

Collective Non-Recognition of Illegal States

[in German]

Kollektive Nichtanerkennung Illegaler Staaten

Stefan Talmon

Mohr Siebeck, (Tübingen, 2006) xxxix + 1052 pp

ISBN: 3-16-147981-5

At first glance this book, with its sheer number of pages seems a daunting read. What new was there to be written, and to what extent, about a topic as old as this, despite the book's interesting inner sub-title, "Elements and Legal Consequences of an Internationally Coordinated Sanction in the Case of the Turkish Republic of Northern Cyprus" ('TRNC'). The book is about the UN's request for collective non-recognition of illegal states, of those whose establishment is based on violence or has been imposed against international law. The matter of non-recognition is bound to raise a number of questions, for example the participation at international conventions, postal service, currency, passports, citizenship, public property abroad etc. The solution to those questions is necessarily dependent on the individual circumstances: for instance, whether there is a question of territorial annexation or the creation of a puppet state. Since the author has decided to discuss the issue of collective non-recognition of illegal states in the case of the 'TRNC' and since this text will appear in the "The Cyprus Review" journal my review will therefore focus on the aspects related to the 'TRNC'.

From its opening pages, the author promises to present the facts "as objectively as possible". It is difficult to recall a researcher who has handled the Cyprus issue in an "objective" way, as there are always personal reasons to take into account when tackling an issue that has remained an open case for decades at both national and international level. The author mentions several previous comparable examples: Manchukuo, Rhodesia, and the Homeland States in South Africa. These examples are used to prove that collective non-recognition basically constitutes an ineffective sanction also in the case of the 'TRNC'. He assumes that by focusing on a specific case, a direct comparison with other cases of non-recognition becomes feasible. However, isn't a legal comparison often used to underpin one's own assumptions in a selective and results-oriented way?

The book is divided into three sections which make up 868 pages. The remaining pages constitute two annexes. The first contains a tabular overview of

sanctions and the impact that collective non-recognition has on non-recognised entities. The second one contains a list of treaties and agreements regarding the 'TRNC', that was proclaimed on 15 November 1983 in northern Cyprus.

The book's aim is to offer guidance as to the precise restraints which should be exercised under the label of non-recognition. The collective non-recognition of new states is not regulated by international agreements or by international law. It is, however, used generally as "an essential legal weapon in the fight against grave breaches of the basic rules of international law" (p. 1). The objective of this study is, therefore, to identify the basic tenets of this legal "weapon" which is used by the international community as an instrument for global governance, as well as to determine its impact.

In general, the book inquires as to whether non-recognition of illegal states by the international community is a necessary or a politically motivated practice: "Is the international community obliged to use non-recognition in the case of breach against non-violence?" According to the author, states are simply required to refrain from recognising violently induced situations as "legal", or "lawful" (p. 367). On the other hand, each state is required to determine for itself whether the conditions for such an obligation are fulfilled or not. Also, the language of a Security Council resolution determines whether it is to be legally binding or not. It is a known fact, and the author concurs with this perception, that a UN Security Council decision in resolutions must be made under Chapter VII of the UN Charter (p. 366).

In the case of Cyprus, in Zurich in 1959, a Greco-Turkish agreement was reached on the creation of the Republic of Cyprus under a Constitution providing for community power-sharing. The complexities of this Constitution which was shaped by external powers, soon resulted in an internal crisis and in 1963 this crisis developed into inter-communal fighting. Despite the author's claimed "neutrality", the historic description of this conflict looks one-sided, often biased towards the Turkish view.

In 1974, Turkey used the Greek Coup as a pretext against the legitimate Cypriot government of Archbishop Makarios, invaded and proceeded to occupy northern Cyprus. Since that time, Cyprus has de facto been divided. Only the Republic of Cyprus is recognised by the international community, and the 'TRNC', established in 1983, remains an entity declared invalid by UN Security Council resolutions 541 (1983) and 550 (1984) and is recognised and sustained only by Turkey.

The author argues that through the use of 'TRNC' – called "secessionist entity" in resolution 541 (1983) – the seed of legal recognition of the 'TRNC' is sown. The principle *ex injuria jus non oritur* [an illegality cannot become the source of legal

rights to the wrongdoer] is, however, one of the fundamental maxims of jurisprudence. The 'TRNC' is the result of an invasion and the continuous illegal occupation of a part of the internationally recognised Republic of Cyprus and this is reflected in numerous UN Security Council and General Assembly resolutions. A secession brought about by outward violence may not be legitimised through recognition. The author believes that this is the main cause of non-recognition of separatist entities.

Consequently, the non-existence of the 'TRNC' recognition is the result of a decision by the international community not to attribute the quality of statehood to the northern part of the island. This attitude is manifested by the resolution of the UN calling upon the states of the international community to negate the existence of the northern part of Cyprus as a separate international entity. This non-recognition, proposed by the Security Council, amounts virtually to a sanction inflicted by the international community against the primary illegality of the use of force to attain a political purpose of secession of the northern part of Cyprus from the rest of the Republic. In other words, the concept of non-recognition is used here to prevent the attribution of statehood to an illegal entity.

The author declares, though not convincingly, that according to the wording and the circumstances of their adoption, UN-resolutions 541 and 550 are not legally binding because they have not been adopted under chapter VII of the UN Charter (p. 325). To the contrary, the government of the Republic of Cyprus is of the opinion that these resolutions are of a binding nature (p. 324).

Up to 1983, when the 'TRNC' was proclaimed, many occasions of non-recognition of violence-induced entities occurred based on UN resolutions. Therefore, in November 1983, all states, including Turkey, were aware of their duty of non-recognition. According to the author, however, this duty is not of an absolute nature (p. 367).

The 'TRNC', according to the author, is a democratic and social state under the rule of law in which human rights are respected. Contrary to that, the European Court of Human Rights has held on several occasions that, since 1974, Turkey has been viewed directly responsible for continuing violations of basic fundamental rights by occupying the northern part of Cyprus. The rule of law within the international law context provides for all official activities to be undertaken in a way that is consistent with legal principles. But how can the rule of law apply in a territory which is illegally occupied by a foreign power? The prohibition of violence is at the heart of the international legal order. Prohibiting the consequences of violence means rejecting the benefits obtained as a result of illegal violence and is enshrined, for example, in the jus cogens norm of the non-acquisition of title to

territory as a result of violence. The presence of Turkish troops in occupied northern Cyprus in the current situation clearly constitutes an affront to the principles of democracy as well as human rights and remains a symbol of violence.

The author further discusses the consequences of non-recognition of the 'TRNC' as a state and its impact on the ability of the 'TRNC' to conclude international agreements. He recognises that it cannot take part in multilateral agreements; neither can it conclude administrative contracts, as the competence to sign such agreements lies with the Republic of Cyprus whose reach also extends to the territory of the 'TRNC'. The Republic of Cyprus has since December 1963 signed several hundred bilateral and multilateral agreements on behalf of the whole island, with other states, and with supra-national organisations, e.g. with the EU. This, according to the author, led to practical problems. In the case of Cyprus' accession to the European Union the 'TRNC' considered the accession request as ineffective and consequently the administrations of the northern part of the island have failed to cooperate with the European Commission services. Commission officials were denied access to the northern part of the island as "this community since December 1997 has suspended all contacts with the European Commission and the Commission has no clear perception of the existing legislative provisions vis-à-vis the *acquis communautaire*", as specified in a report of the EU Parliament of 1999.

I agree with the author's last phrase: Despite the fact that non-recognition is laid down in statements and documents as an absolute requirement, it is not a "guarantee for eternity" (p. 868). I would rather add: This situation can only change if the involved people want it. People have a right to self-determination under a democratic process and in line with international and (in the case of Cyprus) European legal principles. The question is which people?

The two separate and simultaneous referenda held on 24 April 2004 showed that 64.91 per cent of Turkish Cypriots voted "Yes" to the Annan Plan and 75.83 per cent of Greek Cypriots voted "No". Settlers who have become "citizens" were in the list of 45,000 persons to become citizens of the United Cyprus Republic and who knew that this Plan permitted them to remain. The Greek Cypriots see Turkish settlers as culturally very different from Turkish Cypriots thus changing the character of Cyprus, and turning the northern part, in effect, into another province of Turkey. They found it particularly offensive that Turkish settlers were permitted to vote in the referendum for "Turkish Cypriots" and that being the majority of that electorate, they would decide on the future of Cyprus.

In an attempt to manipulate the demography of the island of Cyprus the implantation of settlers from Turkey runs counter to the principles of international

law, especially those relating to self-determination and human rights. In particular, Article 49 of the Geneva Convention IV of 1949 on the protection of civilians (ratified by both Cyprus and Turkey), prohibits the transfer of part of its own civilian population into the occupied territory by the occupying power. The provisions of the Plan in relation to settlers from Turkey were hardly consistent with international law. The Plan permitted the settlers to vote in the Turkish-Cypriot referendum, even though the former now constitute a majority of the inhabitants of the north and even though this recognised a decisive constitutional force as an illegal consequence of an illegal aggression. The UN has not envisaged settlers voting in internal self-determination elections in other situations, such as the West Bank and Gaza, Western Sahara and East Timor.

The accession of the Republic of Cyprus to the European Union has fundamentally changed the internal as well as the external aspects of the Cyprus problem. How long will the EU be able to look away while one of its member states is prevented from exercising its sovereignty over part of its internationally recognised territory, if the international community accepts that there can be no international rule of law in a territory illegally occupied by a foreign power? The author does not say anything on this issue.

The author concludes that collective non-recognition is an ineffective sanction; it tends to preserve a conflict situation without contributing to its solution. None of the illegal states, under his investigation, has been driven through such an action directly into their dissolution. All illegal states were dissolved by military means (Manchukuo) or via a political solution of the underlying conflict (Rhodesia). The question arises as to whether a political solution that does not respect the principles of international (and European in the case of Cyprus) law can be the right solution for the affected peoples. A second question the author fails to answer satisfactorily regards the duration of such a solution. History however has shown that people are prepared to wait for the reunification of their homeland. Cyprus has been a divided country for more than thirty-three years now. Other countries have shown this – even under different circumstances and reasons: Germany's reunification happened after forty-four years and the Baltic states became sovereign again after more than half a century.

As the author highlights, UN Secretary-General Annan disappointedly remarked on 24 April 2004, that “a unique and historic chance to resolve the Cyprus problem has been missed” (p. 31). From this perspective, the reunification of Cyprus has failed. Concerning this referendum, former Attorney-General of Cyprus, Stella Soulioti, wrote in a letter how the Greek Cypriots felt. The choice had not been whether or not to reunite Cyprus because the solution of the Cyprus problem and the island's reunification had been their only hope for redressing at least some

of the tragic consequences of the Turkish invasion and the losses they had suffered. Also, the choice was not between living together with their Turkish-Cypriot compatriots or not. They rather saw the choice as being between opting for a Plan which would install a government whose workability and viability they felt was at least dubious, in which human rights would not be adequately safeguarded, disregarding United Nations resolutions and giving Turkey the right to fetter Cyprus' independence and providing no satisfactory guarantees against a repetition of armed intervention. Above all hung the fear that the Greek Cypriots ran the risk of losing the only security they had, that of the recognised state, the Republic of Cyprus, and of being reduced to a Community without a State.

Has the unique chance been missed for Cyprus? We do not know, but history's wheel of fortune offers many opportunities at different times – even if long lulls intervene.

This book was presented in 2002 at the University of Tübingen, Germany, as a habilitation treatise. Its wealth in references to German and international publications on the legal nature of collective non-recognition is enormous, and I have personally benefited a lot from it. The complete list of precedence cases of collective non-recognition offers an opportunity to review old (and sometimes forgotten) cases of non-recognition. I agree with the author that collective non-recognition characterises “the drama” of states in between realpolitik, on the one hand, and support for an international legal order on the other (p. 866). In the case of the ‘TRNC’, as the situation appears today, it has contributed to a hardening of standpoints between the conflicting parties.

Altana Filos