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Recognition and Non-Recognition of a State Resulting from Secession: Case Studies of Annulled Status of the Turkish Cypriot Entity after its Declaration as "Turkish Republic of Northern Cyprus" and Kosovo

Anastasios Nikolaos Kanellopoulos

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Recognition and Non-Recognition of a State Resulting from Secession: Case Studies of Annulled Status of the Turkish Cypriot Entity after its Declaration as "Turkish Republic of Northern Cyprus" and Kosovo¹

Anastasios-Nikolaos Kanellopoulos²

Abstract

This paper approaches the situation of a state's recognition or non-recognition, in cases arising from secession. In particular, the international law will be presented, regarding the recognition of states that come from secession and have been created, either on the occasion of prohibited violence use, or for the sake of rehabilitation due to human rights violations. After that, the cases of the Turkish Cypriot annulled status entity after its declaration as the "Turkish Republic of Northern Cyprus" and Kosovo will be examined. The overview and legal evaluation of these two cases, can provide useful conclusions regarding the legalization of a state recognition that has resulted from secession.

Keywords: International Law; Secession; Cyprus; Kosovo; Human Rights; State Recognition; Liberal Political Theory; Diplomacy; United Nations; Security Council.

Introduction

International law is a modern tool for international human behavior regulation. The invocation of this is used in order to prevent war, to resolve interstate or supranational disputes, as well as to remove the use of violence between any legal entity or people. Today, it increasingly constitutes an international legal system that deeply governs the international community and regulates policy and organizational principles.

In the light of international law, jurisprudence has been formed based on the decisions of international organizations, such as those of the international court, in order to define specific conditions and procedures, under which a new state can be recognized by other states and organizations. These conditions are not mandatory, but largely determine the foreign policy of state entities and direct the activity of international legal entities.

State Recognition/Non-recognition

The creation of a state is identified in two specific methods. Firstly, in a primary way, it can gather at a specific moment, all the elements necessary for its creation. Secondly, in a derivative way, it can be

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² PhD Candidate in Business Intelligence, Athens University of Economics and Business, Greece.

detached from another state and create an autonomous state entity (Fabry, 2013; Roukounas, 2015).

The recognition of a state, is a unilateral legal act by which one or several state entities declare that they recognize or implicitly accept the rights and obligations of the recognized state to the international community (Roukounas, 2015). The possibility of recognizing a state, is a powerful diplomatic and negotiating “weapon”, in the hands of the existing countries, as they can manage it properly, taking advantage of the international circumstances and securing their interests (Lawteacher, 2021).

The character of a state's recognition can be "declaratory" or "constitutive". The term "declaratory" means that the recognition appears as a factor of confirming a reality and strengthening the legal existence of the state, while the term "constituent" means that recognition is a step towards the completion of the creation of the new state (Roukounas, 2015). Furthermore, there is no specific recognition methodology, which facilitates the diplomatic management of the matter. It could be done through several procedures such as an international protocol of recognition of a country's independence or through a simple declaration of state political head (Roukounas, 2015). It is of highly importance to mention that, recognition can take the form of "De facto" or "De Jure" recognition (Florea, 2014). By using the concept of "De facto" is meant the imposition of the state entity's existence on the international stage, while "De Jure" means that the entity has been created, in a way that is "legal" under international law (Busch at al., 2020).

Then, regardless of the recognition of a new state, an important factor that increases the power of a recognition is the geopolitical power of the entity that carries it out (Newman and Visoka, 2021). A new state, which carries the recognition of states with significant political, economic and military power, is objectively easier to be imposed on the international community (Roukounas, 2015). However, at bilateral level, legal recognition between states is of great importance for the conduct of daily activities, such as economic activity, cooperation of government agencies and exchange of critical information (Coppieters, 2018).

Creation of a State by Secession

Secession is the officially declared separation of a territorial entity, from an independent state, which aims to fulfill the aspirations of a specific population group and create an autonomous state (Liakouras, 2007). The population group does not necessarily prevail numerically in the specific area, but may, supported by external factors, proceed with separatist actions. In a more detailed sense, secession is the means, manifested unilaterally through the rebellion of a national group, which aim

to terminate the powers of the state, in its territorial area, and to assume them, by the authorities of the new state entity under formation (Boykin, 1998).

The concept of secession cannot be used in cases of states creation, that was formed with the consent of the state to which it previously belonged, as well as in the case that this state was established with the provision of international organizations (Liakouras, 2007).

Secession, as an event, is treated negatively, based on the systemic status quo arising from international law, as well as from the diplomatic customary law of states. It is an event with negative ramifications, as it is a derivative of violence acts and fragmentation of the territorial integrity of a pre-existing state (Liakouras, 2007). This fact conflicts with the basic principle of respect of the territorial integrity of states, in accordance with international law. This is derived from the Article 2 of the Charter of the United Nations, from resolutions 1514/1960 and 2625/1970 of the General Assembly of the United Nations, as well as from the final act of Helsinki of 1975, which mentions the great importance of territorial integrity and the respect to the right of self-determination, always in connection with the safeguarding of the existing borders.

However, secession can be viewed in the light of protecting the human rights of a population group. Supporters argue that self-determination is a permanent right people can use to establish their own state with independent structures, especially when the denial of the human rights of a population by the state, makes secession the only viable option (Henders, 2010).

Regarding the right of self-determination, there is a multitude of international jurisprudence and decisions, which support its existence and the need to implement it. Specifically, relevant reference is made in articles 1 and 55 of the United Nations Charter, in resolutions 1514/1960 and 2625/1970 of the United Nations General Assembly, in 1966 International Covenant on Economic, Social and Cultural Rights, as well as in the declaration of Vienna in 1993 (Efsthathiou, 2013). The principle of self-determination was developed, in order to support the formation of new states in the post-colonial era, however of the minimum territorial cost for the country that is being divided. The nation states where mostly multinational, a factor that led to the development of international law, regarding the protection of minority rights and minority ethnic populations within a territory (Neuberger, 2001).

Therefore, the dimension of a separatist action is twofold. It may either have taken place for a number of reasons with the prohibited use of force, or it may have arisen for reparation due to human rights violations of a population.

Prohibited Use of Force (annulled status of the Turkish Cypriot entity)

The Cypriot state became independent from the United Kingdom, as a consequence of the Zurich and London agreements of 1959. The form of democracy shaped on Cypriot soil, was a bi-communal structure between the Greek Cypriots and the Turkish Cypriots, in which the Greek Cypriot side, maintained supremacy at all levels of power. Each community maintained its special characteristics, but not at such a level that an environment of acute conflict could be formed, due to social and cultural differences. In this context, the founding agreements of the Republic of Cyprus demonstrated the Cypriot people as the only body of self-determination, united and did not grant a separate status of power to the two communities. The bi-communal status of the Cypriot people may emphasize cultural differences, but it did not deprive any part of the population of institutional participation. Simultaneously, the institutional representation and balance of the entire population was ensured, in every dimension of the legislative and executive power (Liakouras, 2007; Tselepou, 2021).

The Republic of Cyprus committed itself with the agreements of 1959, following specific principles that would be foreseen in its constitution. Among these commitments, was the obligation not to unite with the other state entity or partition. In 1963, the president of Cyprus, Makarios, proposed the constitution's provisions revision which resulted in the negative reaction of the Turkish Cypriot community and the first rift between the two communities. The Turkish Cypriot side, withdrew itself from the Cypriot government and created community enclaves, choosing isolation and essentially carrying out the initial secession, as it denied the powers of the Cypriot Republic, in its regions. Then, in 1964, the UN sent a peacekeeping force to the region, which further affected the population unity of the area. Nevertheless, in the same year, the representation of the Republic of Cyprus by the Greek Cypriot community received international recognition. This representation continued in the following years, with other diplomatic moves of Cyprus, such as its accession to the European Union in 2004. This demonstrates the uninterrupted and perpetual operation of the Cypriot state, which does not stop because of the internal problems created by the acts of the Turkish Cypriot community (Liakouras, 2007; Tselepou, 2021).

With its successive actions, the Turkish Cypriot side, taking advantage of incidents between the two communities, established a temporary Turkish administration, in the areas it controls, from 1963 and escalated the self-determination movements gradually until 1967. Negotiations that took place between the two sides in 1967-1974 had no result. In 1974, a coup d'état took place overthrowing the Cypriot president Makarios and installed an administration friendly to the Greek dictator regime. On this occasion and in order to "protect" the Turkish Cypriot community, Turkey made two military invasions.

The Turkish invasion in Cyprus, created special conditions for Turkey and gave the chance to demand the consolidation and recognition of Turkish Cypriot self-government on the island, in the form of secession. Furthermore, in the context of its absurd demands, at the Geneva conference in July 1974, it wished to ensure the permanent and legal establishment of its military forces in the occupied territories, refusing to return to the content of the 1959 agreements (Liakouras, 2007).

After the second invasion in 1974, the General Assembly of the United Nations, through the unanimous resolution 3212, appealed to all states to respect the territorial sovereignty of the Republic of Cyprus. Efforts that followed by the international community aimed at federalizing and ensuring the indivisibility of the Republic of Cyprus. However, they had no result, with the Turkish Cypriot community constantly escalating its actions, in the direction of secession and independent administration (Liakouras, 2021).

The result of these actions was the declaration of the self-proclaimed "Turkish Republic of Northern Cyprus" in 1983. However, the declaration of independence was deemed invalid and non-existent by the United Nations, based on the resolutions 541/1983 and 550/1984 of Security Council, while urging non-recognition thereof. The unilateral declaration was deemed legally invalid, as it is the result of Turkey's military intervention in the internal affairs of the Republic of Cyprus, violating fundamental principles of international law (Efsthathiou, 2013).

Through studying the case of the Turkish Cypriot administration in Cyprus, it becomes clear that, the entity formed as a result of the illegal use of force from the Turkish Republic. Turkey, misinterpreting the provisions of the 1959 agreements and interpreting in its own way provisions of international law on the protection of ethnic groups, carried out military invasions into the Republic of Cyprus, forcibly depriving Cyprus of its state powers, in a large part of its territory. In addition, Turkey attempts, from July 1974 until today, to legitimize the illegal actions in the eyes of the international community and proceeds to illegally colonize the occupied Cyprus' territories. It is clear that the Turkish intervention, constitutes a direct violation of the provisions mentioned in Article 2 of the Charter of the United Nations, and in resolutions 1514/1960 and 2625/1970 of the General Assembly of the United Nations (Liakouras, 2021).

Reparation due to human rights violations (The case of Kosovo)

Liberal political theory mentions that governments have the obligation to provide protection and security to citizens, living within their jurisdiction. Furthermore, the specific theory claims that the state must respect the fundamental rights of its population. In case the above conditions do not exist,

the population may seek self-determination, in order to be protected from the “incomplete” exercise of state power (Beitz, 1979; Birch, 1984).

Another extension of liberal political thought, promotes that a population voluntarily forms a political entity as a state, legitimizing it through its support. If this legalization is lifted, part of the population may be led to self-determination (Beran, 1984).

Self-determination comes as a democratic demand of the freedom and equality of a population, against the central state power that oppresses it, by depriving it of basic freedoms and protection. Both protection of the human existence and spiritual status of a population is ensured, through the freedom of expression and the determination of the conditions under which it wishes to operate. Democracy is the internal self-determination of the people, in the form of a state establishment, in order to ensure the necessary freedom for them (Moore, 2003).

In the case of Kosovo secession, a significant question occurs. Was it a case of the Kosovars' desire for self-determination, against the denial of their autonomy by the Serbian state, or was it a comprehensive plan for the secession of the Albanian-speaking community against the Serbs?

In order to answer this research question, we must study the historical constitutional development of the region of Kosovo. Kosovo's status as an autonomous entity was established both by the constitution of the Federal Democratic Republic of Yugoslavia of 1946 and 1947, and by the ratifications of 1963 and 1974 (Efsthathiou, 2013). By recognizing the autonomy of Kosovo, Tito attempted to manage the dynamics of the Albanian-speaking populations within his territory. However, his decision formed the conditions for the development of the Albanian national identity, which led to the reduction of the Serbian population in the region. Autonomy and self-determination became a “request”, for the population of the region, which acquired extensive local powers and rights to control local state agencies and organizations.

Nevertheless, in 1989 the Serbian authorities unilaterally revoked Kosovo's autonomy so that the government could regain political control of the region. The 1992 constitutional amendment, simply ratified the change, as there was no longer any reference to the autonomous province of Kosovo (Worldstatesmen, 1992). The disenfranchisement did not stop there, as in the following period, legislative initiatives of the central government attempted, through the administrative and judicial expulsion of the Albanian-speaking population, to change the demography of the region in favor of the Serbs. The situation led to a flare-up of conflict between Kosovo's ethnic groups, with the Kosovo Liberation Army (KLA) establishing operational activity since 1997 (Efsthathiou, 2013).

It is clear that the people of Kosovo were deprived during the period of Milosevic's rule, from their internal self-determination and any concept of human rights, which endangered even their physical existence as an ethnicity. The Security Council with its decisions 1178/1998, 1179/1998, 1217/1998, 1218/1998 found the violations and with decision 1244/1999, set the area under the protection of the United Nations (Sicilianos, 2003). The international community intervened decisively through NATO and the conflict ended. Serbia was forced to withdraw its military forces from the region, giving way to international military forces of the United Nations. In 2008, after intense diplomatic and political processes, Kosovo declared its independence, which today has led to its recognition by one hundred and thirteen states (Efsthathiou, 2013).

Despite the aforementioned, in the above case of secession, a violation of the basic principles concerning the protection of the territorial integrity of state entities exists. The violation of Albanian-speaking minority's rights led to the intervention of the international community with military means, in a way that destroyed the territorial integrity of the Serbian state and was allegedly a clear interference in its internal affairs. For these reasons, Kosovo's declaration of independence was condemned by a number of countries at the United Nations. In particular, countries such as Serbia, Russia and China demanded that the declaration should be considered invalid and condemned it to the United Nations.

Conclusions

Taking the aforementioned into consideration, the concept of secession and the recognition of a state resulting from this process is a complex issue, which cannot be examined under a broad general framework of rules. It is observed that, based on the international literature, there are a number of legal and interpretative provisions of International Law. These provisions compose a picture in which secession can be legal and illegal, always depending on the geopolitical environment in which it takes place (Crawford, 2007). Some interpretations even reach the point of full recognition of the process of secession, through revolutionary actions against the central state authority (Lauterpacht, 1947).

However, in order to evaluate a secession, many special factors should be analyzed, concerning both the particular historical and social characteristics of the populations, as well as the geography, the local economic and the political balance. Plus, it is important to understand the will to act of powerful states in the region and how they try to impose their interests (Neuberger, 2001).

It is clear that the international legal order, attempts to simultaneously protect both the individual and collective human rights of populations and minorities, while guarding the cohesion of existing state entities. In order to achieve this, it defines, through international law, new rules guaranteeing the right

to secession, under specific terms and conditions, which focus on the preservation of human dignity (Efsthathiou, 2013).

In the case of Kosovo and the violation of the human rights of the local region's Albanian populations by the Serbian authorities, the international community did not stand idly by. With gradual steps of involvement and through the processes of the Security Council, decisive involvement in the field ensuring the freedoms of the Kosovars and promoted reconciliation processes between the two warring sides was carried out. Determining factors that led to the UN involvement in the region, were the previous recognition of Kosovo as a semi-autonomous entity by Yugoslavia and its already existing administrative autonomy.

Regarding the case of the annulled existence of the Turkish Cypriot entity, the involvement of the Turkish state in the internal affairs of the Republic of Cyprus is obvious. Gradually, the Turkish state, in cooperation with a small number of Muslims in the region, created conditions of rivalry between the Cyprus populations. In addition, Turkey took advantage of the gradual political mistakes of the Cypriot Republic and the indifference of the international community, in order to carry out a brutal military intervention, in the absence of substantial grounds. The violation of international law, both during the interventions and the "independence" of the northern part of the island in the following period, is evident. However, interests of powerful states in the wider region of the Eastern Mediterranean and the Middle East, did not allow in previous years, the decisive involvement of the international community in favor of the unity of the island, under the Republic of Cyprus.

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