

A Partitioned State that is in the European Union: The Case of Cyprus

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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.¹ 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%).² According to the tentative 30 April 2006 census, the *de facto* population of the “Turkish Republic of Northern Cyprus (TRNC)” is 264,172³, 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 2006.⁴ 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.⁵

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.⁶

2 JOSEPH, J. S., Cyprus, *Ethnic Conflict and International Politics: From Independence to the Threshold of the European Union*, (2nd ed., Hampshire: Macmillan Press Ltd, 1997).

3 See <http://nufussayimi.devplan.org/population%20and%20housing%20%20census.pdf> [Accessed on 20 May 2008].

4 See <http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/B34F2AC2C4546FDCC22573B1003325A9?OpenDocument&sub=1&e=> [Accessed on 05 November 2008].

5 Loizides, N. G. (2007), “*Ethnic Nationalism and Adaptation in Cyprus*,” *International Studies Perspectives*, No. 8, pp. 172-189.

6 MENDELSON, M. H., QC, “The Application of the Republic of Cyprus to Join the EU,” in “*The Cyprus Issue: A Documentary History, 1878-2007*, 571-588 (HAKKI, M. M., ed., London: I.B. Tauris & Co Ltd., 2007).

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.”⁷

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.⁸ 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.⁹ 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.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.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.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 *de facto* division to become *de jure*.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.¹⁴ The “TRNC” considered such an accession to be a security threat as well as a back-door to *Enosis*, while denying membership options to Turkey.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.”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.”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

¹⁰ *Id.*

¹¹ DEMETRIOU, O. (2004), “*EU and the Cyprus Conflict: Review of the Literature*”, Working Papers in EU Border Conflicts Studies, No. 5, pp. 1-37.

¹² *Id.*; NUGENT, N., “*EU Enlargement and the Cyprus Problem*,” *Journal of Common Market Studies*, 38:1 (2000) pp. 131-150.

¹³ NUGENT, *supra* note 12.

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/21398) and a Supplementary Note on 3 September 1990 (UN Doc A/45/538 – S/21817). Both reprinted in ERTEKUN, N. M., *The Status of the Two People in Cyprus; Legal Opinions, respectively* pp. 39-49 and pp. 50-53.

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.*

¹⁶ European Commission, *supra* note 7.

¹⁷ *Id.*; BOEDELTE, F. L., *et al.*, “*The Fallacious Imperial Geopolitics of EU Enlargement: The Case of Cyprus*,” *Tijdschrift voor Economische en Sociale Geografie*, 98:1 (2007) pp. 130-135.

will involve Cyprus and Malta.¹⁸ 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.¹⁹ 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.²⁰ Indeed, this was the result of Greek insistence on linking the RoC's application to the implementation of a customs union with Turkey.²¹ 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.²² However, the conflict does not appear to have changed as much or as significantly as might have been expected thus far.²³

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.²⁴ 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 1996.²⁵ 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 accession of a divided Cyprus.²⁶

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.²⁷

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.²⁸ 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:

18 European Council Summit, 24-25 June 1994.

19 NUGENT, *supra* note 12.

20 FRIIS, L., "Looming Shadows: The European Union's Eastern Enlargement and Cyprus," in *The European Union and the Cyprus Conflict: Modern Conflict, Postmodern Union* (Diez, T., ed., Manchester: Manchester University Press, 2002) pp. 15-33.

21 BOEDELTE, *supra* note 17.

22 TOCCI, N., "Cyprus and the European Union: Catalysing Crisis or Settlement?," Centre for European Reform (2002) pp. 1-36, available at <http://aspects.no-ip.org/acgta/papers/Tocci.rtf> [Accessed on 05 Nov 2008].

23 RICHMOND, O.P., "Shared Sovereignty and the Politics of Peace: Evaluating the EU's 'Catalytic' Framework in the Eastern Mediterranean," *International Affairs*, 82:1, (2005) pp. 149-176.

24 STEFANOU, C., *Cyprus and the EU: The Road to Accession* (Aldershot: Ashgate Publishing Limited, 2005) p. 3.

25 JOSEPH, *supra* note 2, at 120.

26 TOCCI, *supra* note 22.

27 BOEDELTE, *supra* note 17.

28 *Id.*

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

²⁹ European Council Seville, Summit, 21-22 June 1992.

³⁰ BOEDELTE, *supra* note 17.

³¹ The Dublin European Council, June 1990, states that the Cyprus conflict "affects EC-Turkey relations" upon the Greece'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.

³³ International Strategic Research Organization (ISRO), "Alternative Approaches for the Cyprus Issue: Multi-Component Step Model (2008) available at <http://www.turkishweekly.net/news.php?id=54409> [Accessed on 05.11.2008].

³⁴ DUNDAS, G., "Cyprus from 1960 to EU Accession: The Case for Non-Territorial Autonomy," Australian Journal of Politics and History, 50:1 (2004) pp. 86-94.

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 accession 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 Cypriot 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.³⁶ 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.³⁷ 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 Commission 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, expressed 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.³⁸ Turkey also procured a legal opinion from Professor Mendelson,³⁹ on 6 June 1997, in support of the “TRNC” objections. In return, the RoC procured a joint legal opinion from Professors Crawford, Hafner and Pellet⁴⁰ on 27 September 1997.

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 and S/2001/1222. See also CRAWFORD, J., PELLET, A. and HAFNER, G. (1997), “The Eligibility of Cyprus for EU Membership” in *The Cyprus Issue: A Documentary History, 1878-2007* (Hakki, M. M. ed, London: I.B. Tauris & 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.”⁴¹

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 1990.⁴² 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."⁴³

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."⁴⁴

Mendelson's first argument was analysed above. The response to his second argument by Crawford refers⁴⁵ 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:

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,⁴⁶ 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 bicomunal 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

⁴⁶ BROWNIE, I., *Principles of Public International Law* (6th ed., New York: Oxford University Press, 2003), p. 89.

⁴⁷ BARTKUS, V. O., *The Dynamic of Secession* (Cambridge: Cambridge University Press, 1999), p. 73.

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 fondamentale* and Security Council decisions and specifically demands that such activities which are now taking place in Katanga shall cease forthwith.” See *Id.*

in 1960-1961.⁴⁹ Nevertheless, some secessionist actions, such as Bangladesh in 1971, were justified under the right to self-determination.

According to Bartkus,⁵⁰ 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 States⁵¹ 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.⁵² 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 264,172⁵³ 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 kilometres. 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.⁵⁴

49 *Id.*

50 *Id.*, at 10.

51 Signed on 26 December 1933.

52 HOFFMEISTER, F., *Legal Aspects of the Cyprus Problem: Annan Plan and EU Accession* (Leiden: Martinus Nijhoff Publishers, 2006), p. 50.

53 According to the tentative 30 April 2006 census, *supra* note 3.

54 HOFFMEISTER, *supra* note 52, at 51.

Accordingly, Leigh⁵⁵ 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 Treaties⁵⁶ 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.⁵⁷

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."⁵⁸

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 bicomunal 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

55 LEIGH, M. (1990), "The Legal Status in International Law of Turkish Cypriot and the Greek Cypriot Communities in Cyprus". In: Ertekun, M. (1997), ed., "The Status of the Two Peoples in Cyprus: Legal Opinions", 2nd ed., pp. 54-68, Lefkosa: Okman Ltd.

56 See the Additional Protocol No. 1 of the Treaty of Alliance.

57 HOFFMEISTER, *supra* note 52, at 51.

58 CHRYSOSTOMIDES, K., *The Republic of Cyprus: A Study in International Law* (Hague: Kluwer Law International, 2000, p. 274.

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, *coups d'état* 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 bicomunal nature of the RoC, but did not end the RoC itself. The UNSC Resolution 186 on the mandate of UNFI-CYP 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

59 CRAWFORD, J. (1979), “*The Creation of States in International Law*,” (New York: Oxford University Press, 1979) p. 405.

60 See Tinoco Arbitration (1923), 1 R.I.A.A. 369. Brownlie, *supra* note 46, at 80.

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 bicomunalism with the guarantees of three States: the UK, Greece and Turkey. The two communities were co-founders of the bicomunal 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 bicomunal nature has ended.

Greece clearly breached the Treaty of Guarantee by organising a *coup* against the leadership of the RoC with the aim of *Enosis* 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.