

THE LEGAL STATUS OF THE SOVEREIGN BASE AREAS IN CYPRUS

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According to article 2 § 2 of the Treaty of Establishment, the Republic of Cyprus shall co – operate fully with the United Kingdom, in order to ensure the security and effective operation of such military Bases, as well as the full enjoyment by the United Kingdom of the rights conferred by the Treaty. The legal status of the SBAs was confirmed by Protocol 3 of the Treaty of Accession of the Republic of Cyprus in the European Union, entitled '*on the Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus*', where it is provided that the Treaty shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia, except to the extent necessary to ensure the implementation of the agreements set out in the Protocol. A significant development which coincided with the accession of Cyprus in the European Union, was, however, the decision of the British Government to extend the application of the European Convention on Human Rights to the SBAs with effect from 1st May 2004; since the aforementioned development, all citizens of the Republic who live or go through the SBAs ought to be able to enjoy the rights and freedoms that they would have elsewhere in the island.

The extent of the United Kingdom's sovereignty over the Base Areas is, however, disputable. The SBAs are clearly not a state, since they do not have autonomous powers and are completely dependant on the United Kingdom. Nor could it be accepted that the SBAs are a '*quasi – state*', since any authority exercised by the authorities of the SBAs derives exclusively from the United Kingdom sovereignty and the relevant provisions of the Treaty of Establishment. Could then one conclude that the SBAs are a colony under international law? Article 2 (ii) of the Declaration by Her Majesty's Government, Regarding the Administration of the Sovereign Base Areas (Appendix O), provides that the Government does not intend to develop the SBAs for other than military purposes and does not intend to set up and administer colonies. Despite such declaration, however, the position under

British constitutional law seems to be that the SBAs constitute a '*colony*', in the sense that in 1960 all Cyprus, apart from the SBAs became independent; therefore, the SBAs are what remains of the former Colony of Cyprus and are to be regarded '*as constituting a Colony acquired by consent or cession, as from 5th November 1914*', which is the date of annexation of Cyprus by the United Kingdom.

Concluding, however, that the SBAs are a colony is not so simple, since the United Kingdom has never considered that the SBAs are a colony in the sense of article 73 of the United Nations Charter and has refrained from transmitting reports to the UN on the SBAs, as it did for other of its colonies. If it is accepted that the presence of the Base Areas in Cyprus is a form of colonization, then it should be concluded that such presence cannot be justified according to international law, since two Resolutions of the General Assembly of the United Nations, namely 2555/1969 and 2621/1970, prohibit the continuation of colonization in whichever form.

Another approach would be to characterize the SBAs as *sui generis* servitudes in favour of the United Kingdom, which, therefore, represent rights of the United Kingdom arising from the Treaty of Establishment. Therefore, it could be argued that the SBAs are foreign military bases, without any real sovereignty under international law, despite the use of the word '*sovereignty*' in the Treaty of Establishment. Such view is supported by the decision of the Supreme Court of Cyprus in *Pearce v. Estia* (1991).

It is submitted that the view according to which '*sovereignty*' over the SBAs equals to effective control over military base areas is the correct one. It could therefore, be argued that the SBAs could not have a right to territorial sea, since only states can exercise such a right, according to international law. While article 3 of Annex A of the Treaty of Establishment provides that the Republic of Cyprus shall not claim as part of its territorial sea, waters lying between the four Lines described in the Annex, this has been interpreted as a *sui generis* right of the Base Areas to control some part of the territorial sea,

as well as a *sui generis* obligation of the Republic of Cyprus to accept certain restrictions to the extent of its right to territorial sea; the purpose of the aforementioned provision with regard to territorial sea, was to safeguard free access to the territory controlled by the SBAs and under no circumstances to accept that the British Base Areas have a right to territorial sea. It is also suggested that the relevant provisions of the Treaty of Establishment do not recognize a right of the British Base Areas to continental shelf; such argument is strengthened by the fact that the United Kingdom has not objected in any way to the agreement between Cyprus and Egypt, which recognizes the right of the Republic of Cyprus to continental shelf in the area, opposite to the SBAs.