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THE QUESTIONS OF PALESTINE AND CYPRUS: JUSTICE, LAW AND POLITICS

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INTRODUCTION

The Palestinians and the Turkish Cypriots share a history of conflict and unfulfilled aspirations. The plight of the Palestinians ranges from denial of rights of self-determination, land confiscation and economic encirclement, to the daily violence of occupation. As for the Turkish Cypriots, although Turkish protection has contained the existential threat, they continue to live under an embargo and their country is treated as a pariah. While the Palestinians struggle for independence, the Turkish Cypriots want recognition and sovereign equality.

The first article of the United Nations' Charter prescribes the UN's purposes as, inter alia, to peacefully bring about, "in conformity with the principles of justice and international law", the resolution of conflicts. The principles of justice are given precedence over the principle of international law because law without justice is, as Kesler put it, an arbitrary concept. The law also represents the codification of the game's rules in conformity with the established distribution of power.

The Palestinians and Turkish Cypriots have had justice denied them despite having the law on their side. I argue that they need to reassess where they are and where they are going, and learn the lessons of experience. One such lesson is about the relationship between justice, law and politics in international relations. Responding to this requires a multifaceted strategy including various forms of resistance and political and diplomatic offensives to form alliances and build coalitions.

BETRAYED BY THEIR PARTNERS

The Palestinians

The partners of both the Palestinians and Turkish Cypriots have betrayed them. The Palestinians base their claim to independence and self-determination on their long and continuous possession of the land and their rights to self-determination, acknowledged in the 1915 Anglo-Arab compact. Their claim is also based on the 1918 British Declaration to the Seven when Britain pledged that no regime would be established in Palestine without the "principle of the consent of the governed" and observing President Wilson's Fourteen Points, which were the general principles of the post-World War I order and recognised colonised people's rights to independence and self-determination.

Article 22 of the Covenant of the League of Nations recognised that Palestine, Syria, Lebanon and Iraq became states under international law and that "their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a

mandatory power.”

In its advisory opinion on the Namibia case in 1971, the International Court of Justice explained the purpose of the mandate system. “The [League’s] mandate system”, the International Court of Justice (ICJ) stated, “was based upon two principles of paramount importance: the principle of non-annexation and the principle that the well-being and development of the peoples concerned formed a sacred trust of civilisation.” The ICJ continued, “There can be little doubt that the ultimate objective of the sacred trust was self-determination and independence.”¹

Yet, in formulating the mandate for Palestine, Britain ignored the Arab majority’s wishes for self-determination, as expressed in the 1919 King-Crane Commission report. Britain, however, did formulate the mandate’s terms in “consultation with Zionist representatives.” This resulted in the inclusion of the Balfour declaration’s contradictory clauses about the establishment of a Jewish home in Palestine (not the transformation of Palestine into a Jewish home) and safeguarding the rights of the inhabitants of Palestine, 92 percent of whom were Arabs. Although entrusted with the well being of the inhabitants of Palestine, Britain permitted massive Jewish immigration, which caused significant demographic changes. Even Lord Balfour recognised this duplicity: “In Palestine we do not even propose to go through the form of consulting the wishes of the present inhabitants—the Powers have made no statement of fact which is not admittedly wrong, and no declaration of policy which, at least in the letter, they have not always intended to violate.”²

From the mandate’s outset, the British government violated its promises to the Arabs about helping them attain independence and about government based on the consent of the governed. It allowed the Zionist Commission in Palestine to emerge as a parallel authority to supervise the implementation of the Balfour declaration. In March 1920, the Chief British military administrator of Palestine, General Louis Bols, complained to the British government about the Zionist Commission: “My own authority and that of every department of my Administration is claimed or impinged upon by the Zionist Commission...It is no use saying to the Moslem and Christian elements of the population that our declaration as to the maintenance of the status quo on our entry into Jerusalem has been observed. Facts witness otherwise—and these have firmly and absolutely convinced the non-Jewish elements of our partiality. The situation is intolerable... I recommend that the Zionist Commission in Palestine be abolished.”³

In response, the British government abolished not the Zionist Commission but replaced General Bols military administration with a civil administration under Sir Herbert Samuel, the chief propagator of the Zionist idea in the British War Cabinet. Thus, the British government entrusted a British Zionist with the League’s mandate for Palestine; a mandate that was “a sacred trust of civilisation” to promote the welfare of the Palestinians and help them consolidate their provisionally recognised independent state. The tools for the transformation of Palestine, the subjugation of its Arab majority and the establishment of Israel were set in place.

The Turkish Cypriots

Great Britain, Cyprus’ occupying power, explicitly recognised the Turkish Cypriots’ right to self-determination and self-government. On 19 December 1956, Mr Alan Lennox-Boyd, the Secretary of State for the Colonies, committed the British government to respecting the right to self-determination of the two Cypriot peoples - the Greek Cypriots and the Turkish Cypriots. He told the British Parliament: “It will be the purpose of Her Majesty’s Government to ensure that any

exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status. In other words, Her Majesty's Government recognises that the exercise of self-determination in such a mixed population must include partition among the eventual options."⁴ The Prime Minister, Harold Macmillan, confirmed this statement on 26 June 1958, and described the Colonial Secretary's assurances as "pledges".

Negotiations for the transfer of sovereignty took place between Great Britain, Turkey, Greece and the representatives of the two Cypriot peoples. At the 19 February 1959 Cyprus Conference, the British Foreign Minister, Selwyn Lloyd, emphasised that Britain was transferring the island's sovereignty to two peoples. The Cyprus state, he said, "would be created on the basis of friendship, on the basis of the agreement between Greece and Turkey and between the two communities in the island. And the British Government would approve the transfer of sovereignty to a new state of Cyprus of two communities."⁵ Negotiations led to the signing of international agreements establishing a bi-national republic in Cyprus, in which sovereignty was equally shared by the two constituent peoples.

These Agreements were the basis of the Cyprus constitution and included: the Zurich and London Agreements of 11 and 19 February 1959, the Treaty of Establishment of 1960, the Treaty of Guarantee of 1960, and the Treaty of Alliance of 1960. The sovereign equality of the two peoples was reflected in these Agreements, which formed the basis of the 1960 Constitution. Under Article 1 of the Zurich Agreement of 11 February 1959 the President was to be a Greek Cypriot and the Vice-President a Turkish Cypriot, both elected by their respective communities. They were also, under Article 5 of the same Agreement, to enjoy equal power of veto.⁶

The Treaty of Guarantee committed the three powers, the United Kingdom, Greece and Turkey, to ensure respect for the constitutional provisions. Article 2 required that, so far as possible, they prohibit the union of Cyprus with any other state or partition on the island. Article 3 provided: "In the event of any breach of the provisions of the present Treaty, Greece, the United Kingdom, and Turkey undertake to consult together, to ensure observance of those provisions. In so far as common or concerted action may prove impossible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs established by the present Treaty."⁷ Thus, in 1960, a partnership Republic of Cyprus, founded on the sovereign equality of its two peoples with an internationalised constitution guaranteed by the three Powers, came into being.

In December 1963, the Greek Cypriot leadership launched an all-out assault on their Turkish Cypriot partners. They ejected the Turkish Cypriots from Parliament and, backed by 25,000 Greek troops secretly sent to Cyprus,⁸ uprooted one-third of the Turkish Cypriot population and declared the 1960 Constitution null and void.

Prof. Pierre Oberling documented in his classic account *The Road to Bellapais*: "The 1963-64 crisis was not a revolution by a downtrodden minority against an arrogant, oppressive majority, but a revolution by an arrogant, oppressive majority against a downtrodden minority. Makarios tried to compel the Turkish Cypriots to accept constitutional changes, which would have deprived them of their political rights by launching a campaign of terror against the various Turkish Cypriot enclaves and by forcibly disarming the TMT militiamen who were protecting them. But all he succeeded in doing was to frighten the Turkish Cypriot enclaves, which his ill-organized and incompetently-led

forces were unable to overrun. Thus his attempt to carry out the Akritas Plan almost completed the physical separation between the two communities.”

The Akritas Plan and the attacks on the Turkish Cypriots were intended to transform Cyprus from a bi-national state founded by two equal peoples into a unitary Hellenic state with a dominated Turkish minority as a first step towards enosis, union with Greece.

Lt.-Gen. George Karayannis, the Greek officer commanding the Cyprus Army, admitted in the Athens newspaper *Ethnikos Kiryx* on 13 June 1965 that President Makarios gave the order to organise Greek Cypriots for battle to turn the partnership Republic into a Greek Cypriot Republic, before uniting with Greece, as early as August 1960 (i.e. immediately after the establishment of the partnership Republic).

While Archbishop Makarios was signing the set of international agreements that gave birth to the Republic of Cyprus, he intended to breach those agreements and turn Cyprus into a Hellenic island that would eventually unite with Greece. The Constitution and the Treaty of Guarantees stood in the way of his plan. Makarios admitted his duplicity when he wrote, 1 March 1964, to the Greek Prime Minister, George Papandreu: “Our aim, Mr Premier, is the abolition of the Zurich and London Agreements, so that it may be possible for the Greek Cypriot people, in agreement with the Motherland, to determine in an unfettered way its future. I am signatory of these Agreements on behalf of the Greeks of Cyprus. In my opinion, in the conditions then prevailing, ‘naught else was to be done’. Since then internationally and locally the conditions have changed and I think that the time has come for us to undertake to rid ourselves of the Agreements imposed on us”¹⁰

Thus, just as the British had no intention of carrying out their obligation to the Palestinian Arabs, the Greek Cypriots intended to breach the agreements that gave birth to the bi-national Republic of Cyprus.

THE UNITED NATIONS

UN Resolutions 181 (1947) and 186 (1964)

The response of the Palestinians and the Turkish Cypriots to their betrayal was similar. While defending themselves against subjugation and elimination, they essentially relied on the justice and the legality of their causes, hoping that this would be enough to secure a just remedy. Both had high hopes in the UN. But in both cases the UN sanctioned injustice.

Palestine

On 29 November 1947, the UN General Assembly recommended the partition of Palestine into separate Arab and Jewish states. The Palestinian Arabs rejected this and questioned the UN’s competence to partition their homeland and destroy its territorial integrity.

As Henry Cattan pointed out, the Partition Resolution was untenable in law. First, the UN had no jurisdiction and no sovereignty over Palestine. Second, the General Assembly’s refusal to refer the question of UN jurisdiction over Palestine to the International Court of Justice represented avoidance of international law. Third, the Resolution violated the status of Palestine as a “provisionally independent” state. Fourth, the Resolution violated the principle of self-determination. Finally, the Resolution represented gross injustice to the majority of Palestinians by giving the Jews - who

totalled less than one third of the population and who were mainly recent immigrants and possessed less than six percent of the land - 57 percent of Palestine, leaving the Arabs, owners of 94 percent of the land, with only 43 percent.¹¹

Ben-Gurion's conviction that military fait accompli are the basis of political achievements guided the Zionists in the formation of Israel. Ben-Gurion urged the acceptance of Palestine's partition as a first step toward achieving Zionist goals. From 10 March 1948, after the partition resolution was adopted, the Zionist forces moved to implement their plan. It involved the seizure of land assigned to the Arabs and the Arabs' expulsion. By the end of 1949, over 800,000 Palestinians had fled or been expelled, leaving Jews in control of their own UN defined area and about half of the area defined for a Palestinian state. The Israeli army captured the remaining 22 percent of mandated Palestine (the West Bank and Gaza) in June 1967. Thus, the UN Partition Resolution provided cover for the establishment of Israel and the destruction of Palestinian society.

Cyprus

Similarly, the Greek Cypriots, having destroyed the bi-national partnership Republic of Cyprus, received support and legitimacy from the UN. They were rewarded for their violation of international agreements and their forcible expulsion of the Turkish Cypriot co-founder partner from the partnership's organs.

On 4 March 1964, the UN Security Council adopted Resolution 186, recommending the creation, with "the consent of the Government of Cyprus," of a UN peacekeeping force in Cyprus (UNFICYP). The Security Council left the expression 'Government of Cyprus' undefined but recognised in its hearings Archbishop Makarios as President and the official Turkish Cypriot representatives as only private individuals, thereby giving de facto recognition to the Makarios 'government'. The Security Council did this even though international treaties take precedence over UN normative declarations, a fact which gives the Security Council a legal and moral obligation to uphold the international treaties that gave birth to the Republic. The Turkish Cypriots were betrayed again.

The resolution recommended that the function of UNFICYP should be, "in the interest of preserving international peace and security, and to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions." The Turkish Cypriots interpreted this to mean a return to the legal and constitutional arrangements and the normal conditions that prevailed before the Greek Cypriots' destruction of the Republic. Contrarily, the Greek Cypriots insisted that the mandate was to help the 'government' establish its (i.e. Greek Cypriot) law and order and subjugate the Turkish Cypriots. Since the UNFICYP could not take the initiative in using armed force and the mandate was not conceived as enforcement action, the Turkish Cypriot interpretation could not prevail. The Turkish Cypriots were left without recourse.

UN Secretary-General U-Thant reinforced the Greek Cypriot position by maintaining the solution of the Cyprus problem was a matter for the 'Cypriot government'. The Turkish Cypriots could not receive justice when the UN called for one of the Greek Cypriots to be both a party to and judge in the same case. Thus, the UN and its Secretary-General transformed the crisis from an international conflict concerning violation of international agreements into an internal conflict, thereby rewarding the wrongdoer with international recognition.

The UN then started making proposals for a resolution in Cyprus based on this misguided definition. On 26 March 1965, Galo Plaza, the UN Mediator, reported to the Secretary-General that restoration of the constitutional arrangements that prevailed before December 1963 would not solve the Cyprus problem. So, Plaza, like Makarios, was unilaterally setting aside international agreements which could only be changed with the agreement of all the contracting parties. He recommended a solution involving the UN guaranteeing the Turkish Cypriots' protection, thereby (contrary to international Treaties but in accord with the Greek Cypriots) seeking to demote Turkish Cypriots from equal partners in the Republic to a minority. In fact, he recommended that the UN make the island Hellenic with a Turkish minority.

As a result, the Greek Cypriot government felt strengthened and proceeded to tighten its siege on the Turkish Cypriots. Makarios felt that the Security Council Resolution of March 1964 was "the first phase of our struggle in the international field."¹² Following a meeting in Athens on 2 February 1966, the Greek and Greek Cypriot governments reaffirmed their rejection of any solution to the Cyprus problem that excluded enosis¹³. The Greek Cypriot assembly ratified this view on 26 June 1967. This Greek Cypriot assembly resolution still stands.

UN Resolutions 242 (1967), 37/253 (1983) and 541 (1983)

The Palestinians and the Turkish Cypriots felt further let down by three other UN resolutions, 242 (1967), 37/253 (1983) and 541 (1983).

In Resolution 242 of 22 November 1967, which followed the 5 June 1967 Israeli attack on Egypt, Jordan and Syria, and the Israeli occupation of the West Bank, Gaza, the Golan Heights and the Egyptian Sinai, the Security Council emphasised "the inadmissibility of the acquisition of territories by war." It called for the establishment of a "just and lasting peace in the Middle East" based on:

1. Withdrawal of Israeli armed forces from territories occupied in the recent conflict, and
2. Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area.

In requiring Israel to withdraw from territories occupied in 1967 and that Arab states recognise Israel's sovereignty and territorial integrity, Resolution 242 in fact legitimised Israel's 1948-49 occupation of Palestinian territories. This violates Resolution 242's own preamble, which reaffirmed "the inadmissibility of the acquisition of territory by war." Israel possess no title over the Palestinian territories acquired during the 1948-49 war and its armistice agreements with Egypt, Lebanon, Jordan and Syria in 1949 did not lay down political boundaries.

In requiring the withdrawal of "Israeli armed forces from territories occupied in the recent conflict" the Resolution left open the possibility that Israel would not withdraw from all the territories occupied in 1967 (the resolution requires withdrawal of Israeli armed forces only from "territories" not from "the territories" occupied in 1967). So, again, the Security Council accepted a settlement based on the acquisition of territory by war, in violation of its preamble.

The Palestinians rejected Resolution 242 because it referred to them as refugees and made no mention of their right to self-determination and independent statehood in Palestine. But, following the start of the first Intifada in December 1987, the Palestine National Council, meeting in Algiers on

15 November 1988, accepted the principle of two states in Palestine and issued a declaration of Palestinian independence. The Palestine National Council accepted resolutions 242 and 338 as the basis for negotiations with Israel.

As Resolution 242 did not require Israel to withdraw from all the territories occupied by its army in 1967, Israel continued, unopposed, to confiscate land in the West Bank and to build Jewish settlements in the West Bank, Gaza and in and around occupied East Jerusalem. The realisation that the growth of Jewish settlements was daily diminishing the territory Israel would return in a peace settlement led to the latest Palestinian Intifada, and to the Israelis' horrendous response to it.

Resolution 242, provided legitimacy for a peace process based on the acquisition of territory by war. The Security Council's action cannot be said to be in conformity with justice and international law.

Background to General Assembly Resolution 37/253 and Security Council Resolution 541 (1983)

Talks between the Greek Cypriots and Turkish Cypriots in the pre-1974 period failed because of Makarios' rejection of any agreement that barred enosis. EOKA-B and the Greek military junta increased agitation for enosis and put pressure on Makarios to speed up the process for its realisation. Makarios, a royalist who resented the Junta, insisted on a gradual process. General Georgos Grivas, who returned to Cyprus in September 1971 and formed EOKA-B, campaigned for immediate enosis while Makarios tried to persuade him to accept a gradual approach. In November 1973, a counter coup overthrew the Papadopoulos regime in Greece and the new military junta took direct control of EOKA-B in 1974, following Grivas' death. Threatened by Athens' push for immediate enosis, Makarios asked the Greek junta to withdraw its officers from Cyprus. On 15 July 1974, the Greek officers staged a coup against Makarios, who fled to London. They installed a former EOKA gunman, Nicos Sampson, as the new 'President'.

The next day, Turkish Prime Minister Bülent Ecevit urged the British government to co-operate in enforcing the Treaty of Guarantee, but the British were more influenced by Makarios' appeal to them not to use force in Cyprus and by their political considerations. The British Parliament recognised both Britain's duty to honour its commitment and its failure to do so.

On 19 July 1974, Makarios told the UN Security Council "Cyprus was under invasion by Greece." "The coup did not come about," he said, "under such circumstances as to be considered an internal matter of Greek Cypriots. It is clearly an invasion from outside, in flagrant violation of the independence and sovereignty of the Republic of Cyprus."¹⁴

Turkey, which had repeatedly warned that it would forcibly oppose any attempt to declare enosis, invoked the Treaty of Guarantee and mounted a successful military operation on 20 July 1974, after failing to persuade Britain to act jointly under the Treaty of Guarantee. The Turkish military intervention saved Turkish Cypriots from the danger of annihilation and allowed them to regroup under the protective Turkish military umbrella. The intervention also helped save Greek Cypriot lives by putting an end to the Greek Cypriots' fratricidal struggle and also helped bring down the two juntas in Greece and in Cyprus.

In his August 1990 legal opinion, which was also submitted to the UN (A/44/967 and S/21420), Monroe Leigh concludes that: "The Turkish intervention could not and did not alter the equal status of the two communities, which derived from the earlier treaties and Constitution; nor was it the

origin of the physical separation of the Greek and Turkish Cypriot peoples, who had been living as separate, self-governing communities since at least 1964.” Furthermore, the Athens Court of Appeal, in decision No. 2658/79, 21 March 1979, stated: “The Turkish military intervention in Cyprus, which was carried out in accordance with the Zurich and London Accords, was legal. Turkey, as one of the Guarantor Powers, had the right to fulfil her obligations. The real culprits are the Greek officers who engineered and staged a coup and prepared the conditions for this intervention.”¹⁵

On 13 February 1975, the Turkish Cypriot authorities proclaimed the establishment of the Turkish Federated State of Cyprus. A constituent assembly drew up a democratic constitution, which was approved by a referendum held on 8 June 1975. Immediately after the proclamation, Turkish Cypriot authorities called on the Greek Cypriots to form a federation with them through their own federated state.

On 2 August 1975, ‘The Population Exchange Agreement’ was signed between the two parties, preparing the ground for property exchange between the Turkish Cypriot North and the Greek Cypriot South. On 12 February 1977 and on 19 May 1979, the two parties signed two High Level Agreements that foresaw a bi-communal and bi-zonal settlement in Cyprus. The foundation of these Agreements was the equality of the two parties (neither subordinate to the other); territorial separation (separate territorial integrity of each party); and specific restrictions on the freedoms of movement, settlement and ownership.

General Assembly Resolution 37/253

On 13 May 1983, the UN General Assembly adopted Resolution 37/253. Contrary to the High Level Agreements, Paragraph 2 of the Resolution affirmed “the right of the Republic of Cyprus and its people to full and effective sovereignty and control over the territory of Cyprus and its natural and other resources” and called upon other states to support and help the “Government of the Republic of Cyprus” to exercise these rights. Regrettably, in spite of the 1977 and 1979 High Level Agreements, the UN still maintained that the Greek Cypriot government was entitled to extend its sovereignty and control over the Turkish Cypriot community, which, in effect, meant the relegating of the latter to a minority within a unitary Greek Cypriot state.

Faced with no progress in inter-communal talks, the lack of understanding at the UN and seeing that the Greek Cypriots were determined to get away with Cyprus by any means, including the exploitation of UN resolutions, the Turkish Cypriot Legislative Assembly, a democratically elected body, unanimously proclaimed, on 15 November 1983, the Turkish Republic of Northern Cyprus (TRNC). In a letter to British Prime Minister Margaret Thatcher, TRNC President Denktaş, explained that the Turkish Cypriots had decided “by their own free will through their legitimate representatives of our Parliament, to exercise their right to self-determination to proclaim the Turkish Republic of Northern Cyprus.” He added: “the Turkish Cypriot people have been left with no other alternative but to take this vital step based on our equal co-founder partnership status in the independence and sovereignty of Cyprus.”¹⁶

UN Security Council Resolution 541 (1983)

On 17 November 1983, Denktaş told the UN Security Council: “My people, a co-founder partner people, one of the two equal peoples in Cyprus that co-founded the partnership State of Cyprus, today stand in the North in their own State and extend their hand of friendship to the Greek Cypriot

side.”¹⁷ President Denktaş begged the UN Security Council to show understanding: “Give Cyprus a chance by not heeding the Greek Cypriot demand that the Council not only condemn us but order all the world to ignore us and not to recognise us.”¹⁸

The following day, the Security Council adopted Resolution 541 (1983) ignoring this plea. The Resolution declared TRNC’s establishment “invalid” because, it stated, it was “incompatible with the 1960 Treaty of Guarantee.” Let us first note that the Security Council is not a legal body and cannot decide what is legal and what is illegal in Cyprus. Furthermore, the Security Council is itself guilty of violating international agreements by treating the Greek Cypriot government as the Government of Cyprus. For their part the Turkish Cypriot people acted in self-defence. Their action flowed directly from the violent and illegal action of the Greek Cypriots in 1963; the TRNC’s establishment did not cause the partition; the Greek Cypriot assault in 1963-64 and the Greek invasion of 1974 did.

As Professor Lauterpacht put it in his Opinion on the TRNC: “If the Security Council attached importance to the idea of compatibility of the conduct of the Turkish Cypriot community with the Treaty, it should have attached the same importance to the compatibility with the Treaty of the conduct of the Greek Cypriot community. By failing to do so, the Security Council not only signally failed to apply in an objective and even-handed manner the substantive legal requirements to which it had itself made reference; it also failed to adhere to the standard of equal treatment that it had repeatedly affirmed in its use, in relation to the negotiations between the two sides, of the words ‘on an equal footing’.”¹⁹

In its advisory opinion on the case of Namibia of 21 June 1971, the ICJ pointed out that it was “one of the fundamental principles” of relations among states that “the party which disowns or does not fulfil its obligations cannot be recognised as retaining the rights which it claims to derive from the relationship.”²⁰

It is not clear from UN resolutions 541 (1964) and 186 (1983) why the Security Council thought it proper to absolve the Greek Cypriot authorities of their responsibility to uphold the international agreements that established and guaranteed the bi-national Republic of Cyprus of 1960 (Resolution 186), while holding the Turkish Cypriot authorities to the terms of the same agreements in 1983 (Resolution 541). In so acting, the Security Council showed bias that tainted its resolutions and made their validity untenable in law and lacking in justice.

NEGOTIATIONS

The Turkish Cypriots and the Palestinians have both accepted to negotiate a peaceful settlement to their respective conflicts. Both are seeking recognition from their interlocutors of their equality as partners in peace and as co-inhabitants of the same land. The primary difference is that the Turkish Cypriots, thanks to the timely intervention of Turkey, do not have to negotiate from a position of absolute weakness. The Palestinians, for various reasons, find themselves in a position where they are often told to take it or leave it.

The Palestinians

The Palestinians negotiated alone and from a position of relative weakness, usually allowing the Israelis to impose their priorities on the negotiation agenda. The results of the negotiations thus

reflect the inequality of the parties.

In 1978 and 1979, Egypt and Israel signed, at Camp David and Blair House, a series of agreements that came to be called the Camp David Accords.²¹ These amounted to a separate peace between Egypt and Israel, removing Egypt, the most powerful Arab country, from the confrontation with Israel. Israeli Prime Minister Menachem Begin and General Ariel Sharon felt that this peace treaty cleared the way for them to settle the Palestine question by stamping out Palestinian nationalism. This was one of the primary objectives of the Israeli invasion of Lebanon in June 1982. The Palestinians were militarily defeated and dispersed at the end of that war but their nationalism was undiminished. However, deprived of the means of harassing Israel from Lebanon and dispersed throughout the Arab world, the Palestinian military option against Israel lost credibility for many Palestinians.

The Palestinian uprising of December 1987 forced the Palestinian leadership to come up with a new strategy. Meeting in Algiers in November 1988, the Palestine National Council and the Palestine Liberation Organisation accepted the two-state solution based on Resolution 181 that recommended the partition of Palestine into two states: Israel and Palestine. Following the Gulf War in 1991, the Madrid Middle East Peace Conference established a framework for a comprehensive peace in the Middle East based on the formula of land for peace. In 1993, the PLO and Israel issued a statement of mutual recognition and signed what became known as the Oslo Agreements.²² But the Oslo Agreements and others that followed between Palestinians and Israelis basically confirmed the relationship of inequality between the parties.

For instance, the end of the military government of occupation did not mean the end of its prerogatives and powers, which the Israeli government assumed. Thus, the agreements provided for Israeli forces to move into the self-rule areas in case of outbreak of general hostilities “or imminent threat of such outbreak.” This allowed Israeli forces to reoccupy many areas under Palestinian National Authority control to stamp out the latest Palestinian uprising.

In addition, Israeli governments imposed severe restrictions on the movement of Palestinians between the West Bank and Gaza. On 4 September 1997, the so-called Israeli Military Governor of the West Bank issued a decree forbidding any person from entering areas labelled B and C before obtaining a permit. So, residents of Palestinian cities in Area A (representing three percent of the West Bank and 27 percent of the population) cannot go to the 500 villages in Areas B and C without Israeli permission.

The building of bypass highways and the expansion of settlements in Jabal Abu Ghneim, Efrat and Ras al-Amoud are designed to accelerate a process of creating *fait accompli*. This is part of a strategy of demographic transformation designed to reverse the status of the West Bank from Palestinian land with dispersed Jewish settlements to a land dominated by sprawling Jewish settlements with areas of dispersed Arab populations.

While Jewish settlements in Jerusalem have mushroomed, Arab construction has been prevented and restricted, pushing the Palestinians who have been refused construction permits to live on the outskirts of the city. The Israeli authorities then claimed that these Palestinians were non-residents and withdrew their Jerusalem identity cards.

The inequality of the parties was also illustrated when the Israelis demanded and got re-negotiation

of the agreement on Hebron. The Palestinians had to agree to have 20,000 Palestinians and 20 percent of the city under direct Israeli military rule and subject to the demands of the illegal 400 Jewish settlers in the city.

The fate of the roughly 800,000 Palestinian refugees from the 1967 war remains un-negotiated, while the PLO has asked the 1948 refugees, under the terms of the Washington Declaration of Principles of September 1993, to give up ideas of returning the lands from which they were expelled or fled.

Israel remains in control of the Rafah border crossing to Egypt and the Allenby-bridge crossing to Jordan, giving it control over who can leave and who can enter the new Palestinian entity.

The Israeli government and military have retained the right “to continue to use roads freely within the Gaza Strip and the Jericho area” while the Palestinians and their police force enjoy no reciprocal freedom of movement inside Israel. Any incident with or attack against Jewish settlers can prompt the Israelis to close off the Palestinian self-rule area, much as the military did when the area was occupied.

In their bilateral peace negotiations with the Egyptians, the Israelis insisted on what they called a ‘normalisation’ of relations. It was designed to get the Egyptian government and people to accept Israel’s Zionist foundations - the ‘historic right’ of Jews to Palestine and racially-exclusive character of the Zionist settler movement that required dispossession of the Palestinians.

The Cairo Agreement also started the Palestinians on the road of ‘normalisation’ with its implicit acceptance of Zionist ideology. The agreement commits the parties to preventing incitement and hostile propaganda against each other by any organisation, group or individuals within their jurisdiction. This is an understandable and desirable feature of a peace agreement when there is no longer a tangible cause for hostility or grievance. But, in this case the very symbols of a racially-exclusionist ideology based on dispossession, the Jewish settlements, are protected by the Agreement. The Cairo Agreement, in effect, required the PLO to silence and suppress Palestinian protests against the Jewish settlements and occupation even though the international community considers them illegal acts of dispossession. This, the Palestinian Authority has been unable to do, as is clear from the latest Palestinian uprising. In response to the latest uprising, the Bush Administration sent, in May 2001, the CIA Director, George Tenet, to examine with Palestinians and Israelis the issue of security. His recommendations, publicised in June 2001, reiterated that the Palestinian National Authority work harder to prevent attacks on Jewish settlements in the occupied Palestinian territories.

The Wye Agreement, signed in October 1998, dealt with redeployment of the occupying Israeli army, security issues and with reviving talks about the transitional period. But the major part of the agreement focused on security issues, which were the Israeli negotiators’ main concern. The redeployment of the Israeli army of occupation was made conditional upon the Palestinian Authority’s compliance with the agreement’s security conditions. The CIA was to play a supervisory role in this regard, in co-ordination with the Israelis. The conditional redeployment called for the transfer of 12 percent of Area C to Area B (curiously including a development of three percent of this land into a nature reserve) and 15.2 percent of Areas C and B were to be transferred to Area A, bringing the total area under Palestinian Authority control to about 18.2 percent. In Area A, the Palestinians were to control 21.8 percent of the land, but not the security of the area. In Area B, 60 percent would be under Israel’s full control. Thus, the Palestinian Authority were to control less than 20

percent of the West Bank, i.e. about four percent of Palestine.

The Wye agreement also required the Palestinian Authority to amend the Palestinian Charter but it did not require Israel to stop building or expanding settlements. The Mitchell Report, prepared following the start of the latest Palestinian uprising in late 2000 and publicised in May 2001, called on the Israeli government to stop all settlement activities as a precondition for reviving the peace process. Israeli Prime Minister Ariel Sharon made it clear that his government would not stop all settlement activities.

The Turkish Cypriots

Although living under an economic siege and humiliated by being treated as an international outcast, the TRNC continued to negotiate, directly or through the UN, with the Greek Cypriots until the end of the proximity talks process in November 2000. It would have been understandable if the TRNC had insisted, as the Palestinians and Israelis did in 1993, on mutual recognition as a precondition of these negotiations or on the lifting of the embargo, but the TRNC continued to negotiate and showed readiness to reach a peaceful settlement. Nothing, however, came of the UN facilitated talks in the 1980s and the 1990s.

In his legal opinion, Monroe Leigh pointed out: “For more than 20 years the Turkish Cypriot community has negotiated in good faith with representatives of the Greek Cypriot community to come to a lasting political solution to their island’s troubles. The fact that the Turkish Cypriots restrained themselves for 20 years from proclaiming a separate Turkish Cypriot Republic was, under the circumstances, an act of continuing forbearance, the exhaustion of which can hardly be condemned, and stands in sharp contrast to the actions of the Greek Cypriot community in forcibly dismantling the constitutional Cypriot regime three years after their specific commitment to preserve it.”

In the early 1990s, the Secretary-General developed the UN Set of Ideas, which endorsed the principles of bi-communality, bi-zonality, global exchange of properties and the formation of a new partnership in the form of a federation. It was also stated in these Ideas that sovereignty emanated equally from the two constituents of the partnership, that the 1960 Treaties of Guarantee and of Alliance will continue and that application for EU membership will come after a settlement so that the status of the Turkish Cypriot party would no longer be in dispute. These would have enabled the Turkish Cypriot party to discuss vital derogations, vis-à-vis the EU, which it deemed necessary for its security and well-being.

The election of Mr Glafcos Clerides in 1993 as leader of the Greek Cypriots put an end to the negotiating process on the UN Set of Ideas. Mr Clerides openly stated that he rejected the UN Set of Ideas and declared that his priority would be EU membership and the development of a Joint Military Doctrine with Greece.

When President Denktaş and Mr Clerides met at UN Headquarters in Cyprus in 1994, Mr Clerides was frank enough to say that he would not enter into any discussion with President Denktaş if he did not agree to support the unilateral Greek Cypriot application for EU membership. The Greek Cypriots claimed that the EU application was made on behalf of the whole island, including Turkish Cypriots. Naturally, the Turkish Cypriot response could not have been ‘yes’.

It was in 1997, the time the EU released Agenda 2000, when the UN Secretary-General was able to

bring the two parties together again - this time in Troutbeck (USA) and Gilion (Switzerland). Agenda 2000's confirmation that accession negotiations for membership would soon start with the Greek Cypriot side fall like a bombshell on the negotiating table. When President Denktas challenged Mr Clerides for continuing to pursue threatening unilateral initiatives (like the illegal EU membership process, rearmament and the Joint Military Dogma with Greece) while pretending to negotiate for the establishment of a new partnership, Mr Clerides replied that the 'Government of Cyprus' was in situ, that it would continue with its governmental activities, that the continuation of the inter-communal talks was no reason for stopping such 'governmental' activities, that the Turkish Cypriot side had no right to challenge such activities because these were also their government's legal activities, and that, since the whole world accepted them as the legitimate government of the whole island, why should the Greek Cypriot side be expected to act otherwise.

It was at this point that the Turkish Cypriot side realised there was no meaning or future in inter-communal negotiations and that for the Turkish Cypriot side to protect its vital interests, negotiations had to be conducted on a state-to-state basis.

On 31 August 1998, Rauf Denktas, proposed a confederation between the two sovereign Republics of the Island. This offered an opportunity for institutional co-operation between the two parties while allowing each to preserve its identity. Unfortunately, the Greek Cypriots and their supporters have not given this offer the consideration and appreciation it deserves.

As a last attempt, the two sides engaged in five rounds of UN-sponsored proximity talks from December 1999 to November 2000. On 12 September 2000, the UN Secretary-General stressed that the objective of the negotiations was "a comprehensive settlement enshrining a new partnership". The final paragraph of the statement read: "...I have concluded that the equal states of the parties must and should be recognised explicitly in the comprehensive settlement which will embody the results of the detailed negotiations required to translate this concept in to clear and practical provisions."²³

The Greek Cypriot side immediately rejected both the stated objective of the negotiations (the establishment of a new partnership) and the principle that the equal status of the two parties must and should be recognised explicitly in the comprehensive settlement. On 11 October 2000, the Greek Cypriot House of Representatives unanimously resolved that the 12 September "Éstatement [of] UN Secretary-General Mr Kofi Annan falls outside the letter and spirit of the framework of the talks and the basis of a solution of the Cyprus problemÉ"

Unfortunately, the UN rewarded the fanatical nationalism and defiance of the Greek Cypriot side by the UN Secretary-General issuing his oral remarks of 8 November 2000 where, this time, he spoke of the principles of single indivisible sovereignty (a characteristic of unitary states and not of partnerships) and of reinstatement of property to its previous owners - effectively making meaningless the agreed principle bi-zonality or territorial separation (a primary source of security for the more vulnerable Turkish Cypriot people). Furthermore, he proposed that security in the island be entrusted to an international force, which, in turn, would have made the 1960 Treaties of Guarantee and of Alliance a farce.

One can understand why the Turkish Cypriots, given their experience, would not agree to entrust their security to an international force. It was the 1960 Treaties of Guarantee and of Alliance that saved the Turkish Cypriot people from annihilation and subjugation. These Treaties constitute the

main pillar of Turkish Cypriot security. Moreover, it is self-evident that if the security of a new partnership has to be assigned to foreign troops, then the most basic elements for cementing that partnership, namely the trust and desire to live together in harmony, is missing. If it is not there, it cannot be imposed, much less maintained by international forces, as we have seen in Bosnia and Kosovo. Furthermore, federalism, as the international community proposes, is the end of a process, not the beginning; it must go through the building of trust and confidence and gradual devolution of power from the periphery to a central authority.

The UN's suggestion of a common state, one sovereignty and one citizenship and reinstatement has proved unhelpful. The UN was supposed to be engaged in preparing the grounds for meaningful negotiations between the parties, yet its proposals for resolution suggest that it is more partial to one of the parties. The 12 September 2000 statement of the Secretary-General reiterates the UN's belief in the equality of the parties and the need for the establishment of a new partnership, yet the non-papers and remarks produced by the UN prejudice the negotiation process by setting criteria for an outcome that will not facilitate the sustenance of a partnership between two equal constituents with a track record of hostility. These criteria represent a resuscitation of the failed arrangements of 1960, which, in fact, were a bi-national partnership in the shape of a functional federation. It is not clear why, if these arrangements failed in 1960s when federal arrangements were fashionable, they would succeed in an era where federal arrangements are discarded in favour of innovative confederal solutions. This is the point that the UN Secretary-General's own Special Envoy for the Balkans, Carl Bildt, recently made to the Secretary-General with regard to the Former Republic of Yugoslavia FRY: "[T]he present structure of the FRY is unsustainable even after the demise of the Milosovic regime. At a minimum, there is a need for a new power-sharing deal between Serbia and Montenegro. Such a deal should move the FRY more towards a confederation of sovereign republics. There is no way in which stability in the region can be built on a continued role for Serbia over Kosovo. There has, therefore, to be a constitutional divorce between the Republic of Serbia and the future of Kosovo. In order to be stable over time, such a divorce will have to be codified and accepted by a democratic Serbia. Otherwise there will be no stability."²⁴ Why would a constitutional divorce and confederal arrangement bring peace and stability to the failed federation of the FRY but not to the destroyed arrangements of the 1960 partnership of Cyprus? In fact, an argument can be made that the two-state solution has in practice assured peace and stability between the two peoples of Cyprus and a confederal solution would only recognise the already existing reality, while at the same time making it possible for the two parties to work in partnership.

There is also a precedent for the international community and the UN recognising the futility of trying to reconstruct failed bi-national arrangements. In 1959, France granted independence and transferred sovereignty to two African communities jointly: the peoples of Senegal and of French Sudan, who were co-signatories with France of the independence arrangement. The two peoples formed the Federation of Mali. In 1960, Senegal decided to proclaim its independence. The dissolution of the bi-national state was a reality and, by September, France stopped trying to restore the old order and recognised both states: Senegal and the Republic of Mali (former French Sudan). The UN had no difficulty in extending recognition to the two states. Prof. Joe Verhoeven, in *La Reconnaissance dans la Pratique Contemporaine*, points out that the attitude of the former colonial power was a determining factor in the case of the failed Federation of Mali. He also cites the separation of Bangladesh from Pakistan and the recognition given to Bangladesh. Verhoeven makes the point that the determining factor was that Pakistan was unlikely to ever re-establish its authority over Bangladesh.²⁵

Britain judged it expeditious not to live up to its commitments under the Treaty of Guarantee, not to recognise the realities that resulted from the Greek Cypriot coup against the Turkish Cypriots in 1963-64 and then from the Greek coup against the Greek Cypriot government in 1974. Had Britain recognised the reality of the TRNC, the international community would have followed its example. The international community also fails to realise that the Greek Cypriots are not likely to ever re-establish jurisdiction over the North. Greek Cyprus has benefited greatly from the status quo and so, as Martin Woollacott pointed out: "Greek Cyprus must rank as one of the most subsidized nations in the world—but since most of the money directly derives from the division of the island, it also creates, as one diplomat put it, 'a vested interest in keeping things as they are'."26

The proposals made by the UN also prejudge the outcome of the negotiations between the parties in another important area. The Secretary-General said to the two sides on 8 November 2000, that he envisaged a future in which Greek and Turkish Cypriots would be free as citizens of Europe. Joining Europe is a choice that the Greek Cypriots have made already but not the Turkish Cypriots. The European Union is joining the UN in prescribing what the Turkish Cypriots should be. Its announcement that admission of Greek Cyprus to the EU was not conditional upon the resolution of the Cyprus problem shows no understanding or appreciation of the Turkish Cypriots' aspirations. In this age of human rights, the UN and EU's prescriptions for Cyprus are anachronistic, pregnant with potential conflicts and insensitive to the rights the Turkish Cypriots.

CONCLUSION

Through Turkey's proactive policy, the Turkish Cypriots have achieved security and a democratic and sovereign existence in their own state, although they continue to be subjected to a harsh boycott and denial of recognition. Through the Arab regimes' reactive policies in the 1920s, 1930s and during the 1947-49 war, Palestinian society was shattered and its people dispersed. Since Israel's establishment in 1948, the Arabs have failed to secure the Palestinians' right to return to their homeland or to self-determination. When President Sadat signed a separate peace with Israel at Camp David in 1979, the Palestinians found themselves alone.

With Camp David, Israel eliminated Egypt from the Arab-Israeli conflict and thus made an Arab military option unlikely. Following Camp David, Israel consolidated its occupation of Arab territories, though these were the object of negotiations. With the elimination of Iraq as a potential military competitor and with increasing American military help, Israel has established an unchallenged military supremacy over a region more weakened than ever. The United States supports Israel's strategic doctrine of forbidding the Arabs conventional and unconventional military parity. Thus, the Camp David agreements and the elimination of Iraq as a military competitor have strengthened Israel's regional superiority.

Thus, in 1993, the Palestinians negotiated with the Israelis and, consequently, they continue to find themselves in a take it or leave it position, unable to reconstruct a secure, independent national existence even on a reduced portion of their country. The collapse of the Palestinian-Israeli peace agreements forced the Clinton Administration to be more involved and the Palestinian uprising is dragging a reluctant Bush administration into a similar involvement. But, the overall balance of power is against the Arabs and the Palestinians.

The end of the Cold War, the collapse of the Communist Bloc, the relegation of the non-alignment movement to insignificance, the inability of the South to present the North with a coherent and

effective strategy for negotiating a better arrangement for addressing global concerns, have all affected the nature of many international conflicts and their potential solutions. As for the UN, it possesses no inherent power to make and enforce decisions affecting international peace and security. Its decisions are its members' decisions, affected by power relationships in the international arena, where politics prevails over justice and law.

The Palestinians and Turkish Cypriots are both negotiating with their adversaries from positions of relative weakness. In a review of almost a thousand socio-psychologist studies, in their book, *The Social Psychology of Bargaining and Negotiations*, Jeffrey Rubin and Bert Brown reached an important conclusion about negotiations between unequal powers. "Under conditions of unequal relative power among bargainers," they wrote, "the party with high power tends to behave exploitatively, while the less powerful party tends to behave submissively, unless certain special conditions prevail [specifically, coalition formation by the weak]."²⁷

The Turkish Cypriots and the Palestinians need to ensure that their adversaries stop behaving exploitatively. The Palestinians' and the Turkish Cypriots' experiences teach that justice and law do not necessarily ensure respect for rights to self-determination and independence. The Turkish Cypriots and the Palestinians must now engage in the balance of power game. Both peoples must explore ways of empowering themselves. Given their relatively unfavourable positions vis-à-vis their adversaries, they must combine multifaceted strategies of resistance, politics and diplomatic offences - forming alliances and building coalitions to affect the regional power balance. This entails that both peoples and their supporters need to adopt creative, bold and pro-active policies in their quest for a just and secure peace, and life with dignity.

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3 Nevill Barbour and Nisi Dominus, *A Survey of the Palestine Controversy*, London, George G. Harap Co., 1946, p. 97.

4 Parliamentary Debates (Hansard), 19 December 1956, Vol. 562, No. 32, col. 1271.

5 Quoted in Ahmet C. Gazioğlu, *Two Equal and Sovereign Peoples, Cyrep*, Nicosia, 1999, p. 102-103.

6 'The Zurich and London Agreements: the Basic Structure of the Republic of Cyprus: Annex III', *Journal of Cyprus Studies*, 14/15, Centre for Cyprus Studies, Eastern Mediterranean University, 1999.

7 'The Treaty of Guarantee: Annex III', *Journal of Cyprus Studies*, 14/15, Centre for Cyprus Studies,

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8 See Andreas Papandreou, *Democracy at Gun Point*, New York, 1970, p. 100.

9 Pierre Obberling, *The Road to Bellapais*, Social Science Monograph, Boulder, distributed by Columbia University Press, 1982, p. 120-121.

10 See John Reddaway, *Burdened with Cyprus: the British Connection*, London, 1986, p. 224, quoted in Michael Moran, *Sovereignty Divided: Essays on the International Dimensions of the Cyprus Problem*, Cyrep, TRNC, 1999, pp. 24-25.

11 See Henry Cattam, *The Palestine Question*, London, Croom Helm, 1988, pp. 38-39.

12 See *Cyprus Mail*, 5 March 1964, quoted in Zaim M. Necatigil, *The Cyprus Question and the Turkish Position in International Law*, Second Edition, Oxford University Press, New York, 1993, p. 50.

13 Quoted in *Ibid*, p. 55.

14 Quoted in Ahmet C. Gazioğlu, *Two Equal and Sovereign Peoples*, opt. cit.; p. 116.

15 See Pierre Oberling, *The Road to Bellapais*, op. cit., p. 170.

16 Michael Moran (ed.), *Rauf Denktash at the United Nations*, Eothen Press, UK, 1997, p. 328.

17 *Ibid.*, p. 187

18 *Ibid*, p. 185.

19 'Opinion of E. Lauterpacht, CBE, QC, on the Turkish Republic of Northern Cyprus', United Nations A/44/968, S/21463, 9 August 1990.

20 *Judgments, Advisory Opinions and Orders of the International Court of Justice: 1948-1991*, United Nations, New York, New York, 1995, p. 79.

21 See Adel Safty, *From Camp David to the Gulf*, Black Rose, Montreal and New York, 1992, 1997.

22 Adel Safty, *Leadership and Conflict Resolution*, Eastern Mediterranean University Press, 2000.

23 UN, SG/SM/7546, 12 September 2000.

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25 Joe Verhoeven in *La Reconnaissance dans la Pratique Contemporaine*, Editions A. Edone, Paris, 1975, pp. 29-30.

26 Quoted in Pierre Oberling, *The Road to Bellapais*, opt. cit., p. 196.

27 Jeffrey Z. Rubin and Bert R. Brown, *The Social Psychology of Bargaining and Negotiations*. New

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