

# Memo

To: The American Hellenic Institute  
From: Thanos Basdekis, Esq.  
Date: April 19, 2005  
Re: Transfer of Weapons to Cyprus; 22 U.S.C. § 2373

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## **QUESTION PRESENTED**

In light of the State Department's assertion that U.S.-supplied arms can be lawfully transferred to occupied Cyprus so long as the Turkish military retains exclusive control over the arms, does 22 U.S.C. § 2373 absolutely prohibit the transfer of arms to Cyprus by Turkey without regard to whether the arms remain in the control of the Turkish military?

## **SHORT ANSWER**

Yes, 22 U.S.C. § 2373 absolutely prohibits the transfer of U.S.-supplied arms to Cyprus by Turkey, just as it prohibits the transfer of such weapons to Cyprus by Greece.

## **FACTUAL BACKGROUND**

A number of media sources have reported that the United States has allowed Turkey to bolster its forces in occupied Cyprus. See, e.g., Middle East Newslines, "U.S. Enables Turkey to Bolster Forces in Cyprus," available at [http://www.menewslines.com/stories/2005/march/03\\_04\\_4.html](http://www.menewslines.com/stories/2005/march/03_04_4.html). In short, the State Department has decided not to prevent Turkey from introducing additional U.S.-supplied weapons to the occupied north. The State Department claims, moreover, that Turkey has not violated any U.S. laws by deploying the disputed military equipment in the so-called "Turkish Republic of Northern Cyprus" (TRNC).

In February 2005, the Republic of Cyprus asserted that Turkey had deployed additional tanks and armored personnel carriers in the occupied north. Greek Cypriot officials said Turkey transferred 12 U.S.-origin M-48 tanks as well as M113 APC's to the island.

State Department deputy spokesman Adam Ereli said the above deployment of additional U.S.-origin weaponry does not violate U.S. law on account of the fact that Turkey's military continues to be responsible for the disputed weaponry.

"These are weapons that the Turkish Armed Forces have, and that to our knowledge there are no transfers that have taken place or provisions governing transfers that have been violated," Ereli said on March 1. "There have been no new developments that would lead us to conclude that something illegal or prohibited is taking place."

Officials said the State Department has confirmed Greek Cypriot complaints of the transfer of additional U.S.-origin equipment to Turkish military forces in occupied Cyprus. However, they asserted there was no violation of U.S. law.

"The question that we deal with on these issues is, if a government has signed a deal to buy weapons and operate weapons and not to transfer those weapons to other governments and then goes ahead and transfers them, then the regulations on transfer of weapons has been violated," Ereli said. "And our understanding is that in the case of the Turkish tanks, the Turkish government is still and continues to have authority and control over those weapons."

Officials from the Republic of Cyprus said the Bush administration's acquiescence to the deployment of additional U.S. tanks and APC's in occupied Cyprus marked a new U.S. policy toward the island.

## **DISCUSSION**

The military security assistance programs of the United States "are intended to strengthen allies and other friendly nations internally by promoting stable democratic government and by providing the capability to deter external aggression." Carl J. Woods, An Overview of the Military Aspects of Security Assistance, 128 Mil. L. Rev. 71, 71-72 (1990). These military security assistance programs are established by Congress and administered by the executive branch, although Congress "maintains a significant degree of control over the programs through an elaborate array of constraints upon executive action in this area." Id.

Security assistance legislation "contains many outright or conditional prohibitions on furnishing aid." Id. at 87. These constraints are largely contained in policy sections of the two primary security assistance statutes,

the Foreign Assistance Act (FAA) and the Arms Export Control Act (AECA), formerly known as the Foreign Military Sales Act. These prohibitions can be generally applicable or can be country-specific. As a rule, however, they do not follow any particular pattern. Id. at 87-88.

The Foreign Assistance Act of 1961 (FAA) is the focus of the restrictions on military assistance concerning Greece, Turkey, and Cyprus. See Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (codified as amended at 22 U.S.C. §§ 2151-2431k (2000)). Section 2373 of the FAA sets forth the “Eastern Mediterranean Policy Requirements,” and subsection (a) sets forth the Congressional declaration and statement of findings, pursuant to which Congress stated as follows:

The Congress finds that --

(1) a just settlement on Cyprus must involve the establishment of a free and independent government on Cyprus and must guarantee that the human rights of all of the people of Cyprus are fully protected; [and]

(2) a just settlement on Cyprus must include the withdrawal of Turkish military forces from Cyprus[.]

22 U.S.C. § 2373(a)(1)-(2).

Similarly, in its articulation of “Governing Principles,” Congress made clear that the United States (i) “shall encourage all parties to avoid provocative actions,” (ii) “shall strongly oppose any attempt to resolve disputes through force or threat of force,” and (iii) “shall use its influence to achieve the withdrawal of Turkish military forces from Cyprus in the context of a solution to the Cyprus problem.” 22 U.S.C. § 2373(a)(1)-(2).

In order to effectuate the above goals, Congress included subsection (e), entitled “Arms sales agreements to prohibit transfer to Cyprus.” It reads in full as follows:

(e) Arms sales agreements to prohibit transfer to Cyprus

(1) Any agreement for the sale or provision of any article on the United States Munitions List

(established pursuant to section 38 of the Arms Export Control Act [22 U.S.C.A. § 2778]) entered into by the United States after December 22, 1987, shall expressly state that the article is being provided by the United States only with the understanding that it will not be transferred to Cyprus or otherwise used to further the severance or division of Cyprus.

(2) The President shall report to Congress any substantial evidence that equipment provided under any such agreement has been used in a manner inconsistent with the purposes of this subsection.

22 U.S.C. § 2373(e).

There should be no dispute about the meaning of the plain language of the 22 U.S.C. § 2373(e). This is so for at least four reasons.

First, the title of § 2373(e) — “Arms sales agreements to prohibit transfer to Cyprus” — offers clear proof that Congress intended to prohibit the transfer of U.S.-origin weaponry from Turkey to Cyprus. *See, e.g.*, 73 Am. Jur. 2d Statutes § 108 (2004) (explaining that “[t]he title to statute may properly be consulted to confirm legislative intent”).

Second, the text of § 2373(e) clearly mandates that any weapon provided to Turkey will be provided “only with the understanding that it will not be transferred to Cyprus.” *Id.* This is a blanket provision, and there is no qualifying language in the statute that permits an “exception” based on the alleged continued control of the military weapon(s) by the Turkish Armed Forces.

Third, the lone commentator to address this issue (whose work is available through online legal databases) agrees with the analysis set forth herein. *See* Woods, 128 Mil. L. Rev. at 92. As Woods explains, under § 2373(e):

No security assistance is to be supplied to either Greece or Turkey unless it is intended solely for defensive purposes (including fulfillment of NATO obligations) and does not adversely affect the balance of military strength existing between those countries. **Further, such assistance cannot be**

**transferred to Cyprus or used in support of the severance or division of that island.**

Woods, 128 Mil. L. Rev. at 92 (emphasis added).

Fourth, Congress has not passed any amendments to 22 U.S.C. § 2373(e) containing any “qualifying” language. Accordingly, the gloss placed on the plain language of the statute by the State Department — claiming that a “transfer” of weapons to Cyprus occurs only if the weapons are transferred to the control of another government — is without support.

### **CONCLUSION**

In light of the foregoing, 22 U.S.C. § 2373 absolutely prohibits the transfer of U.S.-supplied arms to Cyprus by Turkey, without regard to whether the arms remain in the control of the Turkish military.