

OPINION

Legal Status of United Cyprus under the “Draft Joint Declaration”

James Crawford AC SC

1. I am asked by the Republic of Cyprus to advise on whether the ‘Draft Joint Declaration’ which is proposed to be made following the first meeting of leaders, shortly to be held under the auspices of the UNSG’s Good Offices mission, may have any adverse implications for the continuity of the State of Cyprus as a Member of the United Nations and of the European Union. In my opinion the answer is: no. The settlement envisaged by the Draft Joint Declaration (if agreed and implemented) will not affect the continuity of Cyprus as a state in international law and will not require it to be re-admitted to the United Nations or to undergo a new accession process to the European Union. Cyprus, internally reconfigured, will retain a single nationality and a single legal personality.

2. The present legal position is clear. In accordance with the basic Treaties of 1960 and applicable Security Council resolutions, there is a single state of Cyprus which is a Member of the United Nations and of the European Union. The *de facto* division of Cyprus which has endured since 1975 has not led to the creation of a separate state in the northern part of the island. The territory of Cyprus as a whole is part of the EU, although given the *de facto* division of Cyprus, the application of the *acquis* to the north is suspended.

3. This legal position has been affirmed and reaffirmed by such international courts as the ECHR and the CJEU, as well as by national courts in third states.

4. On the other hand both communities in Cyprus are entitled to be represented in the government of Cyprus and of their own communities, and the unification of Cyprus requires the consent of both communities. It is the purpose of the proposed settlement negotiations to move towards that situation, recognizing that ‘[t]he status quo is unacceptable’ (para 1).

5. Against this background the Draft Joint Declaration calls for ‘a united Cyprus within the European Union’ (para 1). What will change are the constitutional arrangements leading to a ‘bi-communal, bi-zonal federation with political equality, as set out in the relevant Security Council Resolutions and the High Level Agreements’ (para 3). But these Resolutions and

Agreements refer to and recognize an existing single state of Cyprus whose territorial integrity is guaranteed and will be preserved under the new constitutional arrangements to be negotiated. Existing prohibitions – notably the prohibitions on '[u]nion in whole or in part with any other country or any form of partition or secession' – are affirmed (para 4).

6. Although Cyprus will be a 'bi-communal, bi-zonal federation' with substantial guarantees of constituent state autonomy (para 3), this is not inconsistent with the unity of Cyprus from the international law perspective: para 3 stresses that united Cyprus 'shall have a single international legal personality and a single sovereignty'. The fact that the single personality and sovereignty 'emanate equally from Greek Cypriots and Turkish Cypriots' does not confer on either community of constituent state any separate sovereignty or anything of the kind. 'Sovereignty' inheres in a single State and there is nothing peculiar about the 'equal emanation' wording.

7. By the same token, the provision that all Cypriots will also have citizenship of one or other constituent state does not imply separation on the international plane. Secondary citizenship of the constituent units of a federal state is not at all unusual in practice. Para 3 makes it clear that there will be 'a single united Cyprus citizenship': internal citizenship status 'shall compliment and not substitute in any way the united Cyprus citizenship'.

8. For these reasons, in my opinion, the united Cyprus will not be a new State but will be the same international legal person as that which emerged to independence and was admitted to the United Nations in 1960.



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