

The Case of TRNC in the context of Recognition of States under International Law

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INTRODUCTION

International society is basically, although not solely, made up of states. Besides the objective elements required for the formation of a new entity – i.e. territory, population and sovereign authority – the question of under which procedures this legal and political entity has gained the qualification of being a “state” in international society, is referred as the “recognition of states” in international law.¹

The main reason behind the complicity of the issue of recognition is that in international law, there are not any organized legal provisions which oblige existing states to recognize a new entity when certain conditions are met. There have been attempts by commentators to try to institutionalize the process of recognition of states but the process of collective recognition as such in international law does not exist; however there is an important body of theory regarding state practice on the recognition of states, although they are far from coherent.²

The recent history of the island of Cyprus within the framework of the principles of international law relating to statehood and recognition as well as their application to the issue at hand constitutes one of

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1 Hüseyin PAZARCI, *Uluslararası Hukuk Dersleri*, II. Volume, 5. Edition, Ankara 1998, p. 19.

2 Colin WARBRICK, States and Recognition in International Law in M Evans (ed), *International Law* (2nd edition), 2006, p. 206.

those examples of state practice. Numerous articles and books have been written on aspects of the “Cyprus problem” since the violent events of 1963 and especially, since the Turkish military interventions in 1974. The Turkish Republic of Northern Cyprus – TRNC, which declared its independence in 1983 after a sad and complex sequence of events possesses all the criteria of statehood – a clearly defined territory with a population and a government with full internal autonomy and independence in its external relations – but it has not been accorded recognition, except by one state, Turkey, on the grounds that recognition of a state created as a result of illegal use of force is incompatible with the principles of international law.³

In the context of all these facts, the aim of this article is to shed light on the principle of recognition in conjunction with the problem of the TRNC and the grounds and motives of its non-recognition in the international community.

A) Brief Historical Background

The island of Cyprus, because of its location and size,⁴ is still of considerable strategic importance for the Mediterranean powers. Thus, at various times it has drawn the attention of many nations, including the Egyptians, Persians, Romans, and Greeks. Cyprus was under Turkish sovereignty between the years 1571-1914, and under the English sovereignty between the years 1914-1960. In this regard, the attempt to annex the island by Greece, despite the opposition of Cypriot Turks and Turkey, created the struggle and disputes called the “Cyprus Conflict” between Turks and Greeks on the island and between Turkey and Greek outside the island. After a long period of conflicts between these two communities on the island, Cyprus became an independent republic on 1960; however, it did not receive its independence by a unilateral act but rather its independence was the result of a series of negotiations between Greece, Turkey and the UK.⁵ In this period, three interdependent documents: the Treaty of Guarantee, the Treaty of Alliance and the Basic Structure of the Republic of Cyprus (BSRC), which are also known as the London/ Zurich Accords, were signed by the Republic of Cyprus (ROC), Turkey, Greece and UK.⁶ The principles set forth in the London/Zurich accords were embodied in the 1960 Constitution of the Republic of Cyprus; each community, Greek and Turkish Cypriots, was co-founder and co-partner of the Republic on

³ Zaim M. NECATİGİL, *The Cyprus Question and the Turkish Position in International Law*, Oxford University Press, 1989, p. 283.

⁴ Cyprus is the third largest island in the Mediterranean Sea and lies 40 miles south of Turkey, 650 miles south-east of Greece.

⁵ Scott PEGG, *International Society and the De facto State*, Ashgate Publishing, 1998 pp. 100-101.

⁶ According to these documents, the basic articles of the Cypriot constitution were unamendable and the Constitution itself, as well as the independence, security and territorial integrity of the island were guaranteed by Greece, Turkey and the UK. Britain was allowed to retain sovereignty over two military bases and Greece and Turkey were each allowed to station limited numbers of troops on the island. Partition and union with any other state were prohibited. For the documents see http://www.kypros.org/Cyprus_Problem/treaty.html, last visited: 04 December 2009.

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the grounds that both would hold political and legal equality despite disproportionate population rates.⁷

The solution generated by these treaties envisaged the establishment of an independent federal republic based on the participation of the two communities with the collaboration of Turkey and Greece.⁸ The BSRC set forth the principal articles of the 1960 Constitution of Cyprus. The Constitution would accept the rights of both communities to set the general will and maintain national composition in accordance with the numerical data of existed population. It would provide for a presidential regime, the President being a Greek Cypriot and the Vice- President being Turkish Cypriot, both of whom would have veto power over certain issues concerning foreign affairs, defense and security. It would also provide for the participation of the two communities in the central government. Thus, the legal arrangement of the 1960 treaties would solidify the presence of two separate and equal communities in Cyprus. By these treaties, a state which had to be administered by the collaboration of two communities in Cyprus had been founded, and by the Constitution, the national integrity, independency and security of this state were guaranteed in the international arena.

Later on, uneasy years followed because the Greek side argued that this Constitution was imposed upon Cyprus from outside and that its provisions were inherently unworkable. They also believed that it was undemocratic since it provided for veto by a minority government. On the contrary, for the Turkish Cypriots, the Constitution was an innovative document which could have worked if there had been sufficient cooperation between the two communities.⁹ In reality, many of the terms of the 1960 Constitution were never implemented and it was not simply a numerical question of 70:30 ratio; Greek and Turkish Cypriots had strong differences of opinions over things like the composition of the civil service and the armed forces and the proper structuring of municipal government. The tension became stronger in 1963, when Greek President Makarios declared that since the Constitution conferred rights on the Turkish Cypriots in addition to what was intended only to protect them, "he was forced to disregard or seek revision of existing provisions of the Constitution"¹⁰ and later on, he proposed 13 amendments for the 1960 constitution which would have repealed the vice president's veto power, abolished the requirement for separate majorities for the passage of certain laws and called for the removal of separate municipalities and the Turkish public service quotas.¹¹ The

7 According to the census of 1960, population of Cyprus was 573.566, out of which 70 percent were Greek and about 30 percent were Turks. See Zaim M. NECATIGİL, *supra*, p. 1.

8 Sevin TOLUNER, "Kıbrıs Türk Federe Devleti'nin Milletlerarası Hukuki Statüsü", *Milletlerarası Hukuk Açısından Türkiye'nin Bazı Dış Politika Sorunları*, İstanbul 2000, p. 151.

9 Scott PEGG, *supra*, p. 101.

10 Majid KHADDURI, *Major Middle Eastern Problems in International Law*, American Enterprise Institute for Public Policy Research, Washington DC, p. 123.

11 Zaim M. NECATIGİL, *supra*, pp. 21-22.

Turkish Cypriots refused to go along with these proposed constitutional changes and violence between the two communities broke out further on.

Consequently, the events turned into an inter-communal fight between the armed radicals of the two communities.¹² Twice in 1964, the Turkish military threatened to invade Cyprus on the basis of Article 4 of the Treaty of Guarantee¹³ unless all attacks against the Turkish Cypriot community stopped. In March 1964, the UN Security Council unanimously passed Resolution 186 authorizing the deployment of the UN Peacekeeping Force in Cyprus (UNFICYP) but this force could not stop the violence. Contrarily, by 1965 the Turkish Cypriots found themselves excluded from the mechanisms of the state.¹⁴ In 1965, a special representative of the Secretary-General of the UN was informed that the “Cyprus Government” no longer recognized the leader of the Turkish Community as vice president and that the Turkish Cypriot members no longer had legal standing in the House of Representatives.¹⁵ Similarly, Resolution 186 referred to the Cyprus Government in such a way as to recognize the exclusively Greek Cypriot administration as constituting the legitimate government of the Republic.¹⁶ Thus, as a result of these ongoing violent acts on the island despite various attempts to stop them, the Turkish Cypriots proclaimed the establishment of the “Temporary Turkish Administration” in 1967.¹⁷

In 1974, the Greek Cypriot armed forces, backed by the Greek junta, deposed the government of President Makarios with the aim of *Enosis*, i.e. unification of Cyprus with Greece. Thereupon, Turkey, citing the 1960 Treaty of Guarantee as a legal basis for its actions, sent troops to Cyprus for the first time to protect Turkish Cypriots from the Greek Cypriot armed forces, which were backed up by the military junta of Greece.¹⁸ In the following days, the UN called for all parties to cease fire.¹⁹ However, things did not end at this point. The sides could not establish peace and in August 1974, the second invasion²⁰ of one-

12 ARSLAN and GÜVEN, Ankara, 2007 <http://cpc.emu.edu.tr/articles/Cyprus%20Problem%20in%20International%20Law%20-%20ICANAS38%20final%20Kaya%20Arslan%20and%20Halil%20G%C3%BCven.pdf>, last visited: 04.12.2009. See also Zaim M. NECATIGİL, *supra*, pp. 29-35 for further information.

13 The said Article states that: “In the event of any breach of the provisions of the present Treaty, Greece, the United Kingdom, and Turkey undertake to consult together, with a view to making representations, or taking the necessary steps to ensure observance of those provisions. In so far as common or concerted action may prove impossible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs established by the present Treaty”.

14 ARSLAN and GÜVEN, *supra*, p. 3.

15 Secretary General’s Report on Recent Developments in Cyprus, UN Document S/ 6569, 1965, p. 3.

16 Security Council Resolution 186, 4 March 1964, paras 1, 2 and 6. Also See Scott PEGG, *supra*, p. 103.

17 Sevim TOLUNER, *supra*, p. 155.

18 Carol MIGDALOVITZ, Cyprus, Status of UN Negotiations and Related Issues Congressional Research Service <http://www.fas.org/sgp/crs/row/RL33497.pdf>, last visited: 04.12.2009. Also see Scott PEGG, *supra*, p. 103 and Zaim M. NECATIGİL, *supra*, pp. 75-79.

19 Similarly, with the efforts of UN and the peace making diplomacy, the Geneva Declaration of 30 July 1974 were held between the foreign ministers of Turkey, Greece and UK and according to this Declaration, the two sides were to exchange prisoners and hostages and Greek and Greek Cypriot forces were supposed to evacuate the Turkish Cypriot enclaves that they had occupied.

20 Although Turkey officially refers to its action as a “peace operation”, the Greek Cypriots and much of the international community refer to it as an “invasion.”

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third of Cyprus was launched by the Turkish Army - again on the basis of Article 4 of the Guarantee Treaty - which expanded the amount of territory under Turkish control and led to the partition of Cyprus that still exists today.²¹

Although the first intervention was met with general approval from the international community, the second one created a negative impact on world opinion in opposition to Turkey, which still exists. The position of UN on the issue before and afterwards the invasion gains importance in this respect.

B) UN Position In Cyprus Problem and the *Loizidou* Case

The UN, with its peacekeeping forces and political power, has been – and still is – closely concerned with inter-communal tensions and conflicts in Cyprus since the collapse of the Republic in 1964. According to most Turkish authors, Resolution 186 of the UN, that was adopted in 1964, “has been ever since a cornerstone of the Cyprus problem and a turning point, the dimensions of which created an obstacle to a final and just settlement.”²² Notwithstanding that this Resolution called upon members to refrain from action or threats likely to worsen the situation, it also recommended the creation of a UN peacekeeping force in Cyprus, but with the consent of the ‘Government of Cyprus,’ which as a term refers only to the Greek Cypriots.²³ From the view of the Turkish Cypriots, and Turkey, the Republic of Cyprus ceased to exist after this Resolution where – according to the Turkish opinion – the UN accepted the Greek Cypriots, who took exclusive control in Cyprus²⁴ as the only legal representative of both communities. Subsequently, upon the appearance of Turkish army flights over Cyprus skies, the Security Council asked for “the stop of bombardment and military power exertion” in its Resolution 193, and thus implicated that any “external” intervention in Cyprus would not be approved.²⁵ Similarly, both in Resolution 353, which the Security Council passed just before the Turkish intervention in 1974,²⁶ and in Resolution 360, that was passed in response to the Turkish intervention,²⁷ it requested “the withdrawal without delay from the Republic of Cyprus of foreign military personnel present” and emphasized “its formal disapproval of the unilateral military actions undertaken against the Republic of Cyprus.” Therefore, it can be generally said that the Security Council resolutions in the period 1964-1974 deplored the change in the status,

21 Scott PEGG, *supra*, p. 103.

22 Ahmet C. GAZIOĞLU, Perceptions, Journal of International Affairs, 2001 <http://www.sam.gov.tr/perceptions/Volume6/March-May2001/gazioglu03.PDF>, last visited: 04 December 2009.

23 Ahmet C. GAZIOĞLU, *supra*, p. 1.

24 Because the Greek Cypriot, which since 1963 had attempted to overthrow the 1960 Constitution, pretended to be the “Government of Cyprus”.

25 Security Council Resolution 193, 9 August 1964.

26 Security Council Resolution 353, 20 July 1974 <http://www.greece.org/cyprus/UNRes353.htm>, last visited: 22 July 2008.

27 SC Resolutions 357 and 358 <http://www.greece.org/cyprus/UNRes357-360.htm>, last visited: 04 December 2009.

which had been established by the 1960 Constitution, by the use of force and military intervention. They mainly emphasized that the new state should be “demilitarized.”

Besides these military issues, the UN Security Council has also discountenanced Turkish and the Turkish Cypriot attempts at political and diplomatic actions. Right after the declaration of the establishment of the Turkish Federated State of Cyprus (TFSC) on 1975, the Security Council passed its Resolution 367,²⁸ where it regretted this unilateral decision and requested that the two communities and other parties refrain from any attempt to partition the island or its unification with any other country. Although the language was not as strong as in Resolution 541, it caused the TFSC to be dead from the beginning.

The Security Council adopted the same approach when the TFSC Assembly unanimously approved the declaration of independence and establishment of the TRNC in 1983.²⁹ The Security Council responded by passing the well-known Resolution 541³⁰ which considered the declaration of the TRNC to be legally invalid, thus calling for its withdrawal, and called upon all states not to recognize any Cypriot state other than the Republic of Cyprus on the grounds that the new formation was in contrary to the Treaty of Guarantee. This Resolution also stated that the BSRC and the TRNC were established by the unlawful use of force of Turkey. Therefore, the TRNC has not been recognized internationally, except by Turkey.

Here, it can be deduced that the overall policy of the UN as discussed above also constitutes the main reason for the non-recognition of the TRNC by the international community. In this sense, as Joseph S. Joseph, an Associate Professor at the University of Cyprus indicated, “the lack of international support for the Turkish attempts at the legalization of the partition of Cyprus is largely due to the successive condemnations of the General Assembly and the Security Council. Apparently, no country has been willing to take political and moral risks involved in the recognition.”³¹

Non-recognition of the TRNC was also dealt with in the *Loizidou* judgment of the ECHR.³² The subject of the case was to apply the European Convention on Human Rights,³³ the aim of which is to secure the public order in Europe based on human rights, individual civil rights and the rule of law, to the Cyprus problem and in this way to

28 SC Resolution 367, 12 March 1974 <http://www.greece.org/cyprus/UNRes367.htm>, last visited: 04 December 2009.

29 Scott PEGG, *supra*, p. 105.

30 SC Resolution 541, 18 November 1983, <http://www.argyrou.eclipse.co.uk/Res541.htm>, last visited: 04.12.2009. Also in the same year the SC adopted the Resolution 550 which reiterated the call upon all states not to recognize the purported state of the TRNC set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity.

31 Although he is partial in his opinions instead of looking from a disinterested point of law, his statement deserves some consideration.

32 ECHR, *Loizidou v. Turkey*, 40/1993/435/514, 1966.

33 “The Convention”.

decide on the legal status of the TRNC. In this sense, the Court took note of the abovementioned Security Council Resolution 541, declaring the proclamation of the establishment of the TRNC to be legally invalid and calling upon all States not to recognize any Cypriot State other than the Republic of Cyprus. Thus, the ECHR reiterated that only the Cypriot Government was recognized internationally as the Government of the Republic of Cyprus in the context of diplomatic and treaty relations and the work of international organizations. In this respect, “it was evident from international practice and the various strongly worded resolutions referred to above that the international community did not regard the TRNC as a State under international law and against this background, the Court could not attribute legal validity, for purposes of the Convention, to such provisions as Article 159 of the TRNC Constitution, and Mrs. Loizidou, the applicant, who had been prevented from gaining access to her properties in Northern Cyprus as a result of the presence of Turkish forces in Cyprus, could not be deemed to have lost title to her property.”³⁴

With this judgment, besides countenancing the non-recognition of the TRNC and the UN Resolutions, the Court refused to take into consideration at all the status of the TRNC as a stabilized *de facto* regime. Thus, it disregarded the effectual and autonomous nature of the legal order and administration in the northern part of Cyprus. If this would not be the case, the Court would have found that the people of North Cyprus have been governing themselves in an orderly manner in accordance with democratic standards, in particular, as laid down in Article 3 of the First Protocol to the Convention, and that there existed in fact an administration (executive) and a judiciary, as well as, a legislature capable of making laws.³⁵

Therefore, although not accepted by the ECHR in the *Loizidou* case, since 1983, two autonomous administrations: one *de facto* and one *de jure* have existed on the island.³⁶ Basically, by freezing a particular *status quo*, i.e. by preserving cease-fires on the island for such a long time, UN peacekeeping forces, as an unintended consequence, gave rise to the creation or maintenance of Turkish Cyprus as a *de facto* state.³⁷ This subject needs further explanation.

C) TRNC as a De facto State

The so-called *de facto* regime is an important notion in international law which cannot be neglected at all. Although not many in number and generally small in size, there exist some examples of these kind

³⁴ *Loizidou* case, *supra*, para 44.

³⁵ Zaim M. NECATIGIL, Judgment of the Court in the *Loizidou* case, A Critical Examination, *Journal of International Affairs*, 1999 <http://www.sam.gov.tr/perceptions/Volume4/June-August1999/NECATIGIL.PDF>, last visited:04 December 2009.

³⁶ ARSLAN and GÜVEN, *supra*, p. 3.

³⁷ Scott PEGG, *supra*, p. 165.

of regimes throughout the world, of which the TRNC constitutes one with regard to the following conditions.

First, the Turkish Cypriot territorial claim, although not strong³⁸ from a legal perspective, is based on two main factors. One of them is the belief that since the Greek and Turkish Cypriots cannot live together peacefully, in order to ensure their communal safety, the Turkish Cypriots require a separate territory of their own. The second claim, which is more logical, is that the Turkish Cypriots, although illegitimate and not recognized, have had their own separate territory in the northern part of the island since 1974.³⁹ Thus, the extent of territory that they control has remained constant for more than 30 years now. Similarly, its existence in this sense was recognized with the 1974 Geneva Agreement, signed by the Foreign Ministers of Greece, Turkey and the UK in the period between the two Turkish invasions, which noted the “existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community.”⁴⁰

Second, with regard to democratic accountability and governing capability, it could be concluded that the TRNC lacks democratic accountability on the grounds that its territory was created after an outside military invasion and is maintained by thousands of foreign troops; that its creation produced more than 100,000 Greek Cypriot refugees and that it is externally dependent on Turkey, particularly in military and economical aspects.⁴¹ However, from an internal perspective, the TRNC has a government which in practice is able to exercise effective and exclusive control of its own territory and has a constitution which grants its citizens an extensive range of civil and political liberties. According to Article 1 of the TRNC Constitution, the state is a secular republic based on the principles of democracy and the supremacy of law.⁴² In terms of its governing capability, the TRNC clearly meets or exceeds any plausible criteria for effective governance. Although the TRNC officials who are active in the decision-making process consult closely with their Turkish counterparts on a number of matters, and despite the fact that the TRNC has kept adapting economic policies in its history in line with Turkish direction or control in important matters,⁴³ in broader terms it does maintain effective territorial control of a given area over which it provides governance services

38 The word “not strong” is used here in the sense that the Turkish Cypriots cannot point to some certain parts of the island that they have historically occupied because the two communities lived together in different parts for such a long time.

39 Scott PEGG, *supra*, p107.

40 Zaim M. NECATIGİL, *supra*, p. 60.

41 Scott PEGG, *supra*, pp. 108-112.

42 For the Constitution of Turkish Republic of Cyprus, see <http://www.mahkemeler.net/cgi-bin/anayasa/ktfdana.doc>, last visited: 04 December 2009.

43 The Court in its December 1996 ruling supports this statement. According to this judgment, “It was obvious from the large number of troops engaged in active duties in northern Cyprus that the Turkish Army exercised effective overall control there”. See the judgment, ECHR, *Louizidou v. Turkey*, *supra*.

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and has sovereign authority with democratic structures. On the other hand, it has relations with other foreign countries for the time being on only a limited basis, because the establishment of full diplomatic relations would amount to official recognition.⁴⁴ Its effectiveness, though, has failed to translate into widespread international recognition and it can thus be considered to be a *de facto* state.⁴⁵ As a result of the international community's recognition of the Greek Cypriot government as the sole legitimate sovereign authority for the entire island, the TRNC has not attained a more legitimate status than *de facto* statehood.

Consequently, the effectual and autonomous nature of the TRNC administration has been recognized in various court decisions in the United Kingdom, such as in *Hesperides Hotels and Another v. Aegean Holidays and Another*.⁴⁶ Similarly, in the finding that the arrest and detention of Greek Cypriot demonstrators by the TRNC were lawful, the European Human Rights Commission in the *Chrysostomos* case⁴⁷ attributed legal validity and effect to the legislation of the TRNC, whose constitution was deemed as ineffective by the ECHR in *Loizidou* case as explained above.

In this point, another judgment of the ECHR, this time obviously contrary to its *Loizidou* judgment, attracts notice. It is mentioned above that international law acknowledges as a matter of necessity that *de facto* regimes, despite non-recognition, may be regarded to some extent as having powers of administration and judiciary in the area under their control. In the case of *Cyprus v. Turkey*, the ECHR, by referring to the legal status of the TRNC, reiterated this statement with the following words: "Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the *de facto* authorities, including their courts; and, in the very interest of the inhabitants, the act of these authorities related thereto cannot be simply ignored by third states or by international institutions, especially courts, including this one (...)"⁴⁸

As can be seen, the TRNC as a *de facto* state enjoys only limited acceptance from international society. Although most countries support the isolate and embargo strategy towards the TRNC, the case is not that clear-cut. In some cases, the TRNC is allowed to maintain non-diplomatic representative offices, and for some countries contacts with TRNC officials are possible, although limited to resolving the Cyprus dispute. Moreover, the UN's recognition of the two Cypriot communities participating in negotiations on an "equal footing" also allows TRNC officials to have full, albeit non-diplomatic access to the UN.

44 Zaim M. NECATIGIL, *supra*, p. 281.

45 Scott PEGG, *supra*, p. 113.

46 (1978) 1 All ER 277. See Zaim M. NECATIGIL, *Journal of International Affairs*, *supra*, p. 5.

47 For further information see Zaim M. NECATIGIL, 'Chrysostomos and Papachrysostomou v. Turkey: Some Aspects of State Responsibility', *Journal for Cypriot Studies*, Vol. 2, No. 3 (1996), pp. 217-266.

48 *Cyprus v. Turkey*, *supra*, para. 96.

D) Arguments of Greek and Turkish Cypriots with regard to the Decision of Non-Recognition of TRNC

As mentioned above, recognition of an entity as a state that is created by the unlawful use of force is forbidden under international law. Similarly, since the TRNC was created as a result of Turkish military intervention, it is this principle of prohibition of the use of force that prohibits its recognition. In this respect, the two sides of the island bring their arguments, which are most of the time far from objectivism, forward to blame the other side and to justify themselves.

From the perspective of the Turkish Cypriot community, the Turkish intervention of 1974, coming after the crisis that erupted in the island, was not an illegal intervention because it is based on Article 4 of the Treaty of Guarantee under which Turkey, as one of the guarantor powers, had a right and obligation to intervene, reestablish the *status quo* and protect the Turkish Cypriots.⁴⁹ Therefore, they argue that the Turkish intervention was in response to prior Greek interventions. Besides, it is argued that the TRNC was not established as a result of the Turkish intervention but some nine years after it, in 1983 by the Turkish people of Cyprus in the exercise of their right to self determination.⁵⁰ Moreover, the overriding principle of respect for the territorial integrity of states, as also enunciated in the Declaration of Friendly Relations, is subject to such states having representative governments. At the time of the declaration of statehood in North Cyprus, the island was already divided into two sectors and therefore the Republic of Cyprus did not actually have a representative government.⁵¹ In summary, they assume that it was not the Turkish Cypriots who started the Cyprus conflict. They have been deprived of their rights since 1964, subjected to discrimination, suffered from ethnic cleansing at the hands of Greek Cypriots from 1963-74, and were kept in isolation as if they were the guilty party and all this happened in violation of their rights and in violation of international law.⁵² Thus, by using force, Turkey's intention was to achieve reconciliation and restore the constitutional order on the island; this action was granted to it by the Treaty of Guarantee and so it cannot be the legal basis for the non-recognition of the TRNC.

Greek Cyprus, on the other hand, contests these arguments from some different viewpoints. First, as a legal claim, they argue that Article 4's use of the word "action" does not authorize the use of force or military action. Even if it did, the Treaty of Guarantee could not take precedence over Article 2(4) of the UN Charter; if Article 4 is construed as authorizing the use of force, it is inconsistent with the

⁴⁹ Zaim M. NECATIGIL, *supra*, p. 285.

⁵⁰ Zaim M. NECATIGIL, *supra*, p. 285.

⁵¹ Zaim M. NECATIGIL, *supra*, p. 286.

⁵² ASLAN and GÜVEN, *supra*, p. 7.

UN Charter and consequently *void ab initio* under Article 103 of the Charter.⁵³ According to their viewpoint, the Treaty only provides for action to restore the *status quo ante* and this had been done by the first intervention of Turkish army while the second one clearly established a new situation which cannot be considered to be legal in accordance with international law. Therefore, the Greek Cypriot side believes that a unitary “Government of Cyprus” still exists and that the Greek-Cypriot administration is that Government, which is the internationally-recognized government of all Cyprus in the eyes of the UN and the EU.

CONCLUSION

Neither of the sides has been able to achieve what they wanted or what they argued for and no comprehensive solution has been reached in Cyprus. As a consequence of international non-recognition of the TRNC, Turkish Cypriots have been struggling to overcome the problems caused by the isolation and exclusion.⁵⁴ Non-recognition of this entity as an independent sovereign state precludes intergovernmental cooperation as well as the cooperation that requires the existence of diplomatic relations.⁵⁵ This lack of international acceptance of the TRNC limits its ability to participate in international affairs. It thus cannot turn to the UN or any other international organization for verbal or material assistance in the case of crisis. Opposition to the TRNC as a state in the international community through the use of embargoes and sanctions has hurt its economy since no country other than Turkey participates in its markets.

Although recognition in international law is deemed to be of a declaratory effect, an unrecognized state is not considered competent to act in international relations and does not have the same status as the recognized states in international community. Thus, recognition itself is not only the acknowledgement of the existence of the legal criteria in a present case, but also there is an external factor, which forms part of the criteria. As Crawford states, “ (...) where an entity is widely recognized as a state, where such recognition has been accorded on non-political grounds, that is strong evidence of the statehood of that entity.”⁵⁶

On the other hand, the fact that recognition is a voluntary act instead of an obligation for states to recognize an entity as a state as they take into account purely political considerations, cannot overshadow the general rules and principles of international law. In this respect, when the emergence of the new entity contravenes the general principles of international law, states shall refuse to recognize this entity

⁵³ Scott PEGG, *supra*, p. 104.

⁵⁴ ARSLAN and GÜVEN, *supra*, p. 5.

⁵⁵ Stefan TALMON, *The Cyprus Question before the European Court of Justice*, EJIL, Vol. 12, No.4, 2001.

⁵⁶ Michael SCHOISWOHL, *supra*, p. 10.

with the aim of applying sanctions and preventing the consolidation of an illegal situation under the “theory of non-recognition.”

The prohibition of threats or use of the force in international relations is one of the most fundamental rules of international law under Article 2(4) of the UN Charter which also constitutes the reason why the TRNC has not been recognized.

On this point, arguments of the Turkish authorities and the Turkish Cypriots are partially right, in the sense that the Turkish Cypriot enclaves had been occupied and they were subject to human rights abuses by Greek Cypriots in the 1960s and the Turkish Cypriots wanted to exercise their right to self determination – as historical sources point out – however, the use of force and occupation by the Turkish army is an unacceptable solution even in these conditions.

As a result, there is no international recognition for Northern Cyprus. Despite this non-recognition, the TRNC as a *de facto* state still exists with its population living on its territory which is governed by its own democratic government. Two different administrations exist on the island, one *de jure* and one *de facto*, and the two communities are living on the island together but uncomfortably. Therefore the problem of Cyprus needs more attention from foreign governments and from international organizations while the island waits for a permanent solution at long last.