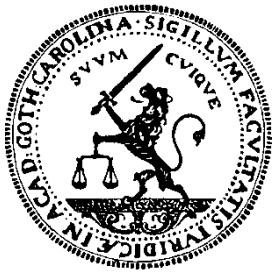

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# Engagement without Recognition

## European Union Trade Practices with Northern Cyprus

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# Contents

# Summary

This thesis examines the extent to which the obligation of non-recognition limits EU engagement, such as trade, with entities which the EU is obliged not to recognise. The EU is bound to observe international law in its entirety, including the obligation of non-recognition which as a customary rule of international law is binding upon its institutions. However, this thesis argues that trade with unrecognised entities takes place in a 'grey zone' where the scope and content of the obligation is unclear. Focusing on EU trade practices with northern Cyprus, the thesis examines the scope and content of the obligation of non-recognition under customary international law in order to identify the permissible scope of recognition that allows for trade between the EU and unrecognised entities.

In order to delineate the scope and content of the obligation of non-recognition under customary international law, the thesis analyses the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), UN political organs' resolutions on Cyprus, Advisory Opinions from the International Court of Justice, and legal literature on the subject. Furthermore, the thesis looks at EU trade practices in relation to northern Cyprus. These trade practices serve as important evidence of the scope and content of the obligation of non-recognition and highlight the challenges and possibilities relating to trade with unrecognised entities.

The thesis concludes that: (1) trade between the EU and northern Cyprus would be prohibited only insofar as it implied recognition of northern Cyprus (or the self-proclaimed 'Turkish Republic of Northern Cyprus') as a sovereign State and (2) that establishing the necessary cooperation to allow for trade with northern Cyprus would not constitute a legitimate occasion for implying recognition.

Furthermore, the thesis illustrates the need to address the influence of regional organisations when examining the limits of non-recognition for engagement with unrecognised entities. The analysis of the EU's trade relations with northern Cyprus shows that the practices of the EU have played a major role

in stifling engagement, such as trade. This is illustrated by the fact that until a European Court of Justice ruling in 1994, non-recognition did not constitute an obstacle for direct trade between the EU Member States and northern Cyprus. Moreover, the thesis finds that the EU's engagement with northern Cyprus, in a post-accession context, is also shaped by internal considerations which may limit trade practices when pursued through internal legislation.

# Sammanfattning

I uppsatsen undersöks frågan i vilken utsträckning skyldigheten att inte erkänna medför begränsningar för EU:s förbindelser, såsom handel, med entiteter som EU är skyldig att inte erkänna. EU är skyldig att iaktta folkrätten i dess helhet inklusive den skyldighet att inte erkänna som följer av internationell sedvanerätt och som är bindande för unionens institutioner. I uppsatsen hävdas att handel dock utgör en ’gråzon’ där omfattningen av skyldigheten att inte erkänna är mindre tydlig. Genom att fokusera på EU:s handelspraxis med norra Cypern undersöker denna uppsats omfattningen av skyldigheten att inte erkänna i syfte att identifiera den tillåtna omfattningen av erkännande avseende handelsförbindelser mellan EU och icke-erkända entiteter.

För att undersöka omfattningen av skyldigheten att inte erkänna i internationell sedvanerätt analyseras FN:s folkrättskommissions *Articles on Responsibility of States for Internationally Wrongful Acts* (ARSIWA), FN:s säkerhetsråds resolutioner om Cypern, den internationella domstolens rådgivande yttranden och doktrin. Vidare analyseras EU:s handelspraxis med norra Cypern. Denna praxis utgör viktig evidens för skyldighetens omfattning och illustrerar de begränsningar och möjligheter som omger handel med icke-erkända entiteter.

Slutsatserna är: (1) att EU har en skyldighet att avstå från handel med norra Cypern endast i den utsträckning detta skulle medföra erkännande av norra Cypern (eller den självutropade ’Nordcyperns turkiska republik’) som en suverän stat och (2) att upprättandet av det samarbete som krävs för att möjliggöra handel med norra Cypern inte kan anses utgöra ett legitimt tillfälle som medför erkännande.

Uppsatsen visar också på vikten av att analysera regionala organisationers påverkan på begränsningarna för handel med icke-erkända entiteter. EU:s påverkan märks särskilt i det att EU:s medlemsländer, trots icke-erkännandet, fortsatte att bedriva handel med norra Cypern fram till ett avgörande från EU-domstolen år 1994. Som analysen av handeln med norra Cypern efter Cyperns

EU-medlemskap visar kan även EU-interna faktorer medföra begränsningar för handelsförbindelser som regleras genom EU-intern lagstiftning.

# Abbreviations

| | |
|---|---|
| ARSIWA | Articles on Responsibility of States for Internationally Wrongful Acts |
| CLS | Council Legal Service |
| EC | European Community |
| ECJ | European Court of Justice |
| ECtHR | European Court of Human Rights |
| EEC | European Economic Community |
| EU | European Union |
| ICJ | International Court of Justice |
| ICJ Statute | Statute of the International Court of Justice |
| ILC | International Law Commission |
| TCCoC | Turkish Cypriot Chamber of Commerce |
| TEU | Treaty on European Union |
| TRNC | Turkish Republic of Northern Cyprus |
| UK | United Kingdom |
| UN | United Nations |
| UN Charter | Charter of the United Nations |
| UNGA | United Nations General Assembly |
| UNSC | United Nations Security Council |

# 1 Introduction

## 1.1 Background

Cyprus has been partitioned for five decades, with the Republic of Cyprus being the only internationally recognised Cypriot State. Its territory *de jure* also encompasses the northern area of the island, which Turkish military troops seized in 1974. The 'Turkish Republic of Northern Cyprus' ('TRNC') proclaimed in 1983, which effectively controls that area, has not been recognised by any other state apart from Turkey.

On 24 April 2004, a United Nations (UN) proposal for a bicommunal, bizonal federation ('United Cyprus Republic') was submitted for approval by separate referendums in the two communities of Cyprus. Although the proposal was approved by the Turkish Cypriot electorate, it was rejected by the Greek Cypriot electorate. Therefore, the plan did not materialise.[1] One week later, Cyprus, still divided, acceded to the European Union (EU).

Despite the TRNC being collectively unrecognised, Cyprus' EU accession meant greater EU engagement with the Turkish Cypriot community. The illegality underlying the establishment of the TRNC may, however, call into question the lawfulness of such engagement. Whether and to what extent the obligation of non-recognition poses any limits to EU engagement has been a point of dispute in EU decision-making, highlighting the inherent tension in an engagement without recognition approach.

### 1.1.1 Previous Research

The obligation of non-recognition has been widely studied. Only a few studies, however, have elaborated on its precise scope and content. Talmon[2] and Dawidowicz[3] suggest that while the obligation of non-recognition is well entrenched in theory and in practice, there is more authority for its existence

[1] UNSC 'Report of the Secretary-General on his mission of good offices in Cyprus' (2004) UN Doc S/2004/437.
[2] Talmon (2005).
[3] Dawidowicz (2010).

than its particular scope. The problem is, as noted by Dawidowicz, that international courts and UN political organs have been reluctant to develop general rules of content for the obligation of non-recognition.[4]

Significant disagreement also exists regarding the scope and content of the obligation in legal literature. Research by Ronen[5] and Crawford[6] suggest that the prohibition on treaty and diplomatic relations are a clear element of the obligation of non-recognition. At the same time, they suggest that it remains uncertain whether and to what extent other types of cooperation fall within its scope.

Previous research also shows that international organisations, specifically the UN political organs, play an important role in this area, for instance, in coordinating the acts of non-recognition.[7] However, less is known about the role of regional organisations, such as the EU.

The EU's trade practices with northern Cyprus offers an interesting case for studying the impact of regional organisations on the implications of non-recognition. In examining EU trade practices with northern Cyprus this thesis seeks to contribute to previous research on the obligation of non-recognition.

## 1.2 Purpose and Research Question

The purpose of this thesis is to contribute to the understanding of the scope and content of the obligation of non-recognition and the role of regional organisations in this area. By focusing on EU trade practices with northern Cyprus, this thesis seeks to identify the permissible scope of recognition that allows for EU engagement with unrecognised entities.

The inquiry is guided by the following research question.

[4] Dawidowicz (2010) 686.
[5] Ronen (2011).
[6] Crawford (2006); Crawford (2012).
[7] Talmon (2005) 113.

- What are the implications of the obligation of non-recognition for trade between the EU and northern Cyprus?

## 1.3 Delimitations

The obligation of non-recognition is closely linked to the obligation not to render aid or assistance.[8] Although both are relevant in the context of establishing the obligations of third parties, such as the EU, due to its limited scope this thesis will not consider the latter.

This thesis will also not pursue the question of the legality of the proclamation of the TRNC, despite its relevance for the obligation of non-recognition. Instead, the classification of the declaration of independence of the TRNC as illegal under international law is presumed, based on the international community's response to its proclamation, reflected in the unanimous positions of the Security Council (UNSC),[9] the General Assembly,[10] the EU,[11] the European Court of Justice (ECJ),[12] the European Court of Human Rights,[13] and the Commonwealth.[14]

Furthermore, trade as discussed in this thesis is delimited to trade as defined by the legal architecture of the European Commission's proposal for a Direct Trade Regulation.[15]

[8] ILC, 'Draft Articles on Responsibility of States of Internationally Wrongful Acts, with Commentaries' (2001) UN Doc. A/56/83, art 41, para 4; (*Commentaries*).

[9] SC Res. 541, 18 November 1983; 550, 11 May 1984.

[10] See, e.g., GA res 3212 (XXIX), 1 November 1974.

[11] See, e.g., Common Statement of 16 November 1983 by the ten Member States of the European Community, citing Ronen (2011) 65.

[12] C-432/92 *The Queen v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and others*, EU:C:1994:277 paras 40, 47; (*Anastasiou I*).

[13] *Loizidou v Turkey* (ECtHR), Judgement of 18 December 1996, paras 42, 43.

[14] See, e.g., the press communiqué by the Commonwealth Heads of government, citing *Loizidou v Turkey* (ECtHR), Judgement of 18 December 1996, para 23.

[15] Commission, 'Proposal for a Council Regulation on special conditions for trade with those areas of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control' COM (2004) 466 final; (proposal for a Direct Trade Regulation).

## 1.4 Methodology and Material

In order to examine the research question, the scope and content of the obligation of non-recognition need to be determined. The methodology used is a legal dogmatic method, which involves looking at the recognised and accepted legal sources.[16]

The obligation of non-recognition under the law of international responsibility is a part of public international law. In order to identify the recognised and accepted sources of public international law, this thesis relies on the non-exhaustive list of sources in Article 38 of the Statute of the International Court of Justice (ICJ).[17] Article 38 (1) (a-c) of the ICJ Statute lists international conventions, international customs, and general principles of law as reflecting the sources of public international law.

This thesis analyses the scope and content of the obligation mainly by reviewing customary international law. Customary international law is listed in Article 38 (1) of the ICJ Statute, which refers in subparagraph (b) to 'international custom, as evidence of a general practice accepted as law'. This encompasses the two essential elements of customary international law: a general practice and its acceptance as law (*opinio juris*).[18]

The identification of the content of rules of customary law follows a 'two-element' approach, which involves looking at available evidence to establish whether there is a 'general practice' and whether that practice is accepted as law.[19]

'General practice' may take many forms, for example legislative and administrative acts, conduct in connection with resolutions adopted by international

[16] Kleineman (2018) 21.

[17] Statute of the International Court of Justice, as annexed to the UN Charter (24 October 1945) 1 UNTS XVI.

[18] ILC, 'Draft conclusions on identification of customary international law, with commentaries' *ILC Report*, Seventieth session, UN Doc. A/73/10 (2018) 123.

[19] Ibid., 125.

organisations, official statements, and claims before national or international courts.[20]

The practice must however be general, meaning that it must be sufficiently widespread, representative, and consistent.[21] Furthermore, the practice in question must be accompanied by a conviction that it is permitted, required or prohibited by customary international law (*opinio juris*).[22] While the existence of the latter must be analysed separately from general practice, the same evidence may support both.[23]

In determining the scope and content of the obligation of non-recognition this thesis also considers EU practices. Although it is primarily the practice of States that is to be looked at when establishing the content of rules of customary international law, the International Law Commission (ILC) has confirmed that international and regional organisations can contribute to the formation of customary international law, for instance, where Member States have transferred exclusive competences to the organisation. For the EU, 27 Member States have transferred exclusive competences to regulate its 'common commercial policy'.[24] Within these competences the practice of the EU may be equated with the practices of those States and may thus contribute to the formation, or expression, of rules of customary international law in this area.[25]

Much of the relevant practices regarding trade with northern Cyprus stem from the EU institutions, which the Member States have established in the founding treaties of the EU.[26] The thesis looks at the judicial practice of the ECJ and the opinions and communications from EU institutions concerning trade with northern Cyprus, which although not being sources of international

[20] Ibid., 133-134.
[21] Ibid., 136.
[22] Ibid., 138.
[23] Rose (2023) 24.
[24] Consolidated Version of the Treaty on European Union [2012] OJ C326/47, arts 3, 207; (TEU).
[25] ILC, 'Draft conclusions on identification of customary international law, with commentaries' *ILC Report*, Seventieth session, UN Doc. A/73/10 (2018) 130-132.
[26] TEU, art 13.

law may nevertheless evidence *opinio juris*. In addition to relevant EU practices, Cyprus-specific EU legislation and the Commission's proposal for a Direct Trade Regulation are also analysed.

Furthermore, Article 38 (1) (d) of the ICJ Statute speaks of judicial decisions and teachings as 'subsidiary means for the determination of law'. These serve as evidence of the content of rules of international law but are not means for their creation.[27]

With regards to subsidiary means, this thesis relies on legal literature, UN political organs' resolutions on Cyprus, and Advisory Opinions from the International Court of Justice (ICJ), particularly the *Namibia* Advisory Opinion,[28] which provides an authoritative text on the scope of the obligation of non-recognition under customary international law.[29] Additionally, this thesis relies on the ILC's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA),[30] an authoritative text within the field of state responsibility.[31]

## 1.5 Terminology

One challenge when dealing with questions relating to Cyprus are the terms used in order to describe aspects of the Cyprus issue, especially the entity in the northern part of Cyprus. One example, as observed by Bryant and Hatay, is the use of quotation marks, such as referring to the TRNC as the 'TRNC', its boundaries as 'borders', and the people who live there and claim rights as 'citizens'. They describe life in an unrecognised State, as a 'life in quotation marks'.[32]

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[27] Rose (2023) 30.

[28] *Legal Consequences for States of the Continued Prescence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16.

[29] Ronen (2011) 72.

[30] ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001) UN Doc A/56/10; (ARSIWA).

[31] Rose (2023) 78.

[32] Bryant & Hatay (2020) 18-19.

Partly growing up in the northern part of Cyprus, I myself was used to the term 'Northern Cyprus' (*Kuzey Kıbrıs*). Some authors use the term 'Occupied Territories in Cyprus' or 'Turkish Republic of Northern Cyprus'. The EU uses the term 'those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control'. The dilemma one faces when dealing with this terminology is, as noted by Skoutaris, that almost every term used in order to describe aspects of the Cyprus issue has a political connotation.[33]

Bearing this in mind, the term used throughout this thesis to refer to the entity in the northern part of Cyprus, is the term 'northern Cyprus'. Despite its flaws, it still provides for a description which is untainted by any legal consideration regarding the legal status of northern Cyprus. As a geographical term it is applicable regardless whether considered a collectively unrecognised State or a non-State.

## 1.6 Disposition

The next chapter, Chapter two, discusses the obligation of non-recognition in the context of state responsibility, including its customary nature and its applicability to the proclamation of the TRNC. Thereafter, the question whether the EU, as a regional organisation, is bound by the obligation is examined. Last, the scope and content of the obligation of non-recognition under customary international law is analysed.

Chapter three discusses EU trade practices with northern Cyprus, both in a pre- and post-accession context. First, in a pre-accession context, the case law developed by the ECJ concerning Turkish Cypriot exports to the EU Member States is assessed. Second, in a post-accession context, the trade regime outlined in the Direct Trade Regulation is discussed.

Finally, in Chapter four, conclusions are presented together with proposals for further research.

[33] Skoutaris (2011) 5.

# 2 The EU and Northern Cyprus: the Obligation of Non-Recognition

## 2.1 Introduction

This chapter examines the obligation of non-recognition within state responsibility, its customary nature, its applicability to the proclamation of the TRNC, and whether the EU is bound by the obligation. Finally, the chapter addresses the content and scope of the obligation under customary international law.

## 2.2 The Obligation of Non-Recognition

The ILC's ARSIWA, which set out the rules of state responsibility, distinguishes between 'primary' and 'secondary' rules. The secondary rules lay down the legal consequences incumbent on States in relation to breaches of obligations established by the primary rules. Only the secondary rules fall within the field of state responsibility.[34]

Within the field of state responsibility, certain legal consequences are specified as applicable to serious breaches of peremptory norms of general international law. Among these consequences, Article 41(2) ARSIWA provides that '[n]o State shall recognize as lawful a situation created by a serious breach' of a peremptory norm. The obligation of non-recognition can thus be understood as a second-level obligation. It is meant to bring about 'collective non-recognition' by the international community as a whole.[35]

A peremptory norm is a norm from which no derogation is permitted.[36] Additionally, for the obligation of non-recognition to arise, the breach must be

[34] David (2010) 28-29.
[35] Commentary to ARSIWA art 41, *Commentaries,* para 5.
[36] Vienna Convention on the Law of Treaties, 23 May 1969 (1155 UNTS 331), art 53.

serious, involving 'a gross or systematic failure by the responsible State to fulfil the obligation'.[37]

Although the ILC's articles themselves are non-binding, they codify the customary rule that all States are obliged not to recognise an unlawful situation created by a serious breach of a peremptory norm.[38] While it may be questioned whether the obligation under customary international law applies to all peremptory norms, there is a well-established practice concerning forcible territorial acquisition.[39] The present analysis is confined to this principle since, as will be elaborated below, it is of relevance to the illegality underlying the establishment of the TRNC.

Article 2(4) of the UN Charter, prohibiting the threat or the use of force in international relations, is a clear example of a peremptory norm.[40] As noted by Dawidowicz, 'forcible territorial acquisitions constitute the unlawful situation *par excellence* covered by the obligation of non-recognition under customary law'.[41] The obligation not to recognise the illegal acquisition of territory was confirmed as customary by the ICJ in its *Wall* Advisory Opinion.[42]

Importantly, the principle that territory cannot be acquired by the unlawful use of force not only applies to forcible acquisition by existing States but also to the creation of States, requiring the same obligation of non-recognition as in the case of illegal acquisition of territory.[43]

[37] ARSIWA, art 40(1).
[38] Crawford (2012) 72; Talmon (2005) 113.
[39] Dawidowicz (2010) 685.
[40] Crawford (2006) 131.
[41] Dawidowicz (2010) 678.
[42] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, para 87.
[43] Crawford (2006) 148.

### 2.2.1 The Illegality Underlying the Establishment of the TRNC

In response to the proclamation of the TRNC in 1983, the UNSC adopted Resolution 541 (1983) by which it pronounced the declaration of independence invalid and called upon 'all States not to recognize any Cypriot State other than the Republic of Cyprus'.[44] Later, the UNSC adopted Resolution 550 (1984) in which it reiterated its call upon States not to recognise the TRNC.[45]

The UNSC concern seems to be that the declaration 'is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee'.[46] The 1960 Treaties, by which Cyprus achieved its independence, prohibited partition as well as secession of the island. However, as Ronen points out, the treaties apply among particular States – the UK, Greece, Turkey, and the Republic of Cyprus; violation of the 1960 Treaties could therefore not give rise to a collective obligation of non-recognition.[47]

Although not explicitly stated in the resolutions, the prevailing view is that the illegality attached to the declaration of independence of the TRNC stemmed from the fact that it was connected with the unlawful use of force.[48] Consistently with the above-mentioned ILC articles, this would give rise to a collective obligation of non-recognition under customary international law.[49]

### 2.2.2 Consequences for the EU

Article 3(5) TEU places the EU under an obligation of strict observance of international law and respect for the principles of the UN. The ECJ has acknowledged that the EU 'must respect international law in the exercise of

[44] SC Res. 541, 18 November 1983.
[45] SC Res. 550, 11 May 1984, para 3.
[46] SC Res. 541, 18 November 1983.
[47] Ronen (2011) 66.
[48] See, e.g., *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403, para 81; Crawford (2006) 146; Ronen (2011) 66; a point disputed by the TRNC, see, e.g., Necatigil (1989) 285.
[49] Crawford (2006) 148.

its powers' and that when the EU adopts an act, 'it is bound to observe international law in its entirety, including customary international law, which is binding upon the institutions of the EU'.[50] As previously stated, the obligation of non-recognition is a customary rule of international law, which the EU consequently is bound to respect.

Furthermore, in relation to Cyprus, it is also stated in EU primary law that the Republic of Cyprus encompasses the whole island, with a single government even though the Government of the Republic of Cyprus does not exercise effective control over the northern part of the island.[51] Hence, the EU's obligation not to recognise the TRNC can be derived both from customary international law and EU primary law.

## 2.3 Scope and Content of the Obligation of Non-Recognition

### 2.3.1 UNSC Resolutions on Cyprus

As is stated in the UNSC resolutions 541 (1983) and 550 (1984), non-recognition aims to prevent recognition of the TRNC as an independent sovereign State. The resolutions may also indicate what the obligation of non-recognition require States (and the EU) to refrain from, such as refraining from actions like the exchange of 'ambassadors' between Turkey and the TRNC, which Resolution 550 (1984) specifically condemned.[52]

However, with this exception, the resolutions provide limited guidance as to what States and the EU are obliged to refrain from. Additionally, no further resolutions addressing non-recognition have been adopted by the UN political organs. By way of contrast, the UN Secretary-General, reporting on his mis-

[50] C-286/90 *Anklagemindigheden v Poulsen and Diva Navigation*, EU:C:1992:453, para 9; C-366/10 *Air Transport Association of America and Others,* EU:C:2011:864, para 101.

[51] Art 1(1) Protocol No 10 on Cyprus of the Act of Accession [2003] OJ L236/955; (Protocol No 10).

[52] SC Res 550, 11 May 1984, para 2.

sion of good offices in Cyprus in 2004, expressed his hope that all States 'co-operate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development, deeming such a move consistent with Security Council's resolutions 541 (1983) and 550 (1984)'.[53]

### 2.3.2 ILC Articles on State Responsibility

Article 41(2) ARSIWA, which sets out the obligation not to recognise as lawful a situation created by a serious breach of a peremptory norm, provides little guidance as to the precise scope and content of the obligation. However, the ILC's Commentary to Article 41(2) ARSIWA states that the obligation imposes a 'duty of abstention'.[54] Hence, the obligation of non-recognition does not impose positive actions but abstention from acts signifying recognition. Furthermore, the ILC's Commentary provides that the obligation not only refers to formal acts of recognition but also 'prohibits acts which would imply such recognition'.[55]

### 2.3.3 Namibia Advisory Opinion of the ICJ

The *Namibia* Advisory Opinion of the ICJ constitutes an authoritative text on the scope and content of the obligation of non-recognition under customary international law.[56]

The ICJ advised *inter alia* that non-recognition implies abstention from entering into treaty relations with South Africa when the Government of South Africa purports to act on behalf of or concerning Namibia, cessation of 'active intergovernmental co-operation' under existing bilateral treaties relating to Namibia, abstention from diplomatic or consular activity in Namibia, and abstention from 'economic and other forms of relationship or dealing with South

[53] UNSC 'Report of the Secretary-General on his mission of good offices in Cyprus' (2004) UN Doc S/2004/437 para 93.
[54] Commentary to ARSIWA Art 41, *Commentaries,* para 4.
[55] Commentary to ARSIWA Art 41, *Commentaries,* para 5.
[56] Ronen (2011) 72.

Africa on behalf of or concerning Namibia which may entrench its authority over the Territory'.[57]

The ICJ also introduced an element of flexibility, the '*Namibia* exception', allowing recognition of acts the effect of which can be ignored only to the detriment of the inhabitants, such as the registration of births, deaths, and marriages. The Court held in this connection that '[i]n general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international cooperation'.[58]

### 2.3.4 Teachings

In legal literature on the obligation of non-recognition, there are different interpretations on its scope and content that may be used as guidance.

Ronen argues that the 'authority' which must be prevented from becoming entrenched not only refers to formal status but also to actual control, thus proposing a wide interpretation of the prohibition. Such an interpretation encompasses all acts, regardless of their immediate purpose, as any recognition of an act strengthens the effective control of the illegal regime.[59] However, Ronen also proposes a wide interpretation of the exceptions.[60] This means that any act can be exceptionally recognised if failure to recognise it would cause detriment to individuals, even if recognition would contribute to the entrenchment of the regime.[61]

Crawford, on the other hand, argues that the inherent flexibility of the obligation allows for the acceptance of acts which do not purport to secure territorial claims. Such an interpretation allows for the acceptance of acts which are

[57] *Namibia (South-West Africa),* paras 122-124.
[58] *Namibia (South-West Africa),* para 125.
[59] Ronen (2011) 78.
[60] Ronen (2011) 88.
[61] Ronen (2011) 101.

commercial, minor administrative or routine in their character, or of immediate benefit to the local population, making them 'untainted by the illegality of the administration'.[62]

Talmon argues that the question of what kind of cooperation that is excluded by non-recognition cannot be answered generally; it depends on the type of recognition that is to be avoided.[63] Non-recognition as a sovereign State precludes intergovernmental cooperation and cooperation that requires the existence of diplomatic relations but does not preclude administrative cooperation.[64]

Finally, on a more general note, it has been suggested that when assessing acts which may 'imply recognition', the intention behind the act is crucial. As observed by Dugard, 'it is generally accepted that the recognizing State's intention on this subject is the overriding consideration and that recognition should not be too readily inferred'.[65] According to Jennings and Watts, recognition may be implied in certain circumstances, through acts which leave no doubts as to the intention to recognise, such as the conclusion of a bilateral treaty regulating relations between two States, diplomatic relations, and sponsoring or voting for a State's admission to an organisation with statehood as a condition of membership.[66]

## 2.4 Conclusion

This chapter has established that the EU is bound to observe the obligation of non-recognition, given that it is a customary rule of international law and laid down explicitly in EU primary law. Hence, the EU is obliged not to recognise the TRNC and the EU is bound to observe the obligation of non-recognition when engaging in trade relations with northern Cyprus.

[62] Crawford (2012) 51.
[63] Talmon (2001) 748.
[64] Talmon (2001) 749; Talmon (2005) 116-117.
[65] Dugard (1977) 128.
[66] Jennings & Watts (1992) 170-175.

Non-recognition of the TRNC precludes the rights and privileges inherent to statehood. In other words, the obligation entails a prohibition on treating the TRNC as a state. For the EU this means an obligation to refrain from establishing relations with northern Cyprus that are generally reserved to sovereign States. As noted above, one of the forms of implied recognition would be diplomatic relations. Economic and other dealings might, however, be permitted as long as they do not serve to 'entrench' authority of the territory.

It is also evident that the obligation to disregard acts of *de facto* entities is far from absolute; the '*Namibia* exception' allows for recognition of acts, the effect of which can be ignored only to detriment of the inhabitants of the territory.

On the other hand, there are areas constituting a 'grey zone' where the scope of the obligation of non-recognition is less apparent. One such area are dealings carried out at an administrative level which, as will be elaborated below, is necessary for engagement such as trade.

This thesis will proceed by looking at EU trade practices in relation to northern Cyprus. Since the obligation of non-recognition is customary, the practices of the EU and its Member States serve as important evidence of its scope.

# 3 EU Trade Practices with Northern Cyprus: Defining the Permissible Scope

## 3.1 Introduction

This chapter examines EU trade practices with northern Cyprus both in a pre-accession context, with special emphasis on the case law of the ECJ, and in a post-accession context, in light of the EU Commission's proposed Direct Trade Regulation.

## 3.2 EU Trade Practices Before Accession

Before Cyprus joined the EU, trade between Cyprus and the then European Economic Community (EEC) was regulated by an Association Agreement, allowing preferential tariff treatment.[67] The preferential trade regime was conditional on certificates accompanying the products issued by 'customs authorities of the exporting State'.[68]

Following the proclamation of the TRNC, the Republic of Cyprus addressed a *note verbal* to the European Community (EC), which argued that only goods accompanied by a certificate issued by the Government of Cyprus satisfied the requirements under the Association Agreement.[69]

The Commission responded that it held and continues to hold the view that it is lawful for Member States to accept imports from northern Cyprus if the products are accompanied by the required certificates issued by the Turkish

[67] Agreement establishing an Association Between the European Economic Community and the Republic of Cyprus |1973] OJ L 133/2; (Association Agreement).

[68] Council Regulation (EEC) No 2907/77 of 20 December 1977 on the conclusion of the Additional Protocol to the Agreement establishing an association between the European Economic Community and the Republic of Cyprus [1977] OJ L 399/1, arts 7(1), 8(1).

[69] Opinion of Advocate General Gulmann delivered on 20 April 1994, C-431/92, *Anastasiou I*, EU:C:1994:159, para 16.

Cypriot authorities, provided they are not issued under the TRNC designation.[70]

The Commission observed that several Member States recognised the certificates issued by Turkish Cypriot authorities.[71] Hence, despite the UNSC's call for non-recognition, the system of tariff preferences continued to be applied to products originating in northern Cyprus and exported to Member States. The Commission's response, although non-binding, may indicate a conviction that this practice was permissible (*opinio juris*).

### 3.2.1 Anastasiou I

Direct trade between the EU and northern Cyprus continued until 1994, when Greek Cypriot exporters (Anastasiou and Others) brought an action to the UK High Court of Justice against the British Agriculture Ministry to ensure that they would only accept certificates issued by the Republic of Cyprus (and not those issued by the Turkish Cypriot authorities).[72]

The English Court referred a number of questions to the ECJ. As summarised by the Advocate General, '[t]he key question in the case is whether certificates issued by organs which, according to the letter of the relevant rules, do not have authority to issue certificates in question may nevertheless, having regard to the particular circumstances, be recognised by the authorities in the Community of Member States'.[73]

The UK and the Commission argued that the acceptance of certificates issued by Turkish Cypriot authorities would not be tantamount to recognition of the TRNC.[74]

The ECJ confined itself to interpretation of EC Law, more specifically the term 'authorities' appearing under the certificate system. According to the

[70] Ibid., para 17.
[71] Ibid., para 12, fn. 9.
[72] Cremona (1996) 126.
[73] Opinion of Advocate General Gulmann delivered on 20 April 1994, C-431/92, *Anastasiou I*, EU:C:1994:159, para 29.
[74] Ibid., paras 31-32.

Court, the provisions must be interpreted as precluding acceptance by the national authorities of a Member State of certificates issued by authorities other than those of the Republic of Cyprus.[75] The administrative cooperation required under the certificate system excluded the authorities established in northern Cyprus, as the entity was not recognised by the Community or its Member States.[76] The Court stated that '[i]t would be impossible for an importing State to address enquiries to the department or officials of an entity *which is not recognized* concerning the contaminated products or certificates that are incorrect or have been interfered with'.[77]

The Court did not, however, address the arguments put forward by the Greek Government that the acceptance of certificates from the Turkish Cypriot authorities was a breach of the obligation of non-recognition under the UNSC resolutions. Nevertheless, as noted by Cremona, the practical implications of non-recognition, namely the consequent impossibility of establishing the necessary cooperation with the Turkish Cypriot authorities, were crucial to the decision.[78]

After the ruling, goods originating from northern Cyprus no longer benefitted from the system of tariff preferences.[79] Moreover, the Commission sent a circular to Member States' customs authorities asking them to be 'particularly vigilant in case of products suspected coming from northern Cyprus' and emphasised compliance with the Court's ruling.[80] Hence, the circular indicates that the EU's stance had changed after the ruling and that cooperation was no longer considered lawful.

[75] Judgement of 5 July 1994, *Anastasiou I*, C-431/92, EU:C:1994:277, para 67.
[76] Ibid., paras 40, 67.
[77] Ibid., para 63 (emphasis added).
[78] Cremona (1996) 134-135.
[79] Skoutaris (2011) 131.
[80] See the reply of the Commission, given on 10 March 1995, to the questions concerning 'illegal imports to the European Union of products originating from the occupied part of Cyprus' [1995] OJ C145/23.

## 3.3 EU Trade Practices After Accession

After Cyprus joined the EU, the Republic of Cyprus entered into the Union customs territory. In Protocol No 10 of the Act of Accession 2003, the EU Member States reaffirmed their commitment to accommodate a comprehensive Cyprus settlement based on a single State of Cyprus comprising two politically equal communities, in a bicommunal, bizonal federation.[81] However, to account for the unresolved Cyprus issue, pending a settlement the application of the *acquis communautaire* is suspended in those areas where the Republic of Cyprus does not exercise effective control.[82]

As a consequence of the suspension, northern Cyprus is a part of a Member State but outside the Union customs territory.[83] Measures to promote the economic development in the north are, however, not precluded by the suspension.[84]

On 26 April 2004, following the outcome of the referendums, the European Council expressed its determination to 'put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community'. The Commission was invited to bring forward a proposal to this end.[85]

The Direct Trade Regulation, proposed by the Commission on 7 July 2004, aims to facilitate trade between northern Cyprus and EU Member States.[86] Although this proposal at the time of writing has neither been adopted nor withdrawn, it exemplifies the dilemma facing the EU in relation to trade with unrecognised entities. The Republic of Cyprus objects to the adoption of the Direct Trade Regulation, arguing that it would be tantamount to recognition

[81] Preamble of Protocol No 10.
[82] Art 1(1) of Protocol No 10.
[83] Skoutaris (2011) 149.
[84] Art 3(1) of Protocol No 10.
[85] Explanatory memorandum of the proposal for a Direct Trade Regulation.
[86] Preamble of the proposal for a Direct Trade Regulation.

of northern Cyprus.[87] This concern was also acknowledged by the Council Legal Service (CLS) in its Opinion of 25 August 2004.[88]

### 3.3.1 The Proposed Direct Trade Regulation

The main text of the proposed Direct Trade Regulation provides for a preferential regime, allowing free trade between northern Cyprus and the EU. In order to administer the regime, a system of authorisation would need be established, whereby an authorised body, suggested to be the Turkish Cypriot Chamber of Commerce (TCCoC) or another body authorised by the Commission, would need to carry out a number of tasks, including issuing certificates.[89]

If adopted, the proposal would allow Member States to accept phytosanitary certificates issued by experts appointed by the Commission and certificates for the proof of origin issued by the TCCoC.[90] Moreover, this cooperation would function without any role or consent of the Republic of Cyprus. As a comparison, the Green Line Regulation aimed at facilitating intra-island trade in Cyprus, allows the Commission to authorise the TCCoC but only 'in agreement with the Government of Cyprus'.[91]

The CLS held that authorising the TCCoC meant explicitly recognising another administrative authority in northern Cyprus, conflicting with the obligation of non-recognition stemming from the UNSC resolutions 541 (1983) and 550 (1984) and Protocol No 10. Moreover, the CLS stated that the ECJ ruled already in *Anastasiou I* that national authorities of Member States cannot accept certificates issued by authorities other than the competent authorities of the Republic of Cyprus. The CLS also added that the precise status of

[87] Committee on International Trade Working Document [2014] DT1023171EN.doc 3.
[88] Opinion of the Legal Service [2004] 11874/04.
[89] Proposal for a Direct Trade Regulation, art 2(2).
[90] Proposal for a Direct Trade Regulation, arts 4, 6.
[91] Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession [2004] OJ L206/128, art 4(5); (Green Line Regulation).

TCCoC, which is a private corporate body, is irrelevant as it would have functions of *ius imperii*.[92]

Additionally, the CLS argued that the proposal disregarded the EU Treaties' inherent right and the division of power between the EU and its Member States. The CLS emphasised that Member States have primary overall competence for implementing EU law on their territories, requiring that the Republic of Cyprus must give its consent for the Commission to designate the TCCoC in northern Cyprus.[93]

The Commission disputes that the proposal would be tantamount to recognition of the TRNC, citing Ceuta and Melilla as examples of cooperation with territories which are part of the EU but not recognised by the EU as sovereign States.[94]

## 3.4 Conclusion

It has been contended that the scope and content of the obligation of non-recognition is determined by customary international law. Even so, in the case of northern Cyprus, as demonstrated both in a pre- and post-accession context, it is possible to speak of an EU variable influencing the implications of non-recognition.

Specifically, this chapter has looked at the approaches of EU Member States and institutions to trade with northern Cyprus. In a pre-accession context, the ECJ emphasised in *Anastasiou I* the importance of effective cooperation in the application of preferential trade regimes with unrecognised entities. In other words, the outcome of the ECJ ruling depended not so much on the issue of non-recognition as the possibility of establishing effective cooperation with the authorities of unrecognised entities. However, the ruling highlights

[92] Opinion of the Legal Service 7.
[93] Ibid., 7.
[94] Committee on International Trade, Working Document [2014] DT1023171EN.doc 3.

the close connection between the two: non-recognition makes the establishment of effective cooperation more complicated or, according to the ECJ, even 'impossible'.

As the EU Member States' and Commission's practices show, until 1994 recognising certificates from the authorities of unrecognised entities was seen as possible without implying recognition. This has led Talmon to argue that the Court's ruling was 'based on a false premise'.[95] An opposing view is held by Kyriacou, who argues that 'given that the Court found that cooperation with "TRNC" authorities was not permissible, this entailed that any previous cooperation was premised on a wrong interpretation and application of law'.[96]

The aftermath of the ruling illustrates that practices of the EU can have a major role in stifling engagement, such as trade, with unrecognised entities. However, given that the ECJ ruling is strictly confined to the interpretation of EC law, the effects of the ruling on the scope and content of the obligation of non-recognition under customary international law is limited.

In a post-accession context, the CLS assessed the implications of non-recognition in relation to EU internal legislation rather than an international agreement. Unlike the ECJ, which did not consider the obligation of non-recognition, the CLS explicitly referred to the obligation in its Opinion, citing the UNSC resolutions and Protocol No 10. The cited resolutions and the EU act entail, as noted above, an obligation not to recognise the TRNC as a sovereign State.

It is not clear what the CLS bases its interpretation of the obligation of non-recognition on when asserting that the obligation precludes administrative cooperation. The cited resolutions and the EU act are, however, much too general to infer an obligation to refrain from administrative cooperation, which

[95] Talmon (2001) 743.
[96] Kyriacou (2020) 95.

would not require the existence of, for instance, diplomatic relations. Furthermore, the CLS seems to overlook the 'grey zone' surrounding the scope of the obligation of non-recognition under customary international law.

Nevertheless, the CLS's Opinion highlights that Cyprus' EU membership should be considered when defining the permissible scope of recognition to allow for trade with northern Cyprus. In particular, according to the Opinion, the Commission's proposal for direct trade disregards that the Republic of Cyprus holds primary competence for the implementation of EU law on its territory, which *de jure* includes the north. Here, the Opinion seems to be premised on the interpretation that the Republic's consent is necessary for the proposed measures.

The Commission's proposal, on the other hand, seems to be premised on a different interpretation than the Opinion, as it does not require any role or the consent of the Republic of Cyprus for its implementation. However, it is doubtful if a general stance can be inferred from the proposal. As Kyriacou argues, the proposal can be seen as 'to respond to the political situation created after the rejection of the UN plan for the reunification of Cyprus'.[97] Additionally, the EU's mandate to prepare for northern Cyprus EU integration and, in the event of a reunification, the replacement of the Republic of Cyprus by a bicommunal, bizonal federation with a unified economy, may contribute to blurring its stance on the permissible scope of recognition to allow for trade with northern Cyprus.

[97] Kyriacou (2020) 104.

# 4 Conclusion

This thesis has sought to identify the limits and possibilities to EU engagement with northern Cyprus by analysing the implications of the obligation of non-recognition and relating this to trade, as defined by the legal architecture of the Commission's proposal for a Direct Trade Regulation.

Considering the Commission's proposal, the necessary cooperation for the preferential trade regime would require a system of authorisation, whereby the certificates of origin would be issued by the TCCoC. This presupposes recognition of acts, namely the certificates, established in northern Cyprus and hence some form of acknowledgment of the capacity of the TCCoC.

The obligation of non-recognition poses restrictions on the acceptable forms of EU engagement with northern Cyprus. Recognition of the certificates is not, however, necessarily prohibited by the obligation. It has been argued that such administrative cooperation would be prohibited only insofar it implied recognition of the TRNC as a sovereign State.

As shown by the EU practices before 1994, accepting certificates from Turkish Cypriot authorities was seen as possible without implying recognition of the TRNC. This lends support to the contention that non-recognition as a sovereign State neither precludes the acceptance of certificates nor makes it impossible to establish the necessary cooperation.

Moreover, in the Commission's proposal, the certificates would not emanate from the 'government' of the TRNC regime but from a private corporate body. Establishing the necessary cooperation would therefore not contribute to the entrenchment of the authority of this regime. Indeed, designating a private body as the competent authority rather than, for instance, the trade ministry or an equivalent 'state' authority, illustrates that the EU has no intention of recognising the TRNC as a sovereign State. The stated purpose of 'reunification of Cyprus' could also be seen as an implicit disclaimer to this end. As there is no doubt as to the intention not to recognise, recognition should not be inferred.

In light of the above considerations, the establishment of the necessary cooperation to facilitate trade with northern Cyprus, as it is proposed to function in the Direct Trade Regulation, would not constitute a legitimate occasion for implying recognition, thereby not amounting to a violation of the obligation of non-recognition.

That said, in a post-accession context, different considerations may apply. As shown, a necessary part of an assessment of the limits to EU engagement are the implications of Cyprus' EU membership. While this extends beyond the obligation of non-recognition, it could also be described as an extension of non-recognition. It follows from the fact that the regime in northern Cyprus is not recognised that there exists only one internationally recognised government on the island – the Government of the Republic of Cyprus – which has the primary competence for the implementation of any act of EU law on its territory. Consequently, the Government of Cyprus could opt to authorise the Commission to act on its behalf to designate a 'competent authority' in northern Cyprus, as it has done with the Green Line Regulation. But it is doubtful whether the Commission can act independently without Cyprus's consent, as proposed in the Direct Trade Regulation. The stances of the EU institutions remain divergent on this matter.

## 4.1 Further Research

While this thesis aims to shed light on the implications of the obligation of non-recognition for EU trade practices with unrecognised entities, focusing on a single case reveals a number of gaps that would benefit from further research.

Further research might compare EU trade practices with other entities which are not recognised by the EU as sovereign States. A comparative analysis would identify non-recognition practices of the EU across different contexts and provide insight as to how the EU navigates its obligation to strictly observe international law in the exercise of its powers.

# Bibliography

**Books, Book Chapters and Articles**


Bryant R & Hatay M, *Sovereignty Suspended: Building the So-Called State* (University of Pennsylvania Press 2020).

Crawford J, *The Creation of States in International Law* (2 ed., Oxford University Press 2006).

Crawford J, 'Opinion: Third Party Obligations with Respect to Israeli Settlements in the Occupied Palestinian Territories' (Report for the Trade Unions Congress 2012).

Cremona M, 'Case C-432/92, R. v Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd. And Others, Judgement of 5 July 1994' (1996) 33 *Common Market Law Review* 125-135.

David E, 'Primary and Secondary rules' in Crawford J, Pellet A, Ollesson S and Parlett K (eds), *The Law of International Responsibility* (Oxford University Press 2010).

Dawidowicz M, 'The Obligation of Non-Recognition of an Unlawful Situation' in Crawford J, Pellet A, Ollesson S and Parlett K (eds), *The Law of International Responsibility* (Oxford University Press 2010).

Dugard J, 'Rhodesia: Does South Africa Recognize it as an Independent State?' (1977) 94 *The South African Law Journal* 127-130.

Jennings R & Watts A, *Oppenheim's International Law* (9 ed., Oxford University Press 1992).

Kleineman J, 'Rättsdogmatisk metod' in Nääv M & Zamboni M (eds), *Juridisk metodlära* (2 ed., Studentlitteratur 2018).

Kyriacou N, 'The EU's Trade Relations with Northern Cyprus. Obligations and Limits under Public International and EU Law' in Duval A & Kassoti E (eds), *The Legality of Economic Activities in Occupied Territories: International, EU Law and Business and Human Rights Perspectives* (Taylor & Francis 2020).

Necatigil Z, *The Cyprus Question and the Turkish Position in International Law* (Oxford University Press 1989).

Ronen Y, *Transition from Illegal Regimes under International Law* (Cambridge University Press 2011).

Rose C, 'Sources of International Law' in Rose C, Blokker N, Dam-de Jong D, van den Driest S, Heinsch R, Koppe E and Schrijver N, *An Introduction to Public International Law* (Cambridge University Press 2022).

Rose C, 'Law of State Responsibility' in Rose C, Blokker N, Dam-de Jong D, van den Driest S, Heinsch R, Koppe E and Schrijver N, *An Introduction to Public International Law* (Cambridge University Press 2022).

Skoutaris N, *The Cyprus Issue: The Four Freedoms in a Member State Under Siege* (Hart Publishing 2011).

Talmon S, 'The Cyprus Question before the European Court of Justice' (2001) Vol. 12 No. 4 *European Journal of International Law* 727-750.

Talmon S, 'The Duty not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation without Real Substance?' in Tomuschat C & Thouvenin J (eds), *The Fundamental Rules of the International Legal Order: Jus Cogens and Erga Omnes Obligations* (Martinus Nijhoff Publishers 2006).

**Table of Cases and Advisory Opinions**

European Court of Justice

Case C-366/10 *Air Transport Association of America and Others* EU:C:2011:864.

Case C-286/90 *Anklagemindigheden v Poulsen and Diva Navigation* EU:C:1992:453.

Case C-432/92 *The Queen v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and others* EU:C:1994:277.

Case C-431/92 *The Queen v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and others* EU:C:1994:159, Opinion of AG Gulmann.

European Court of Human Rights

*Loizidou v Turkey* (ECtHR) Application No 15318/89 Judgement of 18 December 1996.

International Court of Justice

*Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (Advisory Opinion) [2010] ICJ Reports 403.

*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Reports 136.

*Legal Consequences for States of the Continued Prescence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Reports 16.

**Treaties and Other Legal Instruments**

International Treaties and Conventions

Charter of the United Nations and Statute of the International Court of Justice, as annexed to the Charter of the United Nations, 24 October 1945 (1 UNTS XVI).

Vienna Convention on the Law of Treaties, 23 May 1969 (1155 UNTS 331).

EU Treaties and Regulations

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 [2003] Official Journal L 236/955.

Agreement of 19 December 1972 Establishing an Association Between the European Community and the Republic of Cyprus and the Protocols thereto [1973] Official Journal L133/2.

Consolidated Version of the Treaty on European Union [2012] Official Journal C326/47.

Council Regulation (EEC) No 2907/77 of 20 December 1977 on the conclusion of the Additional Protocol to the Agreement establishing an association between the European Economic Community and the Republic of Cyprus [1977] Official Journal L 399/1. (No longer in force.)

Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession [2004] Official Journal L 206/128.

**United Nations Documents**

UN General Assembly

United Nations General Assembly Resolution 3212 (XXIX), 1 November 1974.

UN Security Council

United Nations Security Council Resolution 541 (1983), 18 November 1983.

United Nations Security Council Resolution 550 (1984), 11 May 1984.

UN Secretary-General

UNSC 'Report of the Secretary-General on his mission of good offices in Cyprus' (2004) UN Doc. S/2004/437.

International Law Commission

'Draft Articles on Responsibility of States of Internationally Wrongful Acts, with Commentaries' *ILC Report*, 53rd session, UN Doc. A/56/83 (2001).

'Articles on Responsibility of States for Internationally Wrongful Acts' *ILC Report*, 53rd session, UN Doc. A/56/10 (2001).

'Draft conclusions on identification of customary international law, with Commentaries' *ILC Report*, 70th session, UN Doc. A/73/10 (2018).

**European Union Documents**

European Commission

Commission's reply, given on 10 March 1995, to the questions concerning 'illegal imports to the European Union of products originating from the occupied part of Cyprus' [1995] Official Journal C145/23.

Commission's proposal for a Council Regulation on special conditions for trade with those areas of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control, COM (2004) 466 final.

Council Legal Service

Opinion of the Legal Service, Proposal for a Council regulation on special condition for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control [2004] 11874/04.

Committee on International Trade

Working Document on the Commission proposal for a Council Regulation on special conditions for trade with those areas of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control [2014] DT1023171EN.doc.