



RAMIFICATIONS OF THE ICJ KOSOVO ADVISORY OPINION FOR THE TURKISH REPUBLIC OF NORTHERN CYPRUS

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ABSTRACT

Kosovo “unilaterally” declared independence in 2008. In the Advisory Opinion delivered on 22 July 2010, the ICJ opined that this declaration “did not violate international law.” This Advisory Opinion has some critical ramifications for the future of the Cyprus question. One can easily deduce from the Court’s findings that neither the declaration of independence by the TRNC nor its recognition violates any applicable rule of international law. As such the Greek Cypriot Administration as well as the international community does not have the right to impose a solution on the island against the will of the Turkish Cypriot community. In fact, given especially the process and outcome of half-a-century of negotiations and of 2004 referendum, the best solution to the impasse between the communities is to recognize two independent states on the island, namely the Greek Cypriot State and the Turkish Cypriot State, as envisaged in the Annan Plan.

Keywords: *International Court of Justice (ICJ), Kosovo Advisory Opinion, Turkish Republic of Northern Cyprus (TRNC), declaration of independence, recognition, international law, the Annan Plan.*

1. INTRODUCTION

This paper is not yet another historical review of events on the island of Cyprus, but an attempt to explain the basic reasons of why the Turkish community has the right to self-determination and why the Turkish Republic of Northern Cyprus (TRNC) should be recognized almost thirty years after its declaration of independence. The paper draws on the recent advisory opinion of the International Court of Justice (ICJ) on Kosovo as well as legal, political, and philosophical arguments on secession and the right to self determination.

The first section of the paper reviews the advisory opinion on Kosovo; the second section relates the arguments of the Court to the Cyprus question and enumerates the basic reasons for the TRNC's right to claim recognition. The third section discusses the position of the Greek Administration of Southern Cyprus (GASC) on the future of Kosovo and Cyprus. Finally the paper provides some policy suggestions with the Turkish side. The paper argues that, given especially the process and outcome of half-a-century of negotiations and of 2004 referendum, the best solution to the impasse between the communities, is to recognize two independent states on the island, namely the Greek Cypriot State and the Turkish Cypriot State, as envisaged in the Annan Plan.

2. ICJ'S ADVISORY OPINION ON THE DECLARATION OF INDEPENDENCE BY KOSOVO

"Injustice anywhere is a threat to justice everywhere"
Martin Luther King Jr.

On 22 July 2010 the International Court of Justice gave its advisory opinion on the unilateral declaration of independence by Kosovo. Before elaborating on the inalienable rights of the Turkish Cypriots and on the declaration of independence by the TRNC, it would be very helpful to briefly look at this advisory opinion. On 8 October 2008 the United Nations (UN) General Assembly adopted a resolution (63/3) where it requested an advisory opinion from the ICJ on the declaration of independence by Kosovo without the blessing of the UN. The question put to the Court in the resolution reads as follows: *"is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"*^[1]

Before addressing this main question, the ICJ tackles two procedural questions: first of all, whether it has jurisdiction to give the opinion requested by the General Assembly and, secondly, if it has jurisdiction, whether it should decline to give the opinion in the case (i.e., the issue of discretion). Citing Article 10 of the UN Charter, the Court concludes that the General Assembly has the competence to ask an advisory opinion. On the possible conflict of powers between the UN Security Council and the General Assembly, the Court asserts that *"a request for an advisory opinion is not in itself a 'recommendation' by the General Assembly with regard to a dispute or situation"* and that *"the fact that a question has political aspects does not suffice to deprive it of its character as a legal question."*^[2] Therefore, the question put to the Court is of legal character and the Assembly has the right to request an advisory opinion from the Court on such questions; that is, the ICJ has jurisdiction in the case before it. The Court also *"considers that there are no compelling reasons for it to decline to exercise its jurisdiction"* in respect of the request of the General Assembly.^[3] The Court, then, starts reflecting on the legality of the declaration of independence by Kosovo.

Although the question before the Court requires political and philosophical discussion on many issues such as sovereignty, self-determination, recognition, and secession, the Court confines itself to a narrow interpretation and reads the question literally. The Court argues that *"the question is narrow and specific; it asks for the Court's opinion on whether or not the declaration of independence is in accordance with international law. It does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved*

[1] ICJ, *"Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo."* Advisory Opinion, 22 July 2010, General List No. 14, paragraph 1. (Hereinafter ICJ, 2010: paragraph No.)

[2] ICJ 2010: paragraphs 24 and 27.

[3] ICJ 2010: paragraph 48.

statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State.”^[4] Therefore, “the task which the Court is called upon to perform is to determine whether or not the declaration of independence was adopted in violation of international law.”^[5]

According to a scholar of international law, the General Assembly’s question “is equivalent to asking whether the decision of the United Kingdom to make drivers drive left side of the road rather than the right is in accordance with international law. The answer in both cases is clear: international law simply does not address the issue.”^[6] Yet given that the political and legal stakes in the case are so high especially for the big powers, the Court can be said to have tried to sidestep the critical issues that may easily deduce from the General Assembly’s question. “In fact what the Court did was to read literally the question it was asked, and thus to avoid opining on the major legal (and related policy) issues raised by the act of secession.”^[7]

After summarizing the factual background of the Kosovo war and the eventual declaration of independence, the Court starts addressing the main question and turns its attention, first of all, to the regulation of declarations of independence by general international law. The Court asserts that “during the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State from which independence was being declared. [And] state practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence.” Accordingly, it concludes that “the declaration of independence of 17 February 2008 did not violate general international law.”^[8]

The Court, then, turns to reflecting on the legal relevance of the Security Council Resolution 1244 that established the United Nations Interim Administration Mission in Kosovo (UNMIK). The Court concludes that “the purpose of Resolution 1244 was to establish a temporary, exceptional legal régime which superseded the Serbian legal order and which aimed at the stabilization of Kosovo, and that it was designed to do so on an interim basis... the Security Council did not serve for itself the final determination of the situation in Kosovo and remained silent on the conditions for the final status of Kosovo.”^[9] As such the Court implied that the political structures Resolution 1244 had established were temporary and the members of the Security Council had the responsibility, or at least they were aware, that a final status should have been agreed on. In fact, this was the mission of the Special Envoy. The Court said:

[4] ICJ 2010: paragraph 51.

[5] ICJ 2010: paragraph 56.

[6] Hurst Hannum, “The Advisory Opinion on Kosovo: An Opportunity Lost, or a Poisoned Chalice Refused?” *Leiden Journal of International Law* 24, 2011, p. 156.

[7] Robert Howse and Ruti Teitel, “Delphic Dictum: How Has the ICJ Contributed to the Global Rule of Law by Its Ruling on Kosovo?” *German Law Journal* 11, 2010, p. 841.

[8] ICJ 2010: paragraphs 79 and 84.

[9] ICJ 2010: paragraphs 100 and 114.

In November 2005, the Secretary-General appointed Mr. Martti Ahtisaari as his Special Envoy for the future status process for Kosovo. This appointment was endorsed by the Security Council. Mr. Ahtisaari's Letter of Appointment included, as an annex to it, a document entitled 'Terms of Reference' which stated that the Special Envoy 'is expected to revert to the Secretary-General at all stages of the process'. Furthermore, 'the pace and duration of the future status process will be determined by the Special Envoy on the basis of consultations with the Secretary-General, taking into account the cooperation of the parties and the situation on the ground.'^[10]

The Court also reflected on the identity of those who declared independence, since the declaration of independence by the very institutions of the Interim Administration would have violated Resolution 1244. The majority of the Court, however, said that the authors of the declaration did not act within the legal order that UNMIK and the Security Council resolutions established. "*The Court considers that the authors of that declaration did not act, or intend to act, in the capacity of an institution created by and empowered to act within that legal order but, rather, set out to adopt a measure the significance and effects of which would lie outside that order.*"^[11]

For all the reasons explained above, the Court unanimously decided that "*it has jurisdiction to give the advisory opinion requested;*" by nine votes to five that it would "*comply with the request for an advisory opinion;*" and by ten votes to four that "*the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law.*"^[12]

3. THE ICJ'S ADVISORY OPINION AND THE TRNC'S RIGHT TO CLAIM INDEPENDENCE

"Injustice in the end produces independence"

Voltaire

The conclusions the Court reached have important ramifications for the Cyprus question, the final status of the island as well as the Turkish Republic of Northern Cyprus. The TRNC does not only have the right to declare independence, which it did on 15 November 1983, but also the right to claim recognition. Among many others, the following legal, political, and moral reasons can be singled out:

As it is clear from the Advisory Opinion, the Court opines that a group of people living in a certain area that has been devastated as a result of years of

[10] ICJ 2010: paragraph 65.

[11] ICJ 2010: paragraph 105.

[12] ICJ 2010: paragraph 123.

conflict should have a final political status and have permanent political structures. A government established by UNMIK and the Security Council was an interim and exceptional measure in Kosovo. By the same token, since the establishment of the UN peacekeeping mission in Cyprus in 1964 (UNFICYP), the island has been de facto divided between the two communities and a final solution to the problem is yet to be reached. Negotiations between the Turkish and Greek communities have been continuing since the early 1960s with no concrete or positive results. Negotiations, however, cannot continue indefinitely. Moreover, as explained below, the Greek Cypriot community's voting down the Annan Plan demonstrates to the UN and world public opinion that the Greeks do not want to coexist with the Turks in a united Cypriot state. Taken together, the island should have a final status and the best way to achieve this is to recognize the TRNC and agree on a two-state solution.

Although the ICJ Advisory Opinion is silent on political consequences of the Kosovo's declaration of independence as well as on whether states should recognize this declaration or not, it is a strong confirmation and reaffirmation by the highest legal authority in the state system that "*general international law contains no applicable prohibition of declarations of independence*" and so the actual adoption of a declaration of independence does not violate "*any applicable rule of international law.*"^[13] As such the declaration of independence by the TRNC does not violate international law; and now it is time for both Turkish Cypriots and Turkey to promote the cause of recognition.

The mission of Mr. Martti Ahtisaari, appointed by the Secretary General and endorsed by the Security Council, was to find a solution to the impasse between the parties and define Kosovo's final status. In his report to the UN Secretary General, who transmitted it to the Security Council, Mr. Ahtisaari concluded that "*the negotiations' potential to produce any mutually agreeable outcome on Kosovo's status is exhausted. No amount of additional talks, whatever the format, will overcome this impasse...the only viable option for Kosovo is independence.*"^[14] The similarities of the negotiation process in Kosovo and Cyprus are striking. UN Secretary-General Kofi Annan had assumed a mission similar to that of Mr. Ahtisaari.

One cannot stress enough the importance as well as legal and political ramifications of the Annan Plan for the island. The Annan Plan had envisaged a two-state federal republic, the Turkish Cypriot State and the Greek Cypriot State, and aimed at bringing a lasting solution to political problems on the island through a complex give-and-take formula between the two communities. The separate referenda in each community held on 24 April 2004. However the Greek Cypriot community voted down the plan (%75.3 against) whereas the Turks voted for (%64.9 in favor). This result should have consequences on the island, but sadly

[13] ICJ 2010: paragraphs 84 and 122.

[14] ICJ 2010: paragraph 69.

and unfortunately, the UN has shied away from its responsibilities and done nothing to correct the ongoing injustice. Fortunately, though, the fate of the Annan Plan and the referendum opens up the critical legal question of whether the Security-Council resolutions as well as the General-Assembly resolutions are still valid or should be binding on the Turkish Cypriot community. Between 1964 and 2012 the UN did what it can and, sadly, it failed. So it is time for the UN to acknowledge the right of the Turkish Cypriot community to independence and recognition. In fact the Annan Plan had created a map of the constituent states. Therefore, the UN should honor the communal borders drawn by this map and recognize the independence of the “*Turkish Cypriot State*.”

The Court in the Kosovo Advisory Opinion referred to Cyprus and said:

Contemporaneous practice of the Security Council shows that in situations where the Security Council has decided to establish restrictive conditions for the permanent status of a territory, those conditions are specified in the relevant resolution. For example... the Security Council, in its resolution 1251 of 29 June 1999, reaffirmed its position that a ‘Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded’. The Security Council thus set out the specific conditions relating to the permanent status of Cyprus.”^[15]

However, in the Advisory Opinion, the Court does not discuss the legality of the TRNC, political consequences of the declaration of independence by the authorities of the TRNC, the situation on the ground, or the process of negotiations since the early 1960s. Nor does the Court discuss the developments since the Security Council passed Resolution 1251. The political and legal arguments made in this paper override any possible opposition to the TRNC’s declaration of independence and its existence as a separate and functioning state on the island.

In fact, by voting down the Annan Plan, in 2004 the Greek Cypriots openly communicated to the UN and world public opinion their political will; that is, they do not want to coexist with the Turkish community in a united Cypriot state. The political will of the Greek Cypriot community should also be respected by the UN as well as by the guarantor states. One can easily deduce from the Greek community’s political will that the Turkish community has been left with no choice but to ask the international community to recognize the TRNC. Just as the Greek community has the right to have their own state, the Turkish community should also have the right to “*pursue life, liberty and happiness*” under their own state. Therefore, enforcing the “*one state solution*” on the Greek community as well as on the Turkish community would be both politically unjust and legally problematic.

[15] ICJ 2010: paragraph 114.

Therefore, a Cyprus with two states is the best solution to the current impasse. As Tozun Bahcheli correctly pointed out more than ten years ago, “*without the presence of a sense of shared identity and a modicum of trust between the two communities, there is no reason to expect that a bicomunal federation would fare any better than the power-sharing experiment of the early 1960s. A negotiated solution for two independent states is worth considering. There is no reason to think that a two-state settlement will make it any harder than other solutions for the eventual reconciliation of the Greek and Turkish communities.*”^[16]

“*The situation on the ground,*” and the circumstances under which the declaration of independence was issued have also been important for the Court in taking its final decision on Kosovo. The Court refers to the “*Letter of Appointment*” extended to Mr. Ahtisaari by the Secretary General. Citing the letter the Court said: “*the pace and duration of the future status process will be determined by the Special Envoy on the basis of consultations with the Secretary-General, taking into account the cooperation of the parties and the situation on the ground.*”^[17] Given that the situation in Kosovo did not change after a long negotiation process; the Court naturally opines that the authors of the declaration of independence wanted to change this impasse. The Court concludes: “*the declaration of independence reflects the awareness of its authors that the final status negotiations had failed and that a critical moment for the future of Kosovo had been reached... The authors of the declaration of independence emphasize their determination to ‘resolve’ the status of Kosovo and to give the people of Kosovo ‘clarity about their future.’*”^[18]

Again the similarities between the Kosovo issue and the Cyprus question are striking. The problems and the conflict between the two communities on the island had started in 1963; and almost twenty years’ of negotiations had failed. However, the Turks and the Greeks were living separately on the island. This “*situation on the ground*” was given a legal status by the authors of the TRNC’s declaration of independence. The very declaration reads that: “*developments which have taken place in Cyprus for the last 20 years, and the critical stage which these developments have reached at present, necessitate the placing of certain facts with clarity before world public opinion...By pressing the legitimate and irrepressible will of the Turkish Cypriot People, in the light of the aforesaid realities, convictions and necessities we hereby declare before the World and before History the establishment of the Turkish Republic of Northern Cyprus as an independent State.*”^[19]

At the time the UN was established, the basic political and moral norm of the new world order was declared to be self-determination; that is those nations

[16] Tozun Bahcheli, “*Searching for a Cyprus Settlement: Considering Options for Creating a Federation, Confederation, or Two Independent States.*” *Publius: The Journal of Federalism* 30 (1-2), 2000, p. 216.

[17] ICJ 2010: paragraph 65.

[18] ICJ 2010: paragraph 105.

[19] TRNC, “*Declaration of Independence by Turkish Cypriot Parliament on 15 November 1983.*”

under the colonial rule would become equal members of the “*family of nations*.” Accordingly, Article 1 of the UN Charter stipulates that one of the four critical purposes of the UN is “*to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples*.” Besides, in an effort to further emphasize, and in fact to realize, this basic norm Articles 55 enumerates critical functions of the UN:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Court, although did not discuss the issue in detail, referred to the right of self-determination in the Advisory Opinion. It said: “*During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation. . . One of the major developments of international law during the second half of the twentieth century has been the evolution of the right of self-determination.*”^[20]

When the UN was established in 1945, the island of Cyprus was under the rule of the British empire. As such, both the Greek and Turkish Cypriot communities have had the right to claim independence because of this very basic norm. The 1960 agreements among Turkey, Greece, and Great Britain were so crafted to push (and maybe force) the two communities to live together. It was almost a forced marriage and, sadly, ended in divorce within three years. Now, it is time for the international community to honor its promise to extend the right of self determination to both the Greek and Turkish communities.

f) In 1960, when the agreements were signed among the three states for geostrategic reasons, one of the main communities on the island was the Turkish Cypriots. Out of political and ethical norms of “*social contract*,” the Turkish side has the right to reclaim its right to self determination just because the so-called Republic of Cyprus did never honor its duties to provide the Turks with the necessary means to pursue a decent life on the island. The Greek authorities claiming to have jurisdiction on the entire island are still in total ignorance of the needs of the Turkish community and they even imposed sanctions on the Turkish Cypriots in an effort to force them to give up their basic rights. Therefore, the international community should accept the right of the Turkish community to self determination and recognize the TRNC.

[20] ICJ 2010: paragraphs 79 and 82.

This raises the issue of the Turkish community's right to remedial secession. This is not a legal or political, but basically a moral argument. The remedial right approach "includes among the grounds for the unilateral right to secede the following: (a) large-scale and persistent violations of human rights, (b) unjust taking of the territory of a legitimate state, and (c) in certain cases, the state's persistent violation of agreements to accord a minority group limited self-government within the state."^[21] It is an established fact that at least since 1963, basic human rights of Turkish Cypriots have been grossly and continuously violated by the authorities of the so-called "Republic of Cyprus." And this injustice cannot be corrected without submitting the right to independence of the Turkish community, because neither the Cyprus Republic nor the UN has been able to stop the persistent violations of basic human rights on the island.

In fact the ICJ touches on the remedial-secession right of Kosovo in its advisory opinion but does not attempt to elaborate on this right. The advisory opinion reads that:

Differences existed regarding whether international law provides for a right of 'remedial secession' and, if so, in what circumstances. There was also a sharp difference of views as to whether the circumstances which some participants maintained would give rise to a right of 'remedial secession' were actually present in Kosovo. The Court considers that it is not necessary to resolve these questions in the present case. The General Assembly has requested the Court's opinion only on whether or not the declaration of independence is in accordance with international law. Debates regarding the extent of the right of self-determination and the existence of any right of 'remedial secession', however, concern the right to separate from a State. As the Court has already noted and as almost all participants agreed, that issue is beyond the scope of the question posed by the General Assembly.^[22]

g) The TRNC meets all the criteria to become a "state" and so to get recognized by the international community as such. The basic legal document that sets out the criteria for recognition is the "Montevideo Convention on the Rights and Duties of States." Nineteen American states signed the Convention in 1933 and it came into force in 1934.^[23] According to Article 1 of the Convention: "the state as a person of international law should possess the following qualifications: a) permanent population; b) a defined territory; c) government; d) capacity to enter into relations with other states."

First of all, the Cypriot Turks have been a group living on the island at least

[21] Allen Buchanan, "Secession" in Stanford Encyclopedia of Philosophy, 2003.

[22] ICJ 2010, paragraphs 82-83.

[23] Cedric Ryngaert and Sven Sobrie, "Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia." Leiden Journal of International Law 24, 2011, pp. 472-474.

for 441 years now, and as of December 2011 the TRNC has a population of 294,906.^[24] Second, the TRNC has a defined territory (either actually drawn by the Turkish side in 1974 or legally drawn in the Annan Plan and accepted by the negotiating authorities in 2004). Third, the Turkish Cypriot community has been administering itself through its own institutions since 1964 and the TRNC has had effective governments since its declaration of independence in 1983. Finally, the TRNC has the capacity to enter into relations in the system of states. The TRNC is not only recognized by Turkey, but also participates in the work of the Organization of Islamic Conference (OIC) that currently has 57 members. Moreover, from a practical point of view, the TRNC has been negotiating with the Greek Cypriot State as well as such organizations as the UN and EU on the status of the island. Furthermore, Australia, France, Germany, and the EU have “*representative offices*” in the TRNC.

Therefore, given the criteria of the Montevideo Convention, the TRNC possesses all the qualifications of a state and deserves full recognition. Interestingly enough, according to Article 3 of the Montevideo Convention, “*the political existence of the state is independent of recognition by other states.*” Article 3 further explains that “*even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law.*” And this is what exactly the TRNC has been doing since 1983. Although the recognition of the TRNC by other states is important, it should be noted that the TRNC “*exists independently*” of recognition and the nature of political treatment, whatever it might be, of other states.

4. THE GREEK ADMINISTRATION OF SOUTHERN CYPRUS AND THE ICJ’S ADVISORY OPINION

*“Sometimes a noble failure serves the world
as faithfully as a distinguished success”*

Edward Dowden

The Greek Administration filed a 70-page “*written statement*,” dated 3 April 2009, with the ICJ about the Kosovo case where it said “*Resolution 1244 does not render the declaration of independence lawful.*” Moreover, according to the Greek Administration, “*Kosovo does not meet the criteria for statehood in international*

[24] TRNC, “Initial Results of the Population Census in THE TRNC Declared to Be 294 Thousand 906 (12.12.2011).”

law and is not an independent sovereign state.”^[25] The Greek Administration, with a letter dated 8 July 2009, also filed “*written comments*” with the ICJ where it not only reiterated its position but also referred to the TRNC: “*the so-called Turkish Cypriot authorities made a declaration purporting to create an independent state in the northern part of Cyprus... The declaration was incompatible with the principle of territorial integrity and with the 1960 Treaty of Guarantee.*”^[26]

Yet it is clear from the Greek Administration’s lengthy defense of Serbia that the Greek Cypriots were not happy that the very issue of declaration of independence was before the ICJ. Naturally, the Kosovo Advisory Opinion disappointed the Greek Cypriots. As a matter of fact, on 26 July 2010, the Foreign Minister of the Greek Administration, Markos Kyprianou, said that the Greek Cypriots “*won’t be lead to recognize the independence of Kosovo. Last week’s announcement of the positive verdict of the UN International Court of Justice regarding the legality of Kosovo’s independence will not affect [our] position. The decision of the ICJ is restricted only to the specific question which refers to the procedure of the declaration itself. At the same time we believe that when a territorial integrity of a country is concerned, the issue is to be resolved by means of talks and negotiations, and not by unilaterally declaring independence.*”^[27]

The international media and scholars of law have not escaped the worry of the Greek Cypriot Administration about the case. For example, Quentin Peel from Financial Times reported that “*Erato Markoulli [the then Foreign Minister of the GASC] said her country ‘cannot and will not recognise a unilateral declaration of independence’. Ms. Markoulli denied the stance had anything to do with northern Cyprus, the Turkish-ruled part of the island whose independence has been recognised only by Turkey. Yet that is clearly the most threatening precedent. If Kosovo wins recognition from the US and UK, how long will they refuse to do the same for the self-styled Turkish Republic of Northern Cyprus? Many EU members now regret allowing Cyprus to join without resolving its internal division. The Greek Cypriots rejected Kofi Annan’s UN plan for unification, after the Turkish Cypriots had voted heavily in favour in 2004.*”^[28]

As Ker-Lindsay argues, the Advisory Opinion also blessed the policies of Russia vis-à-vis South Ossetia and Abkhazia. “*In upholding the right of Kosovo to declare independence, the ICJ has also proved a much needed boost to Russia’s claim that its decision to recognize South Ossetia and Abkhazia was justified. Moscow can now say that as their declarations were not deemed to be illegal it has the sovereign right to recognize these territories.*”^[29] In the same vein, Turkey’s recognition of

[25] <http://www.icj-cij.org/docket/files/141/15609.pdf>, pp. 49-50.

[26] <http://www.icj-cij.org/docket/files/141/15684.pdf>, paragraph 20.

[27] http://www.novinite.com/view_news.php?id=118525

[28] Quentin Peel, “*Greek Cyprus watches Kosovo’s move.*” Financial Times, February 6, 2008.

[29] James Ker-Lindsay, “*Not Such a sui generis Case After All: Assessing the ICJ Opinion on Kosovo.*” Nationalities Papers 39 (1), 2011, p. 7.

the TRNC is completely in conformity with the rules of general international law. In fact Ker-Lindsay also touches on the importance of the Advisory Opinion for Turkey; he says “*in Turkey and northern Cyprus there was considerable speculation that the opinion could open the way for recognition of the TRNC.*”^[30]

From the discussion above, it is clear that the universal recognition of the TRNC is a matter of time. It is not a question of how or why, but when. In this process, it would be fruitful to provide the Turkish side with some policy suggestions.

5. IN PLACE OF A CONCLUSION: POLICY SUGGESTIONS FOR BOTH TURKEY AND THE TRNC

“There is no substitute for hard work”
Thomas Edison

Given the outcome of the Annan Plan referendum, the TRNC should apply to the UN for becoming a member of the organization. The application may be rejected or disregarded; but the leaders of the TRNC should not hesitate to keep this issue on the UN agenda and, as a matter of fact, on the agenda of many international organizations. Toward strengthening its bid for full recognition by the international community, the TRNC should also apply to the International Monetary Fund (IMF) and the World Bank as well as NGOs such as Eurovision and UEFA to become a member. In fact, UN membership is not required for becoming a member of the World Bank. For example Kosovo has membership in all five groups of the Bank.^[31] As Dolidze argues “*collective recognition in the form of acceptance to the United Nations, and to a lesser extent to other international organizations, and recognition by other international organizations may impact upon the whole question of statehood.*”^[32]

Turkey is lavish with recognizing newly independent states and, in fact, attempts to become one of the first few states that recognize a declaration of independence. Turkey should stop recognizing new states unless they recognize the TRNC. It is a fair question to ask why, for example, Kosovo and Bosnia have not recognized the TRNC. In fact, when the problems arose between Kosovo and Serbia back in 1999, Turkey provided with Kosovo all the support it could, including joining the NATO’s mission. “*From the outset Turkey’s*

[30] James Ker-Lindsay, “*Not Such a sui generis Case After All: Assessing the ICJ Opinion on Kosovo.*” Nationalities Papers 39 (1), 2011, p. 6.

[31] World Bank, “*World Bank Group Members,*” 2012.

[32] Anna V. Dolidze, “*Can Kosovo Be a Precedent for South Ossetia and Abkhazia: Recognizing Differences in Dynamics of Recognition.*” Cornell International Affairs Review 2 (2), 2009, p. 42

support for Kosovo's independence was very clear and strong."^[33] However, Kosovo is yet to recognize the TRNC.

Turkey and the TRNC should pursue an active diplomacy especially before small and medium states, because the number of recognitions does matter. Not only big powers but also small and medium states can make a difference in the process of TRNC's getting recognized as a full-fledged member of the family of nations.

Every now and then the news surfaces in the international and national media alike that the TRNC will unite with Turkey and become its 82nd city or province. Unification of the TRNC with Turkey would be neither a good policy nor a good tactic toward promoting their interests. Because, on the one hand, the constituent community of the island is the Turkish Cypriots and not the Turks per se; that is, the international community can and eventually will recognize the TRNC but would not accept the unification of the TRNC with Turkey. This also would be interpreted as "*annexation*," and such the Turkish side would face a strong reaction of the international community, since modern international law prohibits states to expand through "*annexation*." In addition, this policy would contradict the 1960 agreements, regardless of whether they are still in force. Therefore, Turkey should focus on increasing its diplomatic pressure on states toward helping the TRNC to gain full recognition. The TRNC, on the other hand, should be more active on world stage and turn every opportunity into a window through which it can better explain its cause.

Both Turkey and the TRNC should give priority to training able international lawyers as well as scholars of public international law. Providing students with more and better scholarships, establishing research centers, and setting up graduate studies are among many fruitful approaches. In addition, opinions and decisions of the ICJ should be more closely studied, for, although a universal acceptance of the optional clause of the ICJ Statue is yet to be achieved, the Court shapes and shoves international law to an unprecedented extent in the system thanks to its critical decisions on issues ranging from the use of force to environment.

Turkey should increase its diplomatic efforts before the members of the Organization of Islamic Conference in an effort to get the TRNC admitted as a full member of the organization that would enormously help the TRNC to gain recognition by other states. At the thirty-first session of the Islamic Conference of Foreign Ministers, held in Istanbul between June 14-16, 2004, the organization adopted a resolution on "*the Situation in Cyprus*" and, having acknowledged that "*a new situation has emerged in Cyprus following the referenda on 24 April 2004*," decided that "*the Turkish Muslim people of Cyprus should*

[33] Doğu Ulaş Eralp, "*Kosovo and Turkey: What Lies Ahead?*" SETA Policy Brief. Ankara: SETA, 2010, p. 6.

continue to participate in the work, activities and meetings of all OIC organs under the name envisaged by the UN Secretary-General's settlement plan."^[34] (OIC 2004). Although the Turkish Cypriot community has been participating in the work of the OIC under the name of "*Turkish Cypriot State*," this name however is yet to appear in the final communiqués of the summit meetings as well as foreign ministers meetings.^[35] Nor has the OIC accepted "*Turkish Cypriot State*" as a full member of the organization. Such membership would really strengthen the hand of the Turkish community in pursuing the policy of universal recognition.

Turkey and the TRNC should also intensify their efforts to get all the restrictions and embargoes on the Turkish Cypriots lifted that have been imposed by the Greek community as well as the international community. As succinctly put by the Ministry of Foreign Affairs of the TRNC, "*these illegal and immoral embargoes imposed are in blatant violation of the UN Charter and in contravention of the relevant international human rights instruments.*"^[36] Therefore, not only before IGOs but also before humanitarian organizations the Turkish side should pursue an active diplomacy.

Turkey and the TRNC should protect, and in the long-run not give up, their right to natural resources on and around the island of Cyprus. Natural gas and oil reserves have turned the Eastern Mediterranean into a region of strategic competition between not only regional powers but also the great powers, including the European Union. To exploit the resources in a fashion to benefit the Turkish community on the island, Turkey should continue its cooperation with the TRNC in the area of natural gas and oil exploration. Moreover Turkey should continue supporting the normalization of relations between régimes in the region.

The European Union is an important actor in this process. Its importance emanates not only from its political and economic power but also its role to play for the future of the island and the Eastern Mediterranean region. Therefore, Turkey should make its peace with the EU's policies in the membership process; that is, Turkey should decide whether it really wants to become a full member of the organization. If it could reach a final decision, that would help the Turkish side to make the necessary adjustments and create a long-term plan about the Cyprus issue.

The declarations of independence by Kosovo, South Ossetia, and Abkhazia and the subsequent events on their recognition demonstrated that at least one

[34] Organization of Islamic Conference, Resolutions on Political Affairs, Adopted by the Thirty-First Session of the Islamic Conference of Foreign Ministers (Session of Progress and Global Harmony), Istanbul, Republic of Turkey, 14-16 June 2004, Resolution No.2/31-P.

[35] Nejat Doğan, "*Uluslararası Örgütler Nezdinde Kıbrıs Sorunu*," Uluslararası İlişkilerde Güncel Konular ve Türkiye. Cenan Çakmak, Nejat Doğan, Ahmet Öztürk (Eds.) Ankara: Seçkin, 2012, pp. 33-36.

[36] "*Turkish Cypriot Isolation*" <http://www.theTRNCinfo.com/index.asp?page=276>, 2012.

big power must recognize the new state and also support the cause of this state at the international platforms such as the UN Security Council. Currently Turkey and the TRNC are without such a support. Even if Russia (because of its religious and historical ties with the Greeks) and China (out of strategic reasons) may refrain from supporting an independent Turkish Cypriot State; the United States, Britain and France may support for their political, strategic, and economic interests in the region. In fact a two-state solution on the island would serve the interests of the US and Britain in that their basic policy has been to maintain the balance of power in the region. Therefore, Turkey should intensify its diplomatic efforts before the permanent members of the Security Council (P-5 states) in an attempt to cooperate on strategic issues in the region and help the TRNC to gain universal recognition.

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