

UNITED NATIONS



GENERAL ASSEMBLY SECURITY COUNCIL

Distr.
GENERAL

A/32/195
S/12391
30 August 1977

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Thirty-second session
Item 28 of the provisional agenda*
QUESTION OF CYPRUS

SECURITY COUNCIL
Thirty-second year

Letter dated 29 August 1977 from the Permanent Representative of Turkey
to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a letter dated 29 August 1977, addressed to you by Mr. Nail Atalay, Representative of the Turkish Federated State of Cyprus.

I should be grateful if this letter were circulated as a document of the General Assembly, under item 28 of the provisional agenda, and of the Security Council.

(Signed) Ilter TÜRKMEN
Ambassador
Permanent Representative

* A/32/150.

ANNEX

Letter dated 29 August 1977 from Mr. Nail Atalay
to the Secretary-General

I have the honour to enclose herewith the statement of the Attorney-General of the Turkish Federated State of Cyprus, made on 19 August 1977, regarding the constitutionality of the Greek Cypriot Administration and its elected officials.

I should be grateful if this letter and the annex herewith were circulated as a document of the General Assembly and of the Security Council.

(Signed) Nail ATALAY
Representative of the
Turkish Federated State of Cyprus

APPENDIX

Statement by the Attorney-General of the Turkish Federated State
of Cyprus, made on 19 August 1977

No figment of imagination can see in Cyprus one constitutionally established "Government of Cyprus". No such thing exists today. From the strictly legal and constitutional points of view the legitimate bi-communal government of Cyprus ceased to exist when the Turkish Cypriot partners were ejected from it by force of arms as from 21 December 1963, until July 1974. The Greek Cypriot leaders had staged a coup d'état against the bi-communality (and therefore, the legitimacy) of the constitutional Government; but that coup d'état was not wholly successful because the Turkish Cypriots never accepted in their areas the rule of this illegal administration nor has its writ ever run in the Turkish Cypriot areas. Since December 1963, Greek Cypriots have ruled themselves in their areas while the Turkish Cypriots have administered themselves in their own separate areas. The intercommunal negotiations which began in June 1968 were intended to bring about a solution to Cyprus, re-establishing the bi-communal government under agreed terms and thus reset the legitimate Government of Cyprus. These negotiations were continuing when the junta in Greece, in collaboration with its agents in the Greek sector of Cyprus, staged the coup d'état against the illegal and unconstitutional Greek Cypriot administration. By that time for 11 years the Greek Cypriot administration did not in any way or form apply or conform with the 1960 Constitution.

As from December 1963 the Turkish Cypriot Vice-President and the three Turkish Cypriot Ministers were physically prevented from attending even their offices which were taken over by armed Greeks. All Turkish members of the House of Representatives were unable to attend the meetings of the House. The very essence of bi-communality was ruthlessly destroyed and the intercommunal partnership rejected. The Greek Cypriot wing of the bi-communal government usurped the title of the "Government of Cyprus" and declared publicly not only that the 1960 Agreements and Constitution were "illegal, immoral, unacceptable, inapplicable and unworkable", but that they were "dead and buried".

The so-called "Government of Cyprus", which was in effect the illegal Greek Cypriot usurpers of power, believed that they had "killed and buried" the 1960 Agreements and Constitution, and ran the country on this basis without regard for the Constitution at all.

In fact, just one example will more than suffice to prove beyond any doubt the glaring fact that the Greek Cypriot administration never considered the 1960 Constitution to be valid. Any lawyer looking at the oath of affirmation taken by Archbishop Makarios in 1968 and 1973 when he was supposedly "re-elected" to the Presidency (while the Turkish community protested that such an election was legally impossible under the Constitution) will conclude that this Greek

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administration (and the purported "Government of Cyprus") had nothing to do with the 1960 Constitution. According to article 42 of the 1960 Constitution, the oath of affirmation is as follows:

"I do solemnly affirm faith to, and respect for, the Constitution and the laws made thereunder, the preservation of the independence and the territorial integrity, of the Republic of Cyprus."

The oath of affirmation which Archbishop Makarios chose to take in 1973 was his own tailoring and reads (as recorded in the report of the Secretary-General on the United Nations operations in Cyprus for the period 2 December 1972 to 31 May 1973): a/

"I do solemnly affirm faith to and respect for the laws of the Republic of Cyprus in force for the time being and that I will exercise the functions of the Office of the President of the Republic in accordance with them."

Anyone who knows anything about the Cyprus problem will immediately notice the importance of the omissions made in the second oath. It would be relevant to consider them in more detail below in the light of the over-all Greek Cypriot policy on Cyprus:

The Archbishop omitted to affirm adherence to the 1960 Constitution. This is no simple omission. What does it mean? To those who know the Cyprus problem the message is quite clear: The Archbishop had established a purely Greek Cypriot Administration by force of arms as a replacement of the legitimate bi-communal government of Cyprus. If he adhered to the 1960 Constitution in the least, he would be receding from his position (namely, purely Greek administration) which he described to General Gizikis of Greece as "The next thing to enosis". That is why on 1 February 1966, in Athens, he had declared, on the anniversary of the enosis plebiscite, that "the Agreements today stand abrogated and buried. Neither Turkey nor any other power can breathe life again into them". The Constitution was an inseparable part of the Agreements. Both the Agreements and the Constitution prohibited enosis. That was the reason why the Greek leadership had tried to destroy their effect by destroying the bi-communality of the State. Had Archbishop Makarios accepted the view that the Agreements and the Constitution were in existence he would be denying his own existence. In his statement in Athens on 1 February 1966 he was quite frank about his true intentions. He said:

"The Cyprus leadership is doing its utmost in order to shorten the way to enosis. We shall overcome the difficulties and impediments with

a/ Official Records of the Security Council, Twenty-eighth Year, Supplement for April, May and June 1973, document S/10940, para. 17.

patience, perseverance, courage and determination, and we shall reach the desired goal. In 1950 as the head of the Office of Ethnarch, the honour of organizing the enosis plebiscite was bestowed upon me. Today as the responsible leader of the Cyprus people I consider that plebiscite as my own will. With the help of God, I believe, I shall fulfil this will completely."

The Archbishop went on to say that the aim of the struggle continued to be enosis; he explained that he had to sign the 1959-1960 Zurich and London Agreements, purely in order to prevent the partition of the island. And later, in 1973, the Archbishop was to reiterate that he had never deviated from his holy oath in 1950 whereby he had declared that he would work for nothing but enosis in the cause of which he would sacrifice his own life if necessary. So having resorted to force of arms in order to remove these "impediments" to enosis, viz. the Agreements and the Constitution, the Archbishop religiously refused - from December 1963 to July 1974 - to make any move which would revive the bi-communality of the State. He preferred his Greek Cypriot administration as "the nearest thing to enosis" and saw no harm in leaving the Turkish Cypriot community to its own destiny, "to disintegrate in time in their self-segregation", as he put it. Thus the defiance of one fourth of the population of Cyprus (all Turkish Cypriots) to the unconstitutional Greek-Cypriot rule meant nothing for the Greek leaders, but it had a legal effect in keeping the bi-communality of the establishment actively alive. The reason, therefore, for Archbishop's refusal to affirm "faith to and respect for" the Constitution and "the preservation of the independence and the territorial integrity of the Republic of Cyprus" is quite obvious. He regarded the Constitution as "dead and buried" and, therefore, the obstacles on the way to enosis greatly removed. Since he was heading for enosis, why should he affirm "the preservation of the independence and territorial integrity" of the island?

The coup d'état of July 1974 was aimed at removing Archbishop Makarios who, as stated earlier, was himself a coupist vis-à-vis the Turkish Cypriot co-partner community under the Constitution of Cyprus. In other words, the July 1974 coup would have made no change at all so far as the legal and constitutional views and position of the Turkish partners were concerned, except for the fact that the in-coming coupists preferred quick military action against the Turkish Cypriots while the outgoing Archbishop had left the Turkish Cypriots to time to rot in their enclaves, deprived of all legal, constitutional, fiscal rights, dues and privileges.

At this point it would be pertinent to consider another aspect of the problem vis-à-vis the coup d'état of 1974 and the constitutionality of anyone after that.

No one can doubt that the 15 July 1974 coup d'état by the junta was successful. All Greek areas had bowed to the coupists. All resistance had ceased. Even the curfew, which was imposed on the Greek areas, was mostly lifted. Congratulations were pouring in to the new "president" by all Greek Cypriot organizations and personalities for having saved them from Makarios' dictatorship.

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Archbishop Makarios had fled the country and there was no one defending his rights or status in Cyprus. It is at this stage that Turkey used her legitimate right under the Treaty of Guarantee and intervened in Cyprus in order to put an end to a take-over of Cyprus by Greece and the inevitable destruction of the Turkish community.

Thereafter the following events took place:

When the coupists realized that there was no way of stopping the Turkish from taking over - if necessary - the whole of Cyprus, Nicos Sampson - the EOKA killer who had taken over from Makarios - "resigned". Mr. Glafcos Clerides, who was the President of the Greek Cypriot House of Representatives "took over" the presidency. Mr. Clerides was also careful not to revive the bi-communal 1960 Constitution. Like the Archbishop in 1973, he also used the specially tailored oath of affirmation and even went one step further by making the affirmation not in the House of Representatives as required by the Constitution, but before a bishop who had previously been unfrocked by Archbishop Makarios.

The next thing which happened is this, and it is also very important. Mr. Clerides, having "taken over" from "Mr. Nicos Sampson" "carried on" his "government" with the coupist Ministers none of whom were appointed in accordance with the 1960 Constitution which required the signatures of the President and the Vice-President (article 46).

Furthermore, Mr. Clerides signed himself as from that date for three to four months as "the President" and not as "the Acting President" as per article 44 of the 1960 Constitution. Again, had Mr. Clerides been "acting for the President" his legal limit for so acting is also determined by the same article as 45 days. Whereas Mr. Clerides continued to be "the President" until the return of Archbishop Makarios five months later who upon his return, after delivering a speech by leaning over a Greek flag 20 metres by 10 metres, informed his audience that he was back "on duty". A few changes in the Greek Cypriot cabinet (and again lacking the supporting signature of the Vice-President as per article 46 of the 1960 Constitution) apparently set up the "legitimate government of Cyprus", but not from a legal, constitutional or political point of view. There was left nothing of the 1960 Constitution from 1963 to 1974, and now "a take-over" by Archbishop Makarios was the farce of the century. At most the Greek Cypriot community had, by acclamation, accepted Archbishop Makarios to run the administration on the Greek side. For Cyprus as a whole it could be of no legal, political or constitutional effect.

Today, therefore, anyone acting as "the President" pending elections is acting for "the president" of the Greek Cypriots in the south. No attempt, however ingenious, can bring such "acting" in the elections to be held on the Greek Cypriot side within the letter or spirit of the 1960 Constitution, not only because this Constitution has been declared to be "dead and buried" by the Greek Cypriot leaders, but also because it has not been implemented since December 1963 in all its essential parts and in all its elements. For the Greek Cypriot leaders

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now to claim that they are holding elections for the purpose of electing under and by virtue of the 1960 Constitution a President for Cyprus is a false claim which can find no support from a legal or constitutional point of view.

For outside Powers to claim that anyone elected under the 1960 Constitution shall be recognized as the "Head of State of Cyprus" is begging the question because the true issue is whether the Constitution is valid and in existence. It is not so because: (1) Archbishop Makarios has declared that it is "dead and buried"; (2) the non-implementation of it since December 1963 is a reality; (3) the fact that the Turkish Cypriot community, as a co-founder partner of the bi-communal State -- in order to save the bi-communality of the State -- has had to make its own new Constitution "pending an agreement with the Greek Cypriots" for the re-establishment of a bi-communal government; and (4) the recognition at the Geneva Conference in July 1974 by Turkey, Greece and the United Kingdom of Great Britain and Northern Ireland of the existence of the two autonomous administrations in Cyprus, are facts which no one can ignore in approaching the Cyprus problem.

From a legal point of view there are two administrations in Cyprus. If any one of these -- for any international political reason -- is to be called "the Government of Cyprus" then a correct and proper naming of it will be when the appropriate adjective "north" or "south" is also added to it.

Otherwise, the treatment of the south as the "Government of the whole of Cyprus" will make all the Turkish Cypriots aliens to this government and even rebels to it and that, of course, is nonsense. The Turkish Cypriot community has, under the 1960 Treaties, an internationally recognized status, namely the co-founder partner status in the bi-communal government of Cyprus. The armed Greek Cypriot attempt to destroy this status from December 1963 to July 1974 failed because of the continuation of the Turkish Cypriot resistance to the Greeks at great cost of life and property. At the final hour Turkey moved and saved the bi-communal State. The legitimate bi-communal government has to be re-cast between the two partners. At this stage asking the Turkish side to bow to the illegal and immoral proposition that Greek Cypriot side is the government of the whole of Cyprus is to press the Turkish community to a final break-up from the usurpers of power, and this choice is open as an alternative to all the world.