Legal Aspects of the Cyprus Problem

Annan Plan and EU Accession

Frank Hoffmeister
Acknowledgments ix
Introduction xi

Chapter I – The Independence of Cyprus

A. The Facts
1. The UN General Assembly Resolutions on Independence 1
2. The Proposals of Lord Radcliffe 1956 3
3. The MacMillan Plan 1958 3
4. The Zurich and London Agreements 1959 4

B. Legal Evaluation
1. Self-Determination 6
2. Bi-Communalism 10
3. Summary 11

Chapter II – The Breakdown of the Bi-communal Republic

A. The Facts
1. The Political Confrontation 12
2. The Military Confrontation 14
3. The Hellenisation of the Republic and the Turkish Cypriot Enclaves 17
4. Hidden Agendas 21
Contents

B. Legal Evaluation
   1. Partial Illegality of the Republic’s Hellenisation under Constitutional Law 22
   2. The Continuity of the Republic of Cyprus under International Law 31
   3. The International Legitimacy of the Cyprus Government 32
   4. Summary 33

Chapter III – The Turkish Intervention and Turkey’s Continued Presence in the Northern Part of Cyprus

A. The Facts
   1. The Turkish Intervention 34
   2. Turkey’s Continued Presence in the Northern Part of Cyprus 37

B. Legal Evaluation
   1. The Illegality of the Turkish Intervention 39
   2. The Partial Irrelevance of the TRNC under International Law 47
   3. Summary 58

Chapter IV – UN Efforts to Foster a Political Settlement 1975–1995

A. The Facts
   1. The Good Offices of UN Secretary-Generals U Thant, Waldheim and Perez de Cuèllar 60
   2. The Good Offices of UN Secretary-General Boutros-Ghali 68

B. Legal Evaluation
   1. The Legal Status of the Various Settlement Documents 70
   2. The UN Formula on the Four Key Issues 74
   3. Summary 82

Chapter V – Cyprus as Candidate for EU Membership

A. The Facts
   1. EC-Cyprus Relations under the 1972 Association Agreement 83
   2. The Application for Membership 1990 85
   3. The Decision to Accept Cyprus as a Candidate Country 88

B. Legal Evaluation
   1. The Legality of Cyprus’ Application to the EU 90
   2. The Power of Representation of the Cyprus Government 95
   3. Summary 96
Part VI – EU Accession Negotiations and Annan Plan I–III

A. The Facts
1. The European Council of Helsinki and the Proximity Talks 97
2. The Seville Council and the Direct Talks 2002 107
3. Annan Plan I and II and the Copenhagen Council 115
4. Annan Plan III and the Athens Council 124

B. Legal Evaluation
1. Accommodation of the Annan Plan in the Legal Order of the European Union 130
2. Principles on which the EU is Founded 132
3. Ability to Speak with One Voice 144
4. Ability to Implement and Enforce EU Law 149
5. Consistency with Relevant UN Security Council Resolutions 157
6. Summary 160

Chapter VII – EU Accession and Annan Plan IV–V

A. The Facts
1. The February 2004 New York Agreement 163
2. The Negotiations in Cyprus 164
3. The Negotiations in Bürgenstock on Annan IV 170
4. The Finalisation by the Secretary-General (Annan V) 176
5. The Referenda 180

B. Legal Evaluation
1. Legality of the Referenda 182
2. Adaptations to the Terms of Cyprus’ Accession 185
3. Compatibility with the EU Requirements 189
4. Summary 194

Chapter VIII – Cyprus as EU Member State

A. The Facts
1. Rights and Obligations of the Republic of Cyprus 196
2. Suspension of the *acquis communautaire* in the Northern Part of Cyprus 198
3. The Green Line Regulation 199
4. Relations with the Turkish Cypriot Community 201
5. The Sovereign Base Areas of the United Kingdom in Cyprus 204
Contents

B. Legal Evaluation
  1. Rights and Obligations of the Republic of Cyprus 205
  2. Suspension of the *acquis* in the Northern Part of Cyprus 207
  3. The Green Line Regulation 215
  4. Relations with the Turkish Cypriot Community 216
  5. The Sovereign Base Areas of the United Kingdom in Cyprus 221
  6. Summary 221

Chapter IX – Relations between Cyprus and Turkey

A. The Facts
  1. The European Council of Brussels of December 2004 224
  2. The Signature of the Protocol to the Ankara Agreement 224
  3. Start of Turkey’s EU Accession Negotiations on 3 October 2005 227

B. Legal Evaluation
  1. The Duty to Implement the Customs Union vis-à-vis Cyprus 228
  2. The Duty to Recognize the Republic of Cyprus During the Accession Negotiations 231
  3. Summary 231

Chapter X – Conclusion

A. UN-EU Relations on Cyprus and Cyprus’ EU Accession without a Prior Settlement 233
B. The Significance of International and European Law in the Cyprus Problem 236
C. Closing Remark 239

Appendices

Appendix One 243
Appendix Two 246
Appendix Three 252
Appendix Four 260
Appendix Five 267

Bibliography 275
Table of Abbreviations 284
Index 286