
UNFICYP AND THE PROBLEM OF CONSENT

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Introduction

The United Nations defines the concept of peacekeeping as opposed to that of enforcement action:

“... the very concept - non-violent use of military force to preserve peace - differs fundamentally from the enforcement action described in the Charter... (Peacekeeping) requires the consent of the protagonists, impartiality on the part of United Nations Forces, and resort to arms only in self-defense.”^{cxix}

The United Nations peacekeeping practice deviated from that model to a considerable extent on the occasion of the Congo operation 1960-1964 (ONUC). The most significant departures, however, took place in the post-Cold War era. The requirement of assuming new tasks in Somalia and ex-Yugoslavia such as protecting certain areas from the threat or actual use of force, demilitarization of certain areas, assuring the delivery of humanitarian aid, and peacemaking efforts induced the UN to introduce a certain element of enforcement, beyond self-defense, in peacekeeping operations. Introduction of an element of enforcement “led peacekeeping operations to forfeit the consent of the parties, to behave in a way that was perceived to be partial and/or to use force other than self-defense”.^{cxix} This development blurred the conceptual distinction between “peacekeeping” in its traditional sense and “enforcement” under chapter VII of the Charter.

Nevertheless, the United Nations Peacekeeping Force in Cyprus (UNFICYP) has remained as a prototypical case of traditional peacekeeping in internal conflict. It is generally accepted that UNFICYP has been successful in fulfilling its limited mission with limited powers. In the first analysis, it can also be argued that UNFICYP has strictly observed the above-mentioned three basic principles of traditional peacekeeping. Its relative success, however, has overshadowed the need for a deeper legal and political analysis of its performance. The present paper attempts to fill that gap by reevaluating UNFICYP’s performance mainly from the perspective of the principle of consent.

More precisely, we seek to answer the following questions:

- What is the political and legal relevance of consent in peacekeeping operations in general?

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- To what extent has the UN observed the three fundamental principles of traditional peacekeeping in the Cyprus case? If it deviated from them, to what extent and in what ways?
 - Has a deviation, if any, impaired the legality and political appropriateness of UNFICYP?
 - Finally, these three questions will necessarily lead to a reevaluation of the Turkish claim that UNFICYP was not completely impartial in its dealings with the two Cypriot communities primarily because the Security Council Resolution 186 overlooked the consent of the Turkish community in creating the peacekeeping Force.

The following two sections of the paper will aim to clarify the political and legal relevance of consent in general. Then the paper will concentrate on specific issues relating to UNFICYP such as the Security Council Resolution 186 of 4 March 1964, UNFICYP's performance in the field before and after 1974, reactions of the Turkish side to the Force, and the response of the United Nations to these reactions. Finally, the concluding section will be devoted to an analysis and appraisal of UNFICYP's performance and its implications for the resolution of the Cyprus conflict, particularly from the perspective of the problems of consent and impartiality.

The Political Relevance of Consent

As a result of the bankruptcy of the collective security system of the United Nations under the Cold War conditions, the idea of peacekeeping evolved out of necessity through the practice of the United Nations as a pragmatic device for regulating conflicts. In other words, due to the lack of a clear Charter basis, these operations were "improvised in response to the specific requirements of individual conflicts".^{cxvxi} The main concern was to localize conflicts and tensions and prevent them from escalating to a great power confrontation. The underlying political objective of peacekeeping was accurately explained by Inis L. Claude in his Power and International Relations:

"This, it should be noted, is not a device for defeating aggressors - and certainly not for coercing great powers... but for assisting the major powers in avoiding the extension and sharpening of their conflicts and the consequent degeneration of whatever stability they may have been able to achieve in their mutual relationships... The greatest potential contribution of the United Nations in our time to the management of international power relationships lies not in implementing collective security..., but in helping to improve and stabilize the

working of the balance of power system, which is for better or for worse, the operative mechanism of contemporary international politics. The immediate task, in short, is to make the world safe for the balance of power system, and the balance system safe for the world.”^{cxxxi}

If peacekeeping is envisaged to contribute to the smooth functioning of the balance of power system (regional or global), then it should not impair the validity of the rights, claims, or position of the parties concerned. It should essentially defend the status quo. Its purpose should be to suspend a conflict in order to pave the ground for a successful pursuit of negotiations for the resolution of substantial issues. Beside stabilizing the situation and separating conflicting states or factions, peacekeeping operations have had the task of preventing further atrocities and human suffering.^{cxxxi}

On the occasion of the United Nations Emergency Force (UNEF) in 1956, which was the first peacekeeping experience in UN history, Secretary General Dag Hammarskjöld established three interrelated guiding principles: first, unlike the enforcement action provided for in chapter VII of the Charter, peacekeeping operations are based on consent and not on coercion; second, they must be completely impartial; and third, their military personnel are not authorized to use force except in self-defense.^{cxxxi} Hammarskjöld described the principle of non-use of force except in self-defense as the prohibition against any initiative in the use of armed force.^{cxxxi}

These three principles are accepted as the pillars of traditional peacekeeping. The removal of one of the principles would impair the other two principles and finally destroy the whole edifice. The principle of consent is closely linked with that of non-use of force except in self-defense. The UN peacekeeping operations can be initiated only with the consent of the parties directly involved. In any case, peacekeepers are lightly armed and they usually have no capability to challenge the authority of the conflicting parties (incumbent governments or opposition groups). The United Nations, therefore, assumes that the parties, in giving their consent, accept to cooperate with the peacekeepers. Under such conditions, use of force becomes both unnecessary and counterproductive.^{cxxxi}

There is also an interaction between the principle of consent and that of impartiality. Peacekeepers must not take sides between the parties to the conflict. They should treat all the parties on the same footing of equality and maintain correct relations with them. If the UN relies on the consent of only one of the conflicting parties, overlooking the other party or parties, the operation would cease to be impartial. Such a biased attitude on the part of the UN would induce the disregarded parties to reduce cooperation and assume a confrontational stance toward the peacekeepers. This would in turn greatly reduce the peacekeeping operation's chance of success.

In traditional peacekeeping operations, the influence of the UN cannot amount to the imposition of a solution upon the conflicting parties. For that reason, cooperation of the parties

directly concerned, even if one of them is a de facto entity, is politically necessary. De facto entities, like incumbent governments, effectively control a part of the state territory. They have their own population, a political elite, businessmen, and public opinion makers. Their actions inevitably affect the evolution of the conflict and regional stability for better or for worse.^{cxxxi} Their disregard would enormously complicate the conflict regulation task of the UN. The Organization should either cooperate with both sides, the de facto entity as well as the incumbent government, or shift from traditional peacekeeping to enforcement action.

The Legal Relevance of Consent: Chapter VI, Article 40, and Article 2 (7) of the Charter

As described above, there is not express legal basis for peacekeeping in the Charter. The institution has been improvised and has evolved through the practice of the United Nations. Nevertheless, there is today a broad consensus on its legality. In 1962, the International Court of Justice, through a functional interpretation of the Charter, also confirmed its compatibility with the purposes and principles of the World Organization.^{cxxxi} Today, the legality debate seems to have faded out. Although it would be redundant to question the legality of peacekeeping operations in general terms, the legal significance of consent for certain kind of peacekeeping operations continues to be a relevant issue for discussion.

Unlike enforcement actions envisaged under articles 39 and 42 of the Charter, peacekeeping operations depend on the consent of the parties directly involved in the conflict. Nor should they have the purpose of enforcing any specific political solution. For this reason, international lawyers pertinently seek an implicit legal basis for them in the powers of the Security Council in chapter VI on peaceful settlement, or under article 40 on provisional measures.^{cxxxi} They also consider that, for the initiation and conduct of peacekeeping operations, the United Nations should require to get over the obstacle of domestic jurisdiction that is stipulated in article 2 (7) of the Charter. These legal considerations presume that any UN operation departing from the three interacting fundamental principles of consent, impartiality, and non-use of force except in self-defense would require specific authority for enforcement action under chapter VII of the Charter. This was in fact what the Security Council did in the cases of ONUC, UNPROFOR, and UNOSOM II.^{cxxxi} In these three operations, the Security Council went far beyond the three fundamental principles by disregarding the consent of certain parties to the conflict; acting partially, against certain parties, and using armed force beyond self-defense. In moving beyond the three principles, however, the Security Council authorized the UN Force in terms of chapter VII implicitly in the Congo case and explicitly in the Somalia and Yugoslavia cases.

Chapter VI of the Charter empowers the Security Council relating to the peaceful settlement of disputes the continuation of which is “likely to endanger the maintenance of international peace and security”. Under these provisions, the Council has mediatory functions and, unlike chapter VII, it only enjoys purely recommendatory powers vis-à-vis the disputing

parties. The non-mandatory nature of the powers of the Security Council arises not only from the explicit wording of chapter VI provisions, but also from the rules of general international law concerning the peaceful settlement of disputes. Therefore, in order to be applicable, recommendations of the Security Council under chapter VI would require the consent or acceptance of the parties concerned.

It is generally admitted that “the Security Council is also empowered to establish peacekeeping forces in the case of a chapter VI situation”.^{cxxxix} In other words, the Council can launch a peacekeeping operation to contribute to the peaceful settlement of a dispute which is “likely” to endanger international peace and security. On the basis of an extensive interpretation of articles 33 and 36, the Council can formulate recommendations relating to the establishment of a peacekeeping operation as an “appropriate method of adjustment”. The enumeration of procedures of settlement in article 33 is not exhaustive. Bruno Simma’s Commentary is clear on the issue:

“Although the catalogue of Art. 33 (1) lists nearly all mechanisms of dispute settlement which are known in international practice, it has been deliberately left open-ended (‘other peaceful means’). Parties are consequently free to combine different types or to modify them in such a way as may seem most appropriate for the solution of a pending dispute.”^{cxxxix}

It can be deduced from article 33 that the Security Council, under article 36 (1), can recommend any peaceful method as it deems appropriate for the settlement of a specific conflict. For that reason, a peacekeeping operation that the parties assent to can well be considered under articles 33 and 36 as an auxiliary or preparatory method aiming to facilitate the solution of a conflict. Such methods, by their nature, would necessarily depend, for their implementation, on the consent of the parties directly concerned.

Certain jurists also consider peacekeeping operations as “provisional measures” in terms of article 40 of the Charter.^{cxxxix} In his Agenda for Peace, Secretary-General Boutros-Ghali stated that a peace-enforcement action for restoring and maintaining a cease-fire could find its basis in article 40.^{cxxxix} The “provisional measures” of article 40, however, should be “without prejudice to the rights, claims, or position of the parties concerned”. In other words, such measures should “leave unaffected not only the legal positions of the states concerned, particularly those of any parties to the dispute”,^{cxxxix} but also the politico-military status quo.^{cxxxix} We believe, unlike Boutros-Ghali, that this stipulation of article 40 make the “provisional measures” totally incompatible with the notion of “enforcement action”. Any enforcement will unavoidably affect the politico-military status quo and, most probably, prejudice the legal positions of the parties. Therefore, if a peacekeeping force is to operate “without prejudice to the

rights, claims, or position of the parties concerned”, then it should strictly observe the three fundamental principles of consent, impartiality, and non-use of force except in self-defense.

Traditionally, international law regards internal conflicts as a matter of domestic jurisdiction. In other words, internal conflict is considered as a matter to be dealt with by the people of the state in question. In principle, international law adopts a neutral position and does not prohibit civil war, or ethnic conflict,^{cxxxi} though it imposes certain restrictions on states and international organizations.

Article, 2 (7) of the Charter contains two restrictions and one exception, defining the limits of UN intervention in domestic affairs. The first restriction is addressed to the organs of the UN, instructing them to refrain from intervening “in matters which are essentially within the domestic jurisdiction of any state”. The second restriction states that the members of the UN have no obligation to submit their domestic affairs to the Organization for dispute settlement. The exception underlines that the above restrictions should not “prejudice the application of enforcement measures under chapter VII” of the Charter.^{cxxxi}

The UN has intervened, since its very inception, in internal conflicts, notwithstanding the Charter prohibition of article 2 (7) and without being authorized for enforcement action under chapter VII. The UN could get over the prohibition of domestic jurisdiction by applying a combination of two concepts: “international concern” and “consent”. The former is political and subjective whereas the latter is a legal requirement.

The General Assembly and the Security Council have always tended to adopt a flexible and political approach to the problem of domestic jurisdiction. The absence of specific criteria for “intervention” and for “matters which are essentially within the domestic jurisdiction” has left to the UN organ wide discretion in applying those concepts to particular cases.^{cxxxi} This has resulted in the emergence of the highly ambiguous criterion of “international concern”. The idea seems to be based on the authority of the Security Council and the General Assembly to recommend appropriate procedures of adjustment and terms of settlement in disputes “the continuance of which is likely to endanger the maintenance of international peace and security”. Any matters that constitute a potential threat to the peace can be declared to be of “international concern” and, consequently outside the domestic jurisdiction.^{cxxxi} It was on the occasion of the Spanish question in 1946 that the idea of “international concern” received its first elaboration and opened before the organization a wide field of possibilities in situations that had been hitherto deemed to fall within the domestic jurisdiction.^{cxxxi}

It has always remained quite clear to the member states that “the maintenance of international peace and security” which is the primary purpose of the UN does not amount to the prohibition of internal conflicts.^{cxxxi} The Organization, however, has in most cases established links between domestic situations and international peace and regarded internal conflicts as matters of “international concern”. Not only the actual fact of external intervention in an internal conflict but also the mere danger of external intervention or the risk of escalation have been perceived by the organs of the United Nations as an actual or potential threat to

international peace and security. From this standpoint, the issue for the Organization has been political rather than legal. As pointed out earlier, the UN has pursued a strategy of localizing internal conflicts by obviating the competitive intrusion of the interested powers.^{cxxxii}

In order to achieve its aim of maintaining international peace and security, the UN had to deal with the problem of domestic jurisdiction in essentially political terms. The Organization, however, has not considered "international concern" as a fully adequate basis for getting over the prohibition of article 2 (7). "International concern" confirms that a specific intervention falls within the framework of the Organization's aims and it may even constitute a sufficient basis for certain acts of the UN organs. But it is far from being sufficient to legalize a peacekeeping operation. All measures taken on the territory of a given state by an international organization constitute a violation of its sovereignty unless they are taken with the consent of that state. "Within the scope of this consent, the host state temporarily waives its exclusive national competence with regard to any question concerning the presence and the functioning"^{cxxxii} of the peacekeeping force. On the one hand, consent determines the nature and limits of the UN's action; on the other, it constitutes an indispensable element of the legal basis of the non-coercive peacekeeping operation.^{cxxxii}

An internal conflict can be of "international concern" to the extent that it can be considered within the scope of the UN's aims. To that measure the Organization can be regarded as authorized in principle to deal with the issues relating to an internal conflict. It does not follow, however that what is of "international concern" is absolutely outside the domestic jurisdiction. In other words, the criterion of "international concern" alone would not be sufficient to determine the normative limits of the UN measures, because the existence of a consensus as regards the aims in a given case does not necessarily indicate a consensus on the form and intensity of the influence to be exerted upon the conflicting parties. Likewise, to remain within the relatively broad framework of the aims does not necessarily imply the legality of means to be employed.^{cxxxii}

The organs of the UN may put an item on the agenda and discuss any matter of international concern or adopt resolutions enunciating their positions on that matter even if it is related to an internal conflict. Similarly, they may investigate any situation from the headquarters without sending a mission to the scene of conflict. They may perform all these activities without requiring the consent of the parties involved.^{cxxxii} The fulfilment of the condition relating to the aims (international concern) would not however suffice to initiate and continue an investigation or observation mission on the spot, a peacekeeping operation or an intermediary assistance (good offices, mediation, and conciliation). The conflicting parties should not be regarded bound to tolerate such activities of the Organization on the territories they control. In those cases, the Organization could overcome the impediment of domestic jurisdiction (article 2 (7)) only in two ways: either by deciding an enforcement action under chapter VII or by having the consent of the parties to the internal conflict.

Without the consent of the de facto entity, the peacekeeping force could operate only in the territories controlled by the incumbent government. Any forceful action into the territories controlled by a de facto entity would impair the impartiality of the peacekeeping force and constitute an interference with the internal affairs of the country in violation of article 2 (7). The Force could legally act in that way if it is authorized by the Security Council under articles 39 and 42.^{cxvii}

The consequences of the exertion of influence are of primary importance for legal policy.^{cxvii} The outcomes of influence are to be evaluated not only in terms of the UN's aims but also in terms of the means of influence that have been applied. Application of the means depending on consent must not result in altering the political balance in disregard of the parties' will. A military operation in internal conflict situations is susceptible to produce coercive effects upon the parties and, consequently, upset the balance between them unless its deployment and actions depend on the continuing consent of the parties. Likewise, in intermediary assistance, only persuasion is permitted pursuant to the search for a solution. Such assistance should in no way be used as an instrument of pressure. It should be based on the consent of the parties at every stage of the proceedings. The major purpose of a traditional peacekeeping operation is to assist the parties to solve their disputes peacefully by securing a "minimum public order" so that the conditions favourable to the peaceful settlement be promoted. "Minimum public order" can be defined as the minimization of violence and freedom from expectations of severe deprivations by unauthorized violence.^{cxvii} Since enforcement measures would entail deprivations upon at least a segment of the population or cause serious restrictions upon state sovereignty, they should not be presumed. They should be authorized by the Security Council by explicit or, at least, implicit reference to articles 39 and 42.

Thus the basic framework for peacekeeping operations has been as follows: if the parties to the conflict consent, the UN may supply peacekeepers to assist the parties.^{cxvii} As described above, the framework was set up on the occasion of UNEF. In the Suez crisis, the UN had to deal only with the external aspects of the conflict without getting involved in domestic politics of Egypt. Therefore, it had no difficulty to strictly follow the guiding principles of peacekeeping. In the Congo crisis, for example, it was extremely difficult for ONUC to remain in the established framework. The complexities of the internal conflict broke down the delicate line between maintenance of minimum public order and involvement in domestic issues. The Force was increasingly involved in domestic politics and finally became a party to the conflict. It was implicitly authorized by the Security Council to have recourse to arms beyond self-defense. It eliminated the secessionist movement in Katanga and influenced considerably the political outcome of the conflict.

Unlike ONUC, UNFICYP avoided to a great extent undesired involvement in domestic affairs. It strictly refrained from using armed force except in self-defense; and it used persuasive methods in dealing with the communities for its redeployment, interposition, local disarmament and surveillance activities. The overall performance of UNFICYP, however, has

not been completely unbiased and impartial. The UN policy in general and UNFICYP in particular have at times caused discontent and uneasiness on the Turkish side because of the Organization's partial observance of the principle of consent.

The Security Council Resolution 186

The Greek Cypriot community's violation of the 1960 Constitution and its armed attacks on Turkish Cypriots led to the Security Council's adoption of the resolution 186 on 4 March 1964.^{cxxxi} Resolution 186 provided for the creation of UNFICYP and intermediary assistance to the communities in conflict. What is probably more important is that its overall approach to the Cyprus conflict as well as its wording has since left a negative imprint on the efforts of settlement of the conflict.

In Resolution 186, the Security Council first of all emphasized pertinently the international aspects of the conflict. It noted that the situation was "likely to threaten international peace and security". It took into consideration "the positions of the parties in relation to the Treaties" of 1960. It referred to article 2 (4) prohibiting the use of force and threat of force. All these three elements underlined that there was an "international concern" in the Cyprus conflict and it was not simply an intercommunal conflict. It involved Greece, Turkey and, to some extent, the United Kingdom. Moreover, it concerned relations between superpowers, though they were not fully committed to Athens or Ankara. Nevertheless, the Security Council determined a potential, but not a direct, threat to international peace and security ("likely to threaten..."). By using the word "likely", the Security Council indicated that it was acting within the scope of chapter VI relating to pacific settlement of disputes, but not under articles 39 and 42 providing for enforcement measures.

The first preambulatory clause of the Resolution suggested that "additional measures" should be "promptly taken to maintain peace and to seek out a durable solution". For that purpose, the Council recommended the establishment of a United Nations peacekeeping force (parag. 4) and the appointment of a mediator (parag. 7). Their major purpose was to achieve a "durable" peace in Cyprus. The objective of the peacekeeping operation was to prepare favourable conditions for the UN's intermediary assistance and intercommunal negotiations. Both recommendations were envisaged as peaceful settlement measures and, as such, they required the consent of the parties directly involved. In Resolution 186, there was no reference whatsoever, explicit or implicit, to enforcement in terms of chapter VII. Moreover, the Security Council mentioned neither "an imminent external intervention" nor "a possible aggression". From even the first lines of the Resolution, it was quite clear that the Council was not envisaging an action to protect any of the communities against an external attack. It was rather taking measures to minimize violence on the Island to contribute to the smooth implementation of the peaceful settlement procedures between the two communities.

Paradoxically, however, the Security Council recommended the creation of UNFICYP with the sole “consent of the government of Cyprus” and recognized the Greek Cypriot administration as the only representative of the Republic of Cyprus, disregarding the bi-communal nature of the state according to the Constitution of 1960. Similarly, the Security Council recommended “further that the Secretary-General designate, in agreement with the Government of Cyprus and the governments of Greece, Turkey, and the United Kingdom, a mediator”. The consent of the Turkish community was again disregarded in the designation of a mediator.

In spite of these omissions, the Turkish Community did not in principle oppose to the creation of UNFICYP and to the designation of a mediator. However, on March 9, 1964, before UNFICYP arrived in Cyprus, “the Turkish Cypriot Vice President Dr. Fazıl Küçük wrote to both the British Foreign Secretary and the UN Secretary-General that, under the Cyprus Constitution, the Turkish Cypriot community had equal rights with the Greek Cypriot community, particularly on matters relating to foreign affairs, defense and security”. Dr. Küçük pointed out that it was imperative that in implementing paragraphs 4 and 7 of the Resolution, both President and Vice-President are consulted and/or their consent obtained”.^{cxxx}

The Turkish Government also based its objections to the omission of Turkish community’s consent on the Cypriot Constitution of 1960. Initially, the British Government shared the Turkish position, emphasizing the constitutional procedures. The British Foreign Office sent a ciphered telegram to the Head of the United Kingdom Mission in the UN on 2 March 1964, giving him the following instructions:

“Regarding the constitutional procedures, you should draw attention to the fact that our own peacekeeping force was properly established with the agreement of both the President and the Vice-President of Cyprus. In our view this would inevitably be the condition of an international force...

Her Majesty’s Government is of the opinion that any course of action upon which the UN embarks should be generally acceptable to all the parties including the two communities.”^{cxxxi}

The British Government reiterated its position in a number of other official documents. But, despite its declarations, it could not take a firm and sustained stand against the Makarios administration. It finally changed its position because it feared that its objections to the actions of the Greek Cypriot administration might adversely affect British interests, particularly the two sovereign bases on the island.^{cxxxi}

Like many UN resolutions, the Security Council Resolution of 4 March was the result of a compromise which avoided controversial issues. Its main purpose was to get a peacekeeping force to Cyprus as soon as possible. It refrained from addressing questions such as: who constituted the government of Cyprus or was the Makarios administration legal or

unconstitutional. The Resolution, however, upset the legal-political balance between the conflicting parties by overlooking the consent of the Turkish community. Nevertheless, it is to be noted that, in practice, the UN continued to recognize the Greek Cypriot administration as the legitimate representative of the Republic of Cyprus, while also consulting the Turkish community leaders whenever it was necessary.

The Turkish side protested against the omission of the Turkish community's consent in Resolution 186 and the UN's concluding a Status of Forces agreement only with the Greek Cypriot administration. Their objections, however, focused on the constitutional issue, without seriously questioning the legality or the political expediency of UNFICYP itself. On the contrary, the Turkish government welcomed the creation of UNFICYP and made voluntary financial contributions to it.^{cxxx} Moreover, the Turkish community has until very recently almost fully cooperated with the Force.

The political purpose of the UN presence in Cyprus was twofold. First, the Organization aimed to localize the conflict. This objective has been inherent in all peacekeeping operations. Thus the UN's first political objective in Cyprus was to insulate the intercommunal conflict area from the intervention of Greece and Turkey and to avert a possible war between these two nations. The second major purpose of the Organization was to contribute to the resolution of the conflict by creating on the island an atmosphere of calm and non-violence, - to repeat the words of the Secretary-General U Thant by "creating an atmosphere more favourable to the efforts to achieve a long-term settlement".^{cxxxi} The objective was to prevent a settlement by force but to encourage one by negotiation. The Force had no capacity for arbitrating or imposing settlement. It was only a conflict regulation measure.

In pursuit of these major political objectives, the Security Council resolution 186 of 4 March 1964 set the strategy of UNFICYP. The Force was charged with three tasks. First, the Force was "to use its best efforts to prevent a recurrence of fighting". Second, it was asked to "contribute to the maintenance and restoration of law and order". Third, it was to contribute to "a return to normal conditions". Each of the two communities interpreted these generally phrased tasks according to its own interest. The Makarios government expected the Force to help the Greek Cypriot administration to crush "the rebellion" of the Turkish Cypriots, whereas the Turkish Cypriot administration regarded the major task of UNFICYP as the restoration of the constitutional regime of 1960. The Secretary-General of the UN, however, rejected both the Greek and Turkish interpretations. According to the UN, the task of the Force was not to impose the conceptions of peace, order and normality of one party upon the other. Instead, the task of UNFICYP was to "prevent a recurrence of fighting" by interposing troops between the two conflicting communities and negotiating to reduce tensions on the island. The Secretary-General defined "law and order" not as the law and order envisaged by the Constitution of 1960 or as understood by the Makarios government. He described these terms in the quite "general sense of stability", to mean that "the peacekeeping force should assist in protecting life and property against violence from any source". UNFICYP's third task of contributing to a "return to normal

conditions” was interpreted by the Secretary-General not according to the political and constitutional conceptions of either of the two communities, but as being the normality in social and economic activities.^{cxxxix}

UNFICYP’s Performance before 1974

In performing of its tasks, UNFICYP took a series of conflict-control measures. The Secretary-General’s report of 10 June 1966 noted that the most important factor increasing tension and the danger of recurrence of fighting in Cyprus was the armed confrontation around a number of enclaves of Turkish Cypriot population.^{cxxxix} All these enclaves were circled by fortified positions held by Turkish Cypriot fighters; and they were faced by similar positions held by Greek fighters. Thus UNFICYP’s major efforts concentrated on what was called the “process of deconfrontation”.^{cxxxix} In fulfilling this task, the Force interposed its elements with the consent of the two communities between the antagonistic Turkish and Greek Cypriots who faced each other over a narrow strip at times only less than fifty meters wide. The Force was not authorized to resort to arms to prevent fighting. It was hoped that the mere presence of the UN troops would deter each side from initiating hostilities.^{cxxxix} In addition to interposition, UNFICYP negotiated with both parties the withdrawal and disengagement of the opposing armed units.^{cxxxix}

The freedom of movement on the island was considerably restricted by the Greek Cypriots. The restoration of that freedom was, according to the Secretary-General, “the first prerequisite for a return to normal conditions”.^{cxxxix} The Force tried to persuade the Greek administration to eliminate the road barriers and to relax the searches. It also provided escort services to school children, lawyers, civil servants, and farmers to go about their business. Moreover it took measures to control the irregular Greek Cypriot elements threatening the security of the road traffic.^{cxxxix} The Force also negotiated with the Turkish Cypriot administration the reopening of the Nicosia-Kyrenia road under the control of UNFICYP.^{cxxxix}

If, in spite of all these measures and others, the parties resumed hostilities, UNFICYP intervened to obtain a cease-fire through diplomatic ways (persuasion and negotiation). In an aide-mémoire presented by the Secretary-General in April 1964,^{cxxxix} it was emphasized that the Force should avoid any action designed to influence the military-political balance in Cyprus. UNFICYP had to cooperate with all the parties to the conflict and its soldiers should take no action which would be likely to bring them into conflict with either community in Cyprus. The Force could deploy its troops in new positions and interpose them between the clashing elements of the two communities only with the consent of the parties. When hostilities broke out, the UNFICYP officers first tried to find a solution by negotiating with the local community leaders. If these local efforts proved to be unsuccessful, negotiations were then held in Nicosia at a higher level between the representative of the Secretary-General (or the Commander-in-Chief of the Force) and the representatives of both communities.

After 1974

UNFICYP had neither the authority nor the military capability to take decisive action against either the Sampson coup sponsored by Greece or the Turkish military intervention which resulted from it. This is not to imply that it was unable to do some good work. As invited by the Security Council Resolution 353 (1974), the Foreign Minister of Turkey, Greece, and the United Kingdom agreed, in Geneva on 30 July 1974, on certain measures which envisaged action by UNFICYP. These measures included:

- The creation of a security zone by the three Powers at the limit of the areas occupied by the Turkish armed forces. This zone was to be entered by no forces other than those of UNFICYP.
- All the Turkish enclaves occupied by Greek or Greek Cypriot forces were to be immediately evacuated and would continue to be protected by UNFICYP, and
- UNFICYP had to perform police functions in mixed villages.

The peacekeeping force was unable to fulfill the first task because the three Powers failed to reach an agreement on the size of the security zone. Nevertheless, it proceeded, in cooperation with the parties, with the full implementation of the other two functions.^{cxxxii}

During the second phase of Turkey's military operations following the breakdown of the Geneva Conference on 14 August, UNFICYP maintained observation mission and assumed humanitarian function such as relief assistance in cooperation with ICRC and protection of the civilian population (both Cypriots and foreigners) caught up in the hostilities. Soon after the outbreak of the hostilities, it also achieved a "partial cease-fire in Nicosia to allow all the non-combatants to be evacuated".^{cxxxiii}

After the general cease-fire on 16 August 1974, the cease-fire lines and the military status quo were determined through a series of local agreements between UNFICYP and the parties concerned. In the area between the lines the United Nations, with the consent of the parties, established a buffer zone where UNFICYP is interposed and has taken on the responsibility of maintaining the military status quo, "including innocent civilian activity and the exercise of property rights without prejudice to an eventual political settlement concerning the disposition of the area".^{cxxxiv} UNFICYP has, along the cease-fire lines and buffer zone, numerous observation posts and regularly patrols in the area to monitor violations and agricultural activities with a

view to safeguarding security requirements of both sides. UNFICYP also provides its intermediary assistance to the parties, whenever necessary, in order to facilitate the supply of electricity and water across the cease-fire lines. Furthermore, the Force continues to carry out various humanitarian and police functions. As a result of the Exchange of Population Agreement, concluded in Vienna between Greek and Turkish Cypriot leaders on 2 August 1975, the UNFICYP organized and supervised the voluntary transfer of Turkish Cypriots from the south to the north and the remaining Greek Cypriots from the north to the south.

The parties concerned have so far regarded the continued presence of UNFICYP on the island as necessary and appropriate. For its part, the Security Council regularly renewed the mandate of the Force for six-month periods. The Secretary-General reports that, “until June 1983, the parties concerned consistently informed the Secretary-General of their concurrence in the proposed extension of the stationing of the Force on the island. Following the Turkish Cypriot proclamation on 15 November 1983 of the Turkish Republic of Northern Cyprus which was deplored and considered legally invalid by the Security Council,... Turkey and the Turkish Cypriot community have indicated that the text of the resolution [omission of the Turkish Cypriot communities consent]^{cxxxix} was unacceptable as a basis for extending the mandate. Nonetheless, all the parties have continued to cooperate with UNFICYP, both on the military and the civilian levels”.^{cxxxix}

In fact, the Turkish side has on every occasion protested against the omission of the Turkish Cypriot community’s consent on the official level. Nonetheless, the TRNC authorities have always been helpful to UNFICYP in the territories it controls. They have also unsuccessfully tried to convince the UN to conclude with the Turkish Cypriot side a “Status of Forces Agreement” similar to that which had been concluded with the Greek Cypriot administration in 1964.^{cxxxix} The United Nations has not only refused to conclude such an agreement but, during the adoption of its resolution 1303 of 14 June 2000, also deviated from its previous practice by refraining from issuing the usual addendum to the Secretary-General’s report, which underlined Turkish side’s position concerning the necessity of requesting the consent of the Turkish Cypriot administration.^{cxxxix}

Upon the UN’s adopting a new approach contrary to its established and institutionalized practice, the Turkish Cypriot administration confined itself to take certain restrictive measures against UNFICYP instead of asking the UN Force to leave the territory of the TRNC. These measures are as follows:^{cxxxix} UNFICYP’s entry to and exit from the TRNC will take place only through the Ledra Palace border gate. The Force will be required to have all UN vehicles used on TRNC territory insured by an insurance agency operating in the TRNC. UNFICYP will be required to pay, to the relevant departments of the Turkish Cypriot state, for the water and electricity used at its camps located in the TRNC, as well as for the other services rendered. In the case of non-compliance with the payments the services will be discontinued.

The Security Council, in each consecutive resolution extending the mandate of UNFICYP, has “urged the Turkish Cypriot side and Turkish forces to rescind the restrictions

imposed on 30 June 2000 on the operations of UNFICYP and to restore the military status quo ante at Strovilia”,^{cxxxi} without requesting the consent of the Turkish Cypriot administration. President Rauf Denktaş has reacted to the Security Council resolutions by underlining that the restrictive measures “have been put into effect by a decision of the TRNC government, which is the sole authority responsible for political decision-making in the Republic” and, that since all the measures have been taken in the TRNC territory, but not in the buffer zone or British Sovereign Base Areas, there is no question of changing the status quo.^{cxxxi}

Appraisal and Conclusion

The United Nations, legally and politically, required the consent of the Turkish Cypriot administration as well as that of the Greek Cypriot one for the implementation of Resolution 186 of 4 March 1964. That resolution was adopted by the Security Council under chapter VI of the Charter, in contrast to resolutions under chapter VII, which provide for binding decisions and enforcement action. This means that the provisions of the Resolution 186 are not legally binding unless the disputing parties accept them. Furthermore, for the implementation of its paragraphs 4 and 7, the United Nations had to get over the domestic jurisdiction clause of article 2 (7) of the Charter by taking the consent of both disputing parties, despite the fact that only one of the parties was a recognized (incumbent) government and the other was a de facto entity.

After the collapse of the constitutional regime in 1963-1964, the UN and the international community in general (except Turkey) recognized the Greek Cypriot administration as the legitimate government of the Republic of Cyprus. As a result, the Security Council, in Resolution 186, officially requested the consent of the Greek side only, without even mentioning that of the Turkish Cypriot protagonist. Turkey and the Turkish Cypriot administration have on every occasion protested the UN for this intentional omission.

The Turkish claim was based mainly on constitutional arguments. International agreements and the Cypriot Constitution of 1960 had established a functional federal state structure based on the concept of power-sharing between the Greek and Turkish Cypriot communities. Such a bi-communal constitutional structure, albeit broken down as a result of the expulsion of the Turkish community representatives by the Greek Cypriots from the common administration required legally and politically the UN to formally request the consent of Turkish community for the creation of UNFICYP (parag. 4) as well as for the UN’s mediatory efforts (parag. 7).

Another solid argument would be the one that is based on the international law concept of de facto entity (regime, authority, or state). State practice indicates that unrecognized entities governing a specific territory should be treated as “partial subjects of international law”. They may be held responsible for their actions and may conclude agreements. Recognition is a declaratory act. Non-recognition does not imply that “such an entity will have no status under

international law”.^{cxxx} Since 1964, the authorities of Turkish community have exercised effective power and control on certain parts of the island, initially over the enclaves and, after 1974, over the northern part of the island. In spite of the fact that the Turkish Cypriot administration is unrecognized by the international community as the legitimate government of Cyprus, it has undoubtedly been a de facto entity (authority, regime, state), wielding effective power and control and having its own territory, population, and working democratic state institutions.

This de facto situation has been confirmed by the United Nations and the Greek side. For example, in his memoirs, Cyprus: My Deposition, the leader of the Greek Cypriot administration Glafcos Clerides made the following observation:

“Thus there exist today in Cyprus two poles of power on a separate geographical basis, i.e. the Government of the Cyprus Republic, controlling the largest section of the territory of the state and internationally recognized, and the Turkish Cypriot Administration, which controls a very limited area and is not internationally recognized, but has already taken almost all characteristics of a small state.”^{cxxx}

The UN has recognized Turkish community’s effective control over parts of the island since 1963. In his report of 11 March 1965, the Secretary-General U Thant noted that “the writ of the Greek Cypriot government had not run in the areas under Turkish Cypriot control since December 1963”.^{cxxx} Similarly, the Geneva agreement of 1974, signed by Turkey, Greece, and the United Kingdom following the first phase of Turkey’s military operation on the island, underlined the existence in the Republic of Cyprus of two autonomous administrations.^{cxxx} Furthermore the UN practice clearly indicates that the cease-fire line of 1974 has “developed into an international line of demarcation” and the UN-controlled buffer zone has been internationally recognized. Many international documents and facts indicate that the TRNC “has to be treated at the very least” as a de facto entity, a partial subject of international law.^{cxxx}

Without Turkish Cypriot administration’s cooperation, UNFICYP’s fulfillment of its mission and even its continued presence would have been impossible. Since there has been no effective government for the whole island, the UN had to cooperate with the two Cypriot administrations to allow UNFICYP to carry out its functions. The UN intermediary assistance also required the consent and cooperation of both parties to obtain a lasting settlement. In practice, therefore, the UN had no choice but cooperate with the Turkish Cypriot administration and, after 1983, with the TRNC. Similarly, in practice the intercommunal talks were initiated and continued under the UN auspices on an equal footing. On the other hand, the Turkish Cypriot administration has fully cooperated with UNFICYP at all levels until June 2000 when the UN ceased to issue an addendum which had been usually attached to Security Council resolutions extending the mandate of UNFICYP for six-month periods.

The UN’s ambivalent approach to the requirement of consent did not destroy legal foundations of UNFICYP. It, however, certainly undermined the legality of the peacekeeping operation and created doubts about its political appropriateness. To a great extent UNFICYP owed its relative success to Turkish protagonist’s moderation and cooperation despite the UN’s

lopsided management of the Cyprus conflict. Since 1974, however, the Turkish military presence on the island has been the major factor that contributed to the maintenance of the non-war situation and stability.

In adopting Resolution 186, the policy of the United Nations was to support the preservation of the Republic of Cyprus within its current borders. The Organization, however, failed “to make the distinction between supporting the preservation of an existing state within its current borders and supporting the preservation of a particular government”.^{cxxxix} The support of the Greek Cypriot administration as the legitimate government of the whole island has undermined the UN’s objective of preserving the Cypriot state within its borders.

UNFICYP has strictly obeyed the principle of non-use of force except in self-defense. In the case of self-defense the UN troops have been extremely careful to respond proportionally. On the other hand, however, through its resolutions and practice, the UN has empowered the Greek side to the detriment of the Turkish side by lending additional legitimacy to Greek claims and enhancing their bargaining power. This policy has complicated not only UNFICYP’s operations, but also the Secretary-General’s intermediary assistance by violating the principle of impartiality.

Despite all its shortcomings, UNFICYP has made a successful work in preventing the escalation of the intercommunal conflict, particularly from 1964 to 1974. It could to a considerable extent control and stop shooting incidents, arranged and maintained cease-fires. It reduced the level of violence and saved lives. UNFICYP achieved a limited degree of progress in the improvement of daily life and freedom of movement on the island. It also acted as a means of communication between the two communities. But it was not possible to make meaningful progress in the matter of deconfrontation. The Greek Cypriot armed elements continued to face the Turkish Cypriots in many places. The opposing parties continued to perceive their relations in military terms. In other words, escalation was prevented; but de-escalation was not realized. In the future, UNFICYP can continue to be quite useful in easing tension between the two parties by effectively controlling the buffer zone and cease-fire lines. In order to increase UNFICYP’s effectiveness, it is nonetheless required to regulate its activities on the territory of TRNC by a special arrangement.

NOTES

^{cxxxix} The Blue Helmets: A Review of United Nations Peace-Keeping (New York: The United Nations, 1996): 4

^{cxxxix} Supplement to an Agenda for Peace, (A/50/60-S/1995/1, 3 January 1995), par. 34.

cxixi Thomas G. Weiss, David P. Forsythe, Roger A. Coate, The United Nations and Changing World Politics (Boulder, Colorado: Westview Press, 1997): 53.

cxixi Inis L. Claude, Jr., Power and International Relations (New York: Random House, 1962): 283-284. See also Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 16 June 1959-15 June 1960, Supplement 1-A (A/4390/Add.1).

cxixi David J. Scheffer, "United Nations Engagement in Ethnic Conflicts", in International Law and Ethnic Conflict, David Wippman, ed. (Ithaca: Cornell University Press, 1998): 166; and T.G. Weiss, D.P. Forsyth, R.A. Coate, op.cit., p. 54.

cxixi See A/3943, pars. 70-71, 166-167 and 179; and A/3302, pars. 10-12.

cxixi A/3943, pars. 179-180. See also Kjell Goldmann, Peace-Keeping and Self-Defense (Paris: International Information Center on Peace-Keeping Operations, 1968): 11.

cxixi F.T. Liu, The United Nations Peacekeeping and the Non-Use of Force (International Peace Academy Occasional Paper, Boulder, Co.: Lynne Rienner, 1992): 11.

cxixi Scott Pegg, International Society and the De Facto State (Aldershot: Ashgate, 1998): 266.

cxixi Certain Expenses of the United Nations, ICJ, Advisory Opinion of 20 July 1962.

cxixi Christine Gray, International Law and the Use of Force (Oxford: Oxford University Press, 2000): 150-152.

cxixi Ibid., p. 153 and 166-169.

cxixi Bruno Simma, et al., The Charter of the United Nations: A Commentary (Oxford: Oxford University Press, 1995): 590-591. See also D.W. Bowett, United Nations Forces (London: Stevens and sons, 1964): 275; Jens Evenson, "Problems of International Law Relating to the Establishment of United Nations Forces", in Peace-Keeping: Experience and Evaluation, Per Frydenberg, ed. (Oslo: Norwegian Institute of International Affairs, 1964): 222-223; and Julius Stone, "Legal Bases for the Establishment of Forces Performing United Nations Security Functions", in Frydenberg, p. 294.

cxixi Bruno Simma, op.cit., p. 511.

cxixi See, for instance, D.W. Bowett, op.cit., pp. 280 ff.

cxixi An Agenda for Peace, (S/2411, 1992), par. 44.

cxixi Bruno Simma, op.cit., p. 619.

cxixi Paul Guggenheim, Traité de Droit international public, tome II (Genève: Georg, 1954): 270.

cxix David Wippman, "Introduction: Ethnic Claims and International Law", in D. Wippman, op.cit., p. 16.

cxix Bruno Simma, op.cit., p. 149.

cxix Oscar Schachter, "The United Nations and Internal Conflict", in *Law and Civil War in the Modern World*, John Norton Moore, ed. (Baltimore: The Johns Hopkins University Press, 1974): 402.

cxix John M. Howell, "Domestic Questions in International Law", Proceedings of the American Society of International Law, vol. 49 (1954): 92; and Rosalyn Higgins, The Development of International Law through the Political Organs of the United Nations (Oxford: Oxford University Press, 1963): 77 ff.

cxix For a brief history of the UN Practice, see A.A. Cançado Trindade, "The Domestic Jurisdiction of States in the Practice of the UN and Regional Organizations", International and Comparative Law Quarterly (1976): 722-744.

cxix Oscar Schachter, op.cit., p. 404.

cxix Inis L. Claude, Jr., Swords into Plowshares, 3rd. ed. (New York: Random House, 1964): 286-289.

cxix Marianne von Grünigen, "Neutrality and Peace-Keeping", in United Nations Peacekeeping: Legal Essays, A. Cassese, ed., (Alphen aan den Rijn: Sijthoff, 1978): 136.

cxix Philippe Manin, L'Organisation des Nations Unies et le maintien de la paix: le respect du consentement de l'Etat (Paris: Librairie générale de droit et de jurisprudence, 1971): 7-11 and 227-230.

cxix For an application of the means-ends analysis, see Oscar Schachter, op.cit., pp. 401-445.

cxix Bruno Simma, op.cit., p. 150.

cxix Mohamed Bennouna, Le Consentement à l'ingérence militaire dans les conflits internes (Paris: Librairie générale de droit et de jurisprudence, 1974): 208.

cxix For different categories of influence, see Myres S. McDougal and Florentino P. Feliciano, Law and Minimum World Public Order (New Haven: Yale University Press, 1961): 27-33.

cxix McDougal and Feliciano, op.cit., pp. 258-261.

cxix David Wippman, op.cit., p. 17.

cxix See S/5575. Resolution 186 was adopted by unanimity, the Soviet Union, Czechoslovakia, and France abstaining. Moscow, in general, considered the creation of peacekeeping forces as a violation of the UN Charter. It did not vote against UNFICYP because it viewed the Force as politically appropriate notwithstanding its legality. Before UNFICYP, a NATO peacekeeping force had been envisaged. It had not been materialized because of the objection of the Greek Cypriot community though it had been consented by Turkey, Greece and the Turkish Cypriot Community.

cxixi Ahmet C. Gazioğlu, "Security Council Resolution 186 and United Nations Force in Cyprus (UNFICYP)", Perceptions, vol. 6, no. 1 (March-May 2001): 42-43. See also the text of Dr. Küçük's dispatch to Secretary-General, 12 March 1964 (S/5594).

cxixi A.C. Gazioğlu, op.cit., pp. 40-48. See also the declaration of the Head of the Turkish Mission to the UN, Mr. Orhan Eralp (S/PV. 151, 16 September 1964).

cxixi The reasons for the change in the British stance were underlined in 1968, in a ciphered telegram from Sir Norman Costar, the British High Commissioner in Cyprus (FCO 27/70, 24 June 1968), cited by A.C. Gazioğlu, op.cit., p. 45.

cxixi See the declaration of Mr. Orhan Eralp in the Security Council (S/PV. 1103, parag. 61).

cxixi S/6228, parag. 274.

cxixi For conflicting interpretations and the UN policy, see James A. Stegenga, The United Nations Force in Cyprus (The Ohio State University Press, 1968): 111-120.

cxixi S/7350, parag. 29.

cxixi S/7350, parag. 29.

cxixi S/5950 and S/6228, parag. 109.

cxixi S/6228, parag. 247.

cxixi S/7001, parag. 106.

cxixi S/6102, parag. 43-44.

cxixi S/6102/Add. 1.

cxixi S/5653.

cxixi The Blue Helmets, op.cit., pp. 162-163.

cxixi Ibid., p. 163.

cxixi Ibid., p. 164. The cease-fire lines extend approximately 180 kilometers from the north-west coast to the east coast of the island. The buffer zone covers about 3 per cent of the island, including some of the most valuable agricultural land.

cxixi The clarification in brackets belongs to the author of this article.

cxixi The Blue Helmets, op.cit., p. 164.

cxixi Ahmet C. Gazioğlu, op.cit., p. 55.

cxixi See letter dated 28 December 2000 from the Permanent Representative of Turkey to the UN addressed to the Secretary General and Annex II to that letter signed by President Rauf Denktaş (A/55/717-S/2000/1241).

cxixi Ahmet C. Gazioğlu, op.cit., p. 59.

cxixi See, for instance, operative paragraph 4 of resolutions 1331 (2000) and 1384 (2001).

cxixi See Annex II to A/55/717-S/2000/1241.

cxixi Zaim M. Necatigil, "De Facto Regime in International Law: with Particular Reference to the TRNC", Perceptions, vol. VI, no. 3 (Sept.-Nov. 2001): 57. See also Barry Bartmann, "Facing New Realities", Perceptions, vol. IV, no. 3 (Sept.-Nov., 1999): 39-53.

cxixi Cited and quoted by Osman Ertuğ, "The United Nations' Approach to the Cyprus Issue and UNFICYP", Perceptions, vol. VI, no. 3 (Sept.-Nov., 2001): 141.

cxixi S/6228. The quotation is from Scott Pegg, op.cit., p. 108.

cxixi Ibid., p. 108.

cxixi Dieter Blumenwitz, "Cyprus: Political and Legal Realities", Perceptions, vol. IV, no. 3 (Sept.-Nov., 1999): 69-70; and Z.M. Necatigil, op.cit., p. 67.

cxixi Scott Pegg, op.cit., p. 264.