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THE (IL)LEGALITY OF OCCUPATION AND THE PRINCIPLE OF SELF-DETERMINATION OF PEOPLES: THE CASE OF CYPRUS

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Introduction

The term "illegal occupation" after the attack of Hamas on the 7th October against Israel and the subsequent attacks of the Israeli army in the Gaza Strip, sounds loudly across the world causing a wave of reaction in favor of the freedom of Palestine. The European Union and several westernized states have acknowledged the humanitarian crisis in Gaza Strip, urged for a humanitarian ceasefire and supported the creation of two states side by side, but they avoid labeling the Israeli occupation as illegal. This practice was also followed by the International Court Justice in the Advisory Opinion of 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory. However, it is widely recognized that as a matter of international law, the Palestinian people have the right to self-determination.

On the neighboring occupied island of Cyprus, the reality is different. Since the decolonization of the island and the establishment of the Republic of Cyprus, the right to self-determination is deemed by some that be realized. The Turkish invasion and subsequent occupation of the northern part of the island in 1974 caused the reaction of the international community and its repeated condemnation. Although, the European Court of Human Rights in cases before it concerning human rights violations in the occupied territories did not hesitate to label directly the occupation as illegal, several resolutions which adopted by the U.N. Security Council and General Assembly after the Turkish invasion did not use the same explicit language.

These practices and mainly the silence of the *jus in bello* led to a growing debate about whether the occupation may assume an inherent illegal character. The debate is focused on which legal frameworks of international law define the illegality of the occupation. Some argue that the *jus in bello* defines the illegality and others believe that the occupation is a neutral phenomenon with no illegal aspects. The contemporary law of self-determination plays a significant role in the discussion in juncture with the jus *ad bellum.*

Given these challenges, this dissertation provides a critical evaluation of what is an illegal occupation and how the right to self-determination of peoples of Cyprus is denied and violated by the Turkish occupation of the northern part of the island. This dissertation contends that the occupation of Cyprus is existential illegal violating the

law on the use of force and the law of self-determination. The Turkish occupation is unlawful *ab initio* because of the lack of a legally valid *casus bellum.* The use of force by Turkey had the ultimate purpose of secession or annexation of the northern part of the island and can never be justified as a legally acceptable 'just cause' under the *jus ad bellum.* This dissertation also contends that the people of Cyprus, Greek Cypriots and Turkish Cypriots, as one self-determination unit have a right to self determination as colonial peoples but also as peoples subject to foreign occupation. The Turkish occupation violates the right of peoples of Cyprus to self-determination and constitutes a denial of its realization.

The remainder of this dissertation is structured as follow: Chapter 1 presents the evolution of the law of occupation and the growing debate around the notion of illegality of occupation from "inherently unlawful" to "existential illegal". Chapter 2 presents a general review of the right to self-determination, defining the content of the right, who are the 'peoples who enjoy the right, the colonial and beyond the colonial context which is appicable. Chapter 3 is focused on the case of Cyprus, providing a historical overview, applying the different forms of "illegality" to the case of Cyprus and defining the "existential illegality" of the Turkish occupation.

PART I

The (I)llegal Occupation

1.1. The Law of Occupation

(a) The Evolution of the Law of Occupation

It is widely accepted that the starting point for the creation of the law of occupation was the Lieber Code[1] developed by President Lincoln to train Union forces during the U.S. Civil War[2]. The Code mainly emphasized military objectives rather than the protection of civilians by sanctioning starvation for civilians[3] and bombardment without warning, when military necessity so required[4].

In 1874, in Brussels, seventeen delegates of European states convened to draft the legal framework of warfare for the first time at international level[5]. The deliberations resulted in a final declaration[6] that was never ratified because the great powers viewed the declaration as "too humanitarian"[7] whilst the small nations found the regulations on occupation unfavorable to their interests[8]. However, they agreed to some degree on the notion of occupation[9].

Article 1 of the Brussels Declaration provided that a "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The

[1] Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, Apr. 24, 1863, reprinted in Schindler & Toman. [hereinafter Lieber Code].
[2] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory [2005] Berkley Journal of International Law, 33 551- 614.
[3] Lieber Code (n 3) Arts. 22-23, 34-38
[4] Ibid. Arts. 14,15,17,19.
[5] Christoper Greenwood, *Historical Development and Legal Basis, in The Handbook of Humanitarian Law in Armed Conflicts* (Dieter Fleck, 1995).
[6] Final Protocol and Project of an International Declaration Concerning the Laws and Customs of War, Aug 27, 1874 [hereinafter Brussels Declaration].
[7] Chris Jochnick & Roger Normand, The Legitimation of Violence: 'A Critical History of the Laws of War' [1994] HARV. INT'L. L. J. 49.
[8] Doris A. Graber, 'The Development of the Law of Belligerent Occupation 1863-1914 – A Historical Survey' [1949] Columbia University Press, American Journal of International Law 43.
[9] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2)

occupation extends only to the territory where such authority has been established and can be exercised"[10]. Article 2 provided that " [t]he authority of the legitimate Power being suspended and having in fact passed into the hands of the occupants, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety[11]". Therefore, the definition of occupation as was formulated in the Brussels Declaration reflected that war was waged between sovereign states and theirs interests were protected against the rights of the populations[12]. The Brussels Declaration also recognized that the status of occupation does not confer sovereignty to the occupier and "the normal order of the international society wherein the legitimate sovereign exercises effective authority suspended in relation to the occupied territory and population" and not terminated[13]. Thus, the occupant was responsible to administer the occupied territory and to prevent chaos[14].

The Hague Conventions and their annexed Regulations were drafted in the context of two conferences held in 1899[15] and 1907[16] and regulated the laws of warfare in a concise but incomplete way[17]. The 1907 Hague Regulations reiterated the definition of the belligerent occupation of the Article of the Brussels Declaration and since War World II became a part of customary rules[18].

Article 43 of the 1907 Hague Regulations was characterized as "the cornerstone for the determination of the nature and scope of occupant's responsibility[19]" and provided that "the territory of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore and ensure as far as possible, the laws in force in the country"[20]. Therefore, the powers of the occupying power were limited in administering the occupied territory in a way that protects civil

[10] Brussels Declaration (n 6).
[11] Ibid.
[12] David Goodman, 'The Need for Fundamental Change in the Law of Belligerent Occupation' [1985] STAN. L. REV.
[13] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2).
[14] Ibid.
[15] Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Law and Customs of War on Land. The Hague, 29 July 1899.
[16] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907) [hereinafter 1907 Hague Regulations].
[17] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2).
[18] Judgment of the Nuremberg International Military Tribunal (30 Sept. 19460, in 22 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL: NUREMBERG, 14 NOVEMBER 1945 – 1 OCTOBER 1946 411,497 (1948).
[19] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2).
[20] 1907 Hague Regulations (n 16).

life, as a trustee of the ousted sovereign for a temporary time[21]. Additionally, the protection of the population was enhanced with the family honor and rights to life, private property and religious convictions[22] and the prohibition of pillage[23] and collective sanctions[24].

Therefore, the modern law of occupation was applicable only when the occupation was conducted by a belligerent state, over a territory of an enemy belligerent state, during war or armed conflict and before any armistice agreement was concluded[25]. The occupation exists only to those territories where effective control is exercised by the occupying power[26] and this control is evident when the occupying power is able to issue and enforce directives to the population[27] of these areas or when prevails everywhere in the territory[28].

The aftermath of War World II revealed deficiencies in the previous definition, particularly in cases where the occupied states hadn't faced any armed resistance or where the territories were not necessarily managed by the armed forces of the occupant[29]. The occupied populations during the war suffered because the law failed to provide adequate protection and the need for reformation was apparent[30].

The 1949 Geneva Conventions[31] were concluded in the light of the lessons learned from War World II[32]. The common Article 2 of the Conventions stipulates that their applicability is expanded in the occupations that had taken place without a declaration

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[21] Arnold Wilson, 'The Laws of War in Occupied Territories' [1932] Transactions of the Grotius Society vol 18.
[22] 1907 Hague Regulations, Art. 46.
[23] 1907 Hague Regulations, Art. 50.
[24] Ibid.
[25] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2).
[26] Adam Roberts, 'What is a Military Occupation?'[1984]British Yearbook of International Law, Vol. 55.

[27] Hans-Peter Gasser , The Protection of the Civilian Population, in The Handbook of International Humanitarian Law (ed. 1995).
[28]Gerhard Von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practise of Belligerent Occupation* (University of Minnesota Press 1957).
[29] Adam Roberts, 'What is a Military Occupation?'[1984]British Yearbook of International Law, Vol. 55.
[30] Gerhard Von Glahn (n 28).
[31] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 12 August 1949; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea12 August 1949; Geneva Convention Relative to the Treatment of Prisoners of War 12 August 1949; Geneva Convention Relative to the Protection of Civilian Persons in Times of War 12 August 1949 [hereinafter Fourth Geneva Convention].
[32] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2).

of war or without hostilities[33]. The Fourth Geneva Convention is perceived as fundamental "paradigm shift, from state-centric, bombs-and-bullets "law of armed conflict" paradigm to a supposedly human-centered, humanizing approach"[34]. The emphasis transitions towards ensuring the safety of the population under the control of the occupying power, rather than protecting the interests of the ousted sovereign.

Article 4 of the Fourth Geneva Convention provides that its provisions apply to "protected persons" namely, "those who at a given moment and in any manner whatsoever find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals"[35]. The status of occupation is only applicable when there is some nexus to an armed conflict and when the occupied territory is a part of another High Contracting Party[36]. However, these provisions were proved unsatisfactory for the new types of occupations in the twentieth century[37].

The Fourth Geneva Convention expands the duties of the occupying powers concerning the civilian population and accordingly the rights to which populations are entitled to enjoy[38]. The core principle of occupation law is that the Occupying Power commits to using force to control daily life in the occupied territory, provided that each use of force is justified by genuine military necessity[39].

This specialized legal framework permits the occupant to temporarily restrict the rights of the population for military reasons. Once the rightful sovereign is displaced, the Occupying power is legally obliged to govern and provide basic protections for the population. These systems have a transitional character, aiming to transfer these

[33] Jean S. Pictet, *The Geneva Conventions of 12 August 1949 Commentary – IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958).*
[34] Ralph Wilde, ' Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation' [2021] The Palestine Yearbook of International Law 22 1-74.
[35] Geneva Convention Relative to the Protection of Civilian Persons in Times of War 12 August 1949 (n 31) Article 4.
[36] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2).
[37] Ibid.
[38] Eyal Benvenisti, *The International of Law of Occupation* (1993, Princeton: Princeton University Press).
[39] Tristan Ferraro, *Occupation and Other Forms of Administration of Foreign Territory* (International Committee of Red Cross, 2009). https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.

powers to local authorities in order to fully reinstate the rights and protections of the local population[40].

(b) The Contemporary Law of Occupation

During the latter half of the twentieth century was notable the development of international human rights and the "undeniable recognition of the fact that wars are being waged against civilians rather than soldiers"[41]. Also, the increasing importance of the right to self-determination has called for action by the international community[42].

The right to self-determination, because of the its inclusion by the UN Charter[43], the two International Covenants on Human Rights[44], several General Assembly Resolutions[45] and Advisory opinions by the International Court of Justice[46], gained the approval of the lawful struggle of peoples subject to foreign domination including occupation from the international community[47].

Article 1(4) of the First Additional Protocol of the Geneva Conventions reflected the contribution of the right to self-determination in the development of the law of occupation, which provides that:

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International

[40] Valentina Azarova (n 8).
[41] Orna Ben-Naftali, Aeyal M. Gross, Keren Michaeli (n 2).
[42] Ibid.
[43] United Nations Charter, June 26, 1945, Article 2(1).
[44] International Covenant on Civil and Political Rights Dec. 19. 1996, art 1(1), 999 U.N.T.S. 175, G.A. Res. 2200(XXI), 21 U.N. GAOR, Supp. (N0. 16) 49, U.N. Doc A/6316 (1967)[hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, De. 16, A/6316, art. 1(1), 993 U.N.T.S. 3, G.A. Res. 2200(XXI), 21 U.N. GAOR, art 11(1), U.N. Doc. A/6316 (1976) [hereinafter ICESCR].
[45] Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960).
[46] *Continued Presence of South Africa in Namibia* Advisory Opinion.
[47] *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among* States, United NationsGeneral Assembly Resolution 2625 , U.N. GAOR, 25TH Sess., Supp. No. 28 at 121, U.N. Doc. A/8028 (1970)

Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations[48].

A controversy arose regarding the customary status of this article because it was intended to include to its scope occupied territories severed by non-state parties or with disputed international status[49] like the Occupied Territories of Palestine and resulting in states like Israel and the United States refusing to sign the Protocol[50].

However, the International Court of Justice confirmed that the enforcement of the law of occupation is not contingent on the territory originally being seized from its "rightful sovereign" when it was initially occupied. In other words, the occupation law is also relevant to non-self governing territories and to self-determining peoples[51].

At the present time, the occupation is defines as "the effective control of a power (be it one or more states or an international organization, such as the United Nations) over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory[52]".

Under this definition, the authority that is given to the Occupying Power is temporary and non-sovereign acting as a *de facto* administrator incapable to acquire title to the territory and with no authority to alter its legal or political structure[53]. Thus, the Occupying Power is obligated to maintain the civil life and public order, respect the local laws, to facilitate its rapid withdrawal[54], allow the normal function of the local institutions and not subject its own national economy as the beneficiary to profits from activities in the occupied territory[55].

[48] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), OF 9 June 1977.
[49] Michael Bothe Et Al, 'New Rules for Victims of Armed Conflicts' [1983].
[50] Theodor Meron, 'The time Has Come for the United States to Ratify Geneva Protocol I' [1994] J. INT'L L.
[51] Legal Consequences of the Construction of the Wall in the Occupied Palestine Territory, Advisory Opinion, 9 July 2004, [2004] ICJ Rep 136 (Israeli Wall Advisory Opinion)para 78.
[52] Eyal Benvenisti, *The International of Law of Occupation* (n. 38).
[53] Adam Roberts, 'What is A Military Occupation', [1984] British Yearbook of International Law 55:239-405 ;Christopher Greenwood, 'Jus Ad Bellum and Jus in Bello in the Nuclear Weapons Advisory Opinion' in Boisson De Chazournes J, Sands P (eds) *International La, the International Court of Justice and Nuclear Weapons* (Cambrige University Press, 1999).
[54] Hague Regulations 1907 (n 2), Article 42; Fourth Geneva Convention (n1), Article 64.
[55] Eyal Benvenisti, 'Agora:continued: Future Implication of the Iraq conflict: Water Conflicts During the Occupation of Iraq [2003] American Journal of International Law 97:860-872.

The 'International Human Rights Law' as a distinct and co-applied legal regime in the occupied territory, supplements the abovementioned rules in the context of the extraterritorial obligations which commit the occupying state towards the local population[56]. Accordingly, the Occupying Power is forbidden from changing the demographic composition of the occupied territory transferring its civilians[57] or compelling the local population to relocate within the occupied area or depart from it[58].

The *jus in bello* with time evolved to correspond to the changing realities. However, *jus in bello* failed to regulate with explicit provisions when an occupation is considered illegal. This led to a growing debate about whether the occupation may even assume an inherent illegal character.

1.2. Occupation as "inherently unlawful" or as a "neutral connotation"

Antonio Cassese posits that "self-determination is violated whenever there is "a military invasion or belligerent occupation of a foreign country, except where the occupation – although unlawful- is of a minimal duration or is solely intended as a measure of repelling under Article 51 of the U.N. Charter initiated by the vanquished Power and consequently is not protracted[59]". This perspective, therefore, considers all occupations as inherently unlawful, but acknowledges that the legitimacy of the initial act namely the use of force in self-defense may provide a legal justification for an occupation's existence, subject to a strict though unspecified, temporary limitation[60].

Eyal Benvenisti advanced a different position and posits that "conceptually, occupation is neutral"[61].The notion of 'illegal occupation' could import "major qualifications if not a revolution in the law of occupation[62]". According to Benvenisti,

[56] Yael Ronen, ' Human Rights Obligations of Territorial Non- State Actors' [2013] Cornell International Law Journal 46 21-50.
[57] Fourth Geneva Convention (n 1) Article 49(6).
[58] Ibid., Article 49(1).
[59] Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995).
[60] Orna Ben-Naftali, (n.2).
[61] Eyal Benvenisti *The International of Law of Occupation* (n.38).
[62] Eyal Benvenisti, 'The Security Council and The Law on Occupation: Resolution 1483 on Iraq in Historical Perspective'[2003], IDF L. REV.

the political stigma linked to the idea of occupation, which has been progressively characterized as illegal was linked with the growing prominence of the principle of self-determination[63]. In the context of de-colonization and of the right to self-determination foreign occupation had been associated by a few General Assembly documents with colonialism and other forms of aggression preventing the realization of the right in juncture with the provision of the 'alien subjugation' in Article I (4) of the Additional Protocol I[64] as equal to colonialism and apartheid[65].

However, the latter statement should not be interpreted as endorsing the complete prohibition of the situation of occupation[66]. Instead, only an occupant who violates principles internal to the concept of occupation[67] namely, employs this modality as an indefinite grant of power and declines to engage in negotiations for its withdrawal "abuses its power and might taint its continuing presence in the occupied territory with illegality"[68].

This is because this behaviour reveals that the occupant acts in bad faith namely it does not hold the territory for legitimate security reasons, but seeks to retain it for other purposes, such as de facto annexation[69]. According to this perspective, if the Occupying Power's terms for a peaceful resolution are not driven by "reasonable security interests," then its ongoing occupation would be considered a breach of international law[70].

An occupation that has not been abused in this manner retains its legal legitimacy[71]. Benvenisti adds that, support for this interpretation can be found in the United Nations Security Council Resolution 1483 (2003) which called upon all concerned to comply fully with their obligations under the Geneva Conventions of 1949 an the Hague

[63] Yutaka Arai –Takahashi, (n 23).
[64] Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protoco I), 8 June 1977.
[65] Eyal Benvenisti *The International of Law of Occupation* (n. 38).
[66] Ibid.
[67] Eliav Lieblich, Eyal Benvenisti, *Occupation in International Law, Elements of International Law* (Oxford University Press, 2022) 32
[68] Eyal Benvenisti *The International of Law of Occupation* (n. 38).
[69] Eliav Lieblich, Eyal Benvenisti, (n. 67).
[70] Ibid.
[71] Orna Ben-Naftali (n 2).

Regulations of 1907 . Thereby, this Resolution reinstated the neutral connotation of the doctrine of belligerent occupation "relieving it of its derogatory undertone"[72].

1.3. Occupation as a "factual condition"

To some, the debate about whether an occupation can be illegal is a "category mistake"[73]. According to Yoram Dinstein, there is a myth surrounding the legal regime of belligerent occupation which is, or becomes inherently illegal under international law[74]. He contends that in reality international law does not condemn belligerent occupation as inherently illegal; instead it acknowledges its common occurrence and provides comprehensive regulation for its implementation[75].

It's noteworthy as it was mentioned before that the Security Council Resolution 1483 (2003)[76] straightforwardly mentions the occupation of Iraq by the "occupying powers" and urges all relevant parties to fully adhere to their legal responsibilities as outlined in the Hague Regulations and Geneva Conventions[77]. By its very wording, in this text disproved the assertion that occupation as a concept is inherently unlawful[78]. The International Court of Justice in its Advisory Opinion in 2004 on the Wall criticized Israel for numerous violations of the law of belligerent occupation. However, the Court notably refrained from explicitly labelling the Israeli occupation as illegal[79].

Dinstein argues that the Occupying power could be involved in a war of aggression or could be responding to aggression[80]. The contemporary jus ad *bellum* is based on a notable distinction between wars of aggression, which are considered as crimes and

[72] Security Council Resolution 1483 (2003) (Preamble and para. 5).
[73] Eliav Lieblich, Eyal Benvenisti, *Occupation in International Law* (n 76).
[74] Yoram Dinstein, 'The International Law of Belligerent Occupation'[2019] Cambridge University Press, (2nd ed.).
[75] Yoram Dinstein, , (N. 74).
[76] Security Council Resolution (n 33)
[77] Security Council Resolution 1483 (2003).
[78] Eyal Benvenisti, Guy Keiman, *The Occupation of Iraq: A Reassessment* (R.A.P. Pedrozo ed, 2010),
[79] Richard Sabel, 'Book Review' [2009] Is. LR 628, 631.
[80] Yoram Dinstein (n 74)

wars of self-defense[81]. Nevertheless, as stated in a Judgment in the Hostages trial (part of the so-called 'Subsequent Proceedings in Nuremberg):

International Law makes no distinction between a lawful and an unlawful occupant in dealing with the respective duties of occupant and population in occupied territory. There is no reciprocal connection between the manner of the military occupation of territory and the rights and duties of the occupant and population to each other after the relationship has in fact been established. Whether the invasion was lawful or criminal is not an important factor in the consideration of this subject[82].

Dinstein argues that the obligations arising from the *jus in bello* are applicable to all belligerent parties, "notwithstanding of their unequal standing in the eyes of the *jus ad bellum"*[83].Similarly, the rights and responsibilities of an Occupying Power remain unchanged, regardless of the circumstances that led to the belligerent occupations, whether is resulted from a war of aggression or a war of self-defence[84]. In the Demopoulos case of 2010 the Grand Chamber of the European Court of Human Rights made the following observation regarding the Turkish occupation of the Northern Cyprus in 1974: "the mere fact that there is an illegal occupation does not deprive all administrative or putative legal or judicial acts therein of any relevance under the [European] Convention"[85].

Dinstein concludes that this language might give the impression that it supports the incorrect idea that there should be a differentiation the illegal and legal occupations[86]. He argues that t would have been more precise in the quoted passage to refer to an illegal use of force leading to occupation, rather than labelling the occupation itself illegal. The key point is that regardless of whether the use of force that initiates it is lawful or unlawful under jus ad *ad bellum,* belligerent occupation is the is the font of the same body of law under *jus in bello*[87]. Occupation on this view is simply a factual condition regulated under *jus in bello*, just like any other military operation[88].

[81] Ibid.
[82] Hostages Trial [1948] US Military Tribunal, Nuremberg.
[83] Yoram Dinstein (n 74).
[84] Ibid.
[85] Demopoulos et. Al. v. Turkey [2010] European Court of Human Rights, Grand Chamber, para 94.
[86] Yoram Dinstein, (n. 74).
[87] Ibid.
[88] Eliav Lieblich, Eyal Benvenisti, (n. 67)

Complementing this view is the general approach which views occupation as a neutral concept and perhaps even "a natural phenomenon in war"[89].

1.4. Occupation in the context of *jus ad bellum* and Self-Defence

The perspective of the occupation as a factual condition concentrates on the law of occupation in isolation without taking a broader view when other arguments come into play[90]. Firstly, potential violations can emerge when examining the law of occupation in connection to jus ad bellum[91]. Particularly, in a situation where an occupation results from a war of aggression, as a war of aggression is a breach of a peremptory norm, it can be argued that states have a duty not to recognize such occupations as lawful in their entirety[92]. However, an exception to this duty might exist for administrative acts, especially if their invalidation by a third party would harm the local population[93].

It's crucial to note that non recognition doesn't necessarily imply that the occupant has violated the law of occupation[94]. Consistent with the general distinction between *jus ad bellum* and *jus in bello*, the fact that actions may be lawful under the latter doesn't automatically make them lawful under the former[95]. Consequently, it can be argued that they still form part of the broader illegal context[96].

In this context, some contend that an occupation can be deemed illegal in its entirety even if it initially arises from a lawful act of self-defence[97]. This is particularly relevant if the territory is retained well beyond the point where the threat posed by the attacking state's territory could be considered an unnecessary and disproportionate use of force[98].

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[89] Yoram Dinstein (n 74).
[90] Eliav Lieblich, Eyal Benvenisti, (n. 67).
[91] Ibid.
[92] Ibid.
[93] Legal Consequences for States of the Continued Presence of South Africa in Namimbia (South West Africa notwirhstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 IC.J. Rep 16.
[94] Eliav Lieblich, Eyal Benvenisti. (n. 67)
[95] Ibid.
[96] Ibid.
[97] Ariel Zemach, ' Can Occupation resulting from a War of Self-Defense Become Illegal?' [2015) Minnesota Journal of International Law, 24.
[98] Eliav Lieblich, Eyal Benvenisti, (n.67).

These interpretations face the ongoing challenge of jus ad bellum, where in many instances; third parties may not be able to definitively identify the aggressor[99]. As a practical consequence, in most cases, occupations would not be perceived as illegal by third parties[100]. However, there are exceptions to this scenario namely, when the United Nations Security Council conclusively identifies the aggressor and passes a binding resolution designating an occupation as illegal or demands its termination, or when there is a widespread consensus that an act of aggression has taken place, as seen in the case of Russia's invasion of Ukraine in 2022[101]. In such cases, the occupation may be widely acknowledged as illegal[102].

The same principle applies when a state was authorized to govern a territory continues to occupy it after it mandate is revoked and the occupation can be deemed inherently illegal. [103] Furthermore, if a state withdraws its consent for the presence of foreign forces on its territory, and those foreign forces refuse to depart, they may be considered illegal occupants, provided that the other conditions for occupation are present[104].

1.5. Occupation as a "Normative Phenomenon"

The idea of the inherent illegality of occupation is most commonly applied in the context of the Israeli occupation[105]. Drawing from the practices of the Israeli occupation, some argue that an occupation can indeed become entirely illegal[106]. Those who hold this perspective criticize the "factual" approach that regards occupation as a neutral concept and advocate for seeing it as a normative phenomenon. In other words, they suggest that occupation is generated by the operation of the law itself and, as a result, can be evaluated in terms of its legality or illegality[107].

[99] Ibid.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] Eliav Lieblich, Eyal Benvenisti,(n. 67).
[105] Ibid.
[106] Orna Ben-Naftali (n.2)
[107] Ibid.

They argued that the legality of the phenomenon of occupation as it relates to the function of managing the situation is to be assessed in relation to three fundamental tenets of the law of occupation:

(a) The sovereignty and the title to an occupied territory are not vested in the occupying power;

(b) The occupying power is entrusted with the management of public order and civil life in the territory under control;

(c) The occupation is temporary and may be neither permanent nor indefinite renders an occupation illegal per se[108].

These interrelated principles indicate the constraints on the managerial discretion of the occupant[109]. They also argue that the legality of an occupation, which serves to establish a structured environment distinct from the regular political order based on the sovereign equality of states, should be assessed by its exceptionality. When the distinction between the normal order and the exception becomes unclear, an occupation becomes illegal[110]. The connection between these functions is evident: an occupation that is illegal in terms of managing an otherwise disorderly situation is also illegal because it blurs the line between the norm and the exception[111].

In this context, Gross proposed a differentiation between "jus ad occupation" and "jus in occupation." The former comprises the three fundamental principles, while the latter pertains to the specific norms of the law of occupation. According to Gross, violations of "jus ad occupation" render an occupation illegal[112].

1.6. Occupation as an " instrument to suppress the right to self-determination"

A shared feature among the views that connect the legality of occupation to its compliance with the internal fundamental principles of the law of occupation is their

[108] Aeyal Gross, *Rethinking the International Law of Occupation* (Cambridge University Press, 2017) ;Orna Ben-Naftali (n 2) .
[109] Orna Ben-Naftali. (n. 2).
[110] Ibid.
[111] Ibid.
[112] Ibid.

effort to find scenarios in which occupation is employed as a tool to suppress the right to self-determination[113]. In these situations, occupation can potentially resemble illegal regimes like colonial domination and apartheid, making the distinction between them less clear[114]. Ardi Imseis has proposed that in these occupations, a state is obliged to terminate immediately its occupation as an internationally wrongful act and a violation of a peremptory norm (jus cogens)[115]. This obligation should not be contingent on prior negotiations[116].

1.7. Occupation as "existential illegal"

Ralph Wilde argues that an exclusive focus on the *jus in bello* and occupation law itself "ignores entirely, because of the narrow scope of that law, the question of the existential legitimacy of the occupation itself" and posits that the two areas of international law that address this existential legitimacy are the law on the use of force and the law of self-determination[117]".

The "existential legitimacy" of war and military occupation depends on two parameters: (a) "a legally-acceptable "just cause", defined as the existence of particular type of threat and/or use of force necessitating a defensive response involving the threat/use of force" and (b) a necessary and proportionate defensive response as a means to counteract a threat or the use of force[118].

Wilde subsequently, proposes the distinction of the occupation in two parts. The first part involves the existence of a threat that justifies to a legally valid right to self-defence and if it not in existence then the occupation is unlawful *ab initio* because of the lack of a legally valid *casus bellum*[119]. If it existed, it had to justify the introduction of military occupation as necessary and proportionate but if not, the occupation was illegal again *ab initio*. The second part covers the time from the

[113] Eliav Lieblich, Eyal Benvenisti (n. 67)
[114] Ibid.
[115] Ardi Imseis, 'Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-1920, [2020] European Journal of Internationa Law Vol 31, n3.
[116] Ibid.
[117] Ralph Wilde, 'Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation [2022], The Palestine Yearbook of International Law.
[118] Ibid.
[119] Ibid.

occupation's initial introduction to the present[120]. For the occupation to be legal during this second phase, the initial threat as well as another threat that falls within the limitation of what justifies resorting to force in self-defence must be in operation[121]. If this is the case, the occupation must be a necessary and proportional reaction to these threats and all these elements must be present "in a continuous, unbroken state for the entire period"[122].

Wilde further condemns that an occupation that was initially legal as a means of self-defence can remain legal pending the adoption of a peace agreement only when the occupation is still justified under the requirements for lawful self-defence[123]. The right to employ force including to the conduct of an occupation, is defined only by the nature of the threat, not by the presence or absence of a peace treaty and when the threat is no longer present as necessary and proportionate there is no longer a legal basis for the occupation even if no peace agreement has been reached[124].

Wilde also posits that certain *jus in bello* violations either classified as "grave breaches" of the Geneva Conventions or as "other serious violations of International Humanitarian Law thereby, constituting war crimes, affect the ad bellum legality[125]. When these violations are classified as international crimes having *jus cogen* status they can never be justified by other rules of international law, including the law on the use of force[126]. As a result, any use of force to justify the occupation linked with them goes beyond the limits of necessity and proportionality and they cannot constitute a valid cause of self-defence[127]. Thus, when a state violates peremptory norms of International Human Rights Law and International Humanitarian Law during an occupation, goes above and beyond what the law on the use of force allows and renders the occupation illegitimate in and of itself under the latter norms[128].

The law of self-determination is the other major field of international law that addresses the occupation's existential legality which does not focused on the

[120] Ibid.
[121] Ralph Wilde, 'Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation [2022], The Palestine Yearbook of International Law.
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] Ibid.
[127] Ibid.
[128] Ibid.

occupying power's security needs but towards the position of the occupied people. The violation of the right of people to self-determination and especially "in its external manifestation" including an entitlement to choose their international status constitutes the occupation as "existential illegal"[129].

[129] Ralph Wilde (n. 121).

PART II

The Principle of Self-Determination of Peoples

2.1. The evolution of Self-Determination

Theoretically self-determination is considered as "a political response to "the disenchantment of the world"" and as "a political speech-act, a performative utterance that manifests the people's capacity, and right, to will polities in existence"[130]. Historically, in the modern era the self-determination principle can be traced back to the American Declaration of Independence (1776) and the French Revolution (1789), which marked the end of the idea that peoples, as subjects of the King, were objects to be transferred, alienated, ceded, or secured by the monarch's interests[131]. In the nineteenth century self-determination was invoked by Guiseppe Mazzini as a political postulate requiring all nations to be free to choose their status and by the jurist P.S. Mancini under the guise of the principle of nationality[132].

After World War I, self-determination gained political currency[133] and in conjunction with the Bolshevik Revolution emerged on the international stage[134]. For the U.S. President Woodrow Wilson self-determination was the key to long-term peace in Europe[135] advocating the reconstruction of states corresponding to the nationalist desires to allow the 'autonomous development' of the peoples concerned[136]. Self-determination for V.I. Lenin was the method for accomplishing the dream of global

[130] Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession*, Uriel Abulof (Routldedge International Handbooks 2023).
[131] Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995); Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex
[132] Ibid.
[133] Andrew Pullar, 'Rethinking Self-Determination'[2014] 20 Canterbury Law Review 94.
[134] Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995).
[135] Ibid.
[136] Andrew Pullar, 'Rethinking Self-Determination'[2014] 20 Canterbury Law Review 94; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex

socialism and he was the first to urge the international community to recognize the right of self-determination as a general criterion for the liberation of peoples[137].

The starting point for the evolution of the right to self-determination was the U.N. Charter [138]. One of the purposes of the Charter is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples[139]". Article 55 of the Charter provides that the Organization must promote a number of aims with a view "to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples"[140]. The incorporation of self-determination in the U.N. Charter symbolized "an important turning point, signaling its maturing from political postulate to a legal standard of behavior.[141]"

Since the adoption of the Chapter, several U.N. Conventions and resolutions have addressed and developed self-determination[142]. Most significantly, the identical first articles of the twin 1966 International Covenants on Civil and Political Rights (ICCPR)[143] and Economic, Social, and Cultural Rights (ICESCR)[144] provided that "all peoples have the right of self-determination." The right of self-determination was further recognized by the U.N. General Assembly in the 1960 Decolonization Declaration[145], the Friendly Relations Declaration[146], the 1974 Helsinki Declaration[147]

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[137] Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995).
[138] Helen Quane, 'The United Nations and the Evolving Right to Self-Determination' [1998] International & Comparative Law Quarterly, Volume 47, Issue 3, pp. 537-572.
[139] Aticle 1(2), Charter of the United Nations (24 October 1945) 1 UNTS XVI.
[140] Article 55 Charter of the United Nations (24 October 1945) 1 UNTS XVI.
[141] Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995).
[142] Andrew Pullar, 'Rethinking Self-Determination'[2014] 20 Canterbury Law Review 94; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex.
[143] International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171.
[144] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) 993 UNTS 3 (ICESCR).
[145] Declaration on the Granting Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) 14 December 1960, Article 2
[146] Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, UNGA Res 2526 (XXV) (24 October 1970).
[147] Final Act of the Conference on Security and Cooperation in Europe, 14 IML 1292 (1975), at VII.

and the Vienna Declaration of 1993[148]. Notwithstanding the widespread affirmation self-determination was considered only as a political principle because it was too vague and complicated to imply concrete rights and duties[149].

On the other hand, supporters argued that self-determination was fundamental and a prerequisite for enjoyment of all other rights and freedoms[150]. During the end of the 1970s, self-determination evolved into a legal right and especially in the context of decolonization, it has arguably established an international legal custom authorizing independence.[151] Self-determination has been viewed as an interpretative tool for international law, a norm of legality for international legal developments and a method for international conflict resolution disputes.[152] Despite the inclusion of the right of self-determination as a purpose of the Organization, the U.N. Charter handles self-determination in ambiguous terms, not defining what comprises.[153]

2.2. The content of the right of Self-Determination

Fernado Teson stated that "no other area of international law is more indeterminate, incoherent, and unprincipled than the law of self-determination".[154] Although self-determination has been a regular topic before international courts and despite hundreds of pages of academic work on the subject, it remains uncertain and disputed[155]. Explanation was thus left to following resolutions and conventions.[156]

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[148] Vienna Declaration and Programme Action (World Conference on Human Rights in Vienna, 25 June 1993).
[149] D. Thurer, T. Burri 'Self –Determination in R Wolfrum (ed). Max Planck Encyclopedia of Public International Law (OUP 2008).
[150] Andrew Pullar, 'Rethinking Self-Determination'[2014] 20 Canterbury Law Review 94;Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex
[151] M Koskenniemi ' National Self-Determination Today: Problems of Legal Theory and Practise' [1994] 4 ICLQ 241.
[152] D. Thurer, T. Burri 'Self –Determination in R Wolfrum (ed). Max Planck Encyclopedia of Public International Law (OUP 2008).
[153] Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995).
[154] Fernado Teson, 'Introduction: The Conundrum of Self-Determination' in Teson (ed), *The Theory of Self-Determination*.
[155] Tom Sparks, *Self-Determination in the International Legal System Whose Claim, to What Right?*(Hart Publishing, 2023).
[156] Andrew Pullar, 'Rethinking Self-Determination'[2014] 20 Canterbury Law Review 94; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex

The decolonization movement of the 1960s served as a backdrop to the formation of the legal right to self-determination which was initiated as a political principle with multiple aspects and evolved as a legal right with the underlying meaning of the idea of freedom from subjugation[157]. The Declaration on the Granting Independence to Colonial Countries and Peoples is recognized as one of the most significant contributions of the U.N. to developing the legal right to self-determination[158] and provided that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental rights, is contrary to the Charter of the United Nations" and that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development[159]." The African Charter[160] confirmed this clarification defining self-determination as "the right to free [colonized or oppressed peoples] from the bonds of domination"[161].

In fact the beneficiaries of the right were defined by their subjugation rather than their nationality implying that the colonial people could be viewed as homogenous units[162]. Similarly, while the first articles of both ICCPR and ICESCR used universal language to define the right coloring 'all peoples with references to Non-Self-Governing and Trust Territories implying that the principle is limited to the colonial context[163]. More specifically, according to Article 1 ICCPR and ICESCR:

"1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic

[157] Matthew Saul, 'The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?' [2011] 11 Human Rights Law Review 626,; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex
[158] Helen Quane, 'The United Nations and the Evolving Right to Self-Determination' [1998]
[159] Declaration on the Granting Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) 14 December 1960,
[160] African Charter on Human and Peoples' Rights(1982) 21 ILM 58 (African Charter) article 20(2).
[161] Robert McCorquodale, 'Self-Determination: A Human Rights Approach [1994] 43 International and Comparative Law Quarterly 859.
[162] Matthew Saul, 'The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?' [2011] 11 Human Rights Law Review 626
[163] Ibid.

co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations"[164].

All subsequent international and regional human is mainly reiterated the same definition in rights treaties and protocols that incorporate a right of self-determination.[165] Namely, the limiting approach to the right was retained in the Helsinki Final Act and Vienna Declaration and in the Friendly Relations Declaration in which the wording framed self-determination as a general right but this was changed with the specific references to eliminating colonialism and identifying peoples' subjection to alien subjugation as a violation of the right.[166] Another essential aspect of self-determination was outlined in Resolutions 1514 and 2526: "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations[167]."

It is noteworthy that for the existence and enjoyment of all other individual human rights and freedoms, the realization of the right of self-determination is a necessary prerequisite[168]. The Human Rights Committee (HRC) produced general comments relating to self-determination which have been non-specific[169]. General Comment No.

[164] International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) 993 UNTS 3 (ICESCR).

[165] Robert McCorquodale, "Group Rights" in Daniel Moeckli and others(eds), *International Human Rights Law* (3rd edn, Oxford University Press 2018)347; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex

[166] Matthew Saul, 'The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?' [2011] 11 Human Rights Law Review 626

[167] Declaration on the Granting Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) 14 December 1960, Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, UNGA Res 2526 (XXV) (24 October 1970)

[168] U.N. Human Rights Committee (HRC), CCPR General Comment No. 12: Article 1 (Right to Self-Determination), The Right to Self-Determination of Peoples, 13 March 1984 para 1.

[169] James Summers, *The Right of Self-Determination and Nationalism in International Law* (2005) 12 International Journal on Minority and Group Rights

12 in 1984 examined the common Article 1 and analyzed the fundamental characteristics of the right.[170].

The interpretative practice of states and Committee's reveals a variety of trends in the understanding of the right in Article 1.[171] A primary focus was on colonial peoples and peoples subject to foreign domination and racist regimes.[172] Article 1(3) has been understood to entail active support for specific national struggles.[173] States could expect to be closely questioned in the Committee in the 1970s and 1980s on their support for the Palestinian, Namibian and South African peoples.[174] In the 1990s self-determination in the Committee was prominently mentioned in reports by states still responsible for occupied territories like Morocco in reference to Western Sahara and Israel in relation to Palestinians[175].

2.3. Who are the "peoples"?

In international law, the idea of people is widely vague. The main pillars of self-determination failed to provide an obvious response[176]. However, it is firmly known that people is the basic unit entitled to self-determination and has frequently been emphasized that only the groups that qualify as such have access to the right[177]. It is also worth noting that individuals exercise their right collectively as a group and that 'peoples tend to be seen as large, anonymous human groups possessing certain national characteristics.[178]

[170] Ibid.
[171] James Summers, *The Right of Self-Determination and Nationalism in International Law* (2005) 12 International Journal on Minority and Group Rights.
[172] Ibid.
[173] Ibid.
[174] M. Scheinin, "The Right to Self-Determination under the Covenant on Civil and Political Rights" in P. Aikio and M. Scheinin (eds.), Operationalizing the Right of Indigenous Peoples to Self-Determination (Åbo Akademi University, Turku, 2000).
[175] James Summers, *The Right of Self-Determination and Nationalism in International Law* (2005) 12 International Journal on Minority and Group Rights
[176] Glen Anderson 'Who are the Peoples entitled to the right of self-determination? in Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession* (Routldedge International Handbooks 2023).
[177] James Summers, *The Right of Self-Determination and Nationalism in International Law* (2005) 12 International Journal on Minority and Group Rights
[178] Ibid.

Using the method of textual interpretation, international treaties and General Assembly Resolutions provide a consistent definition of the term 'peoples', namely that 'peoples' are not necessarily synonymous within the entire population of a state or non-self-governing territory an may include sub-state national groups and national groups within non-self-governing territories[179]. This definition permits the rule of self-determination to apply to a range of contexts beyond the decolonization or the entire people of a sovereign state[180]. Namely the term of 'peoples encompasses "(1) the entire population of a State; (2) the entire population of a non-self-governing territory; (3) sub-State national groups; and (4) national groups within non-self-governing territories[181]."

The following definition is frequently used:

"A people for the [purposes of the rights of people in international law, including the right to self-determination, has the following characteristics:

(a) A group of individual human beings who enjoy some or all of the following features: a common historical tradition Racial or ethnic identity, cultural homogeneity linguistic unity, Religious or ideological affinity, territorial connection and common economic life.

(b) The group must be of a certain number who need not be large but must be more than a mere association of individuals within a State.

(c) The group as a whole must have the will to be identified as a people or the consciousness of being a people- allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness.

(d) Possibly the group must have institutions or other means of expressing its common characteristics and will for identity.[182]"

[179] Glen Anderson 'Who are the Peoples entitled to the right of self-determination? in Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession* (Routldedge International Handbooks 2023).
[180] Ibid.
[181] Ibid.
[182] 'Final Report and Recommendations of an International Meeting of Experts on the Further Study of the Concept of the Right of People for UNESCO' [1990].

A wide definition of 'peoples' is required to correspond and reflect the changing realities in order to protect many groups.[183] It is argued that an objective definition is not feasible and will probably strengthen a colonial build of a 'people and not many groups could be capable to meet these criteria.[184]

2.4. Self-Determination and Decolonization

In 1960, the "Year of Africa" the U.N. General Assembly adopted the Resolutions 1514 and 1541 and marked the end of dozen French colonies which became independent.[185] The UN's practice, as illustrated by the abovementioned documents led to the conclusion that the international community has been moving towards the formulation of the general criteria that limit the right of self-determination to colonial peoples.[186] The International Court of Justice endorsed this viewpoint and there is a uniform state practice compatible with the applicability of the right to colonial contexts.[187] Self-determination was recognized by the ICJ as a 'fully-fledged' right and was stated in its legal opinions in both Western Saharan and Namibian cases as a legal right that its beneficiaries may use to establish distinct statehood and sovereign independence.[188]

The key elements of the standards respecting colonial peoples are summarized as follow:

[183] Ibid.
[184] Robert McCorquodale, 'Self-Determination: A Human Rights Approach [1994] 43 Inernational and Comparative Law Quarterly 859; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex
[185] Costas Laoutides, 'Self-determination and decolonization 'in Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession* (Routldedge International Handbooks 2023).
[186] Robert McCorquodale, 'Self-Determination: A Human Rights Approach [1994] 43 Inernational and Comparative Law Quarterly 859; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex
[187]. Ibid.
[188] Costas Laoutides, 'Self-determination and decolonization 'in Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession* (Routldedge International Handbooks 2023).

a) All peoples subject to colonial rule have the right to 'freely determine their political status and pursue their economic, social and cultural development.[189]

b) This right applies solely to external self-determination, or the "the choice of the international status and the territory where it lives."[190]

c) The right belongs to the people as a whole and if the population of a colonial territory is divided into several ethnic groups or nationalities, they are not free to select their external status on their own because of the protection of the territorial integrity.[191]

d) The outcome of the realization of the right to self-determination can take the following forms: a sovereign independent state or association with an independent state or integration into an independent state[192]. For the first form it was not formally essential that the will of the population should be established by a plebiscite or referendum but for the other two according to Resolution 1541 (XV) the outcome "should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes."[193]

e) The right to external self-determination expires once people have exercised it[194].

It is worth to note that colonies are the territories "in which a part of the population known as colonists has taken up residence and settled, whereas the larger part of the population has inhabited the territory prior to the colonists' arrival…The colony is an entity which is subject to the territorial sovereignty of a State and which is a part of that State. The law in the colony is that of the colonizing State; the colony is

[189] Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960). Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995).
[189] Ibid.
[190] Antonio Cassese, *Self- Determination of Peoples A Legal Reappraisal* (Hersch Lauterpacht Memorial Lectures, 1995).
[191] Ibid.
[192] Ibid.
[193] Principle IX of Resolution 1541 (XV).
[194] Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, UNGA Res 2526 (XXV) (24 October 1970) paragraph VI: 'the territory of a colony or other Non-Self-Governing Territory has under the Charter, a status separate and distinct from the territory of the state administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter and particularly its purposes and principles.'

represented by this State in international relations. All public undertakings within the colony are imputed to the State which has jurisdiction over the colony. This State is internationally responsible for public undertakings made within the colony and by the colony. The colony serves the economic and political aims of the colonizing State."[195]

2.5. Self-Determination beyond the Colonial Context

The majority of U.N. members embraced the idea that self-determination meant self-determination of colonies or occupied territories in order to preserve states' territorial integrity.[196] This understanding of self-determination failed to reflect opinions among the U.N. member states concerning the scope of the right whilst several states supported that the right is still applicable beyond the colonial context based on a remedial view of the idea as a last option for evident situations of continuous oppression.[197]

Some states' willingness to include the right of self-determination beyond the colonial context is evident in the Helsinki Act of the Conference on Security and Cooperation in Europe which expressed the link between individual human rights and collective self-determination emphasized in U.N. practice.[198] Principle VIII reaffirmed that "all peoples always have the right, in full freedom, to determine when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development[199]."

The Human Rights Committee in 1984 defended adopting the general comment on Article 1 of the ICCPR by which confirmed that self-determination is a right of all peoples. In other words, is applicable not only to those under the colonial rule and

[195] Felix Ermacora, 'Colonies and Colonial Regime' [1987] Encyclopedia of Disputes Installment 10, 40 ; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex.

[196] Hurst Hannum, Autonomy Sovereignty and Self-Determination: The Accommodation of Conflicting Rights (Philadelphia: University of Pennsylvania Pres, 1990).

[197] L.Bucheit 1978, Secession: The Legitimacy of Self-Determination, New Haven, CT: Yale University Press.

[198] Costas Laoutides, 'Self-determination and decolonization 'in Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession* (Routldedge International Handbooks 2023).

[199] Rosalyn Higgins 'Self-Determination and Secession' in J. Duhlitz (ed.) Secession and International Law Conflict Avoidance, Regional Appraisals, New York and Geneva: United Nations Publications.

under foreign domination.[200] The European Community followed the same logic and declared to the Third Committee of the U.N. General Assembly in 1986 that:

"in accordance with the principles set out in the Charter, the common first article of both International Covenants proclaims the right to self-determination. It is important to remember that, under the Covenants, self-determination is a right of peoples. It applies with equal force to all peoples, without discrimination…. Self-determination is not a single event – one revolution or one election. The exercise of this right is a continuous process. If peoples are to, in the words of the Covenants, "freely determine their political status and freely pursue their economic, social and cultural development" they must have regular opportunities to choose their government and their social systems freely, and to change them when they wish[201]."

2.6. The Boundaries of the Right of Self-Determination

a) Territorial Integrity

The boundary on the exercise of right to self-determination in its external manifestation the principle of territorial integrity[202]. The protection of territorial integrity developed to defend the international peace and security and reflects that States should not be split-up and self-determination should not be understood in such a way that it leads to the disintegration of state's territorial integrity[203]. In the Declaration on the Principles of International law stated that:

"Nothing in the foregoing paragraph shall be construed as authorizing of encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as

[200] Hurst Hannum, Autonomy Sovereignty and Self-Determination: The Accommodation of Conflicting Rights (Philadelphia: University of Pennsylvania Pres, 1990).
[201] Costas Laoutides, 'Self-determination and decolonization 'in Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession* (Routldedge International Handbooks 2023); Marston 1986, pp. 487,516.
[202] Robert McCorquodale, 'Self-Determination: A Human Rights Approach [1994] 43 Inernational and Comparative Law Quarterly 859
[203] Ibid.

described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour[204]".

b) Uti possidetis juris

The principle of uti possidetis juris has been defined as a legal principle that colonial territories may not question their colonial boundaries.[205] It indicates that the formation of a new legal person have to occur inside the previous colonial limits established by the colonial.[206] The principle protects the international peace and security it has resulted on the emergence of various disputes[207] since many of the boundaries were the product of the colonial powers based on their political goals and did not reflect the realities, of the boundaries as are conceived by the peoples.[208]

c) The Freedom and Rights of Others

The primary objective of this restriction is to preserve everyone's rights, not only those people who are entitled to self-determination[209]. Namely, the Aricle 5(1) of the ICCPR and ICESCR provides that:

"Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any other rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.[210]

[204] Declaration on the Granting Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) 14 December 1960
[205] Statement of Mr Kimani, Representative of Kenya, UN Security Council, 8970th Meeting, 21 February 2022, Provisional Verbatim Record, UN Doc No S/PV.8970, 8–9.
[206] Vladyslav Lanovoy, 'Self-Determination in International law: A Democratic Phenomenon or an Abuse of Right? [2015] Cambridge Journal of International and Comparative Law; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex
[207] Robert McCorquodale, 'Self-Determination: A Human Rights Approach [1994] 43 Inernational and Comparative Law Quarterly 859
[208] Garth Abraham, 'Lines upon Maps': Africa and the Sanctity of African Boundaries'[2007], African Journal of International and Comparative Law.
[209] Robert McCorquodale, 'Self-Determination: A Human Rights Approach [1994] 43 Inernational and Comparative Law Quarterly 859; Maria Paradeisioti 'The concept of the right of self-determination in Human Rights Law: The British Millitary Sovereign Bases on Cyprus, [2021] , University of Essex
[210] International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) 993 UNTS 3 (ICESCR).

PART III:

The Case of Cyprus

3.1. Historical Overview

The island of Cyprus was part of the Ottoman Empire until 1878 when the British Empire signed the Cyprus Convention with the Ottoman side during the Berlin Congress, which assigned Cyprus to the British Empire as a protectorate. Following Britain's declaration of war on the Ottoman Empire in 1914, the Crown annexed Cyprus and in the Treaty of Lausanne in 1923, the Republic of Turkey recognized full sovereign rights of Britain on Cyprus. In 1925, Cyprus officially became a "colony of the Crown"[211].

According to British demographic data in 1881, 73.9% of the island's population was Greek and just 24.4% was Turkish. The Greek community started to grow after the annexation of the island by Britain reaching 244,887 when the total population of the island was 310.000 namely, increased by 5%, while the Turkish community decreased to 19.6% of the total population. During October of 1931 the Greek community opposed (Oktovriana), to the British administration under the leadership of Archbishop Kitios Nikolaos, with the main motto and request of the protesters the Enosis, namely the unification of Cyprus with Greece. The British government responded adversely to the Greek community's self-determination aspirations and the Greek population saw this as an act of denial of their right to self-governance and self-determination in their own territory. The international community was against of a possible unification of the island with Greece[212].

For the Greek Cypriots the time for independence against the colonial power was approaching. Their aspirations were realized during the 5-year national liberation struggle against the British forces from 1955-1959. The major opposition force against the British authority was the paramilitary group of EOKA(Ethniki Organosi Kyprion Agoniston), which was established by the Greek general Georgios Grivas.

[211] Andreas Yfantidis, 'The Limits of Self-Determination and the Cases of Forced Separatism: The Example of Northern Cyprus' [2016] Open Journal of Political Science.
[212] Ibid.

The Turkish side also established a paramilitary group called "Volkan" in opposition to Enosis supporting the taksim, namely the island's partition. "Volkan" maintained strong relations with the Turkish army and was eventually renamed "Turkish Resistance Organization (TMT)"[213].

In the late 1950s, several rounds of negotiations were held in London and Zurich between the island's Greek and Turkish communities, as well as the United Kingdom, Greece and Turkey. The deliberations resulted in a series of treaties and the final constitution of Cyprus under which the island became independent[214]. The Republic of Cyprus was established as an independent state at 16th of August 1960. The London-Zurich agreements prohibited the island's partition or unification with another state[215] and in effect were a compromise solution that thwarted the aspirations for the Greek Cypriots on enosis and Turkish Cypriots on taksim[216].

Article 4 of the Treaty of Guarantee stipulated that "in the event of a breach of the provisions of the present Treaty, Greece, Turkey and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions. In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty".

The division of power terms which granted Turkish Cypriots veto powers over some legislation and guaranteed their representation in the government appeared to be the main compromise accepted by the Greek side, reflecting the proportion of both communities' population in Cyprus[217]. Despite the fact that the Constitution clearly stated that the two communities were equal, the Turkish Cypriot population was dissatisfied with the Greek Cypriot leadership and they strengthened their relations with the Republic of Turkey[218]. Also, the Greek side contended that the Turkish

[213] Ibid.
[214] Ryan D. Griffths, Aleksandar Pavkovic , Peter Radan, *The Routledge Handbook of Self-Determination and Secession* (Routldedge International Handbooks 2023).
[215] Treaty of Gurantee,1960, Article 1: Article 1: The Republic of Cyprus undertakes to ensure the maintenance of its indepen dence, territorial integrity and security, as well as respect for its Constitution It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island.
[216] Ryan D. Griffths (n.231).
[217] Ibid.
[218] Andreas Yfantidis (n. 228).

Cypriot minority group had too many privileges in the newly formed state's government[219].

In 1963 after the Turkish members of the House of Representatives had rejected the budget, President Makarios proposed a list of 13 amendments to the constitution that aimed toward removing certain causes of friction between the two communities and of the obstacles to the smooth functioning and development of the state, amendments that limited the powers of the Turkish Cypriots in the government and centralized the power of the state to the majority of Greek Cypriots[220]. The Ankara government rejected the amendments and the Turkish Cypriot leadership followed its stand. In December 1963, the inter-communal violence was escalated on the island leading to bloodshed and loss of civilian lives in both communities. Ankara threatened to invade the island and its military air forces bombed the area of Tilliria. The Turkish Cypriot leadership called for partition and Turkish Cypriots decided to withdraw from state institutions and a large number of them retreated to enclaves.

The informal zone between which was established by the United Nations which divided the capital of Nicosia was the "Green Zone" that attempted to keep the two populations apart from violent acts[221]. Since 1967, the TMT-controlled enclaves had become de facto separate administration[222] occupying around 4% of the island[223]. On December 28 1967, the Provisional Turkish Cypriot Administration (PTCA) was established, completing the Turkish Cypriot withdrawal.

Following the July 15 1974 coup against President Makarios elected administration by the Athens military junta, Turkey found the pretext to enforce its partitionist plans in Cyprus. On July 20, Turkish armed forces launched a full-scale invasion of Cyprus claiming to be acting under Article 4 of the Treaty of Guarantee. The Security Council Resolution 353/1974 inter alia requested "the withdrawal without delay from the Republic of Cyprus of foreign military personnel".

[219] Ibid.
[220] Ryan D. Griffths (n.231).
[221] Ibid.
[222] Maria Hadjipavlou-Trigeorgis, Lenos Trigeorgis, 'Cyprus: An evolutionary Approach to Conflict Resolution' [1993] The Journal of Conflict Resolution, vol. 37.
[223] Nadav Morag, 'Cyprus and the Clash of Greek and Turkish Nationalisms [2004] Nationalism and Ethnic Politics, vol 10.

The July invasion by Turkey ousted the host-state government from just 2% of the island's territory. Turkey launched the second intervention on 13 August 1974 and expanded its control over the 36% of the island's territory[224]. Around 150.000-200.000 Greek Cypriots were forced to move from the north to the south whereas 46.000-65.000 Turkish Cypriots relocated from the island's south to north[225]. One-third of Greek Cypriots became refugees in their own county and are prevented to return to their homes until now. Ankara has brought into Cyprus 114.000 settlers from Turkish Anatolia in order to alter the demographic structure of the island .Thousand of Greek Cypriots were killed or maimed and the fate of approximately 1500 persons is not known and they are still missing. The General Assembly has adopted several resolutions[226] deploring the Turkish occupation and demanding is immediate withdrawal and deploring all unilateral acts that changed the demographic structure of Cyprus[227].

In 15th of November 1983, the "Turkish Republic of Northern Cyprus" ("TRNC") was declared by a legislative assembly invoking the right of Turkish Cypriots to self-determination[228] seeking international recognition. The Security Council reacted against this declaration and condemned it by adopting the Resolution 541/1983 and later the Resolution 550/1984 which prohibited the official recognition of the "TRNC" as an independent and self-governed state[229].

For several years the negotiations for the solution of the Cyprus problem were heading towards a dead end. In 1999, the UN Secretary General Kofi Annan, proposed uniting the two entities in a new state named the "United Republic of Cyprus" establishing a federal republic consisting two states, the Greek Cypriot state and Turkish Cypriot state[230]. The Annan plans 1 and 2 collapsed because the leader of the "TRNC" Rauf Denktash, refused to attend the sixth session of discussions with the

[224] Clement Henry Dodd, *The history and politics of the Cyprus conflict* (Houndmills, Basingtoke, Hampshire; New York: Palgrave Macmillan,2010).
[225] Nadav Morag (n. 241).
[226] General Assembly Resolution 3212 (XXIX) of November , 1974; General Assembly Resolution 3395 (XXX) of November 20, 1975'; General Assembly Resolution 33/15 of November 9, 1978' ; General Assembly Resolution 34/30 of November 20, 1979 (deploring " the fact that part of the territory if the Republic of Cyprus is still occupied by foreign forces");General Assembly Resolution of May 13,1983).
[227] Eyal Benvenisti *The International of Law of Occupation* (n. 38).
[228] Ibid.
[229] Andreas Yfantidis (n. 228).
[230] Ibid.

Greek Cypriot leader Glafkos Clerides. More negotiations took place in the context of the Anan Plans 1 and 2 in 2003, when Kofi Anan proposed the 3rd plan for the settlement of the Cyprus problem[231]. The 3rd plan was granting complete autonomy to the Turkish Cypriot side and establishing a bi-communal and bi-zonal federal republic with a joint legislature and government[232]. The 3rd Anan plan was rejected from the 76% of the Greek Cypriots after a referendum held by the President of the Republic of Cyprus Tassos Papadopoulos. It is worth to note that the majority of Turkish Cypriots accepted the 3rd Annan plan. On May 1 2004, Cyprus became a full European Union Member State.

The start of a fresh round of negotiations has renewed worldwide attention, giving hope for resolving the issue. Three years of discussions followed, with great progress made. The U.N. Secretary General Mr. Antonio Guterres, held a Conference of Cyprus in Crans Montana, Switzerland in June 2017. The Republic of Cyprus, the Turkish Cypriot side with its leader Mustafa Akinci, the three guarantor powers, Greece, Turkey and the United Kingdom and the European Union as an observer all attended the Conference. The Conference came to a halt owing to Turkey's demand on preserving its intrusive rights and a permanent deployment of military forces in Cyprus. Following the last failed talks the island of Cyprus is still under the Turkish yoke for 49 whole years and the problem is still unresolved.

3.2. The Illegal Occupation of Cyprus

Defining the "illegality" of occupation

Ever since the Turkish invasion of Cyprus in 1974, Northern Cyprus has been widely viewed as occupied territory.[233] Ooccupation is an exceptional situation that violates the fundamental principle of the state's sovereignty. Thus, if we admit that occupation is a factual condition which cannot have an illegal dimension then we endanger the

[231] Ibid.
[232] Ibid.
[233] Eyal Benvenisti, *The International of Law of Occupation* (n. 38); Aeyal Gross, The Writing on the Wall, (Cambridge University Press, May 2017).

territorial integrity of each state, whetting the appetite of states like Turkey that have expansionist visions.

It might also lead indirectly to the conclusion that the violations that the occupying powers perpetrated in the context of the occupation are legalized and remain unpunished. The derogatory undertone of the occupation cannot be lifted just because the Security Council and the General Assembly resolutions did not dare to label the occupation of Cyprus explicitly as illegal. Despite avoiding characterizing directly the very illegality of the occupation, the General Assembly adopted several resolutions that implied the illegality of the Turkish invasion and the subsequent occupation of the island. Namely:

1. called upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and to refrain from all acts and interventions directed against it

2. demanded the speedy withdrawal of all foreign armed forces and foreign military presence and personnel from the Republic of Cyprus and the cessation of all foreign interference in its affairs

3. called upon all states to facilitate the voluntary return of all refugees to their homes in safety and to settle all other aspects of the refugee problem

4. called upon all states to respect the human rights of all Cypriots

5. affirmed the right of the Republic of Cyprus and its people to full and effective sovereignty and control over the entire territory of Cyprus and its natural and other resources

6. called upon all states to support and help the Government of the Republic of Cyprus to exercise these rights, and

7. Condemned any act which tends to undermine the full and effective exercise of the above-mentioned rights, including the unlawful issue of titles of ownership of property[234].

In fact the Security Council Resolution 1483 (2003) in which called upon all the occupying powers of Iraq to comply fully with their obligations under the Geneva Conventions of 1949 and the Hague Regulations of 1907 and the above resolutions concerning the case of Cyprus that imposed several obligations to Turkey, do not relieve the illegal character of the occupation. Simply, they address that the *jus in bello* is still applicable even if the illegality of the occupation is doubted. If the opposite was true the occupied population would be exposed to the extreme arbitrariness of the occupying powers.

However, the U.N.'s unjustifiable failure to consistently and explicitly take a principled position on the very illegality of Turkey's 49 years of prolonged occupation of Cyprus, contributed to and led the Cyprus problem in this impasse. The same applies to the International Court of Justice in the in 2004 on the Wall Advisory opinion which artfully avoided labeling the Israeli occupation as illegal. The United Nations and the International Court of Justice probably deemed the illegality as a strictly political matter and preferred to not address it. However, in other cases they chose to cross the line like in the Kosovo Advisory opinion and in the in the Order for the indication of provisional measures, Ukraine v. Russian Federation of 2022 taking more drastic decisions[235].

After the invasion of Iraq in Kuwait in 1990, within hours the United Nations condemned the invasion, demanding immediate withdrawal of Iraqis[236]. The end of the Cold War has allowed the United Nations to enforce the prohibition on the use of

[234] General Assembly Resolution 3212 (XXIX) of November , 1974; General Assembly Resolution 3395 (XXX) of November 20, 1975'; General Assembly Resolution 33/15 of November 9, 1978' ; General Assembly Resolution 34/30 of November 20, 1979 (deploring " the fact that part of the territory if the Republic of Cyprus is still occupied by foreign forces");General Assembly Resolution of May 13,1983).

[235] ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (UKRAINE v. RUSSIAN FEDERATION), REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES, ORDER 16 March of 2022.

[236] Mary Ellen O' Connell 'Enforcing the Phohibition on the Use of Force to Iraq's Invasion of Kuwait [1991] III. U. L. J. 453 (1991).

force beginning with the enforcement against Iraq[237]. The U.N. Security Council Resolution 665/1990[238] provided that:

"The Security Council having decided to impose sanctions under Chapter VII of the Charter of the United Nations; determined to bring an end to the occupation of Kuwait by Iraq which imperils the existence of a Member State and to restore the legitimate authority, and the sovereignty, independence and territorial integrity of Kuwait. "

The Security Council in this instance did not hesitate to label the situation in Kuwait as an occupation which lasted less than a year and moved a step forward enforcing the prohibition on the use of force. In the case of the prolonged occupation of Cyprus the Security Council and General Assembly were more reluctant to use the same explicit language of Kuwait. In other words, the U.N. institutions were not eager to solve the problem with effective measures by enforcing the prohibition on the use of force without even labelling the situation in Cyprus as an occupation through their resolutions.

In the Demopoulos[239] case the Grand Chamber of the European Court of Human Rights referred to the Northern Cyprus as "under the occupation and the control of the Turkish military forces" and mentions the "continuing division of Cyprus"[240]. "The tension between the normative but utopian position of the "TRNC" as void *ab initio* with Northern Cyprus considered occupied territory (*de jure*), together with a concrete but apologetic recognition of some "TRNC" institutions (de facto), is evident in this as well as in the other Cyprus cases[241]".

The Court explicitly label the occupation of Cyprus as illegal holding that "[a]ccepting the functional reality of remedies is not tantamount to holding that Turkey wields internationally recognized sovereignty over Cyprus". It also reaffirmed that because Turkey exercises overall control over the northern part of the island is responsible for the policies and actions of the "TRNC" and for the people affected by it come under its jurisdiction for the purposes of the ECHR. Although, the European

[237] Mary Ellen O' Connell 'Enforcing the Phohibition on the Use of Force to Iraq's Invasion of Kuwait [1991] III. U. L. J. 453 (1991).

[238] U.N. Security Council Resolution 665 allowing force in the Persian Gulf, adopted August 25,1990.
[239] Demopoulos et. Al. v. Turkey [2010] European Court of Human Rights, Grand Chamber, para 94
[240] Aeyal Gross, The Writing on the Wall, (Cambridge University Press, May 2017).
[241] Ibid.

Court of Human Rights addressed the occupied territory of Northern Cyprus turning to European Human Rights law rather than the law of occupation, indirectly safeguarded the basic tenets of the occupation law protecting the occupied population without denying the validity of all measures adopted by the "TRNC" authorities.

It is also worth noting that the Court did not characterize the very use of force by Turkey as illegal but characterized as illegal the very occupation of Northern Cyprus and every effort to mislead this passage ignores the fact that the illegal use of force taints the legitimacy of the occupation. Thus, the Court refutes that occupation is just a factual condition.

Furthermore, the approach of Benvenisti that the occupation can be only illegal when certain internal principles of occupation are abused by the occupying power, isolating the *jus in bello* and disassociating it with the *jus ad bellum* provisions. It is obvious that Turkey occupying the northern part of the island for 49 years and employing the occupation as a means for its secessionist visions abuses these internal principles.

The U.N. Secretary General held an informal U.N. Conference for Cyprus in Geneva on April of 2021, with the goal of achieving a breakthrough for the restart of a series of discussions for a settlement to the Cyprus problem. However, Turkey's and the Turkish Cypriot community's refusal to reaffirm their commitment to the agreed-upon basis of a bi-communal federation with political equality as defined in U.N. resolutions, their intransigence on the equal status of the "two-states" for the resumption of negotiations and their rejection for the appointment of a special envoy, led the effort to a deadlock. Thus, Turkey does not act in good faith holding the occupied territory for illegitimate reasons and its behaviour indicates its primary purpose, namely the secession of the northern part of the island.

Although the case of the occupation of Cyprus fulfils the requirements of Benvenisti's definition of illegality, must be rejected. The illegality of occupation should not be dependent on the presence or the absence of a peace treaty[242]. If the occupation is "existential illegal" under the *jus ad bellum*, the occupation must end

[242] Ralph Wilde (n. 121).

even if no peace agreement has been reached. The illegal Turkish occupation must end even if the negotiations between the concerned parties led to no agreement.

The approach of the occupation as a "normative phenomenon" adopts that the occupation can become inherently illegal[243]. To examine whether the occupation of Cyprus falls into this definition of illegality, must be assessed if the three fundamental tenets of the law of occupation are breached. These basic tenets are: the sovereignty and the title to an occupied territory are not vested in the occupying power, the occupying power is entrusted with the management of public order and civil life in the territory under control and the occupation is temporary[244].

The first basic tenet rests on and reflects the well-established general international legal principle that the acquisition of a territory by force does not confer a valid title to that territory even if the force is used legally namely in self-defence.[245] Thus, even if we accept that Turkey acted in conformity with the Article 4 of the Treaty of Guarantee and invaded on the island in order to re-establish the state of affairs created by the latter Treaty, it has no right to claim the sovereignty of the northern part of the island and subsequently to occupy it for almost 50 years and to incite the secession of it.

Under the second tenet of the law of occupation, namely the trusteeship, the occupying power is vested with the authority "to take all the measures in his power to restore and ensure, as far as possible, public order and safety/civil life, while respecting, unless absolutely prevented, the laws in force in the country"[246]. The narrative of the Turkish occupation is strictly related with the settlement enterprise. "The latter generates both of the dispossession of and the discrimination" against the rights of Greek Cypriots and indicates Turkey's "breach of the trust contemplated by the normative regime of occupation[247]".

In fact Turkey violated the trust with the : "attempted secession, the systematic destruction of the cultural heritage of an ancient land with thousands of years of history and civilization, "ethnic cleansing" on a massive scale with the forced

[243] Orna Ben-Naftali (n.2)
[244] Orna Ben-Naftali (n.2)
[245] Ibid.
[246] Article 43 of the 1097 Fourth Hague Convnetion
[247] Orna Ben-Naftali (n.2)

displacement of practically all of the Greek Cypriot inhabitants of the area under Turkish occupation (constituting eighty percent of the inhabitants of that area and more than a third of Cyprus' total population) and the importation of a large number of colonists aimed at altering the historic demographic composition of the island; and the tragedy of missing persons that raises humanitarian issues of major significance.[248]"

The last basic tenet of the occupation law is the temporary nature of the occupation. As it was mentioned before the occupation of 49 years can never be regarded as temporary.

3.3. The "existential illegality" of the occupation of Cyprus

a) The prohibition on the use of force

In light of the above, the exclusive focus on the narrow scope of the *jus in bello* ignores the "existential legitimacy" of war, including the conduct of associated military occupation. Thus, the appropriate legal framework addressing the "existential legitimacy" of the occupation is the law on the use of force – *the jus ad bellum*.

Turkey's presence in the northern part of the island of Cyprus stems from the 1974 invasion, and is therefore a "belligerent occupation"[249]. Thus, the questions that must be addressed concerning the legality of the Turkish invasion and subsequent occupation are whether there is a legally acceptable "just cause", defined as the existence of a particular type of threat and/or use of force necessitating a defensive response involving the threat/use of force" and if the defensive response is a necessary and proportionate means to counteract a threat or the use of force[250].

Under Article 2 of the Treaty of Guarantee, the guaranteeing powers, Greece, Turkey and the United Kingdom undertook to prohibit, so far as concerned them, "any

[248] Andreas J. Jacovides, 'Cyprus – The International Law Dimension' [1995], American University Journal of International Law and Policy, 10(3), 1221-1232.
[249] 1899 Hague Regulations and 1907 Hague Regulations, passim and especially Sections II ; First Geneva Convention art. 2 ; Second Geneva Convention art. 2; Third Geneva Convention art. 2; Fourth Geneva Convention arts. 2, 27–34 & 47–78.
[250] Ralph Wilde, (n. 59).

activity aimed at promoting directly or indirectly, either union of Cyprus with any other State or partition of the island[251]. Turkey claims that, Turkey's intervention and subsequent presence on the island are legitimate under international law because they were carried out in accordance with Turkey's right and obligations under article 4 of the Treaty of Guarantee[252]. It is necessary to note that Turkey didn't invoke the justification of self-defense.

Despite this assertion, Turkey has clearly breached Article 2 of the Treaty of Guarantee through its illegal use of force and Article 2(4) of the United Nations Charter[253]. The use of force by Turkey had the ultimate purpose of secession or annexation of the northern part of the island and can never be justified as a legally acceptable 'just cause' under the *jus ad bellum.* As a result the subsequent occupation is illegal *ab initio*[254].

Even if we accept that Turkey invaded on the island in order to protect the Turkish Cypriots from the Athens military junta, the prolonged occupation cannot be deemed as necessary and proportionate against to the purported threat. The hostilities between the communities have ceased for several years and the Cypriot Government have proved its dedication only for a political settlement of the problem and made a number of painful concessions during the course of the negotiations.

Thus, neither at the commencement of the occupation in 1974 nor during the 49 years of occupation Turkey had no valid right of self- defense. As several international experts stipulate, it is implausible that prolonged occupation fulfils the requirements of necessity and proportionality[255]. The question that therefore arises now is whether the people of Cyprus have a right to self-determination.

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[251] Treaty of Guarantee (Cyprus, Greece, Turkey, United Kingdom), 16 August 1960, 382 UNTS 5475.
[252] See Letter dated 14 December 2016 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General, A/71/693-S/2o16/o67, 16 December 2016,

[253] Article 2 (4) of the United Nations Charter: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'

[254]Ralph Wilde, (n. 59).
[255] ; Christine D. Gray, *International Law and the Use of Force* (4th ed., 2018).

b) The right of peoples of Cyprus to self-determination

In the context of the decolonization of the island, the people of Cyprus had a right to self-determination to decide their political future. The Cypriot people as a unified totality would express their wish for the political future of the island depending on what the majority of the Cypriot people decide by a plebiscite[256]. Instead, the London-Zurich Agreements which were signed in a period right after the national-liberation struggle of the Greek Cypriots under the motto Enosis, imposed to the Cypriot people without taking into account their will.

It is notable that the very Agreements that established the Republic of Cyprus as an independent and sovereign state appointed as guaranteeing powers three other states granting them to each one of them the right to take action in order the state of affairs of the Treaty of Guarantee to be re-established, in other words to intervene in the domestic affairs of a sovereign state.

In addition article 1 of the Treaty Establishment of the Republic of Cyprus[257] created the Sovereign Bases Areas provided that "[t]he territory of the Republic of Cyprus shall comprise the Island of Cyprus, together with the islands lying off its coast, with the exception of the two areas defined in Annex A to this Treaty, which areas shall remain under the sovereignty of the United Kingdom. These areas are in this Treaty and its Annexes referred to as the Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area. These areas "shall remain under the sovereignty of the United Kingdom" "[258].

The use of the term "remain" means a protraction of the British colony within Cyprus encompassing the Sovereign Bases Areas. The continuation between the colony of Cyprus and the Sovereign Bases Areas is obvious. Threfore, the Sovereign Bases Areas are considered to be a continuation of the British colony within the island.

[256] Dimitrios Bitsios, 'Critical Moments Athens' [1978] D. Kollaros & Co.
[257] Treaty Concerning the Establishment of the Republic of Cyprus (16 August 1960) 382 UN Treaty Series (1960) 5476 art 1
[258] Treaty Concerning the Establishment of the Republic of Cyprus, signed at Nicosia on 16 August 1960.

Thus, one can assume that the establishment of the Republic of Cyprus is a remnant of colonialism.

The same idea reaffirmed by the Cyprus Act of 1960 which provides that territory of the Republic of Cyprus comprises the whole island except of the areas that 'Her Majesty' has sovereignty or jurisdiction[259] and mainly by the UK Supreme Court which stated that "In the case of Sovereign Bases Areas the only change which occurred in 1960 was that whereas they had previously been part of the UK-dependent territory of Cyprus, they were thereafter the whole of it.[260]" This lead to the conclusion that since 1960 the island of Cyprus gained independence apart from the Sovereign Bases Areas which are still under the British colonial rule.

The International Court of Justice in the Chagos Advisory Opinion stated that "any detachment by the administering Power of part of a non-self- governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination[261]" and stipulated that "it is not possible to talk of an international agreement, when one of the parties to it, Mauritius, which is said to have ceded the territory to the United Kingdom, was under the authority of the latter."[262]

The Sovereign Bases Areas were the product of the international agreement of the Treaty of Establishment of Cyprus between the Guarantor Powers and the Republic of Cyprus. It is crucial to note that the people of Cyprus have never been asked to express their will and consent concerning the issue through the democratic procedures of the conduct of referendum or plebiscite[263]. The people of Cyprus as colonial peoples still have the right to freely determine their political future expressing their will as a whole.

The 'Note by the Prime Minister, is a document of 1957 which ensured that the independence of Cyprus was not unconditional stating that "it must be understood

[259] Cyprus Act 1960, Section 2 (1).
[260] R (on the application of the Tag Eldin Ramadan Bashir and others(v. Secretary of State for the Home Department[2018], para 69.
[261] Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion , ICJ Reports 2019 para 160.
[262] Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion , ICJ Reports 2019 para 172.
[263] Andreas Stergiou, 'The Exceptional Case of the British Military Bases on Cyprus' [2014]Middle Eastern Studies.

however that they (Majesty's government) would not regard any solution as acceptable which did not allow them to retain their minimum essential military facilities under British sovereignty."[264] In light of the above since the establishment of the Republic of Cyprus decolonization was not conducted lawfully and the right of self-determination was not properly realized.

The right of self-determination belongs not only to colonial peoples but also to peoples subject to foreign occupation[265]. The U.N Declaration on Friendly Relations made it clear that the situations of 'alien subjugation, domination and exploitation" exist outside the colonial context and give rise to the right of self determination. Several "General Assembly[266] resolutions on self-determination which characterize 'acts or threats of foreign military intervention, aggression and occupation' and 'foreign military intervention, aggression and occupation' as egregious infringements of the right of self-determination also suggest that in practice, states have agreed to limit the concept of 'foreign domination to intervention by use of force and military occupation[267]".

Cassese defines that the terms of 'alien subjugation, domination and exploitation "cover those situations in which any one Power dominates the people of a foreign territory by recourse to force" concluding that "self-determination is violated whenever there is a military invasion or belligerent occupation" [268]. In this context the right of self-determination is not violated only when the Article 51 of the U.N. Charter is not applicable and the subsequent occupation is not protracted.

In light of the above, Turkey's invasion and occupation violates the right of self-determination of peoples of Cyprus. But who are the people of Cyprus? Cassese stipulated concerning the Palestinian occupation that "only those Palestinians living in the territory occupied by Israel since 1967 are entitled to the exercise of this right "[269].Thus, this right belongs only to those Cypriot people living in the territory occupied by Turkey since 1974. If we apply this quote to the case of Cyprus leads to the conclusion that the Cypriots who were living in the occupied territories before the

[264] 'Note by the Prime Minister' [1957].
[265] Antonio Cassese, (n. 59)
[266] See, UN GA Res. 38/16 of 22 November 1983, UN Ybk, 1983,828; GA Res. 41/100, of 4 December 1986, UN Ybk 1986, 694.
[267] Antonio Cassese (n.59).
[268] Ibid.
[269] Ibid.

Turkish invasion and subsequent occupation are not entitled to self-determination. Since the invasion around 150.000-200.000 Greek Cypriots were forced to move from the north to the south whereas 46.000-65.000 Turkish Cypriots relocated from the island's south to north. This perspective excludes from the scope of the protection of the right the Greek Cypriots who were displaced by force and become refugees in their own country and considers as the only beneficiaries the Turkish Cypriots and the thousands of illegal settlers that inhabit in the occupied areas. A population group constitutes a 'peoples' when it is associated with a well defined territory inhabited by that group.

Turkish Cypriots before the Turkish invasion were scattered all over the island, living in mixed villages and towns together with the Greek Cypriots.[270] However, the occupied part cannot be considered as a "territory" for purposes of self-determination because it is a product of illegal use of force. Greek Cypriots have endured and continue to suffer the aftermath of the occupation, losing their properties and being denied until now their right to return , a right that is a form of expression of the right to self-determination.

Turkey's use of force in militarily occupying the northern part of the island prevents the realization of the right of people of Cyprus to self-determination. Greek Cypriots and Turkish Cypriots constitute one self-determination group. The people of Cyprus have the right to be free from any external domination including occupation and have the right to return, the right to the freedom of movement and residence[271]. Sovereignty resides in the Cypriot people because they have the right to self-determination to decide their political future and any denial either disguised as an occupation or as a purported secession prevents the realization of the right. The peoples of Cyprus have the right to full and effective sovereignty and control over the entire territory of Cyprus and its natural and other resources. Thus, the illegal occupation must end for the right to self-determination to be exercised[272].

It is necessary to note that whether the right of the peoples of Cyprus to self-determination is based on the sole ground that the island is occupied or on that the

[270] See relevant tables in Karouzi's, Minorities-with Special Reference to the Turkish Cypriot Minority. Nicosia: Stavron, 1977, pp. 16 and 19.
[271] Ralph Wilde , 'Is the Israeli occupation of the Palestinian West Bank (including East Jerusalem) and Gaza 'legal or 'illegal' in international law?' Legal opinion, [2022] University College London.
[272]Ibid.

Turkish occupation is simply a denial of this right the result is the same, the breach of the right that belongs to all peoples of Cyprus.

Conclusion

The almost 50-years occupation of Cyprus is "existential illegal" violating the law on the use of force – the jus ad bellum and the right of peoples of Cyprus to self-determination. Turkish invasion constitutes a flagrant violation of the Article 2(4) of the United Nations Charter because Turkey had the ultimate purpose of secession of the northern part of the island and can never be justified as a legally acceptable 'just cause' under the *jus ad bellum*. The occupying power neither at the time of the invasion in 1974 nor during the 49 years of occupation had no valid right of self-defense. As a result the subsequent occupation is illegal *ab initio.*

The peoples of Cyprus, Greek Cypriots and Turkish Cypriots, as one self-determination unit have a right to self determination as colonial peoples but also as peoples subject to foreign occupation. Any denial of the right either disguised as an occupation or as a purported secession prevents the realization of the right. The people of Cyprus are entitled to be free from any external domination including occupation and have the right to return, the right to the freedom of movement and residence. Thus, the illegal occupation must end for the right to self-determination to be exercised even if a prior agreement for the settlement of the Cyprus problem has not been reached.

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