
INTRODUCTION

The Cyprus problem is a case study in international law. It involves both the law of war and the law of peace. It is a long-running issue that arose at a time when international politics were of a different texture from those prevailing today.

As the 20th Century draws to a close and the 21st dawns, history is being stirred with unprecedented vigour. Once again it is proven that nothing remains static. World society finds itself in a permanent state of evolution as the eternal swirl of mankind takes its course. Political and international “constants” that were entrenched during the greater part of this century have been upset. Conflict continues. The universality of democratic rule in today’s world is not always established without turmoil. It has become apparent that the collapse of the dictatorial regimes in Europe in the decade of the 1970s, and that of Communism, which began in 1989, did not concurrently create conditions of peace and respect for universal human values. They neither led instantly to the consolidation of a new order of things, nor did they safeguard human rights on a uniform and universal scale. Internal clashes within existing states continuously create new conditions facing the emerging “New World Order”. Contradictory courses of, on the one hand, the rise of nationalism and the disintegration of federal systems, such as those of the former Soviet Union and Yugoslavia, and on the other, the willingness to surrender national sovereignty in favour of central and collective common organs as occurs in the European Union, demonstrate the discor-

dant, uncertain and volatile nature of current historical and legal developments¹.

The equilibrium of world power is undergoing many changes, and the role of international organisations is demonstrating a serious transformation. The influence of certain bodies, such as the United Nations Security Council, is increasing as a result of the shift in the balance of power in favour of one single Superpower; at the same time there is a notable decrease in the General Assembly's effectiveness.² Alliances such as the Eastern Bloc and the Non-Aligned Movement disintegrated. Regional organisations are increasingly assuming a more decisive role. Diversities are shifting: between North and South, between rich and poor nations, worsened as a result of the unacceptable phenomenon of famine of millions of human beings. Religious conflicts are multiplying. At present they are just local confrontations, but they could easily assume regional or even world-wide dimensions. Ecological and population problems are troubling society, and it is impossible to predict future developments in this respect. Even though the nuclear arms race may have been avoided, the unmonitored spread of nuclear weapons over a large number of countries can only increase the risk of their being used, even if in limited neighbourly conflicts. The international community maintains its dynamics, and the search for a golden balance safeguarding

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- 1 *B. Boutros-Ghali*, *An Agenda for Peace*, p. 41, paras. 9-11: "Authoritarian regimes have given way to more democratic forces and responsive Governments....We have entered a time of global transition marked by uniquely contradictory trends..."
 - 2 In contrast, during the 1950s, efforts were made to shift authority from the Security Council to the General Assembly of the United Nations due to the lack of unanimity and the right of *veto* of its Permanent Members; cf. "*Uniting for Peace*" Resolution of the General Assembly on 3rd November 1950: "[I]f the Security Council, because of lack of unanimity of the Permanent Members, fails to exercise its primary responsibility for the maintenance of international peace and security"; as recorded by *W. Friedmann*, *The Changing Structure of International Law*, pp.32-32, where he found at the time, in 1964, that: "...The vote of Mali, Yemen, Honduras or Cyprus is now a more effective factor in the shaping of international affairs through United Nations actions than was envisaged in the Charter..." (p.33).

peace is its apparent concern.³ Regrettably, however, fairness is often neglected whilst a multifarious split amongst the members of the international community is perpetuated.

In the context of this ongoing course of history, international law is agonisingly seeking its own role, the role of a concrete system of rules governing the behaviour of nations, with the aim of achieving the desired stability.⁴ It preserves the hope that in the end reasonable, just and fair conduct will prevail in the international game of domination over national, local and regional interests, and that it will gradually arm the society of nations either with effective methods of persuasion and negotiation, or with

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- 3 *F. Fukuyama*, *The End of History and the Last Man*, writes on p.51: "... and if we are now at a point where we cannot imagine a world substantially different from our own, in which there is no apparent or obvious way in which the future will represent a fundamental improvement over our current order, then we must also take into consideration the possibility that History itself might be at an end." Military confrontations, however, and pessimism for international peace continue, history follows its own course, despite signs of some final and permanent images on the international scene.
 - 4 *E. Roukounas*, (Gr.) *International Law*, vol.1, p.8, and *D.S. Constantopoulos*, (Gr.) *International Public Law*, vol.1, p.15, concerning the historical development of international law. With regard to the particularities of international law, see i.a., *A. Verdross - B. Simma*, *Universelles Völkerrecht*, 3rd ed., p.33; *W. Friedmann*, *op.cit.* p. 81, writes: "The question how the legal sovereignty of the national State, reaffirmed by the United Nations Charter, can be reconciled with the minimum needs of international order and co-operation in our time, is at the root of the continuing debate on the "reality" of international law. This is more than a matter of theory. It is a matter of deep and intimate concern to the peoples of the mid-twentieth century, for whom the difference between a fictitious system of international law, and one that is "real", i.e., that imposes order and restraint upon the states, as the predominant, though no longer the only, subjects of international law, may mean the difference between life and death."; *N.Q. Dinh-P.Dailler-A.Pellet*, *Droit International Public*, 2nd ed., pp.78ff., which includes a detailed discussion of the various theories on the nature of international law; *R.Higgins*, *Problems & Process*, *International Law* and how to use it, pp.2 ff. At variance with the notion of international law as "rules" Higgins describes it as "a process".

measures to impose sanctions and solutions.⁵ The system of practical application of recognised rules of international law is unfortunately incomplete. There is no permanent international tribunal vested with *ipso jure* powers of enforcement or execution of its judgments. Even in cases of flagrant violations of humanitarian law sanctions depended on *ad hoc* tribunals created by the “victors” against the “vanquished”. The Nuremberg and Tokyo trials are an example in point. For instance, the diplomatic procedures laid down in the Geneva Conventions leave much to be desired. Positive recent developments seem, however, to have emerged: the International Tribunal on Yugoslavia and the Treaty on the Establishment of the International Criminal Tribunal signed in Rome as recently as the 18th July 1998. International law is also in an ongoing process of evolution.⁶

The basic principles of international law, which have been shaped in the course of many centuries, some of them having assumed the character of *jus cogens*, were codified after the traumas of the First and Second World Wars, initially in the Covenant of the League of Nations, and anew in the United Nations Charter.⁷ They were more generally recognised by other national, regional and international organisations as principles of law, which had emerged from conflicts and accords. International law has always been based on the cardinal principle of independence and sovereignty of those

5 *H. Kelsen*, *Reine Rechtslehre*, 2nd ed. repr., p.321 ff., at p.329 concludes that international law is moving towards the creation of central bodies for the production and enforcement of its legal rules and this tendency “...zielt auf die Ausbildung einer internationalen Gerichtsbarkeit.”; *Chr. Gray*, *Judicial Remedies in International Law*, which contains an analysis of current judicial procedures in international law; *A.Cassese*, *International Law in a Divided World*, pp. 13-14.

6 Cf. *R. Higgins*, *Problems and Process*, p.16: “...there are very few today who believe that international law cannot exist without sanction, or that sanctions predicate the existence of particular norms of international law....”.

7 Cf. text of the UN Charter in *I. Brownlie*, *Basic Documents in International Law* (Documents) 3rd ed., pp.1 ff.; *D.S. Constantopoulos*, (Gr.) *op.cit.*, vol. III, pp.41 ff.

states which are its subjects and on their sovereign equality;⁸ “real”, not only “formal”.⁹ An equality which, however, is often disregarded with the result that the weaker, smaller states become “less equal”.

A report of the Secretariat of the Commonwealth published in 1985, under the title *Vulnerability: Small States in the Global Society*,¹⁰ underlines the vulnerability of small nations, and their exposure to multiple dangers. Particular emphasis is placed on the threats faced by such small states in relation to their territorial and political security. With regard to Cyprus, the report includes the following comment:

“It is in many respects a classic case of a small state defenceless before a powerful interested neighbour and caught up helplessly in the power game of major political and military forces in the world.”¹¹

Cyprus is indeed included in this category of “small States”, a country with a population of less than one million, which has faced, and regrettably continues to face, core issues of foreign intervention and internal conflict. Cyprus’ geopolitical position and its small size have marked its historical path from ancient times to its present calamity.

It is apparent that a Gordian knot exists between internal difficulties and the external security of small states. Internal conflict tends to facilitate foreign interventions. This is precisely the case in Cyprus, which is a highly typical example of this kind of small States. The lack of convergence between the political aims and ambitions of the Greek majority (80%) and the

8 UN Charter, Article 2.1; *J.L. Brierly, The Law of Nations*, 6th ed., by Sir H. Waldock, pp.130-133; *G. Schwarzenberger, International Law*, vol. II, International Courts I, pp.114-116; *N.Q. Dinh, op.cit.*, pp.364-365; *A. Cassese, op.cit.*, pp.129-131; *F.H. Hinsley, Sovereignty*, 2nd ed., pp.195 ff. ; cf also the UN Declaration on Friendly Relations and Co-operation among States, Annex to Res. 2625 (XXV) of the UN G.A. of 24 October, 1970, in *I.Brownlie, Documents*, p. 43.

9 *D. Carreau, Droit International*, 4th ed., pp.27-28.

10 Report of a Commonwealth Consultative Group, Commonwealth Secretariat, 1985, London.

11 *Ibid.* p.33.

Turkish minority (18%) and their differences in general, which in these particular circumstances have been exacerbated by external factors, and, above all, by colonial policies, have all come together under the constitutional structure of 1960, which was based on the Zurich-London Agreements. The end result is that Cyprus has become the chief target of a permanent, external threat. This threat materialised following a politically insane *coup d'état*, the aim of which was to overthrow the then legitimate government. It was short-lived. That *coup* only managed to provide the pretext for the military invasion of Cyprus by Turkey in 1974. Since then, 36.4% of the territory of the Cypriot State has been under foreign military occupation.

The search for a solution to the Cyprus problem has proven long, difficult and, thus far, fruitless. It has gone through consecutive negotiation phases in which a labyrinth of proposals and counter-proposals have been tabled, regarding which more will be said later.¹² The interplay of internal constitutional problems and the international aspects of the conflict create enormous complications, and the legitimacy of the various issues seems to be disregarded among the coefficients of international policy, the strategies of interests, and the search for political predominance on the international or regional stage.

Although Cyprus will always be a small State, vulnerable in the interaction of major powers – due mainly to its geopolitical position and its size – it could become a stronger and a more compact small power if it could restore and maintain (a) the coherence and continuity of its statehood and (b) its internal constitutional unity with a common allegiance of all its citizens to their State, despite the different ethnic background of its two communities;

12 J. Pérez de Cuéllar, *Pilgrimage for Peace*, pp. 215-236. The author as Secretary General of the United Nations and previously as Special Representative of the Secretary General in Cyprus, had “more involvement with the situation in Cyprus than with any other issue”. He says, at p. 215, “...I would characterize the Cyprus problem as a maze in which each promising pathway leads back to the starting point....” In another passage he proceeds with a most frank statement “...the present status quo in Cyprus is likely to endure at least until there is a change in the Turkish Cypriot leadership and quite probably into the next century”.

in other words, if it were possible to bring about the necessary common commitment of all citizens to their common home, their common legal order, transcending their ethnic differences. Simultaneously, concerning the international aspects of the Cyprus problem, external threats from immediate neighbours can be reduced, if not completely eliminated, through efforts for closer European unification, since Cyprus, historically and politically, clearly belongs within Europe. Consequently, the importance of Cyprus's accession as a full member of the European Union, together with other small European nations like Luxembourg and possibly Malta, becomes apparent. Negotiations for the accession of Cyprus to the European Union have already started.¹³

The "vulnerability" of small States and the study and analysis of the dangers to which they are exposed and all their particularities in general, prove that a more cohesive form of government, unified to the greatest possible extent, is necessary if dependence on and influence by external forces is to be avoided. Such a cohesive form of government is also essential in order to counter the threat of dismemberment through the inducement of a climate of partition or secession instigated by outside powers. Indeed under the particular conditions prevailing in Cyprus, it is clear that a "federal solution" would not be exactly ideal for Cyprus. Such a solution is, perhaps, decidedly unsuitable for a small and vulnerable island-state. Since, however, such an arrangement seems to have been universally adopted in principle, as the only "feasible" solution for the constitutional re-structuring, which can be accepted for Cyprus, caution should be exercised in seeking ways to protect it from the difficulties which lie in ambush in the functioning of federal systems in general.

None of the small States of the world, including Cyprus, have adopted a federal system to its fullest extent, but they have sought, like the Fiji islands and Mauritius, to merge their national differences in a unitary state. These were also the basic characteristics of the Cyprus Constitution of 1960. Admittedly, evidence of constitutional practice in small states demonstrates that federal solutions are not favoured. The reasons are obvious; for the sake of international peace, secessionist tendencies should not be encouraged,

13 Cf. Chapter XIII *infra*.

nor should the possibility of fragmentation of such small states into even smaller and more fragile units be increased. It is believed that the most recent developments in Bosnia-Herzegovina or those in Kosovo do not upset this proposition.

In view of the above general observations, the demands of the Turkish Cypriot community in Cyprus, based on the support of a foreign State's military might, for a completely separate national identity, separate "sovereignty" and a separate right to "self-determination", are legally and politically fallacious and potentially highly precarious for both domestic and international peace. Recent developments in the Balkans confirm this contention. The legal aspects of the Turkish Cypriot demands will be analysed later. It must, however, also be recognised that both the Turkish Cypriot and the Greek Cypriot communities have a legitimate interest to strictly secure and guarantee human and political rights within the framework of a truly democratic system of government in their country.

Indisputably the small state of Cyprus is entitled to have its unity and territorial integrity restored in accordance with the United Nations Charter. A solution must, hopefully, reaffirm the applicability of international law in the case of Cyprus and at the same time set right the anomalous situation brought about by the 1974 Turkish invasion. The aforesaid Commonwealth Secretariat Report goes on to say about Cyprus:

*"... Turkey's continued occupation of Cypriot territory after the crisis was resolved, despite United Nations condemnation, demonstrates that once a violation of territory is allowed to become entrenched it is not easy to marshal sufficient political pressure through the normal United Nations channels to compel a recalcitrant and military powerful nation to withdraw, unless such pressure has the support of the Security Council, and particularly the super powers."*¹⁴

¹⁴ *Ibid.* p.71.

Experience, for example, from the Iraq-Kuwait crisis,¹⁵ and the military involvement of the international community, headed by the United States, proves conclusively the truth of the above.

On the occasion of that particular case the then President of the USA, George Bush stated that:

*“what is at stake is more than one small country; it is a big idea: a new world order - where diverse nations are drawn together in a common cause, to achieve the universal aspirations of mankind; peace and security, freedom and the rule of law.”*¹⁶

These same principles of the international rule of law should also prevail for Cyprus and a resolute process of reversing the illegal results of the 1974 invasion should be set in motion. Support cannot be obtained, nor solutions prescribed on a correct basis under existing international law, if the starting point is the recognition of the “national aspirations” of the Turkish Cypriot leadership, that is their secessionist position cultivated by Turkey. Those would lead to the dismemberment of the Republic of Cyprus. Also the premise that the “federation of Cyprus” must be established from the “union” of two “existing entities” finds no legal justification. What should really happen is that the Cypriot communities, its people, ought to rejoin in a small federal State of Cyprus, which will be restructured wisely and carefully,

15 *Chr. Greenwood*, *New World Order or Old? The invasion of Kuwait and the Rule of Law*, in 55 MLR (1992), pp.153ff., who considers that the Kuwait war as a “success of international law” at pp.177-178 he concludes “... in reality, the conflict in the Gulf was not so much about the creation of a new world order as about saving one of the most important, if fragile, parts of the legal order created in 1945. In that respect it must be judged to have been a success.” However the article also contains the following at p.178: “To its defenders this operation was a triumphant vindication of the rule of law... Critics, however, saw the conflict as a cynical war for oil, fought almost entirely to serve the self-interest of the West with the Security Council being manipulated into giving consent to a military campaign over which it was then deprived of any control, not even being kept informed about the conduct of operations.”; Cf. also *Chr. Dominicé*, *La Sécurité Collective et la Crise du Golfe*, in the EJIL 2, 1991, p.85, at pp.105-108;

16 *President Bush*, *State of the Union Speech*, 19th January, 1991.

and will continue to be the same entity, subject of international law. The continuity of its statehood under international law must not and cannot be put in jeopardy.

Such a restructuring would obviously mean the transformation of the existing State from a unitary one, according to the 1960 Constitution, to a federal State and devolution of powers to its federated provinces. If any other method is adopted it would lead to an unacceptable fragmentation of the territorial integrity and unity of the State of Cyprus.¹⁷ Most importantly, however, redress must be found for the illegal invasion and continued occupation of territories of the Cyprus Republic. This latter proposition for redress is squarely founded on and supported legally and politically by the resolutions of the United Nations, the recognised principles of international law and the decisions and declarations of other international *fora* such as the European Union, the Commonwealth, the Non-Aligned Movement, and recently by the findings of the International Conference in Geneva on former Yugoslavia and the *Badinter Commission* opinions.¹⁸

The Cyprus Government has the legal and political duty to actively hinder any efforts leading to the consolidation of a purported “secessionist unit”, fomented by external military support, on its territory. Particularly, since such a phenomenon has also been condemned so emphatically by the international community; that same international community, in whose ranks can be found so many small States, which under international law legally enjoy sovereign equality with all other nations of the world. At the same time the legitimate Government and the sovereign people of Cyprus cannot be forced to accept any effort aimed at any form of “de-recognition” of their State.

Within the context broadly described above, it should be emphasised that the Cyprus problem is not merely a matter of inter-communal conflict. It has become a *par-excellence* problem of international law, particularly after the 1974 military invasion, which defied both the United Nations Charter and all recognised principles of international law. No solution can possibly

17 J. Dugard, *Recognition and the United Nations*, p.11.

18 Cf. e.g. Report of the S.G. of the UN, S/25221, 2.2.1993, and its Appendices.

be formulated solely on the basis of internal constitutional arrangements. It must be coupled with the implementation of precisely those recognised principles of international law. In this respect what *G. Schwarzenberger*¹⁹ points out under customary international law should be borne in mind: that if an armed confrontation ends with the total subordination (*debellatio*) of one of the warring parties in an armed conflict, the legal personality of the defeated state is destroyed. The victor may, in this case, annex the territory of the defeated state and consider it as *territorium nullius* or establish a new subject of international law in the territory of the conquered nation. If, on the other hand, the conquered nation should survive as an international legal entity, the war usually ends through an international peace treaty. In the absence of such a treaty, the victor either continues his military operations until the full collapse of the other state, or continues to occupy it indefinitely. Tensions and complications are avoided if the conquered side is pressured and persuaded to accept limited powers, which will also serve the aim of preserving the domination of the victor. However, *Schwarzenberger* seems to indicate that even such a compromise does not automatically transform the occupation from a temporary situation to legal permanence, nor does it alter the statehood of the defeated nation under international law.

The analogy of these thoughts with the current situation in Cyprus is obvious, but the above-mentioned framework of customary international law is, of course, outdated, in that it refers to periods probably prior to this century.²⁰ Since then catalytic events have taken place such as world wars, giving rise to the parallel formation of modern and codified principles of international law, like the Statute of the League of Nations in 1919, the *Kellogg-Briand Pact* in Paris in 1928 and the United Nations Charter. This last world code, the United Nations Charter, stipulates that its main aim is to preserve international peace and security and stresses emphatically the principle that:

19 The Frontiers of International Law, p.26.

20 *Nguyen Quoc Dinh*, 5th ed. (P.Daillier-A. Pellet) Droit International Public, p. 511: "En principe, la conquête a cessé d'être un mode légitime d'acquisition de territoires depuis l'interdiction générale du recours à la force...."

*“all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”*²¹

Until as recently as 1989, it was accepted that the cold war division of states into two main camps impacted on the development of international relations according to the socio-political structure and philosophy of these two basic groups of states. Today, we are steadily advancing towards a global uniformity of international relations and international law. The “globalisation” and enforcement of the international Charter can only serve to further world stability and lead to a consistent interpretation of its principles, ultimately creating a uniform ideological denominator.

Through time, the Cyprus problem has traversed two periods of progression and implementation of international law: the later part of the “cold war” period – 1974 to 1989 – and its new era – post 1989 – now emerging, of a potentially uniform and homogenous development of its rules. The “western” approach and philosophy determine this new era almost exclusively. Within this context, those aspects of the Cyprus problem will be analysed which, in light of contemporary international law, must be considered in order to elucidate the path and enhance the hope of arriving at a solution in the form of an international treaty.

J. Pérez de Cuéllar, former Secretary General of the United Nations, had this to say:

*“The Cyprus problem would seem at first glance to be easily susceptible to a reasonable solution. It should be a matter of finding the right formula that would afford the Turkish Cypriot minority – about 14 per cent of the population – a satisfactory degree of cultural and political autonomy and a proportionate share of the island’s territory while preserving the integrity of a federated Cypriot state government, in which both the Greek and the Turkish Cypriots would participate...”*²²

21 Art. 2(4) of the UN Charter.

22 J. Pérez de Cuéllar, *op.cit.* p. 215

If one looks at the text of the latest Resolution of the Security Council on Cyprus the issues involved are easily discernible. It is probably worth while reciting here some of its main provisions:

“Reaffirming all its earlier resolutions on Cyprus, Calling once more upon all States to respect the sovereignty, independence and territorial integrity of the Republic of Cyprus and requesting them, along with the parties concerned, to refrain from any action which might prejudice that sovereignty, independence and territorial integrity, as well as from any attempt of partition of the island or its unification with any other country...

6. Reaffirms that the status quo is unacceptable and that negotiations on a final political solution of the Cyprus problem have been at an impasse for too long;

7. Reaffirms its position that a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising of two politically equal communities as described in the relevant Security Council resolutions, in a bi-communal and bi-zonal federation, and that such settlement must exclude union in whole or in part with any other country or any form of partition or secession;... ”²³

The Cyprus problem is, therefore, predominantly not a problem of internal conflict, of a civil war. *Th.M. Franck*, accurately describes it in a nutshell in two passages of his recent book:

“...In the context of a civil war, where an exchange of populations and territory has already taken place (now usually dubbed ‘ethnic cleansing’) the minority, having carved a de facto but unrecognised state for itself, is usually reluctant to be joined in a federation with the adversaries against whose rule they have revolted. This unwillingness will be reinforced if the minority is in occupation of territory geographically adjacent to another state ruled by ethnic cohorts. This is the geopolitical

23 SC Res. 1217 (1998), 22 12.1998, taken together with Resolution 1218 of same date. In the meantime another pair of SC Resolutions 1250 (1999) and 1251 (1999) were taken in June 1999.

*position of the Turks in Cyprus and the Serbs of Bosnia and Croatia. It complicates the Secretary-General's task because, as executive head of an organisation of sovereign states, he cannot be truly neutral about a non-negotiable principle of the organisation: the inviolability of boundaries, especially in the face of de facto changes wrought through the use of force. His leeway for good offices here is sharply circumscribed, making success especially elusive..."*²⁴

It is indeed the illegal use of force by a third State that demarcates the essential difference of Cyprus from other cases of purely internal conflicts. *Th. M. Franck* seems to acknowledge this in a later passage where, in dealing with the question of the use of force in self defence, says:

*"...The United Nations responded by rejecting the Turkish argument and calling on states not to recognise the resulting Turkish Cypriot state, in an extension of the principle earlier established by the Security Council which not only prohibits the acquisition of territory through the threat or use of force but also forbids states to recognise such a 'poisoned fruit' of aggression..."*²⁵

In order to understand fully the Cyprus problem a brief descriptive historical overview is essential. Furthermore, it will be necessary to refer to texts of relevant international pronouncements, such as resolutions of the United Nations bodies and other international institutions, as well as the positions taken by the two sides, that is that of the legitimate Government of the Republic of Cyprus and the Turkish side. The latter term includes both Turkey as the occupying power and the purported secessionist regime established in the area placed under Turkish occupation. Reference will also be made to the various sets of ideas and proposed plans for a solution that have been placed on the negotiating table under the auspices of the United Nations.

²⁴ *Th.M. Franck*, *Fairness in International Law and Institutions*, p.194.

²⁵ *Ibid.* p. 271.