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**THE TURKISH INTERVENTION OF CYPRUS 1974 AND  
ITS CONSEQUENCES IN INTERNATIONAL LAW**

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**Submitted for the Degree of Doctor of Philosophy  
in the University of London**

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## ***ABSTRACT OF THESIS***

The aim of the present thesis is basically twofold. First, to examine from the International Law viewpoint the 1974 Turkish Intervention of Cyprus; actually whether there are any grounds upon which Turkey may rely in order to establish the legality of intervention. Second, to explore the legal consequences of the intervention. In this way, the dissertation would be forward-looking as prospects for a future settlement of the Cyprus issue would be analysed in the light of Public International Law.

Although Turkey's 1974 intervention has been the subject of much comment, a fresh study is warranted. This is so, because the present analysis will take advantage of information not available to many of the earlier commentators. Extensive research has been conducted in the Public Records Office examining available Foreign Office and War Office Files relevant to the study. Greek Cypriot politicians have been interviewed who gave their own exposition of the events surrounding the issue, and will be cited where relevant. Greek as well as Turkish material has been thoroughly studied and shall also be included in the study. Needless to mention that massive International Law works are quoted in detail, thus making possible the application of legal principles to the issue under examination. Furthermore, this new study is distinctive and even imperative, in that it ranges beyond the question whether the intervention was lawful to consider the legal consequences which flowed from it, and looks to the future exploring prospects for a just and viable settlement to the Cyprus Issue.

It is noteworthy that the thesis is broad enough to comprise analysis of various branches of the academic field of international law such as the International Law of Armed Conflict and the Use of Force, International Organizations, the Law of Treaties, International Law Theory, Statehood, Human Rights, Conflict resolution, Foreign Policy and even Constitutional Theory.

The Doctoral Thesis will be divided in three Parts and comprise eight Chapters.

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**PART I**  
**ORIGINS**

**CHAPTER I**

**DIPLOMATIC CONTEXT OF THE CYPRUS QUESTION**

## CHAPTER I: DIPLOMATIC CONTEXT OF THE CYPRUS QUESTION

### (1) *The period up to 1960*

#### 1.1. Brief Historical background

The History of Cyprus begins with the Neolithic times going back to the 6<sup>th</sup> millennium.<sup>1</sup> With the discovery of copper in Cyprus early in the third millennium B.C. the history of Cyprus enters into a new period, the Bronze period 2500-1500 B.C.<sup>2</sup>

The most important event during that period was the arrival of Achaean-Mycenaeans around the middle of the second millennium and the Mycenaean culture, previously flourishing in the island of Crete was now introduced into Cyprus. The extent of the Mycenaean influence has been shown by the archaeological findings-tombs, vases and other remains, as well as excavations of Mycenaean cities in the Eastern coast of Cyprus, in the province of Famagusta.<sup>3</sup> Before the end of the second millennium more Greek colonists arrived to live in Cyprus while others on the east and west of Asia Minor. According to history, cities of Cyprus were founded by heroes of the Trojan war such as Salamis by Teucer, brother of Ajax, Paphos by Agapenor from Arcadia, Idalium by Chalcanor, Lapithos by Praxandros of Laconia and others.<sup>4</sup> The Greek colonization was very extensive and this is supported by Herodotus, who says that the inhabitants of Cyprus had come from Athens, Argos, Arcadia, Salamis.<sup>5</sup> The Greek colonists brought with them the Greek culture and way

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<sup>1</sup> See Karageorghis: *Cyprus*, Geneva 1968, pp. 34-35; Spyridakis, *A Brief History of Cyprus*, Nicosia, 1974.

<sup>2</sup> *Contra Denktash*. In his Prologue to *The Cyprus Triangle*, he places the year 1571 A.D., date at which Cyprus came under the Ottoman rule, as the starting point of the island's early history. For the legal implications of this assertion, see Chapter 5 below.

<sup>3</sup> Stanley Casson, *Ancient Cyprus*, London , 1937; Spyridakis, *A Brief History of Cyprus*, *supra*, pp. 6-8; Karageorghis, *Cyprus*, *supra*, pp. 62-63. On the question whether *Alasia* refers to the whole of Cyprus or a particular city and regarding the dispute about *Alasia*, *ibid.* p. 64. See also Hill, *A History of Cyprus* vol. I, Cambridge: Cambridge University Press, 1940, pp. 39-49

<sup>4</sup> Homer speaks of Cinyras, the King of Paphos, who gave Agamemnon, the Commander-in-Chief of the Greek forces against Troy, a decorated suit of armour, and King Cinyras is praised by the Greek poet Tyrtaeus (7<sup>th</sup> century B.C.) and Pindar (5<sup>th</sup> century B.C.).

<sup>5</sup> Besides the Greeks, Phoenicians from Syria also came to Cyprus not earlier than 1000 B.C. and settled in the coast, particularly in Kition. But, as Professor Gjerstad, of the Swedish archaeological Expedition, points out, there exists a fundamental difference between the Greek and the Phoenician settlements in that the former were the result of mass migration and aimed at political occupation and cultural penetration whilst the latter were of a strictly commercial character.

of living, including their political ideas and manner of administration. The autochthonous inhabitants, the Eteocypriots (a technical name given by Archaeologists to differentiate the uncivilised population of Cyprus from their civilised descendants) accepted the Greek culture. On the model of the Greek city states and following the Mycenaean system of government many kingdoms have been established in Cyprus. Diodorus Siculus, the historian, refers to nine such kingdoms in the middle of the fourth century.

The Cyprus kings following the Mycenaean precedent were at the same time high priests, judges and generals and the institution of Kingship was hereditary. Gradually the institution of the assembly of the people, the ecclesia, was developed to which the king was referring matters of administration for consideration.<sup>6</sup>

The Kings of Cyprus retained their autonomy under the Egyptians and the Persians from the sixth century to the end of the fourth century B.C. even after the heroic but unsuccessful revolt under King Onesilus in the fifth century B.C. who tried to unite the Cypriots against the Persian domination.

Next important King who united the cities of Cyprus under the leadership of Salamis was its King Evagoras the First. Evagoras carried a ten year war against the Persian yoke and during that struggle was greatly assisted by the Athenians who made him a citizen of Athens. Evagoras is the most important statesman in the History of Cyprus who not only maintained and spread the Greek culture throughout Cyprus but transmitted it to the neighbouring countries.<sup>7</sup>

The kings retained their sovereignty over their own cities during the time of Alexander the Great. When after his death in 323 B.C. a dispute arose over the possession of Cyprus between his successors Ptolemy and Antigonus, the kings of Cyprus were divided some of them supporting the former whilst others supporting the latter, but eventually Cyprus came under Ptolemy who shortly afterwards was proclaimed as King Ptolemy.

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<sup>6</sup> See Casson, *Ancient Cyprus*, *ante*, pp. 143-157; Spyridakis, *A Brief History of Cyprus*, *ante*, pp. 11, 16-22, where reference is made to the most important kings such as Evagoras and Onesilus of Salamis and Cinyras of Paphos.

<sup>7</sup> Isocrates, the friend and the tutor of his son Nicocles, considered Evagoras as the ideal ruler and described him as such in three orations which he presented to Nicocles. As to the three orations of Isocrates see Hill, *A History of Cyprus*, *ante*, p. 216, note 5, who refers to Forster, *Isocrates Cypriot Orations*, Oxford, 1912.

Cyprus remained under the Ptolemies for two and a half a centuries and during that time achieved a great degree of culture and prosperity.

Cyprus was occupied by Rome in 58 B.C., as Greece had been occupied earlier (c. 146 B.C.) and became part of the province of Cilicia governed by a proconsul. Among the early proconsuls was the famous orator Cicero. Under Augustus Cyprus became an imperial province.

The introduction of Christianity to Cyprus was the most important event during this period of the Roman rule. On his first missionary journey in 45 A.D. Paul accompanied by Barnabas, a Cypriot, and Mark landed at Salamis and preached the new religion. The conversion to Christianity was completed by the beginning of the fifth century through the great ecclesiastical figures of the time, St. Barnabas, Lazarus, Spyridon of Trimithus, Philon of Karpasia, Tychon of Amathus and Epiphanios of Constantia.<sup>8</sup>

On the laying of the foundations of the Byzantine Empire, in 330 A.D. Cyprus received special attention and protection by the emperors of Byzantium.<sup>9</sup> When Cyprus was a Byzantine province, the Arabs, who had accepted the religion of Islam raided at intervals Cyprus from the seventh to the tenth centuries and caused great destruction. But the Arabs never made an organised attempt to occupy Cyprus or acquire sovereignty over it and their activities were limited to looting and taking prisoners.<sup>10</sup>

The Byzantine period of Cyprus came to an end with the reign of Isaac Comnenos.<sup>11</sup> Throughout the Byzantine period the Greek character of Cyprus was preserved in all its manifestations.<sup>12</sup> Richard sold Cyprus to Guy de Lusignan, King of Jerusalem and thus Cyprus became a Frankish Kingdom. The Lusignans ruled for about three hundred years (1192-1489) on the feudal system, all privileges belonging

<sup>8</sup> See Spyridakis, *A Brief History of Cyprus, ante*, pp. 43-46; Hill, *A History of Cyprus, ante*, pp. 247-48.

<sup>9</sup> The mother of Constantine the Great visited Cyprus and established Churches including the monastery of Stavrovouni where, according to the tradition, she left pieces of the cross upon which Christ was crucified: see Hill, *A History of Cyprus, supra*, p. 246 note 3 for the various versions.

<sup>10</sup> For the Arab raids see further, Spyridakis, *A Brief History of Cyprus, supra*, pp. 90-102; Hill, *A History of Cyprus, op. cit.*, pp. 291-296.

<sup>11</sup> Isaac Comnenos was expelled from office by the King of England Richard Coeur de Lion on his way to the Holy Land as one of the leaders of the Third Crusade. The arrival of Richard and the events which followed are vividly described by St. Neophytos, one of the eminent ecclesiastical writers of the time.

<sup>12</sup> For the legal implications of this assertion see below Chapter 5.

to the nobles whilst the people were oppressed without participation in the administration. The system of administration was alien to the people of Cyprus. During the Frankish period the Greek Orthodox Church was in a state of persecution as the Latin Church was trying to subjugate it.<sup>13</sup> The last Queen of the Lusignan dynasty Catherine Cornaro ceded Cyprus to Venice in 1489, when the Lusignan domination of Cyprus ended.<sup>14</sup> The Venetian occupation of Cyprus had a purely military purpose that of defending the Venetian interests from any dangers that might come from Egypt and the Turks.<sup>15</sup>

The Turks, who had captured Constantinople in 1453, invaded Cyprus with powerful army in 1570 and, in spite of the defence put up by the Venetians, they captured Nicosia in the same year and in 1571 Famagusta fell after a heroic resistance of the Venetian commander Marcantonio Bragadino. After the capture of Nicosia, but especially after the fall of Famagusta, unprecedented acts of atrocities followed, property was looted and most of the important churches such as St. Sophia, and St. Catherine in Nicosia and in Famagusta were converted to Moslem mosques. And remained as such to nowadays. Hill, in his History of Cyprus after referring to Nicosia at which the massacre and looting went on for three days, writes that “the reader may be spared description of horrors which were such as usually occurred at the capture of any Christian city by the Turks”<sup>16</sup> and after the fall of Famagusta observes that “the history of Cyprus is rich in episodes of horror, and this was an age inferior to no other in barbarity: but as an example of cold-blooded ferocity, in which the childishness of the savage combines with the refinements of the sadist, the martyrdom of the hero of Famagusta by Mustafa Pasha yields the palm to none. It was inspired not by momentary fury, but by deliberate bloodlust. Some details may have been exaggerated by anti-Moslem sentiment, but the main facts are not open to doubt”.<sup>17</sup>

The Turkish conquest brought many radical changes to Cyprus. In spite of the atrocities the Turks supported the Greek-Orthodox Church, which replaced the Roman

<sup>13</sup> See Hill, *A History of Cyprus, ante*, pp. 1059-1061.

<sup>14</sup> For a genealogical table of the house of Lusignans see Cobham, *Excerpta Cypria*, Cambridge: Cambridge University Press 1908, pp. 168-169; Hill, *A History of Cyprus*, vol. III, Cambridge: Cambridge University Press 1948 pp. 1156-1157.

<sup>15</sup> On this, see Hill, *A History of Cyprus, ibid.*, pp. 765-877.

<sup>16</sup> Ibid. p.984.

<sup>17</sup> Ibid. pp. 1033-1034.

Catholic as the official Church of the island.<sup>18</sup> The Archbishop of Cyprus was given similar privileges as those conferred on the Patriarch at Constantinople.<sup>19</sup>

The Turkish rule in Cyprus ended in 1878. By the Convention of the defensive alliance between Great Britain and Turkey with respect to the Asiatic provinces of Turkey signed at Constantinople on the 4<sup>th</sup> June 1878, Turkey consented to assign the island of Cyprus to be occupied and administered by England for enabling her to make the necessary provision for executing her engagements under the Treaty. By an Annex to this Convention signed at Constantinople of the 1<sup>st</sup> July 1878 between the same Contracting Parties the conditions under which England would occupy Cyprus are provided and provision was made that “if Russia restores to Turkey Kars and other conquests made by her during the last war in Armenia, the Island of Cyprus will be evacuated by England and the Convention of the 4<sup>th</sup> June 1878 will be at an end”. By an additional article signed at Constantinople on the 14<sup>th</sup> August 1878, it was agreed between the High Contracting Parties that for the term of the occupation and no longer, full powers were granted to Great Britain for making Laws and Conventions for the Government of the island and for the regulating of its commercial and consular relations and affairs.<sup>20</sup> In July 1878 Cyprus was occupied by Great Britain.

The main purpose of this short historical narrative has been to show that during all the years of foreign occupation many conquerors passed through Cyprus and she came across many cultures. Although they left their traces, which may be witnessed by the various silent monuments, nevertheless Cyprus never has lost its own character or identity.<sup>21</sup>

## 1.2 Legal Questions arising out of the British Occupation

<sup>18</sup> Spyridakis attributes this to a political motive as the Turks did not want to provide the European powers with any excuse for intervention after the battle of Lepanto in 1571 (*A Brief History of Cyprus, ante*, p. 151).

<sup>19</sup> The Patriarch was recognized not only as the religious head of his religious community but also as the political chief master and King taking the place of the former emperor. As the head of his religious community he represented it before all state and diplomatic authorities with which he was corresponding. The Patriarch was entitled to impose ecclesiastical taxes and to adjudicate on disputes between members of his flock of a civil character. The ethnarchical mission of the Church was attributed by Theodore Papadopoulos to historical needs and not religious requirements (see Theodore Papadopoulos, Orthodox and Civil authority, *Journal of Contemporary History*, 1968 p. 201).

<sup>20</sup> The text of the Convention is given in Hill, *A History of Cyprus* vol. IV, Cambridge: Cambridge University Press, 1952 pp. 300-301, of the Annex at p.301-302 and of the Additional Article at p.302.

<sup>21</sup> Stanley Casson correctly observes that it will be incorrect to say that Cyprus has absorbed anything; she rather absorbed and then transformed (*Ancient Cyprus, ante*, p.2).

There is no unanimity as to the legal position of Great Britain in respect of Cyprus during the period from its occupation in 1878 till the annexation in 1914. A view was expressed that Great Britain acquired a *de facto* though not a *de jure* sovereignty over Cyprus under the Convention. The concept of sovereignty, as supreme authority which is independent of another authority, coincides with that of the political power and has different aspects. In so far as it excludes the dependence upon any other form of authority of another state, sovereignty is independence. It is external independence with regard to the liberty of action outside the borders of a State in its intercourse with other States and internal independence with regard to the liberty of action inside the borders. As regards the power of a state to exercise authority over all persons and things within its territory, sovereignty is territorial supremacy (dominion, territorial sovereignty).<sup>22</sup> With respect to the territorial sovereignty three theories were expounded especially in international law.

One theory supports that territory is the object of State power. According to the writers supporting this theory (Oppenheim, Lauterpacht in the U.K.) the territory is an object over which the State exercises a true right. According to the second theory, which extensively is accepted in Germany (by Jellinec) and was introduced in Greece by the late Professor Saripolos, territory is a constituent element of the concept of the State. The territory is not a part of the possessions of the state but a prerequisite of its existence. A third theory inspired by the Austrian school (Kelsen, Verdross) maintains that the territory should be immune from any juristic or geographical element and should be approached from the angle of the exercise of the competence of the state *ratione loci*. Under this theory the relations of the colonial territories to the metropolitan State territory could be better explained.

The supreme authority which the State exercises over its territory would seem to suggest that on one and the same territory there can exist only one full sovereign State and that two or more sovereign States on one and the same territory are an impossibility. But the controversy over the non-divisibility of sovereignty, prevalent

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<sup>22</sup> Oppenheim-Lauterpacht p. 286; Starke, *An Introduction to International Law*, London, 1972, p.106; Hall, *A Treatise in International law*, Oxford, 1924, pp. 56-58.

in the sixteenth, seventeenth and eighteenth centuries was dying out in the nineteenth century especially with the appearance of colonialism.

Among the examples of the divisibility of sovereignty is the case where one state actually exercises sovereignty which in law is vested elsewhere, as where a piece of territory is administered by a foreign power with the consent of the State to which the territory belongs. In this respect reference is made to the position of Cyprus from 1878 to 1914 under British administration and that of Bosnia and Herzegovina from 1878 to 1908 under the administration of Austria-Hungary<sup>23</sup> where a cession of territory has for all practical purposes taken place although in law the territory belonged to the former owner state.

This is borne out by the provisions of the Convention itself under which Turkey assigns the administration of the Island of Cyprus to Great Britain, an expression which denotes transfer of title, whilst at the same time provision is made in the Annex for the eventual return of Cyprus on the fulfilment of certain conditions.<sup>24</sup> That sovereignty was remained in Turkey was never disputed by Great Britain on taking up the administration of the island.<sup>25</sup> The occupation of Cyprus lacked juristic precision but it was analogous to protectorate in the sense that it fell within the designation of a country under protection of Great Britain.<sup>26</sup>

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<sup>23</sup> See Oppenheim-Lauterpacht, *International Law*, *ante*, p.455, where it is observed that "such nominal sovereignty is not totally devoid of practical consequences". See also the observations of Phillimore, *Commentaries upon the International Law* vol. I, London, 1879, pp.131-132.

In the case concerning the Light House in Crete and Samos the Permanent Court of International Justice held in October 1937 that notwithstanding the very wide autonomy conceded by Turkey to the islands of Crete and Samos these territories must be regarded as having been under Turkish sovereignty in 1913 with the result that Turkey could properly grant or renew concessions with regard to these islands. In a dissenting Opinion Judge Hudson, regarding this point said that "a juristic conception must not be stretched to the breaking point, and a ghost of hollow sovereignty cannot be permitted to obscure the realities of the situation" (P.C.I.J. Series A/B No.71).

<sup>24</sup> See Roberts-Wray, *Commonwealth and Colonial Law*, London, 1966, p. 28. A very wide jurisdiction was granted to Britain to administer Cyprus, during the period it had the administration of the island.

<sup>25</sup> The British Government did not wish to ask the sultan to alienate territory from his sovereignty. It has been asserted that until the annexation Great Britain refused to extend the protection of her consuls to Cypriots resident outside the island (see Hill, *A History of Cyprus*, *ante*, Vol. IV p. 285); O'Connell, *International Law* Vol. I, London, 1965, 354: "the British government in fact acknowledged that it had no intention of alienating territory from the Sultan's sovereignty". The British Foreign Secretary was also of the opinion that the transfer of the island to the Great Britain had all the incidents of cession for so long as the British occupation lasted (O'Connell, *Legal Aspects of the peace treaty with Japan*, *British Y.B.I.L.*, 1952 vol. XIX, 423, p.426)..

<sup>26</sup> See Oppenheim-Lauterpacht, *International Law* *supra*, p.455, note 2; O'Connell, *International Law*, *supra*; Roberts-Wray, *op.cit.* (considers as doubtful whether, in English Law, Cyprus could accurately be regarded as a territory under the Sovereign's protection and points out the difficulty of grouping Cyprus with other territories by referring to pre-1915 Acts of Parliament).

Great Britain immediately after the outbreak of war with Turkey in 1914, annexed Cyprus by Order in Council of the 5<sup>th</sup> November 1914<sup>27</sup> and as from that date Cyprus formed part of the Her Majesty's dominions.<sup>28</sup>

Cyprus, when annexed, had been under British administration since 1878. Such annexation in time of peace without the consent of the State which in law owns the territory is unlawful and it is of doubtful legality in war.<sup>29</sup> In any event the annexation was recognized by Turkey by article 20 of the Treaty of Lausanne 1923. *Turkey furthermore, by Article 16 of the same treaty renounced all rights and titles whatsoever over or respecting inter alia the islands other than those over which the sovereignty is recognised by the present Treaty (and therefore over Cyprus as well)* and by Article 27 Turkey was precluded from exercising any jurisdiction in any political, administrative or legislative matter outside the territory of Turkey, on any national of a territory put under the sovereignty of the other signatory Powers (as in the case of Ottoman subjects in Cyprus).

### 1.3 British constitutional proposals for Cyprus

On the assumption of the government by the Labour party in 1945 the Secretary of State for the Colonies stated that it was proposed to seek opportunities to establish a more liberal progressive regime in the internal affairs of the island. For this purpose a Consultative Assembly was convened in 1947 but the response was discouraging.<sup>30</sup> These constitutional proposals though constituting a step towards self-government were inspired by an imperial spirit and were inconsistent with the ideals for which the Second World War had been fought and the declared promises during and after the War by the British government. The limitations imposed by the constitutional proposals and the powers reserved to the Governor with respect to

<sup>27</sup> The Cyprus Annexation Order in Council 1914, Statutory Rules and Orders Revised 1924, No. 1629, vol. II pp. 577-578. During World War II Great Britain offered to transfer Cyprus to Greece in exchange for Greek support for Serbia an offer which was later withdrawn.

<sup>28</sup> It is an indication that the United Kingdom did not subsequently deny the Enosis to the Greeks of Cyprus because of any strategic agreement with Turkey, but on other grounds which will be discussed later in this Chapter.

<sup>29</sup> Oppenheim-Lauterpacht, *International Law*, ante, p. 567, note 3.

<sup>30</sup> For details of the Plan, see Kyriakides, *Cyprus, Constitutionalism and crisis Government*, University of Pennsylvania Press, Philadelphia, 1968, pp. 30-32.

defence and external affairs had not left any room for their acceptance. The Greek Cypriots under the leadership of Archbishop Leontios had decided that their future aim should be *Enosis and only Enosis* (Union with Greece). An aim followed by his successors Makarios II and Makarios III.<sup>31</sup> The demand of Enosis was becoming more persistent and on the 15<sup>th</sup> of January 1950 a plebiscite was held, under the aegis of the Ethnarchy Council, among Greek Cypriots, at which 96 % of the persons taking part in it voted for Enosis of Cyprus with Greece.

In the meantime the British Government announced that she intended to introduce a constitution as a first step towards self-government, an announcement which was met by the immediate reaction of the Greek Cypriots. For overcoming such reaction and winning their cooperation the British thought that the best way was to carry with her some good will from Greece and Turkey and for this purpose she decided to invite Greece and Turkey to send representatives to a conference to be held in London and collaborate for an agreement there. The theme of the conference was to cover all the common interest of the three powers on the eastern Mediterranean.<sup>32</sup>

The proposed Conference was held without the approval of the Archbishop who publicly declared that the convening of such a conference is a trap and a means of undermining Greece's appeal to the United Nations. It is significant that at the Conference, Macmillan, the British Foreign Secretary, frankly admitted that: "it is an undoubted anomaly and it is in our view wrong that while so many other parts of the world have made steady progress in the art and practice of self-government there has been no comparable advance in Cyprus. We must put this right. Internal self-government has to be the first aim."<sup>33</sup> The Greek Foreign Minister Stephanopoulos supported the application of self-determination to Cyprus,<sup>34</sup> whilst the late Zorlu, the Turkish Foreign Minister, maintained that it was not right to consider the Cyprus question from the angle of the present day composition of the people and the guiding principles should not be the consideration of the majorities and minorities but rather

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<sup>32</sup> Eden's, Memoirs London 1960, p. 197; See also debates in the House of Commons in *Parliamentary Debates (Hansard)*, H.C. Debates 12947-1948 vol. 451 col. 2159-2162.

<sup>33</sup> Cmd 9594 (Miscellaneous No. 18 1955). *The Tripartite Conference on Eastern Mediterranean and Cyprus*, p. 13.

<sup>34</sup> Cmd pp. 17-18.

the granting of full equality to the two groups. Furthermore he added that the status quo should be maintained in Cyprus. If this were to be upset then the island should revert to Turkey<sup>35</sup>

In broad lines it was proposed a Constitution providing for an Assembly with an elected majority, a proportionate quota being left for to the Turkish Cypriot community and for the progressive transfer of the departments to Cypriot Ministers responsible to the Assembly with the exception of foreign affairs, defence and security which will be left for the Governor. A proportion of the ministerial posts would be reserved for the Turkish Cypriots.

There was no agreement regarding the future international status of Cyprus and confronted with this deadlock the Conference came to an end.<sup>36</sup>

The Greek Cypriots undertook then an armed struggle for the satisfaction of their demands. The Governor was substituted by Field Marshall Sir John Harding, Chief of the Imperial General Staff, who on arriving to Cyprus started protracted negotiations with the Ethnarch Archbishop Makarios in an attempt to find a solution to the problem. The proposals put forward by the British Government during the talks, as far as the constitutional problem was concerned were as follows

(a) Though the British Government admits that the principle of self-determination may be applicable to Cyprus nevertheless her position was that it was not a practical proposition on account of the situation then prevailing in the Eastern Mediterranean.<sup>37</sup>

(b) The details of the constitution would be a matter for a discussion between the representatives of all sections of the population. Nevertheless the following points were clarified by the British Government

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<sup>35</sup> Cmd 9594 p. 25.

<sup>36</sup> *Eden's Memoirs*, *ante* p. 4101; Cmd. 9594 supra p. 42; comments on the *Conference* by Kyriakides, *Cyprus, Constitutionalism and crisis Government*, *ante*, pp. 39-41.

<sup>37</sup> The British Government would be prepared to discuss the future of the island with representatives of the people of Cyprus when self-government has proved itself capable of safeguarding the interests of all sections of the community (correspondence exchanged between the Governor and Archbishop Makarios, Cmd. 9708, p. 3); for these talks see S.G. Xydis, *Cyprus, Reluctant Republic*, The Hague 1973, pp. 44, 95, 206 note.

- (i) She offers wide measure of democratic self-government and to this end she proposed the drawing of a new and liberal constitution in consultation with all sections of the community.
- (ii) The constitution would enable the people of Cyprus through responsible Cypriot Ministers to assume by suitably phased process, control over the departments of Government except those relating to foreign affairs and defence which would be reserved to the Governor and the public security which would be also be reserved to the Governor for as long as he deems necessary.
- (iii) The constitution will provide for an Assembly with an elected majority.
- (iv) A Cypriot Premier would head the new administration who would be chosen by the Assembly with the approval of the Governor. Ministerial portfolios would be allocated by the Premier subject to a constitutional provision relating to participation of Turkish ministers in the Council of Ministers.
- (v) There would be proper safeguards for the rights of the individual citizens.<sup>38</sup>

Eventually no agreement could be reached, not only on the constitutional question but also on other matters.<sup>39</sup>.

The British Government concentrated on the action necessary to prepare a working plan for self-government of Cyprus and for this purpose entrusted Lord Radcliffe to prepare and submit constitutional proposals for Cyprus. Such was the report submitted by Lord Radcliffe.<sup>40</sup>

By his constitutional proposals Lord Radcliffe recommended that a diarchy for Cyprus consisting of the section of subjects reserved for the Governor, comprising foreign affairs, defence and internal security, and the self-governing section

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<sup>38</sup> *Cyprus: Correspondence exchanged between the Governor and Archbishop Makarios, Cmd. 9708 p. 8; Kyriakides, Cyprus, Constitutionalism and Crisis government, supra, pp.42-44.*

<sup>39</sup> As a result the Archbishop, together with the Bishop of Kyrenia and other churchmen was deported to the Seychelles. The armed struggle, however, continued. See the prophetic speech of Earl Attlee when he said "I hold no brief for the Archbishop, but I remember that the rebels of the past generally tend, sooner or later, to be Prime Ministers in the British Commonwealth" (*Parliamentary Debates-Hansard, House of Lords Debates* vol. 196 col.462).

<sup>40</sup> See *Constitutional proposals for Cyprus, Report submitted to the Secretary of State for the Colonies Cmnd. 42.*

consisting of the Legislative Assembly, the cabinet and the Judiciary and comprising all matters other than the reserved ones.

The Legislative Assembly would consist of a Speaker, a Deputy Speaker appointed by the Legislative Assembly and 36 other members out of whom 6 would be nominated from among members of the minority communities and 30 elected members (6 voters on the Turkish communal roll and 24 elected voters on the general roll). The Legislative Assembly would pass all the Bills dealing with self-government matters that shall become Laws on being assented to by the Governor. The executive power of the self-governing section would be exercised by a cabinet consisting of the Chief Minister, appointed by the Governor from among the members of the Legislative Assembly and enjoying the largest measure of general support in the Assembly and five other Ministers appointed by the Governor on the recommendation of the Chief Minister from among members of the Legislative Assembly. There would be also a Minister of Turkish Cypriot Affairs, appointed by the Governor at his discretion from among the members of the Legislative Assembly elected by the voters on the Turkish Cypriot communal roll, who will be responsible for the office dealing with Turkish Cypriot affairs.

Regarding the Judicature there would be a Supreme Court consisting of the Chief Justice who is appointed by the Governor after consultation with the Chief Minister and two other judges, or such increased number of members as may be provided by law, being uneven, appointed by the Governor after consultation with the Chief Justice.

The Attorney-General would be appointed by the Governor on the recommendation of the Chief Minister and his appointment would be revoked accordingly.

A tribunal of Guarantees would be established, the members of which would be appointed by the Governor in consultation with the Chief Justice and the Chief Minister. Membership of the Tribunal shall include an equal number of the Greek Cypriots and Turkish Cypriots under the chairmanship of a person who would not be either Greek Cypriot or Turkish Cypriot. The Tribunal would deal with individual complaints against acts of the administration.

His conclusions are pertinent, even today. For this reason the relevant paragraphs of this Report are quoted in full:

“27. I have given my best consideration to the claim, put before me on behalf of the Turkish Cypriot community that they should be accorded political representation equal to that of the Greek Cypriot community. If I do not accept it I do not think that it is out of any lack of respect for the misgivings that lie behind it. But this is a claim by 18% of a population to share the political power equally with 80% and, if it is to be given effect to, I think that it must be made on one of the two possible grounds. Either it is consistent with the principles of a constitution based on liberal and democratic conceptions that political power should be balanced in this way, or no other means than the creation of such political equilibrium will be effective to protect the essential interests of the community from oppression by the weight of the majority. I do not feel that I can stand firmly on either of these propositions.

28. The first of embodies the idea of a federation rather than unitary state. It would be enough to accord to members of a federation equality of representation in the federal body, regardless of the numerical proportions of the populations of the territories they represent. *But can Cyprus be organised in this way? I do not think so. There is no pattern territorial separation between the two communities, and apart from other objections, federation of communities seems to be a very difficult constitutional form.*<sup>41</sup> If it is said that what is proposed is in reality nothing more than a system of functional representation, the function of in this case being the community life and organization and nothing else. I find myself baffled in the attempt to visualise how an effective executive government for Cyprus is to be thrown up by a system in which political power is to remain permanently divided in equal shares between the two opposed communities. Either there is stagnation in political life, with the result frustration which accompanies it, or some small minority group acquires an artificial weight by being able to hold the balance between the two main parties. My conclusion is that it cannot be in the interest of

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<sup>41</sup> Emphasis my own. On Federalism see Chapter VII, below.

Cyprus as a whole that the constitution should be formed on the basis of equal political representation for the Greek Cypriots and Turkish Cypriot communities.

29. Does the second ground lead to a different result? I do not think so. To give an equal political strength in a unitary state to two communities which have such a marked inequality in numbers- an inequality which, so far as signs go is likely to increase as decrease- is to deny to the majority of the population over the whole of the field of self-government the power to have its will reflected in effective action. Yet it might be well right to insist on this denial if the constitution could not be equipped with any other means effective of securing the smaller communities in the possession of their essential special interests. Not only do I think that it can be equipped with such means by placing those interests under the protection independent tribunals with appropriate powers and relying only to a limited extent on direct political devices, but I think that the legalist solution which this depends on is in fact better suited to provide the protection that is required, and it does not have the effect of denying the validity of the majority principle over a field much wider than that with which special community interests are truly concerned”.

The Radcliffe constitution was not accepted either by Archbishop Makarios or by the Greek Government.<sup>42</sup> The armed struggle in Cyprus continued.

Sir John Harding was succeeded as Governor by Sir Hugh Foot whose links with the island date back to 1943 when he was Colonial Secretary. It was the Governor's ideas that mainly inspired the Macmillan Plan which was announced on the 19<sup>th</sup> of June 1958.<sup>43</sup> Sir Hugh Foot summarised its aims in a broadcast to the troops of Cyprus:<sup>44</sup> “It may be summarised in three sentences. First, we want to give the best possible deal to all the people of the island. Second we want to bring the three Governments of Great Britain, Greece and Turkey together in a joint effort to make sure that they get it. Third, we believe that this can only be achieved by Great Britain given a definite and determined lead to break the vicious circle from Cyprus which has suffered so long”.

<sup>42</sup> For the details of the *Radcliffe Constitutional Plan*, see Kyriakides, *Cyprus, Constitutionalism and Crisis Government, ante*, pp. 45-48.

<sup>43</sup> Sir Hugh Foot, *A Start in Freedom*, London, 1964, pp. 159-163.

<sup>44</sup> *Ibid.* p. 168

Under the Macmillan Plan a partnership scheme was proposed for Cyprus-partnership between the two communities in the Island and also between the Governments of the United Kingdom, Greece and Turkey. For this purpose:

- (a) The Greek and Turkish Governments will each be invited to appoint a representative to cooperate with the Governor in carrying out the Plan.
- (b) The Island will have a system of representative Government with each community exercising autonomy in its own communal affairs. To this end there would be a separate House of Representatives for each of the two communities, which will have the final legislative authority in communal matters.
- (c) Authority for internal administration other than communal matters and internal security will be undertaken by a Council presided over by the Governor and including representatives of the Greek and the Turkish Governments and six elected members drawn from the Houses of Representatives, four being Greek Cypriots and two Turkish Cypriots.
- (d) The Governor, acting after consultation with the representatives of the two Governments will have the reserve powers to ensure that the interests of both communities are protected;
- (e) External affairs, defence and internal security will be matters specifically reserved for the Governor acting after consultation with representatives of the two Governments;
- (f) Such representatives will have the right to require legislation which they consider discriminatory to be reserved for consideration by an impartial tribunal.<sup>45</sup>

It is to be noted that the proposed constitutional arrangements not only did not satisfy the national aspirations of the Greek Cypriots, but brought Turkey to share the administration of Cyprus. It should be recalled that by the aforementioned provisions of the Treaty of Lausanne Turkey renounced any rights of Sovereignty over Cyprus.<sup>46</sup>

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<sup>45</sup> *Cyprus : Statement of policy* Cmnd. 455 pp. 2-3. Details as to the surrounding circumstances of the preparation of the Macmillan Plan and its contents see Xydis, *Cyprus, Reluctant Republic*, *op. cit.*, pp. 130-143.

<sup>46</sup> See further Eden, *Memoirs*, *op. cit.* p. 413. There exist instances of administration of a territory. Usually the condominium of the Anglo-Egyptian Sudan is referred to under the agreement of Great Britain and Sudan of

Early in 1959 negotiations were held in Zurich between the Greek and the Turkish Governments for the purpose of finding a solution.<sup>47</sup> On the 11<sup>th</sup> February 1959 an agreement was reached at Zurich between the Greek and the Turkish Minister for the establishment of an independent State, the Republic of Cyprus. At a Conference held in London in February 1959 attended by the Prime Ministers of Great Britain and Greece, the Turkish Foreign Minister, the Foreign Ministers of Great Britain and Greece and the representatives of the Greek Cypriot communities a Memorandum with documents annexed to it setting out the foundations of the final settlement of the problem of Cyprus was signed and adopted on the 19<sup>th</sup> February 1959.<sup>48</sup> A joint constitutional commission prepared the Constitution of the Republic of Cyprus and London joint committees prepared the draft treaties giving effect to the conclusions of the London Conference. Agreement was reached on all points on 1<sup>st</sup> July 1960.<sup>49</sup> The Constitution of the Republic of Cyprus was signed at Nicosia on the 16<sup>th</sup> of August 1960<sup>50</sup> by the then Governor on behalf of the British Government, by representatives of the Governments of Greece and Turkey, by Archbishop Makarios, on behalf of the Greek Cypriot community, and Dr. Fazil Kutch on behalf of the Turkish Cypriot community and was put into force on that date.<sup>51</sup>

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January 19, 1899 signed at Cairo.,(see Oppenheim-Lauterpacht, *International Law, ante*, p. 453, note 4). For other instances see Oppenheim-Lauterpacht, *International Law, supra*, pp.453-455. For instances of common control of territory see Roberts-Wray, *Commonwealth and Colonial Law*, ante, pp. 53-54, O'Connell, *International Law, ante*, pp. 352-353.

<sup>47</sup> For details of the circumstances which led to the Zurich Agreement see Sir Hugh Foot, *A Start in Freedom*, ante, pp. 176-179; Xydis, *Cyprus, Reluctant Republic*, ante, pp.359-419.

<sup>48</sup> See Conference on Cyprus signed at Lancaster House on February 19, 1959, Cmnd 79 p. 4. The documents annexed to the memorandum were: (a) Basic structure of the Republic of Cyprus pp. 5-10, (b) the Treaty of Cyprus pp. 10-11, (c) additional article to be inserted inn the Treaty of Alliance between the Republic of Cyprus and Greece and Turkey p. 11, (d) declaration made by the Government of the United Kingdom of February 127, 1959, pp. 11-123, (e) additional article to be inserted in the Treaty of Guarantee p.13, (f) declaration made by the Greek and Turkish Government Foreign ministers of the 11<sup>th</sup> February 1959 p.13, (g) declaration made by the Representative of the Greek Cypriot community on February 19, 1959 p.14, (h) declaration made by the representative of the Turkish Cypriot Community p. 174. (i) declaration made by the Representatives to prepare for the new arrangements in Cyprus pp. 14-15. For details of the conference see Xydis Cyprus, *Reluctant Republic* op. cit. 00. 420-460; Ehrlich ante. pp. 20-35.

<sup>49</sup> The Treaty of Establishment between the United Kingdom, Greece and Turkey and the Republic of Cyprus with its Annexes.

<sup>50</sup> Cyprus Act 1960 section 1 , Republic of Cyprus Order in Council 1960 SI. 1368/1960 appointing the 16<sup>th</sup> day of August, as the day of the coming into operation of the Constitution.

<sup>51</sup> Why the British denied Enosis? From 1951 onwards the Greek Government made it clear that in return for Enosis it was quite willing to grant Britain whatever bases she required either in Cyprus itself, or on the Greek mainland. This made the connection between Western defence and the necessity for continued British sovereignty problematical. One British Official summed it up as follows: "If we link Cyprus with NATO and implicitly admit its value lies in its usefulness for NATO purposes we destroy the case for the retention of the sovereignty by the U.K. on strategic grounds. As NATO base Cyprus could just as well belong to Greece as to

## 1.4 The Structure and legal peculiarities of the Constitution

The structure provided by the Agreement was based on the recognition of the existence of two communities, the Greek and the Turkish- who in spite of their numerical disparity were given equal treatment. The aim was to ensure that each community participates in the exercise of the functions of government.<sup>52</sup> The official languages of the Republic are the Greek and the Turkish ones.<sup>53</sup> For each community a Communal chamber is established exercising legislative and administrative power on certain restricted subjects relating to religious matters, educational, cultural and teaching matters, and instances of courts dealing with civil disputes relating to religious matters and personal status and on matters relating to institutions of purely communal character and having a right to oppose taxes and fees on members of their respective communities in order to provide for the respective need of bodied and institutions under the control of the communal chamber.<sup>54</sup>

The President of the Republic shall be a Greek Cypriot and the Vice-President of the Republic a Turkish Cypriot elected separately by universal and secret ballot.

The President and the Vice-President of the Republic jointly exercise executive power in respect of subjects exclusively laid down in the Constitution except on certain occasions, address messages to the House of Representatives, and exercise the prerogatives of mercy in respect of members belonging to their own community.

The President and Vice-President of the Republic either jointly or separately have a right of return of any law or decision of the House of Representatives or of the

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us. Our whole case depends upon our need for Cyprus as an extra-NATO base for our own purposes in the Middle East (PRO, *Foreign Office*, FO 371/117653) In defining the core NATO area in 1949 special care had been taken to exclude Cyprus, although this fact was not communicated at the time to Greece or Turkey. Such an exclusion was not affected by the entry of the latter two countries into NATO during 1952. (PRO FO 0371/1117631). In the British mind it was because Cyprus, was a Crown Colony and that the United Kingdom therefore possessed tenure in the island, that they were adamant as to the legitimacy and continuance of their sovereignty. The most signal proof of this came in July 1954 when British Middle East Headquarters covering both Land and Air Forces was formally transferred from Suez to Cyprus. See Public Record Office, *British Cabinet Minutes C 54 245, 21.7.54*: "In a top secret briefing in 1950, British military chiefs of staff spelled out the importance of Cyprus". See also Robert Holland, *Britain and the Revolt in Cyprus*, Oxford: Oxford University Press, 1998.

<sup>52</sup> Such principles permeated through the whole constitution structure. It is obvious that these separatist elements were inspired by the Macmillan Plan. An equal status is given to the Greek community, representing the 80% of the population with the Turkish Community, representing the 18% in many respects.

<sup>53</sup> *Cyprus Constitution*, Article. 3.7

<sup>54</sup> Ibid. Articles 86-90. The communities are given the right of special relationship with Greece and Turkey respectively including the right to receive subsidies for educational, cultural, athletic and charitable institutions belonging to the community and of obtaining and employing if necessary schoolmasters, professors or clergymen provided by the Greek or Turkish Government, as the case may be. (*Ibid*, Article 108).

Council of Ministers, respectively, for consideration and of final veto against any Law or decision of the House of Representatives or any decision of the Council of Ministers relating to foreign affairs, defence or security as defined in Article 50 of the Constitution.

The main executive organ is the Council of Ministers. There shall be seven Greek Cypriot Ministers and Turkish Cypriot Ministers nominated by the President and the Vice -President of the republic respectively but appointed by them jointly. The Council of Ministers is the highest organ in the Republic for formulating policy and exercising the executive power in all respects except for the specific subjects allotted to the President and the Vice-President of the Republic, to Ministers and the Communal Chambers respectively.

The President and the Vice-President jointly promulgate the laws or decisions of the House of Representatives and the decisions of the Council of Ministers and each one of them separately is doing the same in respect of the laws or decisions of the Communal Chamber of his own community. Before such promulgation the President and the Vice-President in respect of any law or decision of the Communal Chamber to his own community may refer to the Supreme Constitutional Court for its opinion any law or decision or any part thereof, which appears to be inconsistent with constitutional provisions.

The House of Representatives President shall be a Greek Cypriot and the Vice-President a Turkish Cypriot and shall be elected separately by the representatives of the Greek community and the Turkish Community respectively. In case of vacancy in either office an election shall take place and the functions performed by the eldest Representative of the respective Community.

The House cannot be dissolved either by the President or the Vice-President but only by its own decision. The laws and decisions of the House of Representatives shall be passed by a single majority of the Representatives present and voting. Any modification of the Electoral Law and the adoption of Law relating to the municipalities and imposing taxes shall require a simple majority of the

Representatives elected by the Greek and the Turkish community respectively taking part in the vote.<sup>55</sup>

The judicial power of the Republic is exercised by the Supreme Constitutional Court and by the High Court and its subordinate Courts.

The Supreme Court shall consist of a President and a Greek and Turkish Judge, citizens of the Republic, all of them appointed by the President and Vice-President of the Republic.<sup>56</sup> The main Jurisdiction of the Supreme Court relates to whether a law or decision of the House of Representatives is either totally or partly contrary to constitutional provisions. If a law or decision is declared by the Supreme Constitutional Court as unconstitutional, the law or decision is annulled. In the case of any law before promulgation such law or decision is not promulgated and in case of a reference by a trial Court on a point raised by a party to judicial proceedings the law becomes inapplicable to such proceedings only.<sup>57</sup> The Supreme Constitutional Court has exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision or omission of any organ, authority or person exercising any executive or administrative power is contrary to the Constitution or any law or is made in abuse of power, in which case the Court, may annul or confirm such act.<sup>58</sup> Any decision of the Supreme Constitutional Court on any matter within its competence shall be binding on all courts, organs, authorities and persons.<sup>59</sup>

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<sup>55</sup> *Ibid.* Article 78.

<sup>56</sup> Unlike other countries where it exists a Constitutional Court, the Cyprus Constitutional Court consists (or used to consist before 1964) of only three judges, out of whom its President is not a citizen of the Republic. In the German Federal Republic the Federal Constitutional Court consists of federal judges and other members as regulated by law (Art. 94 of the German Constitution, Peasley: *The Constitutions of the Nations* vol. III Europe Part I The Hague, 1968, p. 69). In Italy the Constitutional Court is composed of fifteen judges nominated in the manner provided by article 135 of the Constitution ( Peasley: *The Constitutions of the Nations, supra*, p. 523). In Turkey the Constitutional court consists of fifteen judges regular and five alternate members elected in the manner provided by Article 145 of the constitution (*Ibid.* vol. II Asia Part 2 p. 1118).

<sup>57</sup> The law is not annulled *erga omnes*, the U.S. system being adopted (see Schwartz, *Constitutional Law*, Cambridge: Cambridge University Press, 1955, p. 9; Southerland, How and Brown, *Constitutional Law*, vol. I, Boston, 1961, p. 112). Therefore, the principle of the separation of powers, adopted by the Constitution is maintained, as the decision of the Supreme Constitutional Court *declaring* a law or a provision as contrary to the Constitution is of *judicial* and not of a *legislative* character. On the contrary, in Italy the declaration of a law as unconstitutional operates *erga omnes* (Article 136 of the Constitution). The same applies in Turkey (Article 152 of the Constitution) and in Austria (Article 140 of the Constitution).

<sup>58</sup> *Cyprus Constitution*, Article 146.

<sup>59</sup> *Ante*, Article 148.

The High Court, on the other hand, is the highest appellate court and has also power to issue of habeas corpus, mandamus, prohibition and certiorari.<sup>60</sup>

The independent officers of the Republic are the Attorney-General assisted by his Deputy, the Auditor-General assisted by his deputy and the Governor of the Issuing Bank assisted by his deputy, all of whom are appointed by the President of the Republic. The first two are not removable from office except on the same grounds and through the same procedure as a Judge of the High Court.<sup>61</sup>

The public service shall be composed as to seventy per centum of Greeks and as to thirty per centum of Turks. There shall be a Public Service Commission consisting of a Chairman and nine other members appointed for a term of six years by the President and the Vice-President seven of whom shall be Greeks and three shall be Turks. It shall be the duty of the Commission to make the allocation of public offices between the two communities and to appoint, promote, transfer and exercise disciplinary control over, including dismissal or removal from office, public officers.<sup>62</sup>

Under the Treaty of Guarantee the Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security as well as respect for its constitution and it undertakes not to participate in whole or in part in any political or economic union with any State whatsoever or to promote the partition of the Island (Article 1).<sup>63</sup> Part II of the Constitution deals with human rights and mainly based on the European Convention.<sup>64</sup>

It is made clear that the Constitution of Cyprus was imposed upon its people by the Zurich Agreement. It is therefore, of the character of a granted constitution, which the monarch, in past centuries, consented to grant to his people, but is rather inconsistent with the prevailing principles of democracy, by which the power is

<sup>60</sup> The High Court constitutes also the Supreme Council of Judicature for the appointment, transfer, removal and disciplinary control over the judges of the subordinate courts (*Ibid* Article 157).

<sup>61</sup> *Ibid.* Articles 112, 121.

<sup>62</sup> *Ibid.* Articles 122-125.

<sup>63</sup> By the Draft Treaty of Alliance the three Parties undertake to co-operate for their common defence and resist any attack or aggression directed against the independence and territorial integrity of the Republic of Cyprus. For this purpose a Tripartite Headquarters shall be established on the territory in which Greece and Turkey shall participate by a military contingent of 950 Greeks and 650 Turks officers and men. In the Treaty of Alliance provision is made for the operation of the Tripartite Headquarters.

<sup>64</sup> See Tornaritis, *The European Convention of human rights in the legal order of the Republic of Cyprus*, Nicosia 1976, pp. 10-15; *Idem*, The Human rights as recognised and protected by law with special reference to the law of the Cyprus, *Cyprus Law Tribune*, parts 4-6, p.3; *Idem*, The right to freedom of movement and residence specially under the law of the Republic of Cyprus, *Cyprus Law Tribune*, Nicosia, 1974, parts 1-3.

exercised by the people.<sup>65</sup> But it is not only the manner in which the Constitution was granted that is against the principles of public law but also the contents of the Constitution as such which rather go against established principles of international law. The right of self-determination of peoples as developed from World War I and adopted by the Charter of the United Nations<sup>66</sup> and the International Covenants<sup>67</sup> consists in the liberty of peoples<sup>68</sup> to determine their own government without any foreign intervention- internal self-determination- and on the external field their future- external self-determination. The right to self-determination is denied to the people of Cyprus by the constitutional provisions whereby the constitutional structure created by the Zurich Agreement shall remain unalterable by any means and that the Basic Articles of the Constitution cannot be amended by way of variation, addition or repeal.<sup>69</sup> These provisions are contrary not only to the principles of public law<sup>70</sup> and constitutional practice,<sup>71</sup> but go against the purposes of the U.N. Charter.

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<sup>65</sup> See the judgment of Chief Justice Marshall in the case *Marbury v. Madison* U.S. Constitutional Supreme Court. Reference may be made to the constitutions of the 19<sup>th</sup> century as the constitutions of *Belgium* 1831, Article 25, 31, *Greece* 1864, Articles 21 and 1 and *France* 1848 Article 1. In the 20<sup>th</sup> century most of the constitutions adopted the principle of sovereignty of the people. See, *inter alia*, the constitutions of *Austria*, Art. 1; *Bulgaria*, Art. 1 and 2; *Finland*, Art. 2; *France* 1958, Art. 1 and 2; Basic Law of the *Federal Republic of Germany*, preamble; *German Democratic Republic*, preamble; *Greece* (1975) Art. 1.3; *Ireland*, preamble and Art. 1; *Italy*, Art. 1; *Burma*, preamble; *India*, preamble; *Turkey*, preamble where reference is made to the Turkish nation; *Libya*, preamble.

<sup>66</sup> U.N. Charter Articles 1, 2 and 55; See also Bassiouni, Self-Determination as a general principle of International Law, *American J.I.L.* (1971) 61, pp. 31-35.

<sup>67</sup> International Covenant on Civil and Political Rights, 1966.

<sup>68</sup> The concept of "people" presupposes a *territory* and *permanence* of a group of persons linked together by certain bonds on such territory.

<sup>69</sup> *Cyprus Constitution*, Article 182.1.

<sup>70</sup> Since the time of the French Revolution the right of the people to revise and alter their constitution has not been challenged. See Article 1 of Title VII of the French Constitution of 1791 (Peaslee, *The Constitutions of the Nations*, *ante* p. 31). The special provision for revision is hereby provided as a guarantee that the alteration is processed after mature consideration, but such restriction may be considered as of a *political* rather than *legal* character.

<sup>71</sup> According to constitutional practice a constitution may be revised either unrestrictively (as the constitution of Switzerland (Art. 118) and of certain Latin American States) or subject to certain conditions relating either to the revisional organ and the procedures to be followed or the imposition of a time limit before the expiration of which no revision can take place (as the constitutions of Greece of 1964, 1911 and 1927 and the constitution of the United States (Art. V) which could not be revised before 1808) or to certain provisions which could not be revised in any event (such as the provisions of the form of government or specifically provided articles as under the constitutions of Italy (Art. 139), and of France (1958) (Art. 89)).

A lot of debate has erupted on the issue whether Article V of the Treaty of Guarantee is in accordance with international law principles. This matter stands beyond the scope of the present chapter.<sup>72</sup>

The constitutional provision relating to the decision-making competence of the Public Services Commission in case of appointment, promotion, transfer and discipline of public officers belonging to one of the communities by an absolute majority of the members of the Commission including a fixed number of votes of its members belonging to such community, amounts to the exercise of a right of veto by the latter and the communal criteria contravene universal criteria.

As regards the constitutional provision relating to the proportion of the participation of the Greeks and Turks in the composition of the Public Service, the implementation of such provision creates situations leading to a deadlock. The Public Service Commission, in considering appointments and promotions, is obliged not to use criteria such as the qualifications, and suitability of the candidate, because it has to take into account the Community to which the candidate belongs.<sup>73</sup>

The final veto accorded to the President and Vice-President against any law or decision of the House of Representatives or decision of the Council of Ministers relating to foreign affairs or certain matters of defence is against the principle of the separation of powers and could bring the President and Vice-President in direct conflict with the Legislature.<sup>74</sup>

The constitutional provision regarding the replacement of the President of the Republic in case of his temporary absence or incapacity, not by the Vice-President, but by the President of the House of Representatives not only is by-passing the Vice-

<sup>72</sup> Article IV of the Treaty provides, *inter alia*: "In so far as common or concerted action may not prove possible, each of the guaranteeing powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty". For representative, but by no means exhaustive, bibliography on the matter by authors of the two communities, see respectively Tornaritis, Whether the resort to force or armed intervention would be justified either under the Charter or customary international law, *Cyprus Today*, vol. III. 3 Supplement, 1964, p.2; Zotiades, The Treaty of Guarantee and the principle of non-intervention, *Cyprus Today* vol. III (1965) pp. 5-8; Necatigil, *The Turkish Position in International Law* (Oxford: Oxford University Press, 1993), p. 109 seq.

<sup>73</sup> The rigid provision about the ratio of participation in the public service is against the internationally accepted principle of the right of every one of equal access to the public service of his country (Universal Declaration of Human Rights Article 21(2); International Covenant on Civil and Political Rights, 1966, Article 25 (c)).

<sup>74</sup> In the U.S. the President has only qualified negative prerogative commonly called a "suspensory veto" but actually it is a right of return for the Bill for reconsideration (*Constitution of the U.S.A.*; Schwartz, *Constitutional Law, ante*, p. 99; for instances of its use, see Binkley, *The man in the White House, Baltimore*, 1959, pp. 175-176).

President, but also hinders the continuity of the smooth functioning of the executive power. The election, on the other hand, of the President of the Republic by the Greek Community and of the Vice-President by the Turkish Community and of the President of the House of Representatives by its members belonging to the Greek Community and of the Vice-President of the House by its Members belonging to the Turkish Community, instead of uniting the people of Cyprus and allowing the Greeks and Turks to co-operate friendly, they draw them apart.

But what is unprecedented is the division of justice in the sense that a court trying a case the litigants of which belong to one community shall consist only of judges belonging to that community.<sup>75</sup>

The complicated character of the Constitution of Cyprus has been stressed by various authors. Professor Stanley de Smith wrote: "The Constitution of Cyprus is probably the most rigid in the world. It is certainly the most detailed and (with the possible exception of that of Kenya's new constitution) the most complicated. It is weighed down by checks and balances, procedural and substantive safeguards, guarantees and prohibitions. Constitutionalism has run riot in harness with Communalism. The Government of the Republic must be carried on, but never have the chosen representatives of a political majority set so daunting an obstacle course by the constitution makers".<sup>76</sup>

In the face of this situation, whereby Articles of the Constitution prevented Government from functioning smoothly, Archbishop Makarios, by a letter of the 30th November 1963 to the Vice-President, submitted a thirteen-point memorandum. By this he suggested measures to remove some causes of inter-communal strife.<sup>77</sup>

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<sup>75</sup> Such a division is not only detrimental to the course of justice, but tends to render the judges communally minded and suspicious of one another. Further, it tends to shake the confidence of the public in the administration of justice.

<sup>76</sup> S.A. de Smith, *-The Commonwealth and its Constitutions*, Penguin Books, p. 295. Reference may also be made to the Constitution of India with 395 Articles.

<sup>77</sup> The proposals were also communicated to the Governments of the three Guaranteeing Powers. For the letter together with the memorandum containing the proposed amendments, see *The Cyprus Question: A Broad Analysis*, Press and Information Office, Nicosia, 1969, pp.9-20. Makarios was encouraged to take this course by the then British High Commissioner Sir Arthur Clark, who went so far as to make suggestions on the proposed letter. (see generally Glafkos Clerides, *My Deposition, ante*). On the proposals see also Kyriakides, *Cyprus, Constitutionalism and crisis Government, ante*, pp. 104-109; Ehrlich, *International Crises and the Role of Law, ante*, pp. 57, 118-119.

The President put forward the following points:

- (1) The right of veto of the President and Vice-President to be abandoned;
- (2) The Vice-President of the Republic to deputise for the President in case of his temporary absence or incapacity to perform his duties.
- (3) The Greek President of the House of Representatives and its Turkish Vice-President to be elected by the House as a whole and not, as at present, the President by the Greek Members of the House and the Vice-President by the Turkish Members of the House.
- (4) The Vice-President of the House of Representatives to deputise for the President of the House in case of his temporary absence or incapacity to perform his duties.
- (5) The constitutional provisions regarding separate majorities for enactment of certain laws by the House of Representatives to be abolished;
- (6) Unified municipalities to be established;
- (7) The administration of justice to be unified;
- (8) The division of the Security Forces into Police and Gendarmerie to be abolished;
- (9) The numerical strength of the Security Forces and of the Defence Forces to be determined by a Law;
- (10) The proportion of the participation of Greek and Turkish Cypriots in the composition of the Public Service and the Forces of the Republic to be modified in proportion to the population of Greek and Turkish Cypriots;
- (11) The number of Members of the Public Service Commission to be reduced from ten to five;
- (12) All decisions of the Public Service Commission to be taken by majority;
- (13) The Greek Communal Chamber to be abolished.

## ***2. Inter-communal Conflict analysis***

Despite the fact that the Cyprus Question has been treated as an international problem in world politics, I think that in order that an adequate picture may be drawn, it is

necessary to examine foreign policies in conjunction with domestic developments.<sup>78</sup> I shall therefore discuss the character of ethnic strife in Cyprus by pointing out the factors, internal as well as external that caused the strife.

## 2.1 The Roots of political Partition<sup>79</sup> in Cyprus

The Ottoman conquest of Cyprus 1571 altered the demographic character of the island by transplanting there a population different from the Greek native one in terms of culture, ethnic origin, language, and religion. It further contributed to the consolidation of the Greek population and to the revival of the role of the Orthodox Church under the Millet system.<sup>80</sup> So, it sets the roots of the present conflict by establishing bi-communalism in Cyprus. Therefore under the millet system the Church of Cyprus became the spokesman in the political, economic, educational and religious affairs of the Greek Cypriot community.<sup>81</sup> Also, by the middle of the nineteenth century, the Church became the leader of Greek Cypriot nationalism.

The historical record in Cyprus, though, is full of instances of intermarriage and common opposition to oppressive administration.<sup>82</sup> How, then, did nationalism brought the point of political division? The first is to be found in the internal role played by the Orthodox Church in the context of the British Colonial rule. Britain controlled Cyprus from 1878 until 1960 when independence was granted to the island. On the assumption of the administration of Cyprus, the Greek Cypriot community was mobilised under the leadership of the Orthodox Church and the pursuit of the *enosis* aim. The last quarter of the 20<sup>th</sup> century was one of nationalism in Greece under the

<sup>78</sup> The distinction between domestic politics and international relations is only an analytical one; foreign policies do not operate in a vacuum but are conditioned by the domestic realities of the States involved. As covert and overt forms of intervention are increasingly becoming a core element of the foreign policies of the major powers today, the mystique of neo-imperialism tends to obscure the fact that intervention and imperialism in their subtle contemporary forms are possible to a considerable extent because of the domestic conditions in the "host country provide the needed opportunities.,(Paschalis Kitromilides, *From Coexistence to Confrontation: The Dynamics of Ethnic Conflict in Cyprus*, in Michael Attalides ed., *Cyprus Reviewed*, Nicosia, 1976).

<sup>79</sup> For a definition of political partition, see International Studies Association, *Comparative Interdisciplinary Studies Bulletin*, 1975, Vol. 4, No. 4, pp. 4-6: "the division of formerly unified political units into new entities based on ethnic and cultural identity, a deliberate political action taken by internal or external elites".

<sup>80</sup> See Spyridakis, *A brief History of Cyprus*, ante, pp. 46-56.

<sup>81</sup> On this, Lewis, *The Emergence of Modern Turkey* (London, 1968), p.335. On the role of the Church see Stanley Kyriakides, *Cyprus, Constitutionalism and crisis Government*, *op. cit.* pp. 8-12. Also on religion and class as internal factors of conflict, see A. Pollis, Colonialism and Neo-colonialism: Determinants of Ethnic Conflict in Cyprus, in Kitromilides and Worsley, *Small States in the Modern World*, Nicosia , 1979), p.48.

<sup>82</sup> See Admantia Pollis, Intergroup Conflict and British Colonial Policy, *Comparative Politics*, July 1973, pp. 582-7. On the Cryptochristian group of the Cypriot *Linobambakoi* in the Ottoman Society, see R.M Dawkins The Cryptochristians of Turkey, *Byzantium*, vol. VIII (1933) pp. 247-275.; A.C. Aimilianides, The Evolution of the Law of Greek Mixed Marriages in Cyprus, (in Greek) *Kyriakai Spoudai*, Vol. II (1938)

impact of the Megali Idea,<sup>83</sup> which also affected the Greek Cypriots. Most of the territories sought by Greece under the Megali Idea were under the Ottoman rule. The ensuing rivalry between the two States instigated nationalistic behaviour. The British arrival encouraged the Greek Cypriots that Britain, as it did in the case of the Ionian Islands, would react favourably to their demands for Enosis.<sup>84</sup> Their hopes were soon frustrated by the British unwillingness to respond to these very demands.<sup>85</sup> The Enosis movement was thus intensified. The British policy was to formalise ethnic divisions, which lead to a clash of the communities. The policies with respect to the communities were manifested in the following areas:<sup>86</sup> (a) The Legislative Council, where each of the communities was given certain degree of proportional representation, in addition to the appointed representatives of the Governor. This Council became not only a vehicle of politicisation of the two communities, but also the one of enhancing their nationalist rivalries. Given that the Greek Cypriot majority was neutralised by the coalition of the British appointed and Turkish Cypriot representatives; (b) the expanded and segregated educational system of Cyprus, which also became a promoter of nationalism. This was particularly true among the Greek Cypriots who utilised personnel, instruction materials, and so on from Greece; (c) the use of symbols of national identification, such as the flying of Greek flags. Therefore the absence of national integration of Cyprus was the outcome not only of Cyprus' Ottoman background, but mostly of the deliberate colonial policy, which (i) exacerbated existing linguistic, religious and ethnic differences; (ii) destroyed , by its vertical separation of the two communities, the horizontal bonds that had developed across the communities, whose task became the promotion of their respective national interests; (iv) gave rise to separate political alliances to the people of the two Cypriot

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<sup>83</sup> The Great Idea: The movement to liberate and unify the unredeemed sections of the Hellenic world to the motherland. It guided Greek foreign policy during the nineteenth and the first half of the 20<sup>th</sup> century. See Adamantia Pollis, *The Megali Idea: A Study in Greek Nationalism* (Ph. D Dissertation , Johns Hopkins University, 1958).

<sup>84</sup> For the Ionian Islands case see C.W.J. Orr, *Cyprus Under British Rule* (London: R. Scott, 1918), p. 160.

<sup>85</sup> Britain did offer Cyprus as an inducement to Greece for her entry into World War I on the side of the Allies in 1914. By the time Greece entered into the War in 1917 the British offer had been withdrawn. See Alexander Pallis, *Greece's Anatolian Ventures and After* (London: Methuen Press, 1937), pp. 8-11, 37.

<sup>86</sup> The analysis is that of Professor Van Coufoudakis and is here adopted and quoted verbatim.

communities; and (v) gave rise to the demands by both groups to control the various aspects of their communities fate, and their claims to a separate political autonomy.<sup>87</sup>

Therefore the roots of political partition were set during the period of the British administration. Subsequently, when, in the aftermath of the 1931 rebellion in Cyprus, Britain introduced legislation in order to eliminate the demands of the Greek Cypriots for *Enosis*, these legislative measures intensified the more the nationalist aspirations of the Greek Cypriots, as well as the leadership role of the Church. When the Enosis plebiscite was held among the Greek Cypriots in 1950, the Enosis became the sole aim of the Greek Cypriot nationalists of all political ideologies, while the Church remained the most influential national factor in the political affairs of the island.

## 2.2. The external factors of Political Partition

In the period 1954-1958 the trend toward political partition on Cyprus was enhanced by these factors<sup>88</sup>: (a) the confrontative activity between the two communities, particularly after 1957; (b) the clash between Turkey and Greece in NATO and the United Nations on behalf of their respective communities on Cyprus, and the suppression of the Greek minority in Turkey;<sup>89</sup> (c) the international environment in the 1950s. Proposals for the settlement of the dispute based on political partition were put forward. Britain attempted to encourage the Turkish claims to the island on strategic grounds,<sup>90</sup> and by emphasising the priority of her own strategic needs<sup>91</sup>

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<sup>87</sup> See Coufoudakis, *Essays on the Cyprus Conflict*, (New York: Pella Publishing Company, 1976), p.34.

<sup>88</sup> It has to be noted, however, that Greece and the Greek Cypriots pursued wrong tactics. For example the underestimation of Turkey, the United States, the international environment of the 1950s and whether and how the goal of *enosis* could be achieved through international diplomacy.

<sup>89</sup> See the government sponsored riots against Greeks living in Constantinople (Istanbul) at the end of the Tripartite Conference on the Eastern Mediterranean and Cyprus, held in London, on August 29, 1955, a crime for which the Prime Minister Menderes and his associates were convicted by the Turkish Military Tribunal after the 1960 coup.

<sup>90</sup> See the role of Turkey in NATO and as a promoter and participant in CENTO. Also, the Turkish argument of encirclement by islands controlled by Greece. Thus, Turkey urged either no change in the *status quo* or that Cyprus revert to Turkey. Finally the Turkish position focussed on the division of Cyprus between Greece and Turkey (see Van Coufoudakis, *Essays on the Cyprus Conflict*, *supra*, p.36, note 25)..

<sup>91</sup> Cyprus is located forty miles south of Turkey and sixty miles west of the coast of Syria. It is an important location in relation to Israel, the Suez Canal, and the Aegean Sea. The location is important for radio communications, the monitoring of Soviet (Russian) naval activity and so on. As John Campbell points out in his *Defence of the Middle East: Problems of American Policy* (2<sup>nd</sup> ed. New York: Harper and Brothers, 1960), pp. 198-199, "Cyprus may not be the best substitute for Britain's Suez base which was lost in 1954. Cyprus lacks harbours adequate for large ships, and, as the 1956 Suez invasion showed, Cyprus by itself could not support large-scale sea and air operations. But Cyprus remains an important headquarters and communications centre; it has valuable airfields for tactical air power; and important supporting facilities for limited air operations in the eastern Mediterranean...is ideally located on the doorstep of the Middle East but beyond the reach of Arab nationalism and untouched by the conflicts of the Arabs with other Middle Eastern nations..." In

in the region, as well as those of the United States and the various Western regional alliances over the Greek Cypriot aim of *Enosis*.

Britain's proposals for the resolution of the dispute comprised elements of partition. Therefore, Macmillan's plans for Cyprus, as well as that of Radcliffe<sup>92</sup> provided for the institutionalisation of external powers in the political affairs of Cyprus, and suggested the establishment of separate communal institutions. The persistence of Britain to settle the Cyprus issue along the lines of the Second Macmillan Plan in 1958 was the main factor,<sup>93</sup> which led Greece embark upon secret talks with Turkey the conclusion of which was the Zurich and London Agreements of February 1959. The Agreements institutionalised communalism and the involvement of external forces in the affairs of the State.<sup>94</sup> This should not be surprising in view of that these Agreements were negotiated by external Powers.<sup>95</sup>

The new constitution became the catalyst of communal conflict.

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the aftermath of the 1956 Suez invasion Britain reassessed her strategic position interests and policies. For the place of Cyprus in this context, see, *Great Britain, Defence, Outline of Future Policy*, Cmnd.124 ,H.M Stationery Office, April, 1957. Apart from Campbell's comments, see also George Harris, *Troubled Alliance* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1972), pp. 49-65.

<sup>92</sup> For the First Macmillan Plan see Great Britain, *The Tripartite Conference on the Eastern Mediterranean and Cyprus*, Cmnd. 9594, H.M. Stationery Office, 1955, pp. 31-35. For details of the second Macmillan Plan, see Great Britain , Cyprus, Statement of Policy, Cmnd. 455, June, 1958. For the 1956 Radcliffe proposals see Stationery Office, *Great Britain, Constitutional Proposals for Cyprus*, Cmnd. 42, H.M Stationery Office, December , 1956.

<sup>93</sup> There were other factors which led to the London and Zurich Agreements: the British decision to relinquish its sovereignty over Cyprus is discussed in Thomas Ehrlich, *Cyprus, 1958-1967: International Crises and the Role of Law* (New York and London: Oxford University Press, 1974), pp.7-35. Some of Britain's reasons were: her changing strategic needs in the aftermath of the 1956 Suez invasion and EOKA's struggle; the domestic and international pressures created by the Cyprus Question. Turkey accepted the idea of the Zurich settlement with the apparent willingness of Greece to drop the aim of Enosis; the economic and political problems facing Menderes at home; the overall inability in the Middle East in 1958 and Turkey's fear of further deterioration of its position. With regard to Greece, the causes were the inability to achieve her diplomatic aims in the U.N.; the fear of a possible partition of Cyprus; the repercussions of the Cyprus issue on the outcome of the 1958 Greek elections.

<sup>94</sup> The three of the major documents signed in London on February 1959, are: (a) The Basic structure of the Republic which guarantees constitutionally Cypriot bi-communalism. The President and Vice-President have final veto powers independently over all important political matters. A 70:30 ratio governs the distribution of all public offices including the Cabinet, the civil Service and the Legislature. There are separate Municipalities and Judicial systems. (b) The Treaty of Guarantee under the terms of which, Britain, Greece and the Turkey guarantee the independence, territorial integrity and the constitutional structure of the Republic. The three Guarantors are allowed (Article IV) to take action jointly, or independently if negotiations among them fail, to restore the status quo created by these Agreements. (c) The Treaty of Alliance between Cyprus, Greece and Turkey, which included the stationing of Greek and Turkish forces on the island.

<sup>95</sup> For the Greek view of the constitutional negotiations, see Stephen G. Xydis, *Cyprus, Reluctant Republic, ante*, pp. 342-40. The author has had access to the archives of the Greek Prime Minister Karamanlis and Foreign Secretary Averoff-Tossiza.

On November 30, 1963, President Makarios presented the Vice-President a set of thirteen points of proposed amendments to the Constitution. The proposals aimed at removing some of the obstacles, which had appeared in the administration of the State.<sup>96</sup> The proposals were rejected first by Turkey and then by the Turkish Cypriots. The inter-communal strife which broke out in December 1963 marked the political division of the island.<sup>97</sup> The breakdown of the republic was manifest in various ways. Two important and obvious ones were (a) the Turkish Cypriot officials withdrew from the Cypriot Government, and (b) United Nations and British Peace keeping forces created protected areas for the Turkish Cypriots in the cities, as well as enclaves in limited areas of the northern part of the island. Although under the auspices of UNFICYP<sup>98</sup> some progress had been made in some parts of the administration and co-operation between the two communities prior to the 1974 Turkish Intervention of

<sup>96</sup> The fields of constitutional tension are discussed in Thomas Ehrlich, *Cyprus 1958-1967*, pp. 36-60; *Idem*, *Cyprus, The Warlike Isle': Origin and Elements of the Current Crisis*, *Stanford Law Review*, Vol. 18 (May 1966), pp. 1021-1097; Stanley Kyriakides, *Cyprus, Constitutionalism and Crisis Government*, *ante*, pp.72-103.

<sup>97</sup> Some initiatives were taken up to give a halt to the inter-communal fighting. Examples may be provided by (i) the London Conference of January 15, 1964, sponsored by the United Kingdom; (ii) threats of Turkish unilateral armed intervention; (iii) a limited British Peacekeeping operation; (iv) U.S. President Johnson's letter of December 26, 1964, to Makarios and Kuchuk, and the letter of dated June 5, 1964 to the Turkish Prime Minister Inonu. Some important parts of this last letter are hereby quoted: "I am gravely concerned about the information which I have had through Ambassador Hare from you and your Foreign Minister that the Turkish Government is contemplating a decision to intervene by military force to occupy a portion of Cyprus. I wish to emphasize, in the fullest friendship and frankness, that I do not consider that such a course of action by Turkey fraught with such far reaching consequences, is consistent with the commitment of your government to consult fully in advance with the United States. It is my impression that you believe that such an action by Turkey is permissible under the provisions of the Treaty of Guarantee of 1960.

I must call your attention, however, to our understanding that the proposed intervention by Turkey would be for the purpose of supporting an attempt by the Turkish Cypriot leaders to partition the island, a solution which is specifically excluded by the Treaty of Guarantee. Further, that treaty requires consultation among the guarantor states. It is the view of the United States that the possibilities of such consultation have by no means been exhausted in this situation and that, therefore, the reservation of the right to take unilateral action is not yet applicable. I must call to your attention also, Mr Prime Minister, the obligations of NATO. There can be no question in your mind that a Turkish intervention in Cyprus would lead to a military engagement between Turkish and Greek forces. Secretary of State Rusk declared at the recent meeting of the ministerial council of NATO in the Hague that war between Turkey and Greece must be considered as literally "unthinkable". I wish also Mr. Prime Minister, to call your attention to the bilateral agreement between the United States and Turkey in the field of military assistance. Under Article IV of the agreement with Turkey of July 1947, your government is required to obtain United States consent for the use of military assistance for purposes other than those for which such assistance is furnished. The United States cannot agree to the use of any United States supplied military equipment for the Turkish intervention in Cyprus under the present circumstances... The United Nations forces could not prevent such a catastrophe (the text may be found in Clerides, *My Deposition*, *ante*, p. 115-118).

<sup>98</sup> UNFICYP was the peacekeeping force established by Security Council Resolution 186 (1964) of March 4, 1964. A mediator was also appointed to facilitate settlement of the dispute.

Cyprus,<sup>99</sup> UNFICYP proved unable to eliminate inter-communal fighting. It is noteworthy that under the superintendence of the United Nations the Turkish Cypriot enclaves remained intact for a decade, thus containing the division between the two communities.<sup>100</sup>

In our discussion of the role of external factors in the Cypriot inter-communal strife, it is necessary to examine at some length the role of foreign Powers, especially Turkey, Greece and the United States respectively. The interrelation between domestic and international politics thus becomes clear in the analysis of the interaction between the two Cypriot ethnic communities, Greece, Turkey and the United States.

With regard to Turkey, and the Turkish Cypriots, the Turkish Cypriot community was subordinated to Turkish policy makers. Turkish Government control over the Turkish Cypriot community was achieved through several means, including penetration of some Turkish Cypriot institutions, economic dependence of the community on Turkey, and the formation of irregular Turkish military groups. The Turkish troops on the island exceeded the number inscribed in the Zurich Agreements.<sup>101</sup> Turkish Officers trained all Turkish Cypriot men in Turkish nationalism. The Turkish Defence Organization, TMT, a terrorist group dedicated to "Cyprus is Turkish" or to *taksim* (partition) was supported by Turkey and led by a Turkish officer from the mainland.<sup>102</sup> After the creation of the Turkish enclaves, the Turkish government annually subsidized the Turkish Cypriot community.<sup>103</sup> It has been asserted that in an effort to enforce its policy of segregation, the Turkish government subsidized the Turkish Cypriots, some of whom were refugees from the

<sup>99</sup> See the Report of the Secretary General prior to the intervention, United Nations Security Council, *Report by the Secretary-General on the United Nations Operation in Cyprus (for the period 2 December 1973 to 22 May 1974)*, S/11294, pp.14-16.

<sup>100</sup> See further, Stegenga, *The United Nations Force in Cyprus* (Columbus: Ohio University Press, 1968). For subsequent developments, including the Mediator Galo Plaza proposals see United Nations Security Council, *Report of the United Nations Mediator on Cyprus to the Secretary-General* (S/6253, 26 March, 1965).

<sup>101</sup> See Stephens, *Cyprus: A Place of Arms*, London, 1966, p.200, where he estimates that in 1965 Turkey had about 1000 men in Cyprus and the Turkish Cypriots some 12,000 men under arms. There is no reason to assume that the number was reduced in later years. Other estimates place the number of Greek troops at 10,000 (Thomas Ehrlich, *Cyprus, International Crises and the Role of Law*, ante, p. 99). See also Attalides, Relations between Greek and Turkish Cypriots, in Perspective, *Proceedings of the International Symposium on Political Geography*, Nicosia, 1976.

<sup>102</sup> James Hughes, The Cypriot Labyrinth, *New Left Review* (June 1965), pp.49-50.

<sup>103</sup> Denktash, R., *A Short Discourse on Cyprus*, Nicosia, Cyprus, undated, p. 25: In 1972 Rauf Denktash claimed that for eight years, "Turkey has been paying the salaries of every single Turk in the Turkish administration; Turkish Cypriot refugees have lived on Turkey's aid and live in houses built by Turkey, resulting from the fact that the Makarios government refused to recognise the Turkish Cypriots' legitimate rights".

December 1963 events, thus reducing the economic pressure for leaving the Turkish enclave and working in the Greek sector.<sup>104</sup> There was considerable criticism of the Turkish Cypriot leadership, particularly by opposition leader Barberoglou for the leadership's segregationist policies, and for repression of Turkish Cypriots. The ability of the opposition to speak without constraints, to organise and promulgate their opinion among the Turkish Cypriot community was severely limited by the activities of the Turkish defence Organisation-TMT. Terrorist bombings and assassinations committed by TMT members have been reported from 1962. In 1962, Ahmet Gurkan, editor of Turkish Cypriot newspaper *Cumhuriyet* and Ayhan Hikment, a lawyer, both friendly to the Greek Cypriots, were found murdered,<sup>105</sup> while in 1966 a Turkish Cypriot trade union leader, Kavazoglu, was murdered together with a Greek Cypriot union official. In the 1975 TMT agents terrorized the Turkish Cypriot population in the Greek area, and they threatened the Turkish Cypriots with reprisals if they mixed with Greek Cypriots or did not move to the area occupied by the Turks. By the fall of 1975, of the 8,000-9000 Turkish Cypriots in the Greek area, approximately 200-250 remained.<sup>106</sup> An opinion has been said to the extent that TMT and EOKA B have served the same function within their respective communities. TMT's goal of *taksim* has complemented EOKA B's goal of *Enosis*; a fulfilment of both goals would divide Cyprus with the largest area going to Greece.<sup>107</sup> While TMT has served the interests of Turkey and EOKA B the interests of Greece, both in turn have served the interests of the United States.<sup>108</sup>

Turkey has publicly declared her control over the Turkish Cypriots. In 1963 when Kutchuk received Makarios' proposals for constitutional amendment, he was willing to take them into account, but Turkey at once stopped him from doing so.<sup>109</sup> In 1967 Kutchuk was attacked by those in favour of partition and defended his policies through a newspaper of his own. The Government of Turkey then ordered him to stop

<sup>104</sup> Adamnatia Pollis, Colonialism and Neo-colonialism: Determinants of Ethnic Conflict in Cyprus, in Kitromilides and Worsley, *Small States in the Modern World*, *ante*, p. 63.

<sup>105</sup> See Hughes, *The Cypriot Labyrinth*, *New Left Review*, *ante*, pp. 49-50.

<sup>106</sup> Adamantia Pollis, Colonialism and Neo-Colonialism: Determinants of Ethnic conflict in Cyprus, *supra*, p.65.

<sup>107</sup> *Ibid.* p.65

<sup>108</sup> *Ibid.* p. 65

<sup>109</sup> Stephens, *Cyprus: A Place of Arms*, *ante*, p. 180.

opposing the Turkish nationalists.<sup>110</sup> Under rather curious circumstances, Kutchuk was ousted in 1969 and replaced by Rauf Denktash, who was seen as a reliable advocate of Turkish Foreign Policy and ally of the Western States.

The Turkish Cypriot reality cannot be said as being representative of the attitudes or goals of the Turkish Cypriot community.

With regard to Greece and the Greek Cypriots, similar attempts to control the Greek Cypriot leadership, and to bring Cypriot policies into compliance with the U.S. and Greek Foreign Policy were made on part of Greece. However, the Greek Cypriot leadership went against these attempts. Makarios pursued a line contrary to the aims of the Greek and U.S Foreign Policies.<sup>111</sup> Makarios was able to maintain a high degree of independence for the Greek Cypriot political system, because mainly of the support by two political parties, namely EDEK and AKEL, the Socialist and Communist party respectively.

During the dictatorship in Greece (1967-74) Makarios struggled to achieve maintenance of the independence of the Cyprus Government in view of the military junta's attempts to impose a totalitarian regime on the Greek Cypriot community. The Greek junta put forward a variety of political stratagems: announcing that Athens was the centre of Hellenism and demanding that Makarios replace his cabinet officers with those acceptable to the Papadopoulos regime; setting up the Cypriot bishops to demand resignation of Makarios as president, on the allegation that he had contravened ecclesiastical law and threatening his excommunication. Makarios compromised to some extent. He replaced two cabinet ministers, ignored the bishops, in fact he had them defrocked<sup>112</sup> and eventually attacked Ioannides in public.<sup>113</sup> The failure of political pressure on Cyprus led the Greek regime to rely increasingly on the threat and use of force as a means of attaining domination over the Greek Cypriots. As

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<sup>110</sup> Purcell, *Cyprus*, New York, 1969, p.378

<sup>111</sup> For an illuminating account of the tension and conflict between the Cypriot leadership of Makarios and the Greek Governments see Xydis, The Psychological Complex, in Xydis et al. *Makarios and his Allies*, Athens: Gutenberg, 1974, p.28.

<sup>112</sup> *The New York Times*, 15 July 1973. The three bishops were defrocked by the Middle East Synod on 14 July, 1973.

<sup>113</sup> One such letter-considered the precipitating factor for the Cyprus coup of July 15, 1974-was sent by Makarios to the Greek dictatorship days before the coup against his regime. In it he specifically accused the Ioannides regime of planning his assassination and he demanded the withdrawal of the Greek officers from the National Guard-a demand he had refused to make for the previous six years (see the *Observer*, July 7, 1974 and *The New York Times*, July 16, 1).

a result Cyprus had been constantly in a state of civil strife, not between the Greek and Turkish Cypriots though, but between the Greeks themselves. The military force of the Cypriot community was the National Guard, which was manned by Greek Officers from mainland Greece. Particularly during the office of Papadopoulos these officers were selected for their loyalty to Papadopoulos, their fascist ideology and their opposition to Makarios.

The significance of the use of force as a factor shaping historical developments were the activities of the EOKA terrorist bands. Under directions from Greece these bands were reorganised in 1971 as EOKA B, and like their Turkish Cypriot counterpart, directed their activities against their fellow nationals while receiving external support from Greece and from the United States.<sup>114</sup> Grivas, the guerilla leader of the EOKA in the 1950s when it operated as a nationalist anti-colonial movement, who had returned to Greece after independence, returned to Cyprus in 1964 after apparently accepting the Acheson Plan,<sup>115</sup> was expelled by Makarios, and returned once again with the approval of Papadopoulos in 1971. Then EOKA B mounted a propaganda campaign for Enosis, assassinated supporters of Makarios, and planned assassinations and coups to oust Makarios with the assistance of the officers of the National Guard.<sup>116</sup> Clearly Marios had a broad political base, but, little way of force to protect his position. The Palace Guard he had organised and a police force loyal to him had few arms and supplies which could not go against the power of the well supplied and financed EOKA B and the Greek officered Cypriot National Guard. It was the EOKA B and the National Guard<sup>117</sup> that Greece used as its instruments of force to attain its aims in Cyprus. The Papadopoulos dictatorial regime had set as one of its goals the settlement

<sup>114</sup> On C.I.A. involvement, see Laurence Stern, Bitter Lessons: How we Failed in Cyprus, *Foreign Policy*, Vol. 19 (Summer 1975), pp. 43, 52. The author strongly implies that the CIA may have transmitted funds through Greece to EOKA B using Andreas Potamianos, a wealthy Greek Cypriot, as the intermediary; J. Bowyer Bell, Violence at a distance: Greece and the Cyprus Crisis, *Orbis*, Vol. 18, No. 3 (Fall 1974), p. 796, discusses the fact that the EOKA was trained by KYP, the Greek C.I.A. See also Christopher Hitchens, Detente and Destabilisation: Report fro Cyprus, *New Left Review*, 94, November-December 1975, pp.61-73.

<sup>115</sup> See Van Coufoudakis, United States Foreign Policy and the Cyprus Question: A Case Study in Cold War Diplomacy, in Theodore Couloumbis and Sallie Hicks (eds.), *U.S. Foreign Policy Toward Greece and Cyprus*, Washington, D.D.C, The Center for Mediterranean Studies and the American Hellenic Institute, 1975, pp.123-124..

<sup>116</sup> For details, see Adamantia Pollis, Colonialism and Neo-colonialism: Determinants of Ethnic Conflict in Cyprus, Kitromilides and Worsley, *Small States in the Modern World*, ante p.69.

<sup>117</sup> See *The Guardian*, October 8, 1973 on planned coups against Makarios which became common. A major coup attempt against him in February 1971 was followed by another attempt in 1973.

of the Cyprus crisis, a settlement which should be satisfactory to both Greek and American interests. Cyprus was to become destroyed as a non-aligned country with a strong communist force (AKEL) since this posed a potential threat to western security interests in the eastern Mediterranean. Abortive coups and failed assassination attempts against Makarios became commonplace. Finally, shortly after the death of Grivas in January 1974, a coup was executed against Makarios.

It is now necessary to examine the role of the United States in the ethnic conflict of Cyprus. Although at times Greek and Turkish national interests have been and are in conflict, most sharply of on the question of the oil in the Aegean, both are members of NATO and both have been client States of the United States. The foreign policy of both Greece and Turkey has been to strengthen their own interests in view of the danger posed by a non-aligned Cyprus with a strong communist party, by soon incorporating Cyprus in within the Western military alliance. Time after time Greece and Turkey have agreed on a solution to the Cyprus conflict only to find implementation turned down by Makarios. It was Greece and Turkey who agreed on the constitution of 1960, and who agreed on the Acheson Plan in 1964 and it was Greece and Turkey that in June 1971 at a NATO meeting apparently made a secret agreement to end the independence of Cyprus and partition the island.<sup>118</sup> Highly suspicious is the mounting evidence that the two communities had arrived at an agreement in July 1974 retaining Cyprus' independence prior to the coup against Makarios.<sup>119</sup>

The status of the Greece and Turkey as client states of the United States sets the context within which their policy vis-a-vis Cyprus was formulated. Therefore, the United States was a major determinant of developments within Cyprus. Shortly after the 1963 inter-communal strife on the island, the United States initiated direct negotiations with the Cypriot Government and put forward the Acheson-Ball Plan as a solution. This Plan, would have united Greece with a large part of the island, whereas the northeast part would become mainly a Turkish Base under Turkish sovereignty.

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<sup>118</sup> See Coufoudakis, United States Foreign Policy and the Cyprus Question: A Case Study in Cold War Diplomacy, *ante* p. 126.

<sup>119</sup> Adxaamnata Pollis, Colonialism and Neo-Colonialism, Determinants of Ethnic Conflict in Cyprus, in Kitromilides and Worsley, *Small States in the Modern World*, *ante* p.71.

This proposal, accepted by Turkey and Greece, was rejected by Makarios, who faced pressures towards this direction by the Communist Party (AKEL). The Prime Minister of Greece George Papandréou then reversed his first position on the matter and declared support of Makarios' view, thus rejecting the Acheson Plan.<sup>120</sup>

A major determinant of the United States foreign policy was its willingness to settle the Cyprus problem within the perceived American interests.<sup>121</sup> An independent non-aligned Cyprus was and is viewed by the United States as a potential threat to her interests and President Makarios has been labelled the “Castro” of the Mediterranean.<sup>122</sup> The urgency of incorporating Cyprus into NATO became more immediate after the Arab-Israeli war of June 1967 and the continuing Middle East crisis. It was perhaps a sense of urgency also that prompted the United States to support the coup of July 1974 in Cyprus and to approve the Turkish invasion.<sup>123</sup>

### ***3. Foreign involvement 1960-1974: U.S. Foreign Policy on Cyprus***

The role of the United States in the Cyprus dispute has been of utmost importance. This has been especially so from 1960 onwards. It would therefore be necessary to thoroughly examine its role. The present section constitutes overwhelmingly an analysis of the American policy toward Cyprus.

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<sup>120</sup> See A.G. Xydis, The Psychological Complex of the Cyprus Question, in A.G. Xydis et al. *Makarios and his Allies*, ante, pp. 35-38.

<sup>121</sup> Adamantia Pollis, Colonialism and Neo-Colonialism, Determinants of Ethnic Conflict in Cyprus in Kitromilides and Worsley, *Small States in the Modern World*, ante, p.72.

<sup>122</sup> See David Fairhall, Bitter Lemons, *Guardian* (London) , May 29, 1974, for a discussion of the strategic value of the British bases in Cyprus to NATO. On Makarios, see Stephens, Cyprus: *A Place of Arms*, *op. cit.* pp.200-201.

<sup>123</sup> This view has been expressed by Adamantia Pollis, Colonialism and Neo-Colonialism: Determinants of Ethnic Conflict in Cyprus, in Kitromilides and Worsley, *Small States in the Modern World*, *supra*, p.72. For other view see below, section 3 of the present chapter. The former U.S. Ambassador to Greece, Henry Tasca, has testified before the House Select Committee that the CIA was the U.S. representative in Greece during the Ioannides dictatorship. Taylor Belcher, former U.S. Ambassador to Cyprus testified that senior Cypriot officials knew that the CIA was paying Ioannides to subsidize EOKA B. Summary of testimony transcripts provided upon request from the House Select Committee on Intelligence, October, 1975. See also Christopher Hitchens, *Détente and Destabilization: Report from Cyprus*, *New Left Review*, *op. cit.*

### **3.1. U.S. Policy in the Colonial Period of the Cyprus Question**

For the sake of completeness, it need be said that the internationalisation of the Cyprus question in 1954, affected the American interests in a number of ways. First, as an inter-allied dispute Cyprus threatened the cohesion of the Western Alliance after the Greco-Turkish entry into Nato.<sup>124</sup> Second, it undermined the military cooperation of Greece and, to a lesser extent, Turkey with the United States. Third, on numerous occasions the acuteness of the Greco-Turkish conflict over Cyprus brought threats of war between the two partners of NATO. Such a conflict would bring about irreparable damage to NATO's South-Eastern flank and would risk possible Soviet involvement. Fourth, the Cyprus conflict had an important outcome in domestic politics of the three allies, and especially Greece. In the latter case, by 1958, the issue of Cyprus threatened to undermine the political system so carefully constructed under American auspices in the aftermath of the Civil War and the security commitments agreed<sup>125</sup>. Fifth, the Cyprus Question was a cause of embarrassment of the Western Bloc in the United Nations and an issue to be exploited by Soviet propaganda. Sixth, there was the presence of AKEL, the Communist party of Cyprus. The party was well-organized, had influence in local politics, with popular support. AKEL was therefore given an opportunity to extend their influence on the island.<sup>126</sup>

John Foster Dulles viewed Turkey as an indispensable component for both the defence of the Eastern Mediterranean and the extension of the Western power in the Middle East. Thus the policy dilemma created by the Cyprus dispute for the United States had to be resolved along lines that would not risk the alienation of Turkey.

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<sup>124</sup> The Protocol of accession of Greece and Turkey in NATO was signed in October 17, 1951, and both states assumed full membership in the organization.

<sup>125</sup> See Theodore Couloumbis, *Greek Political Reaction to American and NATO Influences* (New Haven and: Yale University Press, 1966), pp. 53-60, 22119-132. The possibility of a Greek withdrawal from NATO was openly advocated by the Greek Conservatives in the by 1958 in response to the United States and NATO 's attitudes in the Cyprus Question.

<sup>126</sup> From the early days of this dispute the United States was also interested in the elimination of the Communist influence in Cyprus. See Thomas Adams, *Akel: The Communist Party of Cyprus* (Stanford: Hoover Institution Press, 1971.) See also Coufoudakis, *The U.S. Policy toward Cyprus: A study in Cold War diplomacy*, *ante*, pp. 133, fn. The means utilized were: the military, economic, and diplomatic support to Turkey against Soviet pressures 1945-47; the Truman Doctrine and Marshall plan as applied to Greece and Turkey; the establishment of the stable governments in Iran and Greece; the creation in February of 1946 of the sixth Fleet as a major diplomatic and military deterrent in the region, and the integration of Greece and Turkey in bilateral alliance agreements.

Cyprus did not become a concern of the United States until the early 50s when the attempt of Greece was toward internationalisation of the Cyprus dispute because of Britain's unwillingness to discuss the question of Cypriot independence and Enosis with Greece. Various Greek Governments during the World War II and the immediate post war period had expressed interest in the future of Cyprus. But their political and economic dependence on Britain and the United States, had kept them from openly challenging British control of Cyprus. On several occasions Dulles, repeatedly attempted to dissuade Greece from such steps and pressured Greece to abandon its appeal to the United Nations.<sup>127</sup> But Dulles also introduced some new directions to American policy that have remained constants of American approach to the Cyprus Question. These new directions were that Turkey had an equal interest in the future of the island.<sup>128</sup> Department of Defence Planners stressed the value of Turkey to the Western System of Alliance.<sup>129</sup>

### **3.2 The independent Republic of Cyprus and the United States**

The 1950 London and Zurich agreements had been greeted with satisfaction and relief in the United States.<sup>130</sup> After the 1963 crisis, minority community was determined to maintain the status juris of the 1959 and the special position it granted to the Turkish Cypriots. This crisis undermined the relationship that had developed between Cyprus and the United States during the 1960-63 period. The United States tried to bring about the return to the 1960 status quo. Any settlement though would have to be acceptable to all those who signed the Zurich Agreements. The American interests were heightened by the Soviet presence in the area. Given the Soviet flee in the region,

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<sup>127</sup> For instances of he early pressures exerted by Dulles on the officials to drop the 1954 appeal to United Nations see Xydis, Cyprus: Conflict and Conciliation , 1954-1958 ( Columbus: The Ohio State University Press), pp. 197-22.

<sup>128</sup> By the second half of the 1956 the United States had quietly advocated partition for solving the Cyprus problem.

<sup>129</sup> Each of the partners sought to justify the need to American support for their claims on Cyprus in the interests of an allied unity, security, and the country's reliability in its western commitments. Assuming that Britain had a major role in the dispute, by its emphasis on the Turkish factor, it contributed to the Turkish negotiating intransigence and strengthened the American perception of Turkey's importance; further it urged Turkey and the United States to repel Greek pressures. Greece caught in the situation of promoting anti-communist policies in order to gain the American sympathy. (Harris, *Troubled Alliance, ante*, pp. 549-65.)

<sup>130</sup> *The New York Times*, in an editorial on February 20, 1959, (p. 2), called the Agreements "a resounding success for enlightened statesmanship that will be welcomed in the free world." The U.S. Department of State, in turn, observed that "a mutually satisfactory solution of the Cyprus issue should restore peace on the island and strengthen the ties among the countries and the peoples involved" (p 3).

Cyprus, whether within the context of NATO or with closer ties with Britain, could provide the United States with unsinkable bases in the Mediterranean.

The United States thus reflected the American preference for quiet diplomacy and limited internationalisation of the Cyprus question.<sup>131</sup> This was necessary not only to avoid the irrevocable breakdown of the political system of the State, but also to eliminate conditions that could be exploited by AKEL and the Russians. The grave anxiety expressed by President Johnson in his letters of December to Makarios and Kuchuk, appeals by the Greek, Turkish and British Governments, and the limited peace-keeping effort undertaken by British troops at the request of the Cypriot government had not restored peace on the island. The London Conference was convened on the 15 January 1964. Duncan Sandys<sup>132</sup> raised the issue of broadening the British Peace-keeping Force on the island by the participation of other NATO countries. The United States proved receptive to the British suggestion. Turkey was too. General Lemnitzer, the Commander of NATO at the time, at the request of Lyndon Johnson, postponed the impending Turkish action and set the stage for the unveiling of the NATO plan for Cyprus, following a trip to Greece and Turkey. As Philip Windsor clearly shows,<sup>133</sup> this plan was in reality an Anglo-American creation. By providing for both a NATO peacekeeping force and a mediator, the sponsors expected to help stabilize the situation on the island and seek a settlement that would safeguard western interests as well as those of Turkey. Thus, through limited internationalisation in the NATO and under Anglo-American direction, the dispute would be contained and managed.<sup>134</sup> The Anglo-American NATO Plan for Cyprus failed, much like the London Conference, despite the acceptance of the Plan by the guarantor states, and the heavy pressure exerted by George Ball upon Makarios. Cyprus, though, readily accepted UNFICYP, an international peacekeeping force funded and manned largely by NATO members, but controlled by the Security

<sup>131</sup> Through American mediators, Presidential initiatives, and handling the dispute through NATO.

<sup>132</sup> Colonial Secretary of State for Commonwealth Affairs and the presiding officer at the Conference Robert Kennedy, in London during the Conference, had further discussed with the British their NATO peacekeeping proposal. (Cousoudakis, U.S. Foreign Policy Toward Cyprus: A Study in Cold War Diplomacy, *ante*, p. 139, fn. 52).

<sup>133</sup> NATO and the Cyprus Crisis, *Adelphi Papers*, No. 14 November 1964, p. 13.

<sup>134</sup> The original plan called for a NATO force of some 10,000 men for a period of three months. It would involve at least 12000 U.S. troops as well as troops of the three guarantor powers. See Windsor, NATO and the Cyprus Crisis, *supra*.

Council of the United Nations.<sup>135</sup> UNFICYP had not managed to deal with the increased levels of armaments of the two communities, the infiltration of military personnel by all sides, or to stop the Turkish bombing of the raids of 1964 and successive Turkish invasion threats. But, UNFICYP has contributed to the lessening of the possibility of a broader confrontation over Cyprus, and thus the need for an overt NATO / US intervention. Secondly, the United Nations Peace Keeping Force, by contributing to the pacific perpetuation of the dispute, provided the United States with the opportunity to seek settlements without pressures.

### 3.3 The Acheson Plan

The possibility of Greco-Turkish war in Cyprus, and the interest shown by the Soviet Union over Cyprus, in view of Makarios's appeal to the U.S.S.R for help during the Turkish invasion threat of 1964, urged the American national security officials to seek to bring about a permanent settlement of the Cyprus Question. This was the main aim of the Acheson Plan.

George Ball openly pressured the U.N Secretary-General to sponsor a new American mediation effort under Dean Acheson. Another Johnson letter was sent to the Greek Government, introducing the proposal, which actually warned Greece that the United States would stand aside if Turkey intervened in Cyprus, thus causing a war that Greece was bound to lose according to American estimates. Prime Minister's Papandreu's reluctant acceptance was also motivated by the tension on Cyprus, which had its apex the bombings early in August 1964.

The Acheson Plan provided for Enosis, thus satisfying the needs of Greece, and safeguarding the Turkish strategic interests as well as those of the United States.

The definition of the Plan, on behalf of Acheson, by George Ball, who drafted it together with Talbot, was as follows. Cyprus, was seen as a threat to the United States interests because (a) of a potential Turkish intervention and thus an unavoidable Greco-Turkish War; (b) it has weakened the ties of Greece and Turkey to the United

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<sup>135</sup> In the discussion that opened on February 18, 1964, at the Security Council, the United Nations States and the Britain endorsed the idea of an international force under the control of the Security Council.

States; (c) it has strengthened the position of AKEL and the U.S.S.R on Cyprus; (d) it has created a serious problem to the United Nations; (e) it has undermined NATO. For these and in order to remove the threats, the proposed settlement of the Cyprus Question should be achieved through Enosis with: (1) territorial compensation by Greece to Turkey; (2) a Turkish military presence on Cyprus; (3) resettlement and repatriation of Turkish Cypriots that desire to do so; and 4) pledges by Greece to apply the Lausanne Treaty minority provisions on the Turkish Cypriots; disarm all irregulars; eliminate AKEL's influence.<sup>136</sup> In defining further the Greek concessions to Turkey on Cyprus, Acheson proposed at the end of July, 1964 (a) the full sovereign cession to Turkey, in perpetuity, of a large area of Cyprus for military bases. These base areas were located in the Karpasia peninsula of Northeast Cyprus; (b) up to two cantons to be established for the Turkish Cypriots with full local administration in their control; (v) an international body to observe the application of human rights provisions, with NATO exercising an enforcement role in case of violations. In terms of other territorial exchanges, the original proposals included the cession of the Greek island of Kastellorizon to Turkey.<sup>137</sup> As the negotiations progressed Acheson presented the some revisions of his plan in an attempt to overcome some of the objections of the Greek government. He thus proposed: (a) a fifty-year lease for the Turkish bases on Cyprus instead of in perpetuity; (b) the area to be delimited by a North- South line in West of the village of Komi Kepir in Northeast Cyprus; (c) instead of formal cantonal divisions to provide for Turkish Cypriot eparchs (prefects) with Turks to administer local affairs in the heavily Turkish Cypriot areas of the island.<sup>138</sup> The Plan was rejected by the Cyprus Government under pressures by her AKEL Party, and was subsequently turned down by Greece, too.

Some political observations need be made with regard to the Acheson Plan. Firstly, Acheson proposed that no formal agreements be signed between Greece and Turkey requiring Greek Parliamentary and Cabinet control approval. Instead the sovereignty of Cyprus would be terminated by a unilateral declaration of enosis by Greece. To ensure that prearranged strategic concessions to Turkey would be made, a secret

<sup>136</sup> Coufoudakis, U.S. Foreign Policy Toward Cyprus: A Study in Cold War Diplomacy, *ante* p. 114.

<sup>137</sup> Coufoudakis, U.S Foreign Policy Toward Cyprus: A Study in Cold War Diplomacy, *Ibid*, p.115

<sup>138</sup> *Ibid.* p. 115.

NATO protocol would be drawn up in advance. Secondly, Washington trusted the Greek government to deal firmly with Communism in Cyprus.<sup>139</sup> Thirdly, Grivas secretly returned to Cyprus under Greek auspices in June 1964 to take charge of the Cypriot Armed Forces and provide a Conservative countervailing force to Makarios. Ball, with secret meetings with Grivas, gained his endorsement of a plan for union of Cyprus to Greece, with bases being turned over to Turkey and eventually to NATO.<sup>140</sup>

### 3.4 The events leading to 1974 and the U.S. role

Another event of crucial importance was the Lisbon meeting of the NATO Foreign Ministers of 3-4 June 1971, which, according to Soviet and Cypriot sources, under the changing strategic conditions in the Mediterranean, formalized the Greco-Turkish Agreement to terminate Cypriot independence by partitioning the island.<sup>141</sup> Their determination to resolve the Cyprus Question was publicly manifested in the recognition of that their continued friendship and cooperation was dependent upon resolution of the Cyprus Problem.<sup>142</sup> Papadopoulos further declared that the Cypriots

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<sup>139</sup> Foley in his *Legacy of Strife: Cyprus from Rebellion to Civil War*, Baltimore: Penguin Books, 1964, pp. 184-185, says: "George Papandreu was a traditional Liberal and therefore trustworthy in the eyes of the United States. When it became apparent that the Centre Union Party was falling under the control of his son Andreas Papandreu, whom the United States saw as unreliable the United States moved swiftly to overthrow Papandreu." It makes one wonder, however, whether they really favoured ascent of Andreas to the Premiership.

<sup>140</sup> Coufoudakis, U.S. Foreign Policy Toward Cyprus: A Study in Cold War Diplomacy. *Supra*, p. 116. It has to be noted that the U.S. used Greece for the promotion of their own aims, and stressed that the anti-communist feelings of Greece and the U.S. were best served by eliminating Makarios and that only through an Acheson-type settlement would the nationalist aspirations of Greece ever be realised. It is for this purpose that Grivas returned to the island to organize the Cypriot National Guard, and also Greek Army Units were secretly dispatched. *Ibid*, p.122.

<sup>141</sup> Coufoudakis, U.S Foreign Policy Toward Cyprus: A Study in Cold War Diplomacy, *ante*, p.126.

<sup>142</sup> Illuminating is the report by Stern in his work *The Wrong Horse, Intervention*: "The Meeting in Lisbon was conducted between the Turkish Foreign Minister Olcay and Greek Foreign Minister Palamas. Nothing was drafted at the meetings, but they seemed rather promising then as said a high-ranking Turkish Diplomat who participated in the sessions. There was a great effort on the part of both sides to eliminate the misconceptions. We insisted that the Greeks get rid of the misconceptions of a unitary state in Cyprus which was foreign to the original conception of the sovereign state. The Greeks hinted indirectly that if worse came to worse, instead of breaking relations between Greece and Turkey they might be agreeable to a kind of separation, a territorial arrangement might be envisaged with a large base for Turkey so that the Turkish Cypriots would feel more secure. The population would be left as it was." These secret talks were conducted first in Lisbon and later in Paris under the cover of NATO conferences. Two foreign ministers and their advisors met for what were called "bilateral lunches" held discreetly in their respective embassies. No Notes were taken.

had to resolve their differences in a manner acceptable to Greece and Turkey.<sup>143</sup> How did the United States view these developments and especially those of 1971? In June 1972 Department of State analysts had concluded that Greece and Turkey were favourably disposed to double enosis (i.e. partition proposals) although it was proposed that the United States should restrain Greece and Turkey from any premature moves toward partition. Department Officials did not foreclose the possibility of an eventual double Enosis. Such a settlement would not be dangerous to American interests if Makarios could be induced to accept it. Thus the consensus reached among Department of State officials was that the Makarios problem should essentially be left to Greece.

A new supply of Czech weapons for the Cypriot police arrived in Cyprus in late January 1972 and this gave Athens the pretext for the delivery of a nine-point ultimatum to Makarios on February 19.<sup>144</sup> The note mainly demanded the surrender of the equipment to the UNFICYP, thus leaving the Greek officered Cyprus National Guard as the strongest force in Cyprus; (b) the recognition of Cyprus that Athens is the national centre of Hellenism and that Cyprus is only part of the Greek nation (her implication being that Cyprus should accede to the Greek guidelines and not act as an independent State). (c) the recognition of the reconstruction of the Cypriot Government into one of national unity drawn from all segments of the nationalist Greek Cypriot public to assure confidence in the relations between Athens and Nicosia. The demand clearly implied the elimination of pro-independence figures such as Foreign Minister Kyprianou, and the introduction of Grivas and his supporters into the Cypriot Government. The act failed. The only compromise of Makarios was to force Kyprianou to resignation. Grivas did not go against Makarios having understood both his weak position and also that he was being used by Athens to implement a policy that was against his lifelong goals. Bitter, he remained in the island in charge of terrorist groups hoping to induce Makarios to give up his

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<sup>143</sup> See the Papadopoulos interview in the *Millet* newspaper of Istanbul, May 30, 19741 and related comments by Turkish Government officials.

<sup>144</sup> See Coufoudakis, *supra*, p. 127

independence policy.<sup>145</sup> Grivas's activities, though, undermined Makarios influence and as long as they did not create a threat of Greco-Turkish confrontation thus promoted the interests of the U.S.<sup>146</sup>

The latest phase of the Cyprus Question was hugely a result of Makarios determination to reassert his control over the Cypriot National Guard and Greek Officers. Thus Makarios letter to the Greek President General Gzikis requesting the removal of these Officers became the catalyst that brought to a climax twenty –five years of uneasy Greek-Greek Cypriot relations. Makarios underestimated the determination of Colonel Gzikis in Athens as well as the intentions of Washington.

The subsequent overthrow of Makarios was based on the Plan HERMES.<sup>147</sup> The opportunity was then provided for Turkey to intervene militarily basing her intervention on the legal premise of Article IV of the Cyprus Treaty of Guarantee.<sup>148</sup> Kissinger, Foreign Secretary of the U.S. at the time was the pre-eminent figure in the formulation of public policy in the United States in view of the preoccupation of President Nixon with the Watergate affair. It is here submitted, perhaps for the first time that the long-standing friendly relations between Kissinger and Ecevit was a decisive factor taken into account in the U.S Foreign Policy decision not to prevent the Turkish intervention from being waged.<sup>149</sup>

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<sup>145</sup> Until his death in early 1974. He lead EOKA B, a mall band of loyalists from the independence (or enosis struggle) since the 1950s.

<sup>146</sup> Cypriot and Israeli sources have acknowledged the extensive deployment and active involvement of American Intelligence operatives on Cyprus. See Coufoudakis *ante*, p. 182

<sup>147</sup> Colonel Ioannides was the author of the plan *Hermes* and the leading members of the last military junta had served in Cyprus during 1963-64 with the Greek forces that had been dispatched to Cyprus at the time. He strongly disliked Makarios's ties with the non-aligned nations, the U.S.S.R. and the AKEL. During his service in Cyprus he had met and become friends with Nicos Sampson and shared fears, aspirations and concerns. The latter was installed as President of Cyprus following the overthrow of Makarios. For detail of Ioannides Plan *Hermes* see the Athenian newspaper. *Hellas*, April 21, 1970.

<sup>148</sup> See Chapter II, below. For an American view advocating for the legality of the Turkish Intervention in Cyprus 1974, see Arthur Hartmann's interview (in what was his first public statement on the Cyprus Question since 1974) to the Greek Cypriot journalist Yannis Kareklas, Cy.B.C. TV Political Affairs Programme, 20<sup>th</sup> July 2002. Arthur Hartmann, Adviser to the U.S. Department of State at the time, drafted various Memoranda on the Cyprus Problem for Foreign Secretary Henry Kissinger.

<sup>149</sup> Ecevit, has been Fellow at the Center for International Affairs, Harvard University, and had Kissinger as his Supervisor. An apologist of Kissinger, though, asserts the following, which is indicative of what Kissinger allegedly believed: "The statesman skill was demonstrated in his capacity to choose well among the options he detected. All choice involved risk; all choice was based on conjecture... one could not be certain of the results... The policy maker was the risk taker; there was no way to guarantee his success... (As Viet Nam shows the decision was made to run those risks, in the belief that the alternatives, while less dangerous, promised results that could not be satisfactory..." (Guarard, Kissinger, *Portrait of a Mind*, (New York 1973) p.277.

It would be interesting, though, to see, albeit briefly, the role played by Sisco, the U.S. Ambassador, who tried to avert the crisis by consulting directly with Ankara and Athens governmental officials. It is submitted though that these consultations cannot amount to the “joint consultations” envisaged by the Cyprus Guarantee Treaty Article VI in case of violation of the Constitutional order of the State, and at any rate the frankness of Sisco’s intentions have been doubted. He had met with Ecevit in London, and his last words to him at Heathrow airport were: “Don’t do anything until we consult again”.<sup>150</sup> Having gone to Athens immediately afterwards and had discussions with Ioannides, Armed Forces Chief of Staff General Bonanos and Prime Minister Androutsopoulos, flew back to Ankara. At a meeting with the Turkish National Security Council, he asked Ecevit, who was an accomplished poet: “You have given all your life to humanitarianism. Now as a result of your decision a lot of people are going to be dead. Why can’t you wait fourty-eight hours?” The reply was that the Turks did not want to repeat the mistakes of 1964.<sup>151</sup>

It is worth noting though that Ioannides and his closest advisers were preparing orders for submarine and aerial attacks on the invading Turkish forces, whose first amphibious landing was being hampered by adverse weather. However, unbeknown to Ioannides, a mutiny was beginning to form among his top military commanders who were against full-scale war with Turkey. There were strong indications afterward that the American intelligence establishment in Athens was now monitoring the generals’ revolt against Ioannides. Afterward, the deposed head of the junta was to charge through his attorneys that the generals conspired with the Americans in what the attorneys regarded as a treasonous scheme to betray his orders. It was also alleged through the CIA that the Turks would not invade if the coup on Cyprus were cleanly executed.<sup>152</sup>

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<sup>150</sup> Stern *The Wrong Horse*, Intervention, p.118.

<sup>151</sup> At dawn, Sisco stood alone on the tarmac of the airport in Ankara, awaiting a plane back to Athens. A Turkish armada was steaming toward the Northern coast. Deeply by his humiliating ordeal in both capitals, Sisco contacted Washington and suggested that he return home. Kissinger’s response, recalled by a member of the Washington task force who inadvertently intercepted the traffic, was to threaten that he would go to the East Mediterranean himself to take over the crisis mediation. It was not clear whether the Secretary was joking or not. (Stern *The Wrong Horse*, *Ibid* , pp.20).

<sup>152</sup> Stern, *The Wrong Horse*, *ante*. p. 21. On the role of the US. in the events of 1974 see also Brendan O’Malley and Ian Craig, *The Cyprus Conspiracy*, London, Tauris Press: Benjamin Rosenthal, who led a House of Representatives examination of U.S. foreign policy during these events, said Washington must share the blame

Next chapter will examine the legality of the Turkish Intervention in Cyprus 1974.

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for the crisis because of the encouragement it gave the Greek junta that sponsored the coup in Cyprus. He said that “the seizure of power by the Greek Colonels in 1967 was the only case in 25 years of NATO’s history where a functioning democracy had been turned into a military dictatorship. But Washington had established relations with the junta, claiming disingenuously that a trend towards constitutional rule had been established and made Greece the Eastern Mediterranean base for the sixth fleet. Why in the crucial week of 15 July 1974 did not the United States publicly demand a reversal of acts by the Greek dictatorship which clearly produced a disaster bound to involve our country.” Greek American Senator Paul Sarbanis and Americans should be deeply concerned by the State Department’s failure, despite repeated warnings from many sources, to take action to avert the subversion of and effective partition of Cyprus. He damned the administration for failing to support Makarios, which would have preserved the peace and stability; for failing to prevent the first Turkish military intervention by denouncing the coup and pressing Ankara to hold back- as Johnson had; and for failing to limit and restrict the Turkish military action once it had begun. (Craig *The Cyprus Conspiracy, supra* )

## **CHAPTER II**

### **LEGAL EVALUATION OF THE TURKISH INTERVENTION OF CYPRUS: THE ARGUMENT FROM THE TREATY OF GUARANTEE**

## **CHAPTER II: LEGAL EVALUATION OF THE TURKISH INTERVENTION: THE ARGUMENT FROM THE TREATY OF GUARANTEE**

The Present Chapter examines the legality of the Turkish intervention of Cyprus 1974 from the Treaty of Guarantee of the Cyprus Republic. As it will appear later on, the main argument of Turkey to justify the intervention was based on the Treaty of Guarantee provisions.

Early in the morning of the 20<sup>th</sup> July 1974, Turkey, availing itself of the coup d'etat of the 15<sup>th</sup> July 1974 engineered by the Greek military junta (then ruling Greece) to overthrow the democratically elected President Archbishop Makarios<sup>1</sup>, proceeded to an armed attack<sup>2</sup> by air and by sea against the independent and sovereign Republic of Cyprus.

### ***(1) Turkish Justifications for the Intervention and Claims regarding the Treaty***

Various justifications were given by the Turkish leadership for the purposes of the intervention. The then Prime Minister of Turkey Mr. Ecevit made the following official statement according to the statement of the Permanent Representative of Turkey Mr. Olcay at the meeting of the Security Council of

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<sup>1</sup> Glafkos Clerides, in his book, *Cyprus: My Deposition* (Nicosia, 1990, vol. III, p. 343) states the following about the motives of the conspirators : 'Bluntly, the real objectives of the conspirators were to oust Makarios and his Government in order to proceed with direct negotiations with Turkey, and use the good offices of the United States, to achieve Enosis of the major part of Cyprus with Greece, conceding a smaller part of Cyprus to Turkish sovereignty. At no time did the Greek junta have in mind to declare Enosis unilaterally and to accept the risk of having a military conflict with Turkey.'

<sup>2</sup> The meaning of "armed attack" was considered in the *Nicaragua case*, I.C.J. Reports 1986, p.14 para.195.

the 20<sup>th</sup> September 1974:

*“ The Turkish armed forces started this morning an operation of peace in Cyprus in order to put an end to struggle of decades of years brought about by extremist elements.*

*During the last steps of the Cyprus tragedy, these extremist elements started massacring their own people, the Greeks.*

*It is admitted by everybody that the last coup has been staged by the dictatorial regime of Athens. As a matter of fact it was more than a coup: it was a violent and flagrant violation of the independence of the Republic of Cyprus and of the international treaties on which the Republic was founded.*

*Turkey is co-guarantor of the independence and the constitutional order of Cyprus. Turkey taking action is fulfilling her legal responsibility. The Turkish Government has not resorted to the armed action until after all the other means were tried and proved unsuccessful. This is not an invasion but an act to put an end to invasion. The Turkish armed forces will not open fire unless being fired at.*

*I am addressing all the Greeks in Cyprus who have been the victims of atrocities, of terrorism and dictatorship: bury in the past the dark days of inter-communal enmities and strife which were resorted to by the terrorists themselves. Join hand in hand with your Turkish brothers to speed up the*

*victory and together build up a new free and happy Cyprus”<sup>3</sup>.*

In other statements he said that the objective of the operation was to overthrow the regime which toppled Archbishop Makarios; when, however, he was asked to say whether the intention was to restore Archbishop Makarios to power he declined to answer, as he declined to state whether Turkey intended pulling out its forces after gaining control of the island.

In a Turkish government communiqué issued immediately after the intervention by the Turkish Embassy in London it was stated that Turkey as one of the guarantor powers had decided to carry out its obligations under article IV (2) of the Treaty of Guarantee with a view to safeguarding the security of life and property of the Turkish community and even that of many Greek Cypriots.<sup>4</sup>

The main argument put forward by Turkey in order to justify the 1974 military intervention in Cyprus is based on the Treaty of Guarantee of the Cyprus Republic. The Treaty, signed on 16 August 1960 between the United Kingdom, Greece, Turkey, and the Republic of Cyprus, forms an integral part of the constitutional order of the Republic.<sup>5</sup> By Article I, the Republic of Cyprus undertook the obligation to maintain its independence, territorial integrity, and security as well as respect for its Constitution. Under article II, Greece, Turkey and the United Kingdom guaranteed the independence, territorial integrity and

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<sup>3</sup> S/PV, 1781, 86

<sup>4</sup> For the text of the communiqué see *The Turkish Yearbook of International Relations*, 14 (1974), p.125.

<sup>5</sup> Article 181 of the Constitution provided that the treaty guaranteeing the independence, territorial integrity, and constitution of the Republic “shall have constitutional force”.

security of the Republic of Cyprus and also the state of affairs established by the basic articles of the Constitution. Article IV, which constitutes the strongest basis of the Turkish argument provides the following: “*In the event of a breach of the provisions of the present Treaty, Greece, Turkey and 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”.*

Turkey first declared that intervention had been to guarantee the independence of the island. According to Turkey, the coup government of Mr. Sampson was no more than a puppet regime under orders from Greece, ready to rule the end of the island’s independence and to annex it to Greece.<sup>6</sup> In a Turkish government communiqué of 20 July it was stated that “the Turkish community in the island can no longer tolerate this situation which offends human dignity and threatens the lives and the very existence of its greater majority, and they, therefore, anticipate Turkey as a Guarantor Power, to liberate them as soon as possible”<sup>7</sup>. The Turkish government went on to state

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<sup>6</sup> See Necatigil, *The Turkish Position in International Law* (Oxford: Oxford University Press, 1993) p. 109; see also (1974) 11 *U.N. Monthly Chronicle* 9 (at the Security Council which was convened at the requests of the Secretary General and the Cypriot representative, Archbishop Makarios, who managed to flee the country and was still recognized as the legal head of state, denounced the coup as a flagrant violation of Cypriot independence and sovereignty, and urged the Council to call upon Greece to withdraw her officers and end its invasion of Cyprus).

<sup>7</sup> *The Turkish Yearbook of International Relations, ante*, p.130 (italics supplied).

that the “Turkey as one of the guarantor powers had the decided to carry out its obligations under article IV(2) of the Treaty with a view to safeguarding the security of life and property of the Turkish community and even that of many Greek Cypriots”<sup>8</sup>. The Turkish Cypriot leader Rauf Denktash wrote that ‘Turkey, as one of the guarantors of the Cyprus Republic, could not accept the *fait accompli* against the independence and sovereignty of the republic, nor could it stand by and watch Turkish Cypriots being killed’.<sup>9</sup> He also says that Turkey was left with no alternative but to move alone under Article 4 (2) of the Treaty of Guarantee to protect the independence of the island and to put an end to the terrible destruction of life and property.<sup>10</sup> Denktash further alleges that the Turkish villages were being attacked throughout the island by mobile units of the National Guard, the pattern of the onslaught resembling that of 1963.<sup>11</sup>

## **(2) Treaty of Guarantee and International Law**

What is of crucial importance and need be examined is whether *unilateral military intervention* may be conferred by *treaty right*. In other words whether

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<sup>8</sup> *ibid.* p.130

<sup>9</sup> Denktash R., *The Cyprus Triangle* (Nicosia, 1972), p. 68.

<sup>10</sup> *Ibid.* p.68 (It is said therein that “Turkey sent a *peace* force which landed in northern Cyprus”).

<sup>11</sup> *Ibid.* pp. 69-70. The following is an excerpt from a report sent by Terence Smith from Limassol at the time and published in the *Herald Tribune* on 25 July 1974: “On the sun-baked dirt floor of the Municipal Soccer Stadium here, about 1,750 men from Limassol’s Turkish enclave and the surrounding Turkish villages are penned behind cells of barred wire. Their days are spent sheltering under the scorching sun that sends temperatures into high 90s. Although the men are dressed in street clothes and claim to be civilians, they are being held as prisoners of war by the Greek Cypriots”; Denktash, *The Cyprus Triangle*, *supra* p.71.

such a right (even if expressly stipulated) is in accordance with the principles of Public International Law.

### ***2.1 Theories on the Legality of Military Intervention by Treaty Right.***

It is commonly accepted in academic theories that armed intervention is legal when it is done on the basis of a right provided for by treaty. The legality of such an intervention finds support in the overwhelming majority of academic writings, at least before the passing of the U.N. Charter.<sup>12</sup>

Vattel is one of the advocates of such a view. Although he supports the principle of non-intervention, which he considers as flowing from Sovereignty-“the most precious principle that states ought to safeguard”- accepts the exception of intervention provided for by treaty.<sup>13</sup>

Phillimore, also writing in the nineteenth century, considers intervention legal, in case this is guaranteed by treaty right.<sup>14</sup>

Diena, while is of the view that intervention violates the sovereignty and territorial integrity of states, regards intervention provided for by treaty as an exception to the rule of non-intervention.<sup>15</sup> The preceding views are also shared by Oppenheim,<sup>16</sup> Lawrence,<sup>17</sup> Hodges,<sup>18</sup> and Westlake<sup>19</sup> among others.

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<sup>12</sup> Potter notes that the majority of experts on the subject matter readily tends to consider as legal any intervention provided for by treaty. (1930) II Recueil des Cours, p. 657.

<sup>13</sup> See Vattel, E. de, *Le Droit des gens ou principes de la loi naturelle appliquee a la conduite et aux affaires des Nations et des Souverains* (Paris: 1863) p.22.

<sup>14</sup> See Phillimore, R., *Commentaries upon International Law* (London, 1879), vol. I, p.474.

<sup>15</sup> See Diena, *Diritto Internazionale* (Milano, 1900) p.

<sup>16</sup> See Oppenheim, *International Law, War and Neutrality*, Vol. II (7<sup>th</sup> ed. H. Lauterpacht, London, 1952) p. 307.

Greek writers also hold the aforementioned views. Seferiades, having said that states have no right to intervene in the internal affairs of other states, conceded that intervention under a treaty is legal.<sup>20</sup> Tenekides, though states that the well established principle of non-intervention has been considerably strengthened by the United Nations Charter, writes the following: 'International Law exceptionally accepts intervention if this is based upon agreement freely entered into or treaty providing for intervention in special circumstances'.<sup>21</sup>

Professor Brownlie wrote that States may lawfully confer by treaty a right to intervene by the use of armed force within the territorial or other legally permitted limits of their jurisdiction. They may also give *ad hoc* consent to the entry of foreign forces on their territory, to the passage of foreign forces and to

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<sup>17</sup> See Lawrence, T.J., *The Principles of International Law* (London, 1920) p.121-23: "If a State has accepted a guarantee of any of its possessions, or of a special form of government, it suffers no legal wrong when the guaranteeing state intervenes in pursuance of the stipulations entered into between them. It is perhaps to this right to intervene in pursuance of a treaty that the course of action adopted towards Greece by the allied powers, Great Britain, France, and Russia, during 1915-1917, must be referred". By the Treaty of London 1863, Greece was put under the guarantee of these powers as a 'monarchical, independent, and constitutional state. Greece, entered the great war on the side of Great Britain and her allies. The majority of the nation was enthusiastically in favour of the Entente cause, and of giving effect to a treaty with Serbia (an ally of Great Britain, France and Russia) under which Greece was bound to assist Serbia in the event of war between Serbia and a third power. On October 2, 1915, the British and French governments landed 150,000 troops at the Greek port of Salonika. They did this, with the hearty approval of Minister Venizelos and of an overwhelming majority of the Greek populace for the purpose of aiding Serbia, that was at war with Austria and Germany.

<sup>18</sup> See Hodges, *The Doctrine of Intervention* (New York, 1915)

<sup>19</sup> See Westlake, J. *International Law* (Cambridge University Press 1910) Vol. I, p. 304: "The questions arising from reciprocal rights and obligations of states, it is said, are determined in a notable measure by the body of what are called political treaties, which are nothing else than the temporary expression of transitory relations between the different national forces. These treaties bind the freedom of action of the parties so long as the political coalitions which produced them remain without change".

<sup>20</sup> See Seferiades, *Public International Law* (Athens, 1926), Vol. I, p.319, and (1930) 34 *Recueil des Cours*, p. 389.

<sup>21</sup> See Tenekides, *Vima* (Greek Newspaper, 26.1.1963), p. 5; to the opposite direction goes the view expressed by the International Law Professor Constantopoulos by which the UN Charter expressly prohibits intervention (Constantopoulos, *Public International Law*, Thessaloniki 1962, Vol. I, p.278).

operations by foreign forces on their territory.<sup>22</sup> Therefore, the charge of aggressive war against Thailand was disregarded by the International Military Tribunal at Tokyo on the ground that consent was given to the passage of Japanese forces through Thailand.<sup>23</sup> Brownlie gives some examples indicating that a right to intervene by force on the territory of another state could properly be conferred by treaty. Article 3 of the Treaty of 22 May 1903, between Cuba and the United States provided: “*The government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty...*”<sup>24</sup> The Treaty of Friendship between Persia and the R.S.F.S.R., signed on 26 February 1921, provided as follows in Article 6: “*If a third party should attempt to carry out a policy of usurpation by means of armed intervention in Persia, or if such Power should desire to use Persian Territory as a base of operations against Russia, or if a Foreign Power should threaten the frontiers of Federal Russia or those of its Allies, and if the Persian Government should not be able to put a stop to such menace after having been once called upon to do so by Russia, Russia shall have the right to advance her troops into Persian interior for the purpose of carrying out the military operations necessary for its defence. Russia undertakes, however, to withdraw its troops from Persian territory as soon as the danger has been*

<sup>22</sup> Brownlie, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963) p.317.

<sup>23</sup> Judgment, Sohn, *Cases and Materials on United Nations Law*, pp 916-17.

<sup>24</sup> This provision, however, did not appear in the later treaty of 29 May 1934: 28 A.J.I.L. (1934), Suppl., p. 97.

*removed*".<sup>25</sup> Another example is the General Treaty of Friendship and Co-Operation signed by the United States and Panama on 2 March 1936. Article 10 provided: "*In case of an international conflagration or the existence of any threat of aggression which would endanger the security of the Republic of Panama or the security of the Panama Canal, the Governments of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests*". An identical provision in Article 7 of the Treaty of 1903 was the basis for the United States armed intervention in Panama in 1904 for the purpose of restoring order.<sup>26</sup> Further, the Agreement signed between Egypt and the United Kingdom on 19 October 1954<sup>27</sup>, provided for the evacuation of British forces from the Suez Canal area. The United Kingdom was given the right to re-enter the area with military forces given an attack was made against by a State which was a member of the Arab Collective Security Pact, or Turkey.

Despite the above, the principles of self-determination<sup>28</sup> and equality of States<sup>29</sup> as stipulated in the U.N. Charter have put into doubt the right of military

<sup>25</sup> Art. 1 of a Treaty of Guarantee and Neutrality between Persia and the U.S.S.R., signed in 1 Oct. 1927, confirmed the Treaty of 1921. A soviet statement of Oct. 1958, referred specifically to the Treaty of 1927; *The Times*, 3 Nov. 1958.

<sup>26</sup> Oppenheim, *International Law*, ante, p.307; Brownlie, *International Law and the Use of Force by States*, ante, p. 320.

<sup>27</sup> Cmd. 9298 (1954), abrogated by Egypt 1 Jan. 1957 (A.J.I.L. (1957), p.672).

<sup>28</sup> U.N. Charter Article (12): "To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples...".

intervention conferred by Treaty. A number of jurists have denied that such a treaty is valid. Nevertheless, in Brownlie's view, the right of forcible intervention on the territory of a state may still be lawfully conferred by treaty.<sup>30</sup>

## ***2.2 Arguments for the legality of intervention envisaged by Treaty***

### ***(i) Legitimate limitation of a State's sovereignty.***

It has been said that military intervention, constituting involvement in the internal affairs of a state, violates the principle of sovereignty. However, if intervention is done on the basis of a treaty right, the sovereignty of the state against which the intervention is launched is not violated, because the *treaty* right of intervention suggests legitimate and legal limitation of the state's sovereignty.<sup>31</sup> Given that the state itself has *accepted* the diminution of its sovereignty, the intervention must be legal. Under such circumstances the state is obligated to accept the intervention. Contrary to the above argument, it has been asserted that a treaty envisaging a right to intervene is illegal, because it is in violation of general principles of law. Since international law acknowledges the principle of independence of states, it comes that a state has the obligation of self-preservation. The treaty envisaging intervention deprives a state from the exercise of self-preservation and administration.<sup>32</sup> But those who advocate for

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<sup>29</sup> U.N. Charter Article 2(1): "The Organisation is based on the principle of the sovereign equality of all its Members".

<sup>30</sup> Brownlie, *International Law and the Use of Force by States*, *ante*, p.321; Oppenheim, *International Law*, *ante*, p.307; Jessup, 32 *A.J.I.L.* (1938), p.117.

<sup>31</sup> On this, Lawrence, *The Principles of International Law*, *supra*, pp. 118-119.

<sup>32</sup> See Thomas and Thomas, *Non Intervention: The Law and its Import in the Americas* (Dallas, 1956), p. 91-92 (where it is argued that the state is even deprived of its international personality). Indeed, whether a state, under these circumstances, maintains to the utmost its independence and sovereignty, remains controversial.

the legitimate limitation of sovereignty of the state conceding a right of military intervention, say that there is no such thing as obligation to self-preservation.<sup>33</sup>

In the *Austro-German Customs Union Case*, Judge Anzilotti, in a separate Opinion, went so far as to assert that according to general international law each State is free to deny its independence, also described as sovereignty (*suprema potestas*), and even its own existence.<sup>34</sup>

#### (ii) *Volenti non fit injuria*

Most authors base the legality of intervention by treaty right upon the consent of the state agreeing to the grant of a right of intervention to another state. The legal axiom *volenti non fit injuria* is not only a theoretical construction, but has constituted the legal basis of interventions in state practice.<sup>35</sup>

Proponents of this legal axiom also suggest that entering into treaties is a right of independent states, which may by way of treaty confer a right of intervention to another state in the same way as they may by international agreement concede part of their territory to a third state.<sup>36</sup> Thus, a state not only gives away its sovereign rights, but, on the contrary, exercises its sovereign right of

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<sup>33</sup> See Lawrence, *The Principles of International Law*, *supra*, pp. 118-119: "Sometimes an independent state finds itself obliged to submit for a while to restraints imposed upon it by superior force, as when Prussia was forbidden by Napoleon in 1808 to keep an army of more than 40,000 men. Such limited and temporary restraints upon the freedom of action of a state are not held to derogate from its independence. The same thing may be said of the authority assumed by the U.S. on the American continent. There can be no doubt that in America a position of primacy has been assumed by the U.S. But occasional deference to these authorities does not deprive a state of its independent position under the law of nations"; Winfield, *The Grounds of Intervention in International Law*, (1924) 4 *British YBIL*, pp. 155-159.

<sup>34</sup> *Advisory Opinion*, (1931) 41 P.C.I.J. Reports, Series A/B, p.59.

<sup>35</sup> Instances of the kind are the Soviet intervention in Hungary 1956, the joint intervention of Great Britain, France and Israel in Egypt 1956, and the intervention of the United Kingdom in Jordan 1958.

<sup>36</sup> See Thomas and Thomas, *Non-intervention: The Law and its Import in the Americas*, *ante*, p. 96.

concluding a treaty. In the *Wimbledon Case*, the Permanent Court of International Justice held that “the right of entering into international engagements is an attribute of State sovereignty”.<sup>37</sup> In the *Perry Case*, which appeared before the Supreme Court of the United States, Chief Justice Hughes stated in his judgement: “the right to make binding obligations is a competence attaching to sovereignty”.<sup>38</sup>

*(iii) Pacta sunt servanda*

One view dictates that since the intentions of two or more states coincide in an International Agreement, so that a right to intervention of one of the contracting parties into the internal affairs of the other may be agreed, law regulating their relations is therefore created. This law is binding. In accordance with the principle of *pacta sunt servanda* the contracting parties are obliged to fulfil the terms of the Agreement.<sup>39</sup> Interventions are illegal, unless the intervening state acquires special right to intervene according to public international law principles.

Thus, it could be argued, the binding force of international treaties may be said to sufficiently form the basis of the legality of intervention accorded by treaty. Furthermore, the legality of intervention of this sort may be grounded upon the relevant principle of *modus et conventio vincunt legem*. The rationale behind

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<sup>37</sup> (1923) 1 P.C.I.J. Reports, Series A, p. 25

<sup>38</sup> (1934) 294 U.S. Supreme Court Reports, p.330, 353-354. To the same effect, see the Opinion of the Permanent Court of International Justice in the Case of the Greco-Turkish exchange of populations in 1923 (1923, 10 P.C.I.J. Reports, Series B, p.21).

<sup>39</sup> See Harvard University Law School, Research on International Law, (1935) 29 *American J.I.L.*, Supplement Part III Law of Treaties, p. 671.

this very legal principle is that, given the lack of a unified international legislature, the creation of legal rules governing relations between members of the international community depends to a great degree on international conventions, which do create legal relations among the parties to a convention.

*Modus et conventio vincunt legem*, like *pacta sunt servanda* is a generally recognized principle, on condition that the content of the treaty is in conformity with legitimacy.

Upon the three arguments mentioned so far, a strong case for the legality of military intervention provided for by treaty right may be built up. Consequently, we could assert, at this stage, that Turkey's military intervention in Cyprus 1974 was a legal act according to international law principles; that Article IV(2) of the Cyprus Treaty of Guarantee, even if expressly authorized unilateral armed intervention, would be perfectly lawful. Nevertheless, in the subsection to follow, I shall attempt to present views going against this assertion.

## ***2.3 Arguments against the legality of intervention provided for by Treaty right.***

### ***(i) General Principles of Law***

A valid treaty presupposes lawful provisions. It is true that states have the capacity, by virtue of sovereignty, to conclude treaties on any matter whatever. It is equally true, however, that in the international legal order there exist legal rules, which states -parties to a treaty- cannot, and should not, ignore. This view is pointedly expressed by the legal maxim *privatorum conventio juris publico*

non derogat. The rationale underlying this axiom is that the international community, like every well ordered society, should see to the lawful and moral coexistence of its members. As *Lauterpacht* very well put it: “ the parties conclude a treaty not in a legal vacuum, but against a background of existing rules of international law”.<sup>40</sup> It may be true that the treaty has to be interpreted by reference to the intention of the parties. But the intention of the parties must be interpreted by reference to rules of international law, in so far as their application has not been expressly excluded.<sup>41</sup> Along similar lines, Verdross wrote that “no juridical order can admit treaties between juridical subjects which are obviously in contradiction of the ethics of a certain community”.<sup>42</sup>

According to these *general principles of law*, a treaty comprising unlawful provisions is void (*turpes stipulations nullius esse momenti*).<sup>43</sup> Unquestionably, *general principles of law* are in force under international law;<sup>44</sup> customary law, the history of international arbitration and Article 38(1) of the Statute of the International Court of Justice attest to their legal validity.<sup>45</sup>

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<sup>40</sup> H. Lauterpacht, *The Function of Law in the International Community* (Oxford: Oxford University Press, 1933), p.109.

<sup>41</sup> *Ibid.* p.109. The above considerations, Sir Hersch Lauterpacht observes, will perhaps suggest to the reader a certain criterion for gauging the relative importance of the first two paragraphs of the enumeration of sources of law to be applied by the Permanent Court of International Justice according to Article 38 of its Statute. In particular, he may be inclined to think, not without good reason, that the order in which the first two sources of law have been placed, although technically correct, is not necessarily indicative of the function which they fulfil in the process of bringing about the decision.

<sup>42</sup> A. Verdross, *Forbidden Treaties in International Law*, (1937) 31 *American J.I.L.*, p. 572.

<sup>43</sup> *Corpus Juris Civilis, The Digest of Justinian*, translated by Charles Henry Monro (Cambridge: The University Press, 1904-1909) 26 Pandects, 43,1 and 57 Pandects 17,2.

<sup>44</sup> See Verdross, *Forbidden Treaties In International Law*, *supra*, p.572.

<sup>45</sup> Article 38 (1) (c): “The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: the general principles of law recognized by civilised nations”.

The question which naturally follows is *which* are those international law principles violation of which renders a treaty void ? Answer: the *peremptory norms of international law* otherwise known as *jus cogens*. The basis of these principles may be found in natural law. Article 53 of the Vienna Convention on the Law of Treaties, signed at Vienna in 1969<sup>46</sup>, provides as follows: “*A treaty is void if, at the time of its conclusion conflicts with a peremptory norm of international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character*”.<sup>47</sup> The definition of a peremptory norm is more skilful than appears at first sight. A rule cannot become a peremptory norm unless it is “accepted and recognized (as such) by the international community of states as a whole”, a requirement which is too logical to be challenged. At present very few rules pass this threshold.<sup>48</sup> There is considerable agreement on the *prohibition of the use of force*, of genocide,

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<sup>46</sup> The Vienna Convention is the outcome of the work of the International Law Commission and two sessions of the United Nations Conference on the Law of Treaties held in 1968 and 1969.

<sup>47</sup> Text in *ILM* 8 (1969), 679; *American J.I.L.*, p.875; Brownlie (ed.) *Basic Documents in International Law* (Oxford: Oxford University Press, 1985), p. 388.

<sup>48</sup> Oppenheim, *International Law* Vol. I (9<sup>th</sup> ed. Sir Robert Jennings QC and Sir Arthur Watts QC London: Longman, 1996) p.1292: “There is no general agreement as to which rules have this character”; Sir Arthur Watts, *The International Law Commission*, Oxford: Oxford University Press, 1999 pp. 740-1: “The view that in the last analysis there is no rule of international law from which States cannot at their own free will contract out has become increasingly difficult to sustain, although some jurists deny the existence of any rules of *jus cogens* in international law, since in their own view even the most general rules still fall short of being universal”; H. Lauterpacht’s Report on the Law of Treaties, *YBILC* (1953), ii, pp.154-5; Waldock’s Report, *YBILC* (1963), ii, pp. 52-3; Sinclair, *The Vienna Convention on the Law of Treaties* (2<sup>nd</sup> ed. 1984) pp. 203-41; Rozakis, *The Concept of Jus Cogens in the Law of Treaties* (1976)

slavery, of gross violations of the right of people to self-determination, and of racial discrimination . Others would include the prohibition of torture.<sup>49</sup> The International Law Commission, in its commentary on the draft of the Vienna Convention, identified the Charter's prohibition of the use of inter-State force as a "conspicuous example" of *jus cogens*.<sup>50</sup> The Commission's position was quoted by the International Court in the Nicaragua case.<sup>51</sup> In his Separate Opinion, President Singh underscored that "the principle of non-use of force belongs to the realm of *jus cogens*".<sup>52</sup> Judge Sette-Camara, in another Separate Opinion, also expressed the firm view that the non-use of force can be recognized as a peremptory rule.<sup>53</sup> Despite some reservations, this position seems to be the prevalent at present.<sup>54</sup> In the relevant draft of the International Law Commission, it is indicated that treaties providing for use of force in violation of the principles of the UN Charter, treaties for the commission of acts which constitute crimes under international law, treaties providing for slave trade, piracy *jure gentium*, and genocide, may be cited as examples of treaties

<sup>49</sup> In the *Barcelona Traction Case* 1970, in an obscure *obiter dictum*, the International Court of Justice referred to 'basic rights of the human person', including the prohibition of slavery and racial discrimination and the prohibition of aggression and genocide, which it considered to be 'the concern of all States', without, however, expressly recognizing the concept of *jus cogens*. However, in its Advisory Opinion in the *Legality of Nuclear Weapons Case*, the ICJ did not find it a need to address the question whether universally recognized principles of international humanitarian law (applicable in time of armed conflict) are part of *jus cogens* as defined in Article 51. (35 *I.L.M.*, 1996, p. 828, para.83).

<sup>50</sup> Report of the International Law Commission, 18<sup>th</sup> Session, [1966] II *YBILC* 172, pp. 248-9, 261.

<sup>51</sup> *Nicaragua Case (Merits)* I.C.J. Rep. 1986, p.14

<sup>52</sup> *Ibid.*, p. 247

<sup>53</sup> *Ibid.*, p. 199

<sup>54</sup> See American Law Institute, 1 *Restatement of the Law: The Foreign Relations Law of the United States* 28 (3<sup>rd</sup> ed., 1986; L. Henkin, Chief Reporter).

that conflict with peremptory norms of general international law. Another view appears to be that a rule of *jus cogens* can be derived from custom.

In view of the above, it could be argued that the rule of general international law prohibiting the unilateral use of force, especially as laid down by Article 2(4) of the U.N. Charter, constitutes *jus cogens*.<sup>55</sup> The International Law Commission observes that the prohibition of the threat or use of force undoubtedly constitutes peremptory norm of international law “from which states cannot derogate by treaty arrangements”.<sup>56</sup> Thus, this legal rule cannot be invalidated by an international treaty. A pact of aggression concluded between Arcadia and Numidia against Utopia will not only be stigmatized as a violation of the Charter, as well as general international law, but it will also be void *ab initio*.<sup>57</sup> Authors such as *Guggenheim*, who see international law as dependent upon the consent and agreements of states, reject the peremptory nature of international customary law rules. Contrary to this position, *McNair* writes that states are not capable of evading peremptory norms of international law by the conclusion of special treaties.<sup>58</sup> Article 103 of the U.N. Charter may be cited as

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<sup>55</sup> This peremptory norm may further be said to stem from the principle of state sovereignty.

<sup>56</sup> See U.N. Doc. A/5509, Supplement No. 9, p. 11-12; Watts, *The International Law Commission, ante*, p.741: “Some members of the Commission felt that there might be an advantage in specifying some of the most obvious and best settled rules of *jus cogens*. Examples suggested included (a) a treaty contemplating an unlawful use of force contrary to the principles of the U.N. Charter.

<sup>57</sup> See G.G. Fitzmaurice, “Third Report on Law of Treaties”, [1958] II *Y.B.I.L.C.* pp. 20-40; Dinstein, *War, Aggression, and Self-Defence* (Cambridge: Cambridge University Press, 1994), p.103. 1979 Dig.

<sup>58</sup> See McNair, *The Law of Treaties* (Oxford: Oxford University Press, 1961), p. 215: “There are, however, many rules of customary international law which stand in a higher category and which cannot be set aside or modified by contracting States; it is easier to illustrate these rules than to define them. They are rules which have been accepted, expressly or tacitly, by custom as being necessary to protect the public interests of the society of States or to maintain the standards of public morality recognized by them. For instance, piracy is stigmatized by customary international law as a crime, in the sense that a pirate is regarded as *hostis humani generis* and can lawfully be punished by any state into whose hands he may fall. Can there be any doubt that a

evidence of the existence of a peremptory norm of international law going against the conclusion of treaties providing for unilateral military intervention.<sup>59</sup>

From the above discussion it may be inferred that article IV(2) of the Cyprus Treaty of Guarantee conflicts with *jus cogens* and is legally invalid. As a result, one could argue that Turkey may not claim a right for unilateral military intervention conferred by the Treaty of Guarantee. Even if the Treaty expressly provided for such a right (which is not the case), this would again be in plain violation of peremptory norms of international law. On the other hand, a possible counterargument could be that Cyprus was not a member of the United Nations at the time when the Zurich and London Accords were signed, and so the rules of *jus cogens* as embodied in the U.N. Charter could not have been applicable to the newly born Cyprus Republic. In answer to such possible allegation, it may be asserted that the peremptory rules of international law laid down by the U.N. Charter were nevertheless applicable to all other signatory States to the Treaty of Cyprus; Turkey, Greece, and the United Kingdom were

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treaty whereby two States agreed to permit piracy in a certain area, or against the merchant ships of a certain State, with impunity, would be null and void? Or a treaty whereby two allies agreed to wage a war by methods which neglected the customary rules of warfare?" Also, authors like Georg Schwarzenberger, representing more or less a traditional view of international law, assert that treaties should not conflict with a peremptory norm of general international law (*jus cogens*), as the principle is expressed in the Vienna Convention on the Law of Treaties, 1969: "Notwithstanding the absence in international customary law of rules of *jus cogens* or of any rule requiring compliance of treaties with *jus cogens*, Article 64 of the Vienna Convention of 1969 on the Law of Treaties provides that if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with it becomes void and terminates" (Georg Schwarzenberger and E.D. Brown, *A Manual of International Law*, 6<sup>th</sup> edn., London, 1976, pp. 139-40).

<sup>59</sup> U.N. Charter, Article 103: " In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". The Vienna Convention on the Law of Treaties 1969 provides that the rules which it sets out regarding the rights and obligations of states parties to successive treaties relating to the same subject matter are subject to this Article; see generally Oppenheim, *International Law* Vol. I, *ante*, p. 1216; Goodrich, Hambro and Simons, *Charter of the United Nations* (3<sup>rd</sup> ed., 1969), pp. 614-17, Kelsen *The Law of the United Nations* (1950), McNair, *The Law of Treaties*, *ante*, p. 216-18.

already members of the United Nations Organization at the time, clearly bound by its principles. Of course as soon as Cyprus became a UN member state (in fact long before the 1974 Turkish intervention), the principles of the United Nations –including *jus cogens*– were to be directly applicable.<sup>60</sup>

Another objection to the applicability of *jus cogens* in the case of Cyprus, may be phrased as follows: Article 65 of the Vienna Convention relates to the procedure to be followed with respect to invalidity, termination, withdrawal from, or suspension of the operation of a treaty. The Convention, which incorporates the principle of the *jus cogens* into the law of treaties, makes it mandatory to refer a dispute to the International Court of Justice for a decision.

Article 66 states that if, under paragraph 3 of Article 65 no solution has been reached within a period of twelve months following the date on which the objection was raised, any of the parties to a dispute concerning the application or the interpretation of articles 53 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration. On this basis, one line of argument is put forward (in fact by Necatigil),<sup>61</sup> that in the absence of a ruling

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<sup>60</sup> This may form a separate argument against the legality of intervention provided for by Treaty right. Given the conventional character of the UN Charter, two treaties conflict: the UN Charter itself on the one hand, and the Cyprus Treaty of Guarantee, on the other. In such a case the Charter, considered as 'higher' law, prevails. The supremacy of the Charter over *any* other international agreement is established by Article 103 (UN Charter). Art. 103 refers both to past and future treaties conflicting with the Charter of the UN (on this last point, see McNair, *The Law of Treaties*, *ante*, p.218: "This provision contains no limitation as to time and operates both retrospectively and prospectively"; Oppenheim, *International Law*, Vol. I (9<sup>th</sup> ed. Jennings and Watts), *ante*, p. 1216: "Article 103 is widely accepted as establishing the supremacy of the obligations of the Charter over any other contractual agreement of the members whether past or future, and whether between members *inter se* or with non-member states"; Oppenheim-Lauterpacht, *International Law* Vol. I (7<sup>th</sup> ed. H.Lauterpacht) *ante*, p.807.

<sup>61</sup> See Necatigil, *The Turkish Position in International Law*, *ante*, p.118.

of the International Court, a treaty, such as the Treaty of Guarantee, should not be presumed to be invalid as being in conflict with a peremptory norm of international law. In other words, the presumption should be in favour of the validity of a treaty until there is a judicial ruling to the contrary. This procedure has not been invoked by the Republic of Cyprus.

*(ii). Treaties reached under Duress or Inequitable Treaties*

The legal position of the Cyprus Government, as later expressed in the United Nations by Mr. Kyprianou, then Foreign Minister, was that the “Constitution was foisted on Cyprus... The combined effect of the Constitution and the Treaty of Guarantee is that a situation has been created whereby the constitutional and political development of the Republic has been arrested at its infancy and the Republic as a sovereign State has been placed in a strait jacket”.<sup>62</sup> The Minister of Foreign Affairs also argued that the treaties “were imposed on the Cypriot people (thus) making the international legal doctrines of unequal, inequitable and unjust treaties relevant”. The resulting legal conclusion, according to Mr. Kyprianou, was that the 1960 Agreements were “unequal and inequitable treaties, as a result of which they cannot be regarded as anything but null and void.”<sup>63</sup>

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<sup>62</sup> UN SCOR, 1098<sup>th</sup> meeting, 5 Aug., 1965, para.20 (1964).

<sup>63</sup> UN SCOR, 1235<sup>th</sup> meeting, para.25 (1964).

According to Oppenheim, real consent is a condition of the validity of a treaty.<sup>64</sup> An expression of consent procured by the coercion of its representative through acts or threats directed against him is generally agreed to be without legal effect, and Article 51 of the Vienna Convention on the Law of Treaties so provides: the Treaty is void not merely voidable.<sup>65</sup> Any treaty signed by a state under pressure exerted by another state is void.<sup>66</sup> Article 32(a) of the *Harvard Draft Convention on the Law of Treaties*, states: 'Duress involves the employment of coercion...If the coercion has been directed against a person signing a Treaty on behalf of a State, and of with knowledge of this fact the treaty signed has been ratified by that State without coercion, the treaty is not to be considered as having entered into by the State in consequence of duress'.<sup>67</sup>

The argument of the Cyprus government implies that unequal treaties-agreements imposing burdens on states in unequal bargaining positions- are in themselves void. However, the Cyprus Government representatives never

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<sup>64</sup> *Oppenheim-Lauterpacht, International Law, ante*, Vol. I, pp.802-803; Oppenheim, *International Law* Vol. I (9<sup>th</sup> ed. R.Jennings and A.Watts), *ante*, London: Longman, 1996), p. 1290.

<sup>65</sup> See Oppenheim, *International Law, supra*, p.1290; H. Lauterpacht, *Private Law Sources and Analogies of International Law* (London 1927) p. Brownlie, *International Law and the Use of Force by States, ante*, pp. 404-6; Watts, *The International Law Commission, ante*, p.737: "There is general agreement that acts of coercion or threats applied to individuals with respect to their own persons in their personal capacity in order to procure the signature, ratification, acceptance or approval of a treaty will unquestionably invalidate the consent so procured".

<sup>66</sup> See relevant discussion in *Oppenheim-Lauterpacht, ante*, Vol. 1, p. 802; H. Lauterpacht, *Private Law Sources and Analogies of International Law, supra* p. 74; McNair, *The Law of Treaties, ante*, p. 209, (1927) 26 *MLR*, pp. 139-151; Brierly, (1936) 58 *Recueil des Cours*, pp. 203-210.

<sup>67</sup> Harvard Law School Research on International Law, *ante*, p.1148; Grotius maintained that 'the law of nature required that there ought to be freedom of choice by the parties, and that their consent should not be induced by fear' (*De jure belli ac pacis, ante*, Book II).

pressed this position to its logical conclusion, that the 1960 settlement was void.<sup>68</sup>

### *(iii) Sovereign equality*

Article 2(1) of the Charter of the United Nations declares that 'the Organization is based on the principle of sovereign equality of all its members'. It has been stated that the obligation of the Treaty of Guarantee 'to keep unalterable in perpetuity the constitutional structure and order' purports to deprive Cyprus of one of the fundamental requirements of a state as an integral person, internal independence and territorial supremacy'.<sup>69</sup> This point is further elaborated; article IV of the Treaty of Guarantee conflicts both with customary international law and with article 103 of the UN Charter by violating the principle of 'sovereign equality' as laid down in article 2(1).<sup>70</sup>

Indeed, the Republic of Cyprus does not have the capacity to amend the fundamental or so called 'Basic Articles' of its Constitution. However, absence of power of a state to change its constitution may not affect its sovereign

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<sup>68</sup> Ehrlich, *International Crises and the Role of Law, Cyprus 1958-1967* (Oxford, 1974), p.48: "In part, the logical reason may have been concern that Turkey and the United Kingdom would respond that if the settlement was invalid then Cyprus was still a British colony. But no one seriously urged that position; the Republic of Cyprus had been a member of the United Nations for over three years and its 'sovereign equality' was recognized by the Charter. Much more important, there were strong pressures from at least Turkey and England, and probably Greece as well, against abrogation of all the Accords.

<sup>69</sup> C. Tornaritis, *Cyprus and its Constitutional and Other Legal Problems* (Nicosia, 1977), pp. 58-59.

<sup>70</sup> Tornaritis, *ibid.*, pp. 42, 60. See also A. J. Jacovides, *Treaties Conflicting with Peremptory Norms of International Law and the Zurich-London Agreements* (Nicosia, 1966), pp.15-28.

equality. Also, absence of such power is not regarded as being incompatible with the concept of independence, a necessary requirement for statehood.<sup>71</sup>

By now, there should be no doubt that unilateral military intervention provided for, even expressly, by treaty right is not in accordance with public international law principles.

### ***(3)Did the Treaty of Guarantee purport to authorize military action?***

The proper interpretation of certain expressions in the wording of Art. 4 is the subject of great controversy. 'Representations' may simply be a request to comply with a duty, but they could also take the form of a threat of violence, as and when the duty bound does not behave as it should.<sup>72</sup>

The word 'measures' is also ambiguous; as Articles 41 and 42<sup>73</sup> of the United Nations Charter demonstrate, it may mean actions of a peaceful although coercive nature, as well as those which involve the use of force.<sup>74</sup>

Terminological differences culminate over the interpretation of the right of each of the guaranteeing powers *to take action*. A vexed question remains whether the phrase *to take action* may also imply military action. The Greek side, as one would easily guess, answers in the negative. The Turkish side, of course, in the affirmative. The former is of the view that nothing in the Treaty warrants a

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<sup>71</sup> See Crawford, (1976) 48 *British Year book of International Law*, p.93, at 123-4.

<sup>72</sup> N.Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity* (Martinus Nijhoff Publishers, 1985) p. 128.

<sup>73</sup> UN Charter, Article 42: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

<sup>74</sup> Ronzitti, *supra* p. 128; Necatigil, *supra* p.131.

forcible intervention by Turkey. Criton Tornaritis Q.C., formerly Attorney-General of the Cyprus Republic holds that irrespective of the validity of the Treaty of Guarantee, from the preamble and the provisions of which it appears that the guaranteeing powers were aiming at the protection of their own interests than the interests of the Republic of Cyprus, its Article IV invoked by Turkey does not grant the right to of armed intervention to the guaranteeing Powers.<sup>75</sup> Necatigil, says that the second paragraph of the article in question, by providing for the right of any of the guaranteeing powers *to take action*, is stronger in terms than the first paragraph.

If only unilateral intercession was envisaged, then there was no reason why the second paragraph should not expressly speak of the right to unilateral intercession or... diplomatic representation. Upon this rationale, one could conversely that neither a right to unilateral military action is *expressly* provided for by Article IV(2).<sup>76</sup>

Thus, great difficulty arises over ascertaining the intentions of the Treaty drafters which becomes even more acute in view of the very limited sources of information on the matter. The Treaty of Guarantee was initialled at the end of the Zurich Summit between Greece and Turkey of 5-11 February 1959; its content, however, was disclosed only after the London Conference.<sup>77</sup> The

<sup>75</sup> Tornaritis, Whether any resort to armed intervention in Cyprus would be justified either under the Charter or under customary international law, (1964) II *Cyprus Today*, p.2.

<sup>76</sup> The *Textual* or “*plain meaning*” approach to Treaty Interpretation does not seem to be helpful in this case. It should be noted, however, that the International Court of Justice has more than once pronounced that the textual approach is regarded by it as established law (see, for instance, the *Admissions* case, I.C.J. Reports 1948, p. 57, and the *Competence* case, I.C.J. Reports 1950, p. 4).

participants did not draw up an official record of the summit and the information available is unfortunately little. However, Stephen Xydis, shades light to the events. His account is the outcome of interviews with the Greek representatives<sup>78</sup>. According to Xydis, Turkey submitted a draft to the Greek counterpart, probably after consulting the United Kingdom. The draft allowed the right to take unilateral action, without having previously determined if a common or concerted action was in fact possible.

“At a certain point of the negotiations”, Xydis goes on, “the Turkish side wanted specific reference to the right of resort to ‘military’ action for the purpose of restoring the state of affairs established by the treaty. The Greek side, however, contended that resorting to military action was prohibited by the U.N. Charter and was permissible only under a decision of the Security Council, if at all. Finally, the text was drawn up in its present form, with the Turks always having possible resort to the *ultima ratio* in mind, in contrast to the Greeks who did not”.<sup>79</sup>

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<sup>77</sup> See *Conference on Cyprus: Documents signed and initialled at Lancaster House on February 19, 1959*, Cmnd.679, Miscellaneous No. 4, London, HMSO, 1959, pp. 5, 10.

<sup>78</sup> S.G. Xydis, *Cyprus reluctant Republic* (London 1973)

<sup>79</sup> *Ibid.* pp. 409-410. On this point see also D. Bitsios, *Cyprus: The Vulnerable Republic* (1975), p.102; to the same effect, of interest is a report sent by Averoff, Foreign Minister of Greece, to Prime Minister Karamanlis, briefing him on the points that had arisen during the preparatory London talks: ‘ The most serious point that had arisen concerned paragraph 2 of the Treaty of Guarantee, which provided that each of the guarantors could act unilaterally in order to safeguard the constitutional order if the other guarantors did not agree as to the manner in which they should act. At the meeting of 12 February, obviously after consulting legal experts, the point was raised by the British that this provision was incompatible with the UN Charter and perhaps would prevent Cyprus from becoming a UN member. Mr Zorlu, Mr Palamas, Greek expert on UN matters, and Mr Averoff argued that there was no incompatibility. Mr Averoff declared, however, that should any article of the Zurich Agreements create difficulties for the entry of Cyprus to the UN it should be amended in such a way as to remove the difficulty’ (*Story of Lost Opportunities*, ed. p. )

More illuminating perhaps are the Security Council Debates of 1963 and 1974.

In 1963, Turkey militarily intervened in Cyprus allegedly to protect the lives of the Turkish Cypriots who had engaged in a bloody conflict against the Greek Cypriots.<sup>80</sup> A ‘Joint Peace-Making Force under British command (to its credit) operated in Cyprus towards the end of 1963 and the beginning of 1964. It was composed of contingents from the three Guarantor States. This Peace-Making Force had the task of helping the Cypriot Government in its efforts to bring about peace between the two communities. In critical debates of 1964 on the Cyprus question, representatives of Turkey at the United Nations repeatedly stated that their government’s freedom of action derived from the Treaty of Guarantee, whose validity was incontestable.<sup>81</sup> The Cypriot Government position was stated by the then Foreign Minister, Mr. Spyros Kyprianou. He said that his government firmly rejected Turkey’s interpretation of article 4 of the Treaty of Guarantee.<sup>82</sup> More interesting is the view of the Greek representative. In answer to the Cyprus representative, who demanded a declaration from the Guarantor States on the question whether the treaty gives the right of unilateral military intervention, he said: ‘Do we the Greek government- think that this article gives us the right to intervene militarily, and unilaterally without the authorization of the Security Council? The answer is

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<sup>80</sup> More of the international dimensions of the inter-communal strife, see below, chapter VI.

<sup>81</sup> 19 UN GAOR 29<sup>th</sup> Session, 23 Sept. 1974 (A/PV 2793), paras.123-5.

<sup>82</sup> 19 UN SCOR, 27 Feb. 1964, S/PV 1098, para.16. On another occasion, he said that the Treaty of Guarantee contains provisions which are contrary to the UN Charter and is consequently void (20 UN SCOR, 5 Aug. 1965, S/PV 1235, para.25).

“no”.<sup>83</sup> Even more interesting and, indeed, revealing was the statement of the British government representative. Firstly, he said that “it was not under article IV of the Treaty of Guarantee that the United Kingdom Government sent its troops to Cyprus. We sent our troops because they were asked for and because they were generally considered to be necessary and helpful in preventing further serious strife.”<sup>84</sup> Furthermore, he emphasised ‘the action provided for in article IV(2) of the Treaty of Guarantee can only be taken in the event of a breach of the provisions of the Treaty, that is, in circumstances in which there is a threat to the independence, territorial integrity or security of the Republic of Cyprus as established by the Basic Articles of its Constitution; a right of intervention for this purpose, and for this purpose alone, is provided for in the Treaty. But the question of *military* intervention under article IV of the Treaty of Guarantee *would never arise if all concerned played their part as they have undertaken to do* (emphasis added).’<sup>85</sup> This very statement is quite clear. If the attitude of all the States concerned was in accordance with the commitments undertaken resort to force would not be necessary. In case this should not happen, the problem arises of restoring the state of affairs created by the Treaty of Guarantee, if need be by measures which might comprise the use of force.<sup>86</sup>

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<sup>83</sup> 19 UN SCOR, 1097<sup>TH</sup> meeting, 25 Feb. 1964 (S/PV 1093), para.168. In his view, the Turkish military intervention was aimed at invasion and, in the long run, the partition of the island.

<sup>84</sup> S/PV. 1098, February 27, 1964, pp. 48-50. See also E. Lauterpacht, *British Practice in International Law*

<sup>85</sup> *ibid.* pp.42-46. The representative of the British Government interestingly went on to say that ‘the legal effect of the provisions of article IV of the Treaty of Guarantee, as in the case of other legal provisions, will depend on the facts and circumstances of the situation in which they are invoked, and there is nothing in article IV to suggest that action taken under it would necessarily be contrary to the United Nations Charter’.

<sup>86</sup> See N.Ronzitti, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity*, *ante*, p. 124.

However, it is, I consider, necessary to refer in this regard to the legal advice given by Sir Elihu Lauterpacht to the Cyprus Government after a consultation in London on 25 January 1964.

Lauterpacht considers that the Treaty of Guarantee is valid. He does not, however, consider that the Treaty of Guarantee gives the right to *armed intervention*.<sup>87</sup>

On 20 July 1974, during the debates before the Security Council, the Greek Cypriot representative put forward that Turkey's action contravened the treaty itself, as well as the UN Charter. He argued that the right *to take action* denotes only the application of peaceful measures and, furthermore it does not include armed aggression, which is forbidden to member states, except in case of self-defence.<sup>88</sup> The Turkish representative, on the other hand, stressed that the Treaty of Guarantee gave Turkey the right to take military action, aiming at establishing constitutional administration in the island and protecting the rights of the Turkish Cypriots<sup>89</sup>. The Greek government's attitude was less clear and partly contradicted the 1964 declaration. It did not maintain that Article IV(2) did not allow the right of intervention. Instead, the Greek representative pointed out that for unilateral action to be considered lawful, it would have to take place

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<sup>87</sup> Eli Lauterpacht, *Written Opinion*, 1964 (the Opinion may be found in G. Clerides, *Cyprus: My Deposition, ante*, Appendix f pp. 386-7)

<sup>88</sup> UNSC S/PV 1781; UN Monthly Chronicle 1974, vol. xi, No.8, 21-3. He proceeded to state that even though it could be assumed that the treaty gave a right to take military action, this right could be resorted to only for the protection of the Constitution.

<sup>89</sup> Necatigil, *The Turkish Position in International Law, ante*, p113.

only after the collapse of negotiations between the three Guarantor States and would have to have the sole aim of re-establishing the status quo ante.<sup>90</sup> One could therefore allege that it would seem the Greek government did not deny existence –under Article VI(2)- of a right of military intervention, but, rather, that it contested its vindication in the particular case.<sup>91</sup>

The United Kingdom did not take up a position with regarding the content of of Article IV(2) of the Treaty of Guarantee.

Nevertheless, great light is shed on the British position by the debates before the House of Commons, particularly by a report prepared by the Select Committee appointed to conduct an examination the Cyprus situation.<sup>92</sup> The Foreign Secretary replied in the following manner to the Members of Parliament who asked him whether, under Art. IV(2), the United Kingdom had the right to use force as and when there was a breach of the Treaty of Guarantee: 'I dare say legally we had'.<sup>93</sup> From a careful reading, though, of the Select Committees records, the Foreign Minister seemed to hesitate; not because he was not of the opinion that Article IV of the Treaty of Guarantee gave a right to military intervention, but because he doubted if it was wise from a political standpoint to use such a right.<sup>94</sup> The parliamentary Committee stated: 'Britain had a legal

<sup>90</sup> U.N. Doc. S/PV.1781, 20 July 1974, p.82 (where it is stated: 'neither of those prerequisites has been fulfilled...exhaustion of consultations did not precede the Turkish attacks nor were Turkey's plans aimed at the status quo ante, but, obviously, at the permanent occupation of large portions of Cypriot territory').

<sup>91</sup> See N.Ronzitti *ante*, p.121.

<sup>92</sup> See, Report from the *Select Committee on Cyprus* together with the *Proceedings of the Committee*, Minutes of Evidence and Appendices, Session 1975- 76, Ordered by the House of Commons to be printed, 8<sup>th</sup> April 1976, H.M.S.O., London.

<sup>93</sup> *Ibid.* However, it has to be noted that the U.K., according to the Report of the *Parliamentary Debates*, would only intervene in order to overthrow the Sampson regime and protect the lives of the Turkish Cypriots.

right to intervene, she had a moral obligation to intervene, she had the *military capacity* to intervene. She did not intervene for reasons which the government refuses to give.<sup>95</sup> In a recent House of Lords Debate on the Cyprus question, Lord Caradon referred to article IV of the Treaty of Guarantee and said these: 'Having signed the treaty with the authority of Her Majesty's Government I have naturally watched subsequent events in the island of Cyprus with dismay and shame that we should have given an undertaking and have failed so shamefully to carry it out'.<sup>96</sup>

Apart from the United Nations debates and the United Kingdom Parliamentary Papers so far considered, the available *travaux préparatoires* are of little help on ascertaining the intentions of the Treaty drafters concerning whether intervention must be by peaceful means alone or it may consist of measures amounting to the use of force. Even so, there exist documents of considerable gravity with regard to this point. During discussions by the London Joint Committee<sup>97</sup>, of one particular annex, namely, Annex C on the status of forces, the Greek delegation proposed the inclusion of a provision dealing with the settlement of disputes. The Cyprus Official Committee, in which the views of

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<sup>94</sup> It may be inferred that several statements (the present one included) of the United Kingdom, although not without a degree of ambiguity, lead one to believe that, in the eyes of the UK, Article IV permits military intervention on the part of the Guarantor States.

<sup>95</sup> Report from the *Select Committee on Cyprus* together with the *Proceedings of the Committee*, Minutes of Evidence and Appendices, Session 1975-76, *supra*, p. x (emphasis added).

<sup>96</sup> *Parliamentary Debates (Hansard)*, *House of Lords* (Official Report), vol. 44, No. 80, 20 Apr. 1983, 618.

<sup>97</sup> The London Joint Committee, on which the United Kingdom, Greece, Turkey, the Greek-Cypriot and Turkish Cypriot communities were represented, was engaged in drafting the Treaty of Establishment of the Republic of Cyprus.

Whitehall Departments are coordinated, considered the matter and concluded that the most satisfactory proposal was that a disputes article covering the whole Treaty and its Annexes should be included in the Treaty of Establishment.<sup>98</sup> following is the of the said article:

*“Any question of difficulty as to the interpretation or application of the provisions of the present Treaty shall be settled as follows:*

*Any question or difficulty that may arise over the application or operation of the military requirements of the United Kingdom, or concerning the*

*provisions of the present Treaty in so far as they affect the status, rights and obligations of United Kingdom forces or any other forces associated with them under the terms of this Treaty, or of Greek, Turkish and Cypriot forces, shall ordinarily be settled by negotiation between the tripartite Headquarters of the Republic of Cyprus, Greece and Turkey and the authorities of the armed forces of the United Kingdom”.*<sup>99</sup> So, if any such controversy came about (and actually did come about in the subsequent years) the interested parties would be under an obligation to settle their differences by means of peaceful negotiation and therefore resolve any difficulty regarding interpretation of Treaty provisions on armed forces rights and obligations. It may be deducted that the need for proper interpretation of Art. IV(2) should be resolved in this context. Further, the above mentioned article provides a mechanism by which a tribunal is set up

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<sup>98</sup> See letter from Sir Gerald Fitzmaurice, Legal Adviser to the Foreign Office, to the Rt. Hon. Sir Reginald Manningham-Buller, Q.C., M.P., Attorney-General. {*Foreign Office* (F.O.) 371/152871, Public Records Office}.

<sup>99</sup> F.O. 371/15289, Public Records Office.

in order to decide on matters which negotiation cannot settle.<sup>100</sup>

Unfortunately, the provisions of this article have not been complied with by Turkey either before the events of 1963-67 or her intervention in Cyprus 1974.

Furthermore, since the textual or teleological methods of interpretation do not seem to be that helpful in the present case, the principle of effectiveness may be applicable. According to the principle of effectiveness (*et ret magis valeat quam pereat*), the words 'take action' should logically be interpreted in such a way as not to conflict with the UN Charter provisions and be likely to cause practical difficulties to the Constitutional structure, thus making it unworkable.

Be the case what it may, it must be noted at this stage that a cardinal mistake<sup>101</sup> was committed by the Greek side at the preliminary discussions in London between the Foreign Ministers of Greece, Turkey, and the United Kingdom, prior to the signature of the 1959 Accords. Had the Greek side supported the view of the British side that Article 2 of the Treaty of Guarantee was incompatible with the UN Charter, it would have been possible to define the term "take action" in such a way as clearly to exclude military intervention. This would have been necessary in order to make the treaty compatible with the

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<sup>100</sup> *Ibid.*, 'Any question or difficulty as to the interpretation or application of the provisions of the present Treaty on which agreement cannot be reached by negotiation between the military authorities in the cases described above, or by negotiation between the parties concerned through the diplomatic channel, shall be referred for final decision to a tribunal appointed for the purpose, which shall be composed of four representatives, one each to be nominated by the United Kingdom Government, the Greek Government, the Turkish Government, the Government of the Republic of Cyprus, together with an independent chairman nominated by the President of the International Court of Justice.

UN Charter.<sup>102</sup> In fact, the Legal Department of the UN, when the Treaty was subsequently deposited with the UN Secretariat, gave an opinion that the term “take action” could not be interpreted to mean military action. Such an interpretation would make the Treaty compatible with the UN Charter, and by virtue of its provision that in the event of a conflict between the provisions of the Charter and any article of the Treaty, the Charter prevails, military intervention would be ruled out.

President *Clerides* summarized the matter quite pointedly and need be cited: *“Legally, a definition excluding the meaning of military intervention was not necessary, but politically it was imperative. The political history of the world shows that all aggressors attempt to allege a justifiable right for their act of aggression. A treaty which granted the right of unilateral “action” could be used to create confusion, and during that confusion temporarily justify actions which otherwise would have been manifestly an undisputed act of aggression. This is exactly what happened in 1974, when the Turkish forces invaded Cyprus, after the military coup of the Greek junta, which destroyed the constitutional order of the Cyprus Republic”*.<sup>103</sup>

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<sup>101</sup> This grave mistake is well spotted by Mr Clerides in his *Cyprus: My Deposition*, ante, p.75.

<sup>102</sup> *ibid.* p.75.

<sup>103</sup> *ibid.* p.75; As pointed out by a Greek-Cypriot scholar in international relations, “the particular circumstances of 1974 had made it necessary for Turkey to intervene, and her initial intervention was a legal one” (M. Evriviades, 1975 10 *Texas International Law Journal*, p.264).

#### **(4) Criteria set by the Guarantee Treaty and the conduct of Turkey**

An answer to the crucial question whether Turkey could, indeed, justify her military intervention on the basis of Art. IV(4) of the Cyprus Treaty of Guarantee is now imperative. Let us assume that the Treaty of Guarantee did purport to authorize military action (though this may not be the case).

By Art. 4, the Treaty of Guarantee expressly provides for joint consultations between Greece, Turkey and the U.K., before any action is taken following such a Treaty. The machinery of joint consultations should have been put in practice and only on a failure of such consultations could unilateral action have been undertaken. Obviously, this machinery was not initiated. As a matter of undeniable fact, the Turkish Premier, Mr Bulent Ecevit, flew to London on 17 July 1974 to seek British coordination under the Guarantee Treaty. It was made clear that if Britain was unwilling to act (which was the case) Turkey was in a position to intervene on her own.<sup>104</sup> As Mr. Callaghan, the British Foreign Secretary, said at the Geneva Conference, before Greece could be brought into the picture as guarantor, Turkey undertook unilateral action in Cyprus.

The communication of views between the Turkish and Greek Governments via the mediation initiative of Mr. Sisco, the U.S. Under-Secretary of State, cannot be alleged to amount to the consultations envisaged by Art. 4.

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<sup>104</sup> Necatigil, *The Turkish position in International Law*, ante p.94

On another point, in these terms spoke the United Kingdom representative during a Security Council debate on the situation in Cyprus, February 1964, in answer to the question of the Cyprus government delegate: “Is it the view of the Governments of Greece, Turkey and the United Kingdom that they have a right of military intervention under the Treaty of Guarantee in view, in particular, of the Charter?”<sup>105</sup> Here is what he said: *“I should like to draw the attention of members of the Council to the nature of the right provided for in article IV (2) of the Treaty of Guarantee and the limitations placed on the exercise of that right by that article. The right which is reserved to the guarantor powers is not an unlimited right of unilateral action but-and here I quote- “the right to take action with the sole aim of re-establishing the state of affairs created by the Treaty”.*<sup>106</sup>

It follows that the extensive nature of the Turkish intervention was itself in contravention to the Treaty of Guarantee provisions, particularly Article IV(2).<sup>107</sup> It may also be said to have been contrary to Article II, by which Turkey, Greece and the United Kingdom undertook ‘to prohibit activity aimed at promoting directly or indirectly either union of Cyprus with any other State or *partition* of the island’. The de facto military occupation and division of Cyprus until nowadays clearly violates the above provision.

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<sup>105</sup> U.N. Security Council, 1097th Meeting, Provisional Verbatim Record, S/PV. 1097.

<sup>106</sup> Lauterpacht, *British Practice in International Law*, *ante*, pp. 8-9.

<sup>107</sup> The area of the so called “Attala line” comprises the whole of the northern part of Cyprus, covering 37% of the territory of the Republic. The most important natural resources, most of the orchards of olive groves, the most important mines, ports including the main ones of Famagusta, Kyrenia and Karavostassi, the main water

Even if there was initial justification for military intervention by Turkey (and, indeed there was), such justification had faded away on Mr. Clerides' accession to power in Cyprus (and the dismissal of the dictatorial regime). Clerides represented the reestablishment of legality and Constitutional Order. But, even if such a proposition is objected to, once the Geneva Conference of the Guarantor Powers was convened in 25<sup>th</sup> July 1974, and diplomatic initiatives were engineered in the context of the Treaty of Guarantee itself for the re-establishment of constitutional government, the Turkish armed intervention should perhaps have come to an end. Further, at the second round of the Geneva talks, when the United Kingdom was satisfied with the assurances given by the Greek Cypriot delegation for fair resolution of the Cyprus problem, and security of the Turkish Cypriots, the Turkish military forces should have terminated their operations.<sup>108\*</sup>

Further, it would not be a paradox to classify the Treaty of Guarantee as a Regional Arrangement for the maintenance of peace and security, which is first among the purposes of the United Nations Organization.<sup>109</sup> So Turkey could rely upon this argument for unilaterally using force in Cyprus 1974. A counterargument lies in Article 53 of the UN Charter, which provides that 'no

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resources, the most breathtaking archaeological sites and tourist centres are included within the area occupied by the Turkish forces.

<sup>108</sup> On the Geneva Conferences, see generally Clerides, *Cyprus: My Deposition, ante*; Necatigil, *The Turkish position in International Law, ante*.

<sup>109</sup> See Necatigil, *The Turkish Position in International Law, ante*, p.126.

enforcement action shall be taken under regional arrangements or regional agencies without the authorization of the Security Council'. Security Council authorization for Turkish intervention was never given.<sup>110</sup>

### ***(5) The subsequent actions of Turkey***

Mention has already been made to the extensive nature of the Turkish intervention.<sup>111</sup> However, it is necessary to explore a bit more whether Turkey's subsequent actions may be justified, even if the initial Turkish intervention was rendered lawful by the Treaty of Guarantee. The answer to this question seems to be in the negative because of the following.

Firstly, despite the fact that the Turkish Government was assured at the Geneva Conference for the reestablishment of constitutional government and the safety of the Turkish Cypriots, Turkey proceeded to a second round of military action. Explaining the reasons which, in his view, necessitated the second operation, the Turkish Premier said:

*"Having reached the conclusion that there is no use but only harm in maintaining the appearance of continuing a conference that is being internationally obstructed and the deliberations of which are unilaterally violated, Turkey has considered it her duty to fulfil by herself her prerogatives*

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<sup>110</sup> See MacDonald, International Law and the Conflict in Cyprus, 1981 *Canadian Yearbook of International Law*, p. 29: "I conclude that the 1974 invasion of Cyprus was in contravention of international law; for for an invasion to be legal it must be consistent with the provisions of the United Nations Charter, whether express or implied; compliance with a treaty, on its own, is insufficient to render an invasion consistent with Article 2(4) of the Charter.

*and duties as a guarantor power, and her responsibilities concerning the independence of Cyprus as well as the rights and security of the Turkish Cypriot people.*

*The action now undertaken by Turkey is at least as rightful and legal as the action she started on July 20, as a guarantor power and strictly within the bounds of her authority as such power, for the same conditions exist today as on the 20<sup>th</sup> July – conditions that formed the basis of the rightfulness and legality of her action. This new Turkish action is as legitimate as Turkey's initial move and is its logical conclusion".<sup>112</sup>*

In view of the preceding discussion in this section, the second phase of the armed campaign of Turkey was not *as rightful and legal as* her action of July 20.

The Third Report of the U.K. House of Commons Foreign Affairs Committee 1987 attests to the validity of this assertion.<sup>113</sup>

Secondly, The mass killing and brutal treatment of innocent Greek Cypriot civilians during the hostilities, the uprooting of others from their homeland and subsequent reduction to the tragic status of refugee, the unascertained fate of missing persons, the destruction of cultural property, and the occupation until

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<sup>111</sup> See p. 36 above.

<sup>112</sup> Quote from the Turkish Prime Minister, Mr Ecevit's statement on 14 August 1974 (*Hurriyet* and *Milliyet* newspapers, 15 August 1974); see also Mr Ecevit's letter to R.Denktaş, leader of the Turkish Cypriot community, in R.Denktaş, *The Cyprus Triangle, ante*, Appendix 13.

<sup>113</sup> *Parliamentary Debates (Hansard)*, House of Commons, No.23, 1986-87, para. 99: "it is our view –evidently shared by most of the international community- that the extention and entrenchment of the Turkish occupation of northern Cyprus in August 1974 and subsequently, was illegal both in terms of the 1960 Treaties and in terms of the UN Charter and general international law".

nowadays of large part of the Cyprus Republic territory rather seem to argue against a valid invocation of the Treaty of Guarantee Article VI (2) by Turkey. Whatever the answer to the question whether the Turkish intervention was rendered lawful by the Treaty of Guarantee, it needs saying that the humanitarian law of armed conflict as well as the European Convention on Human Rights still apply to the Turkish invasion and subsequent military presence in Cyprus.

Thirdly, the subsequent establishment of the so called Turkish Federated State of Cyprus (TFSC) in 1975, and of the “Turkish Republic of Northern Cyprus” (TRNC) in 1983, both acts condemned by the international community,<sup>114</sup> rather suggest that the real aim of the Turkish intervention was not so much the restoration of constitutionalism or the protection of the Turkish Cypriot community;<sup>115</sup> it could probably be the case, that the intervention was also dictated by other considerations.

#### ***(6 ) Stance taken by the International Community***

It is noteworthy that the Parliamentary Assembly of the Council of Europe, by Resolution 573 of 29 July 1974, affirmed that the Turkish military intervention

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<sup>114</sup> The U.N. Security Council in Resolution 367/1975 “regrets the unilateral decision of 13 February 1975 declaring a part of the Republic of Cyprus would become Federated Turkish State”. The U.N. General Assembly Resolution 37/253 of 20 May 1983 reads: “The General Assembly deplores the fact that part of the territory of the Republic of Cyprus is still occupied by foreign forces...demands the immediate withdrawal of all occupation forces from the Republic of Cyprus; considers that the *de facto* situation created by the force of arms should not be allowed to influence or in any way affect the solution of the problem of Cyprus”.

<sup>115</sup> See MacDonald, International Law and the Conflict in Cyprus, *ante*, p.37: “ It is concluded that, even if there is jurisdiction in customary international law or in the provisions of the Charter for the intervention in 1974, or

was the exercise of a right emanating from an international Treaty and the fulfilment of a legal and moral obligation. However, the member states did not maintain this view after the second round of military operations.

The Resolutions of the U.N. Security Council and General Assembly indicate that the Turkish invasion was an illegal act. Mention shall be made only to some of them which characteristically stress the unlawfulness of the military intervention.<sup>116</sup> Security Council Resolution 353 (1974), passed on the 20<sup>th</sup> of July 1974, reads as follows:

- “1. Calls upon all States to respect the sovereignty, independence and territorial integrity of Cyprus;*
- 2. Calls upon all parties to the present fighting as a first step to cease all firing..;*
- 3. Demands an immediate end to foreign military intervention in the Republic of Cyprus that is in contravention of paragraph 1 above;”*

Subsequent Resolutions of 1974 have confirmed Resolution 353. In Resolution, the Security Council, having made reference to Res. 353, stated “*that all States have declared their respect for the sovereignty, independence and territorial integrity of Cyprus*”.

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for a continued presence in Cyprus, such continued presence over a protracted period of time is rendered legally doubtful by the Security Council resolutions adopted in regard to Cyprus since 1974”.

<sup>116</sup> See the Resolutions of the Security Council 353(1974) of the 20<sup>th</sup> July 1974, 354(1974) of the 23<sup>rd</sup> July 1974, 355(1974) of the 1<sup>st</sup> August 1974, 358(1974), 359(1974) of the 15<sup>th</sup> August 1974, 360(1974) of the 16<sup>th</sup> August 1974, 361(1974) of the 30<sup>th</sup> August 1974, 364(1974) of the 16<sup>th</sup> December of 1974.

The Geneva Conference at its first phase sought to find ways and means for carrying the above resolutions into effect, especially the Resolutions 353(1974) and 354(1974) for attaining a cease fire agreement. It has, however, exceeded its authority in that, though the Security Council demanded *the immediate withdrawal* of the Turkish

The Security Council by Resolution 365 (1974) adopts General Assembly Resolution 3212<sup>117</sup>, and by 367 (1974) reaffirms 365 of the Security Council and General Assembly's 3212. Resolution 367 includes the following:

*“Calls once more on all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and urgently requests them, as well as the parties concerned, to refrain from any action which might prejudice that sovereignty, independence, territorial integrity and non-alignment, as well as from any attempt at partition of the island or its unification with any other country;”*

It is noteworthy that, although the United Nations Resolutions do not expressly go against the *Turkish invasion*, they amply illustrate that the intervention was an illegality. Further, it should be stressed that the words “calls upon”, used in the Resolutions, have, according to some scholars, binding force.<sup>118</sup>

## **CONCLUSION**

In spite of the above, it seems difficult to me to overlook the, admittedly, strong arguments advocating for the legality of armed intervention accorded by treaty

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forces, in the Geneva Conference the three Foreign Ministers of Greece, Turkey and the United Kingdom were content in agreeing that measures should be taken for their *reduction by stages*.

<sup>117</sup> UN General Assembly Resolution 3212 (1974): “1. Calls 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. Urges the speedy withdrawal of all foreign armed forces and foreign military personnel from the Republic of Cyprus and the cessation of all foreign interference in its affairs;”

right, especially the ones premised upon the principles of *pacta sunt servanda* and, perhaps more importantly, *volenti non fit injuria*. The latter surely indicates the vital role played by states themselves in the determination of their own fate and the development of international relations. Simultaneously, one should not overlook the particular and complex circumstances surrounding the 1960 Zurich-London Agreements, mainly the various interests of the parties to the Cyprus Treaty. Nevertheless, having regard to the equally powerful arguments militating against unilateral armed intervention envisaged by treaty, it may be *clearly concluded* that Turkey should not have exercised a right of intervention in Cyprus, 1974; however, such a proposition could remain subject to criticism, in view of the peculiarities of the Cyprus issue.<sup>119</sup>

It should be noted finally that the above discussion is especially important in view of the contemporary effort to reach a peaceful settlement to the Cyprus issue. In what way is it useful?

One of the most important aspects of the Cyprus problem is that of *Security*. Would the Cyprus people like Greece and Turkey to guarantee the independence and integrity of the Cyprus State within the framework of a

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<sup>118</sup> Goodrich and Hambro, *The Charter of the United Nations*, *ante*, p. 545.

<sup>119</sup> Ronzitti, clearly adopting a pro-Turkish view, cites Wengler: "a treaty providing for a right to intervene against the will of a future government of the other State is regarded as prohibited by a *jus cogens* rule of general international law. Nonetheless, an exception may be valid if intervention is permitted to secure the upholding of an arrangement among different peoples each other exercising its right of self-determination, to live together in one State". He then concludes that Wengler's observation fits perfectly the case of Cyprus". (*Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity*, *ante*, p. 134). For the issue of self-determination and its application to the Cypriot Communities, see below Chapters IV and VII of the present thesis.

settlement? This, I think, given the unhappy past would not be a good idea. If, however, it would be deemed necessary that these two States play a significant role in the security of the island, then I would propose that a regional arrangement be reached along the lines of the existing Treaty of Guarantee, but expressly excluding *unilateral* military intervention.

Would we like the British sovereign bases to remain on the island, even if this would appear to be a possibility? Despite the troubled relations between Britain and Cyprus in the uneasy years of the 1950s, which by now have been overcome (and, if not, they should be), the British presence on the island is, in my view, indispensable. The British have a crucial role to play in the maintenance of security, but they should give explicit assurances (in the form of a legal document, if need be) that they would not allow repetition of the bloody events of 1974.

Furthermore, what would be the future of the common Defence doctrine, as it now functions, between Greece and Cyprus? Would that be affected by security arrangements in the context of a future settlement of the Cyprus issue? These matters should be thoroughly examined by all *interested* parties. The Cyprus Government especially should project drafts considering these pressing strategic implications.

It remains the case that survival is of utmost importance for a nation. In international affairs, as in the Cyprus case, strategy considerations should be taken into account in conjunction with international law, the latter providing a basis for international politics and conversely the former conforming to international legality.

## **CHAPTER III**

# **LEGAL EVALUATION OF THE TURKISH INTERVENTION OF CYPRUS: THE ARGUMENT FROM HUMANITARIAN INTERVENTION**

## **CHAPTER III: LEGAL EVALUATION OF THE TURKISH INTERVENTION: THE ARGUMENT FROM HUMANITARIAN INTERVENTION**

A powerful argument employed by the Turkish Prime Minister Ecevit to justify the intervention in Cyprus was that of humanitarian intervention.

In order that concrete conclusions may be drawn regarding the legal validity of this argument, a clear answer need be given to the notorious question: is there a right of (unilateral) humanitarian intervention?

Humanitarian intervention may be defined as the proportionate use of force by governments in order to prevent serious violations of fundamental human rights of individuals in another State who would readily consent to such a military operation. According to Oppenheim, 'when a state commits cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interests of humanity might be legally permissible'.<sup>1</sup> The vexed question of humanitarian intervention will now be thoroughly examined in the light of state practice, relevant rulings of the International Court of Justice (if any), and the theoretical approach to the matter as presented by academic debates, and writings of those learned in the law in general.

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<sup>1</sup> *Oppenheim's International Law* (9<sup>th</sup> ed. Sir Robert Jennings and Sir A. Watts, Longman 1996) p.442; H.Lauterpacht's rationale for humanitarian intervention is that 'ultimately peace is much more endangered by tyrannical contempt for human rights than by attempts to assert, through intervention, the sanctity of human personality' (*International Law and Human Rights*, London: Stephens & Sons p. 32);

## **(1) Sovereignty v. Human Rights**

At first sight there is a legal duty to refrain from the internal affairs of other states. Each state is bound to respect the sovereignty of its neighbour states. This view has its roots in legal positivism. The German philosopher Wolff was the first to separate the international law principles from the ethics of the individual. De Vattel, along similar line of argument said: 'The duties of a nation towards itself are of purely national concern, and no foreign power has any right to interfere.<sup>2</sup> Great academic debate has erupted over the general prohibition of the use of force as stipulated in Article 2(4) of the UN Charter,<sup>3</sup> especially the wording 'against the territorial integrity or political independence of any State'.<sup>4</sup>

It is necessary to show that a right of unilateral humanitarian intervention is compatible with Article 2(4) of the UN Charter.<sup>5</sup> The only exceptions to the general prohibition of the threat or use of force are the 'inherent right of individual or collective self-defence in the face of an armed attack against a State in Article 51 of the UN Charter, and enforcement actions by the Security Council or by a regional organization or group of States authorized to use force by the Security Council under Chapter VII of the Charter. Neither of these

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<sup>2</sup> de Vattel, 'The Law of Nations' (Washington DC, Carnegie Institution, 1916) I, iii, para.37.

<sup>3</sup> See generally, Brownlie, *International Law and the Use of Force by States*, *ante*; Schachter, 'The Rights of States to Use Armed Forces' (1984) 82 *Michigan Law Review*, 1620;

<sup>4</sup> Walzer proposed that 'any use of force by one state against the political independence of another constitutes aggression and is a criminal act' (*Just and Unjust Wars*, *ante*, p.61)

<sup>5</sup> UN Charter Article2(4): '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'.

provisions is applicable to unilateral humanitarian intervention. Two arguments may be employed: that a genuine humanitarian intervention would not be a use of force against the ‘territorial integrity or political independence’ of another state, or that it would not be ‘inconsistent with the Purposes of the United Nations’. It is noteworthy that in their commentary on the Charter, Goodrich and Hambro observed that it is possible to construe the language as allowing certain limited uses of force, such as a temporary intervention for protective purposes.<sup>6</sup> Teson, noting that the promotion of human rights is as important a purpose in the Charter as the control of international conflict, concludes that to argue that humanitarian intervention is prohibited by Article 2(4) is a distortion.<sup>7</sup>

Article 2(4) must be read and interpreted in conjunction with the purposes of the United Nations one of which is the promotion of human rights. The Preamble to the Charter reads as follows: ‘We the peoples of the United Nations determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights...of nations large and small...’. Article 1(3) states: ‘To achieve international co-operation in solving international problems of an economic, social, cultural, or *humanitarian* character, and in *promoting* and encouraging *respect for human*

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<sup>6</sup> Goodrich and Hambro, *Charter of the United Nations: Commentary and Documents* (Boston: World Peace Foundation, 1946) p.68-69.

<sup>7</sup> Teson, *Humanitarian Intervention*, *ante*, p.151.

*rights and for fundamental freedoms for all.*'<sup>8</sup> Further, Article 55(c) of the Charter declares that the United Nations shall promote 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. More importantly, by Article 56 'all members pledge themselves to take joint and separate action in *co-operation* with the Organization *for the achievement of the purposes set forth in Article 55*'.<sup>9</sup> Further, Professor *Greenwood*, in a memorandum submitted in response to a request from the U.K. House of Commons Select Committee on Foreign Affairs in connection with its hearings on the NATO intervention in Kosovo 1999, quite pointedly states: 'The development of international human rights law since 1945, through global agreements such as the Genocide Convention and the International Covenant on Civil and Political Rights and regional instruments such as the European Convention on Human Rights, has reached the point where the treatment by a State of its own population can no longer be regarded as an internal matter. In particular, widespread and systematic violations of human rights involving the loss of life on a large scale are well established as a matter of international concern'.

The clear deduction from the above should be that the right of unilateral humanitarian intervention is clearly not incompatible with Article 2(4) of the UN Charter.

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<sup>8</sup> UN Charter, Article 1(3) (emphasis added).

<sup>9</sup> UN Charter, Article 56 (emphasis added).

Apart from the legal debate, however, I would suggest, from the moral standpoint, that the rights of states under international law derive from individual rights. The proper role of the state is to ensure protection of the rights of the individuals.<sup>10</sup> As Hersch Lauterpacht very well put it, 'states are like individuals; it is due to the fact that states *are composed* of individual human beings...The dignity of the individual human being is a matter of direct concern to international law'.<sup>11</sup> This is the true meaning of the Grotian analogy of states and individuals. Therefore, in my opinion, State sovereignty must give way to the protection of human rights whenever these are flagrantly violated.<sup>12</sup> In view of the preceding theoretical discussion in this section, which is hoped not to have been at a high level of abstraction, I strongly submit that states have a *moral right*, to say the least, to *unilaterally* intervene in cases of overwhelming humanitarian necessity. The writings of learned jurists should, in my submission, be taken much more seriously into account, and perhaps cease to be seen merely as subsidiary sources of public international law (despite Article 38(1)(d) of the ICJ Statute). Further, State practice of ancient times cannot be neglected.<sup>13</sup> The adoption of the UN Charter is not meant to suggest that pre-charter international customary law has automatically been abrogated.

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<sup>10</sup> This presupposes a kind of social, what Rawls has called 'hypothetical' consent in his *Theory of Justice*.

<sup>11</sup> H. Lauterpacht, 'The Grotian Tradition in International Law', *ante* p.27 (emphasis original).

<sup>12</sup> Most legal scholars who are opposed to humanitarian intervention emphasizing the danger of abuse, are putting forward a policy objection rather than a principled argument. As Professor Greenwood very well put it in his *Memorandum*, *ante*, p.5 'all rights are capable of being abused. The right of self-defence has undoubtedly been the subject of abuse but it is never seriously suggested that international law should not include the right of a State to defend itself'.

Instead, customary law can, indeed, be considered as part and parcel of a unified international law tradition; as living international custom, living law, which may still find appeal in the modern world.

In view of the above as well as post-Charter state practice on humanitarian interventions, especially the Belgian and U.S. intervention in the Congo 1964, and the Indian invasion of Bangladesh 1971, it may be said that a right of humanitarian intervention did form part of international law in 1974 (though it might be seen as a development of 1990s state practice) when Turkey militarily intervened in Cyprus.

## **(2) State Practice**

### ***(a) Pre-Charter Unilateral Humanitarian Interventions***

#### ***(i) Intervention of Great Britain, France and Russia in aid of Greek Revolutionaries***

The joint intervention of Great Britain, France, and Russia in support of the Greek insurgents against Turkish oppressive rule is said as being the earliest example of true humanitarian intervention.<sup>14</sup> The treaty between the three Powers, signed in London on 6 July 1827<sup>15</sup>, lays down in its preamble the

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<sup>13</sup> Thucydides, having detected the unchangeable character of human nature, ably predicted: 'My work is not a piece of writing designed to meet the taste of an immediate public, but was done to last for ever' (*History of the Peloponnesian War*, *ante*, Book I, para.22).

<sup>14</sup> See Stowell, *Intervention in International Law* (Washington, DC: John Byrne & Co, 1921), pp.126-7; Anthony D' Amato, 'The Invasion of Panama was a Lawful Response to Tyranny' (1990) 84 A.J.I.L. 516, p.519.

<sup>15</sup> This was the formalization of a protocol signed at Petersburg, 4 April 1826, by the Russian Chancellor, the Russian Ambassador to London, and the Duke of Wellington. It was then communicated to Paris where it gained support.

grounds on which they justified their intervention.<sup>16</sup> According to paragraph 1 of the Preamble, of concern was “all the disorders of anarchy caused by the struggle, which both impede the commerce of the states of Europe and gave opportunity to pirates which not only expose the subjects of the High Contracting Parties to grievous losses, but also render necessary measures which are burdensome for their observation and suppression”.<sup>17</sup> Further, by paragraph 2 of the Preamble, two of the Powers (Great Britain and France) “had received from the Greeks an earnest invitation to interpose their Mediation with the Ottoman Porte,<sup>18</sup> and together with the Emperor of Russia, animated with the desire of *putting a stop to the effusion of blood, and of preventing the evils of every kind*, had resolved to combine and regulate their efforts with a view to re-establish peace-efforts demanded *no less by sentiments of humanity, than by interests for the tranquillity of Europe*”.<sup>19</sup> The treaty was primarily an offer of mediation in the transition to Greek autonomy.<sup>20</sup>

The Navy Battle of Navarino took place on the 20<sup>th</sup> October 1827 and ended with a serious defeat of the Turkish forces, and withdrawal of the Egyptian

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<sup>16</sup> Treaty between Great Britain, France, and Russia, for the Pacification of Greece, signed at London, 6 July 1827 (Edward Hertslet, *The Map of Europe by Treaty*, London: Butterworths, 1875, VOL. 1, PP.769-70.

<sup>17</sup> See extensively John Westlake, *International Law* (2<sup>nd</sup> edition, Cambridge: Cambridge University Press, 1910) p. 319 n 3.

<sup>18</sup> Chesterman, in his *Just War or Just Peace :Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001) p. 29 n 167, says that “as the intervention took place within what was then Turkish territory, it is not an instance of intervention by consent”. With great respect, this view seems to be rather absurd. Who should have been expected to give consent to the joint humanitarian intervention of the Great Powers other than the insurgents themselves ? Is it conceivable that the Ottoman Porte could have consented to an intervention by European States in the territory of its Empire for the purpose of liberating its own oppressed subjects ? But, see below, at page 55, the particular circumstances under which the Sultan’s consent was given to the French intervention in Syria, 1860-1.

<sup>19</sup> Emphasis supplied.

army from the Morea. Ian Brownlie dismisses the characterization of the action as an instance of humanitarian intervention as 'ex post factoism'<sup>21</sup>, saying that the governments of the day did not refer to a legal justification for intervention<sup>22</sup> and that jurists and historians have ascribed numerous motives to the action.<sup>23</sup> He concludes that the substantial motive was the prevention of racial extermination in the Morea, but this cannot be discussed 'in terms of a legal concept which probably did not exist at the time'.<sup>24</sup> At this point, Professor Brownlie manifestly contradicts himself. Earlier (in the very same publication) he acknowledged that a majority of nineteenth-century publicists recognized a right of humanitarian intervention.<sup>25</sup> More important perhaps is his assertion that Great Britain and France might have participated in the action due to fears of unilateral intervention by Russia. This may throw some light on the diplomatic background to the London Treaty. There is evidence that Ibrahim's plan to commit genocide in Greece was only a pretext for an alliance between Britain and Russia against Turkey.<sup>26</sup> Nevertheless, during the middle stages of the Greek Revolt, support for Greece was explained more on in the context of Europe's emotional interest. This was reflected in the orders from Lord Bathurst,

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<sup>20</sup> On this, see CW Crawley, *The Question of Greek Independence : A Study of British Policy in the Near East, 1821-1833* (Cambridge: Cambridge University Press, 1930) p. 79.

<sup>21</sup> Brownlie, 'Humanitarian Intervention', in John N Moore (ed.), *Law and Civil War in the Modern World* (Baltimore, Maryland: Johns Hopkins University Press, 1974) p. 220.

<sup>22</sup> Brownlie, *ibid* pp. 220-1; Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press) p.339.

<sup>23</sup> Brownlie, 'Humanitarian Intervention', *supra*, p.339.

<sup>24</sup> Brownlie, *ibid*. p.339.

<sup>25</sup> Brownlie, *ibid*. p.338.

<sup>26</sup> Crawley, *ante*, pp. 49, 54.

Secretary of State for the Colonies, to Sir Harry Neale, Commander-in-Chief of the Mediterranean Station, in February 1826:

“His Majesty has long had reason to lament the atrocities which have disgraced the contest in which Greece has been for many years unhappily involved... When it is understood, that, whether with the consent of the Porte or not, designs are avowed by Ibrahim Pacha to extirpate systematically a whole community, to seize upon the women and children of the Morea, to transport them to Egypt, and to re-people the Morea from Africa and Asia, to change, in fact, that part of Greece from an European State, into one resembling the States of Barbary; His Majesty cannot, as the Sovereign of an European State, hear of such an attempt without *demanding* of Ibrahim Pacha, either an explicit disavowal of his ever having entertained such an intention, or a formal renunciation of it, if ever entertained”.<sup>27</sup>

Simon Chesterman,<sup>28</sup> argues that ‘the incident is at best a questionable precedent for the doctrine of humanitarian intervention. Russian involvement had little to do with humanitarian concerns and –despite the public statements of British officials- it was this that served as the catalyst for intervention’.<sup>29</sup> Also, before embarking on an analysis of the incident, he cites<sup>30</sup> *Historicus* obviously in an attempt to support his view: “The emancipation of Greece was a high act

<sup>27</sup> See Woodhouse, *The Battle of Navarino* (London: Hodder & Stoughton, 1965), pp. 35-6.

<sup>28</sup> Clearly adopting a Brownlie approach to the subject matter.

<sup>29</sup> Chesterman, *Just War or Just Peace*, ante, p.32.

<sup>30</sup> *ibid.* p.28.

of policy above and beyond the domain of law".<sup>31</sup> Unquestionably, the joint intervention of the Great Powers was, indeed, a high act of policy. Anyone denying this reality would simply do injustice to the actual facts. To deny the underlying strategic expediencies or commercial interests of the intervening Powers would certainly be a mistake, but to assert that these have been the primary motives, let alone the only ones, to the joint military action undertaken would amount to distortion of history. Such an assertion would unjustifiably put into doubt the humanitarian sentiments of the highly civilised Europeans. It would also minimize the decisive role played by the Great Powers in the celebrated liberation and independence of Greece, that since the conquest of Constantinople by the Ottomans in 1453 had undergone the most onerous and disgraceful (albeit eventually glorious) period of her history. Further it would marginalize the ingenuity and magnanimity shown by brilliant British leaders, especially that of George Canning, then Prime Minister. The contribution of Canning to the freedom of Hellas has been duly respected and honoured by the Greeks. The joint intervention of Great Britain, France, and Russia in aid of the Greek insurgents, 1827, remains a paradigm example of humanitarian intervention, which put a halt to a major humanitarian catastrophe, thus affirming the sanctity of human life.

(ii) *French occupation of Syria, 1860-1*

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<sup>31</sup> William Vernon Harcourt, *Letters by Historicus on Some Questions of International Law: Reprinted from 'The Times' with Considerable Additions* (London: Macmillan, 1863) p.6.

In 1860, thousands of Maronite Christians were killed by Muslims on Mount Lebanon, then part of Syria but within the Ottoman Empire. After a meeting of the ambassadors of Great Britain, France, Prussia, Russia, and Austria a convention was signed.<sup>32</sup> Under the terms of the Convention, the Sultan, wishing to stop, by prompt and efficacious measures, the effusion of blood in Syria, and to show his firm resolution to establish Order and Peace amongst the Populations placed under his Sovereignty, agreed to the dispatch of 12,000 troops to Syria to contribute towards the reestablishment of tranquillity.<sup>33</sup> France was to provide half the number. A French force was sent, but came across restoration of order by the Ottoman local government. Despite that, the French troops occupied parts of Syria and warships remained in the area from August 1860 to June 1861. Brownlie includes this as the most likely exception to his general statement that international practice in the nineteenth century discloses no genuine case of humanitarian intervention.<sup>34</sup> However, it has been said that the measures taken by the Ottoman Sultan made foreign intervention unnecessary and suspicious in view of the various interests of European States in the declining Ottoman Empire. It has also been asserted that responsible for the strife were the Christians.<sup>35</sup> Nevertheless, a crucial aspect of the incident

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<sup>32</sup> Convention Between Great Britain, Austria, France, Prussia, Russia, and Turkey, respecting measures to be taken for the Pacification of Syria, signed at Paris, 5 September 1860, in Hertslet, *ante*, p. 1455, Preamble paragraph 1.

<sup>33</sup> *Ibid.* Art. 1.

<sup>34</sup> Brownlie, *International Law and the Use of Force by States*, *ante*, p.340.

<sup>35</sup> See Thomas Frank and Nigel Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' (1973) 67 *A.J.I.L.* 275, p.282, citing the Minute of the British Commissioner to Syria, who remarked that 'the original provocation proceeded from the Christians'.

which renders it an instance of humanitarian intervention is the absence of interest on part of the parties to the action taken. Although it took place in the context of French colonialism in the area, the occupying force departed when the mandate came to conclusion. In a protocol signed before the adoption of the Convention Between Great Britain, Austria, France, Prussia, Russia, and Turkey, the Powers declared “in the most formal manner” that they would not seek any territorial advantage, exclusive influence, or concession under the pretext of the occupation. There should be no doubt that the concerns of the Powers, especially France, for the Christian populations were purely humanitarian.

### *(iii) United States Intervention in Cuba, 1898*

The US intervention in Cuba 1898 seems to be another instance of humanitarian intervention in state practice preceding the adoption of the UN Charter. Stowell refers to it as ‘one of the most important instances of humanitarian intervention’.<sup>36</sup> Chesterman, on the other hand, citing Fonteyne says that ‘...the action was but the flashpoint of the broader war with Spain. In a matter of months, the Spanish navy was defeated. Spain had relinquished the remnants of its empire, the United States had established herself as a world

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<sup>36</sup> C Stowell, *Intervention in International law*, *ante* , p.481. It is also cited by Michael Reisman and Myres McDougal, ‘Humanitarian Intervention to Protect the Ibos’ in Lillich (ed.) *Humanitarian Intervention and the United Nations* (Charlottesville: University Press of Virginia, 1973), pp. 182-3. Oscar Straus, an American commentator, states that one would search in vain the records of the world’s history to find a more striking example of a war undertaken by any nation from motives singularly humane and free from selfish interests and purpose (Humanitarian Diplomacy of the United States, 1912 6 *Proceedings of the American Society of International Law*, p.50.)

power, and Cuba was an American protectorate'.<sup>37</sup> Atrocities were committed by Spanish authorities in Cuba attempting to control the insurrection of 1885. Beyond doubt, the Spanish policy of forcing the population into concentration camps in order to identify revolutionaries instigated genuine outcry in the United States. According to the estimations of Ferrell, about 200,000 Cubans perished while in the concentration camps.<sup>38</sup> Another factor leading to the US intervention was the destruction of the US battleship Maine, probably by a Spanish submarine mine.<sup>39</sup>

In his special message to Congress of 11 April 1898, President McKinley outlined three justifications for US intervention in the conflict: 'the cause of humanity, protection of US citizens, and self-defence'.<sup>40</sup> A resolution was then passed, authorizing intervention because of "abhorrent conditions which have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship".<sup>41</sup> The goal of the intervention was to secure the independence of Cuba.

Fonteyne, cited again by Chesterman, does not include the intervention in Cuba as an instance of humanitarian intervention as in his view it lacks a clearly

<sup>37</sup> Apparently, a similar view was put forward by Michael Walzer in his *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1992) pp. 103-4.

<sup>38</sup> Robert Ferrell, *American Diplomacy: A History* (New York: Norton, 1975), p. 350.

<sup>39</sup> See Moore, *A Digest of International Law* (Washington, DC: Government Printing Office, 1906) vol. 6, pp.181-4 (Report of Senate Committee on Foreign Relations).

<sup>40</sup> President McKinley, Special Message to Congress, 11 April 1898, in Moore, *ibid* vol. 6, pp.219-20.

<sup>41</sup> *Ibid*, vol. 6, p.226

humanitarian motive.<sup>42</sup> But, such a view, it seems to me, could not stand as valid argument militating against the characterization of the intervention as humanitarian. True, States may be driven to interventions by 'mixed' motives. This does not mean that interventions under these circumstances may not be described as

It is interesting that Teson concludes his brief survey of pre-Charter practice by stating that the most important precedent for a right of humanitarian intervention is the Second World War itself.<sup>43</sup> Citing Michael Walzer's just war analysis of the conflict,<sup>44</sup> he argues that the 'Allies fought Fascism not just because Hitler and Mussolini engaged in military aggression, but to defend dignity, reason, human rights, and decency...against degradation, authoritarianism, irrationality, and obscurantism'.<sup>45</sup> This view is too endorsed here, and, as Teson put it, the example of World War II is 'the paradigm of a just war'.

### ***(b) Post-Charter Unilateral Humanitarian Interventions***

Let us now turn to some instances of the post-charter State practice.

#### ***(i) Belgian and US intervention in the Congo, 1964.***

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<sup>42</sup> Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention: Its current Validity Under the UN Charter', (1974) 4 *California Western ILJ* 203, pp.210-11.

<sup>43</sup> *Ibid*, pp. 178-9.

<sup>44</sup> Michael Walzer, 'World War II: Why was This War Different?' (1971) 1 *Philosophy and Public Affairs* p.3

In 1964, one third of the Congo came under the control of a rebel group based in Stanleyville. The rebel forces took a thousand or so foreign residents hostage and threatened to kill them. Peaceful efforts to free the hostages having failed, Belgian forces intervened with United Kingdom logistical assistance and United States aircrafts. The troops were withdrawn after a successful operation. In the 1970s, the mission was characterized as one of the clearest modern instances of true humanitarian intervention and one that should be viewed as lawful in character.<sup>46</sup> In a note to the address to the Security Council, Belgium spoke of the mission as being 'a legal, moral and humanitarian operation which conforms to the highest aims of the United Nations: the defence and protection of fundamental human rights...'<sup>47</sup> The United States, in a letter to the Security Council stated 'that the sole purpose of this humanitarian mission was to liberate hostages whose lives were in danger'.<sup>48</sup> However, as Harris<sup>49</sup> observes, the rescue operation was undertaken under the consent of the Congolese Government and hence was not dependent upon any right to humanitarian

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<sup>45</sup> Teson, *Humanitarian Intervention*, *supra*, p.178; Chesterman, on the contrary, says that although it may be argued that humanitarian concerns played a part in the Allied involvement in the war, they were nevertheless subsidiary to more traditional motives such as self-defence (*Just War or Just Peace*, *ante p.28*).

<sup>46</sup> See Lillich, 'Forcible Self-Help by States to Protect Human Rights' (1967) 53 *Iowa Law Review* p.325

<sup>47</sup> S/6063 (1964).

<sup>48</sup> S/6062 (1964)

<sup>49</sup> See Harris, *Cases and Materials on International Law* (London Sweet & Maxwell 1998) p.919.

intervention.<sup>50</sup> Another reason for the doubtful description of the intervention as a humanitarian one is that it took place in the context of colonialism.<sup>51</sup>

*(ii). Indian Invasion of Bangladesh, 1971.*

Until 1971, Pakistan consisted of East and West Pakistan, with India between the two parts. In March 1971, east Pakistan declared itself independent under the name of Bangladesh. Although the Pakistan army was initially successful in suppressing the rebellion, rebel guerrilla forces launched a general offensive with considerable success. As there was evidence to suggest that India, which had taken into its territory about one million refugees from East Pakistan,<sup>52</sup> had given the guerrillas military assistance, Pakistani and Indian troops clashed in the border area (the Indian Prime Minister Indira Gandhi having first declared war). Eventually Pakistan surrendered and Bangladesh has since received recognition (that of Pakistan included!) as an independent State. The Indian intervention in East Pakistan is commonly held up as one of the more promising examples of humanitarian intervention. Teson calls it 'an almost perfect example';<sup>53</sup> Fonteyne says that 'it probably constitutes the clearest case

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<sup>50</sup> Evidence of this is the letter of Prime Minister Tshombe of the Democratic Republic of the Congo to the American Ambassador in Leopoldville dated 21 November 1964 (in Whiteman, *Digest of International Law, ante*, Vol. 12, p.213).

<sup>51</sup> On this point, see Thomas Frank and Nigel Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' (1973) 67 *AJIL* 275, P.288.

<sup>52</sup> The International Law Commission summarized events as follows: 'The principle features of this ruthless oppression were the indiscriminate killing of civilians, including women and children and the poorest and the weakest members of the community; the attempt to exterminate or drive out of the country a large part of the Hindu population; the arrest, torture and killing of students, business men and other potential leaders among the Bengalis; the raping of women; the destruction of villages and towns.

<sup>53</sup> Teson, *Humanitarian Intervention, ante*, p.207.

of forceful individual humanitarian intervention in this century’;<sup>54</sup> Bowett includes it as the only possible illustration of the practice in the period 1945-86.<sup>55</sup> In the Security Council, India’s representative stated that ‘we have on this particular occasion absolutely nothing but the purest of motives and the purest of intentions: to rescue the people of East Bengal from what they are suffering’.<sup>56</sup> India’s Prime Minister when appealing to foreign governments for help said that the general and systematic nature of inhuman treatment inflicted on the Bangladesh population was evidence of a crime against humanity’. It is not surprising that Lillich stated that the intervention was *morally* justified.<sup>57</sup>

*(iii) Tanzanian Intervention in Uganda, 1978-9.*

Tanzania’s intervention in Uganda has been as a clear case, and indeed is, of humanitarian intervention. Long years of animosity between the Ugandan dictator Amin and the President of Tanzania Nyerere culminated in 1978, when Ugandan forces occupied part of Tanzania invoking self-defence. The Tanzanian President stated that this was an act of war, and went on to say that he had the capacity and determination to hit Amin. The latter offered to withdraw his forces. However, there was serious evidence that Ugandan occupation had resulted in acts of massacre, destruction and rape. So the Tanzanian armed forces penetrated into Uganda, as Amin could not be ‘let off’.

<sup>54</sup> Fonteyne, *The Customary Law Doctrine of Humanitarian Intervention: Its Current Validity Under the UN Charter*, *ante*, p.204.

<sup>55</sup> Derek Bowett, ‘The Use of Force for the Protection of Nationals Abroad’, in Antonio Cassese, ed. *The Current Regulation of the Use of Force* (Dordrecht: Martinus Nijhoff, 1986) p.50.

<sup>56</sup> S/PV 1606 (1971) para.186.

<sup>57</sup> See Lillich, *Humanitarian Intervention*, *ante*. p.114

Consequently, the dictatorial regime of Amin in Uganda's capital, Kampala, was defeated and deposed. Tanzania's President stated: 'Those who say that Tanzania created a bad precedent are liars. What we did was exemplary at a time when the OAU found itself unable to condemn Amin. I think we have set a good precedent inasmuch as when African nations find themselves collectively incapable of punishing a single country, then each country has to look after itself'.<sup>58</sup> The international community approved of the intervention.<sup>59</sup> This is clearly attested by the fact the new regime in Kampala was immediately recognized. There was no debate on the matter either in the Security Council or the General Assembly. Teson pointedly concludes that 'on the whole the Tanzanian action was legitimised by the international community',<sup>60</sup> which 'virtually approved the Tanzanian intervention'.<sup>61</sup>

*(v). Assessment of State practice.*

In view of the post-Charter State practice, there is evidence strongly suggesting the existence of a customary international law right of unilateral humanitarian

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<sup>58</sup> *Keesing's Contemporary Archives: Record of World Events* (hereinafter cited as *Keesing's*) (1979) p. 29673.

<sup>59</sup> The US Secretary of State Cyrus Vance stated: 'Our position is very clear; we support President Nyerere's position that according to which Ugandan troops must withdraw immediately': *ibid* p.29669.

<sup>60</sup> Teson, *Humanitarian Intervention*, ante, p.187.

<sup>61</sup> It is necessary, at this stage, to mention quickly some incidents in which humanitarian motives were indeed marginal; these very incidents should be viewed in the context of the Cold War.

(i) In 1968, Warsaw Pact forces purported to aid the people of Czechoslovakia. The humanitarian motives were rejected by the Security Council. Initially the USSR asserted that the Czech government leaders had requested its assistance in dealing with opponents of the regime. Afterwards, it put forward that the socialist community had a duty to intervene whenever socialism came under attack in a socialist state. This was to be called the 'Brzhnev Doctrine'. In 1956, the USSR invasion of Hungary (on which see S/PV.754, 1965 para.53) was condemned by the international community.

(ii) The 1964 intervention in Vietnam and 1965 intervention in the Dominican Republic fall within the same category of interventions.

(iii) The US interventions in Grenada 1983, and Panama 1989, though frequently cited as cases of humanitarian intervention or as pro-democratic interventions, the US never invoked humanitarian intervention as justification for these actions.

intervention. We try to impose order on diplomatic history. Humanitarian intervention is the best explanation of the Tanzanian action, for example; in the relevant words of Dworkin, 'it is the one that interprets that piece of history in its best light'.<sup>62</sup>

It is noteworthy that the emergence of a customary international law right of humanitarian intervention was further endorsed in the *Nicaragua* case<sup>63</sup>, which here deserves some elaboration. The Court held that reliance by a State on a novel right or an unprecedented exception to the principle of non-intervention might, if shared by other states, tend towards modification of customary international law.<sup>64</sup> Although the Court found that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States, went on to make a critical observation: 'no doubt the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or in any other way contrary to international law'.<sup>65</sup> This dictum clearly paved the way for the establishment of a post-charter international custom of unilateral humanitarian intervention. The ICJ, having reaffirmed the criteria for the formation of new rules of customary international law as laid down in the *North Sea Continental Shelf* cases, provided a definition of *opinio juris*, essential requirement to the creation of international

<sup>62</sup> Ronald Dworkin, *Law's Empire* (London: Fontana, 1986) p.87-113.

<sup>63</sup> I.C.J. Reports 1986, p.14.

<sup>64</sup> *Nicaragua (Merits)* [1986] ICJ Reports p. 109, para.207.

custom: ‘either the states taking such action or other States in a position to react to it, must have behaved so that their conduct *is evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it*’<sup>65</sup>.

It seems that even the best cases of humanitarian intervention, such as

*Bangladesh* (1971), *Uganda* (1978-79), lack the necessary *opinio juris*. The U.K. Foreign Office Policy Document No. 148 on *Humanitarian Intervention* is illuminating: ‘often the humanitarian benefits of an intervention are either not claimed by the intervening state or are only put forward as an *ex post facto* justification of the intervention... State practice, especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and on most assessments none at all’. The FCO Policy Document concluded, in a rather ambiguous language, that ‘the best case that can be made in support of humanitarian intervention is that it cannot be said to be unambiguously illegal’. However, a widespread argument in favour of a right of humanitarian intervention is that it survived the passage of the UN Charter. It is noteworthy that in *Nicaragua*, the ICJ noted that the Charter does not cover the whole area of the regulation of the use of force in international relations. Particularly, Article 51 refers to the ‘*inherent* right of self-defence’. Bowett writes: ‘It is fallacious to assume that members have only those rights which the Charter accords them; on the contrary they have those rights which general

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<sup>65</sup> *Ibid* p. 114 para.242

international law accords to them except in so far as they have surrendered them under the Charter'. The prohibition in Article 2(4), Bowett continues, 'left the right of self-defence unimpaired'. Thus, it is hereby proposed that a customary right of humanitarian intervention is a legitimate form of self-defence or self-help. Michael Reisman says: '*because rights without remedies are not rights at all, prohibiting the unilateral vindication of clear violations of rights when multilateral possibilities do not obtain is virtually to terminate those rights*'.<sup>67</sup> However, this statement does not interpret the scope of the right of self-defence as a justification for unilateral humanitarian intervention.

If, however, this last argument finds no support, then an argument based on the hierarchy of international law sources may be put forward. Treaties and custom are of equal authority<sup>68</sup>. In the present case, there is obviously a conflict between Article 2(4) of the UN Charter (itself an International Treaty) and an alleged emerging post-charter customary law right of humanitarian intervention. In deciding this conflict, a basic principle (in fact, a general principle of law) may be applicable; Namely *lex specialis derogat legi generali* (a special law prevails over a general law). 'Special law', in the present conflict, is the customary right of humanitarian intervention whereas 'general law' is the UN Charter Article 2(4) provision laying down a *general* prohibition of the use of force. It may thus be argued that the former (humanitarian intervention being a

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<sup>66</sup> *Ibid.* p.109 para.207.

<sup>67</sup> Michael Reisman, 'Sovereignty and Human Rights in Contemporary International Law' (1990) 84 *AJIL* 866, p.875.

*special kind* of forceful action) prevails over the latter. For the purposes of the present analysis, it should be clear enough by now that pre- as well as post-Charter State practice indicates, at least as far as I can see, the existence of a customary international law right of *unilateral* humanitarian intervention. Additionally, UN practice has in recent years witnessed a trend towards humanitarian intervention or aid and need be looked at in passing.

### **(c) Post-Charter UN Humanitarian Interventions.**

The end of the Cold War has transformed the situation in the UN Security Council, so that the way has been paved for humanitarian interventions by this political institution.<sup>69</sup> The approach of the past that the United Nations are not authorized 'to intervene in matters which are essentially within the domestic jurisdiction of any state'<sup>70</sup> is not any more the international position. As the former UN Secretary General Perez de Cuellar stated, 'we are witnessing...the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents'.<sup>71</sup>

#### **(i) Iraq, 1991**

The period after the defeat of Iraq in the Kuwait crisis, witnessed risings of the Kurds in the northern part of the country, which were brutally repressed by the

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<sup>68</sup> See Michael Akehurst, 'The Hierarchy of the Sources of International Law', 47 (1974-75) *B.Y.B.I.L.*, p.273.

<sup>69</sup> Instances of humanitarian intervention include, *inter alia*, the UN intervention in the former SFRY 1992, Somalia 1992, and Sierra Leone 1997-98.

<sup>70</sup> UN Charter, Article 2(7).

<sup>71</sup> (1991) 22 *Diplomatic World Bulletin*.

Iraqi Army in disregard of the relevant Geneva Conventions provisions or human rights international instruments. The international community was particularly moved by the fate of hundreds of thousands Kurdish refugees abandoning their homes. Security Council Resolution 688, 1991 stated that the Council condemned the repression of the Iraqi civilian population in Iraq. The UK, the USA and other states brought forces into Iraq in aid of the Kurdish refugees. The UK Foreign Secretary spoke thus about the military operations purposes: 'We are vigorously pursuing this proposal for safe havens. Our aim is to create places and conditions in which the refugees can feel secure. We are not talking of a separate Kurdistan or a permanent UN presence'.<sup>72</sup> The objectives of the intervention were humanitarian. As Professor Greenwood very well put it, 'it is difficult to resist the conclusion that the intervening states were in practice asserting a right of humanitarian intervention of some kind'.<sup>73</sup> This conclusion is reinforced by the statement of the Minister of Defence in the House of Commons when a 'no fly' zone was imposed in southern Iraq: 'the zones were established to meet situations of *severe humanitarian need*'.

#### *(ii) Liberia, 1990*

In 1990, a civil war between different factions brought about anarchy in the country. A declaration issued by the Economic Community of West African States (ECOWAS) Heads of State, following the despatch of peace-keeping forces, read as follows: '...first and foremost to stop the senseless killing of

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<sup>72</sup> H.C. Debates, Vol. 189, Col. 21; 15 April 1991.

innocent civilian nationals and foreigners and to help the Liberian people to restore their democratic institutions'.<sup>74</sup> It is unclear whether the government of Liberia gave its consent to the intervention.<sup>75</sup> Again, as Greenwood observes 'the intervention seems to involve the assertion of some kind of right of humanitarian intervention'.<sup>76</sup>

(iv) *Kosovo*<sup>77</sup>, 1999

The situation in Kosovo involved serious violations of human rights and there was an impending humanitarian catastrophe well before the NATO action (undertaken to put a stop to the ethnic cleansing of Albanians) began. The Security Council Resolution 1160, adopted a year before the NATO operations, referred to 'intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian Security forces and the Yugoslavian Army which have resulted in the displacement of over 230,000 persons from their homes',<sup>78</sup> and dictated immediate steps to avert the '*impending humanitarian catastrophe*'. The UK Representative to the UN justified the NATO military intervention, undertaken without express authorization of the Security Council, on the ground that a right to take military action in case of

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<sup>73</sup> Greenwood, 'Is there a Right of Humanitarian Intervention?', (1993) 49 (2) *The World Today*, p. 36.

<sup>74</sup> UN Doc. S/21485.

<sup>75</sup> For a detailed account of the facts see Greenwood, 'Is there a Right of Humanitarian Intervention?' *ante*, p.37.

<sup>76</sup> *Ibid.*, p.37.

<sup>77</sup> For a brief account of the origins of the conflict, see Chesterman, 'Just War or Just Peace?' *ante*, p.207.

<sup>78</sup> SCR 1199, 6<sup>th</sup> paragraph of the Preamble.

overwhelming humanitarian necessity is recognized by international law.<sup>79</sup> In my view, the use of force by NATO was, indeed, not contrary to international law and was justified on a right of humanitarian intervention.<sup>80</sup>

Conclusively, as Greenwood stated, quite pointedly, 'it is no longer tenable to assert that whenever a government massacres its own people...international law forbids military intervention altogether'.<sup>81</sup>

The argument can be made, however, that the carrying out of humanitarian intervention authorised by the Security Council may militate against the existence of a right to humanitarian intervention on part of States. Nevertheless, a counter argument would be that in case a State makes use of its veto power in the Security Council, thus disabling the latter from taking military action where human rights are clearly violated, States may then be capable of intervening unilaterally to prevent the occurrence of gross violation of human rights.

### **(3). Legal and Political Theory on Humanitarian Intervention**

This subsection (of the second Part of the present chapter) will address the fundamental issue of the moral justification of humanitarian intervention (bellum). An inquiry into the ethical foundations of the international legal system. Indeed, the link between international law and moral philosophy is

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<sup>79</sup> See S/PV.3988 (1999) p.12.

<sup>80</sup> See further, the truly excellent Memoranda submitted by Professors Christopher Greenwood QC and Vaughan Lowe before the House of Commons Select Committee on Foreign Affairs, <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmfaff>; Hoffmann, *Humanitarian Intervention* (1977)

<sup>81</sup> Greenwood, 'Is there a Right of Humanitarian Intervention?', ante...

consistent with the Grotian tradition in international law which regards the Law of Nations as founded upon universal moral values.

### *(a) Just War (Bellum Justum)*

The origins of humanitarian intervention must be seen in the context of whether it is ever lawful to wage war.

#### *(i) War is not in conflict with the Law of Nature*

Cicero has presented: 'What can be done against force without force?'<sup>82</sup> In Ulpian we read : 'Cassius writes that it is permissible to repel *force by force*, and this *right* is bestowed by nature. From this moreover it appears that it is permissible to repel arms by means of arms'.<sup>83</sup> That war is not in conflict with the law of nature is proved from general agreement.<sup>84</sup> The jurist Gaius says: 'Natural reason permits defence of oneself against danger'.<sup>85</sup> 'For there is', says Josephus, 'that law of nature which applies in the case of all creatures, that *they wish to live*; and therein lies the reason why we consider those as enemies who clearly wish to rob us of life'.<sup>86</sup>

#### *(ii) Biblical texts arguments that war is compatible with the law of the Gospel*

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<sup>82</sup> *Letters*, XII, iii 1.

<sup>83</sup> *Digest*, XLIII, xvi. 1. 27 (emphasis supplied).

<sup>84</sup> Cicero, in regard to force used in the defence of life, wrote: 'There is this law which is not written, but born with us; which we have not learned, have not received, have not read, but which we have caught up, have wrung out from nature herself; a law regarding which we have not been instructed, but in accord with which we have been made; the law that if our life has been placed in jeopardy by any violence, or weapons of enemies, every possible means of securing safety is morally right' (*For Milo*, iv. 10).

<sup>85</sup> *Digest*, IX. ii. 4.

<sup>86</sup> *Jewish War*, III, viii. 5.

Despite the divine Commandment given to Moses 'Thou shalt not kill'<sup>87</sup>, two other Commandments of the Old Testament which seem to conflict with the former ones, to say the least, are hereby quoted: 'An eye for an eye, a tooth for a tooth'.<sup>88</sup> Despite the call for love in the New Testament these provisions could still be held valid. In my humble opinion, Moses (as well as mankind) has been given the authority of God to enforce divine law on earth.

On this rationale, transgressors of law may, if necessary, be put to death. Indeed, comparison may be made between the right to wage war and the death penalty. Being fervent exponent of the latter, I would argue that war may be justified on the same grounds as is the penalty of death. If the right to inflict capital punishment and to defend citizens by arms against criminals should be taken away, there would follow a riot of crimes, and illegality among nations. Paul thus speaks: 'If I have wronged any one, and have committed *anything worthy of death*, I refuse not to die'.<sup>89</sup> There are certain crimes for which justice permits, or even demands, punishment by death. I strongly submit that it is in the *love of innocent men* that both capital punishments and *just wars* have their origin. The words of Chrysostom on human punishments become here relevant: 'men do such things not in cruelty but in kindness'.<sup>90</sup> There is, on the other hand, the consideration that we are bound to love our enemies by the example of God.

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<sup>87</sup> *Exodus*, xx. 30.

<sup>88</sup> *Leviticus*, xxiv. 20; *Deuteronomy*, xix. 21; see also: 'Thou shalt love thy neighbour (that is an Israelite), *Leviticus*, xix. 18, 'and shalt hate thine enemy, against whom the Jews are bidden to wage implacable war' [*Exodus*, xxxiv. ii, *Exodus*, xxvii. 19; *Deuteronomy*, xxv. 19].

<sup>89</sup> *Acts* xxv. II (emphasis added).

<sup>90</sup> *On First Corinthians*, iii. 12; see also Seneca, *On Clemency*, Book I. Chap. ii.

But the same God inflicts punishments upon some wicked men even in this life.

Further, a counter-argument may be phrased as follows: 'God is called gracious, merciful, and long-suffering'.<sup>91</sup> Yet, it is Christ himself who inflicts severe punishments upon disobedient Jews, and uncovers their hypocrisy.<sup>92</sup> The occasional wrath of Jesus Christ was imitated by the Apostles, who used the power which had been given them by God for the punishment of wrongdoers.

Chrysostom, *On First Corinthians*, iv. 21 states: 'Shall I kill...For as there is a spirit of gentleness, so there is a spirit of severity'.

### *(b) War as punishment*

Grotius, drawing on the ideas advanced by Gentili,<sup>93</sup> admitted a right to wage war for the purposes of punishment.<sup>94</sup>

Furthermore, I should like to submit a proposition by no means original, yet, as it will be shown, of everlasting value. The moral justification for a just war lie primarily in a deep feeling of *anger*. Aristotle in his masterpiece *Rhetoric* made the point explicitly: 'anger is the human feeling which makes a man exact *revenge* upon someone who is thought to deserve it'.<sup>95</sup> Anger, though according to some views the ugliest passion, forms proof of the fact that human beings are moral agents. It is evidence that people, being members of a moral community,

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<sup>91</sup> *Exodus*, xxxiv. 6.

<sup>92</sup> *Matthew*, xxii. 7

<sup>93</sup> Alberico Gentili, *De jure belli* [1612], (Classics of International Law; Oxford: Clarendon Press, 1933).

<sup>94</sup> Grotius, *De jure belli ac pacis*, (Kelsey ed. London, 1964) II, xx; Grotius also cites Augustine: 'They think that they should decree the commission of crimes of such sort that if any state upon earth should decree them, or had decreed them, it would deserve to be overthrown by a decree of the human race' (On Benefits, VII, xix, 9). Augustine's statement may qualify as a powerful argument for humanitarian intervention.

<sup>95</sup> The element of 'Anger' appears in the Homeric Epics, too (hence the wrath of Achilles in the *Iliad*).

by no means approve of instances of violation of moral and legal principles.<sup>96</sup>

Therefore a just war may be implemented as a measure of *just retribution* and deterrence, both theories of punishment being applicable; such a proposition directly fits the case of humanitarian intervention.<sup>97</sup> On the one hand, intervention of this kind can be launched as a means of retribution against the State which violates the fundamental human rights of its own nationals; on the other, it may serve as vehicle for deterring humanitarian catastrophe from taking place in a given situation.

### *(c) War in the name of the oppressed*

St Ambrose had written that 'he who does not keep harm off a friend, if he can, is as much in fault as he who causes it'.<sup>98</sup> Grotius and Gentili, who quoted St Ambrose, entirely share this view. However, Grotius' position differs from that of Gentili, in that, according to Grotius, the justice of war waged on behalf of oppressed subjects is clearly a legal right rather than a moral duty. In *De jure belli ac pacis*, II, xxv, para.8, it is stated: '*If, however, the wrong is obvious, in case some Busiris, Phalaris, or Thracian Diomede should inflict upon his subjects such treatment as no one is warranted in inflicting, the exercise of the right vested in human society is not precluded. In conformity with this principle Constantine took up arms against Maxentius and Licinius, and other Roman*

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<sup>96</sup> This argument is not dissimilar to the one expressed above at p. 78 that love of the innocent is the motive for waging war.

<sup>97</sup> It is submitted that only in this way can moral order be restored and international legality be preserved.

<sup>98</sup> St Ambrose, *De Officiis*, I, xxxvi, para.179.

*emperors*'. Hersch Lauterpacht refers to this as the 'first authoritative statement of the principle of humanitarian intervention'.<sup>99</sup>

#### *(d) Historical Evidence of Humanitarian Interventions*

In the massive material on humanitarian intervention that I have gone through, the contribution of Thucydides to the subject matter has been unduly neglected.<sup>100</sup> Even Grotius scarcely makes mention of him.<sup>101</sup>

The Thucydidean historical work, a masterpiece of political philosophy and science, sets an authoritative example of humanitarian intervention in international relations. The affairs which follow should be seen in the light of the fact that the Greek cities in ancient times were States themselves.<sup>102</sup> First, Book IV of the *History of the Peloponnesian War*, may at first sight be said to pose an example of humanitarian intervention; on its way to Sicily the Athenian fleet was met with a sea storm, which forced the ships to seek refuge in the Peloponnese (Pylos).<sup>103</sup> As the war between Athens and Sparta was at its apex the Athenian navy members were arrested by the Lacedaemonians. Cleon, the Athenian demagogue, forcefully urged the Athenian Assembly for a military

<sup>99</sup> Hersch Lauterpacht, 'The Grotian Tradition in International Law' (1946) 23 *British YBIL* 1, p.46.

<sup>100</sup> See Phillipson, Coleman, *The International Law and Custom of Ancient Greece and Rome* (London: Macmillan, 1911), which, though a very good exposition of that period's law, contains no hint of Thucydides.

<sup>101</sup> Here is what he mentions: 'In Thucydides the Corinthians find it just that "each party should punish its own subjects"' (*De jure belli ac pacis, ante*, II, xxv, 1). Even this reference ignores the context in which these words have been spoken, and may therefore be misleading as regards the era's State practice on intervention.

<sup>102</sup> It is precisely because of the fact that the Greek cities were themselves recognized as States –albeit with common origins of blood, language, and religion- that the Peloponnesian War, though often described as the greatest 'Civil War' in antiquity, was in fact an international conflict.

<sup>103</sup> Coincidentally, more than two thousand years later, the Navy Battle of Navarino, described above, was to take place on the same spot, Navarino being the contemporary name of ancient Pylos.

campaign to prevent their fellow citizens from being massacred. Although the incident may be better described as operation to save nationals abroad (since the Athenian prisoners of war were not subjects of the Spartans), it has generated the criteria for a legitimate humanitarian intervention as these were formulated in the speech of the Athenian General Demosthenes only a while before the commencement of the military rescue operation: 'Men who have gathered in this venture, let no one of you wish to be esteemed a man of rationality; but, instead, with plain courage, which *leaves no moment for deliberation*, let him attack the opponents and even be optimistic that he will eventually be victorious. When matters reach a point of *overwhelming necessity*, as the present case is, crude reflection is least needed in view of the *instant danger*'.<sup>104</sup> Secondly, in Book I an account is given of a clear instance of humanitarian intervention. The Island of Lesbos (member of the Athenian Empire-Commonwealth or Confederation of city-states) revolted from Athens.

The Athenians set sail against the Mytilenians (inhabitants of Lesbos), and warned them that if they were to refuse an order to surrender, they would demolish their fortifications. An embassy of Mytilenians seeked the help of Sparta thus: 'Come to the help of Mytilene. It is our lives that we are risking; an even more general calamity will follow if you will not listen to us'.<sup>105</sup> The very

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<sup>104</sup> Thucydides, *History of the Peloponnesian War* (Cambridge: Harvard University Press, 1972) Book IV, para. XXXVIII. (emphasis added). Note the striking similarity between the terminology used in this text, and the one employed in the *Caroline Case* 1840: 'It will be for Her Majesty's Government to show a necessity of self-defence, instant, overwhelming, leaving no moment for deliberation'. It makes one wonder whether Mr Webster, was a fervent reader of Thucydides !

<sup>105</sup> Thucydides, *History of the Peloponnesian War, ante*, Book II, para.14

basic criteria for humanitarian intervention were in this case fulfilled: (i) the Mytilenians were subjects of a State (Athens), (ii) they consented to the military intervention undertaken for their own sake, and (iii) they faced imminent danger of humanitarian catastrophe. The Spartans, indeed, dispatched a fleet which reached the coast of Lesbos but never engaged in fighting. The conservative foreign policy of Sparta dictated that the military forces of the State were to keep an eye on a possible Revolt of the Helot population in the Peloponnese. This affair serves, if not else, as an instance clearly showing that humanitarian disaster may, indeed, be the outcome of non-intervention, as it eventually was with the Mytilenians. Therefore, humanitarian intervention in cases of instant necessity is a must.

#### **(4). *Criteria and Conclusions on the Turkish Intervention***

Given that States may exercise the right of unilateral humanitarian intervention in cases of large-scale human rights violations, could then Turkey justify her 1974 intervention of Cyprus upon such a right? I would dear say a proposition that no Greek-Cypriot has so far articulated, namely that the Turkish military operation could *prima facie* be seen as an example of humanitarian intervention. If a coup was directed against the Republic of Cyprus by Turkish Generals, being Greek-Cypriot myself, I would expect from Greece to take military action and intervene in order to protect the human rights of the Greek-Cypriot community and prevent any humanitarian catastrophe from taking place. One could argue that the lives of the Turkish Cypriots were not threatened in 1974 (a

proposition which may be true). However, let us suppose that there existed in 1974 a most dangerous humanitarian emergency involving large scale loss of life. On the other hand, as already noted, the Turkish operation may only *at first sight* be considered as an instance of intervention to protect basic human rights. The limitations to the right should alongside be taken into account. First, a criterion, which renders humanitarian intervention morally and legally justified, is that the victims of oppression welcome the foreign intervention;<sup>106</sup> there was no indication that the Turkish Cypriots requested the protection of Turkey. No doubt, the Turkish Cypriots felt afraid and there is ample evidence that they were initially pleased to see the Turkish army. However, the majority of them were eventually displaced unwillingly from their homes and transferred to the northern part of the island. A second criterion is that humanitarian intervention must correspond to the dictates of the proportionality principle. The *Caroline* case principle may be seen as one that sets limits to the use of force in general and calls for adherence to proportionality. The classic formulation of Mr Webster may in this context be quoted: '...did nothing unreasonable or excessive; since the act is justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it'.<sup>107</sup> So the invocation by Turkey of humanitarian intervention to justify her action should not be seen as isolated from the extent to which this very right was used in 1974 by the

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<sup>106</sup> Walzer concedes that if the invaders are welcomed by a clear majority of the people, then it would be odd to accuse them of any crime at all (*Just and Unjust Wars, ante*, pp.213-214).

Turkish troops, and, of course, from the consequences of the intervention. The mass killing and brutal treatment of innocent Greek Cypriot civilians during the hostilities, the uprooting of others from their homeland and subsequent reduction to the tragic status of refugee, the unascertained fate of missing persons, the destruction of cultural property, and the occupation until nowadays of large part of the Cyprus Republic territory rather seem to argue against a valid invocation of this sort of right by Turkey.<sup>108</sup>

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<sup>107</sup> See Oppenheim's *International Law* 9<sup>th</sup> ed. *ante*, p.443, n.18, where the principle of proportionality is echoed in the phrase 'the action taken is limited both in time and scope to the needs of the emergency'.

<sup>108</sup> On the relevant Humanitarian Law of Armed Conflict (*jus in bello*) see below, Chapter III.

## **PART II**

### **CONSEQUENCES OF THE INTERVENTION**

#### **CHAPTER IV**

##### **THE TURKISH FEDERATED STATE AND THE TRNC**

## CHAPTER IV: THE TURKISH FEDERATED STATE AND THE TRNC

In 1983 the Turkish Cypriot leadership proceeded to a unilateral declaration of the so called Turkish Republic of Northern Cyprus (“TRNC”). Mr Denktash, leader of the Turkish Cypriot community, stated:

‘We are not seceding from the independent island of Cyprus, from the Republic, or will not do so if the chance is given to us to re-establish a b-izonal federal system. But, if the robbers of my rights continue to insist that they are the legitimate Government of Cyprus, we shall be as legitimate as they, as sovereign as they in the northern State of Cyprus’.<sup>1</sup>

It is the purpose of this chapter to examine the legality of this act in international law, in particular whether recognition may be granted to the “TRNC”.

### **(1) International community reaction to the “TRNC”**

#### ***Unilateral Declaration of Independence***

The United Nations Security Council, in Resolution 367 (1974), which reaffirmed Resolution 3212(XXIX) of the General Assembly, expressed regret that the declaration regarding the creation of the ‘TFSC’ was aimed at compromising the continuation of negotiations between the two communities.<sup>2</sup> Further, Resolution 367 called upon all member States to ‘respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and to refrain from any action which might prejudice that sovereignty, independence, territorial integrity and non-alignment, as well as any attempt at partition of the island or its unification with any other country’.

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<sup>1</sup> S/PV 2500 of 18 Nov. 1983, p.31 Turkey recognised the “TRNC” on the same day it was proclaimed. The reasons for recognition are to be found in the statement of the Turkish Foreign Ministry of 15 Nov. 1983, which was circulated as U.N. Doc. A/36/602 of 23 Nov. 1983.

<sup>2</sup> This “State” was not recognised by any State and its establishment seemed to be aimed primarily at improving the constitutional bargaining position of the Turkish minority (Dugard, *Recognition in International Law, ante*, p.108).

The Unilateral Declaration of Independence of the “TRNC”<sup>3</sup> was strongly condemned by Resolution 541 of the Security Council, which saw the UDI as an open violation of the Cyprus Republic Treaty of Guarantee.

Particularly, the Security Council:

- ‘1. Deplores the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus;
2. Considers the declaration referred to above as legally invalid and calls for its withdrawal;
6. Calls upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus;
7. *Calls upon all States not to recognise any Cypriot state other than the Republic of Cyprus.*<sup>4</sup>

In S.C. Resolution 550 (1984) which reaffirmed Resolution 541, the Security Council stated that:

1. Reaffirms its resolution 541 (1983) and calls for its urgent and effective implementation;
2. Condemns all secessionist actions, including the purported exchange of ambassadors between Turkey and the Turkish Cypriot leadership, declares them illegal and invalid, and calls for their immediate withdrawal;
3. Reiterates the call upon all States not to recognise the purported State of the “Turkish Republic of Northern Cyprus” set up by the secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity;
4. Calls upon all States to respect the sovereignty, independence, territorial integrity, unity and non-alignment of the Republic of Cyprus’.

It is noteworthy that the British representative at the United Nations stated these:

‘We recognise only one Cypriot State, the Republic of Cyprus under the Government of President Kyprianou. The Turkish action is incompatible with the state of affairs brought about by the Treaties governing the establishment of the Republic of Cyprus’.

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<sup>3</sup> On 15 November, 1983, however, the Assembly of the Turkish Federated State of Cyprus, with the apparent support of Turkey, proclaimed the establishment of a new “State”-the Turkish Republic of Northern Cyprus. This entity was promptly recognised by Turkey, but no other State has given its recognition (Dugard, *Recognition in International Law*, *supra*, p.109).

Similar stand was taken by the European Community. The European Commission, on 16 November, condemned the Unilateral Declaration of Independence as, indeed, two resolutions of the European Parliament.<sup>5</sup> Also, the European Parliament Resolution of 13 September 1985 stressed that there would be no recognition of the “TRNC” or of the constitutional developments in the northern part of the island.

The Council of Europe, on the other hand, through a decision of the Committee of Ministers based on a recommendation of the Parliamentary Assembly, considered the TRNC declaration legally void. Particularly, in Resolution (83) 13 on Cyprus, the Committee of Ministers of the Council of Europe:

- ‘1. Deplores the declaration by the Turkish Cypriot leadership of the purported independence of a so-called “Turkish Republic of Northern Cyprus”;
2. Considers the declaration of referred to above as legally invalid and calls for its withdrawal;
3. Declares that it continues to regard the Government of the Republic of Cyprus, which is represented in the Committee of Ministers, as the sole legitimate Government of Cyprus;
4. Calls for the respect of the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.’

Likewise, the Commonwealth Heads of State, at the New Delhi Conference, condemned the declaration to create a secessionist state in northern Cyprus, called upon all states not to assist the secessionist entity, and claimed the implementation of the relevant resolutions of the United Nations.

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<sup>4</sup> Emphasis supplied.

<sup>5</sup> OJ No. C342, 19.12.1983, p.52.

## **(2). Jus Gentium and Positivism**

In accordance with positivism, the obligation to obey international law derived from the consent of states. Oppenheim's *International Law* provides the most influential expression of positivist theory. International law was seen as the law existing between civilized nations. In 1859 the British Law Officers spoke of international law as it has been hitherto recognized and now subsists by the common consent of Christian nations.<sup>6</sup> Members of the society whose law was international law were the European States between whom it evolved from the fifteenth century onwards, and those other States accepted expressly or tacitly by the original members into the society of Nations; for example the United States of America and Turkey.<sup>7</sup> Recognition, express or implied, solely created their membership and bound them to obey international law.<sup>8</sup> States not so accepted were not bound by international law. Only States recognised and accepted as States into international society, were bound by international law and were international persons. States solely and exclusively are the subjects of International Law.<sup>9</sup> Through recognition only and exclusively a State becomes an International Person and a subject of International Law.<sup>10</sup>

### **2.1 The Constitutive theory**

The constitutive view which deduces the legal existence of new States from the will of those already established dates back to Hegel, one of the spiritual fathers of the nineteenth-century doctrines of positivism and of the absolute sovereignty of the State in the international sphere.<sup>11</sup> Most of the adherents of the constitutive view of recognition are also

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<sup>6</sup> Oppenheim, *International Law* (1<sup>st</sup> edn.) 17.

<sup>7</sup> *Ibid.* p. 18. On Turkey's membership see Hall, *International Law* (2<sup>nd</sup> edn. 1884), p.40.

<sup>8</sup> Oppenheim, *International law*, *supra* p.17

<sup>9</sup> *Ibid.* p.18. By "States" Oppenheim meant recognized States.

<sup>10</sup> *Ibid.* p.108.

<sup>11</sup> Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press 1947) p.38.

positivist in outlook. Sir Hersch Lauterpacht, however, who was not a positivist, was one of the most persuasive exponents of the constitutive position.<sup>12</sup> Lauterpacht formulates the position as follows: The full international personality cannot be automatic. As its ascertainment requires the prior determination of difficult circumstances of fact and law, there must be *someone* to perform that task. In the absence of a preferable solution, such as the setting up of an impartial international organ to perform that function, the latter must be the fulfilled by States already existing.<sup>13</sup>

In modern international law this argument is not applicable at large. Determination of the legality of the use of force, or the violation or termination of a treaty, may involve difficult circumstances of fact and law, but it could not be contended that the views of particular States as to such matters are conclusive. If that was the case, every rule of international law would be the subject of an automatic reservation with respect to every State.<sup>14</sup> It is of interest though that Lauterpacht allowed the possibility of an invalid act of recognition.<sup>15</sup> Another objection to the constitutive approach is its relativism. Kelsen says that 'it follows from constitutivist theory that legal existence of a State has relative character. A State exists legally only in its relations to other States. There is no such thing as absolute existence'.<sup>16</sup> Lauterpacht, who accepts the relativity of recognition as inherent in the constitutive view, refers to it as a 'glaring anomaly casting grave reflection upon international law'.<sup>17</sup>

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<sup>12</sup> Lauterpacht adopts the view that prior to recognition, the community in question possesses neither the rights nor the obligations which international law associates with full Statehood.

<sup>13</sup> Lauterpacht, *Recognition in International Law*, *supra* p.55.

<sup>14</sup> See Crawford, *The Creation of States in Modern International Law*, p.18.

<sup>15</sup> Lauterpacht regarded Italian and German recognition of the Franco regime as 'illegal ab initio': *Recognition in International Law* *supra* p. 234 fn. 3.

<sup>16</sup> Kelsen, p. 609.

<sup>17</sup> Lauterpacht, *Recognition in International Law*, *supra* p. 67.

## 2.2 The declaratory theory

According to this theory, a State exists as a subject of international law-i.e. as a subject of international rights and duties- as soon as it exists as a fact, i.e. as soon as it fulfils the conditions of statehood as laid down in international law.<sup>18</sup> If recognition is purely declaratory of an existing fact what is, then, its juridical significance? The answer often given is that recognition is a political rather than a legal act.<sup>19</sup> Others maintain that its sole legal effect is to establish ordinary diplomatic relations between the recognizing and the recognized State.<sup>20</sup> This probably is also the intention of a large number of adherents to the declaratory doctrine for whom recognition signifies the acceptance of the State as a member of the international community.<sup>21</sup> Others still explain the declaratory effect of recognition in the sense that although prior to it the new State possesses all rights which international law grants to States, it is only after recognition that it is assured of enjoying them.<sup>22</sup>

A passage of Taft C.J.'s judgment in the *Tinocco Arbitration* is considered as the classical piece of reference: The non-recognition by other nations of a government claiming to be a national personality, is usually appropriate evidence that it has not attained the independence and control entitling it by international law to be classed as such.<sup>23</sup> A German-Polish mixed Tribunal, in reference to the existence of the new State of Poland, stated: 'the recognition of a State is not constitutive but

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<sup>18</sup> Lauterpacht, *Recognition in International Law*, ante, p.41; Crawford, *Recognition in International Law*, p.20: according to the declaratory theory, recognition of a new State is a political act which is in principle independent of the existence of the new State as a full subject of international law; Brierly, *The Law of Nations* (5<sup>th</sup> ed. 1955) pp. 131-2: the better view is that the granting of recognition to a new state is not a constitutive but a declaratory act; it does not bring into legal existence a State which did not exist before. A State may exist without being recognized, and if it does exist in fact, then, whether or not it has been formally recognized by other States, it has a right to be treated by them as a State.

<sup>19</sup> See Brierly, *The Law of Nations* (3<sup>rd</sup> ed. 1942) p.100; also see *Hague Recueil*, vol. LVIII (1936) (iv), p. 52, where Professor Brierly further says that 'international law prescribes the objective conditions on which States are bound to base their *decision* in the matter'.

<sup>20</sup> Lauterpacht, *Recognition in International Law*, *supra*, p.42.

<sup>21</sup> *Ibid.* p.42.

<sup>22</sup> *Ibid.* p.42.

merely declaratory. The State exists by itself and the recognition is nothing else than a declaration of this existence, recognized by the States from which it emanates'.<sup>24</sup> Of great importance in this regard is the report of the Commission of Jurists on the Aaland Islands. The passage of the Report dealing with the independence of Finland reads: "these facts by themselves do not suffice to prove that Finland, from this time onwards, became a sovereign State... The same legal value cannot be attached to recognition of new States in war-time, especially to that accorded by belligerent powers, as in normal times...In addition to these facts which bear upon the external relations of Finland, the very abnormal character of her internal situation must be brought out. This situation was such that, for a considerable time, the conditions required for the formation of a sovereign State did not exist'.<sup>25</sup> The crucial point above is that conditions are required for the formation of a sovereign State apart from recognition. It is evident that the declaratory doctrine prevails among writers. Brownlie summarizes the position thus: 'Recognition, *as a public act of State*, is an optional and political act and there is no legal duty in this regard. However, in a deeper sense, if an entity bears the marks of statehood, other states put themselves at risk legally, if they ignore the basic obligations of State relations'.<sup>26</sup> Nevertheless, States do not practically regard recognized States as exempt from international law.<sup>27</sup>

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<sup>23</sup> (1924) 18 *American Journal of International Law* 147-74, 154.

<sup>24</sup> *Deutsche Continental Gas Gesellschaft v. Polish State* (1929) 5 *Annual Digest of Public International Law Cases* No.5.

<sup>25</sup> *League of Nations Official Journal*, Supp. No. 4 (1920), 8.

<sup>26</sup> *Principles of Public International Law*, 94 (emphasis original); Writers sharing the declaratory view include: O'Connell, *International Law* I, pp.123-34; Starke, *Studies in International Law*, pp.91-100; Fawcett, *The Law of Nations* (2<sup>nd</sup> ed., 1971), p.49, 55; Higgins, *The Development of International Law through the Political Organs of the United Nations* (London, pp.135-6; Akehurst, *Modern Introduction to International Law*, pp. 60-63; Waldock (1962), 106 *Recueil des Cours*; Chen, *The International Law of Recognition* (ed. L.C. Green, London, 1951); Brierly, *The Law of Nations*, *ante*, p.139.

<sup>27</sup> Brownlie, *Principles of International Law*, *supra*, p.92 fn; Brownlie, *Recognition in Theory and Practice*, BYBIL : the declaratory view militates in favour of a legal and objective method of analysing situations. Whiteman, 2 *Digest of International Law* (Washington, 15 vols. 1903-1973), pp. 604-65; Brownlie, *International Law and the Use of Force by States*, *ante* p.380: non-recognition of North

### **(3) States created as a result of illegal use of force and the “TRNC”**

It is established principle that territory may not be acquired by the illegal use of force.<sup>28</sup> The entities created during World Wars by illegal use of force were regarded as puppets and thus not independent. The puppet State situation illustrates the difficulty in any consideration of the relation between statehood and the illegal use of force. Either the entity owes its existence directly and substantially to the illegal intervention- in which case it is unlikely to be independent- or it does not, in which case the normal criteria for statehood would presumably apply.<sup>29</sup>

The term “puppet State” is used to describe nominal sovereigns under effective foreign control, especially in cases where the establishment of the puppet State is intended as a cloak for manifest illegality.<sup>30</sup> It is applicable to two European “States” established in German occupied territories. Slovakia was a nominally independent part of Czechoslovakia under German protection from 1939 to 1945. Croatia was also established on occupied Yugoslavian territory at the same period. A U.S. International Claims Commission held that Yugoslavia was not, either factually or legally, a successor to Croatia:

“At all times during the period of its (Croatia’s) existence as a so-called independent State, forces headed by Mihalovic and Tito conducted organized resistance within it. At no time was Croatia’s control of its territory and population complete. It was

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Korea and of Israel was not regarded as precluding the application of international law rules to the Korean and Middde East wars).

<sup>28</sup> Whiteman, *5 Digest* 874-965

<sup>29</sup> Crawford, *The Creation of States in Modern International Law*, *ante*, p.108. For example, in the Manchurian crisis the question whether Manchukuo could have become an independent State notwithstanding the illegal Japanese intervention was never really in issue, since the puppet nature of the Manchukuo regime was and remained evident (*Ibid*, p.107).

<sup>30</sup> *Ibid*. p. 62.

created by German and Italian forces and was maintained by force and the threat of force, and as soon as the threat subsided Croatia ceased to exist... It appears well established that Croatia was during its entire 4-year life subject to the will of Germany or Italy. It was not established through any dereliction on the part of the Government of Yugoslavia... Croatia is defined by contemporary writers as a 'puppet state' or 'puppet government'...A puppet state or local *de facto* government such as Croatia also possesses characteristics of 'unsuccessful revolutionists' and 'belligerent occupants'.<sup>31</sup>

In the above mentioned cases the factors considered include that the entities were established illegally by the use of external military force, and that they did not have the support of the vast majority of the population they claimed to govern.<sup>32</sup>

It is also necessary in this context to explore the relation between self-determination and the rules relating to the use of force. Apparently the two legal principles are linked. According to Article 2 (4) of the U.N. Charter prohibits the use of force 'in any other manner inconsistent with the Purposes of the United Nations'. One of these purposes is respect for the principle of equal rights and self-determination of peoples. On the assumption that legal personality derives from the legal right to self-determination of the entity in question, it seems unlikely that the use of force to assert that right should be illegal.<sup>33</sup> It is noteworthy that the Declaration on Principles of International Law approved by Resolution 2625 (XXV) states that 'every state has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-

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<sup>31</sup> *Socony Vacuum Oil Claim* (1954) 21 ILR 55, 58-62.

<sup>32</sup> It was not regarded as relevant that certain groups in the territory carried out administrative functions if the elements mentioned were present. In such circumstances, any acts of puppet entity must be regarded as void *ab initio*, except to the extent that they can be regarded as acts of the belligerent occupant itself (Crawford, *The Creation of States in Modern International Law*, *ante*, p. 65); with regard to the puppet governments in Greece during World War II see Tenekides (1947), 51 *Revue General de Droit International Public* 113-33.

<sup>33</sup> *Ibid.* p.110.

determination and freedom and independence'. The principle of self-determination thus takes priority over the prohibition of the use of force against the territorial integrity of a State.

However, the issue in the present analysis is when an entity is created in violation of an applicable right to self-determination by external illegal force. In such a case, the illegality of the entity's origin is confirmed by the maxim *ex injuria jus non oritur*. Therefore, some particular situations of military intervention in aid of self-determination have to be hereby discussed. The two most relevant cases are Manchukuo and Bangladesh. There are two possibilities. It may be that the effectiveness of the emergent entity is in all situations to be regarded as paramount, so that its illegality of origin- however serious will not impede recognition as a State. It may be that the illegality of origin should be regarded as paramount in accordance with the maxim *ex injuria jus non oritur*.<sup>34</sup> "Manchukuo" came into being after Japan invaded Manchuria, a province of China, in 1934. Next year Japan recognized "Manchukuo" as an independent State. Its territory was that of Manchuria. The League of Nations dispatched the Lytton Commission to "Manchukuo" to find out the facts.<sup>35</sup> The Commission reported the following:

"In the Government of Manchukuo", Japanese officials are prominent and Japanese advisers are attached to all important Departments. Although the Premier and his Ministers are all Chinese, the heads of the various Boards of General Affairs, which, in the organization of the new State, exercise the greatest measure of actual power, are Japanese. They are doubtless not under the orders of the Tokyo Government, and their policy has not always coincided with the official policy of the Japanese Government. But in the case of all-important problems, these officials and advisers, some of whom were able to act more or less independently in the first days of the new organization,

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<sup>34</sup> Crawford, *The Creation of States in Modern International Law*, ante, p.114.

have been constrained more and more to follow the direction of the Japanese official authority.<sup>36</sup>

As Crawford observes, the Lytton Commission's finding was that Manchukuo was not a genuine and spontaneous independence movement.<sup>37</sup> He goes on to say that given its total lack of independence the question whether, had it been effectively independent, it would have been deprived of statehood because of Japanese violations of the Covenant and the Paris Pact, did not really arise.<sup>38</sup> In the light of the Commission's Report, on February 24, 1932, the League of Nations Assembly resolved that 'the sovereignty over Manchuria belongs to China'.<sup>39</sup>

Interestingly, the puppet state of "Manchukuo" situation prompted the Stimson Doctrine of Non-recognition. On January 7, 1932, Stimson, the United States Secretary of State for Foreign Affairs, sent a note to the Japanese and Chinese Governments, stressing the illegality of the establishment of the "Manchukuo" State.<sup>40</sup> The Assembly of the League of Nations, using identical phraseology with the one employed in the Stimson note, resolved that 'it was incumbent upon the Members of the League of Nations not to recognize any situation, treaty or agreement

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<sup>35</sup> For an account of the facts, see Harris, *Cases and Materials in International Law* (London: Sweet and Maxwell, 1996), p.109-110.

<sup>36</sup> See Harris, *Cases and Materials on International Law*, *ante*, p.109-110. The Commission went on to say expressly that 'this authority, in fact, by reason of the occupation of the country by its troops for the maintenance of its authority both internally and externally,... possesses in every contingency the means of exercising an irresistible pressure.'

<sup>37</sup> Crawford, *The Creation of States in Modern International Law*, *ante*, p.108. The independence movement was only made possible by the presence of Japanese troops and for this reason the present regime cannot be considered to have been called into existence by a genuine and spontaneous independence movement.

<sup>38</sup> *Ibid.* p.108.

<sup>39</sup> *League of Nations Official Journal*, Special Supp. No. 112, p. 75 (1933)

<sup>40</sup> Extract from the note, formulating what was to become the Stimson Doctrine read as follows: the American Government deems it to be its duty to notify both the Imperial Japanese Government and the Government of the Chinese Republic that it cannot admit the legality of any situation *de facto*...and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27<sup>th</sup>, 1928, to which treaty both China and Japan, as well as the United States, are parties (Harris, *Cases and Materials on International Law*, *supra*, p.219).

which may be brought about by means contrary to the Covenant of the League of Nations, or the Pact of Paris'.<sup>41</sup> This resolution was a strong indication that the Stimson Doctrine was a landmark in international law and relations.

Let us now turn to the Bangladesh case. Pakistan, until 1971, consisted of East and West Pakistan, with India between the two parts. In March 1971, East Pakistan declared itself independent under the name of Bangladesh. Evidence suggests that India, which by the time had taken into its territory about one million refugees from East Pakistan, had militarily assisted the insurgents, and Indian troops came to close quarters with Pakistani ones in the border area. In December Pakistan launched an attack against India. On the declaration of war on both sides fierce conflict commenced. Eventually Pakistan surrendered, and Bangladesh has received recognition including that of Pakistan since December 1971.<sup>42</sup>

Clearly, the Indian intervention was decisive, in the events which occurred, bringing about the creation of Bangladesh. There was a lot of support for independence. As Crawford suggests, 'there can be no doubt that Indian intervention was the dominant factor in the success of the independence movement'.<sup>43</sup> Yet, Bangladesh, despite the Indian intervention, was rapidly and widely recognized as a State. The Indian intervention was criticized by many governments as violating the U.N. Charter, but that illegality did not affect the recognition process.<sup>44</sup>

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<sup>41</sup> *League of Nations Official Journal*, Special Supp. No. 101, pp. 87, 88 (1932).

<sup>42</sup> For an extensive account of events surrounding the Bangladesh case, see Harris, *Cases and Materials on International Law*, *ante*, pp.892-3.

<sup>43</sup> Crawford, *The Creation of States in Modern International Law*, *ante*, p.115.

<sup>44</sup> On the illegality of the Indian intervention, see Franck and Rodley (1973), 67 *American J.I.L.* pp.275-305.

Thus, the issue whether East Bengal was a self-determination unit prior to independence is of importance,<sup>45</sup> because, if it were not, or if recognition was granted on the basis of effective control in disregard of the legality of the Indian intervention, then there would be no legal criterion determining the creation of States through external illegal force.

A number of writers have supported the view that East Bengal did indeed have a right to self-determination. As noted above, this is not to suggest, however, that the Indian intervention was a legal act.

The case of the “Turkish Republic of Northern Cyprus” is different, though, from the one of Bangladesh examined above. Where a State illegally intervenes and instigates the secession of part of a metropolitan State (as the case with the “TRNC” is), other states are under the same duty of non-recognition as in the case of illegal annexation of territory.<sup>46</sup> An entity created in violation of the rules relating to the use of force *in such circumstances* will not be regarded as a State. On the Cyprus issue, Crawford states:

‘The situation in Cyprus after the Turkish intervention in 1974 is illustrative. It is not thought that a Turkish State on Cyprus created as a result of the intervention would have been recognized or accepted: indeed, despite their support of partition, the Turkish government appears to have accepted in practice the formal requirement of a unified Cypriot State’.<sup>47</sup>

It is necessary to explore in this context the doctrine of non-recognition. The modern law of non-recognition may be formulated in the following terms. An act in violation of a norm having the character of *jus cogens* is illegal and is therefore null and void.<sup>48</sup> This applies to the

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This conclusion is reached by Crawford, *ibid.* p. 116-117. He also argues that genocide is a clear case of abuse of sovereignty, and this factor, together with the territorial and political coherence of East Bengal in 1971 probably qualified East Bengal as a self-determination unit.

<sup>46</sup> See Crawford, *The Creation of States in Modern International Law*, *ante*, p.118.

<sup>47</sup> *Ibid.* p.118 fn; also see A.V.W. Thomas and A.J. Thomas (1975), 29 *Southwestern Law Journal* 513-46, 526-7.

<sup>48</sup> See Dugard, *Recognition and the United Nations* (Cambridge University Press, Grotius Publications)

creation of States, the acquisition of territory and other situations. States are under a duty not to recognize such acts.<sup>49</sup>

The object of the policy or the obligation of non-recognition is not to render illegal an otherwise lawful and valid act; its object is to prevent the validation of what is a legal nullity.<sup>50</sup> The jurisprudential basis of the principle of non-recognition is the fundamental maxim *ex injuria jus non oritur*, a “general principle of law recognized by civilized nations”.<sup>51</sup> An illegality cannot, as a rule, become a source of legal right to the wrongdoer.<sup>52</sup> The principle of *ex injuria jus non oritur* provides a sound basis for the duty of non-recognition, particularly where the illegality has been confirmed by the political organs of the United Nations. In the 1971 *Namibia Opinion* the International Court of Justice stated:

“A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence. Once the Court faced with such a situation, it would be failing in the discharge of its judicial functions if it did not declare that there is an obligation, especially upon members of the United Nations, to bring that situation to an end”.<sup>53</sup>

*Jus cogens* is a central feature of the modern doctrine of non-recognition since violation of a *jus cogens* norm is a prerequisite for the illegality that results in non-recognition. Thus, brief consideration of the doctrine of *jus cogens* is imperative. *Jus cogens* has its roots in the Natural Law doctrine of international law, and was revived by the International Law Commission for the purpose of the Convention on the Law of Treaties. In

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<sup>49</sup> This formulation substantially accords with that of the 1981 Draft of the American Law Institute’s Restatement of Foreign Relations Law of the United States which provides that “A State is required not to recognize or treat as a State an entity that has attained the qualifications of statehood in violation of international law”(Tenatative Draft No. 2, pp.3.8).

<sup>50</sup> Lauterpacht, *Recognition in International Law*, *ante*, p. 413.

<sup>51</sup> Statute of the International Court of Justice, Article 38 (3).

<sup>52</sup> Lauterpacht, *Recognition in International Law*, *supra*, p.420; also see *Corpus Juris Civilis, Digest* 50.17.134.i: “ Nemo ex suo delicto meliorem suam conditionem facere potest”; but, illegality may, if the rigid conditions of lapse of time and of other requirements have been complied with, crystallize into a legal right as the result of the operation of prescription (acquisitive prescription): H. Lauterpacht, *Recognition in International Law*, *supra*, p.

<sup>53</sup> 1971 I.C.J. Reports 16, 54.

1953, in his Report to the International Law Commission, Sir Hersch Lauterpacht raised the notion of *jus cogens* when he proposed that the Convention include a provision that a “treaty is void if its performance involves an act which is illegal under international law and if it is declared so to be by the International Court of Justice.<sup>54</sup> Article 53 of the Vienna Convention on the Law of Treaties gives the final form to the deliberations of the Commission on *jus cogens*.<sup>55</sup> Writers have formulated the principle of *jus cogens* in a way that does not confine it to the invalidity of treaties. Verdross, a member of the International Law Commission, wrote:

“In the field of general international law there are rules having the character of *jus cogens*. The criterion for these rules consists in the fact that they do not exist to satisfy the needs of individual States but the higher interest of the whole international community. Hence these rules are absolute”.<sup>56</sup>

Dugard, regards that the prohibition of the use of force as enshrined in Article 2(4) of the U.N Charter provides an example of a *jus cogens* rule. He goes on to argue that the “TRNC” has been created by the illegal use of force, and therefore it bears no legal validity.<sup>57</sup>

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<sup>54</sup> Lauterpacht stated: “It would thus appear that the test whether the object of the treaty is illegal and whether the treaty is void for that reason is not inconsistency with customary international law pure and simple, but inconsistency with such overriding principles of international law which may be regarded as constituting principles of international public policy” (1953 *I.L.C. Yearbook* II 154-156); also see Sir Gerald Fitzmaurice, Third Report on the Law of Treaties, 1958 *I.L.C. Yearbook* II 40; Sir Humphrey Waldock, Second Report on the Law of Treaties 1963 *I.L.C. Yearbook* II 52-53.

<sup>55</sup> “For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community as a whole as a norm from which no derogation is permitted...”; see further Rosenne, *The Law of Treaties: A Guide to the Legislative History of the Vienna Convention of the Vienna Convention* (1970) 290-293.

<sup>56</sup> *Jus Dispositivum ans Jus Cogens in International Law* (1966) 60 *American J.I.L.* 55,58; also see Conference on International Law, Lagonissi, April 3-8, 1966, *Papers and Proceedings: The Concept of Jus Cogens in International Law* (Carnegie Endowment for International Peace); dictum in the *Barcelona Traction, Light and Power Company Case*, 1970 *I.C.J. Reports* 3, 32.

<sup>57</sup> *Recognition and the United Nations*, ante, p.110. For the relevant complexities of the Palestinian Question, see Elihu Lauterpacht, *Jerusalem and the Holy Places*, Anglo-Israel Association, Pamphlet No. 19 (1968); Melinda Crane “Middle East: Status of Jerusalem” (1980) 21 *Harvard International Law Journal* p. 784; the offer to the Palestinians by Barak at Camp David during July-December 2000, could, I submit, provide a framework for a just and viable settlement of the issue: 96 percent of the

#### **(4) Classic Criteria for Statehood<sup>58</sup> and the “TRNC”**

Article 1 of the Montevideo Convention 1933 formulates the criteria for statehood:

‘The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States’.<sup>59</sup>

These criteria are based on the principle of effectiveness. Also, they correspond to the declaratory theory of recognition and are seen as objective criteria for statehood. It is now imperative to explore them with reference to the ‘Turkish Republic of Northern Cyprus’.

##### **4.1 Defined Territory**

‘Territorial sovereignty involves the exclusive right to display the activities of a State’.<sup>60</sup> A State must possess some territory. However, no rule exists requiring a minimum area of the territory.<sup>61</sup> A new State may be in existence in spite of claims to its territory. Three situations may be envisaged: a claim relating to the entire territory of the new State, one relating to the boundaries of the State, the two claims going side by side.

The case of Israel is an illustration of the third situation. Israel was admitted to the United Nations on 11 May 1949.<sup>62</sup> It is interesting to note what Jessup argued for Israel’s admission:

‘One does not find in the general classic treatment of this subject any insistence that the territory of a State must be exactly fixed by definite frontiers...The formulae in the classic treatises somewhat vary, but both reason and history demonstrate that the concept of territory does not necessarily include precise delimitation of the boundaries

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West Bank, 100 percent of the Gaza Strip, a sovereign Palestinian State, an end to the occupation, the uprooting of most of the settlements, and sovereignty over Arab East Jerusalem

<sup>58</sup> On Criteria see Higgins, *The Development of International Law through the Political Organs of the United Nations*, *ante*, p.11-57, Brownlie, *Principles of Public International Law*, *ante*, pp. 74-82, Lauterpacht, *Recognition in International Law*, *ante*, pp.26-32, Whiteman, *I Digest of International Law*, *ante*,221, Akehurst, *Modern Introduction to International Law* (7<sup>th</sup> ed. Routledge, 1997), pp. 77-81.

<sup>59</sup> 165 *League of Nations Treaty Series* 19.

<sup>60</sup> Island of Palmas Case (1928) *I Reports of International Arbitral Awards*, *per* Judge Huber.

<sup>61</sup> Thus, States may cover only a small area. Monaco’s area, for example, is 1.5 square kilometres, and the Vatican’s 0.4 km.

of that territory. The reason for the rule that one of the necessary attributes of a State is that it shall possess territory is that one cannot contemplate a State as a kind of disembodied spirit...There must be some portion of the earth's surface which its people inhabit and over which its Government exercises authority. No one can deny that the State of Israel responds to this requirement'.

The International Court of Justice has confirmed the rule:

'The appurtenance of a given area, considered as an entity, in no way governs the precise delimitation of its boundaries... There is for instance no rule that the land frontiers of a State must be fully delimited and defined, and often in various places and for long periods they are not, as is shown by the case of the entry of Albania into the League of Nations'.<sup>63</sup>

Higgins, however, states that 'when the doubts as to the future frontiers are of a serious nature, statehood becomes in doubt. Thus when in 1919 Estonia and Latvia were recognized by the Allied Powers, no recognition was granted to Lithuania on the express ground that its frontiers were not yet fixed'.<sup>64</sup> Crawford, on the other hand, objects to the above view and the specific example of Lithuania.<sup>65</sup> It seems that a territorial dispute is not enough to bring statehood into question. The only requirement is that the State must consist of a certain coherent territory effectively governed- which demonstrates that the requirement of territory is rather a constituent of government.<sup>66</sup>

In the case of the 'Turkish Republic of Northern Cyprus', there was no already existing territory the aboriginal population of which undertook to govern. In fact the territory claimed by the 'TRNC' is the very one which

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<sup>62</sup> G.A. Assembly Res. 273 (III) (37-12:9); S.C. Res. 70 (9-1 (Egypt) : 1 (U.K.)).

<sup>63</sup> I.C.J. Reports, 1969 p.3,32.

<sup>64</sup> Higgins, *The Development of International Law through the Political Organs of the United Nations*, *ante*, p.20 fn

<sup>65</sup> Crawford, *The Creation of States in International Law*, *ante*, p.39: It is true that *de jure* recognition of Lithuania by the Allies was refused, but this action appears to have been politically motivated.

<sup>66</sup> *Ibid.* p.40.

was militarily occupied during the Turkish armed intervention of 1974. As already shown, the territory of the ‘TRNC’ was acquired by the illegal use of force, therefore it cannot qualify as legal criterion for statehood. It should also be noted that Turkish Cypriots and Greek Cypriots coexisted, with the exception of the 1963 and 1967 hostilities, quite peacefully, scattered over the whole territory of the Cyprus Republic. The Turkish Cypriots were not living in a separate area exclusively of their own. Apart from that, governmental control of this territory is in the hands of a belligerent occupant. As a result, the independence criterion for statehood to be explored below may not be met by the alleged territory of the ‘TRNC’.

#### **4.2 Permanent Population**

A permanent population is necessary for statehood. States are required to have a permanent population.<sup>67</sup> The view has been stated that persons habitually resident in the territory of the new State automatically acquire the nationality of that State, for all international purposes, and lose their former nationality.<sup>68</sup> The better view seems to me to be the one put forward by O’Connell:

‘Although inhabitants of territory ceded or seceding from the Crown lose their British nationality, it does not follow that they acquire either automatically or by submission that of the successor State. The latter may withhold the granting of its nationality to all portions of the persons concerned...it cannot be asserted with any measure of confidence that international law, at least in its present form of development, imposes any duty on the successor State to grant nationality’<sup>69</sup>.

With regard to the ‘TRNC’, the grant to the Turkish Cypriots of citizenship of the declared State should be seen as unlawful, once again

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<sup>67</sup> See Crawford, *The Creation of States in International Law*, *ante*, p.40.

<sup>68</sup> Ibid. p.41; Brownlie, (1963) *British Y.B.I.L.* pp.284-364, 320.

taking into account that the entity in question is the product of an illegal military intervention and, therefore, its actions have no legal validity.

Secondly, in 1974, the permanent population (c.200,000) of the presently occupied part of the Republic territory were forced to abandon their homeland, but nevertheless have since never given up demanding that their properties be returned to their lawful owners. Thirdly, most of the inhabitants of the territory claimed by the 'TRNC' are settlers illegally brought from mainland Turkey; it is noteworthy that the overwhelming majority of Turkish Cypriots have migrated and been dispersed to various parts of the world, because of alleged inhumane treatment towards them on part of the belligerent occupant's regime.

#### 4.3 Government

'Government or effective government' is obviously a basis for the other central requirement of independence.<sup>70</sup> Crawford observes that international law defines territory not by adopting private law analogies of real property, but by reference to the extent of governmental power exercised, with respect to some area and population.<sup>71</sup> The Opinion of the Commission of Jurists appointed by the League of Nations to report on aspects of the Aaland Islands dispute states accurately the requirement of government:

‘...Political and social life was disorganized; the authorities were not strong enough to assert themselves...the Government had been chased from the capital and forcibly prevented from carrying out its duties; the armed camps and the police were divided into opposing forces, and Russian troops, and after a time Germans also took part in the civil war. It is therefore difficult to say at what exact date the Finnish Republic, in the legal sense of the term, actually became a definitely constituted sovereign State.

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<sup>69</sup> O'Connell, *State Succession in International and Municipal LawI*, pp . 503

<sup>70</sup> *Nationality (Secession of Austria) Case 21 ILR 175 (1954);*

<sup>71</sup> Crawford, *The Creation of States in Modern International Law, ante*, p.42.

This certainly did not take place until a stable political organization had been created, and until the public authorities had become strong enough to assert themselves throughout the territories of the State without the assistance of foreign troops. It would appear that it was in May 1918, that the civil war was ended and that the foreign troops began to leave the country, so that from that time onwards it was possible to re-establish order and normal political and social life, little by little'.<sup>72</sup>

As regards the TRNC, its government is the product of illegality, since the 'TRNC' itself is the result of the illegal use of armed force. Also, the administration of the entity largely depends upon financial and military assistance provided by Turkey. In effect, it is not a stable political organization.

#### 4.4 Independence

This is a basic criterion of statehood. In the *Island of Palmas Case*, it was held:

'Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of national organization of States during the last few centuries, and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations'.<sup>73</sup>

Absence of independence may render an entity an inseparable part of a dominant colonial State, in which case the former may better be classified as protectorate. On the other hand, in the case of 'puppet States' independence is legally invalid. In the *Austro-German Customs Union Case*,<sup>74</sup> the term independence was explored. The Court gave advice as to

<sup>72</sup> League of Nations Official Journal Special Supp. No. 4 (1920), 8-9.

<sup>73</sup> Netherlands v. U.S. (1928) 2 Reports of International Arbitral Awards, 829, 838 (per Judge Huber)

<sup>74</sup> Permanent Court of International Justice Reports, Series A/B No. 41 (1931).

whether a customs union between Austria and Germany would be consistent with obligations undertaken by Austria according to the Treaty of Saint-Germain.<sup>75</sup> By eight votes to seven, it was held that the union at issue was illegal. Although it was agreed by the majority that the independence of Austria was not strictly threatened within the meaning of Article 88, the Court was of Opinion that the proposed union was a special regime calculated to threaten independence.<sup>76</sup> The case, however, has been fiercely criticised.<sup>77</sup> The majority Opinion went on to put forward a definition of independence in the particular circumstances of Austria; thus, an independent State is a separate State with the sole right of decision in all matters economic, political...these different aspects of independence being in practice one and indivisible.<sup>78</sup> Judge Anzilotti gave a more satisfactory definition and need be cited:

‘Independence as thus understood is really no more than the normal condition of States according to international law; it may also be described as sovereignty (suprema potestas), or external sovereignty, by which is meant that the State has over it no other authority than that of international law...’<sup>79</sup>

## **(5) Self-determination and the “TRNC”**

The issue whether there exists a right of self-determination has been a subject of great debate. Debatable is also the issue whether self-

<sup>75</sup> Article 88 of the Treaty of St.-Germain , 1919 provided that ‘Austria’s independence was inalienable except with the consent of the League Council: Austria undertook to abstain from any act which might directly or indirectly or by any means whatever compromise her independence by participation in the affairs of another Power’: for details, see Crawford , *The Creation of States in International Law*, *ante*, p. 49fn. 89.

<sup>76</sup> See Opinion of Judge Anzilotti, *P.C.I.J. Reports*, *supra*, p.64.

<sup>77</sup> Morgenthau, *Politics among Nations* (5<sup>th</sup> edn., 1973)p. 426; Brierly, *The Basis of Obligation in International Law and Other Papers* (ed. H. Lauterpacht and C.H.M. Wallock, Oxford, 1963), p.242-9, H.Lauterpacht, *Development of International Law by the International Court* (London, 1958), pp.47-49

<sup>78</sup> Crawford is sceptic as to whether this definition is most appropriate: ‘as a general definition of independence as the criterion of statehood it is much too absolute’ (*The Creation of States in Modern International Law*, *ante*, p.51).

<sup>79</sup> He further stated the following: ‘...It also follows that the restrictions upon a State’s liberty, whether arising out of ordinary international law or contractual engagements, do not as such in the least affect its independence. As long as these restrictions do not place the State under the legal authority of

determination is a legal right or a political principle.<sup>80</sup> Here, it is submitted that there is a right to self-determination, which is a fundamental criterion for statehood. It is useful in this regard to explore the principle as it stood before 1945 and in the U.N. Charter context.

Self –Determination was raised in the *Aaland Islands* Case. The islands population demonstrated their wish to form part of Sweden instead of Finland, when the latter was becoming independent from the Russian Empire. An International Commission of Jurists was appointed by the Commission to examine the affair. In the opinion of the Commission, Finland was not a newly established State and has always embraced the Aaland Islands. No room was left for applicability of the self-determination principle. The Jurists reported the following:

‘The principle is not, properly speaking a rule of international law and the League of Nations has not entered it in its Covenant. This is also the Opinion of the International Commission of Jurists... To concede to minorities, either of language or religion, or to any fraction of the population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of State as a territorial and political unity. The separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees’.<sup>81</sup>

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another State, the former remains an independent State however extensive and burdensome those obligations may be’ (*Permanent Court of International Justice Reports, ante*, p. 57-58).

<sup>80</sup> Suffice it here to quote Crawford, ‘it is an overtly political principle’ (*The Creation of States in Modern International Law, ante*, p.85); Brownlie has combined the phrases ‘legal right’ and ‘political principle’ to conclude that self-determination is at present a ‘legal principle’ (*Principles of Public International Law, ante*, p. 577).

<sup>81</sup> Report of the Committee of Rapporteurs, *League of Nations Official Journal Special Supp.* No. 3 (Oct. 1920) 22-3.

Although the legal principle was not accepted in this case, it should be noted that even nowadays it is most doubtful whether international law would accommodate the principle in a situation like the Aaland Islands.<sup>82</sup>

The U.N. Charter on the other hand, clearly refers to self-determination. According to Article 1(2), one of the purposes of the United Nations is the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.<sup>83</sup> General Assembly resolutions define more accurately the content of the principle. The *Colonial Declaration* (clause 2) stated 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.<sup>84</sup> Resolution 2160 (XXI) stated:

'Any forcible action, direct or indirect, which deprives peoples under foreign domination of their right to self-determination and independence and of their right to determine freely their political status and pursue their economic, social and cultural development constitutes a violation of the Charter of the United Nations...'.<sup>85</sup>

Further, Resolution 2625 (*Declaration on Principles of Friendly Relations between States*) reads:

'By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter...all peoples have the right freely to determine, without external interference, their political and to pursue their economic, social ,and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter'.

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<sup>82</sup> Crawford, *The Creation of States in International Law*, *supra*, p.86. Crawford also observes that the Commission of Jurists stated that Finland was a 'people' whereas the population of the Aaland Islands was not; therefore the secession of Finland from the Russian Empire was justified. He goes on to say that this may not be the principle of self-determination, but it is certainly like it (*The Creation of States in International Law*, *supra*, 87).

<sup>83</sup> See also *U.N. Charter*, Art. 55.

<sup>84</sup> G.A. Res. 1514 (XV), 14 Dec. 1960. (89-0:9),Declaration of the Granting of Independence to Colonial Countries. The International Covenant on Civil and Political Rights, proclaimed by the United Nations General Assembly, has adopted, in article 1(1), clause 2 of the *Colonial Declaration*.

<sup>85</sup> 3Nov. 1966 (98-2:8).

It should be mentioned, though, that the resolutions only have recommendatory capability, as the General Assembly has no law-making capacity. Focussing on the Charter provisions on the principle, two conclusions may be drawn: first, self-determination may be the right of the State to choose its own form of government without intervention, and second that self-determination could mean the right of a people to choose its own governmental system (*internal*).<sup>86</sup> The former is surely accepted by international law.

It is useful to go through the relevant case law of the International Court of Justice. In the *Namibia Advisory Opinion*, the ICJ held:

‘...the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them... All those which did not acquire independence, remain under United Nations tutelage. This is but a manifestation of the general development of which has led to the birth of so many new States’.<sup>87</sup>

The above extract was cited by the Court in the *Western Sahara Case*. In that case the right of the people of Western Sahara to determine their political organization was stated emphatically.<sup>88</sup> In the Opinion of Judge Dillard it was pronounced:

‘...a norm of international law has emerged applicable to the decolonization of those non-self-governing territories which are under the aegis of the United Nations...It is for the people to determine the destiny of the territory.’<sup>89</sup>

The self-determination principle also receives important academic support.<sup>90</sup> However, some objection has been raised against the principle, notably by Sir Ivor Jennings: ‘On the surface it seems reasonable: let the people decide. It is in fact ridiculous because the people cannot decide

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<sup>86</sup> Crawford, *The Creation of States in International Law*, *ante*, p.90.

<sup>87</sup> I.C.J. Reports 1971 p.6, 31.

<sup>88</sup> I.C.J. Reports 1975 p.12, 31.

<sup>89</sup> I.C.J. Reports 1975 p.12, 121-2.

until somebody decides who are the people'.<sup>91</sup> Crawford gives an answer by saying that in fact certain rules enable us to identify with reasonable precision the units to which self-determination applies.<sup>92</sup>

Apart from ICJ case law, it is necessary briefly to explore the state practice on the relation between the principle of self-determination and statehood, especially the case of Rhodesia.

Despite the Unilateral Declaration of Independence of Rhodesia in 1965, no State has recognized it as independent. The Security Council and General Assembly resolved 'to call upon all States not to recognize this illegal racist minority regime in Southern Rhodesia'.<sup>93</sup> Another Security Council Resolution confirmed that the independence declaration had no legal validity and spoke of the Smith administration as an illegal authority.<sup>94</sup> In these circumstances, the self-determination principle prevented the creation of a State, even though the entity in question was administered by an effective government. Fawcett summarized the position in this way:

'to the traditional criteria for the recognition of a regime as a new State must now be added the requirement that it shall not be based upon a systematic denial in its territory of certain civil and political rights, including in particular the right of every citizen to participate in the government of his country... This principle was affirmed in the case of Rhodesia by the virtually unanimous condemnation of the unilateral declaration of independence by the world community, and by the universal withholding of recognition of the new regime which was a consequence. It would follow that the illegality of the rebellion was not an obstacle to the establishment of Rhodesia as an independent State, but the political basis and objectives of the regime were, and that the declaration of independence was without international effect'.

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<sup>90</sup> See e.g. Higgins, *The Development of International Law through the Political Organs of the United Nations*, *ante*, pp. 90-106; Brownlie, *Principles of Public International Law*, *ante*, pp. 575-8; Akehurst, *Modern Introduction to International Law*, *ante*, pp. 281-4.

<sup>91</sup> I. Jennings, *The Approach to Self-Government* (1956), p. 56.

<sup>92</sup> *The Creation of States in International Law*, *ante*, p.99.

<sup>93</sup> S.C Res. 216 (1965), 12 Nov. 1965(10-0:1), para. 2.

<sup>94</sup> S.C Res. 217 (1965) (10-0:1) para. 3.

## 5.1 Turkish Cypriot and Greek Cypriot arguments on Self-Determination

The Turkish position is that the right of self-determination was exercised in 1960 jointly by the two communities which were recognized as co-founders of the bi-communal Republic of Cyprus.<sup>95</sup> This argument stems from the fact that independence was not granted as a mere unilateral act on the part of the United Kingdom, but was the consequence of the conclusion of a number of Treaties between Cyprus, the United Kingdom, Turkey and Greece.<sup>96</sup> The representatives of the two communities signed the relevant documents so that sovereignty derived from both of the communities conjointly, irrespective of their numerical size. As corollary of this, the words 'communities' and 'peoples' are synonymous.<sup>97</sup> It is noteworthy that Lennox-Boyd, British Colonial Secretary in 1956, stated: 'it will be the purpose of Her Majesty's Government to ensure that any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status. In other words, Her Majesty's Government recognize that the exercise of self-determination in such a mixed population must include partition among the eventual options'.<sup>98</sup> This, as well as the rest of the arguments of the Turkish Cypriot community are based on a Legal Opinion given by Professor Sir Elihu Lauterpacht Q.C.<sup>99</sup> In Part I of the document, entitled *The Status of the Cypriot Communities in the Context*

<sup>95</sup> S/PV 2498 of 17 Nov. 1983, p. 27: speech of the then Permanent Representative of Turkey to the U.N., before the Security Council

<sup>96</sup> Necatigil, *Cyprus and the Turkish Position in International Law* (Oxford: Oxford University Press, 1993), p. 222.

<sup>97</sup> *Ibid.* p.222

<sup>98</sup> *H.C. Debates, Hansard*, 19 Dec. 1956. This is, however, a *political* statement which, it is submitted, does not necessarily reflect the most appropriate way in which the *legal* principle of self-determination should be applied to the Cyprus case.

<sup>99</sup> See E. Lauterpacht, *The Turkish Republic of Northern Cyprus- The Status of the two Communities in Cyprus*, 10 July 1990 (<http://www.cypnet.com/ncyprus/cyproblem/>); the Opinion may also be found in the book of Munir Ertegun, former judge of the Supreme Constitutional Court of the Republic of

*the Settlement of the Cyprus Question* stated Lauterpacht states that ‘the two parties are separate communities of equal standing in the negotiations, each exercising its right to determine its own future and neither being subordinate to the other’. He states that the Memorandum setting out the Agreed Final Settlement of the Problem of Cyprus, signed in London on 19 February 1959, took note of the Declaration by the Representative of the Greek Cypriot community and the Representative of the Turkish Cypriot community that they accept the documents annexed to the Memorandum as the agreed foundation for the final settlement of the problem of Cyprus. Lauterpacht also quotes provisions of the Zurich Accords, *inter alia* paragraph one<sup>100</sup>-which was to become Article 1 of the

Constitution- to conclude that no statement was contained of any superior constitutional status for the Greek Cypriot community. He further says that the ‘Basic structure’ or fundamental elements of the Cyprus Constitution were internationalized by treaties (Treaties of Establishment and Guarantee) contemporaneously concluded between Cyprus, Greece, Turkey and the United Kingdom.<sup>101</sup>

Another argument put forward by the Turkish Cypriots is that the Greek Cypriot community has violently prevented the Turkish Cypriot community from playing its role in the Cyprus Government.<sup>102</sup> That the Greek Cypriots instigated the 1963 intercommunal strife and had in mind union with Greece.<sup>103</sup> It is also alleged that the Greek Cypriot House of

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Cyprus and Zaim Necatigil, *The Right of the Turkish Cypriot People to Self-Determination* (TRNC's P.I.O., 199), Appendix I, p.31.

<sup>100</sup> “The State of Cyprus will shall be Republic with a presidential regime, the President being Greek and the Vice-President Turkish elected by universal suffrage by the Greek and Turkish communities of the Island respectively”.

<sup>101</sup> E. Lauterpacht, *Opinion*, *Ibid.* p.3: “thus essential ingredient of the coming into being of the Republic of Cyprus was the balanced and guaranteed participation of both communities, Turkish no less than Greek in every basic aspect of the Government of Cyprus”.

<sup>102</sup> Necatigil, *The Turkish Position in International Law*, *ante*, p. 223.

<sup>103</sup> *Ibid.* p. 223.

Representatives has enacted laws which changed the basic articles of the Constitution, and provided for the illegal operation of the organs of government by excluding the Turkish Cypriot participation.<sup>104</sup>

A further argument is that, according to U.N. documents, the constitutional negotiations on Cyprus should be conducted on the basis of *equality*. The General Assembly resolution 33/15 of November 9 1978, cited by Necatigil,<sup>105</sup> calls for resumption of the negotiations under the auspices of the Secretary-General *between the two communities* and for these to be conducted freely *on an equal footing*.<sup>106</sup> In his opening statement of the inter-communal negotiations on 29 June 1989, the Secretary-General made reference to the principle of equality of the two communities and the bi-communal nature of the federation (agreed in 1977 by Makarios and Denktash as framework for settlement of the Cyprus issue) that are to be 'reflected in the equal role of the two communities in the establishment of the federation, in the need for their joint approval in adopting the constitution and in the equality and identical powers of the two federated states'.<sup>107</sup> In 1990, the Secretary-General also said that the sought solution must be *acceptable to both communities*, whose participation in the process is *on an equal footing* and whose relationship is not one of majority and minority.<sup>108</sup>

It is also worth mentioning a Turkish Cypriot position by which the unilateral declaration of independence by the 'TRNC' does not purport to be a final political solution of the Cyprus problem.<sup>109</sup> It even aims at

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<sup>104</sup> *Ibid.* p. 224.

<sup>105</sup> *Ibid.* p. 229.

<sup>106</sup> Emphasis supplied.

<sup>107</sup> S/21183, p.7; E.Lauterpacht, *Opinion, Ibid.*, pp.6-7.

<sup>108</sup> (emphasis added); the U.S. policy on the question of self-determination was stated by Ambassador Nelson Ledsky, the White House Coordinator for Cyprus in 1990: 'our view is that neither community has the right of self-determination if by that one means the right to choose whatever political future that entity wishes to have. Each has the right of political equality with the other, the right to set its relationship with the other inside a federation, inside a single State of Cyprus'.

<sup>109</sup> Necatigil, *The Turkish Position in International Law, ante*, p. 227.

facilitating the establishment of a federal republic of Cyprus on the basis of equality and double-sovereignty. The Turkish Cypriot point of view is that a federation can be formed by the voluntary will of two equal self-governing units...<sup>110</sup>

In sum, the most important Turkish Cypriot arguments are (a) the right of self-determination was exercised by the two communities, or 'peoples', jointly in 1960, as co-founders of the Cyprus Republic, and (b) from December 1963 onwards, the government of Cyprus was replaced by two exclusive administrations, the Greek Cypriots having attempted to deny the right of the Turkish Cypriots to participate in government.

(c) According to U.N. formal papers it is for the two communities to reach a settlement of the Cyprus issue on the basis of equality.

At the very beginning, it should not be overlooked that the phraseology employed in U.N. documents, namely that the communities must participate in the process of dispute settlement *on an equal footing*, was most unfortunate.

If by (*political*) *equality* is meant that the Turkish Cypriots could choose the form of government they would wish to enjoy or that they, in spite of their numerical inferiority-to say the least, should be equally represented at the level of central government, i.e. *to the same extent* as the Greek Cypriots, that is a very ambitious assertion, evidently far from lawful. If, of course, by that one means that the human rights of the Turkish Cypriots should be safeguarded, in the sense that the Turkish Cypriots as much as the Greek Cypriots should be granted the *equal* protection of the laws in a given governmental system, then I would be a most fervent proponent of such a legal proposition.

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<sup>110</sup> *Ibid.* p. 228. It seems, however, that Necatigil contradicts himself on this occasion. Having expressed the aforementioned view, he goes on to say: 'but supposing for a moment that a federal solution for Cyprus, which is now being negotiated, does not work, why should the right of Turkish

Looking now at one of the main arguments of the Turkish Cypriots, that the 1963 hostilities, allegedly stirred up by the Greek Cypriots, justified the withdrawal of the Turkish Cypriot parliamentarians (and later the UDI), it is necessary to refer in this regard to the doctrine of necessity. The constitutional order of the Cyprus Republic was maintained by reference to the doctrine of necessity.<sup>111</sup> The doctrine was introduced through the case of *Attorney General of the Republic v. Mustafa Ibrahim*.<sup>112</sup> The case evolved around the constitutionality of Law 33 of 1964 which merged the Supreme Constitutional Court with the High Court. It was alleged that this law was not enacted according to the 1960 Constitution. The Attorney-General argued that its passing was premised upon the doctrine of necessity. The doctrine of necessity was the vehicle which preserved the political continuity of the Republic and the validity of the Constitution after the 1963-64 inter-communal fighting. Since 1964, a series of laws have been passed based on the doctrine. It has to be noted that these laws meet some common requirements, namely: the existence of an emergency or exceptional circumstances which cannot be tackled under the Constitution, the necessity cannot possibly be tackled, the measures have to be proportionate to the necessity, and the measures have to be temporary, depending on the duration of the exceptional circumstances.

With regard to the first, and, most important argument articulated by the Turkish Cypriot community, namely that the Turkish Cypriots constitute a 'people' and are entitled to the right of self-determination, and therefore to the establishment of an independent State, certain vital

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Cypriots or Greek Cypriots to secede from that federation, and try to transpose it into a looser form of association be prevented?" (*The Turkish Position in International Law, supra*, pp. 231-2).

<sup>111</sup> The principle was formulated by Cicero in this way: *salus populi, suprema lex*. It reflects the theory of parliamentary supremacy. Also see Dicey, *An Introduction to the Study of the Law of the Constitution*, 10<sup>th</sup> ed. Pp.411-414; Criton Tornaritis, *The Principle of Necessity and the Cypriot Legal System* (Nicosia, 1978).

<sup>112</sup> (1964) 1 Cyprus Law Reports pp. 195

considerations need be made. It seems, *prima facie*, that the Turkish Cypriots form a minority rather than 'people'. Peoples and minorities have been defined<sup>113</sup> as two distinct concepts, because only peoples are entitled to self-determination. Attempts have been made to keep the concept of peoples separate from that of minorities such as the International Covenant on Civil and Political Rights<sup>114</sup> and the Helsinki Declaration.<sup>115</sup> Article 1 of the International Covenant grants peoples the right to self-determination and Article 27 protects the rights of minorities. It simply protects the members of minorities from being denied the right to enjoy their own culture, practise their own religion, or use their own language.<sup>116</sup> A minority is not entitled under Article 27 to a right of self-determination. It cannot determine its own political status, unlike a people under Article 1. In the Helsinki Declaration Principle VII paragraph 4, protection of national minorities is stipulated. However, according to Principle VII, self-determination is not envisaged for minorities.

Despite the above mentioned international instruments, many ethnic groups which are minorities claim to be a people entitled to self-determination. Since only peoples are entitled to self-determination in contemporary international law, minorities have to prove that they are peoples, so that they may qualify for self-determination. Some writers have put forward the view that minorities do constitute peoples. Ermacora, pointing out that both peoples and minorities occupy a specific territory and possess cultural or religious characteristics, concludes that minorities

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<sup>113</sup> In the *Greco-Bulgarian Communities* case, the Court defined a minority as a group characterized by attributes of race, religion, language and tradition and which has possessed a sentiment of solidarity (*Permanent Court of International Justice Reports*, Series B, No.17, p. 4; Capotorti described minority thus: 'a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members-being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language'.

<sup>114</sup> (1976) 999 *United Nations Treaty Series*, p.171.

<sup>115</sup> (1975) 14 *International Law Materials*, p. 1292.

<sup>116</sup> See Antonio Cassese, 'The Self-Determination of Peoples' in Louis Henkin (ed.) *The International Bill of Rights* (1981), p.96.

can also be considered holders to the right of self-determination and must be considered as people.<sup>117</sup> Similar, albeit with important differences, was the Badinter Arbitration Commission's Opinion of January 1992.<sup>118</sup> The issue at stake was whether the Serbian minorities of Croatia and Bosnia-Herzegovina had a right of self-determination. The Commission found that the Serbian minorities were peoples and that Article 1 of the International Covenant of Civil and Political Rights was applicable to them, thus giving them the right to self-determination. But, although Article 1 provides that people are entitled to determine freely their political status,<sup>119</sup> the Commission held that the right of self-determination must not involve changes to existing frontiers.<sup>120</sup> In the case of the Serbian minorities this meant that they had the right to choose affiliation to a religious or linguistic group. Although the Badinter Commission identified the concept of minorities to that of peoples, this did not mean that the Serbian minority groups acquired the right to determine their political status according to their wishes. They were certainly not entitled to determine their political status through secession, which was their political goal.<sup>121</sup>

It has already been submitted that the Turkish Cypriot community cannot qualify as 'people'. The crucial question then is why is this so, in other words why the TRNC is not a self-determination unit. Before examining the term 'people', I feel I should say a word or two on the relevant argument for the TRNC put forward by Professor Eli Lauterpacht; in particular, that the Zurich and London Treaties, establishing the Republic of Cyprus, were signed and accepted by both

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<sup>117</sup> Felix Ermacora, *The Protection of Minorities Before the United Nations* (1983), p.327.

<sup>118</sup> (1992) 31 *International Legal Materials*, p. 1497

<sup>119</sup> The International Covenant on Civil and Political Rights, Art. 1, para. 1 (1976) 999 *United Nations Treaty Series* pp.171-3.

<sup>120</sup> (1992) 31 *International Legal Materials* pp.1497-8.

<sup>121</sup> *Ibid.*, p. 170.

the Turkish Cypriots and Greek Cypriots, so the two communities are separate parties of equal standing to the present negotiations for settlement of the Cyprus issue. It seems to me a rather legalistic argument. The fact that the two communities gave their consent to the Accords should not suggest that they both exercised the right to self-determination. The right to self-determination was exercised by the 'people' of Cyprus *as a whole* which is one and indivisible. In fact, it should be brought to attention that according to Article II of the Treaty of Guarantee, which formed part of the constitutional order of the newly born Republic and was *concluded by both the Greek Cypriot and Turkish Cypriot* representatives in the 1959 Agreements, 'Turkey, Greece, and the United Kingdom undertook to prohibit activity aimed at promoting directly or indirectly either union of Cyprus with any other State or *partition* of the island'. The unlawful demand of the Turkish Cypriot community-supported by Turkey- for self-determination and recognition of its entity (TRNC) clearly violates the above provision.<sup>122</sup>

Let us now explore the term 'people'. The principal General Assembly Resolutions dealing with self-determination refer to 'peoples' in a manner identifying them with ethnic groups. Both Resolutions 1514(XV) and 2625(XXV) declare that 'peoples have the right not only to determine their political status but also to pursue their economic, social and cultural development'. Writers have also provided useful definitions of the term. Dinstein asserts that several peoples can exist in a single State, and defines people in terms of ethnic criteria:

'Peoplehood must be seen as contingent on two separate elements, one objective and the other subjective. The objective element is that there has to exist an ethnic group linked by common history... It is not enough to have an ethnic link in the sense of

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<sup>122</sup> Eli Lauterpacht mentions that 'the Republic of Cyprus undertook not to participate in any political or economic union with any State, but does not make reference to Article II of the Treaty of Guarantee (E. Lauterpacht *Opinion, ante*, p. 3).

past genealogy and history. It is essential to have a present ethos or state of mind. A people is both entitled and required to identify itself as such'.<sup>123</sup>

Also, Brownlie defines people in terms of ethnic requirements:

'The principle of self-determination appears to have a core of reasonable certainty. This core consists in the right of a community which has a distinct character to have this character reflected in the institutions of government under which it lives. The concept of distinct character depends on a number of criteria which may appear in combination. Race or (nationality) is one of the more important of the relevant criteria, but the concept of race can only be expressed scientifically in terms of more specific features, in which matters of culture, language, religion and group psychology predominate'.<sup>124</sup>

The International Commission of Jurists gave the following definition:

'If we look at the human communities recognised as peoples, we find that their members have certain characteristics in common, which act as a bond between them. The nature of the more important of these common features may be: historical, racial or ethnic, cultural or linguistic, religious or ideological, geographical or territorial, economic and quantitative'.<sup>125</sup>

In view of the aforementioned definitions the Turkish Cypriot community cannot, *prima facie*, meet the above criteria and qualify as a 'people'. The numbers of the Turkish Cypriots (18% of the Republic of the Cyprus population) suggest that they rather form a minority and not a 'people' entitled to self-determination. Also, the Turkish Cypriots and, indeed, the so called Turkish Republic of Northern Cyprus are economically dependent upon the State of Turkey. Their dreadful financial condition may attest to the validity of this assertion. Further, their actual relation with the territory of Cyprus, in comparison to the one that the Greek Cypriots have had, has only been temporary. Although, prior to the events of 1974, some of them lived *in their own* villages scattered all over the

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<sup>123</sup> *Collective Human Rights of Peoples and Minorities* (1976).

<sup>124</sup> Ian Brownlie, 'The Rights of Peoples in Modern International Law' in James Crawford (ed.) *The Rights of Peoples* (1988).

<sup>125</sup> International Commission of Jurists, *East Pakistan Staff Study* (1972), p.49.

place, their presence only dates back to 1571 (when the island came under the Ottoman rule), which falls into the modern period of the island's history.<sup>126</sup> It is therefore very difficult for them to claim geographical contiguity with the territory.

On the other hand, considering the definitions of the term 'people', largely given in national criteria, I am tempted to concede that the Turkish Cypriots form a separate 'people'. Their ethnic origin primarily supports this view. It is not accidental that Article 1 of the Cyprus Constitution declares that the State of Cyprus is composed of Greeks and *Turks*.<sup>127</sup> The constitutional provision is a legal confirmation of the mere fact that one of the Cypriot communities is of Turkish origin. Also, the common religion of the Turkish Cypriots, who are Muslims, is another important feature indicating that they may be a separate 'people' within the Cyprus Republic. It should be remembered that the religious element has been a cause of fierce inter-communal conflict in the 1960s. Needless to mention that the common language of the Turks of Cyprus shows that they may be seen as distinct 'people'. However, there is a further feature applicable in this context which should not escape notice. It is well spotted by the International Commission of Jurists. In their Study, referred to above, the Jurists elaborate on the common features of peoples in this way:

'This list, which is far from exhaustive, suggests that none of the elements concerned is by itself either essential or sufficiently conclusive to prove that a particular group constitutes a people...we have to realise that our composite portrait lacks one essential and indeed indispensable characteristic- a characteristic which is not physical but rather ideological and historical: a people begins to exist only when it becomes conscious of its own identity and asserts its will to exist'.

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<sup>126</sup> It should not be surprising that members of the Right Wing Party have from time to time suggested that the Turkish Cypriots should be deported to mainland Turkey, and be given compensation accordingly.

<sup>127</sup> Emphasis my own.

It is by virtue of this very last element that it is really difficult to concede in the end that the Turkish Cypriots constitute a ‘people’. Unlike the Greek Cypriots, who can claim a record of uninterrupted history on the island at least from the 15<sup>th</sup> century B.C., the Turks have only been there since 1571 A.D.<sup>128</sup> It should be noted that between 1878 –when Cyprus became part of the British Empire- the overwhelming majority of Turks, apart from few, left Cyprus. Simultaneously, by Article 23 of the Treaty of Lausanne, Turkey renounced any claims or demands with regard to sovereignty over Cyprus. Eventually it is all a matter of international history. History speaks for itself, and historical facts are unquestionable and unshakeable. It would be absurd for one even to suppose that Hellenistic archaeological sites, Byzantine medieval castles, and Christian churches in the occupied part of Cyprus belong to the Turks or that they should come under Turkish administration by an act of recognition of the ‘Turkish Republic of Northern Cyprus’, following the grant of the right to self-determination to the Turkish Cypriots. The element of history, as the International Commission of Jurists put it, is linked with an ideological element or what I would call psychological (along the lines of Brownlie who labels it ‘group psychology’). Lack of historical continuity apart, the Turkish Cypriots have not developed a consciousness of identity other than the Turkish one. This should not surprise, as there is no such thing as Cypriot national identity. This is so simply because there is no Cypriot nation.

But, again, considering this last argument, could it not be the case that the Turkish Cypriots are indeed a separate people precisely because, other things apart -such as common religion and language- the State of Cyprus is composed by two entirely different *ethnic groups* each of

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<sup>128</sup> This is so, despite attempts by Mr Denktash, leader of the Turkish Cypriot community, to present the year 1571 as the starting point of what he calls Early History of Cyprus (*The Cyprus Triangle, ante*,

which has always aspired to its own *national identity*? Even if this is the case, it is my submission that the Turkish Cypriots cannot or should not determine their political status or system of government without having regard to possible legitimate counter claims of the Greek Cypriots. This is so, because deeply rooted historical and psychological factors together militate for the overwhelmingly Greek character of Cyprus.<sup>129</sup> Biased though it may sound, such a view is premised upon historical facts which should, in my opinion, not be overlooked, especially when the matter of recognition of the 'TRNC' is at stake. At the same time, it is not to be thought that the human rights of the Turkish Cypriots should not be safeguarded. I strongly submit that any future settlement of the Cyprus issue has to protect the legal rights of the Turkish Cypriot community. In this way, the community may exercise, albeit to a limited degree, the right to (internal) self-determination.

## **(6) UNILATERAL SECESSION, SELF-DETERMINATION AND THE TRNC**

In view of occasional threats by the Turkish Cypriot administration as well as the Government of Turkey that the part of Cyprus presently under military occupation shall be annexed to the State of Turkey, it is necessary to explore at this stage the relevant international practice on unilateral secession.

Secession is the process by which a particular group seeks to separate itself from the state to which it belongs, and to create a new state on part of the territory of that state or to be annexed to another state.

State practice to be explored will cover important cases of non-colonial territories seeking secession since 1945. As preliminary remark,

it should be stressed that outside the colonial context, the United Nations is extremely reluctant to admit a seceding entity to membership against the wishes of the government of the state from which it has attempted to secede.

**Bangladesh** is a peculiar case. East Pakistan (otherwise known as East Bengal) was a geographically separate part of Pakistan, which had been created when British India became independent in 1947. Its population was more than half the population of Pakistan. In 1970 national elections were won by the Awami League, a party based in East Pakistan, which obtained 167 out of 313 seats in Parliament. The military leadership of Pakistan refused to accept the elections result, and the Awami League leader declared the independence of Pakistan. The military government of Pakistan responded with bombing and a civil war broke out. Roughly 9.5 million refugees fled to India, and the latter declared war on Pakistan in the same year (1971). On 6 December 1971 India recognised the independence of Bangladesh. The General Assembly on 7 December called for withdrawal of Indian forces. On 16 December, Pakistani forces in East Bengal surrendered, and the Awami League acquired de facto control of the territory of East Bengal. However, Bangladesh was admitted to the United Nations only in 1974,<sup>130</sup> shortly after its recognition by Pakistan, despite the fact that it had already been recognised by many states.

The Baltic States were occupied and illegally annexed by the Soviet Union in 1940. In 1990, Lithuania declared its independence in March 1990. In January it resisted an attempt on part of the Soviet troops to force it to withdraw the Unilateral Declaration of Independence. A

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<sup>129</sup> See Tornaritis QC THE Greek Character of ...

<sup>130</sup> See S.C. Res. 351, 10 June 1974; G.A. Res. 3203 (XXIX), 17 Sep. 1974. On the case of Bangladesh, see further Crawford, *The Creation of States in International Law*, *ante*, pp. 115-17; Franck and Rodley,

referendum held in February 1991 favoured independence from the Soviet Union. In Estonia, the Supreme Soviet declared independence on 20 August 1991. In Latvia a referendum in 1991 again favoured independence and the Latvian Supreme Soviet declared independence in the same year. In September 1991, the State Council of the Soviet Union recognised the independence of the Baltic States. The United Nations Security Council recommended their admission to the Organisation. The President of the Security Council stated:

‘The independence of the Baltic States was restored peacefully, by means of dialogue, *with the consent of the parties concerned*, and in accordance with the wishes of the three peoples’. <sup>131</sup>

Thus, the position of the Soviet authorities was treated as highly significant even in a case of suppressed independence.

The eleven successor states of the former Soviet Union achieved independence by a form of breakaway from the former Soviet Union. The Russian Federation accepted the emergence to independence of the other republics (for example Armenia and Azerbaijan) and supported their applications for United Nations membership.

**The successor States of the former Yugoslavia** came into existence through a violent process (not yet resolved) against the opposition of the Belgrade government claiming to represent the predecessor state. The Conference on Yugoslavia 1991 established an Arbitration Commission presided over by Badinter, President of the French Constitutional Court to give advice on legal issues related to the crisis. The Commission expressed the view that the situation in Yugoslavia was one involving the dissolution of the Federal Republic and the emergence of its constituent

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<sup>131</sup> After Bangladesh: The Law of Humanitarian Intervention by Military Force’ (1973) *American J.I.L.* p. 275.

<sup>131</sup> SCOR, S/PV/3007, 12 Sep. 1991 (emphasis supplied).

republics as independent states. The Commission said in its Opinion No 8 of 4 July 1992:

‘The dissolution of a State means that it no longer has a legal personality, something which has major repercussions in international law. It therefore calls for the greatest caution. The Commission finds that the existence of a federal State, which is made up of a number of separate entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population, constitute themselves as Sovereign States with the result that federal authority may no longer be effectively exercised.<sup>132</sup> By the same token, while recognition of the a State by other States has only declaratory value, such recognition, along with membership of international organizations, bears witness to these States’ conviction that the political entity so recognized is a reality and confers on it certain rights and obligations under international law.<sup>133</sup>

The appropriateness of the international response to the Yugoslav crisis continues to be debated. The early recognition of Croatia and Bosnia-Herzegovina by member states of the European Union continues to be the subject of controversy, as also the delayed recognition of ‘Macedonia’, contrary to the advice of the Commission and out of opposition by Greece regarding the name of the new republic. Certain points need be made. Firstly, the Arbitration Commission, which provided the underlying legal rationale for the positions taken by the members of the European Community and eventually by most members of the United Nations,

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<sup>132</sup> Let us reverse the position for a moment and apply it to the Cyprus issue. Could the Turkish Cypriots, clearly representing a minority determine the political system of the Republic in disregard of the wishes of the Greek Cypriot majority? Can they demand dissolution of the Cyprus Republic and establishment of a separate state, namely the ‘TRNC’? I should think not. Conversely, the Greek Cypriot majority should not be entitled to implement a governmental system, which would exclude participation of the Turkish Cypriots.

<sup>133</sup> Conference on Yugoslavia, Arbitration Commission, Opinion No. 8, 4 July 1992: 92 *International Law Reports* 199, pp. 201, 202.

proceeded on the basis that the process of breaking up of the Yugoslav Republic was a matter of fact.

Secondly, it did not mention any prior right to independence on the part of the constituent republics. It did not rely on any right to self-determination. Its focus was on the breakdown of the federal arrangements for power sharing.

Thirdly, a critical factor was that the breakdown was accompanied by large-scale ethnic conflict, which lead to war crimes and crimes against humanity (such as ethnic cleansing).

Fourthly, it should be noted that none of the constituent republics was admitted to the U.N. prior to the adoption by Serbia-Montenegro of a new constitution, which excluded the other four former republics.<sup>134</sup>

Fifthly, in my opinion the Yugoslav crisis is not a precedent for a right to secede in international law.<sup>135</sup> As the Commission of Jurists said in the *Aaland Islands* Case, international law does not recognize the right of units to secede from the state of which they form a part by the simple expression of a wish.

The separation of the **Czech Republic** and **Slovakia** was clearly a consensual process. Dissolution was achieved by parliamentary action under a Constitutional Act of 1992, rather than by a secession referendum as provided for in a Constitutional Act of 1991. The arrangements had been worked out by agreement between the two governments. On 31 December 1992, the state of Czechoslovakia ceased to exist.

**Kosovo** was an autonomous region within the Republic of Serbia; it had nearly 2 million inhabitants of whom 90% were ethnic Albanians. Its

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<sup>134</sup> See Mark Weller, 'The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia' (1991) 86 *American J.I.L.* p. 596.

<sup>135</sup> To the same effect, see the view of James Crawford, *Report, State Practice and International Law in Relation to Unilateral Secession*, (<http://canada.justice.gc.ca/en/news/nr1997/factum/craw>), p.17.

autonomy was terminated by the government of Serbia in 1990, and there has been serious indication of repression. More than one sixth of the population fled abroad. The Albanian leadership of Kosovo declared its independence in October 1991, but this has only been recognized by Albania.<sup>136</sup>

The Chechnya incident is relevant, too. Chechnya declared its independence from the Soviet Union in 1991 and its government maintained effective control over the republic. In December 1994 the Russian Army made a large-scale attempt to suppress the separatist movement. However an armistice was agreed between the Russian Federation and the Chechen Republic and then a Joint Declaration in 1996 which referred to the recognised right of peoples to self-determination and produced the framework of an agreement to be achieved by January 2001. In spite of the Russian military defeat, no international recognition has been granted to Chechnya. Although, many governments have criticised the conduct of Russian force in Chechnya on grounds of the use of disproportionate force, violations of international humanitarian law and breach of arms control agreements,<sup>137</sup> it has been accepted that the conflict within Chechnya is an internal conflict, and that the principle of territorial integrity applies.<sup>138</sup> As Crawford said, the point is that, even though other governments qualified the Chechens as a 'people', and even though this people was subject to violations of human rights and humanitarian law on a large scale, the principle of territorial

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<sup>136</sup> There is a lot of international politics surrounding the Kosovo crisis, especially in view of the 1999 NATO military intervention, which need not us here.

<sup>137</sup> See for example the Treaty on Conventional Armed Forces in Europe, Paris, 19 November 1990 (1991) 30 *International Legal Materials* 1 Art. V.

<sup>138</sup> The British Government stated that: 'the exercise of the right of self-determination must also take into account questions such as what constitutes a separate people and respect for the principle of territorial integrity of the unitary state. In the case of Chechnya no country has recognised President Dудayev's unilateral declaration of independence, but we have repeatedly called on the Russians to work for a political solution which would allow the Chechen people to express their identity within the framework of the Russian federation' (*House of Lords Debates*, vol. 563, col.476, 18 April 1955; (1995) 66 *British Y.I.L.* p. 621.

integrity was respected.<sup>139</sup> The relations between the Russian Federation and Chechnya were, and remain, a matter for negotiation between them.<sup>140</sup>

Certain conclusions have to be drawn from the preceding discussion. First, in international practice, outside the colonial context, *there is no recognition of a right to unilateral secession* based on a majority vote of the population of a territory, whether or not that population constitutes a people. Even where there is a strong call for independence, it is a matter of the State concerned to decide how to respond.<sup>141</sup> That government is not required to grant independence, and may take into account the national interest.

Second, in pursuance to the above point, the United Nations has never granted membership to a seceding entity against the wishes of the government of the State from which it has purported to secede. Where the parent State agrees to allow a territory to separate, rapid admission to the United Nations will follow. The practice of States is reflected in the fact that since 1945 no new state has been created outside the colonial context by way of unilateral secession, with the exception of Bangladesh. Even in that case, Bangladesh relied on military intervention by India to defeat the armed forces of Pakistan in Bangladesh. Actually, Bangladesh was not admitted to the United Nations until it was recognised by Pakistan four years after its unilateral declaration of independence.

Third, in international law, self-determination for peoples within an independent State is achieved by participation in the governmental system of the State. A State that is democratically governed and respects the human rights of all of its people complies with the right of self-

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<sup>139</sup> Crawford, *Report, State Practice and International Law in Relation to Unilateral Secession*, ante, p. 22.

<sup>140</sup> *Ibid.*

determination and is entitled to protection of its territorial integrity. The people of such a State exercise their right of self-determination through their equal participation in its system of government. It is submitted that this should be the case with the Turkish Cypriots within a unified State of Cyprus.

It is important in this context to make reference to the recent decision in the *Quebec Case*<sup>142</sup>. The Supreme Constitutional Court of Canada, though, a National Court, gives very useful insights as to the international practice on seceding entities. The Reference required the Court to decide on momentous questions that go to the heart of the system of constitutional government. As The Court made a similar observation in the *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721 (Manitoba Language Rights Reference): as in that case the present one combines legal and constitutional questions of the utmost subtlety and complexity with political questions of great sensitivity". The Questions posed by the Governor in Council by way of Order in Council P.C. 1996-1997, dated September 30, 1996, read as follows:

1. Under the Constitution of Canada, can the Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?
2. Does international law give the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

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<sup>141</sup> Traditionally international law treated such issues as matters of domestic jurisdiction, as reflected in the minority rights clause, Article 27, of the International Covenant on Civil and Political Rights.

**Let us accurately put down the conclusions of the Court in this decision:**

We have emphasized that the Constitution is more than a written text. It embraces the entire global system of rules and principles which govern the exercise of constitutional authority. A superficial reading of selected provisions of the written constitutional enactment, without more, may be misleading. It is necessary to make a more profound investigation of the underlying principles that animate the whole of our Constitution, including the principles of federalism, democracy, constitutionalism and the rule of law, and respect of minorities. Those principles must inform our overall appreciation of the constitutional rights and obligations that would come into play in the event of a majority of Quebecers votes on a clear question in favour of secession. The Reference requires us to consider whether Quebec has a right to unilateral secession. Those who support who support the existence of such a right found their case primarily on the principle of democracy. Democracy, however, means more than simple majority rule. As reflected in our constitutional jurisprudence, democracy exists in the larger context of other constitutional values. In the 131 years since Confederation, the people of the provinces and territories have created close ties on interdependence (economically, socially, politically and culturally) based on shared values that include federalism, democracy, constitutionalism and the rule of law, and respect for minorities. A democratic decision of Quebecers in favour of secession would put those relationships at risk. Accordingly secession of province under the Constitution could not be achieved unilaterally, that is, without principled negotiation with other participants in Confederation within the existing constitutional framework.

Quebec could not, despite a clear referendum result, purport to invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation. The democratic vote, by however strong majority, would have no legal effect on its own and could not push aside the principles of federalism and the rule of law, the rights of individuals and minorities, or the operation of democracy in the other provinces or in Canada as a whole. Democratic rights under the Constitution cannot be divorced from constitutional obligations. The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession, should a clear majority of the people of Quebec choose that goal, so long as in doing so, a clear majority of the people of Quebec respects the right of others.

The negotiation process would require the reconciliation of various rights and obligations by negotiation between the legitimate majorities namely, the majority of the population of Quebec, and that of Canada as a whole. A political majority at either level that does not act in accordance with the underlying constitutional principles mentioned puts at risk

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<sup>142</sup> *Reference re Secession of Quebec* [1998] 2 S.C.R.

the legitimacy of its exercise of its rights, and the ultimate acceptance of the result by the international community.

We have also considered whether a positive legal entitlement to secession exists under international law in the factual circumstances, i.e. a clear democratic expression of support on a clear question for Quebec secession. Some of those who supported an affirmative answer to this question did so on the basis of the recognized right to self-determination that belongs to all peoples. Although much of the Quebec population certainly shares many of the characteristics of a people, it is not necessary to decide the “people” issue because, whatever may be the correct determination of this issue in the context of Quebec, a right to secession only arises under the principle of self-determination of peoples at international law where a “people” is governed as part of a colonial empire; where a “people” is subject to alien subjugation, domination or exploitation; and possibly where a “people” is denied any meaningful exercise of its right to self-determination within the State of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing State. A State whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other States. Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the National Assembly, the legislature or the government of Quebec do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally.

Although there is no right, under the Constitution or at international law, to unilateral secession, that is a secession without negotiation on the basis just discussed, this does not rule out the possibility of an unconstitutional declaration of secession leading to a *de facto* secession. The ultimate success of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition. Such recognition, even if granted, would not, however, provide any retroactive justification for the act of secession, either under the Constitution of Canada or at International Law.

It has to be stressed that, taking into account the above conclusions, the chances for the ‘TRNC’ to be granted international recognition are rather slim, if not non-existent.

## **(7) CONCLUSIONS**

The following conclusions may be drawn from the preceding legal analysis:

1. Taking into account that the “Turkish Republic of Northern Cyprus” has been created as a result of an illegal military intervention, it inevitably follows that it is a legally invalid entity.
2. This is even more so, given the uprooting of more than 200, 000 refugees from their homeland and subsequent reduction to the tragic status of refugees. Further, the transfer of foreign settlers from mainland Turkey reveals the real intentions of the State of Turkey as well as the Turkish Cypriot leadership, which do not seem to aim at facilitating settlement of the Cyprus issue (as was allegedly the purpose of the UDI ), but rather at changing the demographic character of the island.
3. According to the classical criteria for statehood in international law (which correspond to the declaratory theory of recognition) the “TRNC” cannot qualify as an independent State. It should be noted that even if other States purport to grant recognition to the “TRNC” in the future, such an act has to be treated as unlawful and without any effect. Considering the predominant position of the declaratory theory of recognition among international law jurists, such an attempt would have to be unsuccessful. However, the Republic of Cyprus should not acquiesce for a moment to the *de facto* situation created as a result of the illegal armed intervention of Turkey in 1974.
4. International Organisations and the international community as a whole have strongly condemned the unilateral declaration of independence of the TRNC, have regarded it as legally invalid, and recognise the

Government of the Republic of Cyprus as the only legitimate representative of Cyprus.

5. It has been shown that the Turkish Cypriots are not entitled to the exercise of the right of self-determination. However, as it has already been submitted, any constitutional settlement of the future should guarantee effective participation of them in the governmental system of the State. Thus, the Turkish Cypriot community may exercise, to some extent, the right to *internal* self-determination.

6. There is no right to unilateral secession in international law. Further, it is a domestic matter for the State concerned whether or not to grant recognition to a people or peoples within its territory. Therefore, even if the Turkish Cypriots constitute a 'people', it does not necessarily follow that they can qualify as a self-determination unit, and secede from the Republic of Cyprus. It should be stressed that recognition of unilateral secession of the 'TRNC' would form a bad precedent in international law and practice. Such a development would open the way for other groups or peoples claiming to have the right of self-determination to secede. Clearly, this would not be in the interests of the international society, especially of States facing imminent danger of this sort such as Spain (the Basques), the United Kingdom (Scotland), France (the Bretons and Alsatians) or Italy (Padania). Recognition of the right to unilateral secession would lead to fragmentation of world legal order.

7. Recognition of the "TRNC" on the part of any State, contrary to international law prescriptions, would create an additional political problem of immense dimensions. It would put the Cyprus problem entirely into the sphere of international relations or power politics. Recourse to international legality would then play a minimal, if any, role

in the resolution of the dispute. Thus, the risk of witnessing the revival of Cold War type incidents would be very high, indeed.<sup>143</sup>

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<sup>143</sup> Being familiar with the complexities of party politics in the Republic of Cyprus, I feel I should stress that the recent S-300 missile crisis may revive. Although I would myself consider that weapons of this kind should not in the first place be imported from Russia under any circumstances, it is more than certain that many politicians apart from Clerides, particularly of the left wing party (AKEL) as well as others, would see it imperative to pursue the policy of close military co-operation with Russia if need be.

## **CHAPTER V**

### **HUMAN RIGHTS**

## CHAPTER V: HUMAN RIGHTS

This short Chapter is intended to give briefly a picture of the very recent human rights cases before the European Court of Human Rights, which have arisen because of violations of humanitarian law of armed conflict and the human rights law at large during the Turkish military intervention of Cyprus. The cases to be examined are the *Loizidou Case* and the inter-state case *Cyprus v. Turkey*.

I should like to stress at the outset that this Chapter is intended to be descriptive and further to serve as introduction to the legal and political argument in Chapter VIII as to my proposed settlement to the conflict. The way in which the important field of Human Rights may be used in reaching a solution to the problem is discussed in that context.

### 1. *Loizidou Case*<sup>1</sup>

The Court examined the argument of the Cyprus Government and applicant Loizidou that ever since the Turkish occupation of the northern part of Cyprus she was denied access to her property and had, as a result, lost all control over it. This constituted, they argued violation of Article Protocol 1 of the European Convention on Human Rights.

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<sup>1</sup> *Loizidou v. Turkey (Merits)*, Judgement 18.12.1996.

The Turkish Government's allegation was that the process of taking of property in the northern part of Cyprus, which started in 1974 had ripened into an irreversible expropriation by virtue of the Article 159 of the so-called TRNC Constitution of 7 May 1985. Actually the Turkish Government admitted the taking of properties in 1974 and tried to justify them under measures purportedly taken by the "TRNC". The Court of Human Rights, taking into account that the TRNC lacks recognition in international law, stated:

"It is recalled that Convention must be interpreted in the light of the rules of interpretation set out in the Vienna Convention of 23 May 1969 on the Law of Treaties and that Article 31 para.3 of theta at Treaty indicates that account is to be taken of any relevant rules of international law applicable in the relations between the parties. In the Court's view, the principles underlying the Convention cannot be interpreted in and applied in a vacuum.

Against this background the Court cannot attribute legal validity for purposes of the Convention to such provisions as Article 159 of the fundamental law on which the Turkish Government rely.

Accordingly, the applicant cannot be deemed to have lost title to her property...the legitimate Government of Cyprus have consistently asserted their position that Greek Cypriot owners of immovable property in the northern part of Cyprus such as the applicant have retained their title and should be allowed to resume free use of their possessions whilst the applicant obviously has taken a similar stance. It follows that the applicant, for the purposes of article 1 Protocol 1

and Article 8 of the Convention, must still be regarded to be the legal owner of the land”.<sup>2</sup>

It is significant that the Court took into account, too, the State responsibility provisions under international law and held:

“Responsibility of a Contracting Party could also arise when as a consequence of military action- whether lawful or unlawful- it exercises effective control of an area outside its territory... whether it (control) be exercised directly, through its armed forces, or through a subordinate local administration... It is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails the responsibility of for the policies and actions of the ‘TRNC’”.<sup>3</sup>

The Court found that there has been and continues to be a breach of the right to property, imputable to Turkey, and confirmed that the applicant, Mrs Loizidou, remains the legal owner of her properties, as is the case, for all other displaced persons who owned property in the occupied part of Cyprus.

It reserved the question of just and equitable satisfaction under Article 50 of the Convention. In its later judgment on Article 50 the Court awarded pecuniary damages for the loss of use (300,000 Cyprus pounds) and very substantial costs and interest at the annual rate of 8%.

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<sup>2</sup> *Loizidou (Merits)*, paras. 39-47.

<sup>3</sup> Ibid. paras. 52 and 56.

It is important to stress that the right to property in the occupied part of the island has not been affected and still lies with its lawful owners that is the refugees. The applicant Government requested the Court to decide and declare that the respondent State is responsible for continuing violations of Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 13, 14, 17, and 18 of the Convention and of Articles 1 and 2 of Protocol No 1.

## ***2. The Case Cyprus v. Turkey<sup>4</sup>***

The allegations were invoked with reference to four categories of complaints: alleged violations of the rights of Greek Cypriot missing persons and their relatives; alleged violations of the home and property rights of the displaced persons; alleged violations of the rights of enclaved Greek Cypriots in northern Cyprus; alleged violations of the rights of Turkish Cypriot community in northern Cyprus.

Two major issues will be examined at some length: the missing persons and displaced persons rights. These are of immense importance, and the most tragic aspects of the Cyprus question, but surely the rest of the issues examined by the Court are too important.

At the hearing before the Court the applicant Government stated that the number of missing persons was currently 1, 495 and that the evidence clearly pointed out that to the fact the at the missing persons were either detained by, or

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<sup>4</sup> <http://hudoc.echr.coe.int/hudoc/view>

were in the custody of or under the actual authority of and responsibility of, the Turkish army or its militia and were last seen in areas which were under the effective control of the respondent state. They maintained, in addition, that the Court should proceed on the assumption that the missing persons were still alive, unless there was evidence to the contrary. The Court at the outset set noted that the applicant Government have not contested the facts as found by the Commission. For its part, it did not see any exceptional circumstances which would lead it to depart from the Commissions findings bearing the latter's careful analysis of all material evidence including the findings reached by it in its 1976 and 1983 reports.

As to the merits of the complaints, the applicant Government requested the Court to find that the facts disclosed a continuing violation of Article 2 from the standpoint of both the procedural and substantive obligations contained in the provision. Article 2 provides as relevant: Everyone's right to life shall be protected by law.

In the applicant Government's submission, the procedural violation alleged was committed as a matter of administrative practice, having regard to the continuing failure of the authorities of the respondent state to conduct any investigation whatsoever into the fate of the missing persons. In particular, there was no evidence that the authorities of the respondent state has carried out the searches for the dead or wounded, let alone concerned themselves with the burial of the dead. Furthermore, the respondent state, by virtue of the presence of its

armed forces , directly continued to prevent investigations in the occupied area to those persons who were still missing and continued to refuse to account for their fate.

From the standpoint of substantive obligation contained in Article 2, the applicant Government requested that the Court to find and declare to take the necessary and operational measures to protect the4 right to life of the missing persons all of whom had disappeared in life-threatening circumstances known to, and indeed, created by, the respondent State.

The Commission found that the missing persons had disappeared in circumstances which were life-threatening, having regard, *inter alia*, to the fact that their disappearance had occurred at a time when there was clear evidence of large-scale killings including as a result of acts of unlawful behaviour outside the fighting zones.

The applicant Government further requested the Court to find and declare that the circumstances of the case also disclosed a breach of Article 4 on account of the Convention, which states that no one shall be held in slavery or servitude". Also, it stressed that Article 5 of the Convention had been breached by the respondent Government as a matter of administrative practice. Article 5 provides that "everyone has the no on e shall be deprived of his security save in the following cases and in accordance with a procedure prescribed by law.

The applicant Government declared that it was an unchallengeable proposition that it was the respondent State's actions which had prevented the

displaced Greek Cypriots from returning to their homes, in violation of Article 8 of the Convention which provides:

- 1.“Everyone has the right to respect for his private and family life, his home and his correspondence”.
2. “There shall be no interference with by a public authority with the exercise of this right except such as the in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder, for the prevention protection of health, or for the protection of the rights and freedoms of others”.

The applicant Government declared that the policy of the respondent State aimed at the division of Cyprus along racial lines, affected 211,000 displaced Greek Cypriots and their children as well as number of Maronites, Armenians , Latins and citizens of the Republic of Cyprus who had exercised the option of under the Constitution to be members of the Greek-Cypriot community. They submitted that the continuing refusal of the TRNC authorities to allow the displaced persons to return to the north violated not only the right to respect for their homes but also the right to respect for their family life. In this latter connection the applicant Government observed that the impugned policy resulted in the separation of families.

In a further submission, the applicant Government requested the Court to find that the facts also disclosed a policy of deliberate destruction and

manipulation of the human, cultural, and natural environment and conditions of life in northern Cyprus. The applicant Government contended this policy was based on the implantation of massive numbers of settlers from Turkey with the intention and consequence of eliminating Greek presence in the area. Having regard to the destructive results brought about to the environment the respondent State, it could only be concluded that the rights of the displaced persons to respect their private life and home were violated in this sense also. As to the merits of the complaints concerning the plight of the displaced persons, the Commission found, with reference to its conclusions in its 1976 and 1983 reports and the findings of fact in the instant case, that these persons, without exception, continued to be prevented from returning to or even visiting their previous homes in northern Cyprus. As to the respondent's Government's view that the claim of Greek Cypriot displaced persons to return to the north and to settle in their homes had to be solved in the overall context of the inter-communal talks, the Commission considered that these negotiations, which were still very far from reaching any tangible result on the precise matter at hand, could not be invoked to justify the continuing maintenance of measures contrary to the Convention.

The Court observed that the official policy of the "TRNC" authorities to deny the right of the displaced persons to return to their homes is reinforced by the very tight restrictions operated by the same authorities on visits to the north by Greek Cypriots living in the south. Accordingly, not only are displaced persons

unable to apply to the authorities to reoccupy the homes, which they left behind, they are physically prevented from even visiting them.

It is now imperative to cite the decision of the Court, especially on the aforementioned issues:

On the alleged violations of the rights of Greek Cypriot missing persons and their relatives,

1. Held unanimously that there has been no breach of Article 2 of the Convention by reason of an alleged violation of a substantive obligation under that Article in respect of any of the missing persons (paragraph 130);
2. Held by sixteen votes to one that there has been a continuing violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts of the and fate of Greek Cypriot missing persons who disappeared in life threatening circumstances (paragraph 136);
3. Held unanimously that no breach of Article 4 of the Convention has been established (paragraph 141);
4. Held by 16 votes to 1 that there has been a continuing violation of Article 5 of the Convention by virtue of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts of the Greek Cypriots missing persons in respect of whom there is arguable claim that they were in Turkish custody at the time of their disappearance (paragraph 150);

5. Held unanimously that no breach of Article 5 of the Convention has been established by virtue of alleged actual detention of the Greek Cypriot missing persons (paragraph 151);
6. Held by 16 votes to 1 that it is there has been a continuing violation of Article 3 of the Convention in respect of the relatives of the Greek Cypriot missing persons (paragraph 158).

With regard to alleged violation of the rights of displaced persons to respect for their home and property, the Court:

1. Held by sixteen votes to one that there has been a continuing violation of Article 8 of the Convention by reason of the refusal of to allow the return of any Greek Cypriot displaced persons to their homes in northern Cyprus (paragraph 175);
2. Held unanimously that, having regard to its finding of a continuing violation of Article 8 of the Convention, it is not necessary to examine whether there has been a further violation of that Article by reason of alleged manipulation of the demographic character environment of the Greek Cypriot displaced persons' homes in northern Cyprus (paragraph 176);
3. Held unanimously that the applicant Government's complaint under Article 8 of the Convention concerning the interference with regard to respect for family life on account of the refusal to allow the return of any Greek Cypriot displaced persons to their homes in northern Cyprus falls to be considered in

the context of their allegations in respect of the living conditions of the Karpas Greek Cypriots (paragraph 177);

4. Held by sixteen voted to one that there has been a continuing violation of Article 1 of Protocol No 1 by virtue of the fact that the Greek Cypriot owners of property in the northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights (paragraph 189);

5. Held unanimously that it is necessary to examine whether in this case there has been a violation of Article 14 of the Convention taken in conjunction with Articles 8 and 13 of the Convention and Article 1 of Protocol 1, by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to respect for their homes, to the peaceful enjoyment of their possessions and to an effective remedy (paragraph 199);

With respect to alleged violations regard the rights of the Turkish Cypriots, including members of the gypsy community, living in northern Cyprus, the Court:

1. Held unanimously that it declines jurisdiction to examine those aspects of the applicant Government's complaints under the Articles 6, 8, 10 and 11 of the Convention in respect of political opponents of the regime in the TRNC as well as their complaints under articles 1 and 2 of Protocol 1 in respect of the Turkish Cypriot Gypsy community, which were held by the Commission not to be within the scope of this case as declared admissible (paragraph 335);

2. Held unanimously that no violation of the rights of the Turkish Cypriots who are opponents of the regime in northern Cyprus under Articles 3, 5, 8, 10, and 11 if the Convention has been established by reason of an illegal administrative practice, including an alleged practice of failing to protect their rights under these Articles.
3. Held by 16 votes to 1 that no violation of the rights of the members of the Turkish Cypriot community under Articles 3, 5, 8 and 14 of the Convention has been established by reason of the an alleged administrative practice, including an alleged practice of failing to protect their rights under these Articles (paragraph 353);
4. Held by 176 votes to one that there has been a violation of Article 6 of the Convention on account of the legislative practice of authorising the trial of civilians by military courts (paragraph 359);
5. Held unanimously that no violation of Article 190 of the Convention has been established by reason of an alleged practice of restricting the right of Turkish Cypriots living in northern Cyprus to receive information from the Greek – language press.
6. Held unanimously that no violation of Article 11 of the Convention has been established by reason of the interference with the right to freedom of association or assembly of Turkish Cypriots living northern Cyprus.
7. Held unanimously that no violation of Article 1 has been established by reason of the an alleged administrative practice, including an alleged practice of

failing to secure enjoyment of their possessions in southern Cyprus to Turkish Cypriots living in northern Cyprus.

Finally the issue of “domestic remedies” as raised in the Court need be briefly pointed out. This is important in that it treats one of the legal consequences of acts done on part of the “TRNC”.

The Court held by ten votes to seven that for the purposes of former Article 26 (current Article 35 para. 1) of the Convention, remedies available in the “TRNC” may be regarded as “domestic remedies” of the respondent State and that the question of effectiveness of these remedies is to be considered in the specific circumstances where it arises.

## **PART III**

### **THE FUTURE-THOUGHTS ON A SETTLEMENT**

#### **CHAPTER VI**

##### **INTERNATIONALISATION OF THE CYPRUS**

**PROBLEM:**

**THE UNITED NATIONS**

## **CHAPTER VI: THE UNITED NATIONS AND THE CYPRUS PROBLEM**

In this chapter, the role of the United Nations in the settlement of the Cyprus issue, in terms of peacekeeping, but especially of peace enforcement action, will be put under scrutiny.

For this purpose, what I intend to do, is to identify four phases corresponding respectively to (1) the period before the independence of Cyprus; (2) the period after the inter-communal fighting until 1974; (3) the period from the Turkish intervention 1974 to the present date.

### **(1). The period before Independence**

In 1953, before the beginning of the E.O.K.A. riot, the visit of the British Foreign Minister in Greece was the pretext of a would be controversy between Greece and Great Britain. The refusal of Antony Eden to meet with the Greek Prime Minister, Papagos, to discuss the Cyprus issue outraged the latter, who then decided (with the subsequent exhortation of Archbishop Makarios) to place the Cyprus problem before the political organs of the United Nations. The consequences of this act, though, were not foreseen at the time. Both the United Kingdom and the United States were firmly opposed to such an action. Only before the first attempt of the Greek Government at the United Nations, 1954, Foster Dulles, sent a personal message to Papagos, advising him not to place the Cyprus problem before the General Assembly of the United Nations, and expressing the willingness of the U.S. Government to mediate in order that the dispute might be settled. Dulles stressed that the unity of the North Atlantic Treaty Organisation should not run the risk of breakdown by a possible conflict between Greece and the allied Powers, that is the United Kingdom and Turkey.

Despite the U.S. piece of advice, the Greek Government proceeded with five successive applications to the General Assembly of the U.N.<sup>1</sup>

On the 20<sup>th</sup> of August 1954, the permanent representative of Greece to the United Nations puts down to the Secretariat of the Organisation an application, claiming the implementation, under the auspices of the United Nations, of the principle of equality and self-determination of peoples in the case of Cyprus. The Assembly resolved not to deal further with the issue of self-determination for the people of Cyprus. Fifty votes were cast for the adoption of this resolution (including that of Greece), and eight States abstained (including the Soviet Union, as it then was).

On the 21<sup>st</sup> of September 1955, the Political Affairs Committee of the General Assembly discussed the issue of whether a renewed claim of the Greek Government should be put on the Agenda (although the Greek Foreign minister had received a clear warning by Dulles that the U.S. would vote against this). Greece did not even achieve the inclusion of the problem in the agenda. The decision of the Political Affairs Committee was approved by the Assembly (including NATO member states, except Greece and Iceland).

In 1956, Greece, in a third attempt before the organs of the U.N., was accused by Britain as instigating acts of terrorism. On the 22<sup>nd</sup> of February, the General assembly issued a vague Resolution by which the settlement of the Cyprus issue should be democratic and just, according to the purposes of the United Nations and expressed the wish that negotiations would commence for this purpose.<sup>2</sup> However, the General

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<sup>1</sup> For a detailed account, see Stephen G. Xydis, *Conflict and Conciliation, 1954-1958* (The Ohio State University Press, 1967). This work could be seen as the standard textbook, the most exhaustive on this period of the Cyprus issue.

<sup>2</sup> *Review of the United Nations*, December 1957, p. 48-57.

Assembly resolution did not mention that the basis of negotiations should be the principle of self-determination, as prescribed by the U.N. Charter.

On the 14<sup>th</sup> of January 1957, a draft resolution was submitted by the Political Committee Affairs to the General Assembly, explicitly stating, for the first time, that negotiations should start, so that the principle of self-determination may be implemented in the case of Cyprus. As a result of strong opposition, mainly coming from the U.S., the majority did not vote for the adoption of the Draft Resolution.<sup>3</sup>

By the time the fifth application was submitted (1958), the policy of Cyprus had changed. Archbishop Makarios, in an historic interview to Barbara Castle, stated that the claim for self-determination and possible Union of Cyprus with Greece had been abandoned. From then on, the claim for independence was put forward.

The General applications of Greece to the General Assembly failed, because the Western Powers, much like today, had a predominant position in the international community, especially in the international Organization. Also, the grounds for failure are to be traced in the side of the applicant State, too. The Greek State pursued conflicting policies, which eventually were proved to be fruitless. On the one hand, it was (as always has been) attached to the Western Alliance, which was, according to experts, in the security interest of the country. On the other hand, it would wish to see Cyprus becoming part of the mainland, thus making the national ideal of *Enosis* come true.

Further, the United States, close ally of the U.K., played decisive role in turning down the applications of Greece seeking for self-determination in the case of Cyprus. It should be noted, albeit in brief, that the United Kingdom, being the Imperial Power, reacted intensely against the internationalisation of the Cyprus issue.

Certain measures were employed to render unsuccessful the actions at the U.N. Organisation. One such measure was the 1955 Tripartite Conference in London, which, though ending up in failure, achieved an important diplomatic goal for the Foreign Office. The Cyprus dispute was dealt with in the context of the Anglo-Greco-Turkish relations. More importantly, it brought Turkey at the forefront of political developments. Turkey was thus presented as a directly interested party in the settlement of the Cyprus issue, and as having equal status at the negotiating table to that of the Greek Government. It is noteworthy the British Ambassador in Athens, in a letter to the Greek Government, says that the Cyprus issue is not a matter of self-determination, but one of defence of the West in the Eastern Mediterranean.<sup>4</sup> The Government as well as the opposition were agreed. Sophocles Venizelos, leader of the Centre, stated that a possible denial on part of Athens to come to negotiations would present the Government as intransigent.<sup>5</sup> At the same time, though, Ankara urged the Turkish Cypriots to take up arms and engage in inter-communal fighting in order that coexistence between the two communities might be proved to be impossible.<sup>6</sup>

Another of these measures taken by Great Britain was the London Conference leading to the London Treaties of February 1959, establishing an independent Cyprus Republic.<sup>7</sup> What is relevant from the Agreements is that no provision was made by which possible disputes could be

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<sup>3</sup>*Ibid*, p.48-57 (31-32-24).

<sup>4</sup> See Linardatos, *From Civil War to the Junta, 1952-1955* (in Greek, Athens, 1978), p.309.

<sup>5</sup> Indeed, this argument was put forward by the Greek Government and the Republic of Cyprus as justification for taking part in the inter-communal talks which followed, but was, in my view, the cause of a policy of constant concessions to Turkey.

<sup>6</sup> The 1955 anti-Greek actions (massacres, vandalisms, and other criminal acts) in Constantinople and Smyrna were committed based on the same methodology of the Turkish State, namely to make the Greek State realize that the Greek populations of Constantinople, Imbros and Tenedos were held *hostages* as it were and could suffer enormously if the Greek State was to continue the policy of internationalisation of the Cyprus issue, clearly against the interests of Turkey.

<sup>7</sup> On which, see above, Chapter 1.

submitted to an international body, like the ICJ or the European Court of Human Rights (given that a case of human rights violations arose). Any controversy over the implementation of the Agreements was to be settled by the parties to the Treaty. The parties to the Cyprus Treaties were thus moving away from the internationalization of the Cyprus issue.

## **2. The period after the inter-communal fighting until 1974**

Cyprus, as an independent State, was unanimously admitted to membership of the United Nations on 20 September 1960. It will be recalled that this was the time of the emergence from colonial rule of many new States, mainly in Africa, which upon independence joined the United Nations and thus transforming its composition and voting patterns. And it was the time when Kennedy and Kruschev, respectively, the United States and the Soviet Union were eagerly competing for influence among the non-aligned newly independent States. In short, the circumstances were propitious and the delegation of Cyprus had the opportunity, through active participation on issues before the various United Nations organs, of playing a role considerably exceeding that which would be expected if one only took into account the country's size and population. Cyprus made the United Nations and the principles of the Charter central to its foreign policy and this had a significant and direct effect upon subsequent developments.

In 1963 when, following serious internal difficulties, the Republic of Cyprus was confronted by serious threats and acts of aggression by Turkey, it turned for protection to the United Nations. The Organisation through its political organs, notably the Security Council and the General Assembly, as well as the Secretariat, responded positively to this appeal. Thus, the standing of Cyprus in the United Nations and its policy of

commitment to the Charter principles, had a direct effect upon the positive response which was given by the Organization to the plea for protection and support against actions in violation of these same Charter principles.<sup>8</sup>

The Cyprus problem was formally placed before the United Nations on 26 December 1963. The Cyprus Government, through a letter of its Permanent Representative in New York, lodged a complaint to the Security Council charging Turkey with acts of aggression and intervention against the Charter.<sup>9</sup> The complaint was considered in an emergency session of the Security Council on 27 December 1963, in the light information received of naval movements and other preparations for a Turkish invasion amidst the inter-communal fighting. The meeting was adjourned after a debate without formal conclusion, and after some NATO initiatives, the issue was considered by the Council in March 1964. The outcome of the deliberations was the unanimous adoption on March 1964 of its landmark *Resolution 186 (1964)*, which has since been reaffirmed and which provided the basic framework of the Security Council's action. The Resolution was based on the legal premise that under Article 2(4) of the Charter, "all Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State". It provided that (i) the above principle should be respected with regard to Cyprus; (ii) a United Nations Peace-Keeping Force in Cyprus (UNFICYP) be set up, with the consent of the Government of Cyprus, and laid down its mandate; (iii) a United Nations

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<sup>8</sup> For reference see *Cyprus: The Problem in Perspective*, Republic of Cyprus: Public Information Office 1967, *The Functions of the United Nations Force in Cyprus*, Republic of Cyprus: Public Information Office 1967, *The Cyprus Problem*, 1975.

<sup>9</sup> S/5488. This was inscribed on the Council's agenda and, as subsequently supplemented, has been the basis of the item during the whole of this period of 1963-1974.

mediator be appointed for the purpose of promoting a peaceful settlement of the problem confronting Cyprus according to the Charter.<sup>10</sup>

Let us now turn to the enforcement of this Resolution. With regard to its first element, Turkey continued the threat and use of force against Cyprus and this necessitated additional Security Council emergency sessions, such as that of August 1964. As regards the second element, UNFICYP was set up and it is generally acknowledged that it has been discharging its functions as set out in the Resolution and interpreted from time to time in the light of factual developments by the Secretary-General, in a commendable way. While it was set up for three months only, it has proven necessary for the Security Council on the recommendation of the Secretary-General, to renew its mandate time and again in six-monthly intervals as its presence is still considered indispensable. In so far as the third element is concerned, the Secretary-General designated as United Nations Mediator originally Mr. Tuomioja (Finland) and after his sudden death, Dr. Galo Plaza (Ecuador). Dr Plaza's Report, which he submitted to the Secretary-General on 26 March 1965, was a constructive document, consistent with his mandate under paragraph 7 of the Resolution 186 and, in the opinion of impartial observers, at the time of its issue, could have formed the basis of a fair, just and viable solution to the Cyprus problem.<sup>11</sup> The Report, it is necessary, that it is analysed in some length.

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<sup>10</sup> While the Council took no clear position as to the validity of the Treaty of Guarantee, by calling for the respect of the principle in Article 2(4) above, it could be argued that it indirectly vindicated the Cyprus Government's claim that the Treaty conferred no right to use military force against Cyprus in violation of this peremptory norm of international law which prevails over any treaty which is in conflict with it. See further, Thomas Erlich, *Cyprus 1958-1967: International Crises and the Role of Law* (Oxford :Oxford University Press, 1974); Higgins, *International Peacekeeping: documents and commentary* (issued under the auspices of the Royal Institute of International Affairs by Oxford University Press, 1964-81).

<sup>11</sup> In some of its observations, Dr. Plaza proved prophetic when one looks at his Report now in the light of the intervening developments, especially regarding the plans of Turkey against Cyprus. This text should have been studied very carefully by the Greek Government as well as the Republic of Cyprus, which has never happened.

At the very beginning, the Secretary-General, notes, should promote a peaceful solution and an agreed settlement to the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people of Cyprus as a whole and the preservation of international peace and security.

Dr. Plaza having spotted the deficiencies of the Cyprus Constitution, stated with regard to Archbishop's Makarios Proposed Amendments: "The President did so on the grounds that in its existing form the Constitution created many difficulties in the smooth functioning of the State and the development and progress of the country; that its many *sui generis* provisions conflicted with internationally accepted democratic principles and created sources of friction between Greek and Turkish Cypriots; and that its defects were causing the two communities to draw further apart rather than closer together".<sup>12</sup> He went on to say that "several of the most important amendments proposed by the President reflected deadlocks which had actually occurred in the functioning of the Constitution".<sup>13</sup> At paragraph 51, he mentions the obstacles for the peaceful coexistence between the two communities: "The physical impediments to normal contacts between the communities were serious enough; hardly less so was the psychological impediment caused by the suppression of the healthy movement of ideas, for which were substitutes slogans and counted-slogans shouted by propaganda across the dividing lines".

Then, the mediator clearly identifies the position of the parties concerned, and extensively makes reference to the Turkish policy<sup>14</sup>.

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<sup>12</sup> *The Galo Plaza Report on Cyprus, 1965* ([http://www.cyprusconflict.net/galo\\_plaza\\_report.](http://www.cyprusconflict.net/galo_plaza_report.)), para.39

<sup>13</sup> *Ibid.* para. 40.

<sup>14</sup> Turkish policy means both the policy of the Turkish State as well as that pursued by the Turkish Cypriot leadership. Both go along the same lines and are interdependent (see *The Galo Plaza Report on Cyprus, 1965*, *supra*, para. 78: The Government of Turkey, for its part,

Insistence that the coexistence between Turkish Cypriots and Greek Cypriots is not feasible was a basic policy. A second one was the transformation of institutional federation, as provided for by the Zurich-London Treaties, to territorial federation or partition, a strategic aim of Turkey.<sup>15</sup> However, considering that this would not be willingly accepted by the Greek and Cypriot-Greeks", they modified this concept to that of creating a federation through physical separation of the two communities.<sup>16</sup> Third, achievement of the separatist policy by the method of changing of populations. "Their proposal envisaged a compulsory exchange of population in order to bring about a state of affairs in which each community would occupy a separate part of the island. The dividing line was in fact suggested: to run from the village of Yalia on the north-western coast, extending towards the towns of Nicosia in the centre, and Famagusta in the east."<sup>17</sup> It is noteworthy that the mediator was stating these years before the intervention of Turkey in Cyprus 1974. The mediator goes on to say that "the zone lying north of the Republic was claimed by the Turkish Cypriot community; it is said that they have an area of about 1,084 square miles or 38 per cent of the total area of the Republic. An exchange of about 10,000 Greeks and about the same number of Turkish families was contemplated"<sup>18</sup>. Fourth, each of the two separate communal areas would enjoy self-government in all matters except for outside external affairs.<sup>19</sup> But even this concept of federal issues has proved to be a relative one, open to constraints which, might

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indicated that it considered a solution along the lines of a federal state, and it communicated to the Mediator a note containing general principles similar to those referred to above in regard to the Turkish Cypriot community).

<sup>15</sup> The Turkish Cypriots wished to be physically separated from the Greek community. (*The Galo Plaza Report on Cyprus, Ibid, para. 72*).

<sup>16</sup> *The Galo Plaza Report, Ibid. para. 72*

<sup>17</sup> *Ibid, para. 73.*

<sup>18</sup> *Ibid. para. 73.*

<sup>19</sup> *Ibid. para. 73*

lead to a total elimination of the central federal government's strength. Fifth, each could have cultural and economic relations directly with Greece and Turkey as the case might be. Each area could also enter into international agreements with Greece or Turkey as the case might be.<sup>20</sup> Such a thing would amount to an indirect annexation of Cyprus to Turkey and Greece respectively<sup>21</sup>. Sixth, Turks would react forcefully in case an imposition of *Enosis* was attempted. "Serious warnings have been given to me that that an attempt to impose such a solution would be likely to precipitate not only a new outbreak of violence on Cyprus itself but also a grave deterioration in relations between Turkey on the one hand and Cyprus and Greece on the other, possibly provoking actual hostilities and in any case jeopardizing the peace of the eastern Mediterranean region".<sup>22</sup> This position indicates a clear message coming from the Turks. A clear warning (or threat, for the rather biased), which was materialized ten years afterwards.

Finally, it is necessary to mention the propositions of the mediator, which are of utmost importance. He concludes that:

(1) the common objective would now be the considerably more precise: a "fully independent" State which would undertake to remain independent and to refrain from any action leading to union with any other State.<sup>23</sup>

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<sup>20</sup> *Ibid.* para.73

<sup>21</sup> It would not be surprising for one to suppose that this provision could be the future basis for the transfer of populations from Turkey. The Turkish Cypriot leadership at the negotiations have been persistent on the issue of sovereignty, demanding that they be given significant powers in external affairs in the context of the proposed federal State. This position should not be striking, Turkish settlers having been brought from Turkey following the 1974 invasion.

<sup>22</sup> *The Galo Plaza Report on Cyprus supra.* para.146; also see para. 138: The question of *Enosis* has several aspects. If its imposition in present circumstances would be judged from the Turkish side as tantamount to an attempt at annexation *to be resisted by force...*(emphasis supplied).

<sup>23</sup> *Op.cit.* para. 147 (emphasis original)

(2) The next important point of divergence between the parties concerns the structure of the independent State. On the one hand, the Greek Cypriot side leadership insists upon a unitary form of government based on the principle of majority with protection of the minority. On the other hand, the Turkish Cypriots envisage a federal system within which there would exist autonomous Turkish Cypriot and Greek States, the conditions for whose existence would be created by the geographical separation, which they insistently demand of the two communities.<sup>24</sup>

(3) It is essential to be clear about what this proposal implies. To refer to it as simply as federation is to oversimplify the matter. What is involved is not merely to establish a federal form of government but also to ensure the geographical separation of the two communities. The establishment of a federal regime requires a territorial basis, and this basis does not exist.<sup>25</sup>

During the same period, the General Assembly was also seized of the situation in Cyprus at the initiative of the Cyprus Government. As a result, the General Assembly adopted on 18<sup>th</sup> December 1965 Resolution 2077 (XX), which amounted to a full vindication of the Cyprus Government's position for the full sovereignty, independence, unity and territorial integrity of Cyprus and thus considerably strengthened the position of the Republic. It included a reference not only to the Report of the United Nations mediator Galo Plaza but also to the *Declaration of Intent and Memorandum of the Cyprus Government* (A/6039), whereby it committed

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<sup>24</sup> *Ibid.* para. 149.

<sup>25</sup> *Ibid.* para. 150. He further adds, "In an earlier part of this report. I explained why the island-wide intermingling in normal times of the Greek-Cypriot populations. The events since December 1963 have not basically altered this characteristic; even if he the enclaves where numbers of Turkish Cypriots concentrated following the troubles, are widely scattered over the island, while thousands of Turkish Cypriots have remained in mixed villages."

itself to the full application of human rights and to all citizens of Cyprus, irrespective of race and religion.

Against the attempts for settlement of the Cyprus issue before the U.N. political organs, a Conference in London was held on 15 January 1964 between Turkey, Greece, the UK, and two Cypriot communities (no mention was made of the *Republic of Cyprus* ). Makarios reluctantly accepted to attend the Conference. The Turkish Vice-President of the Republic, on the other hand, willingly accepted to come to the London Conference, and stated that they wish to create a separate State, and will decide whether the proposed States will remain independent or will be annexed to Turkey. At the same time the Foreign Minister of Greece, Xanthopoulos-Palamas, adopted a position against internationalisation of the Cyprus issue and issued a statement to the extent that placing the issue before the United Nations is not in the interests of either Greece or Turkey. Also he said that “neither Greece nor Turkey have territorial demands. The defence system of the Balkans, the Middle East, and the front against the common threat from the North are based on our countries”.<sup>26</sup>

The final stages of the Conference were marked by an Anglo-American Plan submitted by Duncan Sandys before the parties. The Plan proposed the establishment of a Peace-keeping Force in Cyprus composed of regiments from NATO member states. A mediator would be elected by

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<sup>26</sup> It is important to quote the argument of Erkin, Turkish Foreign Minister, in this context, which is geopolitical and reflects the strategic interests of the Western Alliance: Firstly, being sufficiently large and with a suitable location in the Eastern Mediterranean the island constitutes a convenient base and holds the eastern Mediterranean under its control. In view of the progressing world strategy, Turkey is a country within the western and even the Atlantic area. Actually, Turkey logistics are closely tied up with sea communication routes of which, coming from the Atlantic towards the eastern Mediterranean, join up at the south Anatolian ports. All these supply routes are under the control of the island of Cyprus, only 40 miles away from the southern coasts of Turkey. On the other hand, Cyprus constitutes a foothold behind Turkey's, and consequently the West's defence system which may be used in the direction of the Eastern Mediterranean and North African shores from the Middle East as well as the Balkans (the statement may be found in Tenekides, *Cyprus*: Athens 1981, p. 314).

the three Guarantee Powers who should not be a U.S. citizen or a citizen from the three Guaranteeing Powers. The plan, though welcomed by Greece and Turkey and the Turkish Cypriots, was rejected by the Greek Cypriots.

The 6-year period of 1968 to 1974 was one of relative quiet in so far as the Cyprus problem before the United Nations was concerned. The explanation lies in the fact that from June 1968, the local inter-communal talks on the constitutional aspect of the Cyprus problem were being held in Nicosia. These were initiated within the framework of the good offices of the Secretary General and, as was made clear by him and accepted by the Turkish Cypriot side, on the basis of a unitary, independent and sovereign State in Cyprus. These talks did not result in agreement and were brought to an abrupt end by the events of the summer 1974.

The Turkish invasion of 20 July 1974, using the criminal coup d'etat as a pretext, led to the occupation by Turkey of a large part of the territory of the Republic of Cyprus. In relation to the United Nations it has become a test case of the ability of the Organization to meet a challenge to its basic principles. Much of the diplomatic activity of the Cyprus Government in projecting the Cyprus cause has been performed through the United Nations. During the early stages of the invasion and throughout the critical months of July and August 1974, the Security Council which was already in session on the Cyprus situation immediately following the coup, passed a series of resolutions beginning with Resolution 353 (1974) adopted on 20 July 1974 which, *inter alia*, called for a ceasefire and demanded an immediate end to foreign military intervention and followed this up by Resolutions 354 (1974), 355 (1974), 357 (1974), 358 (1974), 359 (1974), 360 (1974) and 361 (1974).<sup>27</sup> By December of the same year,

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<sup>27</sup> Regarding the texts, see *The Cyprus Problem*, Republic of Cyprus, Public Information Office, 1975.

the Security Council in addition to renewing the UNFICYP's mandate (Resolution 364 (1974)), unanimously adopted the important Resolution 365 (1974) by which it endorsed General Assembly Resolution 3212, adopted earlier by the General Assembly.

### **(3) The period from the Turkish intervention 1974 to the present date**

Following the Unilateral Declaration of 13 February 1975, purporting to create the "Federated Turkish State" in Cyprus, the matter was again referred to the Security Council by the Cyprus Government. After protracted deliberations, the Council adopted on 12 March 1975 Resolution 367 (1975) by which, *inter alia*, it regretted the purported declaration, affirmed that such a declaration does not prejudge the final political settlement, called for the urgent and effective implementation of Resolution 3212 (XXIX) endorsed by its Resolution 365 (1974) and requested the Secretary-General to undertake a new mission of good offices under his personal auspices towards the direction of comprehensive negotiations. In June and December 1975, the Security Council held two more debates on the Cyprus situation and passed two resolutions renewing UNFICYP's mandate and reaffirming its resolutions.<sup>28</sup>

As far as the General Assembly's action is concerned, every effort was also made to inform its members of the true facts in Cyprus and to enlist its support for a just solution. The President of Cyprus Archbishop Makarios delivered two major addresses as Head of State in October 1975 and major debates were held. After preparatory work these debates resulted in the General Assembly Resolution 3212 (XXIX) adopted unanimously on November 1974 and of General Assembly Resolution

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<sup>28</sup> See S/RES/370 of 13 June 1975 and S/RES/383 of 13 December 1975 respectively.

3395 (XXX) adopted on 20 November 1975, by a vote of 177 in favour with only Turkey voting against.

These can only be counted as diplomatic successes both in terms of the overwhelming support they received and in terms of their provisions, which, *inter alia*, called for respect of the sovereignty, independence, territorial integrity of the Republic of Cyprus; for the withdrawal without their further delay of all foreign forces from it; for the return of all refugees to their homes as well as for meaningful and constructive negotiations.<sup>29</sup>

During the thirtieth session of the General Assembly, as a result of the Cyprus Government delegations efforts and despite the strenuous opposition of Turkey, a separate resolution was adopted on 9 December 1975<sup>30</sup> requesting the Secretary-General to exert every effort in assisting the tracing and accounting of missing persons as a result of the armed conflict in Cyprus and also to provide the relevant information to the Human Rights Commission. In turn the Commission adopted on February 1976 Resolution 4 (XXXIX) by which it referred to the General Assembly resolutions and the humanitarian aspects of the return of all refugees and of the missing persons. This was considered by the ECOSOC which, on 12 May 1976, noted with approval the Report of the Commission.<sup>31</sup>

The two Summit Agreements between Archbishop Makarios and Denktash, leader of the Turkish Cypriot community, and President

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<sup>29</sup> The adoption of Resolution 3212(XXIX), endorsed by Resolution 365 (1974) of the Security Council, was in turn helpful for the adoption of the Declaration by the Kingston Commonwealth Heads of Government Meeting of May 1975, which, in addition to expressing its solidarity with the Governments and people of Cyprus and reiterating the call for the implementation of the provisions of the United Nations Charter Resolution on Cyprus decided also the setting up of Commonwealth Committee of 7 members in order to assist in every possible way to that end.

<sup>30</sup> See A/RES/3450 (XXX)

<sup>31</sup> See E/SR 2002).

Kyprianou-Denktash respectively constitute a landmark in the history of the Cyprus issue and especially the attempts to reach a peaceful settlement.

On the 12 March 1977 Makarios, disappointed by the inefficiency of international organizations, mistakenly, in my view, concluded a High Level Agreement with Denktash. It is nowadays an undisputed fact that he was clearly manipulated into it by Clark Clifford, the U.S. President representative, who assured him that if the proposals at the High Level Meeting were accepted, the U.S. would exert pressure upon Turkey to reach a settlement of the dispute. On the other hand, Makarios was optimistic that the talks would be held on basis of the U.N. decisions and Charter principles.<sup>32</sup>

The Agreement bears no signatures, but is kept with the Secretariat of the U.N. They indicate the insistence of the Turks and interested third parties on the discontinuation of the internationalisation process of the Cyprus issue. The inter-communal talks were the preferred procedure. The Guidelines for the negotiators, as agreed between the President of the Republic Archbishop Makarios and Denktash, at the UNFICYP Headquarters were along these lines: (a) An independent, bi-communal federation is sought for; (b) The territory to be administered by each community is to be discussed in the light of economic growth and land property; (c) Matters of principle, like the right to property and others are under discussion, given the principle of a bi-communal federal system, and some practical difficulties, which may come up concerning the Turkish Cypriots; (d) the functions of the central federal government shall be such as to ensure the unity of the country, taking into account the bi-communal character of the state.

The Agreement does not refer to the U.N. decisions on Cyprus and the principles therein on which a settlement of the issue should be based.<sup>33</sup> For the Turks, who welcomed the conclusion of the Agreements, these principles were to be set aside.

Also, the principle stated by all Resolutions, by which refugees have to be allowed to return to their homeland and retain their properties was ignored.

What follows is the “Ten points” Agreement between Kyprianou and Denktash. The purpose of this agreement is that inter-communal talks are continued on the basis of the Makarios-Denktash Treaty.<sup>34</sup> It provided the following: (a) respect for human rights and fundamental freedoms of the citizens of the Republic. (b) the future demilitarization of the island. (c) the recognition of the independence, sovereignty, and territorial integrity of the Republic- in part or in all union of Cyprus with a third country being precluded as well as any form of partition or division of the island. (d) the priority of resettlement of the Famagusta residents in their town, under the auspices of the United Nations.

Point 6 of the Agreement should be noted. According to it, it was agreed to abstain from any action which might jeopardize the outcome of the talks. The Turkish Cypriots interpreted this provision broadly, so that they argued that the dialogue runs a risk of ending up without success, if the internationalisation of the Cyprus issue, especially a process before

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<sup>32</sup> It also asserted that he accepted the Agreements, because he considered that the High Level Meeting was a chance to repel the accusation against him, maliciously spelled out by his opponents, that he had been intransigent (*Tenekides, Cyprus, ante*, p.289).

<sup>33</sup> It is noteworthy that two leaders decided about the future form of the Cyprus State and its government. But, according to the principle of self-determination, it is for the people to decide about their own fate and system of government, not the elected leaders.

<sup>34</sup> It has to be noted that on 2 September 1975, in a speech before the General Assembly of the United Nations, Kissinger presented five points for the settlement of the Cyprus issue, which included the need for protection of the Turkish Cypriots in the context of a bi-communal, bi-zonal federation (see U.S. Department of State, Bureau Public Affairs, The Secretary of State, 22 September 1975, pp. 4-5). For the text of the Treaties see Republic of Cyprus, Public Information Office, *Cyprus Inter-communal Talks* (Nicosia: PIO, 1979) p. 23.

political organs of the United Nations, was to be preferred by the Greek-Cypriots as an alternative.<sup>35</sup>

Why was then the process of inter-communal talks to be preferred over the internationalisation of the issue, and especially its placement before the political organs of the international organization?

As far as the Turks and Turkish Cypriots were concerned, the opportunity of inter-communal talks set aside what happened in the past, and therefore any attempt to place responsibility upon Turkey for the intervention in 1974. By referring to realism and the primary importance of future decisions, the invasion, military occupation, violations of humanitarian law of armed conflict and human rights are forgotten (at least this is the impression given). The inter-communal talks is the method by which the principles of International Law are sacrificed upon expediencies.<sup>36</sup>

The aim of Turkey had always been to eliminate the legal personality of the Republic of Cyprus. Thus, through the route of inter-communal talks, the Cyprus issue is put outside its international context, by which the Republic of Cyprus is entitled to appear as the applicant State against the defendant State which is Turkey. On the contrary, in the context of the inter-communal dialogue the Republic's Government is undermined by being presented as "Greek-Cypriot community", thus placed on an *equal footing* with the Turkish Cypriot community. Therefore, the Turkish Cypriot community does not accept any other process but the inter-communal dialogue, in order that the international responsibility for the problem would not be ascribed to Ankara, but to the Turkish Cypriot

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<sup>35</sup> Thus, they achieved that the Cyprus Problem be deleted from the Agenda of the General Assembly of the United Nations in the fall of 1980.

<sup>36</sup> Proof to this is the fact that in the context of the inter-communal talks an agreement was signed between Clerides and Denktash which the Turks and Turkish Cypriots interpreted as an exchange of population agreement. It is true that it contravenes the rights of man.

community itself, whose status is rather not easily defined, and cannot reasonably or legally be blamed for the invasion of 1974.

In this way, the Turkish Cypriots succeeded in gaining a lot of advantages from the process followed.<sup>37</sup>

As far as the international community is concerned, especially the U.S. and the States of the Western Alliance, their stance against adoption of U.N. Resolutions at the time, manifests their oppositions to the international procedures as means of reaching a peaceful settlement of the dispute. It shows, on the contrary, that they prefer the process of talks behind close doors. In fact, they were in favour of this process since the very beginning, in order to give Turkey, their greatest ally in the Mediterranean region, the chance to retain control of Cyprus and get away from a possible international outcry against her, which would have been caused, had the political organs of the international organisation formally declared that it had violated internationally accepted rules. Such an eventuality would have been negative to its European Union path.

In 1978 the United Nations Secretary-General adopted a Plan submitted on part of the U.S.<sup>38</sup>. The *Nimetz Plan* was presented by on 10 November 1978 by the U.S Department of State adviser, and supported by the governments of Canada and the United Kingdom<sup>39</sup>.

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<sup>37</sup> It has to be said that, interestingly, in a Conference on the "Security of the Mediterranean" held at Monaco, in February 1981, a Turkish high ranking official said that "Turkey, while not prepared to make any concessions in matters concerning the Aegean, in the case of the Cyprus problem there is no ground for anxiety, since most aspects of it have been solved already". (Tenekides, *Cyprus, supra*, p.322, fn.129). It is obvious that the Turks had gained the utmost benefit they could have hoped for, namely the *de facto* recognition of the situation created as a result of the use of force in 1974.

<sup>38</sup> See *Framework for a Cyprus Settlement Prepared by the U.S., British and Canadian Governments*, Republic of Cyprus, Public Information Office, *Cyprus Inter-communal Talks* (Nicosia: PIO, 1979), pp.62-65.

<sup>39</sup> That is why the Plan is known as ABC plan (ABC standing for the initials of the countries which supported it). Diplomatic sources stressed that the U.K. played a decisive role in the drafting of the plan, but the United States put it forward.

This Plan was the first mediation attempt of the U.S. towards a settlement of the Cyprus issue since the Turkish invasion. This attempt was due to the fact that the inter-communal talks for implementation of the Makarios and Denktash Agreements reached a stalemate. This was also due to the initiative taken by President to contribute to the settlement of the problem. The Plan proposed a formula by which Turkey and the Turkish Cypriots should give back much of the territory occupied in return for constitutional privileges. In fact, the proposed solution was a confederation based on the political equality of the two communities. A “positive” element of the Plan was the proposal for resettlement of the residents of the city of Famagusta under the auspices of the United Nations. However, the negative aspects of it was that, while referring to the U.N. resolutions, and recognizing the need for implementation of the human rights of all Cypriots, it curtailed these very rights by referring to the Makarios-Denktash Agreement and the Zurich and London Accords. Also the matter of the withdrawal of Turkish troops was left open for negotiation. Both parties expressed reservations on the Plan and eventually rejected it.<sup>40</sup>

In 1984, the U.N. Secretary-General, offering his good offices, in the context of the internationalisation of the Cyprus issue, lead the way to a fresh round of inter-communal talks, the permission of the Security Council having been given in August 1984. Perez de Cuellar<sup>41</sup> presented

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<sup>40</sup> The U.S. saw the “Nimetz Plan” as a lost opportunity for the settlement of the Cyprus issue. The ensuing Cold war strengthened the negotiating position of Turkey and, because of this Washington declared that could not exert pressure upon the former to reach a settlement of the Cyprus issue. This was the position of the two Reagan administrations, especially after the Unilateral Declaration of Independence of the “Turkish Republic of Northern Cyprus” in 1983.

<sup>41</sup> Before taking up his duties as Secretary-General of the United Nations, Xavier Perez de Cuellar was the Special Representative in Cyprus of the former United Nations Secretary General.

an Outline for agreement which was discussed in New York by Kyprianou and Denktash.<sup>42</sup>

This initiative was also unsuccessful because it left open for negotiation such basic issues as the withdrawal of Turkish troops, the international guarantees for security, and the so called “three basic freedoms”. The Secretary-General put forward revised proposals, which were then commented upon by both sides. The Greek Cypriot party to the dialogue suggested that an international Conference be held to deal with the issue of demilitarisation.<sup>43</sup> The talks reached a deadlock.<sup>44</sup>

In July 1989, De Cuellar presented to the Cyprus Government and the Turkish Cypriots another Outline for the settlement of the Cyprus issue which represented a revised version of the 1985 one. This Outline was also identical with the Nimetz Plan, and was evidently in contradiction to U.N. Resolutions, thus diminishing the prestige and efficiency of the Organisation as such. The Outline: (1) provided for the establishment of a loose federation; (2) extended, as compared to the 1960 Constitution, the veto rights of the Turkish Cypriots and separate voting rights in the House of Representatives, thus recognising the presence of two politically equal communities in the constitutional settlement of the Cyprus issue (ignoring the majority-minority relationship); (3) limited the implementation of the three basic freedoms; (4) presented the Cyprus Government proposal for demilitarisation of Cyprus as an aim for the future. (5) proposed the balance of military strength among the two parties; (6) recognised the need for the continuous presence of Turkish troops at a higher level than those provided for by the 1960 constitution

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<sup>42</sup> For the texts, see United Nations, S/18102/Add. I, Annex I, II, V.

<sup>43</sup> For the position of the parties, *Ibid.*

<sup>44</sup> Again, the U.S., that had supported the initiative of the Secretary-General, saw this as a lost opportunity, and warned that the future proposals would be worse than the ones already submitted. Also, they as well as Turkey claimed that the Kyprianou and Papandreu (Greek) Governments respectively

and stipulated for the preservation of Turkey's rights of intervention; (7) did not include clear proposals for the withdrawal of Turkish settlers; (8) left the territorial aspect of the issue to be discussed in future negotiations and suggested that compensations be given to refugees, so that the inter-communal character of the federation might be emphasised (this implying the need for a Turkish Cypriot majority in the North in order that bi-communal federation might be properly established); (9) imposed on the Greek Cypriots certain financial obligations in favour of the Turkish Cypriots; (10) undermined the Republic of Cyprus by granting the two parts of the federal State limited international personality (or limited external sovereignty). Overall, this Outline provided for partition of Cyprus and the transformation of the Republic of Cyprus into a Turkish protectorate as it were.

Despite the deadlock which this new initiative reached, Nelson Ledsky<sup>45</sup> believed that he could keep the inter-communal dialogue going and find a formula for the two communities. On 26 of February 1990, the Secretary -General, on the advice of Ledsky, convened a High Level Meeting in New York between President Basileiou and Mr Denktash. The Secretary-General, and Mr. Ledsky, who was present at the talks, stressed that the reconstructed Cyprus Republic would not be based on the majority-minority relationship between the two communities, but on that of equal footing of the two parties. He also presented new constitutional proposals the basis of which was the establishment of a Confederated State. After five days of intense talks, the Meeting failed. Denktash, and

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were responsible for the deadlock, though the Cyprus Government made a number of concessions in the context of implementing the Makarios-Denktash Agreements.

<sup>45</sup> In June 1989, Nelson Ledsky was appointed Coordinator for the Cyprus Problem at the U.S. Department of State. His tasks were to support the initiatives of the United Nations Secretary General. This appointment indicates the diplomatic contribution of the United States to reaching a settlement of the Cyprus issue (ostensibly) under the auspices of the United Nations.

clearly the Secretary-General were using terminology<sup>46</sup> which was inconsistent with the one used until then at the various preceding talks.<sup>47</sup>

After the failure of the High Level Meeting, the Cyprus issue was discussed in the U.N Security Council in March 1990. Resolution 649 was unanimously approved which was prepared by Nelson Ledsky, the United Kingdom and the Secretary-General, which, in my view, proved to be of negative force for the Cyprus issue, despite the rhetoric of political victory in Nicosia and Athens, mainly put forward for internal politics purposes. What is the content of Resolution 649? Why did it not have positive impact on the interests of Cyprus? How is it indicative of the fact that the U.S. policy was identical with that pursued by the Secretary-General? Why is it one of the very few, if not the only one, accepted by both the U.S. and Turkey? The answer is given by its provisions: (1) It sees the Cyprus issue as a bi-communal problem, requiring constitutional settlement and not as an international issue of foreign intervention and occupation; (2) It calls for negotiations on the basis of equality of the two communities, as Turkey was requesting since the very beginning of the problem; (3) While referring to the parameters of the constitutional and territorial aspects of the issue, it does not make specific reference to the concessions with regard to territory, the withdrawal of the Turkish settlers and army, the return of refugees, or the three “basic freedoms”;<sup>48</sup> (4) It undermines the sovereignty of the Cyprus Republic; (5) Only impliedly does it recognize the unanimous resolutions of the U.N Security Council on Cyprus.

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<sup>46</sup> Notably by referring to the right of self-determination for the two communities, etc.

<sup>47</sup> Politicians in Washington and the United Nations said that the responsibility for failure should be with Nelson Ledsky. However, the U.S. claimed that the repetition of dialogue was necessary despite the huge differences between the two Communities positions. Ledsky coordinated his efforts with those of the Secretary-General to such an extent that they looked as though they were identical.

<sup>48</sup> This point is of crucial importance, because the Cyprus Republic had accepted the solution of federalism, but only in the context of an overall settlement of the problem which would cover such issues as the return of refugees, rights of intervention on part of Turkey, etc.

Let us now see the situation created after the Kuwait crisis.

The Iraqi invasion of Kuwait on 2 August 1990, had a positive outcome on the strategic importance of Turkey, and brought about a close relationship between Presidents Bush and Ozal. This development affected the Cyprus Republic in two ways. On the one hand, the Cyprus Government faced serious pressure on part of the U.S. for engaging into a new inter-communal dialogue for the settlement of the issue. On the other hand, it was hoped that the Kuwait crisis could form a precedent for implementation of all U.N. Resolutions on Cyprus.<sup>49</sup>

With the strategic importance Turkey had acquired, it was impossible for there to be a progress with regard to the Cyprus issue. After the end of the Gulf war, Washington took up new initiatives through James Baker and Nelson Ledsky to bring about a final settlement to the issue. President Bush repeatedly stated that the U.S. supports a settlement through negotiations under the auspices of the U.N. Secretary-General. The American optimism was due to the following reasons: (1) The American-Soviet relations of cooperation in the United Nations strengthened the prestige of the International Organization as well as the negotiating strength of the Secretary-General; (2) The Secretary-General was determined to find a settlement before the end of his service; (3) The relations between Ankara and Washington were very close, especially as

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<sup>49</sup> The U.S. and Turkey were firmly opposed to this second standpoint of the Cyprus Government, on the ground that, contrary to the case of Iraq, Turkey had the right to intervene militarily under the Treaty of Guarantee 1960. Turkey also added that her intervention in Cyprus was similar to that of the U.S. in the Persian Gulf. While the American intervention was necessary for the liberation of Kuwait, conversely, it was argued, the Turkish one was necessary to prevent the Union (*Enosis*) of Cyprus with Greece. The U.S. Secretary of State, James Baker, in a statement before Congress in 1991, said that the U.N Security Council Resolutions on Cyprus, in contrast to those on Kuwait, are of procedural character, viz they proposed settlement of the issue through negotiations. The Spokesman of the U.S State Department had clarified the position of the Secretary of State by saying that Resolutions on Cyprus also include substantive provisions, but that the settlement of the issue should be reached via negotiations and not through the implementation of the U.N. Resolutions. In April 1991, the Foreign Relations Committee of Congress put forward this view: that while the Resolutions on Kuwait come under Chapter VII of the U.N Charter (ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION), those on Cyprus come under

between the Presidents of the two countries; (4) Turkey realized that the Cyprus issue was an obstacle to her relations with the European Community; (5) The relations between Athens and Washington were friendly, during the Premiership of Mitsotakis, who made the relations of the two countries much better after the PASOK office in Greek Government; (6) President Basileiou gave assurances that he would do his best to solve the issue peacefully by way of negotiations.

A Conference to be held in the United States was proposed by Turkey and the U.S., but the Turkish elections of 20<sup>th</sup> October 1991 put the initiative to a standstill. The new Turkish Prime Minister was against the policy followed by Ozal until then. It was expected that Suleyman Demirel might adopt harder positions than those of Ozal in Turkish foreign policy.<sup>50</sup> Perez de Cuellar retired, and was succeeded by Butros Ghali, who continued the coordination with Nelson Ledsky.

In the midst of warnings by Ghali that the United Nations Peace Keeping Forces (UNFICYP) would be removed from the island in view of the failure of the negotiations and the need for peacekeepers in other parts of the globe, the Secretary-General submitted a Report on Cyprus.<sup>51</sup> It is of crucial importance, because it comprises the eight points which the two parties had discussed under the auspices of the U.N. Secretary-General until the year 1991. Clearly, disagreement still exists on the matters of refugees, territory, and Executive. The Report was adopted, with the exception of paragraph 26, by the Security Council.<sup>52</sup>

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Chapter VI (PACIFIC SETTLEMENT OF DISPUTES). See further Dimitri Constas, *The Greek-Turkish Conflict in the 1990's- Domestic and External Influences* (London:Macmillan, 1991), pp.40-56.

<sup>50</sup> Nine days before the elections in Turkey, Security Council Resolution 716 called the "two parties" in Cyprus, as well as Greece and Turkey to take up negotiations. But the attempts on part of the Secretary-General and Nelson Ledsky to call a Conference on Cyprus were in vain, because the new Turkish Government would not accept.

<sup>51</sup> S-23780

<sup>52</sup> SC Res. 750, 10<sup>th</sup> April 1992.

Let us now turn to the period from 1991 to the present.<sup>53</sup> In April 1992, a Set of Ideas was submitted by the Secretary-General, Boutros Ghali. Proximity talks were held in New York and High Level Meetings in 1992, but were eventually fruitless. Confidence Building Measures were proposed as a first step for an overall settlement of the issue. The *Ghali Set of Ideas* was accepted by the Cyprus Government as a basis for a settlement of the Cyprus issue, in spite of statements of President Basileiou himself to the extent that it was accepted only as a basis for further negotiations. The *Ghali Set of Ideas* provided for the establishment of a loose federation, without making reference to the rest of the thorny issues such as the Turkish troops withdrawal, the territorial adjustments, and the “three basic freedoms”. Having nothing to fear out of the non-implementation of the Security Council Resolutions, which stipulated for a Cyprus State with a single legal personality and sovereignty, the Turkish Cypriots openly rejected the idea of federation and insisted upon recognition of the “Turkish Republic of Northern Cyprus”.

As from 1995 onwards, the U.S. and the U.K.<sup>54</sup> took the initiative to make possible the commencement of a fresh round of talks under the good offices of the U.N. Secretary-General. These initiatives were accelerated due to the tension in the relations between Greece and Turkey

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<sup>53</sup> It should be noted that the United States are particularly keen on a settlement of the issue during this period, for the following reasons: (a) The U.S. role in the U.N. and NATO has been strengthened, mainly because of the dependence of Russia upon the West, as well as the absence of EU Common Foreign and Security Policy (CFSP); (b) the important strategic position of Turkey in the post-Cold War era in South-Eastern Europe, Eastern Mediterranean, and the Middle East; (c) fears for a possibility of constitutional crisis in Turkey, because of the Kurdish problem and the country's financial difficulties; (d) the deadlock in the attempts for a settlement of the Middle East problem; (e) the possibility for a Greco-Turkish crisis in the Aegean and Cyprus, especially after the Imia crisis in the Fall of 1996 and the keen interest on part of the Cyprus Government for purchase of the Russian missile system S-300.

<sup>54</sup> Two points need be made with regard to the motives of the Anglo-American policy at this stage: (a) the U.K. and the U.S.A. aimed at linking the EU accession of Cyprus with the imposition of a constitutional settlement based on loose federation; (b) the U.S.A. impliedly adopted the Turkish position that a possible accession of Cyprus into the European Union, without the Cyprus problem

after the Imia crisis in the Aegean Sea, and the killings of Greek Cypriot citizens in Deryneia (Famagusta province) by Turkish Cypriots extremists and Turkish terrorists.

Indeed, High Level Talks took place under the auspices of the new U.N. Secretary General, Kofi Annan. President Clerides and Mr. Denktash met at Troutbeck, New York, from 9 to 13 July 1997. A second round of talks followed at Glion of Switzerland from 11-15 August 1997. These meetings were coordinated by the U.N. Secretary General's Special Representative Diego Cordovez. Again, these talks were eventually unsuccessful, because of serious different standpoints among the parties, despite pressure exerted by the U.S. upon the Secretary-General to give continuation to the dialogue, thus giving the chance to the communities to reach a peaceful agreement.<sup>55</sup>

The only positive outcome from the talks in Glion was the agreement on humanitarian issues, notably on missing persons.

Next comes the important negotiations in New York under Kofi Annan, whose opening statement constitutes a landmark in the process for settlement of the Cyprus issue. On 12 September 2000 the Secretary-General stated: "the equal status of the parties must expressly be recognized". The talks ended up in failure, not surprisingly, but the above statement, interpreted as implying that the political equality of the two communities has to be recognized in the context of an ostensibly federal (actually confederate state), has been subject to fierce criticism by Greek Cypriots.

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being solved, and without Turkey becoming member of the EU, will be the ground for the formal division of the island.

<sup>55</sup> The initiative of the Americans continued under the Clinton administration when Richard Holbrooke was appointed as representative of the U.S. President on Cyprus. Holbrooke had successive meetings in 1997 with President Clerides and Mr Denktash in Nicosia. Holbrooke accepted that the U.S. had made mistakes with regard to its policy on Greece and Cyprus until 1994 (*Statement to the Cyprus Broadcasting Corporation*, November 1997).

Certainly, none of the above initiatives has had substantial results for the settlement of the Cyprus issue.

#### **(4) Evaluation of U.N. Political Organs' role in International Dispute Settlement**

It has already been emphasized that the United Nations role in terms of Peacekeeping in the case of Cyprus<sup>56</sup> has been satisfactory, with the exception of their inaction during the 1996 events at Deryneia, Famagusta. On the other hand, there is no justification for the lack of effective (enforcement) action on part of the United Nations. What I shall do is to attempt to give an explanation.

Firstly, the point has to be made that clear injunctions are interpreted by others as no more than conditional recommendations. So, the Turkish representatives allege that General Assembly and even Security Council Resolutions, so long as they do not come under Chapter VII of the U.N. Charter, are merely recommendations.

The question still remains: why cannot the United Nations take enforcement action? The answer may be found in the composition of the United Nations. The United Nations is not a world government nor a super-State. It is an association of sovereign States. Although the decisions taken under Chapter VII of the U.N. Charter must be enforced

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<sup>56</sup> See generally, Rosalyn Higgins, *United Nations Peacekeeping: Documents and Commentary* (Published under the auspices of the Royal Institute of International Affairs RIIA by Oxford: Oxford University Press, 1969-1981); *Idem: Problems and Process: International Law and How We Use It* (Oxford: Oxford University Press, 1994); *Idem: The Development of International Law through the Political Organs of the United Nations* (London and New York, 1963 ); *Idem: The New United Nations: appearance and reality* (Hull University Press, 1993); Jacovides Andreas, *A view from within: the role of the small States and the Cyprus experience* in Higgins, Rosalyn, *International Organization: law in movement* (London, New York, Oxford University Press for the Royal Institute of International Affairs, 1974); Bowett D., *United Nations Forces: a legal study of United Nations practice* (London: Stevens, 1964) esp. chapter on UNFICYP; *Idem, The Law of International Institutions* (London: Stevens, 1982); Goodrich and Hamblin, *Charter of the United Nations, Commentary and Documents* (Boston: World Peace Foundation, 1949); Kelsen, *The Law of the United Nations: a critical analysis of*

and complied with, because of political expediencies, the practical measures are rather different. The veto provision, either used or threatened as a deterrent against a resolution addressed to one of the Security Council Members, surely has prevented the implementation or enforcement of Resolutions. It is because of this that it has been argued that there is no such thing as *International Community*, but rather an *international society*.

It is true that power politics often go against implementation of International Law principles.

Despite this the United Nations has an important role to play. Through its Charter principles and resolutions on Cyprus, it provides the framework for the settlement of the issue. As put by an International Law scholar, “the United Nations is still the conscience of mankind and an important forum in which our case is heard and through which international public opinion can be mobilized further”.<sup>57</sup> To quote Archbishop Makarios:<sup>58</sup>

“And if the talks are not resumed or if they fail after resumption, I consider it imperative a new recourse to the United Nations. I will not argue that the international Organization will definitely give a solution to the problem. It can however, contribute to a solution and, if nothing else, it can help keep the Cyprus problem on the international scene and give it international dimensions”.

However, I would be a bit sceptical in accepting the full implication of the above proposition. As it has been shown, the United Nations political organs do not always decide with sufficient clarity on whose side the law is. Simultaneously, they function in collaboration with powerful States to such an extent that their decisions and actions or non-

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*its fundamental problems* (New York, 1951); Hart, H.L.A. *The Concept of Law* (Oxford University Press, 1961), where Hart launches a major attack on the non-efficacy of international law.

<sup>57</sup> Jacovides, A. in Attalides(ed.), *Cyprus Reviewed* (Nicosia 1977) p. 196.

<sup>58</sup> VRADYNI, Athens Newspaper, 6 May 1975.

actions are influenced by these States. It is my submission that the Cyprus issue need better be settled by means of negotiation and mediation jointly, and if need be under the auspices of the U.N. Secretary-General. Despite the negative elements of this process, especially the danger of having negotiations on a non-principled basis or a possible bias on part of a mediator towards a specific party,<sup>59</sup> it is perhaps the most effective one in the imperfect system of International Dispute Settlement. With regard to Cyprus, given the strategic expediencies of various countries involved, I would submit that the *interested parties'*<sup>60</sup> role in the settlement of the Cyprus dispute is of crucial importance, certainly for the benefit of the Cyprus Republic, and need be taken into account.

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<sup>59</sup> See further Merrills, *International Dispute settlement* (Cambridge: Cambridge University Press, 1998), p. 36: "The value of mediators are not infallible and often have interests of their own which may influence what they say and how their messages are received".

<sup>60</sup> In particular that of the U.K. and the U.S.

## **CHAPTER VII**

### **FEDERAL CONSTITUTIONS, HUMAN RIGHTS AND EUROPEAN UNION INVOLVEMENT**

## **CHAPTER VII: FEDERAL CONSTITUTIONS, HUMAN RIGHTS AND EUROPEAN UNION INVOLVEMENT**

### **1. Turkish promotion of federation**

“The proposed creation of two separate states or zones in a small country of the size of Cyprus under the ostensible pretext of the security of the Turkish Cypriot community has no other purpose than under the guise of federation to achieve a partition of the island and eventually satisfy the expansionist aims of Turkey which has been aspiring at such a solution since 1955”.

This statement, made by Criton Tornaritis Q.C., formerly Attorney-General of the Republic of Cyprus, biased though it may seem, remains to be confirmed in the context of statements made by Turkish politicians.

The Turkish Foreign Minister the late Zorlu, made no secret at the Tripartite Conference on Eastern Mediterranean and Cyprus held in London in August-September, 1955 that Turkey had claims on Cyprus. He stated on the 1<sup>st</sup> September, 1955: “Turkey is not only in her rights in making such a claim, but it is also in duty to do so. For the importance of Cyprus to Turkey does not arise from a single cause; it is a necessity which emanates from the exigencies of history, geography, economy and military strategy, from the right to existence and security, which is the most sacred right of every State, in short, from the very nature of things”.<sup>1</sup>

He supported that in case of self-government, the Greeks and Turks should be treated on a full equality basis without any consideration of numerical majorities and he concluded that, in case the then status quo was disturbed, Cyprus should revert to Turkey. The people of Turkey, he said, cannot conceive in any other way the fate of the island which is of vital importance for the defence of their own soil.

That Turkey raised claims over Cyprus for its own interests rather than the protection of the Turkish Cypriots appears from what the Turkish Foreign Minister, Mr. Erkin, said at the London Conference on the 16<sup>th</sup> of January,

1964. After referring to the familiar argument, that of the strategic importance of Cyprus to Turkey, and the geographical position of Cyprus as being a continuation of the Anatolian peninsula he concluded that part of his address remarking: "all these considerations clearly demonstrate that Cyprus has a vital importance for Turkey not merely because of the existence of a Turkish community on the island, but also on account of its geo-strategic bearing".

Mr Erkin, furthermore in June 1964, in a newspaper interview in Athens said that the radical solution would be to cede one part of Cyprus to Greece and the other, closest to the Asiatic coast, to Turkey.<sup>2</sup>

A clear indication of the tactical nature of the use of federation as an official camouflage of partition is contained in the statement of the then Turkish Prime Minister Ismet Inonu in his address to the Turkish National Assembly on the 8<sup>th</sup> September, 1964: "*officially' we promoted the federation concept, rather 'than the partition thesis so as to remain within the provisions of the Treaty*".<sup>3</sup>

It is significant that Mr. Gunes, the Turkish Foreign Minister, put the matter thus:

"Prior to the presumption of the enlarged local talks in Cyprus there were certain agreements referring to the principles on which a possible solution to the Cyprus problem should be based. The granting of local autonomy to the Turkish Cypriot community and the preservation of the fundamental principles, on which the 1960 international agreements are based, were among these agreements. As long as these agreements were respected, some progress was made in the course of the local talks. The difficulties arose when these agreements, which should be respected to the end, were affected by a tendency not to recognise any more the status of partner,<sup>4</sup> enjoyed by the Turkish Cypriot

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<sup>1</sup> Cmnd. 9595

<sup>2</sup> *Vema* Greek Newspaper, 1964

<sup>3</sup> Emphasis supplied. The statement may be found in Criton Tornaritis, *Cyprus and its Constitutional and Other Legal Problems*, *ante* p. 1.

<sup>4</sup> The Turkish side used to put forward the allegation that the Republic of Cyprus was run in partnership between the Greek and the Turkish communities, as if it were a joint business concern. From a strict legal point of view, that is not correct. The 1960 Constitution does not contemplate any notion of partnership. The concept was taken from the Macmillan Plan for the solution of the Cyprus

community on the basis of equality with the Greek Cypriot community regarding the participation in the independence, sovereignty and territorial integrity of the state. Consequently, if this tendency were to be abolished and the above agreements as well as the bi-communal character of the Cyprus state were to be respected, I think that it would not be difficult to solve the Cyprus problem in a way satisfying all the parties concerned. For this reason the parties concerned must examine the question sincerely, in a constructive way without insisting on matters of terminology. They must work to find a solution in accord with the island's realities.<sup>5</sup>

## 2. The Concept of Federalism

Before embarking upon a detailed examination of the issue whether the federal system may be implemented in the case of Cyprus and particularly, whether it would be compatible with the notion of human rights, let us consider what is meant in public law by federalism and federal state.

The states from a constitutional law standpoint and according to the structure of the state power are classified in *simple* or *unitary* and *composite* states. In the unitary state the state power is one and indivisible comprising all the state functions and is vested in the legal person of the state, which through its organs exercises such power on all physical and legal persons within its territory. The composite state on the other hand consists of the linking together by legal bonds of two or more states, which constitute a union of states. When by the union a new state is created such state is a composite state in contrast to the unitary state.

Whilst in the unitary state power is one and indivisible, in the composite state such power is distributed between the composite state and its constituent members, each of which within its own sphere is sovereign and exercises

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problem under which a scheme of partnership was proposed for the government of Cyprus between the three Guarantor states of Great Britain, Greece and Turkey (Foot, *A Start in Freedom*, London, 1964, pp. 168-170). There could be a partnership between states in the administration of a certain territory (such as the condominium in international law as to which see Oppenheim-Lauterpacht, *International Law*, vol. I, London 1955, pp. 453—455), but not partnership between two communities.

<sup>5</sup> Interview to the Greek Newspaper *Vema*, June 1974.

exclusively the state power conferred on it. In the composite state, the main form of which is the federal state,<sup>6</sup> the political power is divided between the federal state itself and its component parts, which usually are states or other territorial areas under various names such as provinces, cantons, regions, having the status of states.

Federalism is a sociological phenomenon. The federal state is constituted by the permanent union of states of restricted competence under a common government and organs.<sup>7</sup>

In the federal state the federal government prevails, which, according to Professor Wheare, "is a system of government which embodied predominantly a division of powers between the general and regional authorities, each of which in its own sphere is co-ordinate with others and independent of them".<sup>8</sup> Federal government is governed by the federal principle which, according to Professor Wheare, "is the method of dividing the powers so that the general and regional governments are each, within a sphere, co-ordinate and independent, the important point being whether the powers of government are divided between the co-ordinate independent authorities or not".<sup>9</sup> The powers granted to the federal state are of legislative, executive and judicial kind. These powers are exercised by the federal state through its own organs.

### **3. Federal state for Cyprus: A Constitutional Law perspective**

Can a federal state be established in Cyprus? It is my submission that such a form of state and system of government would be a very difficult constitutional system. This proposition remains to be examined in the context of constitutional law and history. By the Turkish Cypriot proposals submitted

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<sup>6</sup> Confederacy constitutes a more loose form of federation between two or more confederated states linked together by a recognised international treaty into a union, for the maintenance of their external and internal independence. History, however, proved that the confederation of states has not been satisfactory. Such confederations were those of the United States of America from 1778 to 1787, of Germany from 1815 to 1866, of Switzerland from 1291 to 1798 and from 1815 to 1848, and the Republic of Central America, which comprised the sovereign states of Nicaragua, Honduras and San Salvador from 1895 to 1898.

<sup>7</sup> Oppenheim-Lauterpacht, *International Law ante*, p. 175.

<sup>8</sup> Wheare, *Federal Government*, London, 4<sup>th</sup> ed., 1963, p.33.

<sup>9</sup> *Ibid*, p.10.

at the Geneva Conference, the Republic of Cyprus shall be composed of two federated states with full control land autonomous within the boundaries of their respective geographical boundaries. The area of the Turkish-Cypriot Federated State shall cover 34 per centum of the territory of the Republic falling north of the a general line starting from the Limnitis -Lefka area in the West and running towards the east, passing through the Turkish controlled part of Nicosia, including the Turkish part of Famagusta and ending at the port of Famagusta. The area so claimed by the Turkish Cypriot side coincides with that of the Attila line. And it is of an extent of 1075.20 sq. miles (out of 3572 square miles of the whole area of Cyprus) with a total population of 183, 859 inhabitants (out of 577,625 the whole population of Cyprus on the census of 1960). Out of the 183,859 inhabitants of the area 128, 5863 are Greek Cypriots and 55,296 are Turkish Cypriots the percentage of Greek Cypriots being thus 69,92 per centum and of the Turkish Cypriots 30.8 per centum. In that area there are 94 purely Greek villages with a population of 72,546 44, purely Turkish villages with a population of 15,170, and 444 mixed towns and villages (including the whole town of Kyrenia and part of the town of Famagusta ) with a population of 56,017 Greek Cypriots and 40,126 Turkish Cypriots . The total number of the villages in Cyprus is 625 out of which 392 are Greek Cypriots, 120 Turkish Cypriots and 113 mixed villages.

The prerequisite for the establishment of a federal state is the prior co-existence of two or more independent states or another independent territorial units exercising regional government which desire, for one reason or another such as common defence, economic advantages, geographical factors, to be independent of foreign powers, pre-existing political association and the like, to be under the single independent government for some purposes at any rate whilst at the same time they like to maintain their independent status for some other matters.

Such was the case in Switzerland, which is due to an historical evolution. The Swiss cantons were not formed on the basis of a deliberate application of the principle of nationalities but they were political

organisations, which were formed for a number of historical reasons. It is important to remember that the cantons pre-existed the Swiss confederation, which for the first five hundred years of its existence was composed of entirely German cantons. From 1291 until the end of the 13<sup>th</sup> century the three forest cantons –Waldstatten Uri, Schwyz and Nidwalden forming a union by virtue of the Convention of Friendship of 1291 to which until the 16<sup>th</sup> century another 10 civil German cantons had acceded by virtue of the Convention of Stans. The Swiss confederation was recognized by the Treaty of Westphalia of 1648. During the French Revolution and the Napoleonic wars in 1798 a new constitution was imposed under which Switzerland ceased to be a federation, the cantons lost their status as independent states and the Swiss Republic was created as a unitary state and associated by alliance with France. It was only with the Act of Mediation of Napoleon of 1803, which was based on federal principles that six French and Italian-speaking cantons were added to the already existing thirteen making a total of nineteen, a number increased with the addition of three more French-speaking cantons at the Conference of Vienna 1815 bringing the total number to the present twenty two. On the 12<sup>th</sup> September 1848 a new constitution of the Swiss state, which though called Confederation is a federal state, was introduced. This constitution was extensively revised in 1874 and finally in 1964.

Switzerland is a federal state consisting of sovereign cantons which exercise their sovereign state power in so far as such power is not restricted to by the federal constitution. The federal state guarantees the constitutions of the cantons (article 13). The federal constitution describes in detail the subjects which fall within the competence of the central government and that of the cantons (articles 7-10, 20-41).

Also in the United States of America the federal state of the United States was established in 1787, by the thirteen then British colonies, which constituted separate states in the Federation.

I could multiply the examples by referring to other federal states such as Canada, the federal states of South America, Australia, U.S.S.R, Austria,

Yugoslavia, Federal Republic of Germany, India, Burma, the new African federal states and others, in all of which the constituent parts pre-existed the federal state.

The Turkish side by its proposals submitted at the Geneva Conference supports the adoption of the partition of one and indivisible territory of the Republic of Cyprus into many states or zones or cantons for the purpose of changing the unitary Republic of Cyprus into a federal state. The prerequisites for the federal state of the type she propounds do not exist, as there were not separate geographical units, which could form the constituent parts of the proposed federal state.<sup>10</sup> Such a course would be against not only the principles of public law but also contrary to the prevailing constitutional practice. The federation aims at uniting already existing separate territorial units and not at artificially creating separate territorial areas within an existing unified territory for the aim of achieving the establishment of a federal state.

The ostensible reason put forward by the Turkish side is that such region is required for the physical protection of the Turkish Cypriots and to prevent the Greek Cypriots from destroying or enslaving them. But even such allegation is correct one fails to see how the proposed extensive Turkish region could afford any such protection. The majority of the population in the region will be Greek Cypriots. Unless not all of the Greek Cypriot refugees are to return (which would virtually mean violation of human rights) or/and Turkish settlers from mainland Turkey are to be accepted as Cypriot citizens (which would mean to

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<sup>10</sup> Lord Radcliffe in paragraph 28 of his Report says: "But can Cyprus be organised as a federation in this way? I do not think so. There is no pattern of territorial separation between the two communities and, apart from other objections, federation of communities, which does not involve also federation of territories seems to me to be a very difficult constitutional form. (Lord Radcliffe, *Constitutional Proposals for Cyprus*, London 1956, Cmnd. 42.

And Dr. Galo Palza in paragraphs 149 and 150. observes, on the other hand, "the Turkish Cypriots envisage a federal system within which there would exist autonomous Turkish Cypriot and Greek Cypriot States, the conditions for whose existence would be created by the geographical separation, which they insistently demand of the two communities. (*Galo Plaza Report op. Cit.*)

150. "It is essential to be clear what this proposal implies. To refer to it simply as federation is to oversimplify the matter. What is involved is not merely to establish a federal form of government but also to secure the geographical separation of the two communities. The establishment of a federal state regime requires a territorial basis, and this basis does not exist. In an earlier part of this report, I explained the island-wide intermingling in normal times of the Greek Cypriot and Turkish Cypriot populations. The events since December, 1963, have not basically altered this characteristic; even the

legalise a war crime), so that separate majorities can be effected in the areas administered by the two communities respectively. Conversely, such a settlement would be problematic, as Turkish Cypriots might want to return to their properties in the State under Greek Cypriots administration.

It looks as though it would be necessary to have an exchange of populations so as to turn the predominantly Greek region into a Turkish one. The exchange of populations has been alluded already in 1965 to the United Nations Mediator Dr. Galo Plaza by the then leader of the Turkish Cypriot community Dr. Kutchuk. But an exchange of populations, even on a voluntary basis<sup>11</sup> is not an easily feasible matter. It entails many financial, but mainly humanitarian repercussions leaving apart its remote consequences and is not looked upon favourably in public law.<sup>12</sup>

#### **4. Federation and Human Rights Law**

In this section what is to be explored is whether federation for Cyprus could safeguard human rights of the people of Cyprus.

It is here submitted that bi-communal bi-zonal federation in the case of Cyprus cannot properly provide for adequate implementation of human rights. The first

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enclaves where numbers of Turkish Cypriots concentrated following the troubles are widely scattered over the island, while thousands of other Turkish Cypriots have remained in mixed villages”.

<sup>11</sup> It is noteworthy that the Republic of Cyprus Government has repeatedly stated in public that what is sought for in the context of a settlement is to secure the *right* to return. But has stressed, nevertheless, that the conditions in the Turkish Cypriot administered state of the federation could be so burdensome for the Greek Cypriots that the refugees might not choose to return. It is here submitted that rights that cannot be implemented are not rights at all and that the aforementioned stance on part of the Cyprus Government constitutes political hypocrisy.

<sup>12</sup> After the disaster in Asia Minor in 1922 about one and a half million Greeks had to leave their homes. The Conference at Lausanne was faced with a fait accompli and by the Convention VI attached to the Treaty of Lausanne in 1923 a compulsory exchange of populations was provided (see Oppenheim-Lauterpacht, *International Law*, *op.cit.* p.553, note 1). Such a course today would be against the accepted principle of self-determination of peoples (Article 1 of the International Covenant on Civil and Political Rights) and the individual right of residence and movement (Article 12 of the International Covenant on Civil and Political rights and relevant articles of the European Convention of Human Rights). Same considerations may be applicable to the voluntary exchange of populations of which we have two examples in the diplomatic history; that under the Treaty of Trianon of the 27<sup>th</sup> November, 1919, between Greece and Bulgaria, concerning the Greek minority in Bulgaria and the Bulgarian minority in Greece respectively; and the Albanian declaration for the protection of minorities of the 2<sup>nd</sup> October, 1920.

and foremost human right, which would be violated is that of self-determination.

The concept of self-determination of peoples was developed especially after World War I.<sup>13</sup> Under the U.N Charter it became the cornerstone of the General Assembly's decolonisation policy of the 1960s and 1970s.

The Charter of the United Nations, in Article 1, paragraph 2, indicates, as one of the purposes of the United Nations "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". Articles 55 and 56 of the U.N. Charter develop further this very purpose and have direct relevance to non-self-governing territories. "With a view to promoting 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, the United Nations shall promote..."<sup>14</sup> In the Declaration on the Granting of Independence to Colonial Territories and Peoples, in paragraphs 1 and 2, the General Assembly declared that: "the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation. 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<sup>15</sup>".

So, the concept of self-determination consists in the liberty of the peoples to determine on the internal plane their own government without any

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<sup>13</sup> See generally, Cassese, *Self-Determination of Peoples* (1995); Mullerson, *International Law, Rights and Politics* (1994), Chapter 2; Shaw, *Title to Territory in Africa* (1986).

<sup>14</sup> U.N Charter Article 55. Article 56 of the Charter reads: "All members shall pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55".

<sup>15</sup> G.A. Resolution 1514 (XV), December 14, 1960, *G.A.O.R. 15<sup>th</sup> Session, Supp.16*, p. 66. Also see International Covenant on Civil and Political Rights, 1966, Article 1, para 1: "All people have the right of self-determination", The issue of self-determination was further developed by the International Court of Justice in the *Western Sahara Case (Advisory Opinion, I.C.J. Reports 1975*, p. 12).

foreign intervention –internal self-determination – and on the external field their fate and international status –external self-determination.<sup>16</sup>

The latter has two aspects, a positive one and a negative one. Under the positive aspect peoples may secede from the state to which they belong either by joining another state or by establishing a state of their own whilst under the negative aspect the peoples cannot be exchanged or ceded against their will, enjoying in this respect a right of independence.

It has to be noted that the right is seen by a large number of writers as a rule of *ius cogens*<sup>17</sup>

It is worth noting that self-determination was openly violated when in 1977 and 1979 the people of Cyprus, Greek Cypriots as well as Turkish Cypriots did not decide about their own fate.

Referendum means the process by which the population of a state living in a specific territory decides on the future of that territory. The great number of referenda in history concerns cases of annexation of territories. A referendum can actually bring about three main alternative results: either annexation, or independence, or federal settlements.

It has to be stressed that the power to conduct the referendum is in the hands of the government, a Joint Committee or an International commission. It is here submitted that the referendum regarding acceptance or rejection of federation as constitutional framework for settlement of the Cyprus issue should have been held immediately after the High Level Agreements of 1977 and 1979 respectively. Deliberate delay of this process, unfortunately on part of successive Cyprus Governments, aims at exerting pressure upon the people to cast a vote in favour of federalism upon agreement of a final settlement, at a stage when it would be rather difficult to decline this governmental system.

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<sup>16</sup> See Emerson, Self-determination, *American J.I.L.* (1971) vol. 65, p. 465. For the application of the right of self-determination to the Turkish Cypriot community, see the discussion in the context of the “TRNC”, in Chapter 5 above.

<sup>17</sup> See for example Espiel, in Cassese, ed. *U.N Law / Fundamental Rights: Two Topics in International Law* (1979), p.167. See also Calogeropoulos-Stratis, *The Right of Peoples to Self-determination (in Greek)* Athens, 1977 p.335.

It is submitted that the violation of the principle of self-determination, by far the most important human right, brings with it the non-implementation of other basic human rights, namely the right of each Greek Cypriot citizen to settle, to establish himself, to acquire property, to work wherever he pleases. Bi-communalism and the bi-zonal character of the federal state would not allow for implementation of these and other equally important rights. Will the members of the Greek community who will be living in the Turkish zone (and will therefore be a minority) have guarantees for exercising the freedom of religion, of education or of language? <sup>18</sup> The reservation is worth taking into account. It has already been pleaded before the European Court of Human Rights that the obligation of non-discrimination gives way to regional homogeneity,<sup>19</sup> in its decision on the case related to certain aspects of the laws on the use of language in education in Belgium, the European Court of Human Rights seems to have approved this thesis which- it must be recognised- ruins to a large extent the scope of the general principles that one had thought oneself able to deduce. Some elements of an answer appeared in Article 20 of the 1960 Constitution, which gave to each community the task of seeing to the education needs of the whole of the territory. Elements of an answer appear especially in the Greek proposals (list of regional powers) of April 1977 which give exclusive competence to the regions in matters of culture, teaching, and education but, in doing so, take equal account of the liberty given to the minority community to establish and to make its own schools function (which cannot be of an inferior quality to the minimum requirements of the public schools of the region). This formula would allow, at least in the field of teaching and in matters annexed to answer the needs expressed by a minority

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<sup>18</sup> Similar argument could be made for the Turkish Cypriot community; but, one should be careful to see that the Turkish Cypriots as already shown in Chapter V above, cannot exercise the right to self-determination and establish a state of their own in a separate region, which has historically been predominantly Greek; it has also been indicated that Turks and Greeks lived peacefully together dispersed in various parts of the northern as well as the southern part of the island.

<sup>19</sup> European Court of Human Rights, *A matter relative to certain aspects of the linguistic system of education in Belgium*, vol. 2 Strasburg 1968, p. 135. Similarly, the last paragraph of the proposals of the Turkish Cypriot community also provides that the rights will in principle be safeguarded and on condition that similar observances be submitted to the laws and regulations of the federated state and

community and would give it the opportunity not to disappear. It is noteworthy that article 27 of the pact of the United Nations related to civil and political states particularly that in States where ethnic, religious, or linguistic minorities exist, the individuals belonging to these minorities cannot be deprived of the right of having together with other members of the group, their own cultural life, of exercising and practising their own religion or to use their own language. Must it also be recalled that the Permanent Court of International Justice remarked, in its notice of 6 April 1935, on the minority schools of Albania (series A/B, no. 64 p. 17) that “the ideas, which form the basis of the treaties for the protection of minorities, are to ensure that the social groups incorporated in a state whose population is of different race, language, or religion from their own, have the possibility of peaceful co-existence and of cordial collaboration with this population, while at the same time maintaining the characteristics, which distinguish them from the majority”. It is nevertheless, put forward, that the aforementioned rights could not be *effectively* exercised in the framework of a federation in the case of Cyprus. The effective exercise of rights is provided for in article 25, para.1 of the European Convention of Human Rights. The right to settle, to movement, to acquire property, (what are usually called the three basic freedoms) will not be effectively put in practice, simply because the majority of Greek Cypriots would be reluctant to be ruled by the Turkish Cypriots in the land which has always been their own and run by themselves. It has already been stated above that federation is a sociological phenomenon and this aspect of it should not be ignored. There is no need why the Greek Cypriots should live under the Turkish Cypriots. There are no *needs*, dictating the establishment of a federation. More importantly, the right to education and religion, which are fundamental, the cornerstone of national identity, will not again be effectively implemented, as the meaning of religion, and especially education, in a region under Turkish Cypriot administration will fade away. What would be the point,

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do not harm the territorial integrity and homogeneity of the population of the Turkish federated State of Cyprus.

for example, of teaching the values of Greek history, particularly that of freedom, if the Greeks, the original population of the territory are to be governed unwillingly, if not subjugated -to put the matter rather crudely- by the Turkish Cypriots. This clearly stems from that they have not freely exercised the right of self-determination. Also, who, among young Greek Cypriot scholars and scientists, would go to the State administered by the Turkish Cypriots to practice his profession and, therefore, effectively exercise the right to work? I would certainly not as I am sure a large percentage of the Greek Cypriot youth would not.

The question of political rights by the minority community in a region can no longer be evaded. Is it sufficient to give them the right to vote? In the best hypothesis, it would be useful to appoint to the assembly or the federal council a representative of the other community within a federated assembly. The constitutional proposals seem, in fact, to exclude the possibility of electing a representative of the minority to the assembly of the majority community: no Greek Cypriot in the Turkish federated assembly; no Turkish Cypriot in the Greek federated assembly. The question is important both on the level of doctrine and on the level of politics. But, on the other hand, would there be two categories of citizens in the State, those who will have the power to exercise the political rights recognized to the citizens and who exercise them at all levels of power and those who would have certain prerogatives withdrawn from them, because of their minority status, or who would not be able usefully to exercise them because of the general structure of the State? A positive answer would deprive the declarations of adherence to human rights –and in particular those to the political rights of the citizen- of sufficient credibility. A negative answer forces one to suggest techniques and procedures that would allow the minority members of a community to attach themselves *theoretically* and not *territorially* to their community, in order to exercise these rights more effectively. The Greek proposals of 6 April 1977 carry some elements of an answer to this issue. They state in point 3.2 that each citizen must, at least in what concerns the federal state, be able to exercise political rights whatever

their location on the territory of the Republic. This formula is particularly interesting. It arises from the idea that the federal authorities are called to exercise their powers, however reduced they be, over the whole of the territory of the State. Taking into account the criteria of balance of power fixed elsewhere for the representation of the communities, it is justifiable to allow all citizens to compete directly for the appointment of these authorities. Nothing, for example, would prevent the nationals of the Greek community living in the North of the island from joining the votes with those of the south in electing their representatives to the federal assembly; the same solution would apply to the Turkish Cypriots living in the south of the island.

What is more, no suggestion is made for the exercise of political rights regarding the administration of the region in which the citizen resides; it is simply noted that this question should be the subject of constitutional arrangements. The problems of local administration, particularly that of towns, also remain in their entirety. The constitutional proposals formulated from both sides are discreet on this subject.

Furthermore, it should be noted that in the context of bi-zonal bi-communal federation, the democratic principle is further violated, at the level of central government. It was obvious, since the Zurich Agreements and subsequent 1960 Constitution that the ratio of participation of Turkish Cypriots in central government was not proportionate to their population percentage. Actually, it far exceeded this percentage. At points it even reached 40%. It is clear that at the Executive, participation of the Turkish Cypriots to such an extent would be in violation of the accepted constitutional principle of democracy.<sup>20</sup> The one extreme of democratic theory says that peoples that should properly be treated as minorities cannot be granted privileges that are not proportionate to their numbers. At the other end, there are advocates of the opinion that they should be given the governmental positions that do not necessarily equally correspond to their numeric capability.<sup>21</sup>

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<sup>20</sup> See extensively, Ivor Jennings, *The Law and the Constitution*, 1959 Cambridge: Cambridge University Press.

<sup>21</sup> See Vernon Bogdanor, *The Democratic principle* (Oxford: Oxford University Press, 1990)

In my view, the proposed constitutional form will be worse than partition. The repercussions from such a solution would be catastrophic for both communities of Cyprus. I should like to make clear that, as a matter of principle I would never adhere to partition as possible settlement to the Cyprus issue. However, I must note that a bi-communal federal, or a confederate state, under the camouflage of federation, would bring about the end of the Cyprus Republic. It is essential that human rights are properly and fully safeguarded and expressly stipulated in any settlement plan. Deviations from human rights should not be acceptable for and by either community.

## **5. European Union role in the settlement of the Cyprus issue**

Given the accession process of Cyprus into the European Union it is important to see if the Acquis Communautaire could bring about implementation of human rights in Cyprus. In an Opinion, the European Commission concluded: "On the subject of respect for democracy and human rights, two points must be taken into account, namely that the island's forced partition alone represents a serious infringement of the fundamental freedoms of citizens of Cyprus, and the rights of victims of the events of 1974 have not yet been restored owing to the lack of a political settlement. The presence of a considerable number of Turkish settlers and the demographic changes that result from this are also considered as an infringement of the political and economic rights of the people, including some sectors of the Turkish Cypriot public opinion. Apart from the direct and indirect consequences of the partition of the island, the human rights situation is as follows. The constitution of Cyprus protects the rights of people belonging to the three national minorities and establishes freedom of speech and the right to free assembly, equality of all before the law and bans all forms of discrimination. The independence of the judiciary is guaranteed. All these provisions are effectively respected. However, in the north of the island, opposition parties have mentioned certain constraints and restrictions in their activities, in particular as regards access to

the media".<sup>22</sup> It goes on to say that "a settlement would open the way to the full restitution of human rights and fundamental freedoms throughout the island, and would encourage the development of a pluralist democracy".

Also the opinion says: "As result of the de facto division of the island into two strictly separated parts, the fundamental freedoms laid by the Treaty, and in particular freedom of movement of goods, people, services and capital, the right of establishment and the universally recognised political, economic, social and cultural rights could not today be exercised over the entirety of the island's territory. These freedoms and rights would have to be guaranteed as part of a comprehensive settlement restoring constitutional arrangements covering the whole of the Republic of Cyprus".<sup>23</sup>

The Commission also refers to the political rights that should be safeguarded in the context of a settlement of the Cyprus issue. "This Opinion has also shown that Cyprus' integration with the Community implies a peaceful, balanced and lasting settlement to the Cyprus question -a settlement which will make it possible for the two communities to be reconciled, for confidence to be re-established and for their respective leaders to work together. While safeguarding the essential balance between the two communities and the right of each to preserve its fundamental interests, the institutional provisions contained in such a settlement should create the appropriate conditions for Cyprus to participate normally in the decision-making process of the European Union and in the correct application of Community law throughout the island"<sup>24</sup>.

The possible scenarios, however, vary. One such scenario is that accession of Cyprus into the European Union can take place before a settlement of the Cyprus issue is found. Such a development would, according to one view, facilitate settlement, and European Community Law-especially the relevant corpus on human rights- would have to be implemented in any such settlement in the future. Another view, though, says that such a possibility is

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<sup>22</sup> Bulletin of the European Communities, 5/1997.Ibid. para. 17

<sup>23</sup> Ibid. para. 10.

<sup>24</sup> Ibid. para. 47

rather distant, because the December 1999 Helsinki summit, noted that a political settlement was not a prerequisite to Cyprus' accession, but all factors should be considered in the decision on whether to proceed. The Turkish Government have put forward legal arguments with regard to this, that Cyprus EU accession is illegal, basing their claim on the Cyprus Treaty of Guarantee. Professor Mendelson<sup>25</sup> has given legal Opinion to the Government of Turkey maintaining that Article 1, paragraph 2 of the Treaty of Guarantee 1960, by which the Republic of Cyprus undertakes not to participate, in whole or in part, in any political or economic union with any state whatsoever and it accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other state or partition of the island, runs contrary to Cyprus' accession to the European Union, because (a) it would amount to participation in whole in an economic union, (b) to the extent that the EU also constitutes a political union, this undertaking would also be infringed, (c) it would be likely to promote directly or indirectly union with Greece, the name of the European Union bears out the fact that it is about union between its members, (d) Cyprus had promised to refrain from any activity aimed at promoting directly or indirectly its union with any other State. In a footnote, he makes reference to the *Austro-German Customs Union* Case of the of the Permanent Court of International Justice, which held that Austria's entry into a customs union with Germany would constitute an alienation of its economic independence., contrary to Protocol I of the 4<sup>th</sup> October. The arguments of Mendelson have been repelled by Professors Crawford and Pellet, who refer to the *travaux préparatoires* of the Treaty of Guarantee. Specifically, they refer to point 22 of the Basic Structure of the Republic of Cyprus, signed at Zurich on the 11<sup>th</sup> February 1959. According to this, "it shall be recognised that the total or partial union of Cyprus with any other state, or a separatist independence for Cyprus (i.e. the partition of the island into two independent states) shall be excluded. By referring to the Vienna Convention on the Law of Treaties they argue that the interpretation must be based on good faith and that the language must be

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seen in its context and in the light of its purpose. By reference to Articles 50 and 169 of the Cyprus Constitution which speak of international organizations and pacts of alliance or international agreements with a foreign State or any international organization relating to commercial matters, economic cooperation they point out that the Treaty distinguishes between political and economic union with any other State and other forms of international cooperation. They say that what is prohibited is union with another State, not cooperation with a group of States in establishing a supranational organisation of a political and / or economic union and that a distinction has always been drawn between membership of multilateral organisations of States and the political or economic union with another State. The EU is not a State, it is a supranational organisation or an independent legal order, a legal system of a transnational character, although it aspires to more perfect union. Therefore membership of the EU does not involve political or economic union with any state. They further clearly distinguish the *Austro-German Customs Union* Case from the case of Cyprus, as the latter would be less independent on any single such membership in contrast to the then eventual domination of Austria by Germany.

The Copenhagen summit meeting of 12 December 2002, however, has proved wrong the view above cited. At the Summit, the Cyprus Republic has become member of the European Union without preconditions.

A second scenario has been put forward by two experts in International Relations, namely Henri Barkey, Cohen Professor of International Relations at Lehigh University and a former member of the State Department's Policy Planning Staff, and Philip Gordon, Senior Fellow in Foreign Policy at the Brookings Institution and former Director for European Affairs at the National Security Council. According to this scenario, an option supported by many pro-European intellectuals and government officials in Turkey would be for the United States to encourage the EU to offer Turkey a date for the start of its own

EU accession negotiations in exchange for a deal on Cyprus.<sup>26</sup> Turkey has long resented the fact that the EU offered Turkey candidacy status only reluctantly and under American pressure. This has led many Turks to conclude that the offer was not sincere, and that Turkey will never be allowed into the EU. A concrete date for starting accession negotiations – for example by 2004, when many of the other candidates are expected to join the EU would go far to change these perceptions.<sup>27</sup> There are problems with this approach, however. Most importantly, Washington would find it difficult to successfully persuade the EU to give Turkey the date it seeks. Brussels does not want to depart from its traditional process whereby accession negotiations begin when the Copenhagen Criteria are met, and not the other way around. The resurgence of the right in recent European elections this year, combined with growing European concerns about southern immigration waves, makes it even less likely that European leaders will want to make near-term overtures to Turkey.

Another scenario, enthusiastically endorsed by the American policy makers, is that if an early Cyprus settlement cannot be reached is to seek to link a Cyprus deal to Turkey's eventual EU accession. The biggest problem with the EU's regional accession process is the fact that the timetables for Cyprus and Turkey are so different. With Turkey's accession so distant, Ankara has little incentive to press for Turkish Cypriot concessions as a means of facilitating its own EU entry. Deferring a comprehensive Cyprus solution until the time when Turkey's accession is possible deals with this major problem. The United States should focus initially on minimizing the damage from a divided Cyprus' accession and keeping regional cooperation on track. Instead of denouncing the Turkish Cypriots and Turkey, Greece and the Greek Cypriots would explicitly state that the door to a Cyprus settlement and Turkey's EU accession remains open and that they look forward to working toward that goal. If the Greek Cypriots refused to show such magnanimity, Washington would remind them that they would be writing off any prospect for

<sup>26</sup> See Henri Barkey and Philip Gordon, *Avoiding a Cyprus Crisis*, Policy Brief-July 2002, [www.brook.edu/comm/policybriefs/pb102.htm](http://www.brook.edu/comm/policybriefs/pb102.htm).

<sup>27</sup> *Ibid*, p. 4.

a future settlement to the Cyprus deal, and buying themselves a tense relationship with Turkey that could not possibly be in their interest.<sup>28</sup> The United States and Europe would also need to persuade Turkey not to carry out its threats to incorporate northern Cyprus into Turkey or take other provocative measures, which Washington would feel obliged to denounce in the UN Security Council and which could provoke even harsher measures from U.S. congress or EU Parliament. Turkey would instead have to acknowledge the reality that the ultimate settlement of the Cyprus conflict will require territorial concessions and acceptance of Cyprus as a loosely united entity. To bolster their cooperation while a long-term Cyprus solution is pursued, Greece and Turkey should commit to further progress in their ongoing economic and diplomatic rapprochement.<sup>29</sup>

Deferring a Cyprus settlement until Turkey can join the European Union would reassure the Turkish Cypriots, who understandably worry about their future within an EU that would not include Turkey as a counterweight to Greece and the Greek Cypriots. It would not only give Turkey an added incentive to continue down the European path, but it would give Greece and Turkey an added incentive to promote Turkey's EU membership with all the positive benefits for Turkish society, democracy, and relations with its neighbours that this would entail (even though such an eventuality seems to be rather difficult, because of influence of the Turkish military regime in the running of the state).

However, even if a settlement to the Cyprus issue along the lines of bi-communal federation is to be found after the accession of Cyprus to the EU (which is now the only prospect), it has to be noted that the federal system, given the particular circumstances of Cyprus, would be –according to the preceding analysis- *ab initio* in open violation to the *acquis communautaire*, especially that part of it dealing with human rights. In the *ex parte Brunner Case*, tried in the aftermath of the Maastricht Treaty before the Supreme Constitutional Court of Germany, it was held that the “member States are the

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<sup>28</sup> *Ibid.*, p.5.

<sup>29</sup> *Ibid.*, p.5.

masters of the Treaties". The clear implication of this important decision is that European Community Law is made by consent of the States members. Since, therefore, the communities of Cyprus have decided that the framework for a settlement is a bi-communal federation, which clearly stands in contradiction to human rights principles, then the European Union cannot rectify, so to speak, possible deficiencies of such a settlement. It can make sure, for instance, that no more settlers are brought from Turkey, that all refugees are granted the *right to return*, but the structure of the state, the governmental system as agreed at the High Level meetings between Makarios and Denktash in 1977 cannot be altered.

## **6. The principles *pacta sunt servanda* and *rebus sic stantibus***

The aim of this section is to prove that the Agreement concluded by Makarios and Denktash is not valid or has been void *ab initio*.

On the one hand, according to the international law principle *pacta sunt servanda*, as the name of the maxim goes, the parties to an Agreement have to comply with the agreement provisions. It is an axiom of International Law, going back to the London Declaration of 1871, that international treaties concluded by consent of the parties are to be respected.

Following this principle, the High Level Agreements of 1977 and 1979 respectively are legally valid.

On the other hand, international Agreements are not binding and therefore become ineffective if the consent given by a party is not genuine or has been extracted by coercion.

Writers on international law appear to be unanimous in the opinion that, with the possible exception of treaties of peace, which are often imposed by the victorious belligerent upon a State, which has been defeated in war, freedom of consent by the parties is an essential condition of the validity of a treaty. Grotius maintained that the law of nature required the observance of the

principle of equality in the making of treaties, that there ought to be freedom of choice by the parties and that their consent should not be induced by fear.<sup>30</sup>

To this principle he recognized one exception, which he said had been introduced with the consent of nations, namely that where a war has been publicly declared and waged on both sides all promises made in the course of the war for the purpose of terminating it are valid to the extent that they cannot be made by reason of fear unjustly inspired, except with the consent of the party to whom the promise has been made.<sup>31</sup>

Vattel also likewise recognised the treaties of peace constituted an exception to the general rule of freedom of consent. As to this he said:

*“A sovereign cannot dispense himself from observing a treaty of peace by alleging that it was extorted to him by fear or by constraint. In the first place, if this plea were admitted, it would make it impossible for any reliance to be put upon treaties of peace. For there are few such treaties against which that plea could not be brought as a cover for bad faith. To authorize such an evasion would amount to an attack upon the common safety and welfare of nations; the principle would be condemned as abhorrent by the same reasons, which make the faithful observance of treaties a universally sacred duty. Besides the plea would almost always be disgraceful and absurd. It hardly ever happens at the present day that a Nation waits until it is reduced to the last extremity before making peace; it may have been defeated in several battles, but it can still defend itself; and it is not without resources so long as it has men and arms. If a Nation finds it prudent to procure, by a disadvantageous treaty, a necessary peace, if it delivers itself from imminent danger, or from complete destruction, by making great sacrifices, whatever it thus saves is an advantage, which it owes to the treaty of peace; it freely chooses a loss that is present and certain, but limited in extent, in preference to a disaster, not yet arrived, but very probable, and terrible in character”.*<sup>32</sup>

<sup>30</sup> *De Jure Belli ac Pacis*, lib. II, Chapter XII, section. 10, Classics of International Law, Kelsey trans., p. 348.

<sup>31</sup> *Ibid.*, lib. II, Chapter XVII, section 19, and lib. III, Chapter XIX, section 11, Kelsey trans. Pp. 445 and 798.

<sup>32</sup> *Droit des Gens*, lib. IV, Chapter IV, section 37, Classics of International law, Fenwick trans., p. 356.

Nonetheless, Vattel admitted that it was possible to conceive of treaties of peace so unjust and oppressive that the plea of constraint would be justified.

The *Harvard Draft Convention on International Law* states the position clearly: "As the term is used in this Convention, duress involves the employment of coercion directed against the persons signing a treaty on behalf of the a State or against the persons engaged in ratifying or acceding to a treaty on behalf of a state; provided that, if the coercion has been directed against a person signing a treaty on behalf of a state and if with the knowledge of this fact the treaty has later been ratified by that State without coercion".<sup>33</sup>.

The High Level Agreements of 1977, according to the learned writers quoted above, have to be considered as legally invalid, as great pressure was exerted on Makarios upon signing the treaty. There is ample evidence to suggest that Clifford, the special representative of the U.S. President, exerted heavy pressure upon Makarios, so that he might persuade him to accept the Agreements.<sup>34</sup> The treaty was not a treaty of peace, despite views to the opposite, that is the armed conflict between Turkey and Cyprus in 1974 could have been entirely catastrophic for the Republic of Cyprus; in other words, had the treaty not been signed, the whole territory of the Cyprus would have been occupied by the Turkish troops. The Turkish intervention, furthermore, was an illegal act, and the occupation, a *de facto* situation created thereafter as a result, a manifest illegality in international law. *Debellatio*<sup>35</sup>, that is *total subjugation* of the Cyprus State, has never been the case.

Also, the 1977 Agreements ought to be considered invalid, because a principle of utmost importance so dictates, namely, *rebus sic stantibus*. This very principle requires elaborate analysis<sup>36</sup>.

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<sup>33</sup> Harvard Law School, Harvard Draft Convention on International Law, *American J. I. L* 1934, p. 1096-1097..

<sup>34</sup> For details, see above the Chapter on the *United Nations and the Cyprus Problem*.

<sup>35</sup> On which, see generally Schwarzenberger, *Manual of International Law*, *op.cit.*

<sup>36</sup> See McNair, The Law of Treaties, ante, p.68; British YB.I.L. 11 (1930), P.109. But see Waldock, Second Report, p.83. It would seem that both in Greece and Rome there were certain circumstances under which it was permissible to break a treaty. Thus the argument that a complete change of circumstances existing at the time of the conclusion of treaty of alliance gives release from the obligations of the treaty made by Lycius, the envoy at Sparta, with regard to the treaty between the Spartans and the Aetolians ("If the circumstances are the same now as at the time of the time when you

Some writers asserted that the doctrine originated in Roman Law, in the sense that every contract carried with it the implied condition of *rebus sic stantibus*. Roman Law as it is laid down in the *Corpus Juris Civilis* of Justinian, did not know the clause *rebus sic stantibus*, as a legal institution in the sense in which we understand it today. From the point of view of *rebus sic stantibus*, the most important institution of Roman Law was the *legis action per condicitionem*, one of the five actiones, through which the law recognised as a basis for claim the fact that one party had been unjustly enriched at the expense of the other.<sup>37</sup> A special case of the *condicatio casus a date a causa non secuta*<sup>38</sup> was one of the rules of Roman Law from which the doctrine of *rebus sic stantibus* was subsequently derived. The particular rules which give the party concerned the right of rescission or withdrawal from the contract on account of the supervening changes in the circumstances are to be found in the various places of the *Corpus Juris Civilis* of Justinian. It was in fact as a result of the work of the glossators and commentators, extending over many centuries that a principle *rebus sic stantibus* was derived from unconnected individual cases scattered in various texts of Roman and Canon Law and worked into a comprehensive theory.

On the assumption that legal relationships between states were not basically different from those between individuals, the early writers on International Law transplanted the doctrine, together with a number of private law institutions, into the general corpus of International Law.

The first writer to mention the doctrine in a work entirely devoted to a question of International Law appears to have been Gentili, who conceives the doctrine as a general mental reservation implied in wills, and contracts.<sup>39</sup> His most significant contribution to the doctrine of *rebus sic stantibus* is its application to peace treaties. At the time of the general recognition of the

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made alliance with the Aetolians, then your policy ought to remain on the same lines. That was your first proposition. But if they have been entirely changed, then it is fair that you should now deliberate on the demands made to you as on a matter entirely new and unprejudiced. (Polybius, *Historiae*, IX, 37).

<sup>37</sup> Nicholas, *Roman Law*, London, 1975

<sup>38</sup> Institutes of Gaius, II, Commentary, p. 141, n.3 (ed. F. de Zulueta, Oxford University Press, 1953)

doctrine, Grotius appears to have been the first to reject it, though his attitude towards *rebus sic stantibus* is not devoid of ambiguity. His innovation is to treat the whole question of changed circumstances as basically a problem of treaty, interpretation and so to give the rule of *rebus sic stantibus* a juridical foundation in the contractual intention of the parties. His overt rejection and at the same time covert admission of the clausula as a rule of treaty interpretation made it possible to both adherents and opponents of the doctrine of *rebus sic stantibus* to appeal to Grotius. He became, because of his great authority, the source of divergent, often contradictory view on the doctrine.

Vattel developed the Grotian interpretation and scrutinized the juridical foundation of the doctrine *rebus sic stantibus*. His theory derives the rule *rebus sic stantibus* from the intention of the parties at the time of the making of the treaty and thereby places the whole question of changed circumstances within the field of treaty interpretation.<sup>40</sup> He thus connected the doctrine with the notions of the motive of the promise. Thus Vattel's contribution has decisively influenced successive generations of jurists and has become one of the main constructors of the doctrine.

It is the work of the International Law Commission and the resulting Vienna Convention on the Law of Treaties, 1969 that the doctrine of *rebus sic stantibus* has reached the last phase of its development and is now interpreted as an objective rule of law. The preponderance of the opinion of the Commission has already had a decisive influence on the views of writers<sup>41</sup> and is believed that it will determine the future position of the doctrine.

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<sup>39</sup> *De Jure Belli Libri Tres*: The reservation is: provided affairs remain in the same condition.

<sup>40</sup> If it is certain and evident that the consideration of the circumstances existing at the time entered into the motive of the promise, that the promise was made in view and because of those circumstances, the promise is dependent upon the continued existence of the same circumstances. This is evident, since the promise was only made upon that supposition. When therefore, the circumstances essential to the promise, and without which it certainly would not have been made, happen to change, the promise falls when its basis is destroyed; and in particular cases, when circumstances cease from time to time as be the same as those which brought about or helped to bring about the promise, an exception should be made to its enforcement (*Le Droit des Gens*, 1758, vol. III, p. 211).

<sup>41</sup> See for example, Brownlie, *Principles of Public International Law*, *op. cit.*, pp. 616-18; O'Connell, *International Law, ante*, p. 278, fn.

Already in the Harvard Draft Convention on International Law 1934,<sup>42</sup> the principle was laid down explicitly. Article 28 stipulates: (a) A treaty entered into with reference to the existence of a set of facts the continued existence of which was envisaged by the parties as a determining factor moving them to take the obligations stipulated may be declared by a competent international tribunal or authority to have been ceased to be binding, in the sense of calling for further performance, when that state of facts has been essentially changed. (b) Pending agreement by the parties upon decision by a competent international tribunal or authority, the party, which seeks such a declaration, may provisionally suspend performance of its obligations under the treaty. (c) A provisional suspension of the performance by the party seeking such a declaration will not be justified definitely until a decision to this effect has been rendered by the competent international tribunal or authority.

Paragraph (a) envisages a declaration by a competent international tribunal or authority that a treaty has ceased to be binding, in the sense of calling for further performance, provided: first, that the parties entered into the treaty with reference to the existence of a certain state of facts; second, that the continued existence of this state of facts was envisaged by the parties as determining factor moving them to undertake the obligations stipulated; and third, that this state of facts has been essentially changed. The declaration is to be that the treaty has ceased to be binding in the sense of calling for further performance; it is to have no effect, therefore, upon stipulations of the treaty which have been performed prior to the occurrence of the change. The term international tribunal or authority would include such bodies as the International Court of Justice, arbitral tribunals, the U.N. Security Council, etc. The possibility will tend to discourage a provisional suspension of performance by a party unless it has substantial grounds to expect that a competent international tribunal or authority will render a decision declaring that the Treaty is no longer binding and that the provisional suspension was definitely justified.<sup>43</sup>

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<sup>42</sup> See Harvard Law School, Draft Convention on International Law, 1934 *American J.I.L.*,

<sup>43</sup> Instances of application of the doctrine include: the separation of Belgium from Holland in 1830/3—1839, the cession of Savoy and Nice to France in 1860, the unification of Italy in 1859-61, the

Even though it has been subbed that justification of recourse to the doctrine of *rebus sic stantibus* could be derived from criteria, this is not to say that the opinion of the parties could be ignored altogether in this matter. In fact, when it can be established that at the time of the conclusion of a treaty the parties agreed that the presence of certain circumstances was a fundamental consideration, the treaty may be terminated by applying the doctrine of *rebus sic stantibus* in the event of a supervening change of circumstances. But a State claiming that a change of circumstances has occurred which in its opinion justifies the application of the doctrine, has in general no right to terminate, suspend, or modify unilaterally the operation of the treaty.<sup>44</sup>

Once it is recognized that the doctrine *rebus sic stantibus* is a lawful ground for the termination of treaties, it is possible to explain its proper relationship to the rule *pacta sunt servanda*. This is necessary because in a number of cases an intended termination of a treaty by virtue of that rule was met with the objection that treaties were to be observed according to the rule *pacta sunt servanda*. This objection implies that this rule has priority over, and therefore excludes, the operation of the rule *rebus sic stantibus*. This however, is not the case. According to a widely accepted view, the particular rule *rebus sic stantibus* forms a special exception to the general norm *pacta sunt servanda*. This exception finds its juridical basis in the higher principles of good faith and justice, which, in certain recognized cases, set limits to the requirement of faithful performance of treaties.<sup>45</sup> Although this view is

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arrangement concerning the international status of Luxembourg in 1867, the abolition of the Anglo-French financial control of Egypt in 1882-83, the abrogation of the treaties relating to the international status of Belgium by Article 31 of the Versailles Treaty in 1919, the revision of the Lausanne Convention in 1936, especially the arguments of Turkey, Greece and the Soviet Union, the revision of the Italian Peace Treaty in 1951 and 1954.

<sup>44</sup> Such rule was expressed by the following States: The Netherlands in 1930-31, the Great Britain and France in 1846, Denmark, Great Britain, France, Russia, Sweden and Norway in 1864, France in 1882, the United States in 1896, Great Britain in 1906, Austria, France, Germany, Great Britain, Italy, Russia and the United States in 1914 and 1922-23, France in 1928 and 1932, Great Britain, Italy, France, Belgium, Czechoslovakia, Spain, and the Council of the League of Nations in 1935-36, Great Britain in 1947, Great Britain, the United States and France and the Federal Republic of Germany in 1958, Iraq in 1969, and Great Britain in 1973. (*U.S. Digest of International Law, op.cit.* pp. 184-5)

<sup>45</sup>This view was developed by municipal courts in order to justify termination or modification of contracts on account of changes of circumstances in the absence of a customary or statutory rule. This view is now generally accepted in municipal law, especially in English, German, Swiss, French law.

inadequate to reconcile the principle of *rebus sic stantibus* with that of *pacta sunt servanda*, it fails to go to the root of the problem. In order to do so, one must start from the true meaning of both rules. *Pacta sunt servanda* means that every treaty in force is binding upon the parties to it and must be performed by them in good faith.<sup>46</sup> A Treaty, which is not in force either because it is invalid from origin (void) or because it has lost its force by virtue of its own terms or by operation of law, is not governed by the rule *pacta sunt servanda*. The range of the application of the rule does not extend so to speak beyond two points, that is, where a legitimate ground for terminating, revising or suspending the treaty such as *rebus sic stantibus*, has begun to operate. Within this range *pacta sunt servanda* admits no exception. *Pacta sunt servanda* means that treaties are inviolable, but it does not mean that treaties cannot be terminated or modified. Where it is by law established that by lawful procedure a rule for the termination or revision of the treaty applies, the rule *pacta sunt servanda* ceases to operate. The sphere of its application ends where that of the doctrine *rebus sic stantibus* begins. The rule *rebus sic stantibus* is not in conflict with the rule with the rule *pacta sunt servanda*. It follows that objections to the doctrine of *rebus sic stantibus* on *pacta sunt servanda* grounds cannot be maintained, unless it is admitted that the purpose of such objections is merely to provide a procedural safeguard against the arbitrary application of the doctrine in the absence of compulsory international adjudication.

In the light of the above discussion, it may be inferred that the High Level Agreements 1977 and 1979 between Makarios and Denktash, and Kyprianou-Denktash respectively are no longer legally valid. The fundamental change of circumstances in the intervening years leads to this conclusion; particularly the Unilateral Declaration of Independence of the “Turkish Republic of Northern Cyprus” in 1983 (as well as of the “Turkish Federated State of Cyprus” which preceded it) is a clear indication that the circumstances have severely changed, because of the Turkish insistence on the creation of two separate States on

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<sup>46</sup> Article 26 of the Vienna Convention on the Law of Treaties.

Cyprus. The Turkish plans to promote partition of the island have been pointed out at the beginning of this Chapter.

Also the argument put forward by Turkey and the Turkish Cypriot Leadership, (unfortunately adopted impliedly in the U.N. Secretary General's Statement 2000, "the equal status of the parties must expressly be recognised"<sup>47</sup>) namely that Confederation and not federation should be the constitutional framework for a settlement to the Cyprus issue, is indicative of the Turkish disregard of the High Level Agreements, and the real intentions under the fig leaf of federalism.

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<sup>47</sup> See above the Chapter *United Nations and the Cyprus Problem*.

## **CHAPTER VIII**

### **SOLUTION PROPOSAL AND POLITICAL PARAMETRES**

## CHAPTER VIII: SOLUTION PROPOSAL AND POLITICAL PARAMETRES

### 1. Suggested Solution

In view of the above what is the suggested settlement to the Cyprus Problem?

In my opinion, a possible one is the renegotiation of the Acheson Plan. It has to be noted, by the way, that any Plan so far submitted for the Cyprus could come back to the table of the negotiations in one way or another.

The Plan in its amended form can provide the framework for a viable settlement to the issue. It takes into account the national aspirations of both Greeks and Turks of Cyprus and their respective motherlands; further it satisfies the strategic needs of both Greece and Turkey as well the Western alliance. Here is what the Plan provided in its final

1. Immediate Union (*Enosis*) of Cyprus with Greece. This would be accompanied with recognition of the sovereignty of the Greek Crown, the Greek Central Government, the Greek Parliament (now the Republic of Greece) over Cyprus.
2. A General Commander (or Commissioner) at ministerial level with the duty and political responsibility of implementing the governmental decisions.
3. A military base on a fifty year lease is granted to Turkey the area of which does not exceed more than 4,5% of the territory of Cyprus.
4. The commitment is undertaken that the six eparchies of Cyprus shall not come to over the number of eight.

5. A position of Counsel on Muslim Affairs is established who shall assist the Greek Minister (Commissioner General).

6. The Turkish Cypriot status shall be that of a minority as the one functioning in Greek Thrace for the Turkish minority there.

7. A representative of the United Nations Organisation shall superintend the implementation of the minority status, according to the agreements.

8. Greece and Turkey are recognised the right of petition to the, according to the Treaty of Rome, for human rights. For this purpose the Agreement shall be signed by Greece and Turkey.

9. The Greek sovereignty will extend over Karpas peninsula, though despite its lease as base to Turkey.

10. The main villages of Karpasia shall be excluded from the area to be controlled by Turkey. Also excluded shall be the monastery of Apostle Andreas and a passage is granted establishing communication of the villages and the monastery.

11. A common security body between Greece and Turkey is to be established in strengthening the friendly relations between the two states. An American representative will also take part in this body.

12. The security institution activity will not be confined to military cooperation, but will extent over tourist and political ones.

13. The representative of the Greece and Turkey to the security institution shall meet often and unite their efforts for the development and progress of cooperation for the benefit of the two states.

14. Turkey undertakes to accept without exceptions the return of all those expelled from Constantinople and other Turkish cities, and recognises for them the same minority status as that applicable for the Turks in Greek Thrace and Greek Cyprus.

Turkey undertakes to respect her international obligations relating to the islands of Imbros and Tenedos.

It is noteworthy that the spokesman of the party of George Papandreu the elder, then Prime Minister of Greece, declared that the Greek party had never accepted the Acheson Plan. Simply, in coordination with the General Grivas, Mr. Papandreu had accepted the lease of a military base to Turkey (not in the area of the Karpas peninsula though) only for 30 years. The proposal was rejected by Turkey as well as by Archbishop Makarios.

The General Grivas, on the other hand, was a fervent exponent of the arrangement. When Grivas came to Cyprus in 1964, he made statements assuring the Turkish Cypriots for his friendship, indicating indirectly his disapproval for the assassination of hostages, and insisting upon a plebiscite which would confirm the view of the majority. During secret talks in August and July 1964, he suggested the Unification with Greece as a settlement, with compensation given to the Turks who would wish to migrate and a Turkish

Base which would be established next to a British one. As a realist, he would not ignore or disregard the strength of Turkey and her security needs.

Grivas came to the island with 3,000 troops ,. Americans did not oppose this move , and it is possible that this was because they would like to get Makarios under the control of Athens, and encourage Grivas in promoting the Acheson Plan.<sup>1</sup>

The preferred settlement, however, would be the reestablishment of an independent Cyprus State. The public opinion is very much in favour of such an eventuality. Although the proposed settlement is along the lines of federation, the tacit majority of the population is rather opposed to it. The election results at any time has never been a safe guide toward confirming the wishes of the people, who cast their vote on the basis of criteria other than the views of candidates on the national problem.<sup>2</sup>

I strongly submit that a return to the status of An independent Cyprus Republic, would be the panacea to the long standing and thorny Cyprus issue. Such an arrangement would be along the lines of the Zurich and London Agreements, with additional amendments to the benefit of both communities of Cyprus. The Thirteen Points submitted by Makarios in 1963 can provide the starting point for negotiations on the matter. It is to be noted that the Turkish Cypriots accepted the proposals in 1973, only a year before the Turkish intervention was launched.<sup>3</sup>

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<sup>1</sup> See Purcell, *Cyprus*, London 1969, p. 348. 255

<sup>2</sup> Hence, the need, among other reasons, for a plebiscite, discussed in the preceding Chapter,

<sup>3</sup> See Chapter 1 above, *The Diplomatic Context of the Cyprus Question*.

Such a settlement would, of course, respect the Treaty of Guarantee between Greece, Turkey and the United Kingdom (although this could be a matter for negotiation, especially regarding the number of troops to be stationed on the island, and most importantly *the right to unilateral military intervention* ).

The British Sovereign Base Areas, I submit, should remain utterly unaffected by this arrangement, unless the United Kingdom, in a diplomatic move of good will, would wish to return part of the Area territory to the Republic of Cyprus.

In any event, the Bases, could in my opinion play a very constructive and useful role in the security of the island in virtually protecting the independence, territorial integrity and constitutional order of the Republic, from external dangers in the wider region of the Middle East as well as internal threats. The periodical demonstrations by a tiny minority against the remaining of the British Bases on the island should be viewed as a rather negligible and isolated incident.

The role of NATO in the suggested settlement has to be taken into account, too. The security of the island could be placed under the aegis of NATO. If such an proposition would be unwanted on part of the interested governments, the United States alone should be welcome to have an important role in maintaining peace and security on the island. The military base in Lefkonico, presently in the occupied part, could of course continue to operate without interruption. and the troops It has to be made clear though that this propositions and even military concessions cannot be made in a vacuum. The United States must use their influence, to persuade Turkey that the above mentioned solution

is the best for the interests of all. The United Kingdom, which already has undertaken, by virtue of the Cyprus Treaty of Guarantee, to the safeguard the independence and territorial integrity of the island

Has to take decisive steps toward the same direction. Treating Turkey as the most important strategic ally in the region and looking down upon Cyprus (and Greece) is not the most intelligent path to pursue. In their attempt to achieve the policy of containment of the former Soviet Union (a Cold War goal which, it seems, still goes on), and thereby promoting good relations with Turkey at the expense of peace in Cyprus, they eventually lead things to the opposite result from the one wished for. Such a line stir up the possibility of a Greco-Turkish conflict, which, if ignited, would almost certainly bring about involvement of Russia.

It is imperative that such a settlement respects the human rights of both communities. It is precisely because of the need to protect human rights of both communities that this arrangement is here suggested. The Turkish Cypriots will, be guaranteed proportional participation in Government. Needless to mention in this regard that *all human rights* have to be implemented as these are stipulated in all international instruments, including the European Convention on Human Rights.

A short discussion comes next on how human rights should be enforced.

## **2. Human Rights in Foreign Policy<sup>4</sup>**

Pending international problems, the non-implementation of human rights becomes an indication of serious inefficiency of the international system.

There is an inescapable tension between human rights and foreign policy. Their constituencies are seemingly different. The Foreign Policy according to some views should be conducted among states in disregard of the global communities' and individuals' rights. It might be then, that the way for a minister of foreign affairs to resolve the inescapable tension between human rights and foreign policy is to deny that human rights is part of his job. To the entrenched sceptic who dismisses this as soft law, the reply now is to point out to the judicial decisions which make such basic rights, such as freedom from slavery, peremptory norms of international law.<sup>5</sup> What this international law of human rights suggests is that foreign ministers no longer have a choice about the inclusion of human rights. They cannot escape the tension between human rights and foreign policy simply by declaring that the former have no place in the latter. They are obliged to pay attention to human rights whether they like it or not. They are bound, according to the conventions of positivist international law, by their explicit agreements and by custom.

There is also a deeper sense in which human rights arrived in foreign policy that which observes the presence in foreign offices of desks bearing that title. Human Rights now play a part in the decision about the legitimacy of a State (and of other actors and institutions) in international society. About whether

<sup>4</sup> See Vincent, *Human Rights in Foreign Policy*, Cambridge: Cambridge University Press.

<sup>5</sup> Brownlie, *Principles Public International Law*, 2<sup>nd</sup> ed. Oxford: University Press 1979), pp. 596 and 512-15.

what it is or what it does is sanctioned or authorised by law. It is not enough for a state to be, and to be recognised as sovereign. Nor is it enough for it to be a nation-state in accordance with the principle of self-determination. It has to act in such a way as not to offend against the basic rights and groups in other countries.

The concept of security in foreign policy is too narrow; too narrow in being concentrated on safety against military threats. The task that need to be done is to ask the following questions: what are the present costs for a Great State (in reputation and credibility) of locating a military base within a gangster regime?<sup>6</sup> Further, in planning foreign policy should we not decide what we are for in the world and promote it, as well as merely knowing what we are against and fighting it?<sup>7</sup> Planning Policy staffs introduces the problem of getting beyond the short term, or rather of getting consideration of the longer term into short term decision-making, a problem which is a professionals' barrier into including human rights Policy Planning staffs produce wise papers that nobody reads except perhaps the research staff. But if foreign policy is actually to be a policy rather than merely reaction to the circumstances, the skill of its practitioner is to see beyond the short term and have this vision affect action in the short term. Sensitivity to the quality of human rights observance among both friends and adversaries might play a part in facilitating this vision. Human rights in foreign policy are not merely about standard setting public pronouncements, or finding formulae for the pacification of

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<sup>6</sup> These questions were prompted by Ullman, *Both National Security and Human Rights*

<sup>7</sup> This is the argument of Vincent, The Reagan Administration and America's Purpose in the World, *Yearbook of World Affairs*, vol. 37 (1983).

noisy unimportant domestic pressure groups. They are also matters which affect the great purposes of the state in securing and nourishing its citizens and the citizens of the world at the same time. This is the point of the extension of the concept of security to cover the long term and the unconsidered threat. The flood of refugees that might result from the denial of human rights, even from a country of whose existence we are only scarcely aware. And the likelihood of choosing the western world as a destination, should focus bureaucratic attention on the practicality of human rights observance as a mode of preventive diplomacy.

The small states, conversely, should do whatever they can to promote human rights at the international level, particularly in international organizations.

In the case of Cyprus, the Cases tried before the European Court of Human Rights referred to above should be constantly promoted. Foreign Policy of the Republic of Cyprus should be conducted at the level of Human Rights.

Human Rights Law should be the basis of any future settlement to the issue. If human rights are not safeguarded in their entirety then any attempt to find a peaceful, *viable and just* resolution to the problem will be doomed.

### **3. Strategic considerations**

In order that a settlement may be reached strategy, which is of crucial importance need be considered. Two issues will be here analysed. The military cooperation between Greece and Cyprus and the military-political cooperation between Cyprus (and Greece) and Israel, axis between Turkey and Israel.

The Doctrine of the Common Defence Area between Greece and Cyprus, on the one hand, constitutes no doubt the most important option of the Cyprus Government from the strategic point of view since 1974. The Doctrine was laid down by the Greek Prime Minister Andreas Papandreou and Greek Cypriot President Glafkos Clerides in Athens 1993.

The purpose of the Doctrine is to suggest on part of Athens and Nicosia the adoption of a *preventive strategy*, with the sole aim of effectively facing the Turkish threat. According to the Doctrine any attempt on part of Turkey to launch an attack against the State of Cyprus or get its troops beyond the buffer zone which divides the occupied part of the island from the Greek Cypriot controlled area, shall be constitutes *casus belli* and shall be militarily resisted to. For the purpose of laying down a well organised strategy, the two governments, the Ministers of the respective Defence Ministries as well as Chief Commanders of the Army Headquarters meet regularly in both Nicosia and Athens.

Further, *preventive strategy*, as the name goes, aims at preventing Turkey from undertaking a military operation against Cyprus. By this very strategy Turkey is to be persuaded that if she attempts to promote any plans which could possibly have a negative impact on the vital interests of Greece and Cyprus, then any benefits from such an attempt would be severely outnumbered by the losses (military, financial diplomatic).

It would be useful in this regard to point out the military strength of Turkey and Greece respectively. Turkey has about man power of about 579.200.T Infantry

numbers 470.000 men, the Navy 52.000 and the Air Force 57.200. It is noteworthy that the tanks come to about 3.783, the navy has about 15 submarines among other vessels, and the Air Force has 650 aircrafts in its ranks. Greece has 158.500 soldiers, 1.879 tanks, 1.908 Fire Arms in the Artillery Division, 10 submarines and 448 aircrafts (Mirage, F-16, F-104, F-5A) etc.<sup>8</sup> The numbers are important, but not conclusive. The result of a possible conflict is unpredictable. The relative Turkish superiority is not enough to make sure that the Turks would prevail in a future conflict between Greece and Turkey. On the contrary, the Greek capability as it nowadays stands, indicates that a possible Turkish attack may not only end up with severe losses on part of Turkey, but even with its total defeat. Turkey, it should be recalled, is facing a number of internal as well as external problems., such as the Kurdish problem, the Islam, differences with Syria, neighbouring Iraq, Iran and even Russia in many respects. These fronts surely keep busy a big number of its military forces.

A conclusion Greece, for Turkey, is a country strong enough, especially militarily. Greece's support in the defence of Cyprus adds considerably the to the risk of Turkey's having to pay a severe cost if she attempts to launch a raid or attack against the area presently under the control of the Cyprus Government. On of the basic conclusions of this brief recourse to the military capacity of Greece and Turkey is that Cyprus, without the consistent and strong support of Greece, both in the military and diplomatic fields, is vulnerable to a Turkish

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<sup>8</sup> See Aristos Aristotelous, *The Doctrine of Common Defence Area between Greece and Cyprus, Nicosia, 1997.*

threat, imminent as it is in the view of the thousands of Turkish troops illegally stationed on the island.

Thus, the view that Greece is too far away to protect Cyprus and contribute to the security of the Greek Cypriots is, from the strategic standpoint, utterly wrong. Such a position rather shows lack of knowledge in military affairs.

If this was the stance taken by Greece in the case of the Aegean islands, too, then the result would be total catastrophe for Hellenism.

It should be stressed, nevertheless, that one of the main purposes of the doctrine, under the present circumstances is to strengthen the position of the Cyprus Government at the negotiations aiming at reaching a peaceful settlement to the Cyprus problem.

On the other hand, moving to the co-operation between Cyprus and Israel, three major issues need be briefly stressed. These issues have to be seen in the context of the military axis between Turkey and Israel which has affected in a seriously negative manner the relations between Cyprus and the Israel.

Firstly, Cyprus and Greece have to do their best so that the peace process may be progress in the Middle East. On the basis that peace in the Middle East does not mean no event in the interests of Turkey, peace especially between Israel and Syria must be promoted at once. In the absence of such an enemy, so far a traditional enemy of Israel, the axis between Turkey and Israel can automatically be diminished to a large extent.

Secondly, the relations between the Greek world at large and Israel remain rather undeveloped. Cyprus traditionally keeps better relations with Israel than

Greece does. This strategic advantage has to be properly be taken into account. At the final analysis, the survival of the State of Israel depends not on any kind of relation or cooperation with Turkey, but on the friendly relations with the West, particularly with the United States.<sup>9</sup> These relations inevitably go through stability in the Eastern Mediterranean. Any control of the Middle East by countries by countries not particularly friendly to the interests of Israel, namely Turkey, is not compatible with the notion of survival of the State of Israel. In this region, Cyprus as well as Greece could play a very important role so that peace and stability can be achieved and retained. Military cooperation between Cyprus and Israel towards this direction would surely be a gradual step forward. Thus, again, the axis between Turkey and Israel could possibly be further diminished if not eliminated.

Secondly, Cyprus can play a vital, if not decisive, role in fulfilling Israel's aspiration for joining the European Union. As a full member of the EU and having close relations with Greece and other European countries, Cyprus perhaps holds the key to Israel's future accession to the European Community. Conversely, a future settlement of the Cyprus issue goes through Israel, in that Israel could play a very important role in this process, given its close ties with the United States and the United Kingdom, key actors in the Cyprus Question.

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<sup>9</sup> Indicative of the close relations between Israel and the United States of America on Strategic affairs, is the *Memorandum of Understanding Between the Government of the United States and the Government of Israel on Strategic Cooperation*, the Preamble of which reads: This memorandum of understanding reaffirms the common bonds of friendship between the United States and Israel and builds on the mutual security relationship that exists between the two nations. The parties recognize the need to enhance strategic cooperation to deter all threats from the Soviet Union to the region (Shai Feldam, *The Future of U.S. Israel Strategic Cooperation* (Washington, 1996)

Thirdly, Cyprus has to make clear that the Turkish aggression toward Cyprus (and Greece in the Aegean especially) raises the risks of an armed confrontation in the region. Such an eventuality would certainly bring about catastrophic consequences to the region and the South-eastern NATO flank.

#### **4. Epilogue**

Having said the above, I would like to emphasize finally that it is, and has always been, the intention of the political leadership of the Cyprus Republic, and the people as well, to make every effort in good will, so that a settlement to the Cyprus issue may be reached through peaceful means.

However, if all attempts fail, and not because of our intransigence, then the people of Cyprus should seriously have to consider resorting to armed force and engage into a National Liberation struggle, itself permitted under International Law. I shall not now go through a theory of just war. This has been done elsewhere in the present thesis<sup>10</sup>. Suffice it here to repeat that part of Admiral Demosthenes' speech, as reported by the Athenian historian Thucydides, which constitutes the first authoritative statement on unilateral humanitarian intervention:

“Men, who have gathered together in this venture, let no one of you wish to be esteemed a man of intelligence; but rather, with plain courage, which casts aside reflection let him, together with the others, attack against the opponents and even opponents, and even be optimistic that he shall eventually be proved

victorious. When matters reach appoint of necessity, as the present circumstances are, crude rationalism is least needed”.

Let the employment of these words not be taken as an indication of warlike attitude or excessive nationalism. But, if need be, the Greeks of Cyprus shall fight for their own country and shall never surrender, in order that international legality may be restored.

Even if every one citizen is sacrificed for freedom, posterity shall be able to see, through a clear instance of sacrifice, that national dignity is more important than life itself.

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