

**International Law: Violation and Decline  
The Puppet State in the Occupied Part of Cyprus  
[Διεθνές Δίκαιο: Παραβίαση και Παρακμή  
Το Κράτος Ανδρείκελο στην Κατεχόμενη Κύπρο]**

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Dr. Kypros Chrysostomides needs no introduction to the Cyprus Review readers. Not only does he stand out as a highly reputable and much respected member of the Cyprus legal profession and a political figure of exemplary ethos and integrity, he is also an expert on the Cyprus issue and a fervent supporter of the rule of International Law. Back in 1994, when his first major book on the Cyprus issue *The Republic of Cyprus in International Law (Το Κράτος της Κύπρου στο Διεθνές Δίκαιο)* had been published, I had just been recruited as a rookie advocate at his law firm and I vividly recall receiving from him, with sheer pride and excitement, a signed complimentary copy of his book. Twenty-nine years down the road, having been invited to review his latest and, ever so sadly, last book, I cannot but consider my contribution as a humble tribute to a great Cypriot International Law scholar and practitioner.

This book, albeit overlapping to a certain extent with his previous work (*The Republic of Cyprus in International Law*) is, in my view, an admirable piece of work for a number of reasons. Firstly, it purports to create, as the author states in his concluding remarks, a consolidated source of reference for refuting the arguments put forward by Turkey and the Turkish Cypriot leadership in asserting sovereignty/sovereign equality for the secessionist entity established in the occupied areas. This might arguably be described as a risky exercise, given that each chapter could very well form the subject matter of a separate thesis. Yet, despite the wide scope of issues covered, a core position underlies his whole analysis, forming a solid backbone for the book: adherence to International Law must be *the* core guiding principle for any ‘player’ involved with the Cyprus problem, be it States, International Organisations or International Judicial Organs. Secondly, his approach is not static, as it provokes further analysis and, on certain points, further debate among diverse categories of readers: politicians, political analysts, academics, and international law practition-

ers. Thirdly, he defends and develops very skillfully the tough title selected. His message comes across loud and clear. On the one hand, as the author strives to explain, the arguments put forward by the Turkish/Turkish Cypriot side claiming separate 'sovereignty' for the secessionist entity in the occupied area are meritless in terms of international law. On the other hand, in the political arena of a negotiated solution, the gradual 'upgrading' of the notion of equality between the two communities and the acceptance of 'political equality' have been manipulated by the Turkish side to promote its longstanding claim for separate sovereignty of the secessionist entity. His analysis is dense and his criticism is blunt, expressing with unhindered honesty his disappointment, frustration even, as to the lukewarm response of the international community to the flagrant and continuing violations of international law in Cyprus.

Chapters 1-3 deal with the core arguments regarding the illegality of the 1974 military invasion and continuing occupation, as well as the inherent illegality of the declaration of independence of the seceding entity in the occupied areas. The analysis, predictably, focuses on the violation of the prohibition of use of force, a rule of customary international law and *jus cogens*, set out in Article 2.4 of the United Nations Charter (Charter), as well as on the violation of the Treaty of Guarantee. The Treaty must be interpreted in accordance with customary international law and *jus cogens* principles enshrined in Article 2.4 of the Charter; in any case, even if a conflict is said to exist between the obligations under the Treaty and those under the Charter, it is the Charter that prevails. Interestingly, he also touches upon the issue of humanitarian intervention, stressing that it is highly doubtful whether this has survived the prohibition of use of force in Article 2.4 of the Charter.

The human rights and international law violations, some of a continuing nature, caused by the invasion and continuing occupation, also constitute grave violations of international humanitarian law, including the 1949 Geneva Conventions and international crimes set out in the Rome Statute for the establishment of the International Criminal Court (ICC). The latter aspect is further developed in Chapter 13, where, more specifically, the author discusses (a) whether Turkey's recent illegal activity in the Cyprus Exclusive Economic Zone (EEZ) constitutes aggression under the Rome Statute, and (b) whether the gradual opening of the fenced-up area of Varosha for development and settlement constitutes a war crime under the Rome Statute. Surely the constraints of this review do not leave room for a full discussion of these ideas. Yet, a red flag of caution needs to be raised when it comes to proposing the investigation of the possible commission, by Turkey, of war crimes or the crime of aggression

under the Rome Statute. Like any multilateral treaty, the Rome Statute is the product of compromise between contracting States, and the acceptance of the ICC jurisdiction in investigating and prosecuting international Crimes has strict jurisdictional boundaries, *ratione temporis* and *ratione materiae*. Regarding, in particular, Turkey's illegal activity in the EEZ of the Republic of Cyprus, it is, in my view, highly debatable whether this can legally substantiate a referral for investigation into the commission of the crime of aggression. Additionally, there appear to be insurmountable procedural obstacles for such referral, the understanding being that, except for a referral of the situation by the United Nations Security Council (UNSC), both States concerned have to be Party to the Rome Statute.

The 'Turkish Federated State' ('TFS') and the 'Turkish Republic of Northern Cyprus' ('TRNC') are direct emanations of Turkey's illegal invasion. Arguments that the declaration of the 'TFS' and the 'TRNC' created a new legal entity in international law, have been consistently rejected by International Courts, International Organisations and States. The European Court of Human Rights (ECtHR) expressly held that the presence of Turkish troops in the occupied area of Cyprus prevents the government of the Republic of Cyprus from exercising effective control. Nor can the argument be sustained that, even if no new subject of international law has been created, there has been a lawful transfer of power by the Turkish army to the *de facto* local authorities resulting in the termination of occupation. Such transfer of power must be made to the lawful government of the occupied State. Similarly unattainable is the argument that the 'TFS' and the 'TRNC' are the 'natural evolution' of the Turkish Cypriot authorities that have existed since 1964, given that such authorities had no territorial jurisdiction, hence no independence. United Nations General Assembly Resolutions 33/15 (1978), 34/30 (1979) and 37/253 (1983) include express references to the occupation and eminent scholars, as well as the ECtHR jurisprudence support this position. The 'TRNC' falls squarely in the category of 'puppet states', a term which, according to Crawford, is used to describe 'nominal sovereigns' subject to foreign control, particularly in cases where the establishment of the puppet state purports to disguise a flagrant illegality, such as the illegal military occupation following an illegal military invasion.

In Chapters 8-10 the author addresses the reasons why a claim for separate sovereignty of the 'TRNC'/Turkish Cypriot community cannot be sustained, based on the rules of international law pertaining to state sovereignty, sovereign equality and self-determination. Sovereignty, being synonymous to independence, signifies the

existence of a separate and independent state directly subject to international law. The illegal secessionist entity, an emanation of the illegal use of force, can neither be recognised as a state, nor secede from the Republic of Cyprus and be recognised as a separate state. The same applies to the constitutional structure of federal states, with only the federal state and not the constituent states being constitutionally sovereign. Sovereign states may join only in a confederation in order to maintain intact their previous sovereignty. In the case of Cyprus, even if it can be argued (*quid non*) that sovereignty was to be transferred to a population unit and not to a successor state, this should be effected to the people of Cyprus as a whole. In the author's view, the people of Cyprus exercised effectively, albeit indirectly, the right to self-determination, by terminating the colonial rule and attaining independence. In any event, the Turkish Cypriots do not enjoy a separate right to external self-determination. There are no two *pare jure* entities with separate sovereignty which can be waived or relinquished in favour of a federal constitutional structure.

The legal analysis is complemented by a useful digest of relevant case-law of international and national Courts, set out in Chapter 7.

In Chapters 4-5, 11 and 14, the author turns to the international law 'decline' aspect, as proposed by the book's title. Chapters 4, 11 and 14 focus on the situation at the level of the UN. In a nutshell, although it is acknowledged that the Turkish/Turkish Cypriot claim to separate sovereignty has been a long-standing one, due, mainly, to the UN Secretary General's approach of 'equidistance' (which he openly criticises) in the context of the UN-brokered negotiations, it has been allowed to endure, purporting to elevate the Turkish Cypriot community to a 'people' who will equally and sovereignly co-create the new federal state of Cyprus. In an extensive discussion of the relevant UNSC Resolutions and the United Nations Secretary-General's reports, with particular emphasis on the years 1990-91, the author strongly criticises UNSC Resolution 716(1991), which, in paragraph 4, introduces a new element pertaining to the substance of the proposed solution [namely that the UNSC's '*position on the solution of the Cyprus problem is based on one State of Cyprus comprising two politically equal communities as defined by the Secretary General in the eleventh paragraph of annex I of this Report of 8 March 1990*'], departing from the previous references to only the procedural notion of '*equal footing during the negotiations*'. Chapter 5 deals with the situation at the EU level. It chronologically sets out the various phases that led to the accession of the Republic of Cyprus to the EU, each step encountering Turkey's strong opposition, noting in sheer disappointment that the EU

has not taken substantial measures or imposed sanctions against Turkey for the flagrant violations of international law and EU law against a member State of the Union.

Overall, I consider this book as essential reading for everyone involved in the study of the Cyprus issue, be it from a legal or a political perspective. As already highlighted, it constitutes a comprehensive and useful source of reference for the core legal arguments and relevant case-law refuting Turkish allegations regarding the 'sovereign' status of the puppet regime in the occupied area and, by extension, of the Turkish Cypriot community's participation in a prospective federal state solution. What, sadly, proved to be the swan song of Dr. Kypros Chrysostomides, can truly be described as his legacy on the study and understanding of the Cyprus problem.

**Mary-Ann Stavrinides**