
Legal Aspects of the Cyprus Problem: Annan Plan and EU Accession

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Martinus Nijhoff Publishers, (The Netherlands, 2006) 289 pp.

ISBN: 90-04-15223-7

Frank Hoffmeister's study contends with a variety of questions of concern relating to core issues of the Cyprus problem from an international law and EU law perspective, and forms a valuable contribution to the literature on this subject. As a member of the European Commission Legal Service who participated in the Annan Plan negotiations on Cyprus, the author provides valuable information and assessment which is very useful in understanding ongoing discussions about the Cyprus problem. Following a general introduction, the author addresses the international legal dimensions of the Cyprus problem under different headings to each of which he devotes a separate chapter: The independence of Cyprus; the breakdown of the bi-communal Republic; the Turkish intervention and Turkey's continued presence in the northern part of Cyprus; UN efforts to foster a political settlement from 1975-1995; Cyprus as a candidate for EU membership; EU accession negotiations and Annan Plans I-III; EU accession and Annan Plans IV-V; Cyprus as an EU member state; and relations between Cyprus and Turkey. The manner in which these chapters are formulated makes it easier to understand complex topics. Each chapter includes only two main sections, which are "the facts" and "legal evaluation". At the end of each chapter there is a summary sub-section which assists readers to make an overall assessment on that chapter topic. This methodology employed by the author allows readers, particularly those who do not possess a legal background, to identify the central discussion on the topic.

Through the first four chapters the author examines the period between 1960 and 1998, and illustrates sources of the Cyprus problem from a legal viewpoint. In the first chapter the nature of self-determination applied in the island and the distinctive character (bi-communalism) of the 1960 Republic of Cyprus are explained. As to the collapse of the 1960 Republic the author presents in the second chapter a novel explanation and argues that some measures taken by the Greek Cypriot members of the Cypriot Government following 1964 were not justified under the law of necessity and that an unconstitutional situation existed due to the fact that the Turkish Cypriot elected parliamentarians were impeded from returning to the legislative body. However, according to the author "the partial illegal hellenisation of the Republic" did not affect the existence of the Republic of Cyprus

as a state (p. 33). In the third chapter, where all relevant sources are examined, the author acknowledges that it is possible for a state to accept an *ex ante* invitation to other states to intervene, as is the case in Cyprus' Treaty of Guarantee (p. 44). While he concludes that due to Turkey's failure to re-establish the status quo ante the second phase of the Turkish intervention in 1974 violated international law with regard to the prohibition of use of force, he also argues that despite Turkey's continuing military presence in northern Cyprus, certain "legal acts of the TRNC can be regarded as valid in international law if their non-recognition would work to the detriment of the population in the north" (p. 59). In the fourth chapter the author puts forward an assessment which has been acknowledged tacitly but has never been expressed with such clarity by international lawyers in the past. According to Hoffmeister, the 1977 and 1979 High-Level Agreements (and probably the 8 July 2006 Agreement which was concluded following the publication of the book) as well as UN documents (including Security Council and General Assembly resolutions, and reports of the Secretary General on Cyprus) are not legally binding. This point is very important since both Greek Cypriots (before the 2004 referenda) and Turkish Cypriots (after the 2004 referenda) have relied on UN documents and/or the High-Level Agreements to support their respective political positions. Despite this assessment on the legal character of these UN documents and High Level Agreements, the author does underline their importance at a given time "as a political framework for a settlement" which can be amended to adapt to changes in circumstances over time (p. 74).

It is in chapter five that the author discusses thoroughly conflicting legal arguments of both parties which were prepared through international lawyers on the legality of Cyprus' EU accession before the Treaty of Accession was signed. He concludes that the Treaty of Guarantee did not outlaw the membership of Cyprus to an international organisation (such as the EU) as was contended by Turkey and the Turkish Cypriot leadership. Following a very detailed and comprehensive analysis on the content and legal nature of the first three versions of the Annan Plan, the author states that "the plan was consistent with all relevant UN Security Council Resolutions" (p. 161). While accepting some features of the Plan as uncommon in the European Union he argues that its provisions were not in conflict with "the common EU standards" (p. 160), such as democracy, rule of law, respect for human rights, ability to speak with one voice and ability to implement and enforce EU law. The reader can find well-explained comparisons between the provisions of the first three versions of the Plan and the above-mentioned principles of the EU in chapter six. A similar methodology was applied in the following chapter, in addition to a summary of amendments made in the final version of the Plan during the Bürgenstock negotiations. It is worth mentioning that he states that "trying to justify the Greek Cypriot rejection of the plan with shortcomings as regards its EU compatibility or procedural defects under international law is not well founded." For

the author, such attempts rather show the unwillingness of the Greek Cypriot leadership to accept such a Plan “where EU accession was already secured for Cyprus” (p. 194).

Two significant issues are discussed in chapter eight: a) meaning of the suspension of the EU *acquis*; b) certain secondary EU legislation (such as regulations) on the regime of the Green Line and regarding Turkish Cypriots. As a legal expert who has been involved in the EU processes on Cyprus, points raised and interpretations made by the author regarding the meaning of the suspension is vital in the sense that most of the continuing legal discussions in and outside the island relate to this meaning. One may recall the *Orams Case* which has been sent by the British Court of Appeal to the European Court of Justice for interpretation and which concerned the question of immovable properties in the north, an area where EU law is suspended. It can be argued that the categories created by the author regarding the rights of Turkish Cypriots under EU law (‘Rights linked to territorial application of EU law’ and ‘rights not linked to territory’) will help other legal practitioners in understanding and appropriately applying EU law in the event that no settlement is reached on the island (pp. 208-213). His analysis about the second issue (regulations), particularly on the direct trade regulation and the legality of using the ports located in the north of Cyprus, conflicts with the consistent position of the Greek Cypriot government and brings us to the conclusion that the author is influential on the legal position of the European Commission. It was confirmed following the publication of this book that the author was right in his predictions on the supremacy of EU law over the Cypriot constitution and on the consistency of the legal regime established for the Turkish Cypriot properties in the south of Cyprus with the accepted human rights standards.

In analysing the relations between Cyprus and Turkey in chapter nine the author concludes that what was required from Turkey in the proper operation of the EU-Turkey customs union was to lift restrictions for ships sailing under the Cypriot flag to Turkish ports, but not to “recognize that the Republic of Cyprus legally governs the entire island” (pp. 231-232). However in his view the counter declaration issued by the EU asked Turkey to recognise the Republic of Cyprus as soon as possible in the accession process. The overall conclusion in chapter ten ends with a remarkable brief assessment which includes the following intelligent question in its introductory part: “In view of the failure of the concerted EU/UN effort, will Cyprus continue to be a ‘diplomat’s grave’ – and if I may add – an ‘international and European Lawyer’s goldmine’?” (p. 239). The author believes that international law and European law provide the framework parameters for a Cyprus settlement and underlines that the elements of compromise are still on the table.

One (including the reviewer) may disagree with or even criticise some of the points raised in this book, however, it is very difficult to deny Hoffmeister’s impartial

approach in general. It is still more important to acknowledge and credit Hoffmeister for his ability to simultaneously leave aside any concern to be 'balanced' in his technical and legal examinations. I think it is this distinctive feature that most differentiates this book from others of a similar kind and makes it a truly admirable work on the legal dimensions of the Cyprus problem.

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