
OPINION

Introduction

1. We have been asked for an Opinion concerning the Draft Joint Declaration sent to us by Mr P Polyviou by email dated February 5, 2014 ("the Declaration"). This Opinion concerns the possibility of the Declaration or any phrase in it carrying the implication that the forthcoming negotiations between the two communities that are announced in the Declaration might result in the creation of a new State.

Summary

2. In our view, the Declaration indicates that the negotiations will seek a settlement based upon a new Constitution for Cyprus, and that the effect of the Constitution would be a change in the internal constitutional and political structure of the existing internationally-recognized State of Cyprus. Nothing in the Declaration implies that the new federal Constitution would have any effect on the plane of international law; the Declaration does not imply that the new federal Constitution would mark the creation of a new State or the end of the Republic of Cyprus. We set out our reasoning more fully below.

Analysis

3. First, in general terms the language of the Declaration speaks of negotiations between communities, not between States. The general impression created by the Declaration is that the negotiations will be an internal political process between two Cypriot communities. Nothing in the language of the Declaration implies that two sovereign States exist at present on the island, and regarding the future it expressly states that "[u]nion in whole or in part with any other country or any form of partition or secession or any other unilateral change to the state of affairs will be prohibited" (para. 4).
4. Again in general terms, the Declaration speaks of a settlement that will be based upon a federal structure. The language is that of a future constitutional development, which implies an internal restructuring of an existing State.
5. We note that the Declaration speaks of the 'states' (with a lower-case 's') within the federation, but of the State (with an upper case 'S') that is the federation itself. That is entirely consistent with the notion that the communities and states within the federation have no independent legal personality on the plane of international law now, and would have none under the new Constitution. Indeed, that conclusion is

explicitly stated in the phrase “a single international legal personality and a single sovereignty” (para. 3).

6. We have been asked “whether reference to “emanation equally of sovereignty” causes a problem to the unity and integrity of the State”. We understand this specific query to refer to the statement in the Declaration that sovereignty “emanates equally from Greek Cypriots and Turkish Cypriots” (para 3). We agree with the Opinion of Professor James Crawford SC which states that the characterization of sovereignty as sourced in the relevant habitants would not override specific provisions guaranteeing the unity of the State against secession (at para. 16), and as noted above this Declaration expressly prohibits any unilateral change to the state of affairs including “[u]nion in whole or in part with any other country or any form of partition or secession”. We do not think that the phrase “which emanates equally from Greek Cypriots and Turkish Cypriots” presents a difficulty.

Conclusion

7. For these reasons, we are of the view that the Declaration does not imply that the new federal Constitution would mark the creation of a new State or the end of the Republic of Cyprus.

Vaughan Lowe QC

Amy Sawden

7 February 2014