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THE DOCTRINE OF NECESSITY AND THE THIRTEEN POINTS AMENDMENTS TO THE CYPRUS CONSTITUION

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Abstract

The solution of the Cyprus conflict in the United Nations (UN) system depends on the answer of a very simple question. The question is whether the usage of Doctrine of Necessity which is used to legitimize the Thirteen Points amendments to the Constitution of Cyprus, falls within the domestic jurisdiction of the Republic of Cyprus under the effective control of the Greek Cypriot community on the institutions of Republic of Cyprus as a right of sovereignty as defined in the Article 2.7 of the UN Charter or not. The answer of this question depends on the answer of another question. The question is whether the 1960 Constitution of Cyprus is a *sui generis* international treaty or not. If the answer to the second question is "YES", then this answer makes null and void the Thirteen Points amendments and the legality of the usage of the Doctrine of Necessity by the Greek-Cypriots` as a tool of legitimization of their effective control of the institutions of the Republic of Cyprus which forms the legal background for the UN Security Council (UNSC) Resolutions 541 and 550.

This article by analyzing the development of the international relations of the Republic of Cyprus within the UN system, beginning with the UN General Assembly resolution 1287, is to prove that at the date of the decisions of the UNSC resolutions 541 and 550 were taken, the Treaty concerning the establishment of the Republic of Cyprus and the Treaty of Guarantee were *de jura* null and void subject to the Thirteen Points amendments to the Constitution of Cyprus by the Greek Cypriot community.

In the conclusion part this article is first time to indicate that the determination of a legal dispute inside the UN system between the UN General Assembly resolution 1287 and UNSC resolutions 541 and 550. This article finalizes by accepting the reality that the UNSC cannot be neutral to the Declaration of the Independence of the Turkish Republic of Northern Cyprus, under the obligations originating from the UN Charter, the resolutions 541 and 541 of the UNSC is in fact positive and affirmative recognition of the independence of the Turkish Republic of Northern Cyprus when the invalidity of the Thirteen Points amendments to the Constitutions of Cyprus and the usage of Doctrine of Necessity is to be proven under development of international relations of the Republic of Cyprus. UNSC resolutions 541 and 550 are under the term of an international wrongful act of an international organization and the international community has an obligation not to recognize as lawful.

Keynotes; Cyprus, Jus Cogens, Self-Determination, Decolonization, United Nations

Özet

Kıbrıs sorununun Birleşmiş Milletler (BM) hukuku icerisinde ki çözümü çok basıt bır sorunun cevabına bağlıdır. Bu soru, Kıbrs devletinin kurumlarını etkin kontrolları altına almış Güney Kıbrıs Rum yönetimi tarafından Kıbrıs Anayasası'nda gerçekleştirilen "13 Madde" değişikliğinin hukuki temelini oluşturmak için kullanmış oldukları Zorunluluk Doktirini`nin BM Sözleşmesinin 2.7 Maddesi belirtilen egemenlik hakkı kapsamında olup olmadığı sorusudur. Bu sorunun cevabını bulmak için ise bir başka soru sormak gerekmektedir. İkinci soru 1960 tarihli Kıbrıs Anayasası`nın sui generis bir uluslararası antlaşma karakterine sahip olup olmadığı sorusudur. Eğer ikinci sorunun cevabı "EVET" olması durumunda, verilen cevap aynı zamanda Kuzey Kıbrıs Türk Cumhuriyeti`nin Bağımsızlık Bildirgesi`ni yok sayan BM Güvenlik Konseyi`nin (BMGK) 541 ve 550sayılı kararlarının hukuki temelini ortadan kaldıracaktır.

Bu sunumun temelini, BM Genel Kurulu`nun 1287 sayılı kararı ile Kıbrıs Cumhuriyeti`nin uluslararası ilişkiler tarihinin gelişimi, inceleyerek, BMGK`nin 541 ve 550 sayılı kararlarının hukuki temelini oluşturan "Kıbrıs Cumhuriyeti'nin Kuruluşuna İlişkin Temel Antlaşma" ve "Garanti Antlasması", BMGK kararlarının alındığı tarih itibari ile Kıbrıs Anayasası`nda gerçekleştirilmiş olan 13 Madde değişikliği sebebi ile hukuken yok hükmünde olduğunu ispatlamak oluşturmaktadır.

Sonuç kısmında, Kıbrıs anlaşmazlığı konusundaki çalışmalarda ilk kez olarak, BM sistemi içerisinde BM Genel Kurulu`nun 1287 sayılı kararı ile BMGK`nib 541 ve 500 sayılı kararları arasında hukuki bir ihtilafın oluştuğu ispatlanmaktadır. BM Sözleşmesi çerçevesinde, BMGK`nin Kuzey Kıbrıs Türk Cumhuriyeti`nin Bağımsızlık Bildirgesi`ne tepkisiz kalmamasının, BM Sözleşmesi`nden kaynaklanan bir zorunluluk olduğu kabul edilir iken, Kıbrıs devletinin kurumlarını etkin kontrolları altına almış Güney Kıbrıs Rumları tarafından Kıbrıs Anayasası`nda gerçekleştirilen 13 Maddelik değişikligini yasallaştırmak için kullanmış oldukları Zorunluluk Doktrini`nin hukuken yok hükmünde olması, BMGK`nin 541 ve 550 sayılı kararlarını "Uluslararası Örgütlerin Haksız Fiili" tanımı kapsamına sokmakta ve aynı zamanda uluslararası toplum açısından ise BMGK`nin 541 ve 550 sayılı kararlarını BM Sözleşmesi`nden kaynaklanan sorumlulukları çerçevesinde yasal kabul etmemeleri zorunluluğu ortaya çıkmaktaıdr. BMGK`nin 541 ve 550 sayılı kararlarının, Kuzey Kıbrıs Türk Cumhuriyeti`nin Bağımsızlık Bildirgesi`nin BM tarafından tanınması olarak kabul edilmesi gerekmektedir.

Anahtar Kelimeler: Kıbrıs, Jus Cogens, Kendi Kaderini Tayın Hakkı, Dekonizasyon, Birleşmiş Milletler

INTRODUCTION

After the collapse of the Republic of Cyprus in 1963, in March 1964, by the resolution 186 (1964) of the UNSC the envoy of a UN peacekeeping force in Cyprus was authorized. This resolution had three implications: the establishment of a peace keeping force, the recognition of the effective control of the Greek Cypriot community on the Cypriot institutions, and the recognition of the UN accountability in the management of the peace process. (The Cyprus Dispute: A Failure of UN Mediation, 2019)

The Greek Cypriots today, with the effective control of the Cyprus Republic institutions, defines the conflict as a belligerency issue against the so-called legal government of Cyprus after they proposed amendments to the constitution, known as the "*Thirteen Points*" that entailed usurping the rights of the Turkish Cypriots and degrading their equal co-founder status to that of a minority on the island and at the same time the Greek Cypriots does not accept the Turkish community's recognized equal external right to self-determination under Article 73 of the UN Charter within the Cyprus Republic in 1960.

To analysis the legality of using the Doctrine of Necessity by the Greek Cypriot governance, we should indicate the relationship between the international law and the state in the form of feedback, to identify the relation the international law as a creation of states and the states as a creation of international law. By this, we can analyze if the Constitution of Cyprus 1960 is an international treaty or not which will be the answer of the legality of using the Doctrine of Necessity.

We should analysis the usage of the Doctrine of Necessity first if it is a sovereign right as indicated the concept of "*Sovereignty*". "*Sovereignty*" in Black's Law Dictionary defined as "*the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation*". The Montevideo Convention on Rights and Duties of States of 1933 provided that all States "*are juridically equal, enjoy the same rights, and have equal capacity in their exercise,*" that *"[n]o State has the right to intervene in the internal or external affairs of another*," and that States have "*the precise obligation not to recognize . . . special advantages which have been obtained by force*." The principle of State sovereignty and its corollaries are not only reiterated but also strengthened in the UN Charter. The establishment of the UN is based on the principle of the sovereign equality of all its Members.

The term "*sovereignty*" in the UN Charter is most visible in the context of sovereign equality. Outside this context, the term is rarely used in the text of the Charter. Indeed, Charter Article 2.7 uses the term "*domestic jurisdiction*" as a precept that seems intentionally less inclusive than the term "*sovereign" suggests*. The UN Charter is part of a world constitutional instrument. As a constitution, the Charter is the formal basis of an international rule of law. One of its primary purposes is to constrain sovereign behaviors inconsistent with its key precepts. UN Charter Article 2.7, this section shifts the focus from the analytical and normative to the empirical. It provides a short overview of continuing problems in exploring the nature of sovereignty and why an empirical approach may advance around the standing of the sovereignty idea. UN Charter Article 2.7 is the Charter's reference to sovereignty. It stipulates that nothing in the Charter authorize the UN to intervene in matters, which are "*essentially within the domestic jurisdiction of any State*."

To decide if the usage of the Doctrine of Necessity is under the domestic jurisdiction of the Cyprus government which is under the effective control of the Greek Cypriots, we should look for the "*development of international relations of the Cyprus Republic*" as in the case of the Tunis-Morocco Nationality Decrees. A nationality conflict between Britain and France which was brought to the Council of the League of Nations after France refused to accept arbitration. France responded to the dispute by claiming that the matter was solely within her domestic jurisdiction. On the other hand, Britain relied on treaty commitments between the two states. The matter was referred to the Permanent Court of International Justice (PCIJ). In

1923, the Court rendered an opinion holding that the dispute did not constitute a matter solely falling within the domestic jurisdiction of France. The Council did not declare its competence over the matter since the parties to the dispute resolved it by the settlement. In the Nationality Decrees case (1923), the PCIJ said:

> *" The words solely within the domestic jurisdiction seem rather to contemplate matters which, though they may very closely concern the interests of more than one state, are not in principle matters regulated by international law. As regards such matters, each State is sole judge. The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations".*

The history of the international relations of the Republic of Cyprus can well define if the Constitution of Cyprus is an international treaty or not. The answer of this question will be as well the answer of the legality of the using of the Doctrine of Necessity whether it is under the domestic jurisdiction of the State. If not, then there exits an international dispute between the international community and the Greek Cypriot governance. In this result, we should identify the critical date that is the crystallization of the dispute on the critical date to find out the legality of the using the Doctrine of Necessity to identify the legality of the Greek Cypriot effective control of the government of Cyprus within the UN system.

1. ORIGIN OF THE CONFLICT ON THE RIGHT TO SELF-DETERMINATION OF THE TURKISH CYPRIOTS

The General Assembly of the UN put Cyprus under Article 73 of the UN Charter and the decolonization list by his resolution 66 (I) on 14 December 1946. On 5 December 1958, with resolution 1287, the General Assembly took his last decision on the decolonization problem of Cyprus. In the resolution 1287, the General Assembly stated that:

> "*Express 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 Turkey, Greece and the United Kingdom for a peaceful solution of the decolonization problem of Cyprus within the principle of *uti possidetis*. 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 United Kingdom and Cyprus, (3) The Treaty of Alliance between Cyprus, Turkey and Greece. (Blay, 1983, p.72)

The Constitution of the Republic was based on those two Agreements. The Joint Constitutional Commission established under the London Agreement for completing a draft of such constitution had strict terms of reference in its work to "*have regard to and scrupulously observe the points contained in the documents of the Zurich Conference and fulfil its task in accordance with the principles there laid down*".

The Constitution so drafted was signed on the 16th August, 1960 by the then Governor of Cyprus on behalf of the British Government, by representatives of the Governments of Greece and Turkey, by Archbishop Makarios on behalf of the Greek Community and Dr. Küçük on behalf of the Turkish Community and was put into force on that date. At the same time three Treaties were signed by the same parties the Treaty of Establishment of the Republic of Cyprus between Great Britain, 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. All these Treaties were put into force on the same date.

The Treaty of Guarantee and the Treaty of Alliance were signed on the 16th August 1960, together with the Treaty of Establishment of the Republic of Cyprus. In accordance with Article 181 of the Constitution the two Treaties "*shall have constitutional force*", whilst Article 182 provides that they are basic articles of the Constitution and "*cannot in any way be amended whether by way of variation addition or repeal*". The said Treaties were signed by the Republic of Cyprus, the Kingdom of Greece and the Republic of Turkey. The United Kingdom signed only the Treaty of Guarantee. When the five-party Treaties were signed, Great Britain transferred sovereignty to the two peoples on the island. Thus, the Republic of Cyprus came into being as an independent partnership state, (Cyprus, Questions & Answers, 2019) when its Constitution came into force.

The Republic of Cyprus was established as a bi-communal state based on the partnership between Turkish Cypriots and Greek Cypriots with the authorization of the UN General Assembly resolution 1287. With this resolution, the General Assembly of the UN capacitated not only Turkey, Greece and the United Kingdom for a peaceful solution of the decolonization problem of Cyprus within the principle of *uti possidetis* but as well the Turkish and the Greek Cypriot communities. The Republic of Cyprus was established by the signatures of the representatives of the Turkish Cypriot and Greek Cypriot communities with the three States.

It was the 1959/1960 Agreements that facilitated independence from Britain and that gave international legal personality to the Greek Cypriot community and the Turkish Cypriot community (both were signatories to the Agreement) as two distinct and equal constituent peoples. The Constitutional Treaty of 1960 recognizes the Turkish Cypriots as a subject of international law, recognized by the UN General Assembly under Article 73 of the UN Charter. The jus *cogens* right of *external self-determination* of the Turkish Cypriot community under the principle of *uti possidetis* with the Greek Cypriot community in a bi-communal state under the constitutional guarantees were recognized.[1]

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 as the Turkish minority in Western Thrace. (T. W. Adams p.489). 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. (Campbell-Thomson, 2014, p.61)

Turkey and the Turkish Cypriots rejected the proposed amendments as an attempt to settle constitutional disputes in favor of the Greek Cypriots and as a means of demoting Turkish status from cofounders of the state to one of minority status removing their constitutional safeguards in the process. Turkish Cypriots filed a lawsuit against the Thirteen Points in Supreme Constitutional Court of Cyprus

[1] 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."

(SCCC)[2]. Archbishop Makarios clarified not to comply with whatever the decision of SCCC will be, and defended his amendments as being necessary "*to resolve constitutional deadlocks*" as opposite to the stance of SCCC. On 25 April 1963, SCCC decided that Archbishop Makarios' the Thirteen Points were illegal. On 21 May, 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. (History North Cyprus, 2018).

2. USAGE OF THE DOCTRINE OF NECESSITY BY THE GREEK CYPRIOTS

After the *de facto* changement of the constitution in 1963 by the Greek-Cypriot president Archbishop Makarios, which by and large removed the convocational element from the constitution by limiting the communal rights of the Turkish-Cypriots. In response, the Turkish-Cypriots withdrew from the administration of the state in protest. Since then, the Greek-Cypriots have carried out the administration of the republic. In July 1964, a law was enacted to provide that the Supreme Court should continue the jurisdiction both of the supreme constitutional court and of the High court. In the leading case of Ibrahim 1964, the Supreme Court ruled that the functioning of the state must continue on the basis of the Doctrine of Necessity. (Trimikliniotis and Demetriou , 2012 p.29-30) The Attorney General of the Republic v. Mustafa Ibrahim and others, ruling famously that the aforementioned legislation is not subject to unconstitutionality, due to the "*law of necessity*", (fundamental maxim of which, as stated, is that the salvation of the Republic should be the supreme law, "*salus populi [rei publicae], uprema lex*").(Stergios Mitas, 2009)

According to Kudret Özersay, a brief analysis of the Ibrahim Case reveals that the Greek-Cypriot Supreme Court was aware of the conditions and criteria required by law for the application of the necessity principle, but refrained from inquiring their satisfaction for actual events before it. This statement can be clarified as follows:(2005, p.55)

> *Judge Josephides (member of the Greek-Cypriot Supreme Court) stated that "the following prerequisites must be satisfied before this doctrine may become applicable" and indicated the occurrence of exceptional circumstances, proportionality and temporary character of the measures taken and non-existence of other remedies to apply. Nevertheless, the Court questioned only the existence of the first criterion, but omitted the others. The Greek-Cypriot judges emphasised prevailing armed conflict and disorder in the Island, and concluded that there was imperative and exceptional circumstances for the satisfaction of the first criterion. Despite the decision of the Court not to apply the other conditions and criteria, details of the events between 1963 and 1964 prove that their fulfilment was lacking."*

Kudret Özersay in his article in the conclusion part, written that:

> *"the doctrine of necessity has been erroneously applied in Cyprus since 1964. Not only in 1964 when Turkish-Cypriot Member of Parliaments' tried to assume their responsibilities at the House of Representatives of the Republic of Cyprus, but also during the recent referenda process*

[2] The Supreme Constitutional Court (Articles 133-151of 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.

under the UN Plan, it was the Greek-Cypriot administration who prevented the return to normal conditions on the Island and this government cannot use the doctrine of state necessity as an excuse to be accepted as the legal government of the 1960 the Republic of Cyprus any more. Moreover, other accepted criteria of Necessity have also been violated. Therefore, the international community should "think twice", before regarding the Greek-Cypriot government as the legal government of the 1960 Republic of Cyprus, also representing the Turkish-Cypriot people. Continuing references to the said doctrine in Cyprus would create new legal inconsistencies and unfair situations for Turkish-Cypriots in Europe and this will produce contradictory situations in the European legal system."

According to the Greek-Cypriots, the usage of the Doctrine of Necessity is based on the legal principles of "*salus populi suprema lex esto*"[3] and "*necessitas non habet legem*"[4], the Court held that the doctrine of necessity was a direct result of the rigidity and narrow ambit of the Constitution of 1960 and that it would be inconceivable that a state should destroy itself because of its Constitution. It was, therefore, held that article 179[5] of the Constitution, which states that the Constitution is the supreme law of the Republic, ought to applied subject to the proposition that where it is not possible for a basic function of the state to be discharged properly, or where a situation has arisen which cannot be adequately met under the existing provisions of the Constitution, then the appropriate organ may take such steps within the nature of its competence as are required to meet the necessity. It was therefore, understood that the Doctrine of Necessity is not a supra – constitutional principle; on the contrary, it forms part of article 179 of the Constitution, as an implied principle.(Emilianides , 2007, p.66) For the Greek-Cypriots, it is under the domestic jurisdiction of the Greek-Cypriots, the usage of the Doctrine of Necessity of necessity by the Article 179 of the constitution.

3. THE LEGALITY OF USING THE DOCTRINE OF NECESSITY AND THE 1960 CONSTITUTION OF CYPRUS AS AN INTERNATIONAL TREATY

The legality of using the Doctrine of Necessity depends on whether under domestic jurisdiction or not is the center point to define the legality of the effective control of the Greek-Cypriot control of the institutions of the Republic of Cyprus. To find out if the usage of the Doctrine of Necessity is under domestic jurisdiction, subject to Article 2.7 of the UN Charter, we should follow the methodology as mentioned in the decision of the Tunis-Morocco Nationality Decrees of the PCIJ that is "*the development of international relations*" of the Republic of Cyprus. The question we should ask our self is if the Constitution of Cyprus in fact a *sui generis* constitution with a character of an international treaty or not.

The development of the international relations of the Republic of Cyprus begins with the General Assembly resolutions 1287 of 1958, where by the parties are authorized "*to reach a peaceful, democratic and just solution in accordance with the Charter of the United Nations*." After this authorization from the General Assembly of the UN, the parties could come came together and signed the Zurich and London agreements.

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[3] Latin, meaning, let the welfare of the people be the supreme law

[4] Latin, meaning. Necessity has no law.

[5] Article 179 [] 1. This Constitution shall be the supreme law of the Republic. 2. No law or decision of the House of Representatives or of any of the Communal Chambers and no act or decision of any organ, authority or person in the Republic exercising executive power or any administrative function shall in any way be repugnant to, or inconsistent with, any of the provisions of this Constitution.

The basic features of the Zurich-London Agreements were incorporated into the Constitution, the Treaty of Alliance, and the Treaty of Guarantee. Along with the Treaty of Establishment, negotiated later, they became legally binding on 16 August 1960, when Cyprus was declared an independent Republic by Order-in-Council under the Cyprus Act of 1960. On September 21, the Republic of Cyprus was admitted to the United Nations. In the Articles 149[6] and the 180[7], the spirit of the Zurich and the London Agreements are written as a tool for conflict resolution for the possible dispute in the future on the implementation of the constitution as written in the articles:

"to make, in case of ambiguity, any interpretation of this Constitution."

In Article 181, it is written that: *The Treaty guaranteeing the independence, territorial integrity and Constitution of the Republic concluded between the Republic, the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland*, whereas in the preamble of the Treaty Of Guarantee, it is written *the Republic of Cyprus of the one part*. The meaning of the Republic of Cyprus here means the signatures of the Turkish and the Greek communities, and the two communities' signatories accepted to have *constitutional force.*

The treaties of the Guarantee and Alliance, were given "*constitutional force*" under Article 181[8]of the Constitution. Article 1 of the Treaty of Guarantee, as written: "*The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution"*. In the preamble of the Treaty of Alliance, it is written that "*Considering that their efforts for the preservation of peace and security are in conformity with the purposes and principles of the United Nations Charter*."

In the Article 182[9]of the constitution, in the paragraph one, it is written that *" the Zurich Agreement dated 11th February, 1959, are the basic Articles of this Constitution and cannot, in any way, be amended,*

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[6] Article 149 [] The Supreme Constitutional Court shall have exclusive jurisdiction - (a) to determine any conflict between the two texts of this Constitution by reference to the text of the draft of this Constitution signed at Nicosia on the 6th April, 1960, in the Joint Constitutional Commission together with the schedule of amendments thereto signed on* by representatives of the Kingdom of Greece, the Republic of Turkey and the Greek and Turkish Cypriot communities, due regard being had to the letter and spirit of the Zurich Agreement dated the 11th February, 1959, and of the London Agreement dated the 19th of February, 1959; (b) to make, in case of ambiguity, any interpretation of this Constitution due regard being had to the letter and spirit of the Zurich Agreement dated the 11th February, 1959, and of the London Agreement dated the 19th February, 1959.

[7] Article 180 [] 1. The Greek and the Turkish texts of this Constitution shall both be originals and shall have the same authenticity and the same legal force. 2. Any conflict between the two texts of this Constitution shall be determined by the Supreme Constitutional Court by reference to the text of the draft of this Constitution signed at Nicosia on the 6th April, 1960, in the Joint Constitutional Commission together with the Schedule of amendments thereto signed on* by representatives of the Kingdom of Greece, the Republic of Turkey and the Greek and Turkish Cypriot communities, due regard being had to the letter and spirit of the Zurich Agreement dated the 11th February, 1959, and of the London Agreement dated the 19th February, 1959. 3. In case of ambiguity any interpretation of the Constitution shall be made by the Supreme Constitutional Court due regard being had to the letter and spirit of the Zurich Agreement dated the 11th February, 1959, and of the London Agreement dated the 19th February, 1959

[8] Article 181: The Treaty guaranteeing the independence, territorial integrity and Constitution of the Republic concluded between the Republic, the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland, and the Treaty of Military Alliance concluded between the Republic, the Kingdom of Greece and the Republic of Turkey, copies of which are annexed to this Constitution as Annexes I and IÉ, shall have constitutional force.

[9] Article 182 [] 1. The Articles or parts of Articles of this Constitution set out in Annex III hereto which have been incorporated from the Zurich Agreement dated 11th February, 1959, are the basic Articles of this Constitution and cannot, in any way, be amended, whether by way of variation, addition or repeal. 2. Subject to paragraph 1 of this Article any provision of this Constitution may be amended, whether by way of variation, addition or repeal, as provided in paragraph 3 of this Article. 3. Such amendment shall be made by a law passed by a majority vote comprising at least two-thirds of the total number of the Representatives belonging to the Greek Community and at least two-thirds of the total number of the Representatives belonging to the Turkish Community.

whether by way of variation, addition or repeal. In the paragraph 3, it is written that "*such amendment shall be made by a law passed by a majority vote comprising at least two-thirds of the total number of the Representatives belonging to the Greek Community and at least two-thirds of the total number of the Representatives belonging to the Turkish Community."*

Articles 149, 180, 181 and 182 of the Constitution of Cyprus makes the construction of the Constitution as an international treaty by linking the obligations to the Zurich and London Agreements. Any conflict on the implementation of the Constitution of Cyprus between the two communities related with these articles has the character of an international dispute but mainly a dispute with the UN system as mentioned above, the of the Republic of Cyprus could only be established as a result of the Zurich and London Agreements with the authorization of the UN General Assembly Resolution 1287. Articles 149, 180, 181 and 182 were put in the constitution on the protection of the right to self-determination of the two communities on decolonization. Any conflict related with the implementation of these are under the definition of an international dispute.

The Thirteen Points amendments of Archbishop Makarios, Greek Cypriots to the Constitution of Cyprus are in conflict with articles 149,180,181, and 182. The *raison d'être* of these articles are to protect the bi-communal character of the republic and the status of the external right to self-determination Turkish Cypriots community from any changement by the Greek Cypriot majority.

The Doctrine of Necessity is an internal tool that can be used only for domestic jurisdictions and cannot be used for the legitimization of any situation under the definition of an international dispute. The usage of the Doctrine of Necessity is a result of the Thirteen Points amendments to the Constitution of Cyprus but any conflict related with the implementation of articles 149, 180, 181 and 182 of the Constitution of Cyprus is under the definition of an international dispute and cannot be legitimized by any legal tool under the domestic jurisdiction.

The Thirteen Points are against the international obligations of the Greek Cypriots that creates an international dispute. As a general concept, when there exits an international dispute, the critical date that is the crystallization of the international dispute is the key point for the solution.

4. THE DOCTRINE OF CRITICAL DATE AND THE CRYSTALLIZATION OF THE INTERNATIONAL DISPUTE IN CYPRUS

In international law the point of time falling at the end of a period within which the material facts of a dispute are said to have occurred is usually called the "*critical date*." Although the concept of the critical date has always been implicit in territorial disputes, its use as a term of art seems to be comparatively recent, and to have derived from the terminology employed by Judge Huber, the Arbitrator in the Island of Palmas case (1928), where he more than once referred to the date of the Treaty of Paris of 1898 (under which Spain ceded certain territories to the United States), as being "*the critical moment*", - and added:

> "... the question arises whether sovereignty . . . existed at the critical date, i.e. the moment of conclusion and coming into force of the Treaty of Paris."

The PCIJ in the Eastern Greenland case, after stating that *"The date at which . . . Danish sovereignty must have existed in order to render the Norwegian occupation invalid is the date at which the occupation took place, viz. July 1931"*, went on to say:

> *"It must be borne in mind, however, that as the critical date is July ... 1931 ... it is sufficient [for Denmark] to establish a valid title in the period immediately preceding the occupation."*

It is also the date after which the actions of the parties to a dispute can no longer affect the issue.(Goldie , L.,1963, p.1251) Such a date must obviously exist in all litigated disputes, if only for the reason that it can never be later than the date on which legal proceedings are commenced. The actions of the parties after that date cannot affect their legal positions or rights as they then stood. (Fitzmaurice,, 1956, p.20) The whole point, the whole *raison d'être*, of the critical date rule is, in effect, that time is deemed to stop at that date. Nothing that happens afterwards can operate to change the situation that then existed. Whatever that situation was, it is deemed in law still to exist; and the rights of the Parties are governed by it. (Fitzmaurice,, 1956, p.20-21) According to the Sir Gerald Fitzmaurice., both as the author of "*The Law and Procedure of the International Court of Justice 1951-54: Points of Substantive Law. Part II,"* and as counsel for the United Kingdom in the Minquiers and Ecrehos Case , The critical date doctrine in relation to territorial disputes are those :

> "*This moment, however-which is the critical one-is clearly not that at which the dispute was born-even when the dispute can be said to have had its birth at any definite moment, which is seldom the case: the critical moment is, normally, not the date when the dispute was born, but that on which it crystallised into a concrete issue."*
>
> *"Taking the theory of the critical date a stage further, in the ordinary course of events and assuming that once a concrete issue has arisen between two countries, they decide to settle by international adjudication, the critical date would be in principle the date on which they agreed to submit the dispute to a tribunal. However, there may be cases where the critical date should nevertheless be some other date . . . one object of the critical date is to prevent one of the parties from unilaterally improving its position by means of some step taken after the issue has been definitely joined."*
>
> *"So much for not putting the critical date too late. But equally, if not more important, is not to put the critical date too early, thereby shutting out acts of the parties that were carried out at the time when each of them was perfectly entitled to take any legitimate steps in the assertion or prosecution of its claim. Just as putting the critical date too late may favour the party which has rejected an earlier proposal for adjudication, by enabling it in the meantime unilaterally to improve its position; so putting the critical date too early favours the party which has put forward a claim in a general way, but has not pursued it."*(Goldie, L., 1963, p.1252-1253)

The doctrine demands that time should, by a necessary and abstracting fiction, be deemed to stop at a date designated as "*critical*." In this way the factual position between the parties becomes *"frozen"* or "*crystallise*d" as of that date-rather like the finances of a business are frozen in the balance sheet as of the accounting date. Once the critical date has been designated facts occurring thereafter are excluded from having any operative effect. The rights of the parties are decided on the basis of the facts occurring before the critical date. Events occurring before the critical date have substantive value. They are right-creating facts.(Goldie , L.,1963, p.1254)

In the Minquiers case, the United Kingdom contended that the critical date ought in all the circumstances not to be put earlier than the latest possible date-i.e. that of the compromise submitting the matter to the Court-because the dispute did not really crystallize until then. This contention, as will be seen, did not entirely prevail; yet the practical effect of the view taken by the Court was very similar. It is the fact that in this type of claim the dispute tends, for one reason or another, not to crystallize for a long time. When it finally does, that should normally be regarded as the critical date, and any earlier date would probably prevent justice being done to claims the relative merits of which depend essentially on their general weight taking all the relevant factors into account over the whole. (Fitzmaurice,, 1956,p.36)

The 1960 Constitution provided that separate municipalities be established for Turkish Cypriots and Greek Cypriots. The Greek Cypriots refused to obey this mandatory provision and in order to encourage them to do so the Turkish Cypriots said they would not vote for the Government's taxation proposals. The Greek Cypriots remained intransigent, so the Turkish Cypriots took the matter to the Supreme Constitutional Court of Cyprus. The court comprised one Greek Cypriot judge, one Turkish Cypriot judge, and a neutral President. In February 1963 (Cyprus Mail 12.2.63) Archbishop Makarios declared on behalf of the Greek Cypriots that if the Court ruled against them they would ignore it. On 19th April 1963, Greek Foreign Minister Averoff had written to Makarios "It is not permissible for Greece in any circumstances to accept the creation of a precedent by which one of the contracting parties can unilaterally abrogate or ignore provisions that are irksome to it in international acts which this same party has undertaken to respect." (Cyprus, Historical Overview) On 25 April 1963, SCCC decided that Archbishop Makarios' Thirteen Points as illegal. On 21 May, president of SCCC resigned due to the Archbishop Makarios' disobedience to the laws of SCCC, thereby disobedience to the laws of Cyprus. In November 1963 the Greek Cypriots went further, and demanded the abolition of no less than eight of the basic articles[10] which had been included in the 1960 Agreement for the protection of the Turkish Cypriots. The Doctrine of Necessity was first time used by the Greek Cypriots to legitimize the situation created by the violation of the articles of the Constitution of Cyprus in July 1964.

The critical date in principle the date on which they agreed to submit the dispute to a tribunal. In the case of the usage of the Doctrine of Necessity, the critical date is not the date first time the doctrine was used but the date when the SCCC decided that Archbishop Makarios' Thirteen Points were illegal. The decision of the SCCC on 25 April 1963 is the day of the crystallization of the dispute.

5. THE ZURICH AND LONDON AGREEMENTS WITH THE NORMS OF *JUS COGENS* AND *ERGA OMNES* CHARACTER

The view that some norms are of a higher legal rank than others has found its expression in one way or another in all legal systems. In international law, propositions have consistently been made that there is a category of norms that are so fundamental that derogation from them can never be allowed. The *jus cogens* concept refers to peremptory principles or norms from which no derogation is permitted, and which may therefore operate to invalidate a treaty. *Jus cogens* means compelling law. (Sartipi and Hojatzadeh, 197). It is accepted by the international community that norms of *jus cogens* protect the fundamental values of the international community, are hierarchically superior to other norms of international law, and are universally applicable (Hossain, 2005, p. 455). *Jus cogens* rules are higher law, a feature generally characteristic of national constitutional law in comparison with other ordinary laws. They place certain norms beyond the reach of states when states, bilaterally or multilaterally, exercise their treaty-making (i.e., lawmaking) function (Tomuschat, 1998, p. 425).

One of the questions that the International Court of Justice (ICJ) the East Timor Case gives rise to is whether the right of peoples to self-determination is a norm of *jus cogens* or a peremptory norm of international law. The ICJ's description here of the right to self-determination as one of the "*essential principles of contemporary international law*" having an *erga omnes* character is profoundly significant

10 The Thirteen Points set forth by Archbishop Makarios in his letter provided, inter alia, for the abolishment of the President's and Vice President's right of veto (Point 1), and for the election of both the Greek President of the House of Representatives and its Turkish Vice-President by the House as a whole and not by separate majorities (Point 3). They also provided for the establishment of unified municipalities and for the unification of the administration of justice (Point 6). Other points were the following, The numerical strength of the Security Forces and of the Defence Forces should be determined by a Law (Point 9), and, The proportion of Greek and Turkish Cypriots in the composition of the Public Service should be modified in proportion to the ratio of the population of Greek and Turkish Cypriots (Point 10).

because it appears to amount to its elevation as a norm of *jus cogens*. It should be observed that the notion of rights and obligations *erga omnes* (that is, valid universally) and the concept of *jus cogens* are not identical, although they are inextricably linked. Saliently, it would appear that support for this view can be found in the dicta of the ICJ in the Barcelona Traction Case, in which the Court indicated that certain obligations deriving from, inter alia, the principles and rules concerning basic rights of the human person including protection from slavery and racial discrimination were obligations *erga omnes*, and hence forming part of the corpus of *jus cogens* norms. Opinion is divided but authority from most of the sources of international law exists supports the conclusion that self-determination is a norm of *jus cogens*.(Naldi, 1999)

The International Criminal Tribunal for the Former Yugoslavia (ICTY) for the summarized the background, nature, and effects of *jus cogens* as:

> *"Because of the importance of the values, it [the prohibition of torture] protects, this principle has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even "ordinary" customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by states through international treaties or local or special customs or even general customary rules not endowed with the same normative force."*(ICTY, 1998)

The Zurich and the London Agreements are on the realization of the right to self-determination of the two communities in Cyprus within the principle of *uti posssidetis* and they are having *jus cogens* norms with *erga omnes* character.

In its dictum on the Barcelona Traction case, the ICJ gave rise to the concept of *erga omnes* obligations in international law. The ICJ adapted an idea similar to the field of law enforcement by cryptically pointing to an essential distinction between the regular obligations of a state and those toward the international community as a whole (Siu and Güzel, 2018, p.31). Breaches deemed to be of a collective nature are those that concern obligations established for the protection of the collective interest of a group of states (*erga omnes partes*) or indeed of the international community as a whole (*erga omnes*). Concrete examples of *erga omnes partes* obligations can be found in particular in human rights treaties. Obligations stemming from regional or universal human rights treaties would have *erga omnes partes* effect toward other states parties, as well as *erga omnes* effect to the extent that they are recognized as customary international law. The same would apply to the obligations articulated in the Statute of the International Criminal Court (ICC) that grant the ICC jurisdiction over the most serious crimes of concern to the "international community as a whole", namely genocide, crimes against humanity, and war crimes (De Wet, 2012, p. 554).

The UN General Assembly resolution 1287 is on the implementation of the Article 73 of the UN Charter that is on decolonization. Decolonization is on the right to self-determination of the peoples, which is a *jus cogens* norm. Any contradiction with a *jus cogens* norm has a result of "*the obligation of non-recognition by the international community as a whole"* as an *erga omnes partes* obligation. Zurich and London Agreements are giving the legality of the external right to self-determination of the Turkish Cypriots within the principle of *uti possidetis* with the Greek Cypriots.

6. OBJECTS AND PURPOSES OF THE CONSTITUTION OF CYPRUS

The spirit of the Zurich and London Agreements as written in the articles 149 and 180 of the constitution of Cyprus should be analyzed through the today's concept of "*object and purposes*" of the treaty implementation.

Francis Lieber in his book dated 1839 book, *Legal and Political Hermeneutics, or Principles of Interpretation and Construction in Law and Politic*s observes that sometimes interpretation alone is not enough to identify what the law is. Lieber understands successful communication to be the transmission of ideas from one person to another through the use of words or other signs. Interpretation is the activity of discovering those ideas. "*Interpretation is the art of finding out the true sense of any form of words: that is, the sense which their author intended to convey, and of enabling others to derive from them the very same idea which the author intended to convey"*.(Klass, 2018)

The term "*object and purpose*" is an inherently abstract concept that refers broadly to a treaty's goals. The VCLT Article 31 states that a treaty should be interpreted in light of its object and purpose, that a treaty's text should be interpreted to reflect the goals embodied in the document as a whole.

Among the many meanings which both terms have in English, the Oxford English Dictionary and the Concise Oxford Dictionary define object also as "*the thing aimed at; a purpose*" and purpose as "*an object to be attained*", thereby suggesting that they are synonymous which would make their joined use in "*object and purpose*" pleonastic. In French, the Petit Robert and the Petit Larousse also define a synonymous content for the common use of the terms. The Petit Larousse adds, however, a special legal meaning of objet: "*ce sur quoi porte un droit, une obligation, un contrat, une demande en justice*", in other words the legal position or relationship created by a legal rule or transaction. (Buffard, and Zemank, 1998, p.331),

These sources—text, context, and object and purpose—reflect three schools of treaty interpretation. First, the objective (textualist) school "*start[s] from the proposition that there must exist a presumption that the intentions of the parties are reflected in the text of the treaty which they have drawn up, and that the primary goal of treaty interpretation is to ascertain the meaning of this text*." The subjective school, by contrast, "*assert[s] that the primary, and indeed only, aim and goal of treaty interpretation is to ascertain the intention of the parties*" and, in so doing, it is permissible to go beyond the four corners of the text. Lastly, the teleological school asserts that the practitioner "*must first ascertain the object and purpose of a treaty and then interpret it so as to give effect to that object and purpose*." The VCLT`s general rule for treaty interpretation is a compromise combining all three approaches, though textualism is dominant. According to the rule, treaty interpretation must rely primarily on the terms of a treaty while context and the treaty's object and purpose must inform its meaning. This general rule of treaty interpretation highlights three sources in which practitioners may seek the meaning of a treaty: the treaty's terms, the context of those terms, and the treaty's object and purpose. The Vienna Convention defines context to include "*any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty" as well as "any instrument . . . made by one or more parties . . . and accepted by the other parties*." Practitioners must also take into account, in addition to the context, relevant subsequent agreements between the parties, relevant subsequent practice of the parties, and any relevant rules of international law. (Jonas and Saunders, 2010, p.577).

Before the codification of the VCLT, the current widespread use of the expression "*object and purpose of a treaty*" in various contexts is very probably due to the crucial role which the ICJ assigned to it in the 1951 Advisory Opinion on Reservations to the Genocide Convention. (Buffard, and Zemank, 1998, p.312) The ICJ specified that "*purpose*" with "*intention*" and held that the intention behind the Genocide Convention is:

> *"To condemn and punish genocide as a crime under international law involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity."*

The ICJ created an object and purpose test in its Genocide Opinion. In that opinion, the ICJ explicitly rejected the unanimous consent rule and introduced the object and purpose test as an alternative limit on reservation making. Some limit was necessary, the Court explained, because to hold otherwise would "*sacrifice the very object*" and "*frustrate the purpose*" of a treaty. With this language, the ICJ was invoking some value beyond any single state or reservation, implying that an incompatible reservation threatens not only the integrity of the treaty obligations for the reserving state alone but also the core of the treaty for all states party. Also the ICJ's language, a reservation may "*sacrifice the very object*" of a treaty. (Jonas and Saunders, 2010, p.588-589)

The objects and purposes of the Zurich and London Agreements are on the external right to self-determination of the two communities as codified under the Article 73 of the UN Charter. The right to external self-determination of the two communities are the very object and purpose that can never be sacrificed or frustrated.

7. OBLIGATION OF NON-RECOGNITION FOR A BREACH OF A PEREMPTORY NORM

The necessity law is created for the legitimization of the Thirteen Points amendments that is for the *de facto* effective control of the Cyprus institutions by the Greek Cypriots. Greek Cypriots used the concept of *ex factis jus oritur*, in which the existence of facts creates law. The legitimization is given by the usage of the Doctrine of Necessity. The opposite of *ex factis jus oritur that is the the principle "ex injuria non oritur jus"*

Recognition and non-recognition possess a central importance in the international system as a significant part of its reaction to the consequences of acts which violate established standards of international law. 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 (Lauterpacht, 1947, p. 411).

Accordingly, no legal order may admit that an unlawful [and] to admit that, apart from well-defined exceptions, an unlawful act, or its immediate consequences, may become *suo vigore* a source of legal right for the wrongdoer is to introduce into the legal system a contradiction which cannot be solved except by a denial of its legal character. International law does not and cannot form an exception

The International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) rest on the assumption of international solidarity in the face of a violation of a norm of *jus cogens.* Article 1 states the basic principle underlying the articles as a whole, which is that a breach of international law by a state entails its international responsibility.(Yearbook of the International Law Commission, 2001,p.32) Article 2 specifies the conditions required to establish the existence of an internationally wrongful act of the state, i.e., the constituent elements of such an act. Two elements are identified. First, the conduct in question must be attributable to the state under international law. Second, the conduct must constitute a breach of an international legal obligation in force for that state at that time.(Yearbook of the International Law Commission, 2001,p.34) Article 3 makes explicit a principle already implicit in Article 2, namely that the characterization of a given act as internationally wrongful is independent of its characterization as lawful under the internal law of the state concerned. There are two elements to this. First, an act of a state cannot be characterized as internationally wrongful unless it constitutes a breach of an international obligation, even if it violates a provision of the state's own law. Second and most importantly, a state cannot, by pleading that its conduct conforms to the provisions of its internal law, escape the characterization of that conduct as wrongful by international law. An act of a state must be characterized as internationally wrongful if it constitutes a breach of an international obligation,

even if the act does not contravene the state's internal law—even if, under that law, the state was actually bound to act in that way.(Yearbook of the International Law Commission, 2001,p.36)

Article 25 is cast in negative language to emphasize the exceptional nature of necessity and concerns about its possible abuse. (Necessity may not be invoked ...) In this respect it mirrors the language of Article 62 dealing with fundamental change of circumstances. It also mirrors that language (a) in paragraph 1 by establishing two conditions without which necessity may not be invoked, and (b) in paragraph 2 by excluding two situations entirely from the scope of the excuse of necessity. The first condition, set out in paragraph 1(a), is that necessity may be invoked only to safeguard an essential interest from a grave and imminent peril. The extent to which a given interest is "*essential*" depends on all the circumstances and cannot be prejudged. It extends to particular interests of the state and its people, as well as to the interests of the international community as a whole. However, this condition is satisfied only when such interest is threatened by a grave and imminent peril that must be objectively established and not merely apprehended as possible. In addition to being grave, the peril has to be imminent in the sense of proximate. The second condition for invoking necessity, found in paragraph 1(b), is that the conduct in question must not seriously impair an essential interest of the other state or states concerned, or of the international community as a whole. In other words, the interest relied on must outweigh all other considerations, not merely from the point of view of the acting state, but on a reasonable assessment of the competing interests, whether these are individual or collective.

In accordance with Article 26, circumstances precluding wrongfulness cannot justify or excuse a breach of a state's obligations under a peremptory rule of general international law. The criteria for identifying peremptory norms of general international law are stringent. Article 53 of the VCLT requires not only that the norm in question should meet all the criteria for recognition as a norm of general international law, and thus be binding as such, but further that it should be recognized as having a peremptory character by the international community of states as a whole. (Yearbook of the International Law Commission, 2001, p.84-85)

Article 40 defines the scope of the breaches covered by the chapter titled "*Serious Breaches of Obligations under Peremptory Norms of General International Law*." It establishes two criteria by which to distinguish these from other types of breaches. The first relates to the character of the obligation breached, which must derive from a peremptory norm of general international law. The second qualifies the intensity of the breach, which must have been serious in nature. Chapter III (Articles 40 and 41) applies only to violations of international law that meet both criteria. (Yearbook of the International Law Commission, 2001, p.112)

The obligations in Article 41 rest on the assumption of international solidarity in the face of a violation of a norm of *jus cogens*. They stem from an understanding that a collective response by all States is necessary to counteract the effects of such a violation. In practice, it is most likely that this collective response will be coordinated through the competent organs of the UN (ICJ, 1970, p. 32). Article 41 sets out the particular consequences of breaches of the kind and gravity referred to in Article 40. The first two paragraphs prescribe special legal obligations of states faced with the commission of "serious breaches" in the sense of Article 40, and the third and final paragraph takes the form of a saving clause. The first of these two obligations refers to collective non-recognition, by the international community as a whole, of the legality of situations resulting directly from serious breaches in the sense of Article 40. The obligation applies to "*situations*" created by these breaches, such as attempted acquisition of sovereignty over territory through denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts that would imply such recognition. (Yearbook of the International

Law Commission, 2001, p.115).The obligation of non-recognition of an unlawful situation is set out in Article 41 (2) in the following terms:

> *"No State shall recognize as lawful a situation created by a serious breach (by a State of an obligation arising under a peremptory norm of general international law)."*

The development of such objective obligatory laws (as entailed by the UN systems) points clearly to the creation of an international community in which a breach of law is deemed an offence against the entire community and each of its members. It matters little who is materially injured by the breach: every member of the community is entitled to claim the vindication of law as a matter of his own legal right. In such a community, an objective standard binding on all would exist for testing the legal validity of the acts of its members. Non-recognition would be the natural attitude of the law-abiding members towards illegal acts. Probably the main difference between international and international society lies, not in the lack of objective law for testing the validity of acts, but in the lack of a central authority to administer the test, and the lack of effective means to rectify the situation (Chen, 1951, p. 427-428).

The principle that territorial acquisitions brought about by the use of force are not valid and must not be recognized found a clear expression during the Manchurian crisis of 1931–32.With regard to the denial by a state of the right of self-determination of peoples, the ICJ's Advisory Opinion in the Namibia case is similarly clear in calling for non-recognition of the situation. The same obligations are reflected in the resolutions of the Security Council and General Assembly concerning the situation in Rhodesia and the Bantustans in South Africa. These examples reflect the principle that when a serious breach, in the sense of Article 40, has resulted in a situation that might otherwise call for recognition, this should nonetheless be withheld. Collective non-recognition would seem to be a prerequisite for any concerted community response against such breaches, and it marks the minimum necessary response by states to the serious breaches referred to in Article 40. (Yearbook of the International Law Commission, 2001, p.115)

In the advisory opinion of the ICJ on the Wall in the Occupied Palestinian Territory (2004), the Court 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, certain rules of humanitarian law applicable in armed conflict, which are fundamental to the respect of the human person and elementary considerations of humanity, and Article 1 common to the four Geneva Conventions. The Court then stated:

> "*Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction*" (Talmon, 2005, p. 104).

8. VIENNA CONVENTION ON THE LAW OF TREATIES AND THE THIRTEEN AMENDMENTS

Cyprus ratified and accepted the obligations of the Vienna Convention on the Law of Treaties (VCLT) by ratifying as the date 28 December 1976. Cyprus is obligated under international law to comply the articles of the Constitutional of 16 August 1960 in good faith and cannot use domestic/internal laws to justify the failure of implementation of the Articles of the Constitutional of Cyprus as an international treaty obligation under the VCLT.

The non-retroactivity rule contemplated in Article 4 of the VCLT is not valid for the Thirteen Points amendments to the Constitutional of Cyprus. The Constitution of Cyprus, itself provides no right to withdraw; in other words, the withdrawal provision was intended or agreed to by all of the signatories that is by the Greek Cypriots. Part V, Articles 42 to 45 and 54 to 64, VCLT set out the various circumstances in which a treaty can be denounced, terminated, or its operation suspended, other than on the ground of invalidity, which ground is very rarely invoked, and even more rarely successfully. Articles 65 to 72, VCLT specify the procedures to be followed and the consequences of termination or suspension with the object of limiting the grounds for invalidity, termination, or suspension of treaties to those that are exclusively recognized by the VCLT, and, as far as termination or suspension of treaties goes to the possible grounds foreseen by a treaty itself.

Article 31 gives pride of place in its opening sentence in para. 1 to good faith (*bona fides*) which is "*one of the basic principles governing the creation and performance of legal obligations*". The notion is also referred to in the third preambular paragraph and in Article 26 on *pacta sunt servanda*. When interpreting a treaty, good faith raises at the outset the presumption that the treaty terms were intended to mean something, rather than nothing. Furthermore, good faith requires the parties to a treaty to act honestly, fairly and reasonably, and to refrain from taking unfair advantage (Villager, 2009, p. 426).

According to Article 31, para.1, a treaty shall be determined in accordance with the ordinary meaning. The ordinary meaning is the starting point of the process of interpretation. This is its current and normal (regular, usual) meaning. A term may have a number of ordinary meanings, which may even change over time. This relativist view of hermeneutics underlies Article 31 which in para. 1 requires the ordinary meaning to be given by the interpreter in good faith to the terms of the treaty. In other words, that particular ordinary meaning will be established which is the common intention of the parties. The relativity of the meaning of a term is confirmed by para. 4 which envisages the possibility of a "*special*" meaning going beyond the ordinary meaning of terms.

> "*The limits of this means of interpretation lie "in a meaning incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained* "(ICJ Reports, 1962, p. 335).

Consideration of a treaty's object and purpose together with good faith will ensure the effectiveness of its terms (*ut res magis valeat quam pereat, the effet utile*)

> "*As the ILC Report 1966 expounded: [w]hen a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted* "(Villiger, 2009, p. 428).

The ICJ created an object and purpose test in its Genocide Opinion. In that opinion, the ICJ explicitly rejected the unanimous consent rule and introduced the object and purpose test as an alternative limit on reservation making. Some limits were necessary, the Court explained, because to hold otherwise would "*sacrifice the very object*" and "*frustrate the purpose*" of a treaty.

Trying to give an answer to the question as to whether a State may rely on its internal law in order to put into question an international obligation, Article 46 is characterized by a fundamental tension between sovereignty and democracy, on the one hand, and the efficiency of international law, on the other hand. A reasonable and practical compromise had, thus, to be found between the two interests at stake. The rule established by Article 46 provides that internal law may not be invoked. This provision thus constitutes a clarification, as to the specific rules it covers, of the general principle that a State may not rely on its

internal law for escaping its international obligations, which is restated in Article 27 of the Convention but the latter rule only applies if the international obligation is legally valid. Thus, the consent of a State to be bound must have been expressed by an organ entitled to do so, as provided by Article 7 of the Convention. For the purposes of the international legal order, that provision establishes the rules which determine the capacity of State organs concerning the conclusion of treaties. The basic principle in this respect is the *ius repraesentationis omnimodo* of the Head of State. Nevertheless, that provision also refers back to internal law, if only to a limited extent. For it is impossible to determine, in any given case, who are the persons envisaged by Article 7 without referring back to the internal order of the State in question. Article 46 provides for the possibility to "*invoke*" the invalidity of a treaty. The procedure to be followed in this case is regulated by Articles 65 and Following of the Convention (Bothe, 2011, p. 1093).

Article 27 relates to the binding force of a treaty: this binding force is determined solely by international law, which entails that the execution of a treaty by the parties cannot depend on their respective internal laws. This provision was conceived as the corollary of the fundamental rule contained in Article 26: the principle of *pacta sunt servanda*, according to which every treaty binds the parties and must be performed in good faith. A treaty, whether bilateral or multilateral, may terminate, or a party may with draw from it, in conformity with its provisions of Article 54. The purpose of Article 54 is to set out a quite obvious rule: the termination of a treaty or the withdrawal of a party may take place if the parties agree to it, whether this agreement is expressly stated in the treaty in paragraph a, or at any other time under any other form in paragraph b. Thus, both paragraphs express the same requirement of consent and specify when it must be expressed and, with regard to Article 54 paragraph a, the Form it must take. Paragraph (a) of Article 54 states that the termination of a treaty or the withdrawal of a party may take place "in conformity with the provisions of the treaty". Thus, Article 54(a) serves as a reminder of the *pacta sunt servanda* rule, and affirms that this rule applies to the provisions of the treaty governing its termination or the withdrawal of a party. (Chapaux, 2011, p. 1238).

Article 54(a) shares with this principle its recognized customary character. Article 54(b) requires the Fulfillment of two conditions to terminate a treaty or allow a party to withdraw from it: first, all parties must consent to the termination or withdrawal; secondly, the other contracting States must be consulted. The termination of or withdrawal from a treaty on the basis of Article 54(b) will only take effect after these two conditions have been fulfilled. It seems that concerning termination or withdrawal by consent, the customary rule is only constituted by the first obligation (consent of all States parties). The obligation to consult the 'other contracting States' must essentially be considered a conventional rule (Chapaux, 2011, p. 1238).

Where a treaty is silent as to termination or withdrawal, the question arises if individual parties have an implied right of unilateral withdrawal in the sense of Article 54 lit a, or if their withdrawal requires the consent of all the other parties, as provided by Article 54 lit b. Article 62 has rightly been called one of the "*fundamental articles*" of the VCLT. The principal challenge in formulating Article 62 was to maintain the proper balance between on the one hand the stability ("s*anctity*") of treaties as the cornerstone of the international legal order and international relations, which is expressed in the fundamental rule of *pacta sunt servanda* (Article 26) and on the other hand the principles of equity and justice calling for the adaptation of treaties to a profoundly changing environment. In this tension, Article 62 cautiously attempts to ensure harmony between the dynamism inherent in the life of the international community, necessitating continuous evolution of international law, and the stability essential in every legal order. One important element in that precarious balance is the limited effect of the article which does not automatically terminate the treaty but instead gives the parties no more than an option to initiate a procedure, however imperfect, toward terminating or suspending their treaty obligations. Article 62 extends to all treaties which are,

pursuant to Articles 1-5 VCLT, covered by the Article 26 with the sole exception of treaties establishing a boundary in the sense of Article 62. It is not through far reaching exceptions of certain treaty types from its coverage but through the narrow formulation of its elements that the provision safeguards the stability of international relations, which is based on the security of treaties. (Kohen &Heatcore, 2011, p. 1069). Article 62 did not at all apply to boundary treaties in violation of the principle of decolonization because these were void by virtue of Article 52 or Article 53.

Article 53, provides for the invalidity of treaties that, at the time of their conclusion, are in conflict with a peremptory norm of general international law. Article 53 does not identify any norms having peremptory status. Article 53 was thus negotiated so as to leave it to the international community as a whole to identify those international law norms belonging to the category of *jus cogens* (Erika, 2012, p. 541).

According to the definition provided in Article 53, a *jus cogens* norm is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character (Yearbook of the International Law Commission, 2001, p. 112). Article 53 of the 1969 VCLT restricts itself' to a relatively narrow aspect, notably the effect of a conflict between a treaty, as defined in the Convention, and a peremptory rule of law. Under treaty law or, as stated in Article 53, "*for the purposes of the present Convention*", conflict with a *jus cogens* norm or peremptory law is a ground for voidance of a treaty. Logically, therefore, this Article forms part of that section of the Convention dealing with the invalidity of treaties. Article 53 of the VCLT applies to the specific circumstance in which a treaty conflicts, at the time of its conclusion, with a pre-existing *jus cogens* rule. It does not extend to circumstances in which a treaty conflicts with a rule that has arisen since its conclusion; the latter scenario is covered by Article 64 of the Convention, the commentary to which add support to the developments set out infra, in particular as regards the specific circumstances in which the *jus cogens* superveniens principle applies (Suy, 2011, p. 1225).

Norms of *jus cogens*, as distinct from *jus dispositivum*, are also generally recognized as being universally applicable. As a point of departure, the majority of international law rules are binding on states that have agreed to them, in case of treaties, or at the very least, to states that have not persistently objected to them, in the case of customary international law (*jus dispositivum*). *Jus cogens*, as an exception to this basic rule, presupposes the existence of rules "*binding upon all members of the international community*." (Tladi, 2017, p. 41). In Article 64 of the VCLT, it is written that "*if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates*." The VCLT, Article 2 provides that the validity of a treaty may be impeached "*only through the application of the present Convention*." The basic limitation in the effective enforcement of *jus cogens* norms in the regime of the law of treaties is that this ground of invalidity may be invoked only by the parties to the convention (Magallona, 1976, p. 528).

The non-retroactivity rule contemplated in Article 4 may be concretized in the application of Article 53. Since it is to be understood that a treaty under the latter article is one that is concluded after the convention enters into force, a *jus cogens* norm cannot possibly reach a treaty concluded before the convention comes into force because the point of conflict defined by this article is "*the time of its treaty's conclusion*." Treaties concluded before the convention's entry into force are perforce saved from the operation of Article 53, even if they conflict with a *jus cogens* norm.

To determine the correct application of the non-retroactive rule under Article 4 in relation to Article 64, the relevant issue is not whether the treaty in question was concluded before or after the convention`s entry into force, but from the point of time after the convention's entry into force a *jus cogens* norm should

invalidate that treaty. On the basis of the nature of the *jus cogens* rule in Article 64, the more precise non-retroactivity rule applicable is not Article 4, but paragraph 2(b) of Article 71, which provides, inter alia, that the termination of a treaty under Article 64 "*does not affect any right, obligation or legal situation of the parties created by the execution of the treaty prior to its termination*." (UN Document. A/51/389, p. 702)

The Constitution of Cyprus has a character of an international treaty. The Thirteen Points amendments to the Constitutional Treaty of 1960 by the Greek Cypriot community and the usage of the legitimization of the illegal situation by the Doctrine of Necessity is a breach of *jus cogens* norm, As written in Article 64, any breach of a *jus cogens norm*, "*does not affect any right, obligation or legal situation of the parties created by the execution of the treaty prior to its termination*."

The Thirteen Amendment to the Constitutional of Cyprus is a serious breach of obligations under peremptory norms of general international law, on the right to external self-determination of the Turkish Cypriot community with the Greek Cypriot community. The international community has an obligation of the non-recognition to the unlawful situation created by as the Constitution of Cyprus is an international treaty

9. THE UN SECURITY COUNCIL RESOLUTIONS 541 AND 550

On 15 November 1983, TRNC was proclaimed. At the same time, the founding parliament of the TRNC unanimously passed the Declaration of Independence which emphasized that the Turkish Cypriot side *"firmly adhered to the view that the two peoples of Cyprus were destined to co-exist side by side and could and should find a peaceful, just and durable solution through negotiations on the basis of equality",* confirming that the proclamation of the TRNC aimed at facilitating the re-establishment of a new partnership on the Island between Turkish Cypriots and Greek Cypriots and resolving the Cyprus problem through comprehensive negotiations. (Deputy Prime Ministry and Forign Affairs of Turkish Republic of Northern Cyprus, 2019)

According the Greek Cypriot community, TRNC is an illegal regime in the so-called occupied part of Cyprus, with the encouragement of the Turkish government, unilaterally declared independence in violation of international law and of the treaties of establishment and guarantees of the Republic of Cyprus. The UNSC in its resolution 541 condemned that illegal act which called upon the Turkish side to withdraw the illegal Unilateral Declaration of Independence and to stop all secessionist acts. It further called upon all states not to facilitate in any way the secessionist entity and not to recognize any other state than the Republic of Cyprus. (Permanent Mission of the Republic of Cyprus to the United Nations,2019)

Resolution is a document that offers a solution to a problem in the purview of the UN. Each resolution consists of one long single sentence. It begins with the name of the main organ that is adopting the resolution (e.g., The General Assembly or The Security Council). This is followed by several preambulatory clauses. Preambulatory – literally means, "*walking before*". These are not really paragraphs, but clauses in the sentence. Each one starts with a verb in the present participle (e.g., Recalling, Considering, Noting), which is capitalized, and ends with a comma. Preambulatory clauses describe the problem being addressed, recalls past actions taken, explains the purpose of the resolution, and offers support for the operative clauses that follow. The preambulatory section is where a resolution lists its justifications. It uses passive verbs like guided by, alarmed by, realized, recalling, noting, etc. The preamble does not actually do anything, but it is necessary because it provides a context for the operative section to draw from. This is also the place to reference (recalling) treaties and resolutions that have been adopted on the subject. After the preambulatory clauses, come the operative clauses, which are numbered, and state the action to be taken by the body. Operative clauses all begin with present tense active verbs, which are generally stronger words than those used in the Preamble. Operative clauses state the solutions that the sponsors of

the resolution propose to resolve the issues. The operative clauses should address the issues specifically mentioned in the preambulatory clauses above it. Operative clauses contain all the solutions that the sponsor(s) of the resolutions proposed. These clauses set out actual solutions and initiatives for the committee to undertake.

In the Resolution 541 adopted by the UN Security Council on 18 November 1983, in the preambulatory clauses, it is written that;

Concerned at the declaration by the Turkish Cypriot authorities issued on 15,

November 1983 which purports to create an independent state in northern Cyprus,

Considering that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee,

Considering, therefore, that the attempt to create a "Turkish Republic of Northern Cyprus", is invalid, and will contribute to a worsening of the situation in Cyprus,

In the operative clauses in 1 and 2, it is written that;

1. Deplores the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus;

2. Considers the declaration referred to above as legally invalid and calls for its withdrawal;

According the operative clause two of the UNSC resolution 541, the invalidity of the Declaration of Independence of TRNC is subject to the preambulatory clause as written; "*the declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee*."

The duty of the UNSC is to protect the rule of law and the principles of the UN Charter. The concept of the rule of law is embedded in the Charter of the UN. The Preamble of the Charter states as one of the aims of the UN *"to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*." The UNSC resolution 541 gave his decision to protect the rule of law in Cyprus and the obligations arising from the Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee in Cyprus. The legality of the UNSC resolution 541 is subject to the validity of the two agreements as written in the resolution to protect the rule of law.

In the preambulatory clauses of the 1960 Treaty concerning the establishment of the Republic of Cyprus, it is written that;

"The United Kingdom of Great Britain and Northern Ireland, the Kingdom of Greece and the Republic of Turkey of the one part and the Republic of Cyprus of the other part;

Desiring to make provisions to give effect to the Declaration made by the Government of the United Kingdom on the 17th of February, 1959, during the Conference at London, in accordance with the subsequent Declarations made at the Conference by the Foreign Ministers of Greece and Turkey, by the Representative of the Greek Cypriot Community and by the Representative of the Turkish Cypriot Community;

Taking note of the terms of the Treaty of Guarantee signed today by the Parties to this Treaty;"

In the first paragraph of the perambulatory clause, the Republic of Cyprus is a part against the 3 States. The Republic of Cyprus could only be a part to the agreement by coming into force of the Constitution of Cyprus. The Constitution of Cyprus that was just signed by the Governor of Cyprus on behalf of the British Government, by representatives of the Governments of Greece and Turkey, by Archbishop Makarios on behalf of the Greek Community and Dr. Küçük on behalf of the Turkish Community recognition of its international legal personality before the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee.

In the paragraph 2 of the perambulatory clause, the Turkish Cypriot community's declaration is accepted equally as the Greek Cypriot community subject to the UNGA resolution 1287on the decolonization of the island as the parties to create a bi-communal republic and the followings agreements under the spirit of the Article 73 of the UN Charter within the principle of *uti possidetis*.

At the date the UNSC had taken the decision of resolution 541, the Treaty concerning the establishment of the Republic of Cyprus and the Treaty of Guarantee were already abolished when Greek Cypriot community leader Makarios legalized the Thirteen Points amendments on 30 November 1963. On 30 November 1963, Greek Cypriot community leader Makarios in fact nullified the very object and purposes of the Zurich and London agreements which makes the UN General Assembly resolution 1287 null. The UNSC had an obligation to analyze the history of the international relations of the Republic of Cyprus and when the dispute had been crystallized. The critical date in principle the date on which they agreed to submit the dispute to a tribunal. In the case of the usage of the Doctrine of Necessity, the critical date is not the date first time the doctrine was used but the date when the SCCC decided that Archbishop Makarios' Thirteen Points were illegal. The decision of the SCCC on 25 April 1963 is the day of the crystallization of the dispute where the UNSC should take into account respectively the invalidity of the Treaty concerning the establishment of the Republic of Cyprus and the Treaty of Guarantee in its resolution as the legal effect of the dispute.

The UNSC resolution 541 in fact created a legal dispute with the UN General Assembly resolution 1287 by accepting the Treaty concerning the establishment of the Republic of Cyprus and the Treaty of Guarantee were at force at the date of the resolution decision was taken which was nullified by the amendments of the Thirteen Points to the Constitution of Cyprus-

The UNSC resolution 550 on his operative clause 1 reaffirmed its resolution 541 and called for its urgent and effective implementation. The UNSC resolution was built on the same legal constructions as the resolution 541 and with the same reasons, the UNSC resolution 550 is null and void.

The Article 53 of VCLT, provides for the invalidity of treaties that, at the time of their conclusion, are in conflict with a peremptory norm of general international law which is the legal background of the wrongfulness of the UNSC resolutions. As written in Article 64 of VCLT, any breach of a *jus cogens norm*, "*does not affect any right, obligation or legal situation of the parties created by the execution of the treaty prior to its termination*."

UNSC does not have the mandate in the UN Charter to take any resolution to legitimize any kind of breach of a *jus cogens* norm.The UNSC resolutions 541 and 550 are under the definition of the international wrongful acts of an international organization as the resolution is legitimization the violation of the right to external use of self-determination of the Turkish Cyprus community, a *jus cogens* norm by the Thirteen Points amendments and its legitimization by the usage of the Doctrine of Necessity, violation of a peremptory norm of an international law where no derogation is permitted as an *erga omnes partes* obligation. The international community has an obligation of non-recognition as legal the UNSC resolutions 541 and 550.

10. RESPONSIBILITY OF AN INTERNATIONAL ORGANIZATIONS FOR ITS INTERNATIONALLY WRONGFUL ACTS

International organizations are quite different from States, and in addition present great diversity among themselves. In contrast with States, they do not possess a general competence and have been established in order to exercise specific functions ("*principle of specialty*"). (Draft articles on the responsibility of international organizations, with commentaries, 2011) The ICJ in the advisory opinion of the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt stated that "*international organisations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law*". (ICJ Reports, 1980, p.90)

Under Article 1(1) of the UN Charter, the UNSC is obliged to act "*in conformity with the principles of justice and international law.*" It is a well-accepted fact that the purposes and principles of the UN and general international law limit the powers of the UNSC.

The Security Council is under the duty to act in conformity with general international law can be found in the opinions of the ICJ. In the Namibian case, The ICJ has therefore reached the conclusions that the decisions made by the Security Council in paragraphs 2 and 5 of resolutions 276(1970), as related to paragraph 3 of resolution 264 (1969) and paragraph 5 of resolution 269(1969), were adopted in conformity with the purposes and principles of the Charter and in accordance with its Articles 24 and 25.5 (ICJ Reports, 1971, p.53)

In 2011, the ILC adopted sixty-six Draft Articles on the Responsibility of International Organisations, with the objective of establishing a legal framework regulating the internationally wrongful acts of international organizations and the consequences of those acts. (Palchetti,2012,p.728)

Article 2 of the Draft articles on the responsibility of international organizations requires the international organization to possess "*international legal personality*." The acquisition of legal personality under international law does not depend on the inclusion in the constituent instrument of a provision such as Article 104 of the United Nations Charter, which reads as follows: "*The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes*."

Chapter V of Part One of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts contains a "*without prejudice*" provision that applies to all the circumstances precluding wrongfulness considered in that chapter. The purpose of this provision in Article 26192 is to "*make it clear that circumstances precluding wrongfulness in Chapter V, Part One, do not authorize or excuse any derogation from a peremptory norm of general international law.*" The commentary on Article 26 on the responsibility of states for internationally wrongful acts says that "peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination." (Siu and Guzel,2018, p.75)

Paragraph 1 states the principle that an international organization cannot invoke its rules to justify noncompliance with its obligations under international law entailed by the commission of an internationally wrongful act. This parallels the principle that a state may not rely on its internal law as a justification for failure to comply with its obligations under Part Two of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. The text of paragraph 1 replicates Article 32 on state responsibility, with two changes: "i*nternational organization*" replaces "state," and the reference to the rules of the organization replaces that to the internal law of the state. (Draft articles on the responsibility of international organizations, with commentaries, 2011)

Article 42 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 Draft Articles on the Responsibility of States for Internationally Wrongful Acts. 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 its report to the UN General Assembly, the ILC asked two questions of the governments and international organizations:

> *1) Do members of an international organization that are not responsible for an internationally wrongful act of that organization have an obligation to provide compensation to the injured party, should the organization not be in a position to do so?*
>
> *2) According to Article 41, paragraph 1, on responsibility of states for internationally wrongful acts, when a state commits a serious breach of an obligation under a peremptory norm of general international law, the other states are under an obligation to cooperate to bring the breach to an end through lawful means. Should an international organization commit a similar breach, are states and also other international organizations under an obligation to cooperate to bring the breach to an end?*

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.((Draft articles on the responsibility of international organizations, with commentaries,2011)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 international organization acts in breach of a peremptory norm of general international law, its position is not much different from that of a State*." With regard to the obligation to cooperate on the part of international organizations, the same organization noted that an international organization "must always act within its mandate and in accordance with its rules."(Responsibility of international organizations Comments and observations received from international organizations, 2007)

I n this context it may be useful to recall that in the operative part of its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the ICJ first stated the obligation incumbent upon Israel to cease forthwith the works of construction of the wall and, "*given the character and the importance of the rights and obligations involved*," the obligation for all states "*not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction*." The court then added, "*The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.*" Some instances of practice relating to serious breaches committed by states concern the duty of international organizations not to recognize as lawful a situation created by one of those breaches. For example, with regard to the annexation of Kuwait by Iraq, UN Security Council Resolution 662 (1990) called upon "*all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation.*" The present article concerns the obligations of states and international organizations in the event of a serious breach of an obligation under a peremptory

norm of general international law by an international organization. (Draft articles on the responsibility of international organizations, with commentaries, 2011)

CONCLUSION

The solution of the Cyprus conflict in the United Nations (UN) system depends on the answer of a very simple question. The question is whether the usage of Doctrine of Necessity which is used to legitimize the Thirteen Points amendments to the Constitution of Cyprus, falls within the domestic jurisdiction of the Republic of Cyprus under the effective control of the Greek Cypriot community on the institutions of Republic of Cyprus as a right of sovereignty as defined in the Article 2.7 of the UN Charter or not. The answer of this question depends on the answer of another question. The question is whether the 1960 Constitution of Cyprus is an international treaty or not. If the answer to the second question is "YES", 1960 Constitution of Cyprus is a *sui generis* international treaty, when we analyzed the history of the development of the international relations of Cyprus which makes null and void the Thirteen Points and the legality of the usage of the Doctrine of Necessity by the Greek-Cypriots` as a tool of legitimization of their effective control of the institutions of the Republic of Cyprus which forms the legal background for the UN Security Council (UNSC) Resolutions 541 and 550. The answer of the questions are in the history of the development of the international relations of Cyprus.

The General Assembly of the UN put Cyprus under Article 73 of the UN Charter and the decolonization list by his resolution 66 (I) on 14 December 1946. On 5 December 1958, with resolution 1287, the General Assembly took his last decision on the decolonization problem of Cyprus. In the resolution 1287, the General Assembly stated that:

> *"Express 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."*

The General Assembly of the UN capacitated Turkey, Greece and the United Kingdom for a peaceful solution of the decolonization problem of Cyprus within the principle of *uti possidetis*. 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 United Kingdom and Cyprus, (3) The Treaty of Alliance between Cyprus, Turkey and Greece. The Constitution of the Republic was based on those two Agreements. The Joint Constitutional Commission established under the London Agreement for completing a draft of such constitution had strict terms of reference in its work to "*have regard to and scrupulously observe the points contained in the documents of the Zurich Conference and fulfil its task in accordance with the principles there laid down.*"

The Constitution so drafted was signed on the 16th August, 1960 by the then Governor of Cyprus on behalf of the British Government, by representatives of the Governments of Greece and Turkey, by Archbishop Makarios on behalf of the Greek Community and Dr. Küçük on behalf of the Turkish Community and was put into force on that date. At the same time three Treaties were signed by the same parties the Treaty of Establishment of the Republic of Cyprus between Great Britain, 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. All these Treaties were put into force on the same date.

It was the 1959/1960 Agreements that facilitated independence from Britain and that gave international legal personality to the Greek Cypriot community and the Turkish Cypriot community (both

were signatories to the Agreement) as two distinct and equal constituent peoples. The objects and purposes of the treaties` goals are on the implementation of the Article 73 of the UN Charter that is 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 as a subject of international law, recognized by the UN General Assembly under Article 73 of the UN Charter. The *jus cogens* right of external self-determination of the Turkish Cypriot community under the principle of *uti possidetis* with the Greek Cypriot community in a bi-communal state under the constitutional guarantees were recognized by the Constitution of Cyprus.

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*.

In the Articles 149 and the 180 of the Constitution of Cyprus the spirit of the Zurich and the London Agreements are written as a tool for conflict resolution for the possible dispute in the future on the implementation of the constitution. Articles 149, 180, 181 and 182 of the Constitution of Cyprus makes the construction of the Constitution as an international treaty by linking the obligations to the Zurich and London Agreements. Any conflict on the implementation of the Constitution of Cyprus between the two communities related with these articles has the character of an international dispute but mainly a dispute with the UN system. The Republic of Cyprus could only be established as a result of the Zurich and London Agreements with the authorization of the UN General Assembly Resolution 1287. Articles 149, 180, 181 and 182 were put in the constitution on the protection of the right to self-determination of the two communities on decolonization. Any conflict related with the implementation of these are under the definition of an international dispute.

The Article 25 of ARSIWA emphasizes the usage of the Doctrine of Necessity. The first condition, set out in paragraph 1(a), is that necessity may be invoked only to safeguard an essential interest from a grave and imminent peril. The extent to which a given interest is "*essential*" depends on all the circumstances and cannot be prejudged. It extends to particular interests of the state and its people, as well as to the interests of the international community as a whole. However, this condition is satisfied only when such interest is threatened by a grave and imminent peril that must be objectively established and not merely apprehended as possible. In addition to being grave, the peril has to be imminent in the sense of proximate. The second condition for invoking necessity, found in paragraph 1(b), is that the conduct in question must not seriously impair an essential interest of the other state or states concerned, or of the international community as a whole.

The Thirteen Points amendments to the Constitution of Cyprus as a breach of a preemptory norm and as well an international treaty and the Doctrine of Necessity cannot be used for the legitimization of eliminating the external right to self-determination of the Turkish Cypriots in the bi-communal republic. The Article 41.2 of ARSIWA codifies the obligation of non-recognition of an unlawful situation is set out in Article 41 (2);

> *"No State shall recognize as lawful a situation created by a serious breach (by a State of an obligation arising under a peremptory norm of general international law)."*

Article 27of the VCLT relates to the binding force of a treaty: this binding force is determined solely by international law, which entails that the execution of a treaty by the parties cannot depend on their respective internal laws. This provision was conceived as the corollary of the fundamental rule contained

in Article 26: the principle of *pacta sunt servanda*, according to which every treaty binds the parties and must be performed in good faith as written in the Article 31 good faith (bona fides) which is "*one of the basic principles governing the creation and performance of legal obligations*".

Under Article 1(1) of the UN Charter, the UNSC is obliged to act "*in conformity with the principles of justice and international law*." It is a well-accepted fact that the purposes and principles of the UN and general international law limit the powers of the UNSC.

According the operative clause two of the UNSC resolution 541, the invalidity of the Declaration of Independence of TRNC is subject to the preambulatory clause as written; "*the declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee*."

At the date the UNSC had taken the decision of resolution 541, the Treaty concerning the establishment of the Republic of Cyprus and the Treaty of Guarantee were already abolished when Greek Cypriot community leader Makarios legalized the Thirteen Points amendments on 30 November 1963. On 30 November 1963, Greek Cypriot community leader Makarios in fact nullified the very object and purposes of the Zurich and London agreements which makes the UN General Assembly resolution 1287 null. The UNSC had an obligation to analyze the history of the international relations of the Republic of Cyprus and when the dispute had been crystallized. The critical date in principle the date on which they agreed to submit the dispute to a tribunal. In the case of the usage of the Doctrine of Necessity, the critical date is not the date first time the doctrine was used but the date when the SCCC decided that Archbishop Makarios' Thirteen Points were illegal. The decision of the SCCC on 25 April 1963 is the day of the crystallization of the dispute where the UNSC should take into account respectively the invalidity of the Treaty concerning the establishment of the Republic of Cyprus and the Treaty of Guarantee in its resolution as the legal effect of the dispute.

The Article 53 of VCLT, provides for the invalidity of treaties that, at the time of their conclusion, are in conflict with a peremptory norm of general international law which is the legal background of the wrongfulness of the UNSC resolutions. As written in Article 64 of VCLT, any breach of a *jus cogens* norm, "*does not affect any right, obligation or legal situation of the parties created by the execution of the treaty prior to its termination*." UNSC does not have any authority to take any resolution to legitimize any kind of breach of a *jus cogens* norm but however the UNSC resolution legitimized the Thirteen Points amendments to an international treaty and the usage of the Doctrine of Necessity to legitimize an international wrongfulness by domestic jurisdiction.

The UNSC resolution 550 on his operative clause 1 reaffirmed its resolution 541 and called for its urgent and effective implementation. The UNSC resolution was built on the same legal constructions as the resolution 541 and with the same reasons, the UNSC resolution 550 is null and void.

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 international 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 Cyprus community with the Greek Cypriot communtiy, a *jus cogens* norm that no derogation is permitted and there exits an obligation of non-recognition by the international community as a whole as an *erga omnes partes* obligation.

The resolutions 541 and 541 of the UNSC should be understood as positive and affirmative recognition of the independence of the TRNC.

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