

POLICY PAPER SERIES

1/2017
February 2017

**THE INSTITUTIONAL CONTINUITY OF THE
REPUBLIC OF CYPRUS
A Politico-Juridical Imperative**

Constantinos J. Mavroeidis



CENTER FOR EUROPEAN AND INTERNATIONAL AFFAIRS
University of Nicosia

1/2017
February 2017

**THE INSTITUTIONAL CONTINUITY OF THE
REPUBLIC OF CYPRUS
A Politico-Juridical Imperative***

Constantinos J. Mavroeidis

* This paper was submitted for the conference *The Cyprus Problem, its Solution and the Broader Implications*, organized by the Center for European and International Affairs of the University of Nicosia on March 11-12, 2016.

THE INSTITUTIONAL CONTINUITY OF THE REPUBLIC OF CYPRUS
A Politico-Juridical Imperative

1/2017

Nicosia, February 2017

Copyright © Center for European and International Affairs, University of Nicosia,
Constantinos J. Mavroeidis

Press: Center for European and International Affairs, University of Nicosia

Constantinos J. Mavroeidis

Constantinos J. Mavroeidis was born in Athens in 1960. He studied Law and Political Sciences, and also pursued a post graduate degree in Criminology.

He is a Supreme Court lawyer as well as a State Council lawyer, with an everyday presence in courtrooms. He mainly deals with serious criminal cases, as well as cases concerning violation of human rights. He has handled, with utter success, cases before the European Court of Human Rights (e.g. Agnidou v. Turkey) and the Human Rights Committee based in Geneva (e.g. Kouidis v. Greece).

Constantinos J. Mavroeidis was also an associate of the Marangopoulos Foundation for Human Rights (MFHR) from 1991 to 2003, in the legal field of judicial and extrajudicial protection the Foundation offered. He is also an Associate of the United Nations High Commissioner for Refugees (UNHCR) office in Athens in the field of judicial and extrajudicial protection of refugees or political asylum seekers and as a border monitoring guard from 2002 to 2004.

He also serves as a member of the Legal Service of the Greek Council for Refugees (UNHCR) from 2001 to 31/12/2004, having dealt (judicially and extra-judicially) with refugee and migration matters, trafficking and procedures concerning political asylum. He has participated, as a speaker, in many conferences and meetings related to the judicial and extrajudicial dealing of migration and procedures of political asylum, as well as the legal procedure of those requesting political asylum, issues of violation of human rights, illegal detention or prosecution etc.

He has also been a member of a team of experts for the reform of the legislation of the Republic of Cyprus, in the field of political asylum and the Country's harmonization to the European Community acquis (Twinning Light program, 2003).

He was also an Instructor at the National School of Security on human rights' matters, during 1998-2008.

He is a member of the Commission of Clearance of the Athens Bar Association.

He is married and has two daughters, 26 and 18 years old respectively.

THE INSTITUTIONAL CONTINUITY OF THE REPUBLIC OF CYPRUS
A Politico-Juridical Imperative

ABSTRACT	6
INTRODUCTION.....	7
I. THE ENVIRONMENT OF THE DISCUSSIONS.....	7
II. A FUNDAMENTAL APPROACH TO THE JOINT DECLARATION OF FEBRUARY 2014	7
III. THE DOUBLE ANAGNOSIS OF THE DECLARATION, ITS CAUSES AND THE LEGAL CONSEQUENCES.....	11
IV. THE REAL INTENTIONS OF THE TURKISH /CYPRIOT SIDE.....	14
V. THE CURRENT LEGAL STATUS AS A WORK BASIS	15
VI. CONCLUDING REMARKS AND A SUGGESTED SOLUTION.....	16
VII. BIBLIOGRAPHY	18

Abstract

It is a fact, that nowadays talks concerning a possible solution of the Cypriot Problem, apply directly to the Anastasiades-Eroglu Joint Declaration of February 2014. It is a fact as well, that both parties expound the terms of this Declaration under their individual and obvious, not impartial, view. For example, how the parties interpret the “mutually accepted” terms of the Joint Declaration concerning the procedure of the establishment of the Federal State of The Republic of Cyprus? Is finally possible the goal of transformation and institutional continuity of the Cypriot state to be achieved, or not? The purpose of the present paper is to give the motive for further thoughts on the issue and at the same time, to give a legal and applicable aspect on the matter.

INTRODUCTION

The transformation of the Republic of Cyprus, in case a solution to the lingering for decades Cyprus issue is eventually reached, is the most crucial matter, and its approach will determine the future of the Republic of Cyprus, as well as the future of Cypriot Hellenism and beyond. A substantial public debate has been going on for the present issue, and thus, it is precarious, in the near or distant future, to find ourselves before any unpleasant situation, citing our ignorance as an excuse, because such an attitude cannot be justified.

I. THE ENVIRONMENT OF THE DISCUSSIONS

The present conjuncture is not the best for Greece and Cyprus, as the massive financial and mostly social problems that are both facing make them vulnerable to pressures, which many times, can take the form of political blackmail . It is impressive and at the same time indicative of the environment of the discussions, what President Anastasiades mentioned at the beginning of his speech during the special Session of the Cypriot Parliament, of 11/2/2016, He explicitly said that: *"I will quote the facts as they are and I will develop some concerns about the prospects and opportunities offered or even the consequences to the detriment of Cypriot Hellenism and of our country, either by a unilateral solution or a new deadlock, particularly if this is due to unrealistic expectations or in pursuit of the impossible"*.¹ What does the President mean when he refers to a unilateral solution and what does he mean by the term unrealistic expectations or the pursuit of the impossible? These references of his, define the "psychological context" in which the negotiations started and are continued.

II. A FUNDAMENTAL APPROACH TO THE JOINT DECLARATION OF FEBRUARY 2014

As it is said, both negotiating parties, namely the Republic of Cyprus on one hand, represented by its legit Government and on the other, the representative of the self-defined as Government of this self-proclaimed construct, the Turkish Republic of Northern Cyprus, (who is basically the representative of the Turkish-Cypriot community), consider that the Anastasiades-Eroglu Joint Declaration of 11 February 2014 is the text in which they base the solution sought.² However, it must be analyzed what are the principal terms of the Joint Declaration and their significance, and mostly, under which political and social stereotypes do the parties approach and interpret it. These are the questions I will try to answer hereinafter, by projecting scientific arguments and by having as a basis the principles of merit and neutrality.

¹ Speech of President Anastasiades of 11/2/2016, at the special Session of the Cypriot Parliament, p.1 par. 4.

² Anastasiades – Eroğlu Joint Declaration of 11 February 2014.

The Declaration has a legal, political and social (although this latter seems not to be taken into consideration) interest, especially in articles 1, 3, 4 and 5. Briefly: In art. 1 there is a reference to the unacceptable status quo of the island, which has to be changed to the benefit of both parties, and also, regarding the mutual respect of both communities, the term "*separate integrity*" is introduced for the first time. It is moreover stated in art. 3, that the Federal Republic will have just a single international personality and a single sovereignty, which will be defined as the sovereignty enjoyed by all Member States of the United Nations, under the UN Charter and, which stems equally from the Greek/Cypriots and Turkish/Cypriots. There will be just a single citizenship of the united Cyprus, regulated by the Federal legislation; however, at the same time, all citizens of the united Cyprus will be citizens of either the Greek/Cypriot state, either the Turkish/Cypriot state. This regime is foreseen to apply within the territory and will not replace the citizenship of the united Cyprus. Art. 4 of the Declaration, refers extensively to the way according to which the united Federal Republic of Cyprus will occur, namely with separate and simultaneous referenda by both *constituent states*, on issues such as the Federal Constitution, the function of the Federal Government as well as the function of the local Governments of both constituent states, the acceptance and implementation of principles, the non-unification with another country, the non-partition and non-secession, actions that will be prohibited. Last but not least, art. 5 states that all negotiations are based on the principle that "*nothing has been agreed until everything is indeed agreed*". This is a positive "safety net" it could be said. All the aforementioned, thus, have been mutually accepted and consequently, there seems to be a common ground on the transformation of the Republic of Cyprus, through the above agreements, in combination with the relevant fundamental principles of International Law, the forecasts of the European Legislation, as well as the Decisions of the General Assembly of United Nations and the relative Resolutions of Security Council of UN. However, is reality as such? As Gallie has stated back in 1958, "any concept which cannot be clearly and unambiguously defined is bound to be confused".³ This is an essentially contested concept. Thus, the real intentions of both parties by accepting the above mentioned Joint Declaration, the way they interpret its context and under which social factors and stereotypes, will be analyzed hereinafter, keeping in mind the following:

- a) The reference made in art. 1 of the Declaration, on the respect of both parties' *distinct identity*, is absolutely right and understood, from a legal, political and social perspective. What is, though, the purpose of adding also the term of respect of "*distinct integrity*"? From a legal perspective, and mostly from a Constitutional Law approach, this term seems to be at least unsuitable if not unreal. Hence, what could its addition serve,

³ W. B. Gallie, *Philosophy and the Historical Understanding*, 2nd edition New York: Schocken Books, 1958.

or who? Secondly, how the negotiating parties really approach and interpret their “mutual discovery” of the unacceptable status quo in the island? Do they both ignore or not, that the North part of the island is under occupation?

- b)** The reference made in art. 3 of the Declaration concerning a united Cyprus, member of the European Union and the UN, with a single international legal personality is also absolutely correct and understood, from a legal, political and social perspective. This reference proves that this State_sovereignty emanates from the people of Cyprus as a whole. Thus, what does the further reference of this sovereignty emanating from the Greek/Cypriots and the Turkish/Cypriots equally, could actually satisfy and what is its actual meaning? Is there a similar regulation to another Federal State? Is there, for instance, a reference to the Swiss Constitution that the sovereignty of the country stems from the people of Switzerland but also from the citizens of its Cantons A or B? Or respectively, does the US Constitution state, that their sovereignty stems notably from the citizens of Ohio or New York States, apart from the people of the United States as a whole? The aforementioned assumption legally means, that the Turkish/Cypriot Community is raised to a dominant Turkish/Cypriot state and its members, to a dominant Turkish/Cypriot people, while the people of the United Cyprus should be only one, despite ethnicity and origin, discrimination and mostly asterisks. In the Federal State of Cyprus, as in every state with such a form, the special issues of origin, religion, education and culture that describe the members of every Community, should become internal issues preoccupying the Federal Government of the united State of Cyprus, which will be leading the overall policy. The same goes for citizenship. It is irrational for someone to have two citizenship in his own country! At this point I must highlight and repeat the examples of Switzerland and the United States of America. There are not Swiss or American citizens who, at the same time, have also the citizenship of the State of Kansas or the Canton of Geneva. From a legal point of view, according to International Law provisions, the model described previously in the present case, refers directly to a Confederation of States and not to a Federal State, regardless of the fact that both parts disapprove of the Confederation. It is further no coincidence that at no point of the Joint Declaration is explicitly and clearly stated, that the Federal State of Cyprus will be the continuation of the existing Republic of Cyprus. On the contrary, there are vague references on the new structure, the new partnership etc.

- c) The current Cypriot Constitution,⁴ which is considered as quite rigid, states in art. 2: *"For the purposes of the present Constitution: 1. The Greek Community consists of ... 2. The Turkish Community consists of..."*. This Constitution, which recognizes directly the two main Ethnic and Religious Communities of the Cypriot State, has never been repealed or abolished but implemented by the Republic of Cyprus, together with the EU legislation etc. Hence, based on the above, on which legal basis, the two negotiating parties, introduced in the Joint Declaration the repeating term "Constituent States" instead of the Constitutionally accepted term "Communities", ignoring thus, the Constitution of the Republic? Because the notion of the "State" is very well known to all.
- d) Following the above speculation, what is the rational to mention on par. 2 of art. 3 of the Declaration that the constituent states will fully and irrevocably exercise their powers, with no intervention by the Federal Government, and that the Federal Laws will not intervene to the laws of the constituent states regarding the sectors of their own competence (which, by the way, have not been determined yet), while the laws of the constituent states will not intervene to the laws of the Federal Government regarding the latter's competence (not determined yet, either). These assumptions, which are characterized by uncertainties and ambiguities in substantial legal operational issues of the United Cypriot State, do not only create questions from a legal point of view, but also from a social, educational, cultural and religious viewpoint, questions of social beliefs and stereotypes, so that the application of the model becomes dysfunctional. This model may seem (because it is not) legally possible, however in its core, it ignores the society of the State as a whole, despite ethnicity. For instance, a Cypriot electronic newspaper wrote:⁵ *"two homosexual women will be the first to sign the civil (partnership) union on January 2016, ratified by the Cypriot Parliament on November 2015, while on February 2016, two homosexual men will do the same. The article concludes to the fact that the following two months, approximately 20 homosexual couples will sign the civil union"*. A crucial question must be put now, concerning this fundamental human rights' issue: how could the aforementioned model of legislative procedure and governing, actually function in the case analyzed previously on one hand,

⁴ Constitution of the Republic of Cyprus entered into force on 16 August 1960.

⁵ Sigmalive, Cyprus News:

<http://www.sigmalive.com/news/local/301489/2-gynaikes-to-pto-kypriako-symfono-symviosis>

and how is going to react the society of each Community on the other, as between the two social systems lies a fundamental difference in terms of habit, customs and tradition, class power and prestige.⁶

- e) At no point of the Declaration is any reference to the Army of the Federation, the occupying forces in Northern Cyprus, the Greek/Cypriot National Guard etc. What about these issues? Because let us not forget that the occupying troops are Turkish, not Turkish/Cypriot. But let's keep this for further analysis.

III. THE DOUBLE ANAGNOSIS OF THE DECLARATION, ITS CAUSES AND THE LEGAL CONSEQUENCES

The Greek/Cypriot side, during the past but also very recently, highlighted and stated the obvious, that there is just one solution to the Cyprus issue, which entails to the transformation of the Republic of Cyprus in one Federal State structure. With reference to the 2014's Joint Declaration a frame has been shaped according to which, the transformation of the Republic of Cyprus to a Federation will be established. A solution as such, will not allow the Republic of Cyprus to cease to exist, as its dissolution will bring regime change and not State abolition. The already existing State of Cyprus, based on this Greek/Cypriot approach, will take a Federal form, according to contemporary European, and Western in general frameworks. In the island of Cyprus, there will be created two independent areas/zones/districts, which will not have a state character but will be some kind of local government with increased responsibilities, resembling to the French third grade government, and it will not overshadow, by any means, the Central Administration. Consequently, the so called "Turkish Republic of Northern Cyprus", will not be considered and so, not transformed to the northern county – as part of the new federal structure. This is the Greek/Cypriot's side firm position, as been and still being expressed, based on the aforementioned. And for this side, this framework seems to be absolutely obvious. However, despite this seeming climate of friendship and understanding, there is one point that the Greek/Cypriot side seems to ignore, and this concerns the way the Turkish/Cypriot side approaches and interprets the Joint Declaration on the aforementioned key points.

From the recent public statement by the representative of the Turkish/Cypriot leader Akinci, Baris Burjou, which is the official position of the Turkish/Cypriot leadership, occurs that the other side does not interpret on the same legal basis the term of transformation of Cyprus into a Federal State, in the sense intended by the Greek/Cypriot side.

⁶ Kattos Soteris, Social Regularity as an essential determinant of attitudes towards a solution of the Cyprus issue, 2014, p.3.

More specifically, Burjou supports that the statements and the position of the Turkish/Cypriot leadership during negotiations does not mean that it accepts the Republic of Cyprus. He also highlights that "*our actions do not mean that we accept the Republic of Cyprus and we make efforts for its reconstruction*". On the contrary, he refers us directly to Akinci's statement on 1st September 2015, mentioning that the Turkish/Cypriot side is for the creation of a "*new partnership*", a "*new structure*", which with its designation, its flag and all its features, will be a new federal structure. Plus, Akinci in this statement, highlights that this new structure will not reapply to the UN and the EU, since in these Organizations, the new structure will take the place of the old one, namely that of the Republic of Cyprus. He concludes that: "*this is reality. The Turkish Republic of Northern Cyprus is with all its features a (state) structure. And I (i.e. Akinci), I am its President*".⁷ According to these positions, what is being transformed is not the Republic of Cyprus, but the self-proclaimed today's, State of Northern Cyprus, which is now a constituent/founding state, just as the Republic of Cyprus, which is downgraded into a constituent/founding Member of the new structure as well. This is the legal reality created by the Turkish/Cypriot outlook, within the context of the Joint Declaration.

Based on what it has been said, it is obvious that the same things the two negotiating parties accept as a basis of discussion and possible agreement, are at the same time perceived by them differently. Which factors form this situation? Here come the factors of political and social stereotypes. According to them, I may say that, despite the positive atmosphere and momentum, the Turkish Presidential will not accept this plan, at least not as the Greek/Cypriot party has conceived it and there will be no transformation of the Republic of Cyprus, as President Anastasiades presented it. Let us clarify this: Turkey, with respect to Greece and Cyprus, never ceased to crave for the revival of the Ottoman viewing of relationships, such as those result from the power structure of this historic type, which as such, remained unchanged not only politically, but also in a level of social representations of the Turks, ethnic stereotypes and setting up of their basic, foundational personality. Put quite simply, the above standard, aims to a singular Greek-Turkish condominium with a charge to the latter, the Turkish suzerainty over all, in the form of "*mine is mine and yours is mine*".⁸ Furthermore, the consolidated position of the Turkish external policy was and still is the annexation of Cyprus totally. The initial goal of the Turkish external policy was the partition of the island but after the Greek military coup of summer of 1974 and the Turkish invasion at the same time, which caused the occupation of the 37% of the Cypriot territory by the Turkish army, the hereinabove goal was upgraded and turn into the full control of the island, with or without the cooperation of the Greek/Cypriot factor, through several "ideas" such as the creation of a Federal united Cyprus etc. But

⁷ See public statement by the representative of Turkish/Cypriot leader, Baris Burjou.

⁸ Neocles Sarris, *The Other Side*, Vol. I, (1977), pp. λζ', λη', λθ', μ', μα', μβ', μγ', μδ', με'.

there is a big obstacle in the materialization of these plans, which is the international legitimacy and recognition of the Republic of Cyprus. Therefore the Turkish policy aspires steadily the abolition of the Republic of Cyprus. Hence, since: **a)** the 24/11/1956 and 22.12.1956 Reports for Cyprus, of the Turkish Professor and later on Minister of Foreign Affairs of Turkey, Nihat Erim, which confirm the above initial goal of the Turkish policy and they are the "genesis bible" of the Turkish national policy on the Cyprus issue, **b)** the positions that were constantly developed by the Minister of Foreign Affairs during Ecevit's Government of 1974 and the Turkish invasion, Turan Günes, according to which, *"Turkey does not want the partition of Cyprus but the full control of the island, not because of the existence of the Turkish Cypriots but in order to serve broader interests in the Eastern Aegean"*,⁹ until today, nothing has changed on the above consideration and of course, on the aforementioned Turkish external policy. Due to the present situation, we have to refer to the recent report concerning the official position of Turkey on this matter, as expressed by Turkey's former Minister of External Affairs and recently forced resignation of Prime Minister, Ahmet Davutoğlu. He writes: *"... There are no longer, as independent, one Balkan and one middle east policy..., but a middle east-balkan policy, which grows with a focus on the eastern Mediterranean, and where Cyprus consists of its main tool..."*.¹⁰ Thereinafter, on p. 278-279 he further explains: *"... the Cyprus issue is neither a usual Turkish/Greek ethnic issue nor just a lingering tension between the two peoples. Turkey ..., is obliged to evaluate its policy on the Cyprus issue, outside the limited context of Turkish/Greek relations..."*. On p. 279: *"The second crucial axon of the Cyprus issue is the importance of the island's geographical position from a geostrategic point of view. This axon is very important itself despite of the human element being there. Even if there was neither Muslim nor Turkish there, Turkey had to maintain a Cyprus issue. No country can stand indifferent to such an island located in the heart of its vital area ... Thus, from a strategic point of view, Turkey is bound to be interested to Cyprus, despite the human factor"*.¹¹ Of course the author forgets to mention that according to the terms of Lausanne Treaty, Turkey waived all claims and rights it had, not only in Cyprus, but in the whole territory in the area which was occupied by the old Ottoman empire and after its collapse several new States created, such as Lebanon, Syria, Iraq in the East and Bulgaria in the North. Especially concerning Cyprus, the article 21 of the Treaty provided: *"Turkish nationals ordinarily resident in Cyprus on the 5th November, 1914, will acquire British nationality subject to the conditions laid down in the local law, and will thereupon lose their Turkish nationality. They will, however, have the right to opt for Turkish nationality within two years from the coming into force of the present Treaty, provided that they leave Cyprus within twelve months after having so opted. Turkish nationals ordinarily resident in Cyprus on the coming*

⁹ Turan Güneş' exclusive interview in the Greek daily newspaper "Eleftherotypia" on 11th September 1976.

¹⁰ Ahmet Davutoğlu, *Strategic Depth*, (2010), pp. 277-281.

¹¹ *Ibid*, p. 279.

*into force of the present Treaty who, at that date, have acquired or are in process of acquiring British nationality in consequence of a request made in accordance with the local law, will also thereupon lose their Turkish nationality. It is understood that the Government of Cyprus will be entitled to refuse British nationality to inhabitants of the island who, being Turkish nationals, had formerly acquired another nationality without the consent of the Turkish Government".*¹²

Last but not least, it is written on p. 280 that Turkey has to focus on the strategic asset that obtained during the 1970s (namely, the strategic location of the island regarding to the Middle East, the Eastern Mediterranean, the Aegean, the Suez Canal, The Red Sea and the Persian Gulf) with the Turkish invasion and the illegal occupation of the northern part, however not as an element of a defensive Cypriot policy orientating to the preservation of the current regime, but as one of the diplomatic and basic props of an aggressive sea strategy.¹³ Through the procedure of transformation as the Turkish Cypriots legally interpret and politically and socially pursue, the founding Turkish Cypriot state is of great importance to the plans of the Turkish National Security Council, because Turkey longs to see the Turkish Cypriot statehood taking energetic role to the Middle East and the Eastern Mediterranean. Another essential and direct question arises: The interpretation of the Joint Declaration of 2014, from the Turkish Cypriot point of view, is relevant in relation to the aforementioned, or not? The answer is obvious; it is absolutely relevant.

IV. THE REAL INTENTIONS OF THE TURKISH /CYPRIOT SIDE

Undoubtedly, the current situation in Cyprus is the direct outcome of the London and Zurich Agreements. Despite the –justified- negative criticism they faced, these Agreements were giving a huge advantage to the Greek and Greek Cypriot side, while at the same time they acted as a brake for the Turkey and Turkish Cypriot. As Ismet Inonu had underlined, during his pleading in front of the Grand National Assembly of Turkey, as the leader of the main opposition party, after congratulating Prime Minister Menderes for his unexpected diplomatic success, he observed that, these Agreement's assets for Turkey are vanished by the international legal personality that the Republic of Cyprus obtained and will continue to have. The Republic of Cyprus will be a member of the UN and of the rest of international organizations, it will be internationally recognized and as a result, no one knows what kind of policy this country will follow in the future. The Turkish side today, seems immovable on its position concerning the abolition of the Republic of Cyprus and its replacement with a much-desired new federal structure, deriving from parthenogenesis. As Prof. Andreas Theophanous notices, *"it would be suicidal if the Greek Cypriot leadership abandons the Republic of Cyprus,*

¹² Treaty of Lausanne 1923, Article 21.

¹³ *Supra* fn. 10, p. 289.

especially Protocol 10 according to which Cyprus entered the EU in 2004.Thus, the international status and recognition of the Republic of Cyprus is a priceless treasure".¹⁴

V. THE CURRENT LEGAL STATUS AS A WORK BASIS

According to article 1 of the Constitution of Cyprus, which is applicable and in force, the Cypriot State is an individual and sovereign Republic with a Presidential system, based on the principles of legality, the separation of powers, the judiciary independence and the respect for human rights. Sources of law are, hierarchically for the Republic, the European Union law, the Constitution, international treaties and agreements, formal laws, Normative Acts, the Supreme Court of Justice, the Common Law and the principles of equity. Noted that, the law of the European Union, according to the case law of the Court of the European Union, overrules national laws of its Member States; this also applies to the Republic of Cyprus corresponding to law nr. 127(I)/2006, on the Fifth amendment of the Constitution. Moreover, with a considerable number of remarkable pieces of legislation, the Republic has harmonized its legislation to that of the EU. Furthermore, Article 2 of the Constitution states that: "*For the purposes of the present Constitution. 1. The Greek Community consists of ... 2. The Turkish Community consists of...*". According to this provision, the current Constitution of the Republic as it has been amended, recognizes the two fundamental Communities on the island, as existing Communities with its peculiar characteristics each. Hence, it is a fact that this crucial period, the Republic of Cyprus operates according to the Constitution of 1960, still in force and after been reviewed, the EU legislation etc., based on the aforementioned.

According to Protocol 10[the accession treaty] of EU,¹⁵ the suspension of the Community Acquis in areas of the Republic of Cyprus where its Government "*does not exercise effective control*", was decided (art. 1 par. 1). According to article 3, it is possible to take measures of financial development on the areas of par. 1, measures that already have been taken without Cypriot Government exercising a veto. Finally, in article 4 of the Protocol, it is foreseen that, "*in the event of a settlement, the Council, acting unanimously on a Commission's proposal, decides on the adaptations of the terms concerning the accession of Cyprus to the European Union, with regard to the Turkish Cypriot Community*". At this point, a really serious question on the aspect of International Law arises.

¹⁴ Theophanous , A.2016. "*Fatal and non reversible the abolition of the Republic of Cyprus*".

¹⁵ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 10 on Cyprus, OJ L 236, 23.9.2003, at 955-955.

On which legal basis the modification of the present Protocol will take place in order for the Turkish Cypriot Community, which is being mentioned in it as occupying the areas of par. 1 (*not controlled by the Republic of Cyprus*), will be recognized at the same time, as constituent state, of the new structure, the Federal Republic of Cyprus, while the already existing and recognized Republic of Cyprus will be defined as a constituent state as well? How will the adjustment of the terms of accession of Cyprus to the European Union with regard to the Turkish Cypriot Community can be surpassed, as mentioned in the last sentence of article 4 of the Protocol?

The same substantial legal question arises in connection with the further implementation of existing and in force Documents such as the relevant to the Cypriot issue Resolutions of UN.¹⁶ Especially no 186/1964 Resolution of the Security Council, predicts that all Members States are called to refrain from any action or threat of action likely to worsen the situation in the sovereign Republic of Cyprus or (mainly), no 541/1983 Resolution of the Security Council, according to which: *".....Concerned at the declaration by the Turkish Cypriot authorities issued on 15 November 1983 which purports to create an independent State in northern Cyprus. Considering that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee. Considering therefore that the attempt to create a 'Turkish Republic of Northern Cyprus' is invalid and will contribute to a worsening of the situation in Cyprus"*. It would be mentioned as well as, the relative Resolutions of the Security of Council no. 550/1984, 365/1974, 367/1975 etc. Hence, it is more than obvious, that the international legal status of the Cypriot State has to do only with the one existing and recognized State, which is the Republic of Cyprus in its today's structure and nothing else, so this acceptance must be the working basis on the solution of the problem.

VI. CONCLUDING REMARKS AND A SUGGESTED SOLUTION

According to all the aforementioned, the foreseen transformation as expressed in the text of the Joint Declaration does not seem to be the transformation of the Republic of Cyprus at all. On the contrary, it consists of a vague legal construction, with intentional or not uncertainties in crucial legal matters, without taking into consideration neither the above international legal documents nor the synthesis of the society of the Island as a whole too. Therefore, on one hand the Greek/Cypriot side interprets the transformation according to its intentions, while the Turkish/Cypriot side tries to impose its own (illegal) model, with the creation of a new structure-partnership in the form of the Federal Republic of Cyprus; this form, as it is said, is going to be brought to life by "parthenogenesis" from

¹⁶ Resolutions adopted by the Security Council of the United Nations: S/RES/186 (1964), S/RES/541 (1983), S/RES/550 (1984), S/RES/365/1974, S/RES/367 (1975).

the two “constituent states”, one of which will be “created” for this purpose, since nowadays it does not exist. As I previously stated, and given that one country is now legitimate and real, while the other is illegal morally and towards the International Law provisions, the adoption of the Turkish Cypriot conception or interpretation, will lead, legally speaking, to the recognition and transformation of the occupied part of the island to a sovereign Turkish Cypriot state, a fact that automatically entails from that moment on, the downgrade of the Republic of Cyprus to a simple constituent state of the Federal Republic. I have to emphasize that this “construction” is absolutely illegal and totally against the Treaties of 1960, the existing Constitution of Cyprus, Protocol 10 of the EU and the above mentioned and analyzed Resolutions of the Security Council and of the General Assembly of United Nations as well.¹⁷

The solution is one and obvious for those, who really want it: An agreement in the context of the above international law documents, implementation of EU law and the Constitution of Cyprus and, in parallel, the direct invocation and implementation of article 4 of Protocol 10.

The solution suggested above is absolutely compatible to the provisions of International Law, the European Law legislation, the Treaties in force, the current Constitution of Cyprus, Protocol 10 of the European Union and the above mentioned and analyzed Resolutions of the Security Council and of the General Assembly of United Nations. Thus, under these conditions, the real transformation or evolvement, if you like, of the Republic of Cyprus from a divided to a united State will be materialized normally and peacefully and the institutional continuity of the Republic will be secured. This is the real meaning of the politico-juridical imperative, which takes in consideration the societies of the two ethnic Communities of the island. The negotiating parties and Turkey of course, have only to accept it. Thanks to this, there will be a United Republic of Cyprus, with both of its constitutionally recognized main ethnic and religious Communities, fully integrated to the European Union and the United Nations.

NOTES

1. Speech of President Anastasiades of 11/2/2016, at the special Session of the Cypriot Parliament, p.1 par. 4.
2. Anastasiades – Eroğlu Joint Declaration of 11 February 2014.
3. W. B. Gallie, *Philosophy and the Historical Understanding*, 2nd edition New York: Schocken Books, 1958.
4. Constitution of the Republic of Cyprus entered into force on 16 August 1960.

¹⁷ Resolution no. 3212/1974 of the General Assembly of UN, adopted on the 21 August 2006, which demands directly by all member States in par. 1, the respect of the sovereignty, independence and integrity of the Republic of Cyprus.

5. Sigmalive Cyprus News:
<http://www.sigmalive.com/news/local/301489/2-gynaikes-to-protokypriako-symfono-symviosis>
6. Kattos, S., Social Regularity as an essential determinant of attitudes towards a solution of the Cyprus issue, at p.3.In-Depth ,CIEA,2014
7. Public statement by the representative of Turkish/Cypriot Akinci leader, Baris Burjou
8. Neocles Sarris, *The Other Side*, Vol. I, (1977), pp. λζ', λη', λθ', μ', μα', μβ', μγ', μδ', με'.
9. Turan Guneş' exclusive interview in the Greek daily newspaper "Eleftherotypia" on 11th September 1976.
10. Ahmet Davutoğlu, *Strategic Depth*, (2010), pp. 277-281.
11. Ibid, p. 279.
12. Article 21, Treaty of Lausanne of 1923.
13. *Supra* fn. 10, p. 289.
14. Theophanous A., "*Fatal and non reversible the abolition of the Republic of Cyprus*", (2016).
15. Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 10 on Cyprus, OJ L 236, 23.9.2003, at 955-955.
16. Resolutions adopted by the Security Council of the United Nations: S/RES/186 (1964), S/RES/541 (1983), S/RES/550 (1984), S/RES/365/1974, S/RES/367 (1975).
17. Resolution nr 3212/1974 of the General Assembly of UN, adopted on the 21 August 2006, which demands directly by all member States in par. 1, the respect of the sovereignty, independence and integrity of the Republic of Cyprus.

BIBLIOGRAPHY

Treaties:

- Constitution of the Republic of Cyprus.
- Protocol 10 of the Accession Treaty of Cyprus to the European Union, OJ L 236, 23.9.2003.
- Treaty of Lausanne of 1923.

United Nations' Documents:

- G.A. Res 3212/1974 61st Sess. UN Doc A/RES/3212/1974
- Security Council of the United Nations Resolution S/RES/186 (1964).
- Security Council of the United Nations Resolution S/RES/365/1974, S/RES/367 (1975).
- Security Council of the United Nations Resolution S/RES/541 (1983).
- Security Council of the United Nations Resolution S/RES/550 (1984).

Books:

- Ahmet Davutoğlu, *Strategic Depth*, 2010.
Neocles Sarris, *The Other Side*, Vol. I, 1977.
W. B. Gallie, *Philosophy and the Historical Understanding*, 2nd edition
New York: Schocken Books, 1968.

Articles:

- Theophanous A., "*Fatal and non reversible the abolition of the Republic of Cyprus*", (2016).
Kattos, S., Social Regularity as an essential determinant of attitudes towards a solution of the Cyprus issue, at p.3.In-Depth, CIEA,2014

Miscellaneous:

- Anastasiades – Eroğlu Joint Declaration of February 2014.
Public statement by the representative of Turkish/Cypriot Akinci leader, Baris Burjou.
Signalive Cyprus News:
<http://www.signalive.com/news/local/301489/2-gynaikes-to-pto-kypriako-symfono-symviosis>
Speech of President Anastasiades of 11/2/2016, at the special Session of the Cypriot Parliament.
Turan Guneş' exclusive interview in the Greek daily newspaper "Eleftherotypia".



CENTER FOR EUROPEAN AND INTERNATIONAL AFFAIRS
University of Nicosia