

The Legal Background of the Turkish Republic of Northern Cyprus: The United Nations Security Council Resolution 186

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Abstract

The United Nations (UN) Security Council resolution 186 adopted on 4 March 1964 was misunderstood as the UN's recognition of the effective control of the Greek Cypriot Community over the establishments of the Republic of Cyprus. However, analysis of this resolution shows that it gave a binding decision on the restoration of the 1960 Constitution to the Republic of Cyprus under the effective control of the Greek Cypriot Community (CRUGC). Namely, the obligation to give back the right to external self-determination of the Turkish Cypriot Community in their partnership Republic. The Republic of Cyprus was formed in accordance with the UN General Assembly resolution 1287 of 1958 following the decolonization of the island. Together with the Greek Cypriot Community, the Turkish Cypriot Community used their recognized right to external self-determination given by the UN General Assembly with the foundation of the Republic in 1960. This right afforded the Turkish Cypriots was rescinded in 1963 with the Thirteen Amendments to the Cyprus Constitution by the Greek Cypriot Community. The obligation given to CRUGC by resolution 186 was not fulfilled until 1983 with the establishment of the Turkish Republic of Northern Cyprus (TRNC). Security Council decisions bind not only member states, but also the Council itself. When the UN Security Council considered the TRNC as legally invalid according to resolution 541 of 1983, it did not meet its obligation of due diligence control for the realization of the that given to the CRUGC by resolution 186. Decolonization is based on the principle of "leaving no one behind" for the right of the peoples to external self-determination under Article 73 of the UN Charter. Once the external right to self-determination is realized by decolonization, it becomes a *jus cogens* norm, that is, an inalienable right on which no derogation is permitted. As the Security Council did not fulfil its own responsibility for its resolution for the protection of this absolute right of the Turkish Cypriot Community, the Turkish Cypriot Community has a legal right to form its own state under the "leaving no one behind" principle of the UN Charter.

Key Words: Cyprus, Decolonization, Self-Determination, *Jus Cogens*, United Nations Security Council Resolution 186.

Kuzey Kıbrıs Türk Cumhuriyeti'nin Hukuki Temeli: Birleşmiş Milletler Güvenlik Konseyi 186 Sayılı Kararı

Özet

4 Mart 1964'te kabul edilen Birleşmiş Milletler (BM) Güvenlik Konseyi'nin 186. Sayılı kararı ne yazık ki yanlış bir şekilde bugüne kadar Kıbrıs Rum toplumunun, BM tarafından Kıbrıs Cumhuriyeti kurumları üzerindeki etkin kontrolünün tanınması olarak anlaşılmıştır. Güvenlik Konseyi'nin 186 nolu kararı incelendiğinde görülmektedir ki, ilgili karar 1960 Anayasasının yeniden işlevsel olması konusunda Kıbrıs Rumlarının etkin kontrolü altındaki Kıbrıs Cumhuriyeti'ne (CRUGC) Kıbrıs Türk toplumunun, ortak Kıbrıs Cumhuriyeti'ndeki dışsal kendi kaderini tayin hakkını iade etmesi konusunda bağlayıcı bir karar verdiği ortaya çıkmaktadır. Kıbrıs Cumhuriyeti, Dekolonisasyon üzerine BM Genel Kurulu'nun 1958 tarihli 1287 sayılı kararına göre kurulmuştur. Kıbrıslı Türk toplumu, BM Genel Kurulu tarafından tanınmış dışsal kendi kaderini tayin hakkını, Kıbrıs Rum toplumu ile birlikte Kıbrıs Cumhuriyetini kurarak kullanmıştır. Kıbrıslı Türklerin, uluslararası tanınmış dışsal kendi kaderini tayin hakkı, 1963 yılında Kıbrıs Rum Toplumunun Kıbrıs Anayasası'nda gerçekleştirdikleri On üç Değişikliği ile ortadan kaldırılmıştır. CRUG'ye Güvenlik Konseyi'nin 186 sayılı kararı ile verilen yükümlülük, Kuzey Kıbrıs Türk Cumhuriyeti'nin (KKTC) 1983'te kurulduğu tarihe kadar asla yerine getirilmemiştir. Güvenlik Konseyi kararları sadece üye devletleri değil, kendisi için de bağlayıcıdır. BM Güvenlik Konseyi, KKTC'ni yasal olarak geçersiz kabul ettiği 1983 yılındaki 541 sayılı kararını verir iken, CRUGC'ya 186 sayılı kararı ile vermiş olduğu yükümlülüğü yerine getirip getirmediğine ilişkin durum tespitini yapmamıştır. Dekolonisasyon, BM Sözleşmesinin 73. maddesi çerçevesinde halkların dışsal kendi kaderini tayin hakkı "kimseyi geride bırakmama" ilkesine dayanmaktadır. Dekolonisasyon sürecinde bir kez, bir halk kendi kaderini tayin hakkını kullanır ise, bu hakkın bir "jus cogens norm" olarak vazgeçilemez hak olduğu kabul edilir ve hiçbir değişikliğe izin verilmez. Güvenlik Konseyi, Kıbrıs Türk Toplumunun vazgeçilemez dışsal kendi kaderini tayin hakkını korumak konusunda kendi sorumluluğunu yerine getirmediği için Kıbrıs Türk Toplumunun BM Sözleşmesi'nden kaynaklanan "hiç kimseyi geride bırakmama" prensibi çerçevesinde kendi devletini korumak için yasal hakkı mevcut bulunmaktadır.

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Anahtar Kelimeler: Kıbrıs, Dekolonizasyon, Kendi Kaderini Tayin Hakkı, Jus Cogens, Birleşmiş Milletler Güvenlik Konseyi Kararı 186.

Introduction

The General Assembly of the UN placed Cyprus on the decolonization list with its resolution 66 (I) on 14 December 1946. On 5 December 1958, with the resolution 1287, the General Assembly took its last decision on the decolonization problem of Cyprus. In resolution 1287, the General Assembly expressed: "its confidence that continued efforts will be made by the parties to reach a peaceful, democratic, and just solution in accordance with the Charter of the United Nations".

With this resolution, the General Assembly of the UN capacitated not only Turkey, Greece, and the United Kingdom (UK) for a peaceful solution to the decolonization problem of Cyprus within the principle of *uti possidetis*; but also to the Turkish and the Greek Cypriot Communities by referring to the *parties*.² After the resolution 1287, Greek and Turkish Prime Ministers met in Zurich in February 1959. They agreed on a draft plan for the independence of Cyprus under a Greek Cypriot and Turkish Cypriot president and vice-president respectively. In Zurich, the parties adopted three main agreements (1) The Basic Structure of the Republic of Cyprus, (2) The Treaty of Guarantee between Greece, Turkey and the UK and Cyprus, (3) The Treaty of Alliance between Cyprus, Turkey and Greece.³ The Treaty of Guarantee and the Treaty of Alliance were signed on the 16 August 1960, together with the Treaty of Establishment of the Republic of Cyprus. The Republic of Cyprus was established as a bi-communal state based on the partnership between Turkish and Greek Cypriot Communities with the authorization of the UN General Assembly resolution 1287.

Thus drafted, the Constitution was signed on 16 August 1960 by the then Governor of Cyprus on behalf of the UK; by representatives of the Governments of Greece and Turkey; by Archbishop Makarios on behalf of the Greek Cypriot Community; and Dr Küçük on behalf of the Turkish Cypriot Community. At the same time, three treaties were signed by the same parties: the Treaty of Establishment of the Republic of Cyprus between the UK, Greece, Turkey and the Republic of Cyprus; the Treaty of Guarantee between the same parties; and the Treaty of Alliance between Greece, Turkey and the Republic of Cyprus. The Constitution and all these Treaties were put into force on the same date. When the five-party Treaties were signed, the UK transferred sovereignty to the two communities on the island. Thus, the Republic of Cyprus came into being as an independent partnership state. Under Article 181 of the Constitution, the two Treaties would "have constitutional force". Article 182⁴ stipulates that these are basic articles of the Constitution, and "cannot in any way be amended whether by way of variation

² Prof. Dr. h.c Mehmet Şükrü Güzel, The Doctrine of Necessity and the Thirteen Points Amendments to the Cyprus Constitution, last modified May 15, 2020, https://www.academia.edu/38979237/THE_DOCTRINE_OF_NECESSITY_AND_THE_THIRTEEN_POINTS_AMENDMENTS_TO_THE_CYPRUS_CONSTITUION.

³ Samuel Kwaw Nyameke Blay, "Self-Determination in Cyprus: The New Dimensions of an Old Conflict", *Australian Year Book of International Law*, 10, 72, V.10: 72 (1983): 72.67-100 (Blay, 1983, p.72)

⁴ Article 182 of the constitution states that there are certain fundamental articles, which have been incorporated from the Zurich-London Agreements of 1959. These fifty-five paragraphs (Annex III) deal with the basic structure of the Republic and "cannot in any way be amended, whether by way of variation, addition or repeal." Any other provision of the constitution, however, can be amended "by a law passed by a majority vote comprising at least two-thirds of the total number of Representatives belonging to the Greek Community and at least two-thirds of the total number of the Representatives belonging to the Turkish Community.

addition or repeal".⁵ Articles 149, 180, 181 and 182 of the Constitution give the structure of an international treaty by linking the obligations to the Zurich and London Agreements.

The communal partnership and, hence, the Constitutional arrangements at the foundation of the Republic, lasted only three years. The 1960 Constitution of the Republic of Cyprus was abrogated in November 1963 by the then President of the Republic, Archbishop Makarios, who tried to create a unitary Greek Cypriot state based on a majority rule, in which Turkish Cypriots would be considered a minority in the same way as the Turkish minority in Western Thrace.⁶ The Thirteen Points proposed by Archbishop Makarios in the name of the Greek Cypriots on 30 November 1963 undermined the principles of bi-communality and were not accepted by the Turkish Cypriot members of the government.⁷ Turkish Cypriots filed a lawsuit against the Thirteen Points in Supreme Constitutional Court of Cyprus (SCCC)⁸. Archbishop Makarios stated that he would not comply with whatever decision the SCCC made, and defended his amendments as being necessary "to resolve constitutional deadlocks" as opposed to the stance of SCCC. On 25 April 1963, SCCC decided that Archbishop Makarios' the Thirteen Points were illegal. On 21 May, the President of SCCC resigned due to Makarios' disobedience to the laws of SCCC, and thereby disobedience to those of Cyprus. On 15 July, Archbishop Makarios ignored the decision of SCCC. On 30 November, Archbishop Makarios legalized the Thirteen Points.⁹

The situation gradually deteriorated, and disturbances and communal fighting erupted in December 1963 after the *de facto* change of the Constitution in 1963 by the Greek-Cypriot President Archbishop Makarios beginning with the Greek Cypriot Community's attack on the Turkish Cypriot Community. 21 December 1963 is known and remembered throughout Cyprus history, in particular, for the Turkish Cypriot Community as the Bloody Christmas or the Black Christmas because of the EOKA gun-men's organized attacks on the Community.¹⁰

When the Security Council took up the question on 27 December with the demand of CRUGC, the representatives of Cyprus, Turkey and Greece were invited to participate in the debate without the right to vote. The Greek Cypriot representative said that the "root of the trouble" lay with the Constitution of Cyprus. The Turkish representative added that on the night of 21-22 December, a serious campaign had been undertaken to annihilate the Turkish

⁵ "Cyprus (Historical Overview)", Republic of Turkey, Ministry of Foreign Affairs, accessed May 15, 2020, http://www.mfa.gov.tr/cyprus-_historical-overview_.en.mfa Cyprus.

⁶ T. W. Adams, "The First Republic of Cyprus: A Review of an Unworkable Constitution", *The Western Political Quarterly*, 19, no. 3 (September 1966): 489, pp. 475-490, p. 489.

⁷ Olgas Campbell-Thomson, *Pride and Prejudice: The Failure of UN Peace Brokering Efforts in Cyprus*, accessed, May 15, 2020, https://www.researchgate.net/publication/291165851_Pride_and_Prejudice_The_Failure_of_UN_Peace_Brokering_Efforts_in_Cyprus.

⁸ The Supreme Constitutional Court (Articles 133-151 of the Constitution of Cyprus) The Constitutional Court is composed of a Greek, a Turkish, and a neutral judge, appointed jointly by the president and the vice-president. The Greek and Turkish judges are appointed "from amongst lawyers of high professional and moral standard." The neutral judge, ex officio president of the Court, is appointed for a six-year period and is always from outside the island. The Supreme Constitutional Court passes on any controversy arising from, or relating to, an interpretation or violation of the constitution. Particularly important are disputes and matters relating to the separation of powers established under the constitution, and on these matters the highest organ of the judiciary must pass. No legal action, which would alter conditions of service in a disadvantageous manner, may be taken against any member of the judiciary as a result of a legal decision performed in the line duty.

⁹ History North Cyprus, accessed May 15, 2020, <http://www.studyinnorthcyprus.com.ng/index.php/study-in-northcyprus/history-of-north-cyprus.html>.

¹⁰ Ulvi Keser, "Bloody Christmas of 1963 in Cyprus in the Light of American Documents", *Journal of Modern Turkish History Studies* 26 (Spring 2013), 265-266.

population of Cyprus. The Security Council decided to be reconvened when and if it was considered appropriate by the members.¹¹

To find a solution for the existing dangerous position in the island as the reason of the Thirteen Amendments to the Cyprus constitution, on 15 January 1964, a conference was opened in London in which representatives of Cyprus, Greece, Turkey and the UK participated. The conference did not produce any agreement. The Turkish Cypriot leaders requested the geographical separation of the two main communities. In response to a UK suggestion that its force in Cyprus should be replaced by military contingents from member countries of the North Atlantic Treaty Organization (NATO) and other countries, the CRUGC insisted that any peacekeeping force should come under the direct control of the UN, and that the whole issue should be brought before the Security Council.¹²

A request made on 15 February, both by the UK and CRUGC requested an urgent meeting of the Security Council and debates in the Security Council were held between 18 February and 4 March 1964 and led to the adoption on 4 March of resolution 186.

During the debates on 18 February, the UK representative reminded the Security Council that on 16 August 1960 Cyprus was a British Crown Colony¹³. He added that the Constitution of Cyprus would provide an instrument that would enable the two communities to sink their previous differences in a common concern for the future of Cyprus and to work harmoniously together towards this end.¹⁴ The UK representative added that at the London Conference in December 1963, the representatives of Greece, and Turkey and of the two Cypriot communities had stated their positions on the problem.¹⁵ With this, the UK verified that the dispute was between the two Cypriot communities, not between the CRUGC and the Turkish Cypriot Community during the Security Council debates.

The CRUGC representative opposed the validity of the Zurich and London Agreements and mentioned Greek Cypriots opposition to the validity of the treaties.¹⁶

The representative of Turkey stated that Zurich and London treaties and the foundation articles of the Constitution represented a compromise formula acceptable to all the parties and constituted the very *raison d'être* of the independence of Cyprus. He added that the independence of Cyprus was in complete accord with resolution 1287 of the UN General Assembly resolution 1287¹⁷. The representative of Turkey mentioned that in November 1963, Archbishop Makarios submitted to the Vice-President, Dr Fazıl Küçük, and to the three guarantor Powers, a memorandum in which he put forward thirteen proposals for amending the basic articles of the Constitution. The proposals were designed to alter radically the present status of the island and to take away from the Turkish Cypriot Community the rights which were considered as essential for its protection by the Zurich and London Agreements. The Turkish Cypriot Community indicated that it could not accept such proposals which would endanger its very existence. The Turkish Government, as one of the guarantor Powers, also made known its objection to the proposals of Archbishop Makarios.¹⁸

¹¹ Year Book of the United Nations 1963, (New York, UN Office of the Public Information, 1964) 51-52.

¹² Year Book of the United Nations 1964, (New York, UN Office of the Public Information, 1965) 151.

¹³ Security Council Official Records, 1095th Meeting, 18 February 1964, S/PV.1095, 8, paragraph 34.

¹⁴ Security Council Official Records, 1095th Meeting, 18 February 1964, S/PV.1095, 10, paragraph 41.

¹⁵ Security Council Official Records, 1095th Meeting, 18 February 1964, S/PV.1095, 12, paragraph 52.

¹⁶ Security Council Official Records, "S/PV.1095", 18 paragraph 99.

¹⁷ Security Council Official Records, "S/PV.1095", 34, paragraph 192-193.

¹⁸ Security Council Official Records, "S/PV.1095", 34, paragraph 199.

Under the rule of procedure 39, Mr Rauf Denktash, Chairman of the Turkish Communal Chamber in Cyprus, was invited by the President to speak in the Security Council. Mr Rauf Denktash stated that when the Greeks took up arms in 1955, it was not for independence, which was crucial for the Security Council and the UN, but for the union of Cyprus with Greece. Therefore, it was inevitable that the Turks would oppose the Greeks because the former would be taken from the rule of one colony to another. This opposition brought violence. Turks reacted, inter-communal relations became estranged, bitter and full of mistrust and animosity. The Cyprus question came before the United Nations several times during 1966 and 1958.¹⁹ The conflict arose because the Greeks wanted union and offered the Turkish Cypriots the position of a minority. The Turkish Cypriots refused this and demanded union with Turkey, or at least partition.²⁰

On 2 February, the representative of Brazil in the name of the delegations of Bolivia, Brazil, Ivory Coast, Morocco, and Norway introduced the draft resolution. The representative of Brazil expressed that the situation regarding Cyprus was likely to threaten international peace and security and might further deteriorate unless prompt measures were taken to maintain peace and to seek out a durable solution. In paragraph 2 of the preamble²¹, the representative of Brazil informed that the treaties signed at Nicosia on 16 August 1960, on which the political life of the Republic of Cyprus is based, are mentioned in relation to the view expressed on them by the interested parties and the members of the Council.²² In operative paragraph 2²³, the draft resolution asks the Government of Cyprus to take all measures necessary to maintain law and order and to stop violence and bloodshed.²⁴

After the debates on the draft resolution in the Security Council, on the same date, the CRUGC made a unilateral declaration by sending a letter to the UN Security Council which was distributed the next day to the member states. In their unilateral declaration, the CRUGC defined the Turkish Cypriot Community as a minority²⁵ and tried to legalize the illegal thirteen amendments to the Constitution.²⁶ With this unilateral declaration, the CRUGC made known that they would not be bound by the preamble and operative paragraph 2 of the draft resolution if the resolution was to be accepted by the Security Council. The unilateral declaration of the CRUGC conflicted not only with Article 25 of the UN Charter, but also with a peremptory norm of the contemporary international law that was the unalienable right to external self-determination of the Turkish Cypriots. The declaration automatically made CRUGC a *de facto* state in the UN system.

The draft resolution was approved on 4 March 1964 without any change to the 186th resolution of the Security Council. The Security Council asked the CRUGC to restore law and order accordingly to the positions taken by the parties regarding the treaties signed at Nicosia on 16 August 1960. But before resolution 186 accepted, the CRUGC had already declared that

¹⁹ Security Council Official Records, 1099th meeting, 28 February 1964, S/PV.1099, 9, paragraph 56.

²⁰ Security Council Official Records, "S/PV.1099", 10 paragraph 58.

²¹ Preamble Paragraph 2: Considering the positions taken by the parties in relation to the treaties signed at Nicosia on 16 August 1960.

²² Security Council Official Records, 1100th Meeting, 2 March 1964, S/PV.1100, 2, paragraph 9.

²³ Operative paragraph 2: Asks the Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order, to take all additional measures necessary to stop violence and bloodshed in Cyprus;

²⁴ Security Council Official Records, "S/PV.1100", 3, paragraph 24.

²⁵ Letter dated 64/03/02 from the Permanent Representative of Cyprus to the United Nations addressed to the President of the Security Council, S/5573, 3-4.

²⁶ Letter, "S/5573", 3.

they are not to abide by the resolution. Until the declaration of Independence of the Turkish Republic of Northern Cyprus (TRNC) in 1983, the Security Council never fulfilled its responsibility for the implementation on the law and order as defined in the operative paragraph 2 from the CRUGC which constitutes a serious breach of an obligation of an international organization.

The Turkish Cypriots exercised their right to external self-determination in 1983 as the result of the non-implementation of the operative paragraph 2 of the Security Council resolution 186. In the unilateral Declaration of Independence, the *raison d'être* of the declaration was written as the thirteen points amendments to the Cyprus Constitution of 1960 that entailed the usurping of the rights of Turkish Cypriots and degrading their equal co-founder status to that of a minority on the island.²⁷

After the Unilateral Declaration of Independence of TRNC, the Security Council found the declaration as legally invalid incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee in its resolutions 541 and 550. However, in these resolutions, the Security Council did not ask for the implementation of operative paragraph 2 of its resolution 186 from the CRUGC. The Security Council did not try to bring a breach to a peremptory norm, the violation of the external right to self-determination of the Turkish Cypriot Community to an end from 1964 until the time of the declaration of independence of the Turkish Cypriot Community in 1983. The Security Council did not fulfil its responsibility for its resolution for the protection of the inalienable right to external self-determination of the Turkish Cypriot Community and had left the Turkish Cypriot Community behind.

The Turkish Cypriot Community has a legal right to found its own State under Article 73 of the UN Charter, which was recognized once more by the Security Council resolution 186 as the Security Council had left the Turkish Cypriots behind for 19 years.

The legal background of the unilateral Declaration of Independence of TRNC is the non-implementation of the operative paragraph 2 of the Security Council Resolution 186.

The principle *ex injuria jus non oritur* is one of the fundamental maxims of jurisprudence. An illegality cannot, as a rule, become a source of legal right to the wrongdoer. The UNSC resolutions 541 and 550 are under the definition of the internationally wrongful acts of an international organization as the resolutions are the legitimization the violation of the right to external right to self-determination of the Turkish Cypriot Community with the Greek Cypriot Community, a *jus cogens* norm of which no derogation is permitted. The Security Council resolutions 541 and 550 gave the wrongdoer illegal legality. With this, there exists an *erga omnes* obligation of non-recognition by the international community as a whole for the validity of the Security Council resolutions 541 and 550.

Binding Character of Article 25 of the UN Charter to the Member States

When the CRUGC sent a letter on 15 February 1964 to the UN Security Council and requested an emergency meeting by using the wording "international peace and security",²⁸ the CRUGC asked the emergency meeting under Chapter V, Article 24²⁹ of the UN Charter. By

²⁷ "Historical Background", Deputy Prime Ministry and Ministry of Foreign Affairs, Turkish Republic of Northern Cyprus, accessed May 15, 2020, <https://mfa.gov.ct.tr/cyprus-negotiation-process/historical-background/>.

²⁸ Letter dated 64/02/15 from the Permanent Representative of Cyprus addressed to the President of the Security Council, S/5545, 4.

²⁹ Article 24: 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf. 2. In discharging

sending the letter, the CRUGC agreed to accept and carry out any future outcome of the Security Council meetings following the UN Charter as written in Article 25 of the UN Charter as an obligation.

The Security Council has general powers under articles 24 and 25 to adopt binding decisions, and such decisions do not always need to be taken under Chapter VII. Even when the Council does use its Chapter VII powers, it is not essential to have an explicit reference to Chapter VII or a particular article thereof. Resolutions adopted under Chapter VII may also (and usually do) include provisions that are non-binding.³⁰ Although the Charter does not expressly prescribe a particular form for adopting binding decisions, Council practice suggests that resolutions are the primary vehicle for binding decisions. Presidential and press statements are not used as vehicles for such decisions. The Security Council decisions bind member states and the UN itself.³¹

The International Court of Justice (ICJ) in its advisory opinion on “Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo” of 22 July 2010 in paragraph 85 specified that within the legal framework of the UN Charter, notably on the basis of Articles 24, 25 and Chapter VII thereof, the Security Council may adopt resolutions imposing obligations under international law. The ICJ has had the occasion to interpret and apply such Security Council resolutions on a number of occasions and has consistently treated them as part of the framework of obligations under international law (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, p. 16; Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya vs. United Kingdom), Provisional Measures, Order of 14 April 1992, ICJ Reports 1992, p. 15, paras. 39-41; Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya vs. United States of America), Provisional Measures, Order of 14 April 1992, ICJ Reports 1992, pp. 126-127, paras. 42-44).³²

The ICJ made these points clear in its “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)” (Namibia) advisory opinion of 21 June 1971. The ICJ was considering the juridical implications of provisions of Security Council Resolution 276, which had similarly been adopted with no textual indication that the Council was acting in exercise of its Chapter VII powers. The ICJ held that:³³

these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII. 3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

³⁰ Security Council Special Report, “Security Council Action under Chapter VII: Myths and Realities”, No.1, 2008, accessed May 15, 2020, 1, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Research%20Report%20Chapter%20VII%202023%20June%202008.pdf> .

³¹ Security Council Special Report, “Myths and Realities”.

³² “Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo Advisory Opinion of July 2010, ICJ, 53, paragraph 46.

³³ Don Joyner, “Legal Bindingness of Security Council Resolutions Generally, and Resolution 2334 on the Israeli Settlements in Particular”, *Blog of the European Journal of International Law*, accessed May 15, 2020, <https://www.ejiltalk.org/legal-bindingness-of-security-council-resolutions-generally-and-resolution-2334-on-the-israeli-settlements-in-particular/> .

"It has been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter. It is not possible to find in the Charter any support for this view... It has also been contended that the relevant Security Council resolutions are couched in exhortatory rather than mandatory language and that, therefore, they do not purport to impose any legal duty on any State nor to affect any right of any State. The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council."³⁴

We have examples from the past resolution of the Security Council. Resolution 54 (1948) determined that the situation in Palestine was a threat to international peace and security and ordered a cessation of hostilities - utilising articles 39 and 40 (provisional measures). Although the chapeau "Acting under Chapter VII" was never mentioned as a basis for the action then taken, the chapter's authority was being used.³⁵ In other words, the resolutions of the Security Council may not be minded by the member States and the *raison d'être* of the Security Council for the maintenance of international peace and security can disappear.³⁶ In proceedings before the ICJ on the Corfu Channel Case, a dispute between the UK and Albania in 1949, the UK argued before the Court that, under article 25, "one could not find in the Charter a shred of support for the view that Article 25 is limited in its application to Chapter VII of the Charter... all decisions of the Security Council are binding... [the article] is categorical in its terms."³⁷ In 1954, during the debates on whether Egypt was under obligation to comply with resolution 95 (1951)—which did not mention Chapter VII—the representative of France stated that the call on Egypt was based on article 25 with the usage of the word "*calls upon*".³⁸

As the ICJ addressed this aspect of the issue in the Namibia opinion, indicating that: "when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for member States to comply with that decision... To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter."³⁹

Parts of a Resolution and the Language

Resolutions are formal expression of the opinion or will of the UN organs. They generally have two distinct sections, with a preamble followed by an operative part.⁴⁰

Preambles are used to introduce a resolution. Not numbered, they serve to present the background to the action part of the resolution. The preamble of a resolution states the reasons for which the UN body is addressing the topic and highlights past international action on the

³⁴ "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276(1970) Advisory Opinion of 21 June 1971", *ICJ* 53, paragraph 113-114.

³⁵ Security Council Special Report, "Myths and Realities", 3.

³⁶ Security Council Special Report, "Myths and Realities", 4.

³⁷ Security Council Special Report, "Myths and Realities", 8.

³⁸ Security Council Special Report, "Myths and Realities", 9.

³⁹ Security Council Official Records, 663rd Meeting 25 March 1954, S/PV.663, 9, paragraph 42.

⁴⁰ "General information on draft resolutions and draft decisions", *Commission on Narcotic Drugs and Commission on Crime Prevention and Criminal Justice*, accessed May 15, 2020, https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/Revised_note_on_draft_resolutions_and_decisions_final_website.pdf

issue. Each clause begins with a present participle and ends with a comma.⁴¹ In the preambular part of a resolution, each paragraph is set out individually and begins with an italicized participle or adjective (e.g. recalling, taking note of, having considered, welcoming, concerned, determined, aware). Those paragraphs are not numbered in the text and are normally referred as "first preambular paragraph", "second preambular paragraph" and so forth. Introductory paragraphs may be referred to as "the chapeau".⁴²

Operative paragraphs are actionable solutions to the problems raised in the perambulatory clauses. Operative paragraphs are action-oriented.⁴³ Operative paragraphs in a resolution, each of which begins with an italicized active verb in the present tense (e.g. endorses, calls upon, reaffirms, invites) are numbered sequentially. They are referred to by their cardinal number (paragraph 1, paragraph 7, etc.). There are no "bis" or "ter" paragraphs.⁴⁴ Operative paragraphs, which are numbered, express the opinions of member states and contain the action that they are agree to take. Operative paragraphs begin with an action verb.⁴⁵ When drafting resolutions, the Security Council uses a cornucopia of words and phrases to attach particular meanings to its statements. As of this printing, no other researcher has published a study of the wording used in Security Council resolutions, emotive words, instructive words, and modifiers.⁴⁶ The question of which words will indicate the Security Council's intent to create binding obligation is one that has been discussed in scholarly literature, neither the UN nor the Security Council has created any definitions or hierarchical classification systems from which targeted Entities or researchers can analyse the Security Council's word selection. Furthermore, many of the divergent words used are considered synonyms of each other according to the dictionary, yet appear to convey messages of different intensities.⁴⁷

Emotive Wording

The Security Council uses a wide vocabulary to describe its institutional feelings towards particular actions. Such as concerned, grieved, deplored, condemned, alarmed shocked, indignant, censured.

Instructive Wording

The words that matter most to the target of a Security Council resolution are typically the instructive words. These words indicate the amount of authority the Security Council intends to convey to the Entity of each resolution in order to make the Entity recognize the severity of the Subject. The stronger the instructive word, the greater risk an Entity takes by ignoring it. If disregarded long enough, the Security Council may impose sanctions or authorize military

⁴¹ Writing a Resolution, *MS MUM*, accessed May 15, 2020, https://asb.learning.powerschool.com/_geldc__1460539611_/msmun/cms_page/view/7826507

⁴² "General information on draft resolutions and draft decisions", *Commission on Narcotic Drugs and Commission on Crime Prevention and Criminal Justice*, accessed May 15, 2020, https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/Revised_note_on_draft_resolutions_and_decisions_final_website.pdf

⁴³ Preambulatory and Operative Clauses, *Wisemee*, accessed May 15, 2020, <https://www.wisemee.com/preambulatory-and-operative-clauses/>.

⁴⁴ "General information on draft resolutions and draft decisions", *Commission on Narcotic Drugs and Commission on Crime Prevention and Criminal Justice*, accessed May 15, 2020, https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/Revised_note_on_draft_resolutions_and_decisions_final_website.pdf

⁴⁵ "Editing of Resolutions at the United Nations", *UN*, accessed May 15, 2020, <http://www.un.org/en/ga/second/70/editorialguidelines.pdf>,

⁴⁶ Justin S. Gruenberg, "An Analysis of United Nations Security Council Resolutions: Are All Countries Treated Equally?" *Case Western Reserve Journal of International Law*, 41 No.2, (2009): 482.

⁴⁷ Justin S. Gruenberg, "An Analysis", 482-483.

engagement.⁴⁸ The operative verb or phrase at the beginning of each paragraph of the operative part such as decides to, recommends that, expresses its appreciation to, requests the Secretary-General to, also requests the Secretary-General to, expresses the hope that, takes note with satisfaction of the, calls upon the Governments, calls for etc.⁴⁹

Analysis of the Security Council Resolution 186

To apply a test for determining bindingness of operative paragraph 2 of the Security Council resolution 186, we can use the Namibia case in the ICJ in 1971 as an example. The ICJ determined that the provisions in operative paragraphs 2⁵⁰ and 5⁵¹ of Resolution 276 on Namibia were legally binding on all UN member states. This included the determination by the Security Council in operative paragraph 2 that the presence of South African forces on the territory of Namibia was unlawful, and the Council's call in operative paragraph 5 for all states to refrain from any dealings with South Africa that were inconsistent with this determination.⁵² Operative paragraph 5 begins with the word *call upon*... It is interesting to note in this context that in the Namibia advisory opinion, the ICJ found to be legally binding a provision (which began with the words "Calls upon all States...". Most scholarly commentary over the succeeding decades has, however, categorized "calls upon" language as legally non-binding.

In the preamble paragraph 1⁵³, the Security Council resolution had given the reference to Article 24 of its Charter by noting the present situation in Cyprus is likely to threaten international peace and security. In preamble paragraph 2⁵⁴, the Security Council had given the legal background of its decision to act in the operative paragraph 2. The Security Council accepted treaties signed at Nicosia on 16 August 1960 as the legal framework of the Cyprus Republic by using the word "considering".

As operative paragraphs are describing the actions that need to be taken in order to solve the problem. In the operative paragraph 2⁵⁵, the Security Council asked to take all additional measures necessary to stop violence and bloodshed in Cyprus by giving responsibility to the Greek Cypriots to maintenance and restore of law and order according to treaties signed at Nicosia on 16 August 1960 as written in the second preamble paragraph. "Ask" is a word that has been used by the Security Council to command an addressee to abide by its obligations. The law and order asked by the Security Council was the treaties signed at Nicosia on 16 August 1960, the legal framework of the Cyprus Republic that the Greek Cypriots to abide by its existence obligation within the UN decolonization system.

⁴⁸ Justin S. Gruenberg, "An Analysis", 485.

⁴⁹ "Resolutions and other formal decisions of United Nations organs", *United Nations Editorial Manual Online*, accessed May 15, 2020, http://dd.dgacm.org/editorialmanual/ed-guidelines/types_documents/res_dec_draft_edit.htm.

⁵⁰ Operative Paragraph 2: Declares further that the defiant attitude of the Government of South Africa towards the Council's decisions undermines the authority of the United Nations;

⁵¹ Operative Paragraph 5: Calls upon all States, particularly those which have economic and other interests in Namibia, to refrain from any dealings with the Government of South Africa which are inconsistent with paragraph 2 of the present resolution;

⁵² Joyner, "Legal Bindingness".

⁵³ First Preamble Paragraph; Noting that the present situation with regard to Cyprus is likely to threaten international peace and security and may further deteriorate unless additional measures are promptly taken to maintain peace and to seek out a durable solution,

⁵⁴ Second Preamble Paragraph; Considering the positions taken by the parties in relation to the treaties signed at Nicosia on 16 August 1960.

⁵⁵ Operative Paragraph Two: Asks the Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order, to take all additional measures necessary to stop violence and bloodshed in Cyprus;

The violence and bloodshed as written in the operative paragraph two in Cyprus was the outcome of the 13 points amendments to the Cyprus Constitution by the Greek Cypriots which was well defined by the representative of Greece during the Security Council debates by giving responsibility to the Greek Cypriot President Makarios in 1974 as⁵⁶: "He insisted on proposing the 13 points for the amendment of the Zurich Constitution, thus opening Aeolus' bags, which resulted in the tragic clashes of December 1963."

The CRUGC's international legal responsibility to the UN and the international community in March 1964 was defined as the treaties signed at Nicosia on 16 August 1960 by the Security Council resolution in 186 and the nullification of the thirteen amendments to the Constitution by the Greek Cypriots in the operative paragraph 2. Not to fulfil the obligation arising from operative paragraph 2 by the CRUGC means exactly the same as mentioned in the Namibia decision of the ICJ of the operative paragraph 2 of the resolution 276 of the Security Council, as the defiant attitude of the Government of South Africa towards the Council's decisions undermines the authority of the United Nations

Analysis of the UN Security Council Resolutions 541 and 550

In operative paragraph 1 of the Security Council resolution 550, resolution 541 was reaffirmed. When the word reaffirm is used in a resolution, it means that the UN body is repeating something it has said in a previous resolution.⁵⁷ Therefore, we need only analyse resolution 541.

In preambular paragraph 3⁵⁸ of the resolution 541, the Security Council begins with the same word "considering" as the second preamble paragraph of the resolution 186 and with this word stated that the Declaration of Independence of TRNC is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee.

In the operative paragraph 2, the Security Council by giving reference to the 1960 Treaty concerning the establishment of the Republic of Cyprus 1960 and the 1960 Treaty of Guarantee, considered the declaration referred to above as legally invalid and called for its withdrawal. In operative paragraph 7, the Security Council called upon all States not to recognize any Cypriot State other than the Republic of Cyprus.

On 30 November 1963, Greek Cypriot Community leader Makarios nullified not only the Cyprus Republic Constitution but the General Assembly resolution 1287 as well when he made the Thirteen Points Amendments to the Cyprus Constitution even if there existed the decision of the SCCC against the amendments on 30 November 1963. The *principle ex injuria jus non oritur* is one of the fundamental maxims of jurisprudence. An illegality cannot, as a rule, become a source of legal right to the wrongdoer. When the Security Council did not ask the implementation of operative paragraph 2 of its resolution 186 from the CRUGC for 19 years, the Security Council legitimized the nullification of the external right to self-determination of the Turkish Cypriot Community.

The Security Council had violated not only the Charter of the UN, its own resolution 186 but general international law principle *principle ex injuria jus non oritur* as well and left the Turkish Cypriot Community behind.

Leaving behind of the Turkish Community by the Security Council is a breach of *jus cogens* norm of which no derogation is permitted. Contrary operative paragraph 7 of the

⁵⁶ Security Council official records, 29th year, 1780th meeting, 19 July 1974, S/PV.1780, 6, para.46,

⁵⁷ "UN, "Editing".

⁵⁸ Third Preambular Paragraph: Considering that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus 1960 and the 1960 Treaty of Guarantee.

resolution 541, there exists an *an erga omnes partes* obligation of non-recognition for the Security Council resolutions 541 and 550 by the international community as a whole and accept as legal the Declaration of Independence of the TRNC.

Obligation of Non-Recognition

The political organs of the UN have frequently called upon States not to recognize illegal States such as Rhodesia, the South African Bantustans, the annexation of territory, governments installed by an illegal foreign occupying power, the legality of the presence and administration of an occupying power, and even the result of elections.⁵⁹ As a minimum, the rationale of the obligation of non-recognition is to prevent, in so far as possible, the validation of an unlawful situation by seeking to ensure that a *fait accompli* resulting from serious illegalities do not consolidate and crystallize over time into situations recognized by the international legal order.⁶⁰

In the Namibia advisory opinion of 1971⁶¹, the ICJ held that the presence of South Africa in Namibia was illegal and that States Members of the UN were under an obligation to refrain from any act and in particular any dealings with the Government of South Africa implying the recognition of the legality of South Africa's presence and administration.⁶² In the advisory opinion of the ICJ on the Wall in the Occupied Palestinian Territory, the ICJ advised that the construction of the wall being built by Israel, the occupying power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, were contrary to international law. It held that Israel had violated certain obligations *erga omnes* including the obligation to respect the right of the Palestinian people to self-determination and added that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian⁶³

In its Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the International Law Commission (ILC) has extended the obligation "not to recognize as lawful" beyond aggression and the illegal use of force to all situations created by a serious breach of a *jus cogens* obligation. The ILC in the ARSIWA introduces the notion of "serious violations of peremptory norms of international law" in order to spell out an aggravated regime of State responsibility. Article 41(2) provides for the obligation for States not to "recognize as lawful a situation created by a serious violation" of a peremptory norm, together with the additional obligation not to render aid or assistance in maintaining that situation.

An international organization can be held responsible only for the breach of obligations that are imposed on them. International organizations are bound by the treaties which constitute them. No international organization can create its own powers and competences. These are

⁵⁹ Stefan Talmon, "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?", accessed May 15, 2020, <http://users.ox.ac.uk/~sann2029/6.%20Talmon%2099-126.pdf>.

⁶⁰ Martin Dawidowicz, "The Obligation of Non-Recognition of an Unlawful Situation", Ed. James Crawford, Allain Pellet and Simon Olleson, *The Law of International Responsibility*, Oxford University Press, Oxford, 2010, p.677.

⁶¹ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), ICJ Reports 1971, p. 16.

⁶² Talmon, "The Duty".

⁶³ Stefan Talmon, "The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur?", *British Yearbook of International Law*, 75, No: 1, (2004), .104.

defined by the will of the Member States, as a rule through international treaties.⁶⁴ In August 2011, the ILC adopted the Draft Articles on Responsibility of International Organizations (ARIO). In Article 1⁶⁵ of ARIO, an international organization may be held responsible if it aids or assists a state or another organization in committing an internationally wrongful act; if it directs and controls a state or another organization in the commission of such an act; or if it coerces a state or another organization to commit an act that would, but for the coercion, be an internationally wrongful act. Another case in which an international organization may be held responsible is that of an internationally wrongful act committed by another international organization of which the first organization is a member.⁶⁶

Article 4 of ARIO⁶⁷ expresses, with regard to international organizations, a general principle that applies to every internationally wrongful act, whoever its author. As in the case of states, the attribution of conduct to an international organization is one of the two essential elements of an internationally wrongful act to occur. The term "conduct" is intended to cover both acts and omissions on the part of the international organization. The obligation may result from either a treaty binding the international organization or any other source of international law applicable to the organization. As the ICJ noted in its advisory opinion on the Interpretation of the Agreement of 25 March, 1951, between the World Health Organization and Egypt, international organizations "are bound by any obligations incumbent upon them.

Under general Article 42⁶⁸ sets out that should an international organization commit a serious breach of an obligation under a peremptory norm of general international law, states and international organizations have duties corresponding to those applying to states according to Article 41 of the ARSIWA. Therefore, the same wording is used here as in that article, with the addition of the words "and international organizations" in paragraph 1 and "or international organization" in paragraph 2. In response to a question raised by the Commission in its 2006 report to the General Assembly, several States expressed the view that the legal situation of an international organization should be the same as that of a State having committed a similar breach. Moreover, several States maintained that international organizations would also be under an obligation to cooperate to bring the breach to an end. The Organization for the Prohibition of Chemical Weapons made the following observation: "States should definitely be under an obligation to cooperate to bring such a breach to an end because in the case when an

⁶⁴ Matthias Hartwig, "International Organizations or Institutions, Responsibility and Liability", *Oxford Public International Law*, accessed May 15, 2020, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e509>.

⁶⁵ Article 1. Scope of the present Draft Articles: The present draft articles apply to the international responsibility of an international organization for an internationally wrongful act. 2. The present draft articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.

⁶⁶ "Draft Articles on the Responsibility of International Organization", ILC, accessed May 15, 2020, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf.

⁶⁷ Article 4. Elements of an internationally wrongful act of an international organization: There is an internationally wrongful act of an international organization when conduct consisting of an action or omission: (a) is attributable to that organization under international law; and (b) constitutes a breach of an international obligation of that organization

⁶⁸ Article 42. Particular consequences of a serious breach of an obligation under this chapter: 1. States and international organizations shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.2. No State or international organization shall recognize as lawful a situation created by a serious breach within the meaning of article 41, nor render aid or assistance in maintaining that situation. 3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

international organization acts in breach of a peremptory norm of general international law, its position is not much different from that of a State."

Conclusion

It was the 1959/1960 Agreements that facilitated independence from the UK and that gave international legal personality to the Greek and the Turkish Cypriot communities as two distinct and equal constituent peoples. The objects and purposes of the treaties` (written in the Security Council resolutions 186, 541 and 550) are on the implementation of Article 73 of the UN Charter. That is the usage of the right to external self-determination of two communities on decolonization in the form of bi-communal establishment of a republic under the principle of *uti possidetis*. The Constitutional Treaty of 1960 recognizes the Turkish Cypriots` *jus cogens* right of external self-determination under the principle of *uti possidetis* with the Greek Cypriot Community in a bi-communal state under the constitutional guarantees such as SCCC.

The right to external self-determination of the two communities are the very object and purpose that can never be sacrificed or frustrated as written in the description of the ICJ on the East Timor Case the right to self-determination as one of the "essential principles of contemporary international law" having an *erga omnes* character is profoundly significant because it appears to amount to its elevation as a norm of *jus cogens*.

SCCC decided that Archbishop Makarios' the Thirteen Points were illegal. President of SCCC resigned due to the Makarios' disobedience to the laws of SCCC, thereby disobedience to the laws of Cyprus. On 15 July, Archbishop Makarios ignored the decision of SCCC. On 30 November, Archbishop Makarios legalized the Thirteen Points. The Thirteen Points amendments to the Constitution of Cyprus as a breach of a peremptory norm and as well an international treaty.

When the CRUGC sent a letter on 15 February 1964 to the UN Security Council and requested an emergency meeting, the CRUGC agreed to accept and carry out any future outcome of the Security Council meetings in accordance with the UN Charter as written in Article 25 of the UN Charter as an obligation. After the debates on the draft resolution in the Security Council, on 2 March 1964, the CRUGC made a unilateral declaration by sending a letter to the UN Security Council. With this unilateral declaration, the CRUGC made known that they are not to bind by the preamble and operative paragraph two of the draft resolution if the resolution was to be accepted by the Security Council. The unilateral declaration of the CRUGC is in conflict not only with Article 25 of the UN Charter but with a peremptory norm of the contemporary international law that is the unalienable right to external self-determination of the Turkish Cypriots. The declaration automatically made CRUGC a *de facto* state in the UN system.

The draft resolution was approved on 4 March 1964 without any change as the 186th resolution of the Security Council. The Security Council asked the CRUGC to restore law and order accordingly to the positions taken by the parties in relation to the treaties signed at Nicosia on 16 August 1960. Until the Declaration of Independence of the TRNC in 1983, the Security Council never fulfilled its responsibility for the implementation on the law and order as defined in the operative paragraph 2 from the CRUGC which constitutes a serious breach of an obligation of an international organization. The Turkish Cypriot Community exercised their right to external self-determination in 1983 was the result of the non-implementation of the operative paragraph 2 of the Security Council resolution 186.

In the preambular paragraph 3 of the resolution 541 the Security Council stated that the Declaration of Independence of TRNC is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee. In the operative

paragraph 2, the Security Council by giving reference to with the 1960 Treaty concerning the establishment of the Republic of Cyprus 1960 and the 1960 Treaty of Guarantee, considered the declaration referred to above as legally invalid and called for its withdrawal. In the operative paragraph 7, the Security Council called upon all States not to recognize any Cypriot State other than the Republic of Cyprus.

When the Security Council did not ask the implementation of operative paragraph 2 of its resolution 186 from the CRUGC for 19 years, the Security Council legitimized the nullification of the external right to self-determination of the Turkish Cypriots and violated not only the Charter of the UN, its own resolution 186 but general international law principle *principle ex injuria jus non oritur* as well and left the Turkish Cypriot Community behind.

Leaving behind of the Turkish Community by the Security Council is a breach of *jus cogens* norm that no derogation is permitted. Contrary to the operative paragraph 7 of the resolution 541, there exists an *an erga omnes partes* obligation of non-recognition for the Security Council resolutions 541 and 550 by the international community as a whole and accept as legal the Declaration of Independence of the TRNC as the implementation of the external right to self-determination of the Turkish Cypriot Community, the inalienable right of the Turkish Cypriot Community that was taken away by the non-implementation of the Security Council resolution 186 for years.

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