

Ghost Towns and International Law: The Admissibility of Turkey's Attempt to Re-Open Varosha

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On Thursday 8th October 2020, Turkey's military took down the fencing in the ghost town of Varosha in Cyprus, following an announcement by Turkish Cypriot Premier Ersin Tatar during a press conference with the President of Turkey, Recep Tayyip Erdogan. The move has flared up tensions in the region, intensified by the emergence of poignant images of locals draped in the Turkish flag, promenading onto the beachfront of what was once known as the Cypriot 'French Riviera', a home to a community of Greek-Cypriots who were forcefully displaced from their homes at the wake of the invasion. Following Turkey's invasion of Cyprus in 1974, Varosha's Greek-Cypriot community was forced to flee, leaving it hence completely deserted. The resort was subsequently fenced off by the Turkish military, who has control over it, and it has been a ghost town ever since.

UN Resolutions

A number of UN General Assembly and Security Council Resolutions have been issued since the invasion, calling 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 against it,¹ explicitly condemning over and over again the secessionist acts which led to the creation of the Turkish Republic of Northern Cyprus, and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus.² The UN General Assembly

¹ UN General Assembly Resolution, A/RES/3212 (XXIX), 1st November 1974; UN Security Council Resolution 365 (1974) of 13th December 1974; UN Security Council Resolution 367 (1975) of 12th March 1975; UN Security Council Resolution 370 (1975) of 13th June 1975; UN Security Council Resolution 383 (1975) of 13th December 1975; UN Security Council Resolution 391 (1976) of 15th June 1976; UN Security Council Resolution 401 (1976) of 14th December 1976; UN Security Council Resolution 410 (1977) of 15th June 1977; UN Security Council Resolution 414 (1977) of 15th September 1977; UN Security Council Resolution 422 (1977) of 15th December 1977; UN Security Council Resolution 440 (1978) of 27th November 1978; UN Security Council Resolution 541 (1983) of 18th November 1983; UN Security Council Resolution 789 (1992) of 25th November 1992, and others.

² UN Security Council Resolution 541 (1983) of 18th November 1983.

has *urged* in no uncertain terms the speedy withdrawal of all foreign armed forces and foreign military presence and personnel from the Republic of Cyprus.³ In 1984 the UN Security Council issued Resolution 550 (1984) of 11th May 1984, in which it again condemned all secessionist acts by the Turkish Republic of Northern Cyprus, and expressed concerns about threats to resettle Varosha. More importantly, the UN Security Council stated that it:

“*Considers attempts to settle any part of Varosha by people other than its inhabitants as inadmissible and calls for the transfer of that area to the administration of the United Nations.*”

It comes as no surprise that Turkey’s recent actions in Varosha have unsettled the international community, as they appear to fly directly in the face of UN Security Council Resolution 550 (1984). Quite apart from the fact that Turkey’s continuous failure to surrender Varosha to the control of the UN is contrary to UN Resolution 550 (1984), the decision to re-open Varosha could be the first step towards resettlement, an act that would be inadmissible.

Are UN Resolutions legally binding?

There is little doubt that Turkey and its illegitimate arm, the Turkish Republic of Northern Cyprus, have a long history of disregarding various UN Resolutions concerning the Cyprus question. However, enforceability remains an issue, and there is a certain degree of edifying mystery surrounding the precise legal status of UN Security Council Resolutions. General Assembly Resolutions are generally considered non-binding,⁴ although their recommendatory nature makes them important sources of reference.

Security Council Resolutions, on the other hand, are the subject of some controversy. Whilst Article 25 of the UN Charter states that ‘[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter’, nothing is said about resolutions. It has been argued that on a reading of the UN Charter, it would appear that only resolutions of the Security Council passed under Chapter VII⁵ are legally binding. However, in its *Namibia Advisory Opinion* in 1971,⁶ the International Court of Justice opined that the legal status of Security Council Resolutions was not to be determined

³ *Ibid.*

⁴ See Articles 10 and 14 of the UN Charter. It is also notable that Article 38(1) of the Statute of the ICJ, which is widely recognised and accepted as an authoritative statement on the sources of international law, makes no express provision for the resolutions of the UN General Assembly as a source of international law.

⁵ Chapter VII gives power to the Security Council to take action with respect to threats to the peace, breaches of the peace, and acts of aggression.

⁶ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16.

by reference to which chapter it was made under, but rather by reference to a number of factors:

“The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.”⁷

The Court concluded that “when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for member States to comply with that decision, including those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council. To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter.” Despite having no binding force, the Court’s advisory opinions nevertheless carry great legal weight and moral authority.

In the light of the above, it is notable that Resolution 550 (1984) does not employ words like ‘condemns’ or ‘demands’, which are often used to express the UN’s strong disapproval of a particular state of affairs, and arguably create a legal obligation,⁸ although there is some room for academic debate on the effects of language in UN Security Council Resolutions. Although the use of targeted language is by no means definitive, and will not overcome the usual issues surrounding enforceability, it does seem to play a part in deciphering the hierarchical structure of legal obligations within the UN system. It is also arguable that a clear and unambiguous condemnation by the UN could create impetus for the international community to act, and certainly makes it more likely that appropriate measures will be taken against states whose actions violate international law.

Conclusion

⁷ *Ibid* at [114].

⁸ See, for example, UN Security Council Resolution 550 (2016) of 23rd December 2016.

The Republic of Cyprus has urgently called on the UN Security Council to address the question of whether the opening of Varosha is admissible in international law.⁹ The UN should now take a robust stand against this latest act of defiance, issuing a strong warning against further action in Varosha, and calling upon Turkey to surrender the area to the control of the UN. Irrespective of political affiliations, the re-opening and potential resettlement of Varosha would translate in nothing other than a flagrant disregard for the rule of law.

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⁹ <https://www.theguardian.com/world/2020/oct/09/terrible-day-anger-as-pictures-show-varosha-beach-in-cyprus-opening-after-46-years>