turkey, inter alia, two fundamental benefits. One would be that this would boost Turkey’s EU membership process. This would also likely encourage the Greek government to support Turkey’s EU membership process and put a pressure on the Greek Cypriots administration not to sabotage improving Turkish-Greek relations within the EU framework. Even though being a guarantor country of the 1960 arrangements, Greece’s profile on the Cyprus dispute has been low for a long time. Since the time Greece’s policies in the 1970s led to Turkey’s military operation in 1974, Greece’s policy has become to support Greek Cypriots’ claims, whatever they are. Reflecting a sense of guilt, Greece has held the line that ‘Cyprus decides and Greece supports.’ This policy has come under strong challenges over the last decade, as the possibility of the Greek Cypriot intransigence to seriously impair Turkish-Greek rapprochement has increased. Since Greece has begun to see Turkey’s Europeanization process to be in its own national interests, successive Greek governments have urged the Greek Cypriots to come to a final settlement with Turkish Cypriots soon.\textsuperscript{16} Therefore, the Greek support to the Annan Plan should be seen as model of how Greece will likely behave in the years to come.

Second, Turkey will be able to hold the moral high ground in the international community by signaling that she is the party which sincerely and persistently longs for a final settlement. Proactively supporting the settlement on the island will also be in line with the new Turkish foreign policy that aims at strengthening Turkey’s capability to play a regional/global leadership role. If Turkey wants to increase its sphere of influence in its region, in accordance with its emerging soft/civilian power identity, it would have to get rid of the ‘Cyprus burden.’ Cyprus is one of the soft bellies of Turkey. Neither the dynamics of Turkey’s relations with the European Union nor Turkey’s regional aspirations would tolerate the ongoing situation.

That any final solution would more or less resemble the letter and spirit of the defunct Annan Plan, Turkey and the Turkish Cypriots would be well advised to focus on the main points of the settlement rather than quarreling with the Greek Cypriots on each and every detail of the whole package. As long as the bi-zonal/bi-communal nature of the state administration on the one hand and the continuation of Turkey’s guarantorship rights emanating from the 1960 treaties on the other were to be respected, Turkey should adopt a more flexible stance during the give-and-take process.

\textsuperscript{16} For the differences between Greek and Greek Cypriot polices towards Turkey’s EU accession process see Ker-Lindsay, James. 2007. “The Policies of Greece and Cyprus towards Turkey’s EU Accession,” Turkish Studies, 8:1, pp. 71-83.
Turkey would not need to fear that her interests on the island would be seriously compromised by any solution given that her rising international profile has now been much appreciated by key global actors. As long as Turkey and the European Union cooperate on as many issue areas as possible, particularly concerning the transmission of the natural resources of the Caspian region to the European markets, the European Union would not want to risk this process by fully backing the Greek Cypriots in the name of membership solidarity.

The increase in Turkey’s self-confidence has recently struck observers when Turkish Prime Minister Erdogan delivered his speech in the UN General Assembly in September. He said that Turkey would no longer tolerate endless talks on the island. Such messages are similar to those of Ahmet Davutoglu, the current Turkish Foreign Minister. Turkey will now do her best to help achieve a final settlement on the island by the spring of next year. The Greek Cypriots should not be allowed to derail or procrastinate on the negotiation process in the hope that Turkey’s resolve on the issue would finally break down so long as Turkey’s determination to join the EU exists. Erdogan made it very clear that if no solution came into existence by then, Turkey would intensify her efforts to make sure that the independence of the Turkish Republic of Northern Cyprus be recognized by the international community. Erdogan appears to think that Turkey is now at a better position than ever to convince a quite number of states to recognize the TRNC as a sovereign country in case the talks bear no fruit.

The dynamics of internal politics in the Turkish Republic of Northern Cyprus also dictate the need to reach a final settlement soon. If current negotiations fail, it is likely that a more nationalist/rightist candidate then the current President Mehmet Ali Talat will win the presidential elections in spring 2010. It is well known that the right supports a confederal solution on the island at best. Nobody at home and abroad would be in a position to legitimately hold President Talat responsible for the failure of the ongoing negotiation process, because the political movement Talat leads has so far proved to be the most ardent supporter of any solution that might potentially come into existence through a deal with the Greek Cypriots within the well-established UN parameters.

Assuming that the Greek Cypriots will again veto any comprehensive solution in referendum, the international community will no longer find it easy to object to the Turkish claim that the Turkish Republic of Northern Cyprus deserves sovereignty status.

To conclude, it is worth mentioning that the European Commission in its yearly report on Turkey, which was announced on October 14, 2009, only notes that Turkey has failed to implement the Additional
Protocol to the Association Agreement and normalize its relations with the Republic of Cyprus. The Commission does not however propose any further measure to punish Turkey for its ‘non-cooperation’ since December 2006. It is important to note that this particular position of the EU Commission on Cyprus goes hand in hand with the observation of the same commission that Turkish foreign policy has now been to a significant extent become Europeanized. The EU simply applauds Turkey’s contribution to regional security and stability.
Misgovernance as an Impediment to Peace: The Political Misuse of Property in Cyprus

by Raşit Pertev*

During a conflict, authorities on both sides often use misgovernance for their own personal and political gains, to consolidate any gains they may have had during the conflict and to create as well as appease constituencies. In so doing, they introduce considerable inflexibility into their own negotiating positions in the eventuality of future peace talks.

This article looks at the case of Cyprus, on how the respective public authorities dealt with the properties the Turkish Cypriot and Greek Cypriot refugees left behind, following the 1974 conflict and the subsequent displacement of populations. The article argues that both sides exercised misgovernance on the property issues, but in different ways. Through such misgovernance, both sides also introduced considerable inflexibility into their negotiating positions, which did not initially exist, at least on paper.

Turkish Cypriot authorities, not regarding Greek Cypriots as their citizens, initially put in place a system of ‘global exchange’ of Greek Cypriot properties in the North for the Turkish Cypriot properties in the South, using an elaborate scheme of equivalence. However, in reality, the Greek Cypriot property was used as a pool of resources for distribution to the ruling political leaders and their followers, in a complex chain of patronage and corruption. In line with this logic of patronage,

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the authorities also took steps to increase the value of these properties through their city planning, investment and infrastructural policies so that there would be more to distribute to themselves and their followers.

The Greek Cypriot authorities, on the other hand, exercised misgovernance through discrimination vis-à-vis the people they formally considered as citizens. They *de facto* took away from the Turkish Cypriots the totality of their right to exercise ownership over their properties, including the right to return and right to sell, partly for keeping such properties as a political card, and partly for avoiding a significant financial resource transfer to Turkish Cypriots through such sales. More importantly, they took active steps to devalue these properties, through their city planning, investment, public works and infrastructural policies. Their aim in doing this was to ensure that these properties would not eventually provide any satisfaction to the Greek Cypriot refugees, and that their sentiments for ‘returning home to the north’ would be kept politically and socially alive.

**Introduction**

This article looks at the case of Cyprus, on how the respective public authorities dealt with the properties the Turkish Cypriot and Greek Cypriot refugees left behind, following the 1974 conflict and the subsequent displacement of populations, from a perspective of governance. The article, however, abstains from entering into any historical and political analysis or judgment, as these considerations are outside the scope of this article.

1. **Policies on paper**

On paper, the public authorities of the two sides, namely the Turkish Cypriot and Greek Cypriot authorities, approached the issue of properties refugees had left behind from two, entirely different perspectives and dealt with it within two different paradigms.

1.1 **Turkish Cypriot model**

Turkish Cypriot public authorities approached the issue from their perspective of a new federal delineation or political partition of the island. They considered the changes resulting from 1974 events as permanent, to be formalized in a peace agreement at a later date. In their statements, they also strongly hinted at a separate state. However, they did so but with considerable ambiguity, without clarifying whether this was a state within a united, federal Cyprus, or whether this was an independent state, complete with its Unilateral Declaration of Independence, an ambiguity which still persists up to today.

Within this paradigm, the authorities decided that north Cyprus should be inhabited mainly by Turkish Cypriots, and that each Turkish Cypriot coming from the South should transfer their private land rights and title deeds of the property they had left behind to the Turkish Cyp-
riot authorities. In return, they would individually get a property, left by Greek Cypriot refugees, of ‘equivalent value’. An elaborate system of equivalent (eşdeğer) was set up, evaluating the properties left behind in the South, as well as the properties found in the North. Citizens were issued ‘equivalent value’ points, against which they were allocated new properties in the North.

The Turkish Cypriot public authority, by acquiring the totality of title deeds of properties left behind in the South, was then considered to be in a strong position to negotiate the property issue ‘globally’. At the negotiation table, the Turkish Cypriot side could then propose to the Greek Cypriot side to exchange the totality of the Greek Cypriot property in the North with the Turkish Cypriot property left in the South. This could be done with the stroke of a pen, as the Turkish Cypriot authorities had already done the work of gathering all the title deeds and necessary signatures from individual owners. If the total value of the Greek Cypriot property left in the North was higher than the total value of Turkish Cypriot property left in the South, this balance was to be settled in some way, to be determined during negotiations. The states on both sides would then be responsible for distribution of land and property to their respective refugees. This system was called ‘global exchange.’

1.2 Greek Cypriot model

Greek Cypriot public authorities considered the events of 1974 and their outcome to be a temporary state of affairs. They therefore focused on taking the necessary relief and urgency measures until such time as the political situation would revert back to its original state and they would assume control over the totality of the island.

Since the situation was deemed to be of a temporary nature, the Greek Cypriot authorities appointed an institutional ‘Guardian’ over the totality of the Turkish Cypriot properties left in the South, with the insinuation that abandoning one’s own property was something of an irresponsible act. With the Guardian Law, the appointed state institution would have full powers over these properties, until such time as when a peace agreement would be reached and Turkish Cypriots would come back to their properties. The Guardian, if he so wished, could also allocate these properties for use by Greek Cypriot refugees, with the understanding that such use would eventually be compensated by a payment of accumulated rent to original owners, on the day the Cyprus problem would be resolved.

2. Actual Policies

2.1 Actual Turkish Cypriot policies

The actual Turkish Cypriot practice differed in a number of ways from policies as expressed on paper.

The system of eşdeğer -‘equivalent value’- although elaborate in
design, came out to be arbitrary in practice. Turkish Cypriot authorities did not have access either to the land registers in the south or physically to the south itself, due to the continuation of the conflict. They were therefore not in a position to judge each application objectively and often relied on personal declarations of the applicant, approved by the muhtar or an equally prominent personality of the locality. Very soon, the system also started to distribute land and property to those who had no equivalent property in the South, both through inclusion of new rules for the acquisition of points and as well through improper application in practice. A significant amount of property was also distributed without requiring any ‘points’ at all, to political allies and to new constituencies. Political influence, lines of patronage and corruption soon became an integral part of the system of property distribution in this newly-born democracy.

As a significant turning point, the system reached its logical conclusion in the 1990s, when the state decided to accord actual title deeds to the holders of the Greek Cypriot land and property. This development allowed sales of such land and property to third parties, irrespective of whether or not the seller had any equivalent property in the South. With the establishment of the property market, past misdeeds and irregularities became irreversible with each sale. When the system of land distribution through the system of equivalence was eventually stopped, many people were still holding a large amount of unallocated property points. However, the distribution of land, i.e. Greek Cypriot and public land, continued on a political patronage basis, mainly through Council of Ministers decisions, under the guise of economic and other incentives. Establishment of and free distribution of plots in ‘industrial zones’ continued as another example to extort funds from potential buyers or to award persons of political authority and their allies.

In line with this logic of patronage, the Turkish Cypriot authorities also took steps to increase the value of these properties through their city planning, investment and infrastructural policies so that there would be more to distribute to themselves and to their followers.

2.2 Actual Greek Cypriot policies

The actual practice of the Greek Cypriot authorities also differed in essence from their policies on paper in a number of ways.

The Greek Cypriot authorities, in their own stated paradigm, considered Turkish Cypriots to be their citizens, with equal rights. The authorities, however, starting from 1974, took active steps to ensure the devaluation of the land and property Turkish Cypriots had left behind. This was done by building airports, sewage works, roads, military barracks on the personal properties of Turkish Cypriots. Larnaca International Airport, as well as the Bay of Mari where the main electric-
ity power station and cement works are, large military barracks in the villages of Goshi and Mari, and the establishment of an industrial site in the middle of the former Turkish quarter of Larnaca can all be cited as examples. Equally, a number of Turkish villages were completely erased off the map and afforested, ensuring their disappearance. They also kept Turkish Cypriot properties underdeveloped by not favoring infrastructural and other investment which would increase the value of real estate in those areas or by decreasing their value through infrastructural design by placing public works with negative impact in the proximity of Turkish Cypriot properties. Even the Greek Cypriot policy of preserving parts of the Turkish Cypriot quarters in certain towns, in their 1974 state as an anachronism, can be interpreted in this manner.

Being internationally recognized, the Greek Cypriot authorities also used their laws for the expropriation of Turkish Cypriot properties, with the proviso that any compensation for such property, as decided by the state, could be received by the Turkish Cypriot owners only after the settlement of the Cyprus problem. In a number of cases, public works were carried out even without expropriation, mainly based on the Guardian’s approval.

While the Greek Cypriot authorities called for the return of all refugees to their homes, this did not cover the actual return of Turkish Cypriot refugees, who were somehow not considered as refugees, but as people who had abandoned their homes. Turkish Cypriots were therefore required to be resident in the South at least for six months before they could start to make any claims to get back their own property. In specific cases where this requirement was also fulfilled, the Turkish Cypriots in question were actually not able to receive back their original property, but were only offered the temporary right of use of properties of other Turkish Cypriots. This seemingly strange policy is examined below.

3. Misgovernance as an Impediment to Peace

3.1 Clarification of ‘impediment’

Before we proceed any further to consider whether the policies of either side posed an impediment to peace, we need to clarify what an ‘impediment’ would be in this specific situation and context.

Let us have two sides engaged in peace talks, where each side has a specific negotiating position relating to each issue under discussion. In reaching a peaceful settlement, a negotiated outcome can go either way. On an issue, one side may cave in and accept the position of the other, in return for a gain in other issue. The sides can also decide to meet in the middle ground on each issue. To the extent that both sides have the flexibility to move, and have not unnecessarily tied themselves down in knots on an issue, a peace agreement may be easier to reach.
In summary, an impediment to peace is created, if one of the sides, through its actions in the real world, seriously and unnecessarily damages its existing flexibility on an issue under negotiation.

### 3.2 Policies on paper – Not an Impediment to Peace

We shall argue that the initial policies on paper of both sides did not pose an impediment to peace.

In terms of negotiation positions, the Turkish Cypriot side aimed at a North Cyprus inhabited by Turkish Cypriots, whereas the Greek Cypriot side aimed at the return of all Greek Cypriot refugees to their homes in the North. While these two positions are diametrically opposed, both sides inadvertently endorsed policies which were compatible also with each other’s positions, at least on paper, regarding the issue of properties the refugees had left behind.

The Turkish Cypriot authorities, as a policy, had decided to distribute the property the Greek Cypriot refugees had left behind to Turkish Cypriot refugees settling in the North, based on an elaborate system of equivalent value. As each Turkish Cypriot was supposed to get the exact equivalent in value of the property he/she had left in the South, the system, on paper, did not introduce an additional economic incentive for citizens to prefer either the North or the South. If the Cyprus problem was one day resolved in line with the Turkish Cypriot negotiating position, the Turkish Cypriot refugee in question would have been happy to stay in the North, as he would have incurred no economic gain or loss. Similarly, if one day the Cyprus problem was resolved in line with the Greek Cypriot negotiating position, the Turkish Cypriot refugee would have been as happy to return to the South, as he would incur no economic gain or loss in this case as well. We can therefore safely say that the initial Turkish Cypriot property policies on paper did not pose any impediment to peace.

Greek Cypriot public authorities, on the other hand, had considered the situation to be of a temporary nature, and had appointed a Guardian for the protection and management of properties Turkish Cypriots had left behind. This system, on paper, was also compatible with both Greek Cypriot and Turkish Cypriot negotiating positions. The Guardian, concerned with the welfare of Greek Cypriot refugees, was allowed, on paper, to make the maximum use of available Turkish Cypriot property, upgrade and distribute them on a temporary basis and to keep any accumulated rent for the rightful owners. In the eventuality that the Cyprus problem was settled in line with the Turkish Cypriot negotiating position, the Greek Cypriot refugees would receive some Turkish Cypriot property as well as a financial compensation, in order to ensure that he or she would incur, on balance, no economic gain or loss.

In summary, both policies, on paper, did not introduce any element
MISGOVERNANCE AS AN IMPEDIMENT TO PEACE: THE POLITICAL MISUSE OF PROPERTY

seriously damaging the flexibility of the sides during negotiations.1

3.3 Actual Policies – An Impediment to Peace

It will be argued that both sides, through their actual policies on property issues, created an important impediment to peace by introducing serious and unnecessary inflexibilities into their negotiating positions.

On the Turkish Cypriot side, the driving forces introducing the inflexibilities were the forces of corruption and political patronage. Turkish Cypriot authorities distributed land and property to individuals that went over and above the value of any property they may have had in the South, mostly as corruption and as payments emanating from political patronage. In so doing, they inadvertently created a strong political force against any flexibility on the property issue. This stance was further consolidated when the holders of these properties were accorded actual title deeds, and were able to sell these properties. This extensive group of new Turkish Cypriot buyers also became a party to the conflict, as they had now put their life savings into buying properties which had shaky or outright zero equivalence in the South.

On the Greek Cypriot side, the driving force introducing the inflexibilities was different. Greek Cypriot authorities considered the whole of Cyprus to be their sovereign territory. In line with this national political position, they needed to ensure that Greek Cypriot refugees would, in any type of settlement, return home to the North. The authorities needed to make sure that they did not go overboard while trying to find solutions to the housing problems of Greek Cypriot refugees, but that they clearly relayed the message that the refugees’ final destination and address was not the South but the North. The strong sentiments of the refugees needed to be maintained. For this challenge, the Turkish Cypriot property left behind in the south posed an important problem. Part of this land and property had to be inevitably distributed to Greek Cypriot refugees, but in such a manner so as not to diminish the political dynamism of the refugees in their struggle to return to the North.

Greek Cypriot authorities, as a result, carried out an active policy of devaluation of Turkish Cypriot property, as has been described in Section 2.2 above.

The devaluation and destruction of Turkish Cypriot properties, however, also had their political limits. Greek Cypriot authorities, who formally considered themselves to be the ruler of the Republic, with Turkish Cypriots as their citizens, had to ensure that there was enough

1 Needless to say, these arguments do not include psychological, sentimental and historical considerations but purely focus on economic ones. In any discussion, Turkish Cypriots would immediately cite personal security as a reason why they would not return to the South. Equally, Greek Cypriots would underline the importance of sentimental ties to homes left behind in the North. These are all valid arguments. However, our focus shall remain economic. In the next sub-section, it shall be argued that the policies of both authorities in practice introduced important impediments to peace, precisely of an economic nature, on both sides.
space and property for the Turkish Cypriots to return to, in the eventuality of a settlement.

Encouraging the return of the Turkish Cypriot refugees to their homes would have been a solution to this dilemma. However, allowing the return of the Turkish Cypriots was not an attractive proposition for several reasons. Apart from the fact that the Greek Cypriot authorities wanted to keep the Turkish Cypriot properties as a political card up to the day of settlement of the Cyprus problem, according Turkish Cypriots the right to return to their homes would also mean granting them full rights over their own properties, including the right to sell. Given the opportunity to sell their own properties, the general inclination among Turkish Cypriots was clearly to sell and move to the North. This, however, would have been tantamount to a net flow of resources from south to north for properties on which the Greek Cypriot authorities already had rights of full guardianship as well as full sovereign and public control. For the Greek Cypriot authorities, it made no political or financial sense to spend money for something they already had, thus contributing to the economic betterment of their opponent.

Through such policies, the Greek Cypriot authorities sustained and further strengthened their political basis for the return of the Greek Cypriot refugees to their homes in the North. In so doing, they strengthened their political negotiating position, by intentionally introducing further inflexibility into the peace talks.

4. Concluding remarks

During a conflict between two authorities, the presence of misgovernance, as illustrated above, could act as an important complicating factor to prevent reaching a peaceful settlement between the parties. Authorities on both sides often use misgovernance, both for their own personal and political gains, to create and appease constituencies, as well as to consolidate in an irreversible manner any gains they may have had during the conflict, thus strengthening and making inflexible their own negotiating positions.

In the case of Cyprus, both sides actively used misgovernance in an active, but different manner.

Turkish Cypriot authorities did not regard Greek Cypriots as their citizens. In theory, they had the intention to 'exchange' the properties Greek Cypriots had left behind for the Turkish Cypriot properties in the South through an elaborate system of equivalence, which they had officially put in place. In reality, the Greek Cypriot properties were used as a pool of resources, for distribution to the ruling political leaders and their followers, in a complex chain of political and economic patronage and corruption. In order to maintain this system of misgovernance and corruption, Turkish Cypriot authorities had to take steps
to increase the value of Greek Cypriot properties left behind, through their city planning, investment and infrastructural policies.

The Greek Cypriot authorities, on the other hand, exercised misgovernance through their discrimination of the people they formally considered as citizens. They *de facto* took away from the Turkish Cypriots the totality of their right to exercise ownership over their own property. They also took active steps to devalue these properties, through their city planning, investment, public works and infrastructural policies, so that these properties would not eventually serve as a viable alternative for use by Greek Cypriot refugees. In fact, they took active steps so that such alternatives would not come into being, so that the sentiments of Greek Cypriot refugees would remain politically and socially alive, by ensuring that the refugees got either no or only partial economic satisfaction to their problem.

The day the two authorities finally decide to make peace, their job will be all the more difficult, with all its social, political and economic ramifications, due to the impediments they themselves have created against peace through their misgovernance.

Finally, it should be noted that property values are fixed values only when viewed from a micro perspective. At the macro level, they become an endogenous variable, depending on policies of city planning, economic investment, public works and infrastructure, all of which can be substantially influenced and controlled by public authorities.
The Turkish Cypriot Legal System from a Historical Perspective*

■ by Prof. Dr. Turgut Turhan**

I. THE NECESSITY TO APPLY A HISTORICAL PERSPECTIVE AND A BRIEF HISTORY OF THE ISLAND

The Ottoman Empire conquered the island of Cyprus in 1571 and from 1571 to 1878, Cyprus was a part of the Ottoman Empire. In 1878, England, waiting for a chance to take over Cyprus because of its Far East and Indian policies, seized the opportunity, when the Russian-Ottoman war crumbled for the Ottomans, by promising to protect the Ottomans against the Russians and leased the island. With this lease, not the ownership but only the management of the island passed to England and the Ottoman Empire retained sovereignty over the island. Close to the end of World War I, seeing the fact that the Ottoman Empire was siding with the Germans, and foreseeing the Germans would be losing the war, Britain announced its annexation of the island to the world with a unilateral decision on November 5, 1914. With the Treaty of Lausanne in 1923, the young Turkish Republic recognized this annexation and lost the ownership of Cyprus. If the lease time in 1878 is taken as a basis, Turks had sovereignty over Cyprus for 307 years which is a considerable period. England’s sovereignty over the island

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did not last as long as the sovereignty of the Turks, and England lost its control starting from 1878 when the island of Cyprus became an independent state by the Treaties of Zurich of 1958, London of 1959 and Nicosia of 1960.3

However, the Republic of Cyprus (RoC) was founded by the interested powers (Greece, Turkey and the UK) without asking the question “does the state form a nation or does the nation form a state?” Therefore, the RoC did not live long and the Turkish Cypriots left the administration of the RoC government for reasons I would not like to mention here.4 After the withdrawal of the Turkish Cypriots from the RoC institutions, they have founded, respectively, the Turkish Cypriot Provisionary Administration on December 28, 1967; the Autonomous Turkish Cypriot Administration on September 3, 1974; the Turkish Federative State of Cyprus on February 13, 1975 and finally the Turkish Republic of Northern Cyprus on November 15, 1983.5

As could be seen from the brief history given above, the Cypriot legal system and its part, the Turkish Cypriot Legal System, have not emerged from a sole state’s order because of the alternating sovereign powers on the island. Conversely, all sovereign states brought their own legal systems to the island so that the Turkish Cypriot legal system was influenced by each of them.6 Thus, it becomes essential to handle the different legal systems in Cyprus in its historical stages. These historical stages are: (1) the Ottoman Empire Era between 1571-1878, (2) the Early British Era 1878-1915, (3) the Late British Era between 1914-1960, (4) the RoC Era between 1960-1967, (5) the Era of the Turkish Cypriots’ Establishment of a State between 1967-1983, and finally (6) the Turkish Republic of Northern Cyprus Era after 1983 until present.

II. THE TURKISH CYPRiot LEGAL SYSTEM IN THE OTTOMAN EMPIRE ERA

The island of Cyprus was included in the Ottoman territories during the classical period in the Ottoman history, when all regions of the empire had the same legal system structure. The most prominent feature of this period was the wide application of Islamic Law to the state’s central organization, society, economics and dispensation of justice.7 In this context, the Turkish Cypriots were subject to Islamic

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Law regardless of their ethnicity as were the other Muslims of the Empire. All of them were simply called Muslims.

The Ottomans first founded an administrative body when they conquered new lands and then the place was inhabited; this was a well-known feature of the Ottomans’ state concept. The Ottomans implemented this policy in Cyprus as well. Indeed, the conquest of Cyprus was not completed when the Beylerbeyi (grand seignior) and the Kadi (Muslim judge) of Cyprus were appointed, Muzaffer Pasha and Ekmeleddin Efendi, respectively. Truly, the Ottomans had well enough state experience to appoint a Kadi immediately before the actual conquest.

From there on, a newly formed administrative body was connected to Istanbul, the capital city of the Ottoman Empire, and Islamic Law was applied by the judiciary on the island. That is to say, Islamic law was implemented by the Kadis in Cyprus until the Hatt-i Sharif in 1839 (Tanzimat Fermanı). The Kadi was nominated by the Sheikhulislam and appointed by the Kazasker of Rumelia. The Kadi also had the authority over financial matters, and he was the implementer of canonical and customary law at least for Muslims until the Ottoman rule ended on the island. Cyprus was divided into 15 districts, and each district had its own local Kadi. The local Kadis worked in district courts, and the citizens could appeal their decisions to the Council of Cyprus in Nicosia. The president of the Council was the governor of Cyprus, and the prime Kadi was a member of the Council.

In fact, the judiciary should be analyzed in three different categories in the Ottoman Empire as in all countries in which Islamic Law is applied: (1) disputes between Muslims, (2) disputes between Muslims and non-Muslims, and (3) disputes between non-Muslims. Interestingly, although the Ottoman Empire permitted all its non-Muslim citizens to establish their own courts, the non-Muslims mostly resorted to the Kadis for their disputes. Admittedly, this outcome arose from

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10 ÇEVİKEL, Osmanlı Adası, p. 76.
11 ÇEVİKEL, Osmanlı Adası, p. 76; GAZİOĞLU, Kıbrıs’ta Türkler, p. 123 et seq.
13 See ÖZKUL, p. 55 et seq. for further information.
16 ÇEVİKEL, Osmanlı Adası, p. 173.
the Kadis’ impartial decisions; they pursued justice without considering people’s ethnicity and religion.\(^\text{18}\) The below given cases that are chosen from the Cyprus case history between 1725 and 1750 are good examples of the Turkish Cypriot legal system in the Ottoman Empire Era.

The first given group of examples are chosen from family law. The first example is an annulment of a marriage. The case was decided in 1158 (Hegira Calendar) where Ali Aga, from the district Arab Ahmed of Nicosia and the son of Mustafa, went to the court to cancel his sister Serife Rabia’s marriage because his permission was not obtained as her guardian. The Kadi nullified the marriage due to the absence of the required permission from her guardian.\(^\text{19}\) Another case is about a marriage which was forcibly entered into in 1146. Ali, the son of Ramazan, made a complaint to the court that he and Emine, the sister of Abdulkerim, were unable to cohabit as husband and wife because Emine kept running away from him although Emine’s consent was obtained at the marriage. However, Emine proved with witnesses in her plea that she never gave her consent to marry with Ali and rejected his brother’s consent request and authorization. Consequently, the Kadi nullified the marriage\(^\text{20}\).

Before providing some examples of divorce cases, another group of cases from family law, it may be useful to touch on an interesting point: most lawyers assume that Islamic Law consists of rules regulating a male-dominated society, and it only protects men’s rights. When the court registers of Cyprus are analyzed, one can argue that it may not be so at least for the handling period’s divorce cases in Cyprus. There are three types of divorces in Islamic Law: talak, muhalaa and tefrik\(^\text{21}\). Talak is a type of divorce where a man states his desire to get divorced by saying “I divorce you” three times to his wife; and subsequently the marriage ends. Muhalaa is a type of divorce where a woman renounces some of her marital rights and then gets divorced from her husband.\(^\text{22}\) There were 278 divorce cases in the analyzed period in Cyprus, and 202 of those cases were muhalaa and only 73 of those were talak. Probably there is no other Muslim country during those days where the majority of the initiators of divorces were women.\(^\text{23}\) Also, another set of divorce cases confirm that not only the Muslims appealed to the Kadis but also the non-Muslims did so too. Fesonzo, a non-Muslim living in Camlica, Giriniyye, divorced her husband through a proxy (appointed by herself in front of Muslim witnesses)

\(^{18}\) For instance, the Muslim judge of Kyrenia Ali Efendi-Zade Mehmet was convicted to the kalehent (the political prisoner confined to a fortress) for the offence of bribery and injustice decisions upon the Greeks citizens’ complaints; see Çiçek, pp. 63-64. See also ERDOĞRU, A.: Kıbrıs Ermenileri 1580-1649, Kıbrıs’da Osmanlılar, Lefkoşa 2008, p. 61.

\(^{19}\) See ÖZKUL, p. 129.

\(^{20}\) See ÖZKUL, pp. 129-130.


\(^{22}\) See CİN, p. 122 et seq. for muhalla.

\(^{23}\) See ÖZKUL p. 133.
due to the irretrievable breakdown of marriage\textsuperscript{24}.

Another interesting example of divorce law is “obtaining a divorce through a letter.”\textsuperscript{25} For instance, a Turkish Cypriot, Mehmet Bese, was married to Emine and went to the town of Kirman in Anatolia for some time. He divorced Emine in front of the Kadi of Kirman in Anatolia and sent a divorce letter to her through the Court’s bailiff. Subsequently, Emine first got married to Dervis Aga and then she married to Ahmet Aga upon Dervis Aga’s death. After 36 years of their divorce, Mehmet Bese had returned to the island and was displeased to see that his ex-wife was remarried to Ahmet Aga; he asked the Kadi in the island for the cancellation of the marriage between Emine and Ahmet Aga. However, the Kadi rejected Mehmet Bese’s case when Emine proved with witnesses that Mehmet Bese divorced her through a divorce letter, and she obtained permission from the Kadi before her remarriage.\textsuperscript{26}

One of the most important features of the Islamic Ottoman central administration was the citizens’ right of petition. The citizens could appeal to the Sultan with a petition for compensation of their losses caused by state operations and justice actions. The Cypriots also used their right of petition as many times as the other Ottoman citizens.\textsuperscript{27} In fact, Ms. Serife Emettullah, from Nicosia, went to a Kadi to complain about her husband Abdulgaffar’s physical attacks against her and explained her fear for her life in 1150, but before the Kadi rendered his decision, her husband divorced Serife Emettullah with \textit{talak} and did not give 15,000 \textit{akce} (the Ottoman currency) as alimony. Finally, Serife Emettullah was able to send a complaint letter to the Sultan about the Kadi’s inaction on her case. In 1157, the matter was discussed at the Palace and the Sultan ordered the Chief Kadi of Cyprus to collect money from Mr. Abdulgaffar to be given to Ms. Serife Emettullah, and despite the seven-year delay, Ms. Serife was able to receive justice from the Turkish Cypriot legal system.\textsuperscript{28} As can be seen from the above sample cases, the Islamic legal organization of the Ottoman Empire was fully implemented in Cyprus as in other parts of the Empire.

Another considerable practice of Ottoman law in Cyprus during this period that I provide examples of is tort law. The crime of “\textit{şetm}” in Islamic law covered the torts of assault, battery, false light, slander, defamation, and the unique Islamic torts of the crime of drinking al-

\textsuperscript{24} See ÖZKUL, p. 153.
\textsuperscript{25} See ÖZKUL, p. 152.
\textsuperscript{26} See ÖZKUL, p. 153.
\textsuperscript{27} For further information regarding this system, see ORTAYLI, İ.: \textit{Osmanlıyı Yeniden Kesfetmek}, İstanbul 2006, p. 115. This system was available for all citizens including the non-Muslims. In the practise of Sharia Courts, it is known that the citizens who was not able to obtain a favourable result from the local courts could forward their petitions to Istanbul. See ÇİÇEK, p. 63.
\textsuperscript{28} See ÖZKUL, p. 150.
coholic beverages and cursing at God (Allah), Prophet Mohammed and Sahabah (the companions of the Islamic Prophet Muhammed). Muslims who committed the crime of şetm, apart from those who cursed at God (Allah), Prophet Mohammed and Sahabah, would be given a punishment of falanga (a form of torture wherein the human feet are beaten) by Kadis (Kadis), especially by the Nicosian Kadi. It was possible to convert falanga into a fine. Those who cursed at God, Prophet Mohammed and Sahabah, irrespective of whether they were Muslims or not, would be sentenced to death not only in Cyprus but in other parts of the Ottoman territories as well. A case handled in 1635, in which the accused was a Kadi, constitutes a clear example of how the crime of şetm and punishments imposed for it were taken seriously and implemented carefully in Cyprus during this period. In the case at hand, Governor Halil Aga’s deputy, Ali Aga (one of the Kadis of Cyprus), brought a law suit against Halil Bey, the Kadi of Kukla on the grounds that he called Prophet Mohammed as the “son of concubine,” that he did not consider him to be the last prophet and thus he explicitly denied Koran and Mir’aj (Muhammad's miraculous ascension from Jerusalem, through the seven heavens, to the throne of God). Allegedly, Halil Bey said all these accusatory words to Mehmet Efendi’s face, the Kadi of Baf, who gave written testimony stating what Halil Bey had told him. During the investigations carried out by the court (Kadi), Halil Bey also confessed his defamatory language, which in the end caused him to be sentenced to death.

It can be observed that the criminal cases between a Muslim on the one hand and a non-Muslim on the other concerned offenses with relatively lighter penalties. For example (and probably the most important example) was a theft involving mutual accusations of the parties. As an example of such cases, once Ebubekir Aga, resident of Nicosia, resorted to Kadi with allegations that the five non-Muslims he employed to pick cotton wools in his farm stole cotton, oil, honey and rice belonging to him. After the investigation, it was found that those belongings were hidden inside the houses of the employees, and so the non-Muslims had to agree to pay 50 kurus (cents) diyet (compensation) to Ebubekir Aga. In a similar case held in 1151, two Muslims, Mehmed and Dervis were accused by the bishop of Ayro Monastery of stealing various belongings of the Monastery. However, the accused ones were acquitted after they took an oath that they did not commit the crime; moreover the findings that said the bishop was a notorious “slanderer” (müftleri) also contributed to this acquittal.

30 ERDOĞRU, (Şetm), supra note 1, p. 229.
31 ERDOĞRU, (Şetm), supra note 2, p. 229.
32 For more details regarding the case see ERDOĞRU, (Şetm), p. 230.
33 For more details regarding the case see ÖZKUL, p. 233.
34 For more details regarding the case see ÖZKUL, p. 234.
For criminal cases, non-Muslims had a tendency to resort to their own community courts. However, they too had applied to the Kadi, albeit rarely. For instance, in an event in 1139 (Islamic year), Milo, a non-Muslim woman, was shot dead in Bodamya, Nicosia. The Kadi sent his aide Mevlana Mustafa Efendi, and following his investigation it was found that she was killed by her son from Petro and criminal proceedings were initiated against the murderer.

Another curiosity of Turkish Cypriot law during the Ottoman era was the fact that Kadis would report to Istanbul any criminal cases which they had difficulty resolving and would request assistance. Usually, Kadis would resort to this method especially in sexual assault and or rape cases. A rape case held in 1159 before the Kadi of Psikobu can be given as an example to this matter. The subject matter of the case concerned a complaint filed to Yusuf Efendi, the Kadi of Leymesun, by Saliha, an Arabian woman residing in Psikopu against Mustafa Aga. She alleged that she was raped by him and she got pregnant. In this context, Kadi Yusuf Efendi informed the authorities in Istanbul and asked for their assistance. The authorities ruled for the renewal of the case before a “bailiff” (mübaşir) appointed by the central administration.

In another case in 1159, in which the daughter of Yorgi, resident of Çakmaklı, Nicosia was reported to the Kadi of Nicosia on claims of pregnancy due to adultery by the neighborhood residents. The residents resorted to the Kadis in Istanbul, because the Kadi of Nicosia did not pay any attention to their claims. Thereupon, the judicial authorities in Istanbul wrote to the local Kadi of Nicosia, requesting that the claims of “neighborhood subjects” be investigated and resolved. It is evident that the central judicial authorities assisted and guided Kadis, and almost constantly made Kadis feel they were being supervised on their practices.

There is no doubt that the types of cases that Kadis would handle and conclude during the Ottoman era in Cyprus were not only limited to family law, or criminal cases. They would also deal with “commercial disputes” stemming from the sale and purchase of goods and services. Those would include not only the relationships established between Muslims but also between Muslims and non-Muslims. For example, an action of debt, to which Mehmed, a Muslim resident at Gammadi-

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35 ÇEVİKEL, Osmanlı Adası, p. 175; Özkul, pp. 212-213.
36 For the case, see ÖZKUL, p. 232
37 ÖZKUL, p. 235.
38 For more information regarding the case see ÖZKUL, p. 235.
39 For the case see ÖZKUL, p. 235.
40 Please note that scope of the judicial assistance would not only be limited to the criminal cases but would also include civil law cases. A case held in 1163 shows us that the central judicial authorities would also assist Kadis in solving civil law cases, if requested so. In the case, the two villages, (Meniko and Akça) had a dispute over who would use the water of the river flowing nearby the two villages. The delegated Kadi submitted the case to Istanbul and asked for their advice. In the end, it was decided that for 36 hours per week one village, and for the rest, the other village would be entitled to use the water. For more details see ÖZKUL, p. 218.
41 For more information on the economical structure and the kind of relationships in the Ottoman community see ÖZKUL, p. 204 et seq. and p. 304 et seq.
ye, Nicosia and doing sericultural business, was one party. The other party was a non-Muslim resident Nicola in Kafesli. In this case, Mehmet Efendi resorted to the local Kadi of Nicosia on the grounds that he had 36 kurus receivables from Nikola in consideration for the goods Mehmet Efendi sold to him (22 kurus for a mule, 10 kurus for two silk thread, 4 kurus as cash credit). Nikola denied Mehmet Efendi’s allegations and claimed that he performed his debt fully. However, this case was dismissed because Mehmet could neither prove his allegations nor accepted to take an oath before the Kadi.42

It is known that the Cypriots also established a sort of “partnerships” on sericulture, leather trade, salt, sugar, dye and carpentry industries during the Ottoman era.43 Inevitably some disputes arose from these commercial relationships. One of them concerns a partnership engaged in dyeing industry in Nicosia. One of the partners left the partnership after four years of its establishment and moved to Egypt. He then returned to the island and demanded of his “right/share” of eight years of receivables from the remaining partners. Upon the other partners’ rejection of his claim, he brought a lawsuit against the partners. The Kadi dismissed the case on the grounds that the plaintiff did not have any receivables due from the partners as he had left and dissolved the partnership in line with the other partners’ request.44

In another interesting case in 1709, El Hac Receb Aga, resident at Debbaghane, Nicosia brought an action of debt against Batino Loyizi, the priest of Istevaraoz Monastery. The plaintiff claimed that he lent 160 kurus to Gavrayil, another priest of the same monastery, however the priest had died without paying his debt. When Receb applied to his heirs, i.e. the monastery, to collect his money, he was given a payable bill signed by Yankulu, the old priest of the monastery, to be paid to the monastery. However, Yankulu also died before clearing the bill, and that he had to take a legal action against Batino to collect his money. Batino acknowledged the debt, and asked for one year to pay it. After one year, Recep Aga again went before the Kadi asserting that he had only received cotton valuing 47 kurus in consideration for the debt, however he still had an outstanding amount. The defendant again acknowledged his debt, but rejected this claim and argued that the value of the cotton he gave to Recep Aga was not 47 kurus but 65 kurus, he gave 35 kurus worth of silk, and 127 kurus in cash. Thus in total he claimed that he already paid 227 kurus which was 38 kurus more than the total amount of his debt; thus he requested in the excess amount to be repaid to him. Recep Aga denied these claims. To prove his argu-

42 For more details regarding the case see ÖZKUL, p. 219.
43 For more information see ERDOĞRU, A.: Kobras’ı İle Osmanlı Esnaf ve Zarafkarlar, Kobras’ı Osmanlılar, Lefkoşa 2008, p. 106 et seq.; ÖZKUL, p. 328 et seq
44 For more details see ÖZKUL, p. 208.
ments, Batino brought two witnesses to the Kadi, and they confirmed that Batino had paid the stated amount in cash, but had not seen him give any cotton. Thereupon, Kadi asked for Recep Aga to take an oath that the actual cost of the cotton was indeed 65 kurus, and he failed to do so. The Kadi made Recep Aga pay 38 kurus back to Batino. As a result, Batino, having Greek nationality, won the case with the help of the statements of the two Muslim witnesses.\textsuperscript{45}

The last but not least example that should be mentioned here concerns a case held in 1153.\textsuperscript{46} In this case, Yani, resident at Aya Kesano, Nicosia sold cotton and wool to Safiri, resident at Tuzla. At the time of the sale, since Safiri did not have any cash, the parties agreed that the sale price would be paid by Safiri after he would sell the goods that he bought from Yani. However, after the sales were effectuated, Yani wanted Safiri to pay 200 kurus more than the agreed price by contravening the mutual agreement, and he took the case before the Kadi. In the end, the Kadi rejected the case by virtue of the fact that the parties did not agree upon such kind of special provision beforehand.\textsuperscript{47}

The above mentioned Ottoman legal system was implemented in Cyprus until the “Rescript of the Rose Chamber / Reorganization Edict” (\textit{Tanzimat Fermanı}) of 1839. After this date, regular courts (\textit{Nizamiye Mahkemeleri}) replaced the local Kadis.\textsuperscript{48} A Muslim president judge and both Turkish and Greek associate judges, being equal in number, were assigned to these courts. Moreover, a commercial court was established in Larnaka. As a result of these reforms, Divan-ı Te
dyz, court of the second instance (\textit{Istinaf Mahkemesi}) and Meclis-i Temyiz, court of appeal were established in Nicosia by wholly abolishing the power of Islamic Council of Cyprus (\textit{Divan}).\textsuperscript{49} With these reforms, parties were entitled to appeal against the “unlawful” decisions of the regular courts to these higher courts.

\textbf{III. THE TURKISH CYPRiot LEGAL SYSTEM IN THE BRITISH ERA}

As stated above, the British leased and received control on the island of Cyprus for the period between 1878-1914. In 1915, Great Britain unilaterally annexed Cyprus, the act which then was accepted and recognized by the Turkish Republic in 1923 with the Treaty of Lausanne. The period in which Cyprus was under the British control will be handled here in two separate sections, one covering the years between 1878-1914, the period which is called the “Early British Era” and the other covering the years between 1914-1960, the “Late British Era.”

\textsuperscript{45} For more details regarding the case see Çiçek, pp. 70-71.
\textsuperscript{46} For some other case studies and practices regarding commercial relationships and the law of obligations see Çiçek, p. 64 et seq. and ÖzKUL, p. 319 et seq.
\textsuperscript{47} For more details regarding the case see ÖzKUL, p. 326.
\textsuperscript{48} ÇELEKEL, \textit{Osmanlı Adası}, p. 173; An, p. 84.
\textsuperscript{49} GAZIOĞLU (\textit{Enosis Çemberi}), p. 134; An, pp. 84-85; ÇEVİKEL, \textit{Osmanlı Adası}, p. 173.
1. The Turkish Cypriot Legal System in the Early British Era (1878-1914)

The Early British Era in Cyprus refers to the period in which the island was governed by Britain, but was still owned by the Ottoman Empire, per the enabling convention signed between the two countries. Therefore in theory, it may be expected that the Ottoman legal system would still be in force on the island. But history disagrees. Although the island was still considered as an Ottoman property; the British authorities, after taking over the governance of the island, started to effectuate some legislative activities which slowly caused the Ottoman legal system to be replaced by British law. These compulsory legislative activities, aimed in essence at administering the island, caused the Ottoman law to slowly begin to fade, and British law began to take its place as the legal system to which Turkish Cypriots were subjected. It is difficult to make a case for the presence of “Turkish Cypriot Law” in this period. However Turkish Cypriot Law did indeed exist nonetheless, as the British administration did not, for a while, abolish the competency of the Islamic courts (Şer‘iye mahkemeleri) with regard to cases between Muslims as well as of those special courts for non-Muslims, also the British Administration did not cancel the Ottoman Code of Civil Law (Mecelle).

In fact, the British Administration established a new legal system when they arrived at the island. Criminal disputes were of great importance for the British in order to establish public order on the island when they first arrived. For instance, the Penal Code which was introduced during the Ottoman Reforms of 1858, and was largely modeled after the criminal code of France and was in force in all parts of the Ottoman Empire, was kept in force in order to maintain the criminal law system on the island. On the other hand, the competence of the Islamic courts with regard to cases between Muslims, and that of Community Courts with regard to family law cases of non-Muslims remained valid. The Ottoman Code of Civil Law, regulating civil law and property law of the Ottoman Empire, was applicable as well. The British kept this division and only limited it with respect to family law disputes and kept the Penal Code in force. However, “itinerant tribunals” (Gezici Mahkeme), “regional courts” and “high courts” as courts of appeal were established by the British administrators shortly after receiving control of the island – probably in 1879 – which were envisaged to have jurisdiction over all other sorts of disputes. Those high courts would be regarded as the courts of last instance of all legal

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50 NEOCLEOUS, p. 11.
51 NEOCLEAUS, p. 11.
52 NEOCLEOUS, p. 11.
53 An, p. 87; NEOCLEAUS, p. 11.
54 NEOCLEOUS, p. 11.
and criminal cases, except those falling within the exclusive competence of the Islamic Courts (Şerî'ye) and the Community (Cemaat) Courts, i.e. guardianship, alimony, cancellation and/or nullity of marriage and divorce cases\(^{56}\).

The above mentioned legal system was adopted and applied in Cyprus until 1882, when the British administration went for some major changes by broadening the area of jurisdiction of regional courts, which restricted the power of Şerî'ye courts considerably.\(^{57}\) Moreover, within the same period of time, for disputes stemming from family law issues, which had previously been heard by the High Court as a court of first instance, regional courts were held to be competent, and it was decided that for those disputes the High Court would only be acting as the court of appeal.\(^{58}\) The intention of British administrators to make the applicable law more “British” on the island soon showed itself also in the law that had been applied to “Greek-Orthodox” community during the Ottoman Era. In this context, the power of Greek Community Courts was limited to the cases of guardianship and adoption, by empowering the regional courts on all other cases. This system remained until the establishment of RoC.\(^{59}\)

2. Cypriot Legal System in the “Late British Era (1914-1960)”

The years between 1914 and 1960 were the years when the British administration undertook legal and administrative moves to maintain its existence on the island permanently.\(^{60}\) In those years, the British both wanted to restructure the judicial councils permanently throughout the island and to reshape the community with the new substantive law provisions, and thereby maintain their existence on the island permanently. For instance, the laws like the Protection of the Plaintiffs Code, the Mutual Recognition of the Foreign Court Judgments Code, the Implementation of the Alimony Orders, the Oaths Code, the Limitation of Action Code, the Testimony Code, the Criminal Procedure Code, the Civil Procedures Code, the Justice Courts Code, were the most important laws in the field of procedural law enacted by the British Administration. Similarly, the Marriage Code, the Maritime Code, the Working Hours Code, the Policy Code, the Bankruptcy Code, the Municipalities Code, the tax laws like the Real Property Tax, the Income Tax, the Torts Code, the Contracts Code, the Tax Collection Code, the Real Property Acquiring Code, the Inheritance Code, the laws on the education such as the Elementary Education, Secondary Education, the British School, the laws such as the Trade Unions

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\(^{56}\) NEOCLEOUS, p. 12.

\(^{57}\) An, pp. 87-88.

\(^{58}\) NEOCLEOUS, p. 11.

\(^{59}\) NEOCLEOUS, p. 11.

\(^{60}\) For the preliminary transactions of the British administration for to be permanent in the island and reactions from Greek and Turkish communities towards those transactions, please see GAZİOĞLU, (Enosis Çemberi), p. 41 et seq.; UÇAROL, p. 154 et seq.
Code, the Passport Code, the Immigration Code, the Adaptation Code are the laws that include substantive code provisions through which the British administration aimed to reshape the Cypriot community and become permanent on the island by maintaining the communal living.\textsuperscript{61} It should be stated that the British administration succeeded in this policy and produced a permanent effect on the legal system of the island in 88 years, something the Ottoman administration failed to do in 307 years. Today, if it is said that the Cypriot Legal system, including TRNC law, is based on Anglo-Saxon law, and indeed it is, the underlying principal cause of that is the stated legislative activities of the British administration as for changing the legal system in the island permanently in the years between 1914 and 1960. One should not forget that, the stated laws enacted in the British era and not have been repealed over time, were exactly still in force in the RoC which we call the Greek Cypriot Republic of Southern Cyprus, in accordance with the Article 188 of the Constitution of this state\textsuperscript{62}. Similarly, the laws put into effect until the date of December 21, 1963 among those executed in the years stated, have been kept in force within the Turkish Cypriot Legal System as well, both by virtue of the Turkish Federative State of Cyprus Constitution (Art. 1) and also by the provisional clauses of the Turkish Republic of Northern Cyprus Constitution (Art. 4).\textsuperscript{63} Indeed, the Penal Code, the Criminal Procedure Law, the Testimony Code, the Civil Procedure Law, the Contracts Code and the Torts Code are laws that remained from those years and applied by the TRNC courts on a daily basis.\textsuperscript{64} It is quite difficult to mention a "Turkish Cypriot Legal System" in this context. The single point we can express regarding the Turkish Cypriot Legal System in those years is that the British preservation of the jurisdiction of the religious courts (şer’iye mahkemeleri) was abolished in 1924, and the promulgation of the Turkish Family Code in 1951, and also the Turkish Code of Family Courts in 1954. Regarding these two laws, it is quite unlikely to mention the existence of a "Turkish Cypriot Legal System" on the island during this time period.

\section*{IV. THE REPUBLIC OF CYPRUS ERA}

As mentioned above, the RoC was established with the Treaty of Zurich in 1958, the Treaty of London in 1959 and the Treaty of Nicosia in 1960. As a result of these treaties, the Turkish Cypriots who chose to attain neither the British nor the Turkish citizenship became citizens of the RoC automatically in accordance with Attachment D of the

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\textsuperscript{61} For the chronological list of the stated laws that British Administration enacted, please see COŞKUN,R.: 
\textit{Kuzey Kıbrıs Türk Cumhuriyeti Hukuk Mevzuatı, Amme Enstrümanları (Yasa Referansları), C.1, Gazimağusa 2006, p. 205 et seq.}
\textsuperscript{62} NEUCLEOUS, p. 11.
\textsuperscript{63} Kıbrıs Yasaları, (Revised and Conflated), 1\textsuperscript{st} Volume (Chapter1-104), Revised New Edition, KKTC Cumhuriyet Meclisi Yayımları, 2001, p. 5.
\textsuperscript{64} NECATİGİL,Z.M.: 
\end{flushright}
The Turkish Cypriot Legal System from a Historical Perspective

Facility Treaty (Tesis Antlaşması).\textsuperscript{65} Therefore, in the era of the RoC, it is not possible to mention a Turkish Cypriot legal system to which Turkish Cypriots were subjected to. There was a newly-established independent state which is subject to the Cyprus Republic legal system whether its roots are Greek, Turkish or Maronite. Considered from the Turkish point of view, the sole fact to be noticed here is the existence of the rules and the structures that directly interests Turks, because of a bi-communal structure of the Republic. However, it should not be forgotten that, there are rules and structures within the system that directly interest Greek Cypriots just like the Turks. Therefore, two main points must be particularly emphasized while evaluating the Cyprus legal system in the Republic era. The first one is the dependence of the fundamental character of the system on Anglo-Saxon law and the second one is that the system reflects the characteristics of a bi-community as a matter of the state structure.\textsuperscript{66}

When the Cypriot Republic legal system is considered, what should be said without hesitation is that this country’s legal system is predominantly based on British law.\textsuperscript{67} As was said above, legislative transactions performed by the British administration between the years of 1914 and 1960 played the foremost role in the formation of this foundation. As a matter of fact, Article 188 of the Constitution of the RoC was clearly based the structure of the state on British Law by stipulating that the laws from the British era which were not contrary to the constitution and have not been abolished yet will remain exactly in force.\textsuperscript{68} Moreover, despite all the events that took place, the sustainment of the “State” nature of the Cypriot republic, at least from their own perspective, in other words the lack of any attempt by the Greek Cypriots to reorganize as a state, who are left to be the only founding nation of the state, lead the system to be based on British Law more so than the current TRNC law. Because, as we will see below, although the current Turkish Cypriot legal system is also based on British law, it has at least in certain areas and to some extent moved away from the British law, due to inevitable going through a "state establishment process”.

Undoubtedly, the legislation that forms the RoC legal system is not only the laws inherited from British era and held in force. Besides these laws, the RoC Assembly has expanded the system and regulated the implementation scheme by having new legislative functions in fields, which are deemed necessary, by amending or repealing the current ones and by participating in some international treaties. For instance,

\textsuperscript{65} In this respect, please see TURHAN, p. 45.
\textsuperscript{66} NEUCLEOUS, p. 18, 2-8.
\textsuperscript{68} NEUCLEOUS, p. 30, 2-7; NECATİGİL, Anayasa ve Yönetim Hukuku, p. 1.
the “Republican Army Code”, “the Cyprus Republic Citizenship Code”, “the Foreign Ministry Code”, various tax and tax collection laws, “the Election Code”, “Central Bank Code”, “Maritime Code”, “Justice Courts Code”, “Turkish Municipal Corporations Code” and other similar codes provide for the fundamental political and economic organization of the state. However, in addition to these laws, in this system, it is also possible to come across laws only concerning the Turkish Cypriot community due to the bi-communal structure of the Republic and the presence of the constitutional obligation on the regulation of some fields by their own community assembly (Article 87). “Turkish Community Assembly Election Code”, “Turkish Community Assembly Foundations and Religious Affairs Code”, “Public Holiday and Memorial Days Code”, “Illegitimate Children Code” are examples of codes that directly apply to Turkish community.

It will be appropriate to start explaining the subject of regulations or structuring directly concerning Turkish Cypriots in the Republican era legal system with an institution which still preserves its existence, even today, both in the South part, and in the TRNC, briefly called the "Attorney General" or "Law Department". According to the Constitution of the Republic, two persons who fulfill the requirements of being a high court judge may be appointed by the President and the deputy as a “chief prosecutor” and “deputy chief prosecutor”. Both of these officials who are permanent members of the Republic Courthouse and who act as the legal counsel of both the Council of Ministers and the ministries, shall not belong to the same community. In this case, it is evident that either the “chief prosecutor” or the “deputy chief prosecutor” will be Turkish. The most important feature of the Chief Prosecution institution is the obligation to consult one another before taking decisions on the issues related to the president’s or the deputy’s community. In this case, for instance, a Greek Chief Prosecutor, who takes a decision concerning Turks, is required to consult with his/her Turkish counterpart.

The two other structures of the Republic Constitution which relate to both Turks and Greeks and are comprised of both Greek and Turkish judges together within its structure are the two institutions called the Constitutional Court and the Superior Court of Justice. Among those, the Constitutional Court was composed of an independent president-chief and a Greek and a Turkish judge; the Superior Court of Justice was also composed of an independent president-chief and two Greek and one Turkish judge and both of the members of those courts were appointed by the President and the chief deputy. However, after the inter-societal conflicts began in 1963, due to the malfunction of both

69 For the dates of the entry into force of the stated laws, please see COŞKUN, p. 231 et seq.
courts, these courts were abrogated with a law enacted by the Greek Cypriot deputies and a sole Superior Court, currently in duty, was established in lieu of them.\textsuperscript{71}

Although, it does not matter today and even just for historical information, it will be beneficial to mention briefly about the republic legal system’s regulations on the lower courts. The status of the lower courts had been determined by Article 159 of the Constitution, the principle is that the cases of Turks would be conducted by the courts established by Turkish judges and the cases of Greeks’ would be conducted by the courts established by Greek judges. These cases, where the plaintiff and the defendant or the offender and the aggrieved belong to different communities, were heard by the courts consisting of the judges appointed by the Superior Court\textsuperscript{72}.

V. THE TURKISH CYPRiot LEGAL SYSTEM DURING THE “NATIONALIZATION PROCESS (1967–1983)”

The lifetime of the RoC in terms of the Turkish Cypriot community was not quite long. As a result of the incidents that occurred in only the third year of the establishment of the Republic and the subsequent attempts of Makarios to amend the crucial constitutional arrangements for Turks, as well as the 1967 incidents, the Turks receded from the state administration.\textsuperscript{73} Following this year, Turkish Cypriots experienced a process that was not only very difficult, but also crucial for them. During what we call the “nationalization process” of Turkish Cypriots, Turks established firstly the Provisional Turkish Administration, then the Autonomous Turkish Cypriot Administration, Cypriot Turkish Federation and finally the current Turkish Republic of North Cyprus and hereby they both continue their existence on the island, and form their structuring based on bi-communal, bi-zonal and political equality. Undoubtedly, although the different structures that emerged in the experienced process are based on the one-unique state philosophy basically desired and yearned for, the legal structure surrounding Turkish Cypriots has changed from one to another. Therefore, it is beneficial to consider the subject respectively according to each political structure. Undoubtedly, within these structures, the current legal system of “Turkish Republic of Northern Cyprus (TRNC)” will be considered separate from the above-mentioned three periods.

1. The Turkish Cypriot Legal System in the era of the Provisional Turkish Administration of Cyprus (1967-1974)

The reason behind the establishment of the Provisional Turkish Administration of Cyprus was to carry out the social affairs of the Turkish Cypriot community who had been excluded from the Republic admin-

\textsuperscript{71} NECATİGİL, Anayasa ve Yönetim Hukuku, p. 1.
\textsuperscript{72} DAYIOĞLU, p. 60.
\textsuperscript{73} GAZİOĞLU, Cumhuriyet Yılları, p. 358 et seq.; İSMAIL, Kıbrıs Cumhuriyeti, p. 68 et seq. particularly p. 77 et seq.
istration due to the 1963 incidents, to put an end to the existing disturbances and the conflicts of authorities, briefly to establish a social system that would ensure the desire of the Turkish Cypriot community for the coexistence. In this manner, this administration, as an expression of “restructuring,” has never been an organization implemented against the Republic and as an alternative of it for Turks.\textsuperscript{74} In fact, therefore, the Provisional Turkish Administration had not formed a detailed constitution but rather promulgated a document of 19 articles as a “miniature constitution” including provisions that the Turkish community would be subject to. This document did not repeal the Cyprus Constitution; furthermore it expressed the view that Republic laws adopted before December 21, 1963 were kept in force. However, the Provisional Administration had initiated the nationalization process of the Turkish Cypriots by separating legislation, executive and jurisdiction affairs within these 19 articles to apply current Cypriot Constitution and its laws\textsuperscript{75}.

Leaving executive affairs apart from our discussion\textsuperscript{76}, the rules applied in the Turkish zones of the island have been established by the “Provisional Turkish Administration Assembly.” This Assembly was composed of 15 Turkish members elected to the House of Representatives and the members of Turkish Community Assembly in accordance with Cypriot Constitution\textsuperscript{77}. Undoubtedly, this assembly has made significant contributions by enacting new laws within the framework of the newly-established structure, to the survival of the Turkish Cypriot community on one hand and to the nationalizing process on the other hand. For instance, laws such as “the Judicial Courts Code,” “the Code on the Entrance and Exit Control to the Turkish Zones,” “the Code on the Prohibition of Selling Real Estate to non-Members of the Turkish Community,” “the Code on Election of the House of Representatives and Community – cemaat – Assembly”, “Firearms Law”, “the Turkish Cypriot Armed Forces Code”, “the Department of the Religious Affairs Code,” “the Code Stating the Working Conditions of Cypriot Turks in Turkey”, “Military Penal and Procedural Code” are only some of them enacted by the Provisional Administration.\textsuperscript{78} Eventually, in conclusion, it must be stated that the judicial activities have been executed by the Turkish judges assigned to by the proposal of the vice president.

As is evident from this brief description, in the initial stages of the nationalization process, the Turkish Cypriot Legal System was mainly dependent on the Republic Law. In other words, the fact that legal

\textsuperscript{74} For the aims and characteristics of the Provisional Turkish Administration, please see SARICA/TEZÎÇ/ESKİYURT, p. 157 et seq., particularly p. 160.

\textsuperscript{75} SARICA/TEZÎÇ/ESKİYURT, pp. 158-160.

\textsuperscript{76} For executive acts, please see SARICA/TEZÎÇ/ESKİYURT, p. 159.

\textsuperscript{77} SARICA/TEZÎÇ/ESKİYURT, pp. 158-159.

\textsuperscript{78} For the Laws enacted in the Provisional Turkish Administration period, please see COŞKUN, p. 248 et seq.
rules surrounding the Turkish Cypriot community are mainly based on Anglo-Saxon law has not changed. On the other hand, the Turkish community by being separated from the republic administration which means forming a new organization by taking care of their own, makes it essential to enforce new laws as required by their own social structure and needs. In this manner, the will of Turkish Cypriot Community and its organization to protect the Republic at the beginning, reluctantly, started to move away from British law gradually and directed towards a double-headed structure.

2. Turkish Cypriot Legal System during the Autonomous Turkish Cypriot Administration (1974-1975) Period

The Provisional Turkish Administration was initially renamed the "Turkish Administration" and was eventually replaced by the "Autonomous Turkish Cypriot Administration" with a decision taken by the administration in September 1974. The Autonomous Turkish Cypriot Administration was a short period that only lasted for less than a year. A review of the legislation activities in this period reveals that there were hardly any developments as far as the Turkish Cypriot Legal System is concerned. The system is essentially the same with that of the Provisional Administration period. Nonetheless, the Assembly continued enacting codes aimed at "state establishment", i.e. the "Code on the Registration of Births and Deaths" and the "Minutemen Act." It is noteworthy that, besides the Justice Courts Code that forms the basis of the current Code of Courts numbered 9/1976, a "Code of Citizenship" was enacted. Considering that the concept of "citizenship" is defined as a legal and political bond that bounds persons and things to the "state," it is self-evident that the administration had the intention to restructure the Turkish Cypriot Society as a "nation" as early as 1974.

3. Turkish Cypriot Legal System during the Turkish Federative State of Cyprus (1975-1983) Period

A careful examination of the state establishment process of the Turkish Cypriots reveals that the most important period in this process was that of the Turkish Federative State of Cyprus (1975-1983) following the peace operation, because simply put, this period is marked by Turkish Cypriots doing their part in order for an "independent and federal" RoC to be realized in the future - in other words founding the "Turkish State" that was intended to become one of the founding partners of a future federation. In this stage, the Turkish Cypriot commu-
nity had adopted their Constitution, switched to a genuine multi-party democratical system, made the state fully functional through two general and two local elections, and began to wait on the Greek side for a federation based on equality. It should be noted that the fact that the Turkish Cypriot administration had been restructured as a state to improve the economical and social infrastructure of the Turkish Cypriots, had inevitably caused the Turkish Cypriot legal system to depart from the legal system of the Republic and proceed to become a sui generis legal system.

It can be argued that the Turkish Cypriot legal system in the Federative State period had not completely departed from the legal system of the Republic and therefore Anglo-Saxon law. Although some laws from the British period were slowly being repealed or tried to be made compatible with the needs of the Turkish community, the positive law was still based heavily on the British laws in force since the Republic period. However in spite of this reality, it should be remembered that the Turkish Federative State of Cyprus that was sovereign over the northern part on its own behalf, had announced to the world by enacting a constitution in 1975 that she wanted to continue her existence as an independent state and as a natural requisite wished to pursue legislative activities within the frame of principles and procedures determined in the constitution. A closer examination of the Constitution of the Turkish Federative State of Cyprus reveals that it had codified all vital foundations for a basic political organization of a state, such as “citizenship (Art. 53)”, “suffrage and right to participation in referenda (Art. 54), “founding of political parties (Art. 56)”, “admission to public service (Art. 58)”, “patriotic duty (Art. 60)”, “Federative State Assembly (Art. 63)”, “legislation, amendment, amnesty, enactment of budgetary laws (Art. 65)”, “executive power (Art. 78)”, and “head of state and council of ministers (Art. 79, Art. 58).” These regulations, reflective of a statehood structure considerably divergent from that of the RoC, illustrates that the Turkish Cypriot legal system, although still bearing traces of British law, was gradually shifting towards a sui generis system that was influenced also by the legal system of the Republic of Turkey.

It should be noted that the “Assembly of the Turkish Federative State of Cyprus”, responsible for carrying out the legislative activities of the Turkish Federative State of Cyprus, had met all prerequisites of being a “state assembly” and ferried the Turkish Cypriot
community to become the “Turkish Republic of Northern Cyprus.” The Turkish Federative State of Cyprus, which had preserved, with the Provisionary Article 1 of her Constitution the enforcability of the codes from the British period, codes enacted by the House of Representatives of the RoC until December 21, 1963, the Turkish Community Assembly, Assembly of the Autonomous Turkish Cypriot Provisionary Administration, and the Legislative Assembly of the Autonomous Turkish Cypriot Administration, had created a unified legal system with its codes adopted, amended and abolished by her Assembly. 85. This legal system has come to be the core of the current legal system of the Turkish Republic of Northern Cyprus. In this respect, a few examples could be given for laws enacted by the Assembly of the Federative State and commonly found in the legal structure of all institutionalized political authorities referred to as “states”: “Referendum Law”, “Political Parties Law”, “Land Registry and Cadastre Law”, ”Motor Vehicles Law”, “Inmovable Properties Law”, “Monetary and Exchange Affairs Law”, “Public Servants Law”, “Military Zones Law”, “Banks Law”, “Social Insurance Law”, “Law on the Foundation of Security Forces”, “Retirement Law”, “Reserve Military Officer Law”, “Law on the Collection of Public Receivables”, ”Court of Accounts Law”, and “Rent Law.” 86 A closer technical inspection of these laws enacted after 1974 makes it apparent that a majority of them were inspired by the laws of the Republic of Turkey. Therefore it can be said that during the Federative State period, the Turkish Cypriot legal system gradually moved farther away from the Anglo-Saxon legal system and attained a mixed structure by reapproaching the Turkish legal system.

However it should be underlined that the observation that the Turkish Cypriot legal system has been shifting towards a mixed structure composed of Anglo-Saxon and Turkish legal systems, pertains to the substantive law rather than procedural law. In other words, the shift from Anglo-Saxon law to Turkish law has been in the field of substantive law, not the procedural law. On the exact contrary, the Federative State Assembly continued to remain loyal to the judicial structural and procedural laws of the RoC period by affirming the validity of the procedural laws from the British period, and complimenting them with other laws like the “Law on the High Judiciary Council”, “Legal Chamber Law”, and “Code of Courts.” We believe that, those who claim that the modern Turkish Cypriot legal system is based on the Anglo-Saxon legal system, reach this conclusion by taking into account the more conspicuous judicial structure and the procedural law. As the judicial structure formed in the Federative State period

85 Kıbrıs Yasaları, p. 5.
86 For the dates of entry into force of these codes and other codes enacted by the Federative State Assembly see COS- KUN, p. 257 et seq.
is almost completely preserved in the Turkish Republic of Northern Cyprus period, it will be examined more thoroughly below.

VI. LEGAL SYSTEM OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS

Although Turkish Cypriots had hoped for the foundation of a prospective "Federal RoC", and founded the "Turkish Federative State" with all its institutions which would constitute the Turkish branch of this federal state, their expectations in this sense did not materialize. The Turkish Cypriot community and its representative Federative Assembly did not wait any longer and exercised the "right of self-determination" and declared the “Turkish Republic of Northern Cyprus” (TRNC) on November 15, 1983, in order to reverse the negative international attitude caused by UN resolutions and still be able to negotiate with the Greek Cypriots under equal terms.87

Following the declaration of the TRNC, during an Assembly meeting in December 1983, it was decided that the Assembly would become “Constituent Assembly” with 70 members and was given the tasks of drafting the constitution, holding elections and carrying out necessary legislative activities hitherto. The draft constitution, prepared by the Constitutional Commission composed of a president and fourteen members, was made public right after the Founding Assembly finished her work, the Constitution of TRNC entered into force with a referendum on May 5, 1985.88 An overview of the Constitution of 1985 reveals that the foundations of the state structure of the TRNC were laid down in the Federative State period. In other words, due to the shift away from a federal state expectation, the Constitution of 1985 introduced a new structure that envisioned absolute and unitary exercise of sovereignty within the borders of TRNC, but left this fundamental approach aside, it fully preserved the basic institutions of the Federative State Constitution and reorganized them in more detail and in line with the contemporary approaches.89

It will be appropriate to provide some information on the formation of the judiciary and applicable legislation in explaining the current Turkish Cypriot legal system that is outlined in Section Five (Articles 136-158) of the Constitution of 1985.

1. Judicial Organization of the TRNC

As stipulated under Section Five (“Judiciary”) of the Constitution,
The current Turkish Cypriot Legal system's judicial organization is composed of the “High Judicial Council (Art. 141), “Constitutional Court (Art. 144-150)” - “High Court of Appeals (Art. 151)”, "High Court (Art. 143)” acting as “High Administrative Court (Art. 152)”, “Family Court”, “Juvenile Court”, "Courts-Martial (Art. 156)”, “Military High Court of Appeals (Art. 157)” and “Chief Public Prosecutor’s Office (Art. 158)”. As underlined above, this organizational structure, apart from some non-foundation-related deviations, is a framework derived from the Constitution of the RoC, based on the Anglo-Saxon judicial organization and fully preserved throughout the Federative State period.\textsuperscript{90}

A) High Judicial Council

To start our explanations with the High Judicial Council, it will not be wrong to state that this Council is charged with the duties of the Ministry of Justice and the High Council of Judges and Prosecutors in the judiciary organization of the Republic of Turkey. This council, set up by the Constitution of the TRNC, is composed of the President and seven members of the High Court, one member each appointed by the President and the Speaker of the Assembly, the Chief Prosecutor and the Head of the Bar Association. The council is empowered in respect of the following: the general operation and regular functioning of the judiciary, the attendance of the public officers attached to the judges and the courts to their duties, the effective conduct of tasks, the training of the judges, the preservation of the dignity and the honor of the profession, the appointment of the judges, the promotion of the judges, changing the duties or posts of the judges, security of job (life tenure), and deciding on disciplinary matters.\textsuperscript{91}

B) Lower Courts

The courts of first instance (referred to as “Lower Courts” in Art. 155 of the Constitution) were founded with the “Code of Courts” drafted and enacted during the Turkish Federative State of Cyprus in September 1976, and later amended in line with the administrative structure of the TRNC. “Courts-martial” aside, the lower courts ought to be examined under two sections: civil courts and criminal courts.\textsuperscript{92}

a) Civil Courts

Lower courts operating in civil law matters, so called civil courts, are divided into three subgroups: “Full District Court”, “Senior District Court Judge”, and “District Court Judge”. The Full District Courts operate on the district level and are established in Nicosia (Lefkoşa), Famagusta (Mağusa), Kyrenia (Girne) and Morphou (Güzelyurt). The

\textsuperscript{90} DAYIOĞLU, p. 61 et seq; NECATİGİL, Anayasa ve Yönetim Hukuku, pp. 3-4.

\textsuperscript{91} For the High Judicial Council see DAYIOĞLU, p. 63; NECATİGİL, KKTC Hukuk Sistemi, p. 115. Also see http://www.mahkemeler.net, “FAQ”.

\textsuperscript{92} DAYIOĞLU, pp. 65-66; NECATİGİL, KKTC Hukuk Sistemi, p. 132 et seq.
Court of Nicosia also operates in other areas such as Lefke and Iskele (Trikomo). These courts are composed of two or at most three judges. However in practice, they operate with two judges, the more senior of who acts as the president. Cases with an object of litigation of 5,000 Turkish Liras or more fall under their jurisdiction. The president has the power to conduct a hearing at his own initiative if the object does not exceed 15,000 Turkish Liras. “Senior District Court Judge” and “District Court Judge” conduct hearings on their own, and have the power to hear cases not exceeding 15,000 TL and 5,000 TL, respectively. As a matter of fact, it should be noted that Cyprus is a small country divided into only six districts, with a total of 31 judges operating in all courts throughout the country.\textsuperscript{93}

b) Criminal Courts

Lower courts that operate in criminal matters are divided into three subgroups: “High Criminal Courts”, “District Courts” and “Juvenile Courts”. High Criminal Courts are established only in Nicosia, Famagusta and Kyrenia. They are normally composed of a president and two judges appointed by the High Court. However in practice, the hearings are conducted with three district court members. An exception to this tradition is cases where the defendant is being alleged with a crime that necessitates capital punishment, then the president of the district court chairs the court board. High criminal courts are entitled to hear cases where the punishment is more than 5 years of prison penalty or 2,000 TL of pecuniary penalty. These courts also have the power to assess damages of up to 15,000 TL in favor of the persons injured due to the crime. In districts with no established High Criminal Courts and during the judiciary recess between July 1 and September 14, the cases are heard by mobile field courts. District Courts hearing criminal cases are composed of one judge, and are entitled to hear cases that call for a prison penalty of less than five years or pecuniary penalties not exceeding 5000 TL.\textsuperscript{94}

Another court related with the criminal law is the Juvenile Court established according to the “Code of Juvenile Criminals”. These courts are entitled to try juvenile defendants of younger than 16 years of age. They are composed of a single judge, namely the district court judge. They practice special trial procedures which involve barring the entry of spectators and the press to the hearing room.\textsuperscript{95}

c) Family Courts

Family Courts appear in accordance with the historical development of the Turkish Cypriot legal system. Disputes related to family law had been excluded from the jurisdiction of general courts since the

\textsuperscript{93} See http://www.mahkemeler.net; DAYIOĞLU, pp. 65-66.  
\textsuperscript{94} DAYIOĞLU, p. 66.  Also see http://www.mahkemeler.net.  
\textsuperscript{95} DAYIOĞLU, p. 67.
British era, and family law and personal law disputes of the Muslims and non-Muslims have been held in different courts. Moreover, there is no Civil Code in the Cypriot legal system. Family law issues such as engagement, matrimony, divorce, custody, guardianship, descent, alimony, law of property, etc. are regulated under a private code, “Family Code.” Thus Family Courts, each existing of one judge, apply to this code when resolving disputes in these matters.96

C) High Court

Pursuant to the Constitution of the TRNC (Art. 143), the High Court consisting of a president and seven members, is the highest court in the country. Like other courts, the organization chart of the High Court is also transferred from the British era to the RoC and then to the Federated State and to TRNC. An interesting point of this chart is that the High Court acts as the Constitutional Court, as the Supreme Court, as the High Court of Appeals and also as the High Administrative Court (Art. 143,2). In other words, there is not more than one higher court in the TRNC legal system as there are in the Republic of Turkey. One High Court performs the duties of other high courts.

a) High Court acting as the “Constitutional Court”

The high court, when acting as the Constitutional Court, consists of the president of the Court and four High Court judges. Trial process is not performed only on file but through hearings. The High Court has the following rights and duties as the Constitutional Court.97

a. 1 To solve power and authority disputes upon the objection by the President, the Assembly of the Republic or another body of the State,

a. 2 To give their opinion to the President, if the President suggests that the whole or some rules of a law adopted by the Assembly of the Republic is contrary to the Constitution,

a. 3 To render final decisions on the annulment cases brought before them by the President, political parties represented in the Assembly of the Republic, political groups, at least 9 deputies or institutions, entities and unions, in matters related to their existence and duties, claiming the contradiction with the constitution of a law, decree, by-law or a decision of the Assembly of the Republic or a regulation,

a. 4 To render final decisions when a code, a decision or a code, which may effect a step of the judicial procedure including the appeal phase, is brought before them by a court claiming contradiction with the Constitution,

a. 5 To construe the articles of the Constitution if requested,

96 NECATİGİL, Anayasa ve Yönetim Hukuku, p. 11.
97 DAYİOĞLU, pp. 67-69; NECATİGİL, Anayasa ve Yönetim Hukuku, p. 5.
a. 6 To try the President, Prime Minister or Ministers as the Supreme Court, and

a. 7 To review the closure cases of political parties if certain grounds exist.

b) High Court acting as the “High Court of Appeals”

High Court, acting as the “High Court of Appeals” with a chairman and two or three High Court judges, is the highest appellate court in the TRNC legal system. It is possible to appeal all the decisions of the first degree courts. The appeal period is 42 days starting from the decision date in civil cases, and 10 days starting from the decision date in criminal cases. In addition to this basic duty, the High Court, when acting as the High Court of Appeals, has the following authorities deriving from British law which are unfamiliar in Turkish Law: 98

b. 1 to issue a writ to lift an unauthorized detention (Habeas Corpus),
b. 2 to issue a writ to provide the implementation of an authority (Mandamus),
b. 3 to issue a writ to prohibit the implementation of a wrongful decision rendered by a court or a body applying the judicial authority (prohibition),
b. 4 to issue a writ to investigate which authority is based upon for the occupation of a post (ex warranto) and
b. 5 to issue a writ to annul a decision of a court or of another body using judicial authority (certiorari).

c) The High Court acting as the “High Administrative Court”

The High Court when acting as the “High Administrative Court” tries cases in which a citizens file a lawsuit against a decision, transaction or negligence of a governmental body, authority or an official using an administrative power, that violates the Constitution, a code or laws and regulations. The misconduct which is being sued can be scrutinized on the condition that the legitimate interest of the plaintiff is damaged or negatively affected. The period of applying to the High Court acting as the High Administrative Court, is 70 days following learning the mentioned administrative decision or negligent action. 99

Unless otherwise provided by the Code, High Administrative Court rules with one judge. However, the High Administrative Court assembles with three judges in certain circumstances stated in the High Administrative Court Authorization Code: the administrative actions and/or the decisions of the Ministries, the local authorities, public service commissions, and the Transportation of People and Goods with Mo-

tor Vehicles Commission. High Administrative Court decisions rendered by three judges are final. However, the decisions given by one judge can be appealed at the same court consisting of three judges. The Court,

c. 1 may approve the decision or the administrative decision and/or act as a whole or partially and,

c. 2 may decide that the decision or act is null and void partially or as a whole or is of no effect and will not create any legal consequences,

c. 3 in case of negligence, it may decide that the transaction should not be realized partially or as a whole, or decide that an act or transaction should be realized. 100

High Administrative Court decisions are binding. If a decision is not implemented, persons who are damaged due to this non-implementation can sue for damages against the institution, body or authority which is responsible for the non-implementation.

C) The Office of the Chief Public Prosecutor (Chamber of Law)

The Office of the Chief Public Prosecutor is also an institution that has been transferred from the Constitution of the Republic to the law system. The duty of the Office of the Chief Public Prosecutor, which is a permanent member of the Court of TRNC, is to act as the legal advisor for the state, the president, the prime minister, the ministers and other state bodies. In this sense, the Chief Public Prosecutor who is elected and appointed among the persons bearing the qualifications for being a high court judge and who acts in the same capacity and status with the high court judges,

a) has the power to file, takeover, handle or end a lawsuit related to any crime in circumstances where the public interest requires,

b) during the prosecution process of criminal cases, the Chief Public Prosecutor has the absolute power and liability to administrate,

c) has the right and the authority to represent the State or its bodies/ organs where the State is a party of. 101

2. The Laws and Regulations Applied in TRNC Law System

As it can be understood from the explanations above, the legal system of TRNC has not been formed in an historical development process under a single state’s organization without any interruption. On the contrary, the changing sovereignties on the island and the new political structures have prevented the systematic formation of a unique and integrated law system. Thus, today it is stated that TRNC law is

100 DAYIOĞLU, p. 71.
101 NECATİGİL, Anayasa ve Yönetim Hukuku, pp.45-47.
actually a “law mosaic.” fundamentally based on common law, nevertheless adapted to the conditions and requirements of the country. For this reason, the laws and regulations to be applied by the judicial bodies had to be re-defined in each era. Accordingly, this need has been perceived by the lawmakers of the TRNC and therefore the laws and the regulations to be applied by the TRNC judicial organization had to be defined in Article 38 of the Code of Courts. In this regard, the laws and regulations to be applied have been listed in order of priority as follows:

a) The Constitution,
b) The laws and regulations in force, unless they are infringing the Constitution,
c) The General Principles of Law (judge made law) ("Ahkam-ı Umumiye") and equity law ("nasfet hukuku"), on the condition that they are not infringing or not incompatible with the Constitution,
d) The Pious Foundations Codex (Ahkamül Evkaf) and,
e) The laws and regulations regarding maritime law, which were in force on 21 December 1963.

Nevertheless, in our opinion some of the sources stated herein this list requires further explanation in particular.

Obviously TRNC judicial bodies shall apply the laws and regulations in force, i.e. the codes, regulations and bylaws as the primary source, provided that they are not infringing the Constitution. However, due to the specific structure of the system, it is important to emphasize the time of the enforcement periods of the codes, regulations and bylaws once more. The temporary Article 4 of the Constitution of TRNC states that, all the codes and the consequent regulations and bylaws issued in compliance with these codes, which are not infringing the Constitution and which have been implemented by;

1. the British Colonial Administration until the RoC was established on the 16 August 1960,
2. the RoC until 21 December 1963,
3. the Turkish Community Assembly,
4. the Turkish Cypriot Provisionary Administration Assembly ,
5. the Autonomous Turkish Cypriot Administration/Legislative Chamber
6. the Constituent Assembly of the Turkish Federative State of Cyprus,
7. the Parliament of Turkish Federative State of Cyprus

102 DAYIOĞLU, p. 73; NECATİGİL, KKTC Hukuk Sistemi, p. 141.
8. the Constituent Assembly of the Turkish Republic of Northern Cyprus, and
9. the Parliament of Turkish Republic of Northern Cyprus.

shall be also be in force. Another issue we must mention is that, what should be understood from the terms General Principles of Law (judge made law) ("Ahkam-ı Umumiye") and equity law ("nasfet hukuku"). First of all we should note that there are some translation and spelling errors in this group of sources which may lead to misunderstandings. The first mistake is regarding to the term "ahkam-ı umumiye" (judge made law). This term is regulated in the Code of Civil Courts, 1960 as "Common Law." Nevertheless, this term, taking its mistake from the Anglo-American law systems, being defined as "common law", "traditional law" in today’s legal dictionaries, has somehow been drawn with the wording "ahkam-ı umumiye" (general principles) in the Code of Courts, 1976. However, "ahkam-ı umumiye" is as known, means general principles and this term has no connection with "Common Law". The term "Common Law" as in the British Law, refers to a law system that has been developed by court decisions sourcing from traditions and customs and which can be adapted to the changing socio-economic conditions of the society. This system which has been developed through court decisions in some certain areas is applicable in TRNC law system as a part of laws and regulations. This implementation in particular, creates an option of interpretation of the codes in compliance with the present conditions in some areas where the requirements of the day are not met and the current legislation is insufficient, on the basis of the “precedents”. With regards to the TRNC law system, it can be stated that only the law of contracts and torts is based on Common law.

Another issue, included in the laws and the regulations that should be considered is that what is meant by the rules of “equity law” ("nispet hukuku"). The term “nispet” or “nesafet” which has been erroneously been drawn as “nasfet” in the Code of Courts, is also sourcing from British Law and in general terms it refers to “equity” or “restitution”. This term has been developed by the “Court of Chancery” in order to overcome inequities that take place during the implementations of Common Law and the exact meaning of it in the legal environment of Continental Europe is, judges’ right of ruling in accordance with “justice and equity” as well. The judges of TRNC have the same right and duty.

103 NECATIGİL, Anayasa ve Yönetim Hukuku, p. 11.
104 NECATIGİL, Anayasa ve Yönetim Hukuku, p. 12; Dayıoğlu, p. 62.
105 NECATIGİL, Anayasa ve Yönetim Hukuku, p. 12.
Finally, it will be useful to give some brief information regarding the rules known as “Ahkamü'l- Evkaf” (Pious Foundations Codex). These rules, which are to be applied to TRNC courts prescribed by the Code of Courts, are simply the compilation of rules pertaining to the Law of Foundations. As in many Islamic countries, many charitable foundations have been established in Cyprus, while it was under the governance of the Ottoman Empire. These foundations were so numerous that it is even rumored that they covered the 30% of the whole island. These rules, mentioned as Pious Foundations Codex, are the rules that have been formed and shaped during the foundation implementations which have lasted for years. These rules have also been applied in the British and the RoC eras. The quantity of the properties and assets of the foundations has decreased since the beginning of the British era, due to the suspicious relations between Britain and the Greek society. Yet, despite this decrease, these rules regarding the charitable foundations, are accepted as the primary source in resolution of the disputes arising from the law of foundations.¹⁰⁷

Turkish Foundations in Cyprus*

by M. Serhat Yener**

Köprülü defines the “foundation” as a religious-legal institution which has deeply affected both social and economical life for centuries.

In the Ottoman Empire, foundations were established and governed in accordance with Islamic rules.

According to Kazıcı, the Ottoman Empire can be simply described as a foundation civilization. The foundations developed and increased in number during the Ottoman Era in parallel with the political and financial power of the Empire. As the historical sources tell us, the Ottoman authorities were keen on protecting the existing foundations and the self-administration of the foundations which were established in the annexed territories in accordance with their own rules, without any harm.

It would be right to define the foundations that were established in Cyprus after 1571 when the island was conquered by the Ottoman Empire as “Turkish Cypriot Foundations.”

The Cypriot foundations had been administrated through the Administration of Foundations (Evkaf İdaresi) in accordance with the provisions of the “Code of Foundations” (Ahkam-ül Evkaf) of 1571 when the island was under Ottoman rule until 1878, the date when the island was leased to Britain.

As a result of research coordinated by the Republic of Turkey,

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Prime Ministry General Directorate of State Archives, 54 Islamic (Şeriye) Registry Books belonging to the Ottoman Era, 9 Islamic Registry Books belonging to the British Era and the registry books kept by the courts, instead of Islamic Registries following the end of Islamic registry custom, in the archives of Cypriot General Directorate of Foundations, have been scanned through and 608 foundations, together with their assets, have been defined and categorized according to their locations.

The Code of Foundations had been regarded as valid and remained in force during the British Era, and between the period of 1878-1915, the foundations in Cyprus had been administrated by two representatives, one chosen among the Turkish Cypriot people and one appointed by the British authorities. However in 1915, the British dismissed the Turkish delegation and adopted a system in which two representatives, one having Turkish nationality and the other British, were appointed solely by the British administration.

In 1928, the Cyprus General Directorate of Foundations was attached to the Cyprus Colony Administration and thereby the Foundations were characterized as an official government unit. During the following period, although it had been stated in both the 1928 Cyprus Convention and the Treaty of “Lausanne” that the provisions of the Code of Foundations (Ahkam-ül evkaf) were to be applied in their entirety, upon the presentation of the required guarantee pertaining to the Cyprus Foundations, there were official findings of deviations in the administration of the foundations’ property and the expenditure of their incomes. The codes on the real properties and statute of limitations which were enacted in this period should also be examined and evaluated in terms of the foundations’ estate and within the framework of the provisions of the Code of Foundations (Ahkam-ül evkaf).

“The Code Amending and Unifying the Sacred Islamic Code on Foundations and the Code on the Administration of the Religious Assets of Muslims” was promulgated right after the drafting process, which included some findings such as that the foundations were not working until the year 1955 and the allocated monies at the banks became functionless. Upon the establishment of the Cyprus Republic in 1960, the foundations’ affairs were assigned to the Turkish Community Assembly in accordance with the Constitution. The Code on the Organization of the Foundations and the Religious Affairs Department entered into force on April 12, 1961 and within the provisions of this law, the Foundations Department and the annexed foundations were governed under the administration of a director as an affiliated unit of the Executive Committee of the Turkish Community Assembly.
Turkish Foundations in Cyprus

until October 13, 1970. There are some notes stating that, during this period, the foundations had started to undertake their fundamental duties and thereby contributed to the financial and economical structure of the Turkish community in Cyprus.

After the peacekeeping operation on July 20, 1974, a considerable portion of the real estate, which had belonged to the Administration of the Foundations, was left in South Cyprus. It is known that the income of the Administration of the Foundations is not satisfactory for the foundations and their beneficiaries due to the facts that the real estate and the land remaining in the North region are not income-yielding, their upkeep and operation entail considerable expense, most are experiencing financial loss since their expenses are exceeding their income and also some cannot be operated due to the some of them being allocated to the South and transportation difficulties.

When the legal history of the island is analyzed, and despite the prevailing various dominations on the island, it can be seen that the Code of Foundations (Ahkam-ül evkaf), which is defined in every period as the fundamental provisions concerning foundations, has continued its effectiveness.

The “deed of trust for a foundation (Vakfiye)” is a legal document which contains the principles and conditions of a foundation’s establishment and operation as set forth by the founder of a foundation registered in accordance with the Code of Foundations.

Property endowed in accordance with the Foundation Law is deemed to belong to the foundation as a legal person. In other words, the legal consequence of the act of endowment is the transfer of the ownership of the endowed property to the legal person that is the foundation.

In the law of foundations, following the endowment, the property cannot be sold, donated, put under pledge, loaned or inherited. This legal status is explained in real estate law as the principle of “immunity of the endowed property”.

Subclause 7 of Article 8 entitled “Form of Endowment” of the “Foundations and Charitable Foundations Code” dated October 22, 1955, states that the endowed property shall cease to belong to the endower upon registration of the endowment and shall be considered charitable for all intentions and purposes, and Article 23 entitled “Nontransferability of Foundation” of the same code states that, upon registration of the endowed property, provided that it is in compliance with the provisions of the code, the endowed property may not be alienated or transferred either by the endower or the trustee, nor may it
be inherited by the heirs.

The Turkish legal system acknowledges that the deeds of trust for foundations, duly transferred to the land register, have the effect of a deed.

In conclusion, the Code of Foundations that stipulates the principles of the “law of foundations” and is applicable following the establishment of the foundations, must be taken as a basis in disputes relating to endowed property on the island, being handled either in domestic law or by the Court, in order to preserve the law of foundations.
A Partitioned State that is in the European Union: The Case of Cyprus

by Kadir Yılmaz*

I. INTRODUCTION

The Republic of Cyprus (RoC) joined the European Union (EU), along with Hungary, Latvia, Malta, Slovakia, Slovenia, Lithuania, Poland, Czech Republic and Estonia on 1 May 2004. However, only one de facto entity, the Greek Cypriot Administration, on the island was accepted to join the EU, while the other de facto entity, the Turkish Cypriot Administration, has remained outside of the Union. During the accession negotiations with Cyprus, the Luxembourg European Council meeting of December 1997 did not treat Cyprus any differently from the above mentioned countries, despite its unique status as a divided, territory in conflict. Consequently, the longstanding conflict which has continued over the last five decades became an internal EU problem with the membership of the RoC in 2004, and therefore an issue between the EU and Turkey, which is also a candidate for EU membership. Besides, the membership of the de facto partitioned island has meant that the acquis communautaire is not carried out in the northern part of the island.

Cyprus is a small island of 3572 square miles in the Eastern Mediterranean. Due to its location, it has particular strategic importance to the Middle East and Mediterranean regions. In fact, its geopoliti-

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1 The decision to open negotiations was taken at the European Council meeting in Luxembourg in 1997 for the membership of RoC to the EU.
cal position and small size have influenced its historical development from the ancient past to the present. The island has always attracted the attention of powerful States because of its geopolitical position. States which have desired to take control of the Mediterranean Sea and its trade routes have first had to take control of Cyprus. Its successive rulers were the Egyptians, Greeks, Phoenicians, Assyrians, Persians, Ptolemies, Romans, Byzantines, Franks, Venetians, Ottoman Turks, and British. It became an independent State after a bitter struggle with Britain in 1960. Finally, it became a member of the EU in 2004.

There are two major communities which have different characteristics and demographics features in the island, the Greek Cypriots and the Turkish Cypriots. According to the 1960 census, the population of Cyprus was 572,707, distributed as follows: Greek Cypriots 447,901 (78.20%); Turkish Cypriots 103,822 (18.13%); others (mainly Maronites, Armenians, and Latins) 20,984 (3.66%). According to the tentative 30 April 2006 census, the “de facto” population of the “Turkish Republic of Northern Cyprus (TRNC)” is 264,172, while the population in the Government of the RoC controlled area, the southern part of island, is estimated at 778,700 at the end of 2006. The Greek Cypriots belong to the Greek Orthodox Church and speak Greek whereas the Turkish Cypriots are Muslims and speak Turkish. Both ethnic communities in Cyprus have maintained strong political and cultural ties with Greece and Turkey, respectively, and at some point in their twentieth century history, each has aspired to become part of either the former or the latter.

The Greeks Cypriots first failed at efforts to form a unitary State on the island in the period between 1963 and 1974, and then the Turkish Cypriots with the Turkish military intervention of 1974, and finally the unilateral declaration of the “TRNC” on the northern part of the island in 1983. The “TRNC” has not gained international recognition. It has suffered from varied sanctions and isolations by the international community apart from Turkey. As a result, it has been economically and militarily dependent on Turkey. The Greek Cypriots still represent the whole island as the RoC in international arena without acknowledging the Turkish Cypriots.

The Greek Cypriots applied for accession to the European Communities as the RoC on 4 July 1990. The “TRNC” responded by sending to the Council of Ministers a Memorandum dated 12 July 1990, and a Supplementary Note dated 3 September 1990, setting out its objections to this application.

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The European Commission’s gave its response to these objections on 30 June 1993, stating that:

“(…) these authorities rejected the right of the Government of the Republic of Cyprus to speak for the whole of Cyprus in such an approach. They based their position on the Guarantee Treaty and the wording of the 1960 Constitution, which grants the President and Vice-President (a Turkish Cypriot) a veto over any foreign policy decision, particularly any decision on joining an international organisation or alliance that does not count both Greece and Turkey among its members. They consider, accordingly, that in the prevailing circumstances the community should not take any action on the application. The community, however, following the logic of its established position, which is consistent with that of the United Nations where the legitimacy of the Government of the Republic of Cyprus and non-recognition of the ‘Turkish Republic of Northern Cyprus’ are concerned, felt that the application was admissible.”

In fact, there is no deep analysis of the “TRNC” arguments in the opinion given. It appears that the Commission’s concern was at the time whether the RoC met the European Community’s own requirements for membership, not whether there were any obstacles to membership under the Treaties establishing the RoC, or the Republic’s own Constitution. In accordance with the “TRNC” arguments that were based on the establishment Treaties of 1959-60 and the 1960 Constitution of the RoC, this study will examine whether international law and the domestic law of the RoC permit the membership of the RoC in the EU.

Indeed, the entry of the RoC into the EU, in May 2004 made the resolution of the problem more complicated – the parties to the problem changed. However, the relationship between Europe and Cyprus has existed since an Association Agreement between the RoC and the European Economic Community (EEC) was concluded in 1972 with entry into force on 1 July 1973. The EU policies towards the Cyprus conflict and its consequences are also analysed in this study.

II. THE EUROPEAN UNION AND THE CYPRUS CONFLICT

A. BACKGROUND

The RoC first showed its interest to become an associate member of European Economic Community (EEC) after the UK initiated its EEC application in 1962, in order to balance the prospect of losing its Commonwealth preferences with the UK. However, upon the withdrawal of the UK application because of the French veto in 1963, the RoC also withdrew its request. The RoC’s interest remained dormant until 1971 when it was reactivated simultaneously with the UK’s renewed

7 EU Opinion of Cyprus membership, 30 June 1993.
8 MENDOLSON, supra note 6.
9 JOSEPH, supra note 2, at 117.
efforts to join.\textsuperscript{10}

An Association Agreement between the RoC and the EEC was concluded in 1972 and entered into force on 1 July 1973. The agreement dealt exclusively with issues of trade and was complemented by a protocol concluded in 1987 that provided the framework for EU-RoC relations.\textsuperscript{11} A Customs Union was also agreed and due for completion in 1977, but was then extended first to 1987, because of the uncertainties surrounding the division of the island, and with the commencement of accession negotiations, it became part of the accession process.\textsuperscript{12}

The Greek Cypriot-led Government applied for EU membership on behalf of the whole island on 4 July 1990. However, this Government has not extended its authority to Northern Cyprus since 1974. Nevertheless, the application on behalf only of the territory it controls would be the opposite stance of being the sole legitimate Government in Cyprus and could cause the existing \textit{de facto} division to become \textit{de jure}.\textsuperscript{13}

The “TRNC” rejected the legitimacy of the RoC’s application. It claimed that the application violated the Treaty of Guarantee, and also that the Government of RoC did not represent the Turkish Cypriots.\textsuperscript{14} The “TRNC” considered such an accession to be a security threat as well as a back-door to \textit{Enosis}, while denying membership options to Turkey.\textsuperscript{15}

The European Commission issued its opinion on the RoC’s application on 30 June 1993. It stated that “… the Community considers Cyprus as eligible for membership and that as soon as the prospect of a settlement is surer, the Community is ready to start the process with Cyprus that should eventually lead to its accession.”\textsuperscript{16}

In the same opinion, the Commission also rejected the “TRNC” objections to the application. However, it seems that the “TRNC” objections prompted the Commission to choose a “first settlement approach” for the RoC’s membership. Nevertheless, the Commission stated in the same opinion that “the question of Cyprus’ accession to the Community should be reconsidered in January 1995.”\textsuperscript{17}

The European Council did not wait until 1995 but stated at its June 1994 Corfu meeting that “the next phase of enlargement of the Union

\textsuperscript{10} Id.


\textsuperscript{13} NUGENT, supra note 12.

\textsuperscript{14} The “TRNC” rejected the legitimacy of the application by sending to the Community a Memorandum on 12 July 1990 (UN Doc A/44/966 – S/21598) and a Supplementary Note on 3 September 1990 (UN Doc A/45/538 – S/21817). Both reprinted in ERTEKUN, N. M., \textit{The Status of the Two People in Cyprus; Legal Opinions}, respectively pp. 39-49 and pp. 50-53.

\textsuperscript{15} The Commission responded negatively to the 1987 Turkish application on 18 December 1989 whereas Greece already became a member State on 1 January 1981. Id.

\textsuperscript{16} European Commission, supra note 7.

will involve Cyprus and Malta.” This was the first time the EU did not stipulate a settlement of the Cyprus conflict as a prerequisite for the RoC’s accession to the Union. Ironically, the EU also did not explain what would happen if there was not a settlement of the conflict when the negotiations with the RoC had concluded. Indeed, this was the result of Greek insistence on linking the RoC’s application to the implementation of a customs union with Turkey. Also, the other member States expected that the process of EU accession and the prospect of final membership would act as a catalyst for a settlement of the conflict. However, the conflict does not appear to have changed as much or as significantly as might have been expected thus far.

The Council of General Affairs, on 6 March 1995, confirmed that the RoC was suitable for membership and established that accession negotiations would start six months after the end of the Intergovernmental Conference. At the same meeting, Greece also lifted its veto and agreed to the establishment of a customs union between the EU and Turkey beginning 1 January 1996. The European Council of Luxembourg meeting in December 1997 confirmed that accession negotiations would begin in the spring of 1998. Before that decision, at the same meeting, Greece had threatened to veto enlargement of the EU when some member States expressed reluctance with the initiation of accession of a divided Cyprus.

When full accession negotiations with the RoC and five Central and Eastern European Countries began in earnest in March 1998, the future participation of the Turkish Cypriot community was sidestepped while discussion of the status of the future Schengen border in Cyprus was avoided entirely.

Before the Seville European Council of 2002, the EU had realised the inadequacy of its “wait and see” Corfu strategy, affirming that reaching a political settlement before the end of accession negotiations would give Turkish Cypriots a chance to participate in negotiations. Accordingly, in March 2002, an EU information centre was opened in the “TRNC” in order to inform the Turkish Cypriots on the institutional requirements of the acquis. However, upon the Seville European Council decision, this activity was interrupted. It stated that:
The European Union would accommodate the terms of such a comprehensive settlement in the Treaty of Accession in line with the principles on which the European Union is founded: as a Member State, Cyprus will have to speak with a single voice and ensure proper application of European Union law.29

Accession negotiations were concluded with the RoC on 13 December 2002 and the Treaty of Accession was signed on 16 April 2003. The Commission’s final comprehensive monitoring report on the RoC’s preparation for membership, in November 2003, affirmed that if a comprehensive settlement had not been reached by the date of accession of 1 May 2004, Protocol 10 of the Accession Treaty would lead to the suspension of the acquis in the areas of the country which were not under the effective control of the Government of the RoC.30 In its report, the Commission seemed to give up seeking a settlement of the conflict and leave the island’s divided status as it was.

The UN peace plan, known as the Annan Plan, was voted on in separate simultaneous referenda in both parts of Cyprus on 24 April 2004 as the last chance for a reunited Cyprus before joining the Union. In the vote, 64.9% of the voters in the “TRNC” accepted the Plan, while 75.8% of the voters in South rejected to the Plan. On 1 May 2004, the RoC entered the EU as a divided island.

B. THE EFFECTS OF EU MEMBERSHIP ON THE CONFLICT

Greece’s membership in 1981 and the RoC’s membership in 2004 in the EU made the Cyprus conflict an internal EU problem which should be essentially resolved under the auspices of the UN. This situation also affected the relations between the EU and Turkey,31 the EU’s sixth largest trading partner and a candidate State of the EU.32 “Currently, Greek Cypriots act like the Greece of 1980s against Turkey by using EU decision taking institutions as a platform to refute the claims of Turkish side. Therefore the Cyprus issue forms an important obstacle to Turkey-EU relations.”33 In fact, the accession of Turkey to the EU is impossible while the status quo remains in Cyprus.34

Since acceptance of the Cyprus accession to the EU without any precondition for a settlement takes away the incentive for the Greek Cypriots to resolve this situation, the Greek Cypriot community has made no effort to take sincere steps towards a settlement,35 as was seen in the 2004 referenda for the Annan Plan. Thus, it can be said

30 BOEDELTJE, supra note 17.
31 The Dublin European Council, June 1990, states that the Cyprus conflict “affects EC-Turkey relations” upon the Greek’s pressure. Also, the Accession Partnership Document adopted by the Council of Ministers, March 2001, states that Turkey should “support the UN Secretary General’s efforts to bring the process, aiming at a comprehensive settlement of the Cyprus problem, to a successful conclusion.”
32 The Helsinki European Council, December 1999, formally included Turkey in the accession process.
35 ISRO, supra note 33.
that this situation has caused the settlement process to remain at an
impasse. Moreover, the Cypriot EU membership following the acce-
sion process strengthens the Greek Cypriot bargaining position against
the Turkish Cypriots. It can be said that the Greek Cypriot community,
indeed, gained important political and security superiority by the Cyp-
riot accession to the EU.

The EU has always offered economic benefits to the “TRNC” in
order to tempt it to conclude an easy solution of the conflict. The EU
does not seem to understand the nature of the conflict. Forty-six years
of economic blockade has been endured without creating enough
pressure to force a reunification of the RoC, despite the much higher
standards of living in southern Cyprus. The “TRNC” perceives the
Cypriot EU membership to be a security threat, while its guarantor
power, Turkey, is not a member State. Its fear is that the events of
1963-1974 are likely to repeat themselves. Indeed, the EU has chosen
not to actively intervene in intrastate conflicts within its borders, as the
Basque or the Northern Irish conflicts have demonstrated. Thus, the
EU should be aware the “TRNC” fears along with other incentives.

The EU’s expected catalytic effect seems to have failed because of
the EU’s policies within the framework of enlargement and its
aftermath.

C. DO INTERNATIONAL LAW AND THE DOMESTIC LAW
OF THE ROC CONFIRM THE MEMBERSHIP?

As has been seen, the “TRNC” objected to the legitimacy of the
RoC’s application to the EU in its Memorandum of 1990. The Com-
mission rejected those objections in its opinion of 1993. Later on,
Turkey brought the problem to the EU-Turkey Association Council
in 1995. Also, Turkey and the “TRNC,” on 28 December 1995, ex-
pressed the belief that the RoC could not join “international political
and economic unions to which Turkey and Greece are not members”
in a joint declaration. Turkey also procured a legal opinion from Pro-
fessor Mendelson, on 6 June 1997, in support of the “TRNC” objec-
tions. In return, the RoC procured a joint legal opinion from Professors

The arguments in the opinions were based mainly on the Treaty of
Guarantee and the 1960 Constitution.

1. The Treaty of Guarantee

The RoC undertakes by Article I (2) of the Treaty of Guarantee

36 TOCCI, supra note 22.
37 Id.
38 Joint Declaration of the Republic of Turkey and the “Turkish Republic of Northern Cyprus” of 28 December 1995.
39 An updated version of this legal opinion has been circulated as a UN Document, 9 October 2001, UN Doc A/56/451
and S/2001/953. See also MENDELSON, supra note 6.
40 An updated version of this legal opinion has been circulated as a UN Document, 19 October 2001, UN Doc A/56/723
Co Ltd. 2007) pp. 588-604.
“not to participate in whole or in part, in any political or economic union with any State whatsoever” and the same paragraph prohibits any activities “to promote, directly or indirectly, either union with any other State or partition of the island.” The arguments become vague on the interpretation of this paragraph whether the Treaty prohibits union only with a state, or states. Therefore, it is necessary to invoke Articles 31-33 of the Vienna Convention on the Law of Treaties which set out the interpretation of treaties. Article 31 (1) of the Convention provides that:

“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

Mendelson’s view seems enough to be convinced in that point. He claims that:

“(…) as a matter of drafting and the ordinary use of English (and French) language, the singular usually includes the plural and ‘any State (whatsoever)’ is wide enough to encompass ‘any States (whatsoever)’. This interpretation also accords with common sense.”

Nevertheless, it is true that the drafters of the 1960 Treaties wanted to prohibit Cyprus’ union with Greece or Turkey, single States. However, the already existing strong political, economical, ethnic, military and geographical relations between the RoC and Greece became much stronger than ever with the RoC’s membership in the EU. For example, they use the same currency, the Euro. Even if it is accepted that the EU is not a single State and therefore was not an obstacle for the RoC to become a member State, the RoC-Greece relationship has come very close to Enosis, which is clearly prohibited in the Treaty. It should be reminded here again that the prohibition of union comprises “directly or indirectly (…) union with any other State”.

Thus, it could be said that the entry of the RoC into the EU violated the Treaty of Guarantee.

2. The 1960 Constitution

a. Article 50 of the 1960 Constitution

Article 50 (1) (a) of the 1960 Constitution provides that:

1. The President and the Vice-President of the Republic, separately or conjointly, shall have the right of final veto on any law or decision of the House of Representatives or any part thereof concerning: (a) foreign affairs, except the participation of the Republic in international organisations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate. For the purposes of this subparagraph, ‘foreign affairs’ includes (i) (…) (ii) the conclusion of international treaties, conventions and agreements.

41 See MENDELSON, supra note 6.
There has never been a duly elected Vice-President in Cyprus since the 1963-1964 crisis when the Turkish Cypriots were forced out of the Government. Also, the Turkish Cypriots have been attempting to establish a legally-separated, independent State since the Turkish military intervention of 1974. Therefore, there was no such person acting Vice-President who could perform the veto power as provided in Article 50 at the time of the RoC’s application or accession to the EU. Thus, it seems that Article 50 of the Constitution is not applicable.

However, Mendelson claims that this veto power was, in fact, given to the Turkish Cypriot community and the Turkish Cypriots were against the EU membership as they illustrated that in the “TRNC” Memorandum of 1990. On the other hand, Crawford claims that the veto power, under Article 50 of the Constitution, is vested in a Vice-President duly elected and effectively performing his functions under the Constitution. Indeed, the UN has also taken the latter position, “for example in the periodic resolutions extending the mandate of UNFICYP, which resolutions have been based expressly on the agreement of the Government of the RoC without any reference to Article 50 of the Constitution.”

Indeed, in the absence of a duly elected Vice-President who could perform the veto power in accordance with Article 50, it seems that the EU membership does not contravene Article 50 of the Constitution of the RoC.

b. Article 170 of the 1960 Constitution

Article 170 (1) of the Constitution provides that:

1. The Republic shall, by agreement on appropriate terms, accord most-favoured-nation treatment to the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland for all agreements whatever their nature may be.

Mendelson claims that the entry of the RoC into the EU “would doubly violate the letter and spirit of this provision (...) it would tend to encourage the kind of economic Enosis with Greece” which was clearly prohibited in 1959-60 settlements and “would result in Greece and the UK receiving considerably more favourable treatment than Turkey, which is not a member.”

Mendelson’s first argument was analysed above. The response to his second argument by Crawford refers to the Trade Agreement between the RoC and Turkey of 9 November 1963, which provides for most-favoured-nation treatment to be extended to duties or charges of any kind on importation of the goods of either country to other. Article 1 provides that:

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42 See supra note 39.
43 See supra note 40.
44 See MENDOLSON, supra note 6.
45 See CRAWFORD, supra note 40.
The above most-favoured-nation treatment shall not apply: (...) (c) to privileges, exemptions from taxes (fees), preferences or concessions which each of contracting countries has granted or will grant in the future to other countries on account of a present or future participation, entry or association by them to a customs union...

Turkey seems to have renounced all its rights that might be derived from Article 170 by concluding this Agreement. Therefore, the RoC does not have to extend all rights which it grants to the member States of the EU, also to Turkey. In other words, there is no constitutional obligation for the RoC to do that.

3. The other “TRNC” objection, that the Government of RoC does not represent the Turkish Cypriots

It is clear that the announcement of the “Turkish Federated State of Cyprus (TFSC)”, in 1975, was void because the RoC was not founded and organised as a federation. Indeed, after its military intervention in 1974, Turkey should have encouraged the Turkish Cypriot community to return to their offices in the Government and the Parliament as set up in 1960 Constitution, instead of taking action to partition the island.

Also, the unilaterally declared “TRNC”, in 1983, has remained a state non-recognised by the international community. However, recognition, as a public act of state, is an optional and political act, so it is not a precondition for the legal existence of a state. Therefore, the customary rules of international law should be examined to see whether the “TRNC” bears the characteristics of statehood, and Turkish Cypriots have the right to self-determination.

a. Do the Turkish Cypriots Have the Right to Self-Determination?

The two communities jointly enjoyed the right to self-determination as co-founders of the bicommunal State in 1960. However, in 1983, the concept of the right for the two communities was different. Cyprus was then an established and internationally recognised State, not a colony. Thus, the Turkish Cypriot actions should be evaluated under the dynamics of secession.

“The restricted application of self-determination and elevation of territorial integrity to nearly an absolute principle unite to form the basis of the international system’s implicit opposition to secession.”47

In fact, secession is usually deemed to be illegal because it contravenes the territorial integrity of states. Furthermore, the implicit opposition to secession became an explicit condemnation with the Katangan crisis48

48 In its Resolution 5002 of 24 November 1961 the UNSC states about the territorial integrity of Congo that: “1. Strongly deprecates the secessionist activities illegally carried out by the provisional administration of Katanga with the aid of external resources and manned by foreign mercenaries (...) 2. Declares that all secessionist activities against the Government of Congo are contrary to the Loi fondementella and Security Council decisions and specifically demands that such activities which are now taking place in Katanga shall cease forthwith.” See Id.
in 1960-1961. Nevertheless, some secessionist actions, such as Bangladesh in 1971, were justified under the right to self-determination.

According to Bartkus, a secessionist action implies four necessary elements, those of “a distinct community, territory, leaders, and discontent.” In the Cyprus case, although the Turkish Cypriot secessionist action seems to meet all those elements, they captured their territory illegally. There was no fixed territorial division in Cyprus until the Turkish military intervention. The territorial changes and the exchange of populations were the outcomes of this intervention in Cyprus. A large portion, 36.4%, of the territory of Northern Cyprus came under the control of de facto Turkish Cypriot administration via this intervention. Since Article I of the Treaty of Guarantee prohibits the partition of Cyprus, the secessionist action of the Turkish Cypriots, and its outcome, the foundation of the “TRNC,” were unlawful.

b. Does the “TRNC” Bear the Characteristics of Statehood?

Article 1 of the Montevideo Convention on Rights and Duties of States provides that:

“The State as a person of international law should possess the following qualifications; a. a permanent population; b. a defined territory; c. government; and d. capacity to enter into relations with the other States.”

However, there is no consensus on the fourth requirement on the international plane, as the recognition of Guinea-Bissau as an independent state in 1974 has demonstrated. Thus, the first three criteria are appropriate to examine in deciding whether the “TRNC” is an independent state.

First, the “TRNC” possesses a permanent population – approximately 264,172 Turkish Cypriots and Turkish settlers from Turkey live in Northern Cyprus. Second, the “TRNC” has a clearly defined territory in the north of Cyprus – approximately 3250 square kilometers. Its small size of population and territory are not an obstacle to becoming an independent state since East Timor became an independent State and is a member State of the UN with its smaller size of population and territory. Finally, the “TRNC” possesses a Government, but it is really doubtful whether it has full internal autonomy since Turkey’s continued presence with its 40,000 soldiers on the soil of “TRNC,” and the large amount of financial contributions to the “TRNC” budget.

State practice, especially in the Cold War period, has shown that statehood is not put into question if a government invites a foreign army to be deployed on its territory for mutual defence purposes.
Accordingly, Leigh claims that:

Although Turkish troops remain on Cypriot soil, the continuing presence of troops from a friendly state for the purpose of preserving the rights of the Turkish Cypriot people under the 1960 treaties is in no way inconsistent with statehood.

In fact, Leigh’s reference to the 1960 Treaties is improper while the same Treaties allow Turkey to station only 650 soldiers to the island. Indeed, the amount of Turkish troops is massive for such a small territory even if there is a mutual defence agreement between Turkey and the “TRNC.”

Furthermore, Hoffmeister claimed that the Turkish army has the authority of command over the “TRNC” police and the secret services, which should be a matter for the “TRNC” Government if it were sovereign.

As has been stated above, the failure to gain international recognition has caused the “TRNC” to be economically dependent on Turkey. Turkey is said to contribute about 60% of the “TRNC” budget. Also the Turkish Lira is currently used as the official currency in the “TRNC.” Chrysostomides claims that Turkey often uses the economic dependency of the “TRNC” in order to impose its policies on the “TRNC.”

Thus, it is really difficult to say that the “TRNC” is an independent state while it is economically and militarily dependent on Turkey. Indeed, the Turkish economic aid and military protection have supported the continued existence of the de facto Turkish Cypriot administration.

To conclude, the Turkish Cypriot community should have endeavoured to re-establish the 1960 bicommmunal system when they had chance to do so at the end of the Turkish intervention. Also, they should have patiently worked for the foundation of a federation, as had been already agreed, by the existence of two autonomous administrations in Cyprus, by the three Ministers in the Geneva Declaration of 30 July 1974; later on, a federal and bizonal solution of the problem by the communities in 1980 during the intercommunal talks. However, it seems that the Turkish Cypriots, with Turkey’s guidance, chose the worst alternative for their future political status when they unilaterally declared the existence of the “TRNC.” Their choice, indeed, rendered the Greek Cypriot administration the sole legitimate Government of Cyprus on the international front although it has never exercised sovereignty over the whole of Cyprus. Furthermore, the Greek Cypriot administration has been legally able to invoke the doctrine of necessity

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56 See the Additional Protocol No. 1 of the Treaty of Alliance.
57 HOFFMEISTER, supra note 52, at 51.
to carry out the internal affairs of the RoC, while there had been no legal basis to invoke the doctrine before the secessionist actions of the Turkish Cypriot administration after 1974. Moreover, it seems that the non-recognised status of the “TRNC” will continue if the parties do not reach a solution in the near future.

c. Do Internal Changes Impinge on the Continuity of a State?

It has long been established that, in the case of an internal revolution, merely altering the municipal constitution and form of government, the state remains the same; it neither loses any of its rights, nor is discharged from any of its obligations. Despite the question begging nature of this and other formulations, the rule that revolution *prima facie* does not affect the continuity of the State in which it occurs has been consistently applied to the innumerable revolutions, *coup d’etat* and the like in the nineteenth and twentieth centuries. After some hesitation, it was for example established that the RFSFR (later the Soviet Union) was a continuation of Imperial Russia. A fortiori, continuity is not affected by alterations in a municipal constitution according to its own amendment provision.59

Brownlie also states that the legal rights and responsibility of states are not affected by changes in the head of state or the internal form of government.60

In the case of Cyprus, the Greek Cypriots actions between 1963 and 1974 ended the bicommunal nature of the RoC, but did not end the RoC itself. The UNSC Resolution 186 on the mandate of UNFICYP maintained the view that the RoC had continuously existed in its entirety. The UNGA of 18 December 1965 was even more explicit in this regard,61 revealing the large support Makarios had in the Group of non-allied States. Even Turkey only questioned the legitimacy of the Makarios Government, but not the existence of the Republic of Cyprus.62

Having said the above, the civil war and the abrogation of the 1960 Constitution did not affect the continuity of the RoC. As a result, the RoC has remained a unique political entity on the international plane for both communities and administrations on the island.

To conclude, it seems that the sole legitimate Government of Cyprus is the Government of RoC according to international law. Thus, the Government has the authority to speak on behalf of the whole island in international affairs.

To sum up, there is only one legal obstacle which may cause the entry of the RoC into the EU to be illegal, the interpretation of Article I (2) of the Treaty of Guarantee. However, it cannot be sure that

61 See UNGA Resolution 2077 (XX) of 18 December 1965.
62 HOFFMEISTER, *supra* note 52, at 32.
an interpretation of a treaty can be a legal obstacle whilst it can be changed according to whoever makes it. Nevertheless, the argument appears with Mendelson’s views on the interpretation of Article I (2) of the Treaty, which claims that the membership of the RoC in the EU violates the Treaty of Guarantee.

III. CONCLUSIONS

In the decolonisation era, Cyprus became an independent State for the first time in its recent history in 1960. The right to self-determination of the two communities in the island, the Greek Cypriots and the Turkish Cypriots, was exercised jointly against the former colonial power, Britain. Both communities did not have the right to self-determination separately in 1960. The system of the new State was bicommmunalism with the guarantees of three States: the UK, Greece and Turkey. The two communities were co-founders of the bicommmunal Republic and were politically equal, irrespective of their numerical size, in the new State. However, the State’s system needed substantial goodwill of both communities to be workable because of its delicate structure which balanced the communities’ rights and the all parties’ interests.

By the time of the 1963-64 crisis, this delicate structure of the Republic’s system, its Constitution, broke down. During the civil war between the two communities, the Turkish Cypriot community was forced from the Government and the other State institutions. The Republic that came into being was an exclusive Greek Cypriot administration as a result of these events. The Greek Cypriot community invoked the doctrine of necessity to justify its actions and to carry out the State’s internal affairs. However, the Greek Cypriots’ illegal actions, which contravened the Republic’s Constitution and the Treaties of 1960, cannot be justified by the doctrine of necessity since the Turkish Cypriots were forced from their offices. The physical separation of the two communities began in this period. The Turkish Cypriots moved to enclaves which emerged throughout of the island.

However, as Brownlie stated, the legal rights and responsibility of states are not affected by changes in their system of governance according to international law. Thus, the RoC has remained as a unique State in international matters for both communities and administrations in Cyprus, even if its bicommmunal nature has ended.

Greece clearly breached the Treaty of Guarantee by organising a coup against the leadership of the RoC with the aim of Énosis in 1974. The subsequent first phase of Turkish military intervention can be justified under Article IV (2) of the same Treaty. However, the second phase of the intervention cannot be justified under the same Article since its purpose was not the reestablishment of the State affairs of the RoC as set up in the 1960 Constitution. Therefore, the Turkish military intervention of 1974 was illegal according to international law.
The Greek Cypriots' claim for the legal invalidity of the 1959-1960 settlement agreements, in particular the Treaty of Guarantee, is irrelevant. No party to the settlements has showed intent to terminate the Treaties. In the absence of any legal decision, the Treaties are legally valid. Also, the Treaty of Guarantee does not breach the international prohibition against the use of force since allowing the use of force by the Treaty is appropriate with one purpose of the UN, which is the protection of the territorial integrity of member States by third states in accordance with the will of the threatened member State. Oppose to the Greek Cypriots’ claims, the settlements were also negotiated freely between all the parties. There was no prohibited coercion, as defined in Articles 51-52 of the Vienna Convention on the Law of Treaties of 1969, against the representatives of Cyprus, nor Cyprus itself during the negotiations.

The Turkish Cypriots’ secessionist actions cannot be justified under the right to self-determination as the preference of elevation of territorial integrity to the restricted application of self-determination by the UN. Moreover, Article I of the Treaty of Guarantee prohibits the partition of Cyprus. Therefore, the Turkish Cypriots have not had the right to self-determination separately since 1974 as they had not had that right in 1960. Furthermore, the Greek Cypriot administration has been legally able to invoke the doctrine of necessity to carry out the internal affairs of the RoC, while there had been no legal basis to invoke the doctrine because of the secessionist actions of Turkish Cypriot administration after 1974. Moreover, it seems that the non-recognised status of the “TRNC” will continue if the parties do not conclude a solution in the near future.

The unilaterally-proclaimed “TRNC” does not bear the characteristics of statehood because of Turkey’s continued presence on “TRNC” soil with 40,000 soldiers and contributions of about 60% of the “TRNC” budget. Turkey often uses the dependency of the “TRNC” to impose its policies on the “TRNC.” Therefore, the “TRNC” does not meet one criterion of independent statehood, which is having a government that possesses full internal autonomy.

There is only one legal obstacle facing the membership of the RoC to the EU – the interpretation of Article I (2) of the Treaty of Guarantee. Admittedly, Article I (2) prohibits Cyprus’ union “with any state whatsoever” not “with any states whatsoever.” However, as Mendelson contends, “any state whatsoever is wide enough to encompass any states whatsoever. This interpretation also accords with common sense.” Thus, the prohibition of union with a state also includes a union with states, hence with the EU. Moreover, the prohibition of union also comprises “directly or indirectly (...)union with any other state.” The aim of the drafters of the 1960 Treaties was to prohibit Cyprus’ union with either Greece or Turkey. With the EU membership of the
RoC, the RoC-Greece relations have come very close to Enosis, which is clearly prohibited in the Treaty as “directly or indirectly” contributing to a union. Therefore, the entry of the RoC into the EU violated the Treaty of Guarantee. However, this outcome is only an interpretation of Article I (2) of the Treaty and can change according to who makes the interpretation.

The EU expected that the process of EU accession and subsequent membership would positively affect the conflict and bring about a solution. However, the expected effects have not appeared yet in this conflict since 1997, the year in which the decision to open negotiations was taken at the European Council meeting in Luxembourg. During the accession process, the EU did not also account for the status of the future Schengen area in Cyprus. Now, the application of acquis is suspended in Northern Cyprus by Protocol 10 of the Accession Treaty. Moreover, the Turkish Cypriots were not part of the accession process.

The Turkish Cypriots perceive the Cypriot EU membership as a security threat while their guarantor power, Turkey, is not a member State. They fear that the events of 1963-1974 are likely to repeat themselves. Therefore, they do not see an easy solution with the Greek Cypriots. Indeed, the EU should address their concerns while providing incentives.

The Cypriot EU membership, without any precondition for a settlement, discourages the Greek Cypriots from finding a solution to the conflict. Thus, it can be said that this situation causes the settlement process to remain at an impasse. Moreover, the Greek Cypriots have gained important political and security superiority by the acceptance of accession against the Turkish Cypriots who are at the bargaining table.

The EU membership of the RoC also affects EU-Turkey relations. The Greek Cypriots do not hesitate to use their veto power on any EU decision relating to Turkey. Moreover, it is plain that Turkey, a candidate State of the EU, cannot enter into the EU unless it resolves the Cyprus conflict. Therefore, the Cyprus conflict should be essentially resolved under the auspices of the UN.
“LAW OF THE OTHER - WOMEN” SYMPOSIUM

Equality-oriented law was the subject of discussion at the “Law of the Other – Women” Symposium which was organized jointly by the Law Faculty of Ankara University and the Ankara Bar Association with the participation of female members of the Turkish Grand, National Assembly, High Court of Appeals and other jurists as speakers.

Mr. Ahsen Coşar, as the President of the Ankara Bar Association, stated that the concept of “othering” is a suppression of the individual in society or the cause of the differentiation among people in his speech on the opening day (November 22, 2009) of the Symposium, which was held at the Ankara University Faculty of Law.

CHILDREN’S RIGHTS DAY EVENTS

The Ankara Bar Association Education Center was the scene of children’s performances for Universal Children’s Rights Day on November 20, 2009.

Fethiye Özel Ata Primary School students participated in the event which was organized by the Children’s Rights Center of the Ankara Bar Association. First, students discussed what rights they have; afterwards they gave the message “Save our rights!” to the adults through dance, folk dance and theatre performances.
AWARDS FOR THE ANKARA BAR ASSOCIATION
3rd SHORT FILM COMPETITION ARE GIVEN OUT

Awards were given to winning contestants of the short film competition called the “Water and the Right to Life,” conducted by the Ankara Bar Association Cinema Club at a ceremony on November 16, 2009.

This year’s subject of the film competition was chosen as “Water and the Right to Life” in order to serve the rapprochement between art, law and societal conflict and to be able to attain this togetherness with the purpose of strengthening the collective consciousness through the art of cinema.

As a result of the evaluation made of the films submitted by the 33 contestants, contestant Aydın Çırpan with his film “Dreams of Water/ Su-dan Hayaller,” where a child’s longing for water was told by expressing this desire in water color painting, came first and won three thousand Turkish Liras. Bilgi Diren Güneş came second in the competition with the film “Cry My Side/ Ağla Yanım” and won two thousand Turkish Liras. Ertuğrul Arksan came in third with his film “Arc/Ark” and won one thousand Turkish Liras.

COŞAR APPOINTED AS PRESIDENT OF BLACK SEA COUNTRIES BAR ASSOCIATION (BCBA)

The 14th General Assembly of the Black Sea Countries Bar Association (BCBA) has been held in Istanbul on November 14, 2009. Ankara Bar Association has been elected as President of BCBA and V. Ahsen Coşar has been appointed as President of the Commission for the term 2009-2010. Next general assembly meeting is expected to take place in Sofia in September 2010.
COŞAR RESPONDS STRONGLY TO THE WIRETAPPING OF JUDICIARY AND STATES THAT THE STATE OF LAW AND JUDICIAL INDEPENDENCE ARE UNDER THREAT

With the participation of many lawyers, Ahsen Coşar, as the President of the Ankara Bar Association, held a press conference on November 17, 2009 at the Ankara Bar Association Education Center in order to protect the immunity of judicial independence and rule of law.

Mr. Coşar, who got in front of the cameras along with fellow board members, responded strongly to the wiretapping scandal dealing with phone-tapping of High Court of Appeals judges and other members of the courts and said that “judicial independence, freedom of advocacy and democratic state of law are seriously under threat.” He also called upon all persons and institutions to act within the law and not find solutions outside of democratic principles.

PHOTOGRAPH EXHIBITION BY MENTALLY DISABLED CHILDREN

A photograph exhibition entitled “Blue Eye Beads of the Republic / Cumhuriyetin Nazar Boncukları,” which included photographs of the places about Atatürk, as expressed by 21 mentally disabled children, began to be exhibited on November 20, 2009 at the Art Gallery within Ankara Bar Association Culture Center with the participation of President Ahsen Coşar.

Mentally disabled children explored a different world from the viewfinders of cameras donated by philanthropists. The 53 frames of places about Atatürk, like the Mausoleum of Atatürk, the Ankara Train Station, and the Atatürk House are to be exhibited as both artistically and meaningfully valuable.
SYMPOSIUM ON THE INTELLECTUAL PROPERTY RIGHTS


Problems about the licensing process of pharmaceutical brands in Turkey and related legislation on this process, the central adjudication of patents in Europe, the prolongation of patent terms, the determination of the extension of pharmaceutical patents, adjudication strategies, the nullity of the appeals and the restriction of requests for substantive examination were discussed at the Symposium with the participation of foreign jurists, together with Dr. Saim Kerman, Director General of the Ministry of Health of Turkey, General Directorate of Pharmaceuticals and Pharmacy, as a speaker.

GENERAL ASSEMBLY ON CONSTITUTIONAL LAW

By holding a comprehensive general assembly on the Turkish Constitution on November 07, 2009, the Ankara Bar Association contributed to the preparation studies for the new Constitution, in addition to the studies done so far by the Union of Turkey Bar Associations, the Turkish Industrialists’ and Businessmen’s Association (TUSIAD), the Union of Chambers and Commodity Exchanges of Turkey (TOBB) and other non-governmental organizations like the Confederation of Progressive Trade Unions of Turkey (DİSK).

Besides members of the High Court of Appeals and the Constitutional Court, many law faculty members from Ankara, Bilkent, Başkent, Çankaya, Marmara, Yeditepe, Bahçeşehir, Bilgi and Kocaeli Universities gathered at the “Assembly on the Constitution.”

The assembly, under the name “Renewal Process of Constitution: From Resolution to Rapprochement,” took place at the Ankara Bar Association Education Center and was dedicated in honor of to Prof. Dr. Yılmaz Aliefendioglu, who served great value as a member of the Council of State, the Constitutional Court and as an academic.
CONFERENCE ON BATTLE OF SARIKAMIŞ

Audience members affected deeply by the heroic story that had been told at the conference of the “Battle of Sarıkamış (1914 – 1915)” which was hosted on November 03, 2009 at the Ankara Bar Association Culture Center.

Ahsen Coşar, as the President of the Ankara Bar Association, gave the opening speech at the conference which was held by the Ankara Bar Association and the Association of Soroptimists. Afterwards, Prof. Dr. Bingür Sönmez, as the Founder Chairman of the People of Sarıkamış Association, told the epic story while covered with snow during a documentary display and also supported her speech with newspaper clippings, photographs, and documents in Ottoman and Turkish language.

PANEL ON PATIENT RIGHTS

The Ankara Bar Association Health Law Committee held a panel meeting for Patient Rights Day, which has been celebrated on October 26th since 1998 in Turkey. Attorney Berna Özpinar, as Chairwoman of the Health Law Committee, gave a speech at the beginning of the meeting and promoted the “Patient Rights Bulletin” which is published by the Ankara Bar Association. The bulletin, including the purpose of the Patient Rights Regulation, its scope, the means to seek legal remedies and the applicable decisions of the Council of State and the High Court of Appeals, has been prepared as a handbook so it can easily be used by jurists.

After the promotion, the first speaker of the panel was Mr. Mehmet Kaymakçı, as the Unit Head of the Patient Rights Department of the Ministry of Health. He drew attention to the importance of the awareness of patient rights among citizens and stated that applications to the patient rights unit had been increasing day by day.

Panelist Assoc. Prof. Dr. Hasan Seçkin Ozanoğlu, as an academician in the Ankara University Law Faculty, criticized patient rights if enacted in the form of a regulation because, in his view, the right to life and health is the cornerstone of human rights, so patient rights should be enacted in the form of a law. He also added that most of the problems are caused by doctors not informing patients well.
Journalist Bekir Coşkun was the guest of a panel which was jointly held by the Ankara Bar Association Animal Rights Committee and the Federation of Animal Rights on October 24, 2009 at the Ankara Bar Association Education Center.

Salih Akgül, Vice Chairman of the Ankara Bar Association, gave the opening speech of the panel and stated that the deficiencies in animal rights in Turkey should be taken care of immediately. Bekir Coşkun, who had shown a great deal of determination and worked hard for the passage of the Animal Rights Law by the Turkish Grand National Assembly, was the center of the young lawyers’ attention as an honored guest. Mr. Coşkun said that Turkish society has prejudices against animals, and later explained the problem of defending animal rights to be the lack of organization and stated that the animal-friendly organizations should take more action.

CAMPAIGN AGAINST HUMAN-TRAFFICKING IN THE BLACK SEA REGION

The Ankara Bar Association acting under the motto “As lawyers and jurists, human first!” had shown great sensitivity again to the struggle for the people who have suffered from wrongful acts and held the “Struggle Against Human Trafficking in the Black Sea Region Through Legal Aid” Seminar held jointly with the International Organization for Migration (IOM) on October 15-16, 2009.

The first session took place after speeches of Mr. Talay Şenol, Vice Chairman of the Union of Turkey Bar Associations and Mr. Maurizio Busatti, IOM Mission Chief and Diplomat of the Embassy of Netherlands. In this session, the discussion topics were the struggles against human trafficking in the Black Sea Region and international agreements on the recognition of legal actions.

In the second session, which was directed by Attorney Seher Kırbaş Canikoğlu as a member of the Campaign Against Human Trafficking Group, the subjects were the laws and practices in Bulgaria, Georgia, Moldova, Romania, Ukraine and Turkey.
PANEL ON THE KYOTO PROTOCOL BEFORE AND AFTER COPENHAGEN

The Energy Law Council of the Ankara Bar Association arranged a panel called “the Kyoto Protocol Before and After Copenhagen” on December 26, 2009. With the opening speech of V. Ahsen Coşar (the head of the Ankara Bar Association) and Talay Şenol (Deputy Chair of Union of Bars of Turkey), the pre-Copenhagen and after Copenhagen situations in Turkey and in the world were comparatively evaluated by very valuable specialists in their fields. Bahar Ubay (UNDP), Nursel Atar (New York Bar), Mustafa Şahin (Ministry of Environment and Forestry), Aslı Sezer Özcelik (JP Morgan), Meliha Okur (journalist from Sabah newspaper) were some of the distinguished speakers of the Panel.

ANKARA BAR ASSOCIATION INTERNATIONAL LAW CONGRESS 2010

Ankara Bar Association International Law Congress 2010 will be held between January 11-15, 2010 at the Bilkent Hotel Convention Centre. Local and international scholars, practitioners and policy makers are to be expected to attend the Congress. Main subjects of the Congress are as follows:

1. Justice and Legal Reform,
2. Energy Law,
3. Informatics Law,
4. Mediation

For the Congress Program and for further information please visit: http://www.hukukkurultayi.org/