CYPRUS

DIŞ POLITIKA ENSTITÜSÜ - FOREIGN POLICY INSTITUTE
ANKARA, 2002

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INTRODUCTION

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1. The Cyprus problem is an ongoing struggle between those defending the law and those trying to violate it. Turkey and the Turkish Cypriots scrupulously adhered to the agreements concluded on the subject. Zurich and London Agreements of 1959 were made to respect the equilibrium created between Turkey and Greece by the Lausanne Treaty. An equilibrium was also established between the two national communities on the island.

The prime ministers of Turkey and Greece came together in February 1959 in Zurich and determined the principles that would govern the international status as well as the Constitution of Cyprus. Subsequently, the prime ministers of Turkey, Greece and Great Britain were joined by the leaders of the Turkish and Greek Cypriot communities and signed a Memorandum. The Memorandum included the Basic Structure of the Republic of Cyprus and the draft treaties of Guarantee and Alliance. It also comprised the Declaration made by the leaders of the two communities accepting these documents. In this way a compromise solution was found on the basis of a bi-national independence, resting on the political equality and administrative partnership of the two communities; that was a functional federation where the rights of the two communities were safeguarded. The Turkish and Greek national communities agreed to establish a Cyprus state in partnership.

2. However, the Greek Cypriot side regarded the agreements as a barrier preventing them from reaching their ultimate goal of Enosis. This became clear when only three years after the agreements Archbishop Makarios proposed to amend the Constitution in such a way as to abolish equality rights of the Turkish Cypriots. When his proposal was rejected, the Greek Cypriots started their assaults against the Turkish Cypriots in December 1963.

Turkey as a Guarantor Power tried to stop the bloodshed. The Notes handed to Makarios and to the Guarantor Powers, the United Kingdom and Greece, clearly show that Turkey had no other objective than the protection of the Turkish Cypriots in conformity with the agreements. The Prime Minister of Turkey, İsmet İnönü, in his Note to Archbishop Makarios said that “the situation created in the Island by all sorts of unlawful actions in contravention with the Treaties was discussed in the UN Security Council and the said body of the United Nations by its resolution passed on March 4, 1964, recommended to the two communities and to their leaders to avoid any actions which would aggravate the situation in the Island.” He also complained that “in spite of this resolution, it is observed that the acts aggravating further the

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situation in the Island to such an extent as to endanger international peace in the area are still being perpetrated.” The Turkish Prime Minister, despite all these violations of Treaties still tried to base its policies on legal ground and warned: “I deem it necessary to draw your attention once again to the responsibility befalling in this respect upon the Cyprus administration.”

Prime Minister İnönü also addressed Notes to the United Kingdom and Greek Governments and has drawn their attention to the situation.

3. As a matter of fact, the Security Council had adopted a resolution on 4 March 1964 and decided to send peacekeeping troops to the Island. But the part of the resolution that still adversely affects the Cyprus problem is the phrase recognizing the Greek Cypriot administration as the government of Cyprus. Here, a legal question should be asked: Can the Security Council adopt such an important resolution in complete disregard of the agreements and the prevailing conditions in which the legally constituted government of Cyprus has been taken over by one of the partners, i.e. the Greek Cypriots? In fact, this legal question has been brought to the attention of the United Nations Secretary General. The Turkish Cypriot Vice-President, Dr. Fazıl Küçük on 9 March 1964 reminded the Secretary General that, “it is imperative that in implementing Paragraphs 4 and 7 of the Resolution, both the President and Vice-President are consulted and/or their consent obtained”. Again, in a reply to the UN Secretary General’s memorandum on the terms of reference for the Cyprus Peacekeeping Force, the Turkish Government underlined that the Cyprus Government, as referred to in Resolution 186, was meant to be a legitimate government which could only be created and function according the Constitution and 1960 Agreements, i.e. one which ensured in practice the joint participation of the Turkish and Greek Cypriot communities in the administration. Also, the British Permanent Representative in an Aide-Mémoire to the UN Secretary General on the subject of Resolution 186 stated that “the Guarantor Powers and the United Nations as a whole have no alternative but to conduct their activities in accordance with the Constitution and with the Agreements”.

4. Later, the Turkish Cypriots had to defend their rights against the voting power of the non-aligned members of the UN General Assembly. The General Assembly on 18 December 1965 adopted a resolution based on the Non-Aligned Conference in Cairo on 10 October 1964 and supported the Greek Cypriot attempts to deprive the Turkish Cypriot Community of its bi-communal partnership rights, which were guaranteed by international treaties. The Turkish side had drawn the attention of the UN General Assembly before the adoption of the resolution. When 24 Non-Aligned countries sponsored a draft resolution supporting the views of the Greek Cypriots, it was pointed out to them that if this draft should ever see the light of the day as a resolution, it would carry within it the seeds of re-enflamed civil war on the island and of major disturbances of the peace in the area.

In fact this is what happened following the resolution of the General Assembly. The Greek Cypriots were encouraged in their attacks against the Turkish Cypriots. This has culminated in 1967 in a major crisis in the area when they carried out a major onslaught against
Turkish villages with the help of 20,000 soldiers from Greece. A Turkish-Greek war was nearly averted.

From the beginning of the Cyprus problem the Greek Cypriots made a fundamental mistake. They believed that because of the voting power of the Non-Aligned countries at the UN General Assembly they could nullify the solemn Treaties of Cyprus. The wave of decolonisation of the 1960’s had resulted in many countries gaining independence through the Resolutions of the United Nations. Therefore in the eyes of many Non-Aligned countries, the Resolutions of the United Nations had the force of International Law. Fortunately for the Turkish Cypriots however, treaties are still the primary source of International Law.

Also, contemporary realities developed in a direction contrary to the belief of many Non-Aligned countries on state sovereignty. In Yugoslavia the international community has been obliged to recognize that a rigid application of sovereignty would not be helpful for the protection of different communities. The protection of people within a state even necessitated humanitarian intervention. Rwanda, Haiti, Iraq, Somalia are other examples.

5. The First Series of Intercommunal talks took place between 1968 and 1974, but could not achieve any results because of the intransigence of the Greek Cypriots who did not want to accept any formula that would shut door to their objective of Enosis.

What they persistently ignored was that equality was something that constituted the basis of the Cypriot State. In 1959 and 1960 the Turkish Cypriot Community leader and Greek Cypriot Community leader took part in the mechanism preparing for the creation of the state on equal terms. They did so in the Joint Commission in Cyprus with the duty of completing a draft constitution. The Transitional Committee in Cyprus with the responsibility for drawing up plans for adapting and reorganizing the Government machinery in Cyprus also comprised the leading representatives of the two communities. The same was true for the Joint Committee in London with the duty of preparing the final treaties: the two communities participated along with the interested governments. That was natural since the mechanism was set up to provide the future state for the two communities, and the state was founded on the equal status of the two communities. The leader of the Greek Cypriot Community was designated as President and the leader of the Turkish Cypriot Community as Vice-President.

During the preparatory work, a statement by Her Majesty’s Government requested that “minor religious groups in Cyprus (Armenians, Maronites and Latins) continue to enjoy the liberties and status which they have had under British rule”. That was provided for in the Constitution.

The Greek Cypriots demolished the Cyprus State when they came under the illusion that one day they could reduce their partners, the Turkish Cypriots to the status of these minor religious groups. They continued in this mistaken path even in the face of UN Security Council resolutions which clearly reminded them of the equal status of the two communities; talks between them would be carried out on an “equal footing”. In practice, however, the international community helped them to continue with their illusion.
6. In 1974 the Greek soldiers in Cyprus toppled Makarios and announced the annexation of the island to Greece (Enosis). Turkey, by using its right under Article 4 of the Treaty of Guarantee, intervened militarily and provided security for the Turkish Cypriots. The conference between the Guarantor Powers in Geneva on 25 July 1974 declared that there were two autonomous administrations on the island. That was the description of the situation as it existed during the First Phase of the Conference. The Second Phase of the Conference failed to produce an agreement between the parties, i.e. the Guarantor Powers and the representatives of the two communities. After the Conference, the dispersed Turkish Cypriot enclaves were united in a continuous territorial set-up. The Exchange of Populations Agreement signed between the two sides in 1975 provided the homogenous population that would be under the Turkish Cypriot Administration. It only remained to give it a name, the Turkish Federated State of Cyprus was proclaimed. In fact, domestic sovereignty, the authority and effective control of the government was there. Still, the Turkish side has shown its good will by declaring that their state would form the Turkish Cypriot wing of the future common State.

7. Intercommunal talks started again between the two parties in 1975. Denktas and Makarios at their meeting in 1977 agreed on the guidelines for the representatives in the intercommunal talks as the basis for future negotiations. Again Denktas and Kyprianou in 1979 adopted a Ten-Point Agreement on the same subject. However, in Greece Papandreou came to power in 1981 and put an end to the intercommunal talks, attempting to take the issue to the international platform. This led to the declaration of the Turkish Republic of Northern Cyprus in 1983. President Denktas, in his letter to the UN Secretary General on 15 November 1983, explained the legal reasons for the declaration of their state and said that a solution based on the principle of the equal partnership of the two people must be found. Here, it should be emphasized that the Turkish Cypriots have always possessed in common with the Greek Cypriots the right of self-determination. Already in a Statement in the House of Commons on 19 December 1956, the British Colonial Secretary Mr. Lennox-Boyd stated this principle – He said that “any exercise of self-determination should be effected in such a manner that the Turkish Cypriot Community, no less than the Greek Cypriot Community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status.” The British Prime Minister confirmed it on 26 June 1958. The London and Zurich Agreements and the Cyprus Treaties gave it the force of international law. The Turkish Cypriots have been emphasizing this right in 1963, in 1975 and again in 1983. Today, 19 years have elapsed since the formation of the Turkish Cypriot State. The Turkish Cypriot people have a democratically elected President chosen by the people through direct universal suffrage; a democratically elected Parliament which represents the free will of the Turkish Cypriot People within a democratic multi-party system; a government which is responsible to this Parliament; an independent judiciary with a Supreme Court which also reviews the constitutionality of all legislation; a public administration which covers all the functions of a contemporary state; security forces which maintain law and order; laws enacted through the votes of the elected representatives; taxation imposed by these laws; its own budget; and its own social security institutions.
8. The intercommunal talks continued under the auspices of the mission of good offices of the Secretary General. The “Set of Ideas” on an Overall Framework Agreement on Cyprus was proposed by Secretary General Boutros-Boutros Ghali in 1992. It contained 101 paragraphs dealing with the Constitutional aspects, the structure of the Government and the Judiciary, Security and Guarantee, economic development and safeguards. The Turkish Cypriot side accepted 91 of these paragraphs. The Greek Cypriots first hesitated and later denied consent. Again in 1993-1994, when the UN Secretary General suggested the implementation of the Confidence Building Measures package, this was accepted by the Turkish Cypriots and refused by the Greek Cypriots. The Greek Cypriots not only obstructed any progress in the intercommunal talks, but also endeavoured to create closer military links with Greece within the context of the Joint Defence Doctrine. Turkey and the Turkish Cypriots countered this initiative. The military measures of the Greek side were reciprocated by the Turkish side on 20 January 1997 in a joint declaration saying that any attack against the Turkish Republic of Northern Cyprus would be considered an attack against Turkey.

9. Meanwhile, in 1990 the Greek Cypriots applied for full membership in the European Union. This move was in total disregard of international law. As we have seen above, the island of Cyprus gained independence through multilateral treaties. These treaties guaranteed the continued independence of the Republic of Cyprus. They consequently prohibited any union of the Republic with any state, or any action to produce that result. The signatories took care to eliminate any possible loophole on this matter and undertook that the Republic would not be able to join international organizations in which both Turkey and Greece are not members. The basic structure of the Republic in its article 8 clearly stipulates it. The Treaty of Guarantee Article 1 confirms the same.

The stipulations oblige Cyprus, Greece, Turkey and the United Kingdom to desist from any act to make Cyprus a member of an international organization in which both Turkey and Greece are not members. In our case they have an obligation to prevent Cyprus from becoming a member of the European Union.

In the face of such specific prohibition, the accession of Cyprus to the EU would have the effect of modifying the Basic Structure and therefore would be tantamount to an infringement of the independence and territorial integrity of the Island. The European Union should not therefore have gotten involved in any way with Cyprus, the structure of which was particularly designed to safeguard the balance between Turkey and Greece as well as between the Turkish and Greek Cypriot peoples.

The Turkish side objected strongly to the application. But, the European Union gave precedence to political considerations over legal imperatives and favourably accepted the Greek Cypriot application. The Turkish side reacted and indicated its intention to accelerate the integration process between Turkey and the Turkish Republic of Northern Cyprus. When the accession negotiations started, it was made clear that from that point on, the Turkish Cypriots would not be able to participate in any negotiation process as a “community” but that talks could only be carried out between sovereign equals.
10. The proximity talks started in the fall of 1999 in New York and continued in New York and Geneva until November 2000. During these talks President Denktas proposed an arrangement for cooperation of the two sides within a confederal structure. The Greek Cypriot side did not put any proposals on the negotiation table. An important development was the statement of the UN Secretary General on 12 September 2000. The Secretary General said that “the parties share a common desire to bring about, through negotiations in which each represents its side – and no one else – as the political equal of the other, a comprehensive settlement enshrining a new partnership.” He said “he concluded that the equal status of the parties must and should be recognized explicitly in the comprehensive settlement, which will embody the results of the detailed negotiations required to translate this concept into clear and practical provisions.”

On 8 November 2001 President Denktas wrote directly to Mr. Clerides, proposing face-to-face meetings on the island without preconditions. The two leaders agreed to meet and the talks began on 16 January 2002. The UN Secretary General visited Cyprus on 16 May 2002 and reviewed the progress of the talks with the two parties. He made efforts to bring the two sides closer, in line with his above-mentioned ideas.

11. This short introduction illustrates how the Turkish Cypriots abided by the rule of law and how the Greek Cypriots violated the Cyprus Agreements. First they took action to put the Turkish Cypriots out of the government. Then they posed as the legal government of the Republic. Subsequently in 1974 they declared the Union of Cyprus with Greece (Enosis), in violation of the Treaty of Guarantee. Turkey prevented this Union; the Guarantor Powers at Geneva Conference confirmed that there were two autonomous administrations on the island. This led to the formation of a separate state by the Turkish Cypriots.

The latest attempt to violate the Cyprus Agreements came when the Greek Cypriots applied for full membership in the European Union. Unfortunately, the European Union condoned this unlawful act, accepted the application and started negotiations. The European Union disregarded the well established facts on the island; that there are two politically distinct authorities situated in two distinct territories.

Despite all violations of Treaties by the Greek Cypriots and lately by the European Union, Turkey and the Turkish Cypriots believe that their strength comes from having the law on their side.
THE VALIDITY AND SCOPE OF
THE 1959-1960 CYPRUS TREATIES

Dr. Kudret ÖZERSAY*

Introduction

The 1959-1960 Cyprus Treaties were a kind of turning point for both Turkish and Greek Cypriots in the Island’s history at the end of the de-colonisation process. Following the collapse of the bi-communal partnership within the state of Cyprus, contracting parties have usually based their legal arguments on the validity/invalidity of these Treaties. A Recent example is the European Union (EU) membership of the Greek Cypriot administration as ‘Cyprus’ or as the legal government of the Republic of Cyprus (ROC). The Main arguments of the Parties are formulated by referring to some of the articles of these Treaties, regarding the legality of this unilateral application. Examining the legal status of the 1959-1960 Cyprus Treaties would constitute a first step to analyse some other crucial legal questions deriving from the Cyprus problem.

Basic legal documents regarding the establishment of the ROC were initialled at a summit meeting between Greek and Turkish Premiers at Zurich on 11th February 1959. The Zurich Agreement included three draft instruments: a) A Draft Treaty of Guarantee between the ROC, on the one hand, and Turkey, Greece and the United Kingdom (UK), on the other; b) A Draft Basic Structure of the ROC; c) A Draft Treaty of Alliance between Cyprus, Greece and Turkey. Cypriot representatives, Archbishop Makarios and Dr. Fazıl Küçük, were later invited to participate in the London Conference on 17th February 1959 with the representatives from Greece, Turkey and the UK. On 19th February, all participants decided to establish the Cypriot State and they put all the basic principles and accepted some documents and declarations called ‘The Agreed Foundation for the Final Settlement of the Problem of Cyprus’. These documents and declarations are referred to as the London Agreements.

Following the Zurich-London Agreements, three different committees were established to complete the required legal process: the Transitional Committee was responsible for preparing the transfer of authority from the colonial power to the ROC; the Joint Commission was entitled to complete the draft constitution of the Republic and the Joint Committee was assigned to prepare the final treaties.

On 16th August 1960, with the completion of the constitution and following the elections held in Cyprus, Zurich-London Agreements entered into force, became legally binding and the

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ROC was established by the signatures of the relevant parties at Nicosia and order-in-council under the ‘Cyprus Act of 1960’.iii

The Basic Structure of the ROC contains 27 paragraphs, which are designed to create interrelated checks and balances between the two Communities. The basic principles for legislative, executive and judicial organs of the ROC are set forth carefully. Paragraph 27 provides “all the above points shall be considered to be basic articles of the Constitution of Cyprus”. According to Paragraph 21 a treaty of guarantee and a treaty of alliance shall be concluded and these two instruments shall have constitutional force. It is also stated that this last paragraph shall be inserted in the constitution as a basic article.iv

By the Treaty of Alliance, Turkey, Greece and the ROC agreed to co-operate for their common defence and to resist any attack or aggression directed against the independence or the territorial integrity of the ROC (Arts. I and II). A tripartite military headquarters was established comprising 950 Greek troops and 650 Turkish troops to achieve the aims of this Treaty.v

By the Treaty of Guarantee “independence, territorial integrity and security of the Republic of Cyprus, as established and regulated by the Basic Articles of its Constitution” are defined as the common interest of the ROC and the three guarantor powers.vi The ROC is obliged to ensure not only the maintenance of its independence, territorial integrity and security, but also respect for its Constitution. This structure and “the state of affairs established by the Basic Articles of its Constitution” are recognised and guaranteed by Greece, Turkey and the UK. They also undertake to prohibit activities aimed at union of Cyprus with any other state or partition of the Island. This obligation is also true for the ROC, since it “undertakes not to participate in whole or in part, in any political or economic union with any state whatsoever”. The ROC, Greece and Turkey guarantee the rights of the UK concerning the two sovereign British Bases retained in accordance with the Treaty of Establishment.vii Article IV of the Treaty of Guarantee provides:

“In the event of a breach of the provisions of the present Treaty, Greece, Turkey and the UK 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.”

Under the articles of the Treaty of Establishment, the UK retained sovereignty over two military bases situated in Akrotiri and Dhekelia. And with the exception of these areas, the territory of the ROC is defined as comprising “the Island of Cyprus, together with the Islands lying off its coasts [...]”viii Possible problems concerning the succession of the ROC to the responsibilities, rights and benefits of the UK on the Island, are also regulated by the Treaty of Establishment.ix Rights of the UK and the status of its forces in the Island are contained in a detailed form within the Annexes of this Treaty and it is provided in Article II that these Annexes shall have force as integral parts of the main document.
I. Basic Features of the 1959-1960 Cyprus Treaties and the Nature of the Republic of Cyprus

1. Treaties Establishing Objective Regimes

It has been traditionally accepted that one of the basic rules regarding the law of treaties is the rule *pacta tertiis nec nocent nec procunt*. It provides that a treaty does not create either obligations or rights for third states. Customary character of the rule *pacta tertiis* had been confirmed by the decisions of the PCIJ and some other arbitrary courts prior to the 1969 Vienna Convention on the Law of Treaties. And it was stipulated by Article 34 of the Vienna Convention that this is a “general rule regarding third states.” An exception to this general rule was accepted by Article 38: A principle set forth in a treaty can become binding for third states as a customary rule.

During the preparatory works of the Vienna Convention some members of the International Law Commission (ILC) argued that the concept of ‘treaties creating objective regimes’ existed in international law and must be given effect in the draft articles of the Convention. Treaties concerning the neutralisation or demilitarisation of some territories or areas, and treaties for freedom of navigation in international rivers or maritime waterways were given as treaties falling within this concept. Other members, while recognising that in some cases treaties can create rights and obligations for third states, did not accept these examples as emanating from any special concept or institution of the law of treaties. Because of a lack of general acceptance on ‘objective regimes’ the ILC “left this question aside” in the drafting process. As can be understood from Article 38 mentioned above, in the ILC’s view, a rule formulated in a treaty may become binding upon other states by way of custom, such as the neutralisation of Switzerland. According to the ILC the source of the binding force of such rules for third states is custom, not the treaty. Discussions were related to the source of the rule and focused on the existence of a special concept, different from custom, producing *erga omnes*. The concept of treaties creating objective regimes was supported by the leading jurists of the law of treaties like McNair and Waldock. According to McNair some ‘international settlements’ can be considered as such. For example Convention on Aaland Islands between England, France and Russia, and, the international agreements establishing the existence of Belgium or the Free City of Danzig.

Referring to the existence of treaties binding for third states, irrespective of the source of their binding force like custom or objective regimes is relevant for 1959-1960 Cyprus Treaties. Similar to the examples given by McNair, Cyprus Treaties can be considered as ‘international settlements’ establishing a state. Considering the permanent territorial and political status founded by these treaties, not only the parties concerned but also third states should respect this regime. Furthermore, in conformity with the comments made by the ILC, the Cyprus Treaties must be deemed legally binding for all states, because of their tacit consent about the status of the Island. Unanimous acceptance of the ROC as member to the UN, its
recognition and the registration of Cyprus Treaties to the UN Secretariat are the evidences of this consent.

2. An Internationalised Constitution

The 1960 Cyprus Constitution was a unique internationalised legal document.xvi The 1959-1960 Cyprus Treaties set forth the Basic Articles of the Constitution. Article 182 provides that the basic articles of this Constitution, which were incorporated from the Zurich Agreement “can not, in any way, be amended, whether by way of variation, addition or repeal” (182/1).xvii These articles are attached to the Constitution as an Annex. As a result of these references in the Constitution, provisions of an international treaty becomes part of the national legal system and contents of this treaty is guaranteed by the Constitution. Article 185 creates a further guarantee for the constitutional structure of the ROC by providing “the Republic is one and indivisible” and the “integral or partial union of Cyprus with any other state or the separatist independence is excluded” (185/1 & 2). In addition to this internal guarantee, there is another guarantee at international level for these basic articles or for the provisions of the Zurich Agreement. The Basic Articles, including Article 182, which set forth the unamendable character, are recognised and guaranteed by the UK, Greece and Turkey through the Treaty of Guarantee (Art. II/1). Moreover, according to Article 181 of the Constitution, the Treaty of Guarantee has a constitutional force and is attached to the Constitution as an Annex. Another reference to the Cyprus Treaties within the Constitution is embodied in Article 149. It is provided by this Article that in case of ambiguity the Supreme Constitutional Court is under the obligation to interpret the Constitution by taking into consideration the Zurich-London Agreements (Art. 149/b).xviii

It was not the first time in international law that a state is established by international treaties. The Irish Free State, Vietnam, Indonesia were established this way.xix Moreover, one could also find similarities between the status of the ROC and Bosnia-Herzegovina emanating from their distinctive characteristics. An international treaty also formulates the constitution of Bosnia-Herzegovina. The Bosnian Constitution is incorporated into the General Framework Agreement (Dayton Accords) which was initialled by Bosnian, Croatian and Yugoslavian heads of state. By this Agreement, Croatia and Yugoslavia are under the obligation to “welcome and endorse” and to “fully respect and promote the fulfilment of” the Constitution.xx Although the Bosnian Constitution does not specify unamendable provisions like the Cypriot one, it provides that the elimination of rights and freedoms referred to in Article II is prohibited. This structure “in fact guarantees state structure as well as rights and freedoms.”xxi

As will be seen below, unamendable Basic Articles of the Cypriot Constitution reflects the idea that the will of state can occur only if there exists a combination of the wills of two separate Communities. In many areas within the jurisdiction of the ROC decisions of the state organs should contain the consent of both Communities. This legal structure brings about the conclusion that the international legal personality of the ROC necessitates the existence of a representative government for both Greek and Turkish Cypriot Communities. This formulation prohibits the imposition of one of these wills to be treated as the will of the ROC.
3. A Bi-Communal Republic

Despite the description that the ROC is “an independent and sovereign republic with a presidential regime [...]” set forth in Article 1 of the Constitution, it is not possible to find any evidence supporting the idea that this sovereignty is derived from the ‘Cypriot People’. This instrument, however, does not even include this term. The ROC is based on an understanding of bi-communality and on the division of the population into two communities, namely Greek Cypriots and Turkish Cypriots. It further recognises the existence of some religious groups xxii. Article 2 provides that each religious group is under a constitutional obligation to choose adherence to one or the other of the two communities (Prg. 3).

The bi-communal character of the ROC was integrated in the structure and functioning of the legislative, executive and judicial organs. Most of the executive powers were granted to the president and vice-president. The Constitution provides for a Greek Cypriot president elected by the Greek Cypriots and a Turkish Cypriot vice-president elected by the Turkish Cypriots (Art. 1). In principle, executive power was held by these two authorities and they had a council of ministers composed of 7 Greek ministers and 3 Turkish ministers. It was also provided that one of the three important ministries xxiii should be held by Turkish Cypriot officials (Art. 46). The two chief executives had the power to veto separately or conjointly, decisions of the Council of Ministers and the House of Representatives concerning foreign affairs, defence, and security (Art. 48/d, f, 49/d, f, 50 and 57).

The House of Representatives included 35 Greek and 15 Turkish members (Art. 62). These representatives would be elected by their respective Communities (Art. 63/1). It would hold all legislative powers except those expressly reserved for the Communal Chambers (Art. 61). In principle, decisions of the House would be taken by majority vote. But for any modification of the Electoral Law, adoption of any law regarding municipalities and of any law imposing taxes and duties required a separate simple majority of the Turkish and Greek Cypriot representatives respectively (Art. 78/1-2). This can be considered as a kind of veto right for the Communities. As to the Turkish and Greek Cypriot Chambers, in relation to their respective communities, they have legislative power over all religious matters; all educational, cultural and teaching matters; personal status; composition of the courts regarding civil disputes relating to personal status and religious matters and imposition of individual taxes and fees (Art. 87/1, a-f). Jurisdiction of these special legislative organs (Chambers) was established on a communal separation, instead of a territorial one. Although it was provided that there should be separate Turkish municipalities in five largest towns of the ROC xxiv, “[...] the constitutional system of Cyprus established a special structure of state where the federal principle was differently applied.” xxv

There were some individual government officers called the attorney-general (Art. 112), auditor-general (Art. 115), governor of the issuing bank of the Republic (Art. 118) and
accountant-general (Art. 126) and their deputies. The four deputies could not belong to the same communities. Cypriot legal system aimed to ensure the seven-to-three ratio at all levels within the public service (Arts. 123-125). It was stipulated that the security forces of the ROC (police and gendarme) would include two thousand men of whom seventy percent would be Greeks and thirty percent would be Turks. The sixty-to-forty ratio was accepted for the Republic’s army, which was also limited to two thousand men (Art. 129-130).

Regarding the judicial organs, there was a Supreme Constitutional Court composed of one Greek, one Turk and a neutral president who may not be a Cypriot, British, Greek or Turkish citizen (Arts. 133/1 and 133/3). The High Court of Justice composed of two Greeks, one Turk and one neutral member (having two votes) was the highest appellate court of the ROC. It was accepted by Article 155 that the High Court would have the jurisdiction to hear and determine all appeals from any court, other than the Supreme Constitutional Court. In case where the plaintiff and the defendant belonged to the same community, the lower court exercising civil jurisdiction would be composed only of a judge or judges belonging to that community (Art. 159/1). [This rule also applies to criminal cases where the accused and the person injured belonged to the same community (Art. 159/2)]. But where the parties belonged to different communities, the court would be composed of a judge or judges belonging to both communities who would be determined by the High Court (Art. 159/3&4).

It can be understood from the above that because of complicated checks and balances included within this constitutional structure most of the major affairs of the ROC were subjected to the agreement or concurrence of the representatives of the two Communities. And it is possible to argue that acceptance of any policy or action on vitally important issues would have to be based on the consent of the two Communities.

II. Evaluation of the Arguments Regarding Invalidity and Termination of the 1959-1960 Cyprus Treaties and Rules of International Law

Following the collapse of the bi-communal republic in December 1963, some writers and the Greek Cypriot leadership have argued that these Treaties were invalid and some of them were terminated. These arguments have been (and are being) based on the specific grounds of invalidity which are generally accepted by international law.

1. Ascertaining the Rules of International Law Applicable to the Cyprus Problem

Probably the most comprehensive international legal instrument concerning the rules on invalidity and termination is the 1969 Vienna Convention on the Law of Treaties. There occur two difficulties regarding the application of rules provided by the Vienna Convention to the 1959-1960 Treaties as rules of a multilateral treaty. First of all, not all of contracting parties of the 1959-1960 Treaties were states with full diplomatic relations. Second, the Vienna Convention contains limited rules applicable to the 1959-1960 Treaties.
1959-1960 Treaties accepted and ratified the Vienna Convention. Turkey did not sign and ratify the Convention, whereas Greece (on 30 October 1974), the UK (on 20 April 1970) and the Greek Cypriot administration (on 28 December 1976 as ‘Republic of Cyprus’) have become parties. As mentioned above, because of the rule *pacta tertiis*, treaties can not create rights and obligations for third parties without their consent. This rule makes it impossible to apply rules of the Vienna Convention to disputes which may occur between Turkey and other parties of the 1959-1960 Treaties as rules of a multilateral treaty.

Secondly, there are doubts about the status of the Greek Cypriot Administration as a “contracting party”. The international legal personality of the ROC was a limited one and it would have to enjoy the consent of both Communities at the same time. This formulation is also binding for third parties because of the objective character of 1959-1960 Treaties. This is why an authority departing from the basic articles of the Cypriot Constitution should be deprived of the title “legal government of the ROC”. Despite the referral by the Greek Cypriot side to the doctrine of necessity there hasn’t occurred a persuasive ground granting legality to their administration as the ROC.xxviii

Points mentioned above make it inevitable to search whether the rules of the 1969 Vienna Convention are applicable to conflicts emanating from the 1959-1960 Treaties only between Greece and the UK. This question should be answered within the context of the Vienna rules. For some writers Article 4xxix of the Vienna Convention regarding non-retroactivity functions as a ‘general participation clause’ (*clausula si omnes*), which limits the applicability of an international treaty to cases regarding states which are parties to the treaty. If a third state becomes involved than the international treaty ceases to be applicable altogether because of this clause.xxx Acceptance of such an approach shall make it impossible to apply the rules of the 1969 Vienna Convention to conflicts between Greece and the UK, because of the existence of Turkey as a party to the 1959-1960 Treaties but not to the 1969 Vienna Convention. But interpreting Article 4 as a general participation clause would seriously impair the effects of the Vienna Convention and it could not serve the purposes intended by its makers. As rightly stated by Vierdag, it is unlikely that such a comprehensive limitation on the application of the Convention would be inherent in the two closing words (*such states*) of the Article 4.xxxi The approach excluding *clausula si omnes* can also be supported by the supplementary means of interpretation such as the preparatory works of the 1969 Vienna Convention.xxxii As a result, it seems that there is no restriction on the application of the 1969 Vienna Convention to the conflicts as regards the 1959-1960 Treaties between Greece and the UK.

But there occurs an impediment concerning the application of this Convention. As stated by Article 28 of this Convention, “unless a different intention appears from the treaty”, application of its provisions should be considered as non-retroactive. Moreover, it is provided by Article 4 that the Vienna Convention applies only to treaties which are concluded by states after the entry into force of this Convention.xxxiii Therefore, because of its date of entry into force (27th January 1980), the rules set forth in the 1969 Vienna Convention does not apply to the 1959-1960 Treaties as rules of a multilateral treaty. This conclusion is valid even for the conflicts between Greece and the UK about 1959-1960 Treaties. Consequently, applicable rules for the
1959-1960 Treaties are the customary rules and the general principles of international law regarding treaty conflicts.

2. Coercion of a representative of a state and the 1959-1960 Treaties

On 30th November 1963 Archbishop Makarios made a statement indicating a ground for impeaching the validity of a treaty whose conclusion is procured by the coercion of the representative of a state. With his 1st January 1964 statement he described the Treaty of Guarantee and the Treaty of Alliance as agreements imposed on the Cypriot People. It was also maintained by the Greek Cypriot representative at the UN that the conditions under which these treaties were concluded were denying free will and causing pressure on Makarios.

Regarding coercion on a state representative, Article 51 of the Vienna Convention provides that the expression of consent to be bound by a treaty which has been procured by the coercion of a representative of a state through acts or threats directed against him shall have no legal effect. But as we mentioned, in order to be considered as applicable to the 1959-1960 Cyprus Treaties, a rule from the Vienna Convention should have a customary character. Customary rule character of this Article was tacitly accepted during the preparatory works of the International Law Commission (ILC). This idea was also supported by international literature. It comprises acts affecting the representative “as an individual and not as an organ of his state”. This approach includes threat to destroy his career by disclosing a private indiscretion or a threat to harm the family members of the representative.

The negotiating process of the 1959-1960 Cyprus Treaties should be examined in order to perceive whether there had been such coercion on Cypriot representatives, especially on Makarios. It can be understood from the memoirs of the Greek foreign minister Averoff that Makarios was informed at every stage about the details of the negotiating process and Greece continued this process with his consent. Some records of these informative meetings have been published. Following the Zurich Agreement, Greek Premier invited Makarios to his house and explained him the details. The Archbishop approved the provisions and asked only for an opportunity to negotiate the size of the British bases during the London Conference. The Greek officials accepted his request. But on 13th February 1959 Greek officials from the foreign ministry informed prime minister Karamanlis that Makarios had some doubts about the Treaties and he might hesitate to sign them. Following this “bad news”, Mr. Karamanlis organised a meeting with Greek Cypriot representatives (including Makarios) in London on 17th February. During this meeting Mr. Karamanlis reminded Makarios of his promise not to renegotiate the provisions except the size of the Bases and criticised his inconsistency. He also warned the representatives by stressing that Greece would attend the conference to save her honour and if Makarios wants to carry the struggle on he would have to find support from another country. Because of the effects of this dialogue the Greek representatives accepted to attend the London Conference.
On the first day of the Conference Makarios said that he wished to raise several points concerning the ‘proposed Treaties’. He was seeking renegotiation and change with regard to these documents. On the second day, prior to the session, Mr. Averoff invited the Greek Cypriot delegation for a meeting. At this meeting Mr. Averoff stated that The British Government would put the Macmillan Plan into force within a few months and they failed to postpone its application. He maintained that from that point on the Greek Cypriot representatives would be under obligation to assume the responsibility of the possible bloody events that would occur in the Island.

On the first session of the 18th February Makarios enumerated his reservations concerning the Constitution and the Treaties. And he concluded that he did not think “the Conference can be placed in the position to take it or leave it”. Subsequently Mr. Lloyd said, “[…] this conference was called because we […] were assured that there was agreement between the five parties […]”. Following such objections from other participants Makarios maintained his position by saying that he believed he was called to a conference, which meant he had the right to express his views on the agreements not that he would be faced with a take it or leave it. Other parties refused to renegotiate the provisions of the Zurich Agreement and kept their position by asking a question to Makarios: “[Do] you accept the documents, which have been tabled before this meeting […] as the foundation of the final settlement?”. These and subsequent discussions caused an interruption at the Conference. It was decided to wait for the answer of Makarios to this question on the ensuing day. His answer was yes.

It is true that the parties refused to renegotiate and change the provisions of the Zurich Agreement and this caused a kind of dilemma for Makarios either to sign or reject the Agreement ‘with all the grave consequences’. But this attitude can not be considered as coercion which is prohibited by the rules of international law. The reason to refuse this approach was directly related to the assurance given by Makarios and his inconsistency. Needless to say, Makarios possessed the right to change his mind at the London Conference and to suggest some modifications to Treaties. But this does not deprive the other parties of right to reject such a proposal. And such rejection can not be conceived as coercion. It was within the limits of bargaining.

‘The grave consequences’ mentioned by Makarios were not about physical or mental coercion directed against him or his family members. Greek representatives have intended to imply the possible application of the Macmillan Plan which was considered as Taksim (Partition) by the Greek side. And this was also one of the natural bargaining techniques.

Even if there had emerged all the required conditions about coercion on Makarios, this could not have invalidated ipso facto the 1959-1960 Treaties. Although some writers asserted that Article 51 of the Vienna Convention and existence of words used by the ILC in its commentary has an effect of absolute nullity, there is some proof to the contrary. As stated by Rozakis, invalidity under Articles 51 and 52 is not automatic. This is demonstrated by the wording of Article 69 which requires the establishment of invalidity within the procedure of Article 65. Article 69 provides that a treaty the invalidity of which is established under the
present convention is void. This Article applies also to cases falling under Articles 51 and 52. Because of this rule invalidity under these provisions should be constituted by way of procedure regulated within Article 65.\textsuperscript{i} The preparatory works of the Vienna Convention also sustained this approach.\textsuperscript{ii} The right to appeal the invalidity of a treaty is given only to the state which has been coerced or whose representative has been coerced.\textsuperscript{iii} We should ascertain whether it is also mandatory to ‘establish’ invalidity by a procedure under the rules of customary international law which are applicable to the 1959-1960 Cyprus Treaties.

First of all, as stated by McNair in 1961 there emerged a ‘traditional doctrine’ that a treaty is not rendered \textit{ipso facto} void or voidable by one of the parties because of coercion.\textsuperscript{iv} Such a doctrine makes it compulsory to establish invalidity by way of official initiative and procedure. This specification was also upheld by the attitude of participants at the 1969 Vienna Convention on the Law of Treaties, which should be considered as ‘state practice’.

As mentioned earlier, the establishment of invalidity under the procedural rules of the Vienna Convention for a conflict originated from the 1959-1960 Cyprus Treaties is not possible. It is generally accepted that articles regulating a procedure to be followed with respect to invalidity and termination of a treaty are \textit{de lege feranda}, except the one related to Article 33 of the UN Charter. This part of the procedural provisions which appears as a first step, has customary character.\textsuperscript{v} This is why the Greek Cypriot administration was under the obligation to commence an official initiative for the establishment of invalidity. Lack of such a subsequent attitude prevented them to obtain legal results from such an allegation. It should be concluded that the 1959-1960 Cyprus Treaties haven’t been invalidated until now. And there is a considerable difficulty against such an initiative to establish the invalidity of these Treaties any more. Rules of international law forbid the invocation of a ground for invalidity or termination in case this state acquiesced the validity or maintenance in force of a treaty by its subsequent conduct.\textsuperscript{vi} Such a loss of right to invoke a ground for invalidating the 1959-1960 Cyprus Treaties has become true for the Greek Cypriot administration.

### 3. Coercion of a state by threat or use of force and the 1959-1960 Cyprus Treaties

As mentioned above, Archbishop Makarios described the Treaty of Guarantee and the Alliance as treaties imposed on the Cypriot People. It was also asserted by some writers that these treaties were imposed upon the Cypriot People prior to and as a condition for their independence and that the rules regarding coercion of a state by threat or use of force are relevant and applicable.\textsuperscript{vii} Again, it was contended that the 1960 Constitution was imposed upon Cyprus.\textsuperscript{viii} These statements remind one of the grounds for invalidity of a treaty: coercion of a state.

It’s not astonishing that the phrase ‘Cypriot People’ was used instead of ‘Republic of Cyprus’ in these allegations. Because, prior to 16\textsuperscript{th} August 1960 there was no Cypriot State to be coerced. It is true that there occurred some threats to the Greek Cypriot community during the negotiations. For instance the threat of the Greek government to leave the Greek Cypriots alone
on the way to the *enosis*, like the implied threat concerning the application of the Macmillan Plan which was considered as *Taksim*. Moreover, the threat of concluding these treaties prior to and as a condition for independence. All these threats did not include physical/armed coercion but can be conceived as ‘political pressure’. Thus it is needed to identify the scope of prohibition of coercion.

Article 52 of the 1969 Vienna Convention governs coercion of a state. Article 52 provides “a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.” By referring to developments on the prohibition of the use of force, it was stated by the ILC that such a rule regarding coercion on a state to conclude a treaty is *lex lata* in 1966. This was also supported by the International Court of Justice (ICJ). Because it carries customary law character since 1945 this rule is also applicable to the 1959-1960 Cyprus Treaties.

There is evidence supporting the idea that this Article, as well as its equivalent in customary international law, does not prohibit economic and political pressure. For instance, all cases mentioned by the ILC within its commentary report were related to the prohibition of the use and threat of ‘armed’ force. Again, efforts to insert economic and political pressure into Article 52 of the Vienna Convention by developing countries failed and at the end of long debates during the 1969 Vienna Conference it was accepted only to annex a declaration to the Convention condemning political and economic pressure. Furthermore, it is generally accepted that this declaration does not have the same legal standing as the concrete provisions of the Convention. The ILC left the scope of this Article undefined by recalling that it should be determined “in practice by interpretation of the relevant provisions of the Charter.” But supervening state practice, especially some certain declarations of the General Assembly aimed at interpreting the provisions of the Charter, did not show any tendency by the states to forbid economic and political pressure in the process of concluding treaties.

Above mentioned points justify the conclusion that the 1959-1960 Cyprus Treaties did not carry the required conditions to be invalidated on the grounds of coercion of a state. And these treaties haven’t been invalidated on this ground.

4. Unequal Treaties and the 1959-1960 Cyprus Treaties

More explicitly, the Greek Cypriot administration asserted that the 1959-1960 Cyprus Treaties were unequal and this fact makes them void. The representatives of the Soviet Union and Czechoslovakia supported these allegations at the UN Security Council debates. In view of the Soviet representative, these treaties are unequal, because they were imposed upon a small state and they were not based on equality. During these debates it was also argued by the Greek Cypriot representative that the bargaining powers of the parties were not balanced and rules regarding ‘unequal treaties’ were applicable. Some writers advocate this argument as well.
Although there had occurred the concept of unequal treaties since the early days of international law, there is no accepted rule in this field prohibiting treaties which are concluded between parties having unbalanced bargaining powers. Elimination of this concept during the preparatory works of the Vienna Convention is a proof of its non-existence as an international rule. Besides, there is a considerable inherent inconsistency of the ‘unequal treaties’ approach. Some of the followers of this approach have applied this concept as a ground for termination, while some others invoke it for invalidating a treaty. Furthermore, most of the defenders of the unequal treaties approach attempt to utilise some other independent grounds of invalidity and termination, instead of developing particular criteria. Finally, states which have advocated this doctrine in history have abused this concept for their own political interests and acceptance of such a doctrine would threaten the stability of international treaties. For these reasons, it seems impossible to invoke the invalidity of the 1959-1960 Cyprus Treaties by referring to such an obscure and political ground. In any case, the Greek Cypriot administration renounced advocating the doctrine of unequal treaties. In view of Ehrlich the reasons of this shift were the weaknesses in the inequality case and the potential international support for Turkish position on the matter.

5. Termination of a Treaty as a Consequence of its Material Breach and the Purported Abrogation of the Treaty of Alliance

In December 1963 the Turkish contingent moved out of its barracks and took a position on the road to Kyrenia. Following the resolution of the UN Security Council on 4th March 1964, Makarios sent letters to Turkey and Greece dated 31st March and maintained that upon the dispatch of the UN peace-keeping forces to the Island, Turkish and Greek contingents should return to their previous locations. Turkey rejected this demand by her reply on 1st April. Subsequently, Makarios sent another letter to Turkey and argued that ‘the ROC’ has terminated the Treaty of Alliance between Cyprus and Turkey. The Greek Cypriot administration considered Turkey’s rejection as a material breach of the Treaty. As a guarantor power the UK declared that the invalidating act of the Greek Cypriot administration was not valid.

It should be determined whether there occurred a material breach with the refusal of Turkey to sent its contingent back to their barracks. The definition and elements of ‘material breach’ regulated by Article 60 of the Vienna Convention are accepted as customary law. The ICJ applied the definition of material breach as a customary rule within its advisory opinion on Namibia (1971) and the ICAO Council Case (1972). For Article 60 (Prg. 3/a-b), a material breach consists repudiation of the treaty or violation of a provision essential to the accomplishment of the object or purpose of the treaty. It is clear that Turkey did not repudiate the Treaty of Alliance. The Treaty does not specify the position of the two contingents. It is provided by Article 3 of the Additional Protocol that position of the contingents and some other related problems would be determined by a special and supplementary agreement between the parties. Therefore it can be concluded that a topic in which the treaty is silent, could not be regarded as essential to the accomplishment of the object and purpose of the treaty. Thus the
Greek Cypriot initiative was inappropriate and did not cause a legal effect on the Treaty of Alliance.

Even if it is accepted that the move of the Turkish contingent was a material breach, act of the Greek Cypriot administration did not impair the continuance in force of the Treaty of Alliance. First of all, there is a consensus that breach (even if it is a material one) cannot automatically terminate a treaty. In other words, breach alone does not have *ipso facto* effects.\textsuperscript{lxvii} Secondly, in case of a material breach, a party other than the defaulting state is not entitled “to terminate” the treaty, but “to invoke the breach as a ground for termination.” The latter was clearly supported by the ILC in its commentary reports on Article 60 of the Vienna Convention.\textsuperscript{lxviii} And a proposal to formulate this article as containing the right of termination was declined at the Vienna Conference.\textsuperscript{lxix} But with the Namibia Advisory Opinion the ICJ caused a debate on the meaning of the right granted in case of a material breach. Although the Court decided that Article 60 of the Vienna Convention “may in many respects be considered as a codification of existing customary law on the subject.”\textsuperscript{lxxx} it went on and referred to a supposed “general principle of law that a right of termination on account of breach [...] in respect of all treaties.”\textsuperscript{lxxxi} Some writers argued that paragraph 96 had recognised “the right of termination” instead of “the right to invoke a ground” for termination. But some others criticise the Court for this Opinion.\textsuperscript{lxxxii} Nevertheless, with its 1997 Gabcikovo decision the Court has clarified the meaning and scope of the right granted in case of a material breach. It was applying customary rules of international law and maintained that a material breach entitles other parties to invoke this breach as a ground for terminating the treaty,\textsuperscript{lxxiii} not to terminate it. This brings us to the question of procedural provisions and the ‘establishment’ of termination as we explained above. By taking into consideration all these points, it can be concluded that with the letter of Archbishop Makarios, the Treaty of Alliance hasn’t been automatically terminated. A termination process was commenced, but not completed.

Furthermore, there are some meaningful defects in the act of the Greek Cypriots regarding termination of the Treaty of Alliance. With the application of the rule *nemo ex sua culpa tenet jus* a state which took part in a material breach or contributed to it through its acts cannot maintain the right to terminate a treaty by invoking this material breach.\textsuperscript{lxxiv} This rule is also relevant for the termination of the Treaty of Alliance. It is evident that Greek Cypriots have contributed to the occurrence and continuation of certain events which compelled the Turkish contingent to move out of its barracks. This point prevents them from appealing the right to invoke termination. Besides, there occurs a rule in customary international law, providing the loss of a right to invoke a ground for terminating a treaty and this rule is also embodied in Article 45 of the Vienna Convention.\textsuperscript{lxxv} According to this Article, a state cannot invoke a ground for terminating a treaty if, after becoming aware of the facts, it acquiesced in the maintenance in force of this treaty by way of its conduct (45/b). Following the attempt to terminate the Treaty of Alliance in 1967 Greece and the Greek Cypriot administration have acquiesced its validity and its maintenance in force, by their acceptance to withdraw Greek troops in Cyprus in excess of 950 as regulated by the Treaty. This conduct must be considered as the reaffirmation of the continuance in force of the Treaty of Alliance.\textsuperscript{lxxvi} Finally, as mentioned
earlier, the international legal personality of the ROC was a limited one. A legal government for the ROC should contain the consent of both Turkish and Greek communities in all cases. The ‘will’ of the Cypriot State should be a combination of two wills.\textsuperscript{lxvi} The ‘common consent’ formula deprives the Greek Cypriot administration of the right to represent the Cypriot State alone. Consequently, this administration did not have the right to start the process of termination in the name of the ROC. For all these reasons, it should be accepted that the Treaty of Alliance has not been terminated properly and it continues in force.

6. Arguments against the Treaty of Guarantee

With regard to the Treaty of Guarantee, the Greek Cypriot administration and certain writers maintain that Article 4 does not and cannot authorise the use of armed force by Guarantor powers against Cyprus. In their view, contrary interpretation would conflict with Article 2(4) of the UN Charter and this contradiction would make the Treaty void and null because of Article 103. Such an interpretation would also conflict with rules of \textit{jus cogens}.\textsuperscript{lxviii}

First of all, it should be determined whether Article 4 authorises use of armed force, by applying rules on interpretation of treaty provisions. Some writers have utilised certain principles to prove non-existence of the use of armed force in Article 4. The first one is the principle of restrictive interpretation. According to this principle, it is required to interpret the treaty provisions in favour of the state which is subjected to restrictions on its sovereignty or against the state which has designed the document. It was argued that through this principle Article 4 should be interpreted in favour of the ROC or against the Guarantor powers. And this approach brings them to the conclusion that the Article does not give the right to use armed force.\textsuperscript{lxvii}

Nevertheless, it is ignored by these writers and the Greek Cypriot administration that the principle of restrictive interpretation has an exceptional application.\textsuperscript{xc} It can be applicable only if the meaning which has existed with the employment of the general rules of interpretation is obscure. Moreover, this secondary feature of the principle also continues in relation to the supplementary means of interpretation.\textsuperscript{xci} Another principle which has been used by the Greek Cypriots was \textit{ut res magis valeat guam pereat}. It was maintained that under this principle, an interpretation should create an effective conclusion or in other words, a reasonable result. Thus, in accordance with this principle it cannot be accepted that the Treaty of Guarantee gives the right to use armed force if such a formulation is prohibited by the Charter of the UN and the rules of \textit{jus cogens}.\textsuperscript{xcii} However the exceptional and secondary characteristic of the principle of restrictive interpretation is also relevant for this principle.\textsuperscript{xciii} Considering the above-mentioned reasons we should first apply the general principles of interpretation and, depending upon the clarity of conclusion, we can then apply these two principles in case of ambiguity.

While interpreting the Treaty of Guarantee in accordance with the ordinary meaning to be given to its terms, it should be accepted that the scope of collective right in the first paragraph and the unilateral one in the second are the same. Because ‘representations and measures’ set
forth in the first paragraph are being referred to as ‘common or concerted action’ in the second one, just like the unilateral ‘action’ reserved for the Guarantors.\textsuperscript{xciv} Ordinary meaning can not solve the problem, because terms ‘representation’ and ‘measures’ have dual meanings in international usage. But it can contribute to the idea that these terms do mean more than peaceful diplomatic initiatives, since every state can commence such initiatives without a right derived from a treaty.\textsuperscript{xcv}

Ordinary meaning should be analysed by taking into consideration the context, and, object and purpose of the treaty.\textsuperscript{xcvi} The most important object and purpose of the Treaty of Guarantee is to block the historical aims of the two communities: Enosis and Taksim. These two aims include the use of armed force and it cannot be possible to terminate such attempts by protests or diplomatic initiatives in every case. And it is inevitable to accept that Article 4 does include use of armed force in some cases, especially when it is needed to re-establish the state of affairs created by the Treaty of Guarantee.\textsuperscript{xcvii}

Furthermore, the existence of Turkish and Greek Contingents in the Island strengthens the interpretation that the Treaty of Guarantee gives the right to use armed force. Since the Treaty of Alliance has constitutional force emanating from a basic article and since these articles are under the guarantee of the Treaty of Guarantee, the Treaty of Alliance should be considered as the context of the Treaty of Guarantee with the definition of the term ‘context’ by Article 31 (Prg. 2) of the Vienna Convention. Under Article 32 of this Convention, in case there occurs an ambiguous or obscure meaning or absurd or unreasonable result from the interpretation by the application of Article 31 or in order to confirm the previous interpretation, preparatory work (travaux préparatoires) of the treaty and the circumstances of its conclusion can be applied as ‘supplementary means of interpretation’. If it is argued that the above mentioned interpretation is obscure or absurd it is possible to find additional elements favouring our former interpretation. During the London Conference on 18\textsuperscript{th} February 1959 the Greek Foreign Minister Averoff stated:\textsuperscript{xcviii}

“[...] so I want to make myself an official declaration that my Government sees this right of intervention which will be used only if there is a Turkish attempt at partition, or a Turkish attempt to throw out the Government. We will never make an intervention by our own armed forces, or by other means, if some Turkish schoolboys shout about partition or if there is an article in the newspapers on that subject. In such a case, the Greek Ambassador, who will be there, will go to the Government and ask them, as your Ambassador goes to our government and my Ambassador goes to yours, why the newspapers write such things. That is the way my Government feels there should be the right of intervention.”

\textit{A contrario} interpretation confirms that the Greek Government agreed to “make an intervention by their own armed forces, or by other means” in some cases, like an attempt to create partition or overthrow the Cypriot Government. Again, circumstances at the conclusion of the Treaty of Guarantee are also relevant for the interpretation of Article 4. As stressed by Ronzitti and Ehrlich, this Treaty was reached at a time of bloodshed and violence on the Island.
And this supplementary means is also imposing the conclusion that the Treaty of Guarantee gives the Guarantor powers to use armed force.\footnote{xcix}

To reach the conclusion that the Treaty of Guarantee entitles the Guarantor powers to intervene by armed force by means of Article 4, makes it necessary to evaluate the arguments regarding \textit{jus cogens} and the UN Charter.

\begin{itemize}
  \item a- Problems regarding the concept of \textit{jus cogens} in international law
  \end{itemize}

The concept of \textit{jus cogens} is related to higher norms (peremptory) and creates a hierarchy in law: a-higher norms which limit the freedom of states to conclude treaties against it (\textit{jus cogens}); b- ordinary norms (\textit{jus dispositivum}). There are two articles in the Vienna Convention regarding \textit{jus cogens} rules. Article 53 provides “a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm”. Such a norm is defined in the same Article as “a norm accepted and recognised 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 posterior norm having the same character. And with Article 64 it is accepted that if there emerges a new \textit{jus cogens} rule, “any existing treaty in conflict with that rule becomes void and terminates.” In order to be able to apply rules regarding \textit{jus cogens} to the Cyprus conflict it is required to find such norms free from the Vienna Convention.

Prior to the Vienna Convention it was argued that some of the decisions of international courts can be accepted as evidence of the existence of the \textit{jus cogens} rules, such as 1934 \textit{Oscar Chinn Case}, 1950 \textit{South West Africa Case} and 1951 advisory opinion on the reservations to the Genocide Convention.\footnote{c} But as stated by Sztucki, for some considerable reasons, it is highly debatable whether these decisions may be regarded as indicative of the recognition of the concept \textit{jus cogens}. First of all, most of them are separate or dissenting opinions; moreover, none of them are directly related to the consistency of a treaty with a \textit{jus cogens} norm; they touch upon other matters and all these references can also be interpreted as rules of customary international law, instead of \textit{jus cogens}. Furthermore, it is not possible to find a case in which a treaty was terminated or invalidated by an international court, because of its inconsistency with \textit{jus cogens} rules. There was also a lack of state practice which supports the existence of \textit{jus cogens} rules.\footnote{d} But the position of the doctrine on \textit{jus cogens} was completely different from the state practice and jurisprudence. Most of the writers accepted this concept as applicable in international law.\footnote{cii} Nevertheless, there were substantial inconsistencies among these writers on definition, determination, application and legal foundation of the \textit{jus cogens} rules.\footnote{ciii} These elements disclose that articles on \textit{jus cogens} rules in the Vienna Convention cannot be considered as codification of international law.\footnote{cv} This is why it was decided by the ILC “to leave the full content of this rule to be worked out in state practice and in the jurisprudence of international tribunals.”

However, there occurred more complicated problems concerning the existence and meaning of \textit{jus cogens} with the Vienna Convention. Taking into consideration the unique character of \textit{jus cogens} it is essential to decide the source which it would be derived from. But
there is no provision within this Convention indicating the source of *jus cogens*. The phrase ‘international community as a whole’ cannot clarify the source problem. For article 53, peremptory norm is a norm in which no derogation is permitted. But if we assume that such a norm would be derived from customary law we would face some difficult questions. First of all since in customary law there occurs a right to derogate from an emerging rule by the concept of ‘persistent objector’ and since there was a general acceptance among states even during the 1969 Vienna Conference on the existence of such a right, requirements of Article 53 cannot be fulfilled. To overcome this problem it was proposed to assume that a *jus cogens* rule would be created by custom but with its existence it would acquire its independence from this formalistic structure. Thus it can be applied with its *jus cogens* character. But in this case, the consent which is obtained within the creation process of *jus cogens* should be considered under the authority of procedural rules of custom, instead of *jus cogens* itself. Because of the consent-based character of the traditional sources of international law and doubtful existence of a new source, there has not been a consensus regarding the creation process of *jus cogens* rules.

The meaning of the rule *jus cogens* makes it inevitable to have *actio popularis* in international law which entitled everybody to appeal against an act derogating from these rules. But even in the Vienna Convention the establishment process of invalidity and termination is limited to parties only. It can be concluded from Article 66 (b) and Article 65 that problems regarding *jus cogens* rules are also considered within the procedural process which is restrained only with the parties to the treaty. Leaving the right to commence the process against a treaty derogating from a *jus cogens* rule to the parties discretion only have excluded the concept of *actio popularis* from the Convention and caused a risk to hold some treaties in force which are in conflict with the *jus cogens* rules. This approach within the Vienna Convention modifies the meaning and effects of the concept of *jus cogens*. Furthermore, lack of obligatory procedural rules in customary law, except Article 33 of the UN Charter, makes it more difficult to apply *jus cogens* concept to treaties which are out of the scope of the Vienna Convention such as the 1959-1960 Cyprus Treaties. The problem of *actio popularis* continues also in the positive international law. First of all, the statute of the ICJ is not helpful for the application of such a concept. Moreover, this problem was seriously analysed by the ICJ during its Barcelona Traction Case and the Court refused to apply such a concept.

There hasn’t been a case before an international court and a decision on invalidation or termination of a treaty on the grounds that it conflicts with a rule having *jus cogens* character. Furthermore, the criteria of this concept are ambiguous. Its creation process and definition of such rules are unclear. There is only one single consensus regarding this concept: there have been such rules in international law. But this cannot satisfy the requirements of a rule to be applicable in international law. In this case, to give the states the right to invalidate a treaty by invoking a conflict between a treaty and an unclear concept of *jus cogens* would damage the stability of international relations and the principle of *pacta sunt servanda*.
b- Prohibition of use of force, treaty-based military interventions and the Treaty of Guarantee

Despite the non-existence of an applicable rule of *jus cogens* in international law there is considerable number of writers supporting the existence of such rules.\textsuperscript{cxi} Most of them maintain that the rule on the prohibition of use of force has *jus cogens* character.\textsuperscript{cxii} But even if it is accepted that there are rules having *jus cogens* character in international law, these rules do not prohibit military interventions based on state consent. Reasonably it is clear that a rule from customary law cannot derogate from a rule of *jus cogens* regulating the same subject. Thus, the scope of the supposed *jus cogens* rules can be determined by analysing the state practice, *opinio juris*, and jurisprudence on the relevant subject. The purported prohibition on use of force having *jus cogens* character does not mean an exclusive prohibition like the original consent of the UN members to Article 2/4 despite the existence of contrary arguments. Because it was stated by the ICJ in its *Nicaragua* Case that the prohibition derived from Article 2/4 and from customary law do not have the same content. For the Court “this could also be demonstrated for other subjects, in particular for the principle of non-intervention.”\textsuperscript{cxiii} The idea that the purported prohibition having *jus cogens* character does not contain consent-based interventions is also supported by state practice, jurisprudence and doctrine. With these elements there have been a right of consent-based intervention subject to certain conditions as a customary rule.

There is a considerable number of writers supporting the existence of consent-based legal intervention in international law as an exception to the prohibition of intervention.\textsuperscript{cxiv} The existence of such an approach in international law literature was explained by the ILC in 1979.\textsuperscript{cxv} This approach was also upheld by an extensive state practice. It was stated by the ILC that during the debates at the UN Security Council and the General Assembly all states approved the existence of the principle of consent on military intervention. Objections were directed against the existence, legal validity and required conditions of the consent for a specific case, not against the theoretical existence of this principle.\textsuperscript{cxvi} David Wippman also affirmed this state practice.\textsuperscript{cxvii} Moreover, certain terms used by the General Assembly in its specific resolutions and declarations support the consent principle.\textsuperscript{cxviii}

The existence of military intervention as a customary rule was also implicitly acknowledged by the ICJ. In its *Nicaragua* Case decision the Court maintained that “Indeed, it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a state […].”\textsuperscript{cxix}

Within the scope of this customary rule there are some requirements to be met. For example, it is maintained by certain writers that invitation (or consent) of a state’s government must be given just before the military intervention takes place. They argue that without a contemporaneous consent, a state cannot permit a future intervention by concluding an agreement. In view of these writers, a treaty authorising foreign military intervention in the future would probably be against the will of a future government and such a legal structure would violate the right of self-determination.\textsuperscript{cxx} Nevertheless, treaties which give permission for
foreign intervention, would clarify the scope of the consent, and, determine the aims and limitations of the intervention.

It is generally accepted in the international law literature that military intervention is not permissible by invitation of either the recognised or the rebelling groups in case of civil wars. Such cases indicate the non-existence of any groups’ control over the country and any external intervention would affect the shape of the future government which means the denial of the right to self-determination. But again, an intervention by a treaty may be limited and subjected to an institutionalised objective. And such an objective may be designed to serve the aims of sub-national groups.

It can be understood from the above mentioned points that the Treaty of Guarantee fulfils all requirements of the consent-based intervention which is a customary rule. The ‘sole aim’ of the Treaty of Guarantee is limited with the ‘re-establishment of the state of affairs’ which affirms the application of the right of self-determination of the Turkish and Greek Cypriots respectively. With this limitation, it is inevitable to expect a future government which satisfies the self determination of both Communities. As a result, it should be accepted that even if it is maintained that there are jus cogens rules prohibiting use of force, such rules do not contain the treaty-based interventions which were approved by state practice, jurisprudence and doctrine. These interventions may not be considered as prohibited by purported jus cogens rules, because such interventions cannot occur with the prohibition which is accepted by international community as a whole and in which no derogation is permitted concurrently.

Within the discussions of the concept of jus cogens the validity of the Treaty of Guarantee was also affirmed by the UN Security Council. Because the initiative of the Greek Cypriots to invalidate this Treaty by arguing its inconsistency with purported jus cogens rules was defined as “inconclusive state practice” by literature. As stated by Sztucki, the Security Council refrained from accepting a resolution on the so-called invalidity of the Treaty of Guarantee and goes on to say “[…] as is well known, the Treaty continues to be in force”.

Treaty-based (or consent-based) intervention is also in harmony with the prohibition of the use of armed force derived from the Article 2/4 of the Charter. Although it was proved that the original will of the contracting parties was aimed at an exclusive prohibition (except self-defence) this approach was clarified by the following application. As provided by Article 31 of the Vienna Convention while interpreting a treaty there shall be taken into account “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” (31/b). Moreover, above mentioned state practice on the consent-based intervention excludes such activities from the prohibition stipulated in Article 2/4. There is a considerable number of writers supporting the idea that the consent principle and consent-based interventions do not conflict with the UN Charter and especially with its Article 2/4. Consequently, the Treaty of Guarantee, with its provisions authorising use of force, is in conformity with the UN Charter, and, cannot be considered as void on the ground that it is in conflict with Articles 2/4 and 103. There are additional elements supporting this idea. First of all, the Greek Cypriot administration failed to obtain a resolution
from the UN Security Council impairing the validity of the Treaty of Guarantee. Moreover, the Council implicitly affirmed the validity and continuance in force of this Treaty with its resolutions.\textsuperscript{cxxvi} Furthermore, members of the UN have accepted and recognised the ROC as a member to the Organisation with such a limited international statute and without a reservation.\textsuperscript{cxxvii} All these points impose the conclusion that the Treaty of Guarantee does not conflict with the provisions of the Charter by giving a right to use armed force to re-establish the state of affairs created by the Treaty and it continues to be in force.

**Conclusion**

The 1959-1960 Cyprus Treaties are valid and still in force. Their invalidity has not been properly established and initiatives to terminate them have been unsuccessful. To conclude that a treaty is in force does not necessarily mean that all the provisions are fulfilled. If there occurs a case of non-application of certain provisions of a treaty in force, there are two possibilities: a) breach of treaty; b) grounds which preclude wrongfulness. For the latter, there is a partial non-observance but this does not produce responsibility, because of the grounds such as self-defence, force majeure, distress, consent and state of necessity.\textsuperscript{cxxviii} A party cannot invoke these grounds for invalidating, terminating or suspending a treaty. Such grounds give parties the right to refrain from fulfilling their certain obligations originating from the treaty, without harming the validity and continuance in force of the same. Such cases create a temporary non-performance of certain provisions. The ICJ also defends this approach.\textsuperscript{cxxix}

The above-mentioned points can clarify the Greek Cypriot attitude towards the validity of 1959-1960 Cyprus Treaties. With the non-application of certain basic articles of the constitution by referring to the state of necessity, the Greek Cypriot administration implicitly affirms the validity and continuance in force of these treaties. Even if it is accepted that all the requirements were met by this administration regarding the state of necessity, such grounds cannot impair the validity and continuance in force of the Cypriot Treaties.

The rule *pacta sunt servanda* requires that a treaty in force should be considered as binding for all parties and must be performed by them in good faith. Regarding the defects in the observance of a treaty in force, it was provided by the ICJ during its Gabcikovo case:\textsuperscript{cxxx}

"The Court would set a precedent with disturbing implications for treaty relations and the integrity of the rule *pacta sunt servanda* if it were to conclude that a treaty in force between States [...] might be unilaterally set aside on grounds of reciprocal non-compliance"

Concerning the meaning of the observance of a treaty in good faith, the ICJ stated that the purpose of the treaty and the intentions of the parties should prevail over its literal application. In view of the Court “the principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realised.”\textsuperscript{cxxxi} In other words, the spirit of treaty must prevail over its literal implementation.

Significant conclusions can be derived from these points concerning the Cypriot Treaties. Validity and continuance in force of the 1959-1960 Cyprus Treaties makes it obligatory to refrain
from setting them aside unilaterally on the grounds of non-observance. All the provisions of these Treaties are still binding upon the parties since they are valid. But because of the destruction of the ROC in 1963 some of the articles of the 1959-1960 Cyprus Treaties cannot be implemented. But the impossibility of performance for some articles does not entitle the parties to violate the main purpose of the Treaties. Because of the rule *pacta sunt servanda* all parties are under the obligation to perform the provisions as much as they can. They should aim at achieving and respecting the spirit of the 1959-1960 Cyprus Treaties in conformity with the approach adopted by the ICJ.

The spirit of these documents can be found within the internal and external balance established in 1960. As mentioned earlier, a concrete balance between the two Communities were created by in such a way that the international personality of the ROC was formulated to reflect both the Greek and the Turkish Cypriot consent. Again, within this system a balance was established among the three Guarantor powers. These are the spirit and purpose of the Cypriot Treaties and they should be respected.

The belief that the 1959-1960 Cyprus Treaties must be performed, taking into consideration their spirit, demonstrates that these Treaties have been violated by the international community which has granted a privilege to the Greek Cypriot Community to represent the will of the state alone since 4 March 1964. Such an approach is in contravention with the internal balance and the spirit of Cypriot Treaties. Furthermore, in addition to the clear provisions prohibiting Greek Cypriot membership to the EU, such a development would create another breach by contravening the external balance established among Guarantor Powers and the spirit of the Cypriot Treaties.

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i *Conference on Cyprus, Documents signed and initialled at Lancaster House on February 19, 1959, Cmnd. 679, London, Her Majesty’s Stationery Office*, at 1.


iv *Conference on Cyprus, op.cit.*, at 9.

v Arts. III and IV; Add. Pro., No:1, Prg. 1.

vi Preamble, Prg. 1.
vii Arts. I/1; II/1; II/2; I/2; III.

viii Art. 1.

ix Arts. 6-10.

x Signed on 23 May 1969 and by Art. 84 entered into force on 27 January 1980. We shall use “the Vienna Convention”.

xi Yearbook of International Law Commission, II (1966) 231.

xii Ibid., p. 230-231.


xiv Harvard Draft on the Law of Treaties and Comments on its articles accepted the existence of treaties having objective effects but it was indicated that this approach does not based on the law of treaties. See “Law of Treaties,” A.J.I.L., Supplement, Codification of International Law, 29 (1935) 922-924.


xvi This idea has been supported by Lauterpacht. See, E. Lauterpacht, “Turkish Republic of Northern Cyprus-The Status of Two Communities in Cyprus”, Opinion paper written by Prof. Lauterpacht, Attachment to the Letter Dated 7 August 1990 from the Permanent Representative of Turkey to the United Nations Addressed to the Secretary-General, A/44/968, S/21463, English, p. 6 and 7. The ROC was also defined as an ‘international state’ by Tamkoç. See, Metin Tamkoç, Turkish Cypriot State, The Embodiment of the Right of Self-determination (London: K. Rüstem & Brother, 1988): 63 and 68.

xvii But it is provided by the Paragraphs 2 and 3 of this Article that articles other than the basic ones can be amended subject to a special process.

xviii This rule applies to the determination of any conflict between two texts of the Constitution as well (Art. 149/a).


xxi Ibid., p. 42.

xxii Such as Latins, Maronites and Armenians.

xxiii That is to say foreign affairs, defence or finance.

xxv Altuğ, op.cit., p. 320.


xxvii Tamkoç, op.cit., p. 63.

xxviii For inconveniences and lack of legal requirements during the application of this doctrine by the Greek Cypriot administration see, Mark M. Stavsky, “The Doctrine of State Necessity in Pakistan,” Cornell International Law Journal, 16:2 (Summer 1983) 355 and 358.

xxix Article 4 provides, “Non-retroactivity of the present Convention: Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such states”.


xxxii The International Court of Justice (ICJ) has applied some of the rules of the Vienna Convention to treaties which were concluded before the entry into force of the Convention. But this application obtained from the customary rule character of these Articles. See, M. Mendelson, “The Formation of Customary International Law,” Recueil Des Cours (1995) 337 and ICJ, Case Concerning Kasikili/Sedudu Island (Botswana/Namibia), (13 December 1999) Prg. 18.

xxxiv “[…] I raised a number of objections and expressed strong misgivings regarding certain provisions of the Agreement […] I tried very hard to bring about the change of at least some provisions of that agreement. I failed, however, in that effort and I was faced with the dilemma either of signing the agreement as it stood or of rejecting it with all the grave consequences which would have ensued. In the circumstances I had no alternative but to sign the Agreement. This was the course dictated to me by necessity.” See, T. Ehrlich, International Crises and the Role of Law, Cyprus 1958-1967 (Oxford: Oxford Uni. Press, 1974): 50.

xxxv Keesings Contemporary Archives, XIV (1964) 2015.

The ILC preferred the words “general agreement” and “unquestionably invalidate”. See, *Yearbook of International Law Commission*, II (1966) 246.


Xydis, *op. cit.*, p. 421-422.


Averoff, *op. cit.*, p. 349.


McNair, *op.cit.*, p. 208.

This rule was approved by the Article 32 (Pr. a) of the Harvard Draft. For the comments on this Article see, “Law of Treaties,” A.J.I.L., Supplement, Codification of International Law, 29 (1935) 663-664 and 1148-1161. See also McNair, op.cit., p. 208 and Article 45 of the 1969 Vienna Convention. Although the grounds regarding coercion of a representative and a state are excluded from Article 45, it is not possible to find any example within the commentary report of the ILC supporting customary character of such an approach.


The ILC accepted that this Article does not have a retroactive effects on the validity of treaties concluded ‘prior to the establishment of the modern international law’. But because of the condition existed in this Article (‘embodied in the Charter of the UN) the Commission recognised that it is applicable at least to all treaties appeared since the UN Charter. See, Yearbook of International Law Commission, II (1966) 247.


Like ‘Definition of Aggression’ and ‘Declaration of Principles of International Law and Concerning Friendly Relations’.


Jakovides, op.cit., p. 19.


In 1966, during the Vienna Conference on the Law of Treaties, it was proposed by the Polish representative to include the doubtful concept of unequal treaties in the Article prohibiting coercion of a state by threat or use of force to procure its consent. But this proposal was refused. See, Ingrid Detter De Lupis, “The Problem of Unequal Treaties,” International and Comparative Law Quarterly, 15 (October 1966) p.1083.


70. *Ibid*.


72. Precisely such a supplementary agreement were concluded between the parties. But even this treaty does not give a certain answer concerning the position of the consignees. It provides that, the contingents “shall be garrisoned in the same area as near each other as possible within a radius of 5 miles.” See, Thomas Ehrlich, “Cyprus, the Warlike Isle: Origins and Elements of the Current Crisis,” *Stanford Law Review* (1966) 1065.


74. *Yearbook of International Law Commission*, II (1966) 254. The ILC stressed its concern about the arbitrary use of this right and stated that a “right to invoke” formulation would prevent such misuses.


lxxxvi This point was also accepted by Evriviades. Evriviades, op.cit., p. 259 and 260. See the declaration of the Turkish representative at the UN regarding the accord on withdrawal and tacit acceptance of the Greek Cypriot administration and Greece. UN Security Council Official Records, 1780th Meeting of the Security Council, Held in New York (19 July 1974) Prg. 60.


xcvi Article 31 of the Vienna Convention. This Article has been accepted as customary rule by the ICJ and this makes it applicable to the 1959-1960 Cyprus Treaties. See, Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, *ICJ Reports* 1994, p. 21, Prg. 41; Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, *ICJ Reports* 1996 (II), p. 812, Prg. 23; *Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, 13 December 1999, Prg. 18.


iii Sztucki, *op.cit.*, p. 54-89.


cv *Yearbook of International Law Commission*, II (1966) 248.


cxv *Yearbook of International Law Commission*, II (1979) 111.

cxvi Ibid., p. 110.


cxviii For example, Declaration on Non-intervention of 1981 points out that states have the duty to refrain from any military activity in the territory of another state without its consent. See, Hannikainen, *op.cit.*, p. 335. Again, Article 3 (e) of the Definition of Aggression implicitly accepts the right of military intervention with the invitation (consent), but points out that excess of such an invitation would constitute aggression. See, Christine Gray, *International Law and the Use of Force* (Oxford: Oxford University Press: 2000): 60.

cxix ICJ, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (27 June 1986)* Prg. 246.


cxxii For other conditions of the consent principle see, *Yearbook of International Law Commission*, II (1966) 112-113.

cxxiv Ibid., p. 32.


cxxvi For example, in Resolution 353 (2.7.1974) “the necessity to restore the constitutional structure of the Republic of Cyprus, established and guaranteed by international agreement”; in Resolution 541 (18.11.1983) “this declaration (Declaration of Independence of the TRNC) is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee”; in Resolution 939 (29.7.1994) “to begin consultations with members of the Council, with the Guarantor Powers…”


cxxx Ibid., Prg. 114.

cxsti Ibid., Prg. 142.
UN Security Council Resolutions: Peace-Keeping And Peace-Making

During the colonial period the United Nations (UN) dealt with the Cyprus question between the years 1954-58. In 1954 the Greek claim for *enosis* under the banner of self-determination, was turned down because it aimed at a change of sovereignty. During the General Assembly debates of 1957 and 1958 the Greek claim for *enosis* again created serious difficulties since it could not be easily distinguished from annexation or *anschluss*. In the end, the UN General Assembly urged the parties to seek a peaceful, democratic and just solution in accordance with the UN Charter. Despite acrimonious exchanges between the delegates of Greece and Turkey, at the conclusion of the 1958 debate a ray of hope for a negotiated settlement emerged. Consequently, in February 1959 negotiations were held in Zurich between the Greek and the Turkish governments for the purpose of finding a just solution. After consultations with the respective Cypriot leaders an agreement was reached on 11 February 1959 at Zurich between the Greek and the Turkish Prime Ministers, Karamanlis and Menderes, for the establishment of an independent State, the Republic of Cyprus.

After the intercommunal troubles of 1963-64 which resulted in the ejection by force of arms of the Turkish Cypriot side from all the organs of the Government of Cyprus - the collapse of bi-communal government - the UN have been involved both in peace-keeping and peace-making.

On 4 March 1964 the UN Security Council adopted a unanimous resolution which in para. 4 recommended the creation, with the consent of the "Government of Cyprus", of a UN peace-keeping force in Cyprus (UNFICYP). Para. 5 of this resolution, which has been interpreted to refer indirectly to the Greek Cypriot Administration as the "Government of Cyprus", recommended that the force should function in the interests of preserving international peace and security, and "use its best efforts to prevent a recurrence of fighting and as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions". Furthermore, the Security Council recommended that the Secretary-General should designate a Mediator. The Finnish diplomat, Sakari Tuomioja was appointed as Mediator. He was succeeded upon his death by Dr. Galo Plaza. The latter submitted his report...
to the Secretary-General on 26 March 1965, but his report was not accepted by Turkey because Dr. Plaza exceeded his mandate by acting like an "arbiter" in the way he submitted his own views for a solution, rather than trying to find an "agreed solution".

The UN Force in Cyprus became operational on 27 March 1964 with the arrival of the Canadian contingent.

The troops of UNFICYP could not take the initiative in using armed force, which could be resorted to only in self-defence. The mandate was conceived within Chapter VI, that is, under Article 24 of the United Nations Charter and not Chapter VII concerning enforcement action. As the resolution of the Security Council was taken under Article 24 of the Charter, it was considered that the consent of the government of the country where the force was to be deployed, had to be obtained. An agreement was also reached between the Greek Cypriot Administration and the UN pursuant to Security Council resolution 186 (1964) and Article 105 of the UN Charter by an exchange of letters dated 31 March 1964 as to the status of UNFICYP. All subsequent UN resolutions noted the agreement of the so-called "Government of Cyprus" on the extension of the mandate of the force. The Turkish Cypriot side persistently made formal objections to the Greek Cypriot Administration being referred to as the "Government of Cyprus".

It could be assumed that the reference in the Security Council resolution of 4 March to the "Government of Cyprus", was to the government established by the 1960 Constitution, which should have been composed of both Greek and Turkish Cypriot components. However, the Greek Cypriot wing of the Government of Cyprus, which since December 1963 had attempted to overthrow the 1960 Constitution, pretended to be that government.

It was contended that there was an emergency in Cyprus and the UN had to act quickly to prevent loss of life. At that time no one thought that the Cyprus problem would remain unresolved for so many years, but this could be no justification for the UN to act as it did, that is, to ignore the letter and spirit of the Zurich and London agreements and the fundamental basis of the constitutional order, that is, the bi-communality of the Republic. By recognizing the Greek Cypriot administration as the "Government of Cyprus", the UN unwittingly rewarded the aggressor and punished the victim. Moreover, to add insult to injury, the then UN Secretary-General, in his report of 14 September 1964 defined the term "return to normal conditions", as not implying the restoration of the constitutional situation, as interpreted by the Turkish Cypriots. The Secretary-General was also reported to have remarked that the solution of the Cyprus problem was first and foremost a matter for the "Cypriot Government", meaning the Greek Cypriot Administration. The UN, by its interpretation and application of the said resolution, set the wrong course for Cyprus. Commenting on the Security Council resolution of 4 March 1964, Archbishop Makarios declared "We have secured a resolution in the first phase of
our struggle in the international field. Turkey cannot in future threaten intervention in Cyprus invoking the Treaty of Guarantee". cxxxi

The presence of the United Nations force in Cyprus served to check recourse to armed force, but it only palliated some symptoms of the crisis during 1964 and reached none of its basic causes. The mandate of the force has been renewed at six-month intervals since its creation in 1964, but its numerical strength has been considerably reduced.cxxxi

UNFICYP liaised between the two sides to prevent recurrence of fighting and when fighting flared up intervened to stop it. Such major instances of crises occurred at Kokkina-Mansoura (Erenkoy area) in August 1964 and at Kophinou (Gecitkale) and Ayios Theodoros (Bogazici) in November-December 1967.

Good offices functions of the Secretary-General have been carried out in respect of Cyprus since 1964. As from 1968, the Secretary-General's special representatives had been engaged in promoting an agreed overall settlement.

The intercommunal talks, which started in June 1968 between the representatives of the two communities, continued under the auspices of the UN Secretary-General who appointed his Special Representative to help the two sides in the negotiations to find an agreed solution to the problem.

After Turkey intervened militarily on 20 July 1974, in the wake of the coup d'etat of 15 July 1974, it was agreed by the parties concerned that fresh attempts should be made to solve the Cyprus problem by means of a new series of talks between the two communities on an equal footing under the auspices of the UN Secretary-General. Accordingly, the Security Council, in its resolution 367 (1975) of 12 March 1975, requested the Secretary-General to undertake a new mission of good offices "and to that end to convene the parties under new agreed procedures and place himself personally at their disposal, so that the resumption, the intensification and the progress of comprehensive negotiations, carried out in a reciprocal spirit of understanding and of moderation under his personal auspices and with his direction as appropriate, might thereby be facilitated".

The talks called by the Security Council began in April 1975. Since then, the Secretary-General has, in connection with the extension of the mandate of UNFICYP, reaffirmed the then new mission of good offices referred to in resolution 367 (1975).cxxxi

The conditions under which both sides negotiated within the framework of the intercommunal talks between the years 1968-1974 were different from those prevailing after 1974. During the former period the negotiators were engaged in a process to revise or reformulate the 1960 Constitution. After the 1977 and 1979 High-Level Agreements the intercommunal talks, however, had the aim of reaching an agreed settlement on the basis of "bi-communal, bi-zonal federation", that is, the two parties sought to establish a new status for Cyprus.
In is not the intention of this article to write a chronology of the talks, or to deal with the proposals, or the positions of the parties; or the efforts and initiatives of the Secretary-General. Certain fundamental principles should, however, be emphasized.

The UN is dealing with the Cyprus problem on the basis of two separate communities. The General Assembly resolution 3212 (XXIX) of 1 November 1974 recommended "the contacts and negotiations taking place on an equal footing between the representatives of the two communities and called for their continuation with a view to reaching freely a mutually acceptable political settlement based on their fundamental and legitimate rights". The Security Council, in its resolutions 367 of 1975 and 649 of 1990, described those to whom the Secretary-General is to render his good offices, as "communities" and sometimes as "parties". There is a clear pattern of acknowledgement by the UN of the separate status of the two communities in Cyprus, of the requirement that they should negotiate on "an equal footing", and that the objective of the exercise of the Secretary-General's good offices is "a new constitution" for the state of Cyprus on a federal, bi-communal and bi-zonal basis. The Secretary-General has clearly stated that "the solution that is being sought is thus one that must be decided upon by and must be acceptable to, both communities". He added that his mission is with the two communities whose "participation in the process is on an equal footing" and that the relationship of the two communities is not "one of majority and minority".

The Secretary-General has again referred to these ideas in his report to the Security Council of March 1990. The Security Council resolutions 649 of 12 March 1990 and 716 of 11 October 1991, have again emphasized this parity of negotiating status in the endeavour of the parties to establish a bi-communal and bi-zonal federation. These resolutions reaffirmed the position of the Security Council that "the fundamental principles of a Cyprus settlement are the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus, the exclusion of union in whole or in part with any other country and any form of partition or secession; and the establishment of a new constitutional arrangement". Another often repeated position of the Security Council has been that the "solution to the Cyprus problem is based on one State of Cyprus comprising two politically equal communities".

In its various resolutions the Security Council deplored the inability of the parties to reach an agreed solution to the Cyprus problem and urged the parties to negotiate with a view to reaching an overall framework agreement. In its resolution 831 of 27 May 1993 the Council reaffirmed "that the present status quo is not acceptable". By its resolution 774 of 26 August 1992 the Council endorsed the UN Secretary-General's "Set of Ideas", including suggested territorial adjustments reflected on the map contained in the annex thereto, and called upon the parties to "manifest the necessary political will and to address in a positive manner the observations of the Secretary-General for resolving the issues covered in the report".

Another point that should be made is that the two sides themselves were allowed freely to try to reach and agreed solution, the "good offices" mission of the UN Secretary-General would not by itself attribute to the conflict an international dimension. However, the
involvement of the UN with the Cyprus question, particularly of the General Assembly, as a
question that affects international relations which needs to be settled in accordance with
internationally recognized norms attributed to it an international dimension. One cannot
reconcile this with the viewpoint that the Cyprus question was an intercommunal matter; or an
issue between the Greek Cypriots and the Turkish Cypriots; the UN not being able to impose a
solution. More so because, a framework agreement that may be achieved through the process of
the intercommunal talks would be submitted for approval of the two communities (peoples)
through separate referendums.

The Secretaries-General, who had on certain occasions stressed the importance of the
intercommunal talks as the best available method for pursuing the negotiating process, have
been playing a more active role within their good offices mission. Though this mission did not
allow the Secretaries-General to make formal proposals, such initiatives had been appropriately
described as "Ideas", "Indicators" or "Soundings" (September 1983); "Working Points" (August
1984); "Agenda for the Third Round of the Secretary-General's Proximity Talks on Cyprus" or
"Preliminary Draft for a Joint High-Level Agreement" (November 1984); "Draft Framework
Agreement on Cyprus" (March 1986); and the "Ghali Set of Ideas" (July 1992) which has been
endorsed by Security Council resolutions 744 of 25 August 1992 and 789 of 24 November
1992. This is in line with the view reflected in the note of the President of the Security
Council to the Secretary-General, dated 9 June 1989, which said that the Council expected the
Secretary-General to play an active role to help to bring the two sides together within effective
negotiating range and not to act merely as a recorder of their positions.

In a number of its resolutions the Security Council deplored the inability of the parties to
reach a framework agreement, reiterated its position that the "present status quo" in the island is
unacceptable, reiterated the basic principles for a Cyprus settlement, namely, that it "must be
based on a State of Cyprus with a single sovereignty and international personality and a single
citizenship, with its independence and territorial integrity safeguarded, and comprising two
politically equal communities. The Security Council has expressed its position that a Cyprus
settlement should provide for a bicommunal and bi-zonal federation and that such a settlement
must exclude union or partition of the island. In some of its resolutions the Security Council
expressed its concern over the military build-up in the island and called upon those concerned
to commit themselves to reduction of troops and armaments. Having already endorsed the
"Ghali set of ideas" in its earlier resolutions the Council encouraged the Secretary- General to
pursue his mission of good offices on the basis of the "Set of Ideas" and confidence building
measures. The position of the Security Council was that the parties should try to reach a
settlement on the basis of the elements contained in the Set of Ideas.

The Security Council, however, never diagnosed the Cyprus dispute, did not feel the
need to examine its causes, but by bolstering the position of the Greek Cypriot Administration
as the "Government of Cyprus" could not help towards a Cyprus settlement as the recognized
Greek Cypriot Administration was not made to feel the need to reach an agreement with the Turkish Cypriot side.

**UN General Assembly Resolutions**

The UN General Assembly resolution 3212 (XXIX) of 1 November 1974 adopted unanimously, *inter alia*, called upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and to refrain from all acts and interventions directed against it. The resolution commended the contacts and negotiations taking place on an equal footing, with the good offices of the Secretary-General between the representatives of the two communities and called for their continuation with a view to reaching freely a mutually acceptable political settlement, based on their fundamental and legitimate rights. The General Assembly also noted that the constitutional system of the Republic of Cyprus concerns the Greek Cypriot and Turkish Cypriot communities.

The General Assembly adopted on 20 November 1975 resolution 3395 (XXX) which is stronger in terms than the resolution taken the year before. The resolution reaffirmed the urgent need for the effective implementation of its former resolution, repeated its call upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus; demanded the withdrawal of all armed forces from the Republic of Cyprus; called upon the parties to facilitate the voluntary return of refugees; and called for the immediate resumption of meaningful negotiations.

The General Assembly debated the Cyprus question in its 1976, 1977, 1978 and 1979 sessions. In all of its relevant resolutions the General Assembly deeply deplored the prolongation of the Cyprus crisis; demanded urgent implementation of its resolutions on Cyprus; and reiterated its call upon all States to respect the sovereignty, independence and territorial integrity of the Republic. In all its resolutions the General Assembly referred to the "need to settle the question of Cyprus without further delay by peaceful means in accordance with the provisions of the Charter of the United Nations".

Whereas the General Assembly resolution of 1974 had recorded its consideration "that the constitutional system of the Republic of Cyprus concerns the Greek Cypriot and Turkish Cypriot communities", resolution 34/30 of 20 November 1979 gave a different impression. In the preamble the Assembly recalled "the ideas of holding an international conference on Cyprus" and deeply regretted that "the resolutions of the United Nations on Cyprus ha[d] not yet been implemented". Furthermore, the Assembly deplored "the continued presence of foreign armed forces... on the territory of the Republic of Cyprus and the fact that part of its territory is still
occupied by foreign forces", as well as, "unilateral actions that change the demographic structure of Cyprus". The substantive part of the resolution reiterated full support "for the sovereignty, independence, territorial integrity, unity and non-alignment of the Republic of Cyprus and called once gain for the cessation of all foreign interference in its affairs". It called "for respect of the human rights of all Cypriots and the instituting of urgent measures for the voluntary return of the refugees to their homes in safety". More significantly, the resolution authorised the President of the Assembly to appoint an Ad Hoc Committee to maintain contact with the Secretary-General to facilitate the "successful conclusion of negotiations" and to "recommend steps for and promote the implementation of all relevant resolutions of the General Assembly on Cyprus".

Though the resolution called for "the urgent resumption of the negotiations under the auspices of the Secretary-General between the representatives of the two communities, to be conducted freely on an equal footing on the basis of the Agreement of 19 May 1979, with a view to reaching as early as possible, a mutually acceptable agreement based on their fundamental and legitimate rights", the resolution pre-empted some of the basic issues which the parties themselves should negotiate and agree upon. More significantly the resolution brought in the element of internationalization which is incompatible with the intercommunal nature of the Cyprus issue.

One may venture to say that the above resolution did not help the process of seeking to find an agreed settlement of the Cyprus problem. This has probably been conceded, as the proposed Ad Hoc Committee never got off the ground.

In 1980, though the Cyprus question was on the agenda of the UN General Assembly, the item was deferred and no resolution was adopted in view of the fact that the intercommunal talks were continuing under the auspices of the UN Secretary-General.

The Greek Cypriot side was dissuaded from raising the Cyprus question at the General Assembly during 1981 and 1982. This was rightly so because point 6 of the Denktash-Kyprianou accord of 1979 stated that both sides would abstain from any action which might jeopardize the outcome of the talks. It was understood that internationalization would be likely to disrupt the atmosphere of the intercommunal dialogue.

As the intercommunal talks process was running into difficulties, in March 1983 the Turkish Cypriot negotiator at the talks suggested a "moratorium" on internationalization, that is, avoidance of bringing the Cyprus question before international forums, such as the General Assembly of the UN, the Non-Aligned Conferences, and the International Postal Union Congress, where the Turkish Cypriot side did not have a voice.

There were reports early in April 1983 that UN Secretary-General would be ready to undertake new initiatives to help to vitalize the talks which were continuing on an "open agenda". Progress was hindered, however, due to the pending Greek Cypriot appeal to the UN General Assembly. The talks were therefore recessed pending the debate at the UN.
At the United Nations Turkey proposed the holding of the debate in the Assembly's Special Political Committee instead of a plenary session where only representatives of states concerned are normally allowed to speak. The Greek Cypriot side insisted however that the matter should be dealt with directly by the full body, where the Turkish Cypriot side has no voice, and so it was.

A draft resolution before the General Assembly was sponsored by Algeria, Cuba, Guyana, India, Mali, Sri Lanka and Yugoslavia.

During the debates at the General Assembly the British delegate reaffirmed Britain's support for the intercommunal talks and urged the Assembly to avoid propaganda points. Canada's delegate indicated the need for strict impartiality when it came to the vote by the countries which maintain troops in UNFICYP. Malaysia's delegate dismissed the draft resolution as "lopsided and partial". Nevertheless, the motion was adopted without amendment by 103 votes to 5, with 20 abstentions. Most of the NATO powers, and four Arab States, abstained. Votes against the motion were cast by Bangladesh, Malaysia, Pakistan, Somali and Turkey. More than two-thirds of the nations which voted in favour of the resolution were members of either the Soviet Bloc or the Non-Aligned Movement. Among the European Community (EC) members, France voted with Greece in favour of the motion. Portugal and Spain, then candidates for EC membership, did likewise. Some cohesion and unity of purpose might have been expected from nations which contribute troops to UNFICYP. However, Australia, Austria, Ireland, Finland and Sweden all voted for the motion, thereby undermining UNFICYP's reputation for even-handedness, the requisite for effective peace-keeping.

The resolution of 13 May 1983 included the perennial demand for the immediate withdrawal of all the "occupation forces" and the voluntary return of refugees in safety to their homes. More recent proposals for an international conference on Cyprus and the demilitarization of the whole island were renewed, thereby reflecting the aims of the Soviet Union and some of the Arab States. It was again suggested that the Security Council should examine within a set time-limit the question of the implementation of various UN resolutions on Cyprus.

The Turkish Cypriots were especially concerned by para. 2 which affirmed "the right of the Republic of Cyprus and its people to full and effective sovereignty and control over the territory of Cyprus" and called upon all states to support and help the "Government of the Republic of Cyprus" to exercise these rights. The resolution in fact advocated Greek Cypriot "sovereignty" over the Turkish Cypriots.

Internationalization of the Cyprus question to such an extent met with the reaction of the Turkish Cypriots whose rights were being eroded by resolutions of the international community. As a first move the parliament of the Turkish Federated State of Cyprus adopted, on 17 June 1983, a resolution affirming the right of the Turkish Cypriot people to self-determination. The UN resolution had paved the way for the proclamation of the Turkish Republic of Northern Cyprus on 15 November 1983.
The UN General Assembly has not debated the Cyprus question since 1983. In view of its unrealistic approach to the Cyprus question, however, fostered particularly by the Non-Aligned Movement, of which Cyprus was an influential member, far from helping the Cypriot parties to reach an agreement, the General Assembly by its resolutions affected the Cyprus negotiations in a very negative way by disrupting the atmosphere of the talks in attempting to substitute the parameters of the talks by its own superficial criteria, thereby undermining the very basis thereof.

Reactions Of The International Community To Crises

Some measure of internationalization of the Cyprus conflict came about due to the fact that the UN dealt with the Cyprus question whenever there was a crisis leading to deterioration of the situation on the island.

After the Greek engineered coup d'etat of 15 July 1974 against the government of Archbishop Makarios, and the Turkish intervention of 20 July, the UN Security Council was convened to consider the situation on the island. In the evening of 20 July the Council adopted resolution 353, deploring the outbreak of conflict and continued bloodshed, and expressing concern at the threat to international peace and security and the explosive situation in the Eastern Mediterranean. It called upon all States to respect the sovereignty of Cyprus; upon the belligerents to cease fire, and for the early start of negotiations between Greece and Turkey for the restoration of peace and constitutional government. It demanded an immediate end to foreign military intervention in the Republic of Cyprus. It requested the withdrawal without delay from the Republic of Cyprus of foreign military personnel present otherwise than under the authority of International Agreements.

Again, after the failure of the Geneva Conference, which was followed by the second round of the Turkish military operation starting on 14 August 1974, the Security Council adopted resolution 360 of 16 August recalling its "formal disapproval" of the "unilateral military actions undertaken against the Republic of Cyprus". The resolution was in stronger terms than the previous one, and it referred to "actions" in the plural which could cover the Greek as well as the Turkish intervention, but it stopped short of actual condemnation, it simply recorded "formal disapproval". Crucially, the resolution was silent as to precisely which actions were regarded as being "against the Republic of Cyprus".

The Security Council has not only considered military emergencies in the island, but also political crises. In Security Council debates which followed the proclamation of the Turkish Federated State of Cyprus, the Turkish Cypriot representative stressed that separation of the two communities came about as a result of acts of the Greek Cypriot side and that there could be no return to the 1960 Constitution. Physical separation was vital to the safety of Turkish Cypriots. However, the Security Council members were virtually unanimous in regretting the proclamation of the Turkish Federated State of Cyprus and in declaring continued recognition of
the "Government of Cyprus" under Archbishop Makarios. The British representative was not alone in emphasizing that the proclamation was not a "Unilateral Declaration of Independence" (UDI) and that it ruled out partition or annexation. The setting up of a legal order which adopted the style and title of the Turkish Federated State of Cyprus was not therefore a break-away from an established constitutional set-up that could be described as UDI. The Security Council adopted resolution No.376 of 12 March 1975 without a vote, regretting the decision to declare "that a part of the Republic of Cyprus would become a Federated Turkish State". The resolution noted that the proclamation was not intended to prejudge a final settlement. Significantly, it did not call on States to withhold recognition.

The attitude of the Security Council was stronger, however, when it was requested by the United Kingdom, Cyprus and Greece to consider the situation in Cyprus in the wake of the proclamation on 15 November 1983 of the Turkish Republic of Northern Cyprus.

A draft resolution which considered the declaration of statehood as "invalid" and called for its "withdrawal", was sponsored by the United Kingdom. The United Kingdom representative said that the draft resolution, which reflected the views of his government, was directed at the deplorable action of the Turkish Cypriots, but it did not purport to deal with the whole problem of Cyprus. "We all know", he said, "that the present action by the Turkish Cypriot authorities is not the only wrong of one kind or another that has been done since the Treaties were signed in 1960". In his view, it was just as necessary as before to make every effort bring the two sides together".cxxx

The Turkish view about the draft resolution was expressed by Ambassador Kirca. The proclamation of statehood could not be regarded as null and void. That decision was taken in accordance with the principle of self-determination in order to re-establish the state of affairs laid down in the basic provisions of the Constitution as envisaged in the Treaty of Guarantee, and as a means of remedying the continuous usurpation by the Greek Cypriot community of the title "Government of the Republic of Cyprus". In his view, the Council would have done better to recognize the legal truth and declare null and void the illegal amendments made unilaterally by the Greek Cypriot community to the basic and unalterable provisions of the 1960 Constitution, in violation of that Constitution and of the Treaty of Guarantee. Therefore, Turkey had to reject the relevant paragraph of the draft resolution. He said emphatically, "since there can be no question of the Turkish community's revoking its proclamation of independence, it would be absolutely unthinkable for Turkey to withdraw recognition of the Turkish Republic of Northern Cyprus".cxxx

Commenting on the relevant paragraph of the draft resolution which considered the Turkish Republic of Northern Cyprus to be "invalid", President Denktash said, "it [the Security Council] considered China non-existent for 30 years and East Germany non-existent for 25 years. It does not matter; they are now here among us, and I greet them with respect".cxxx He continued to say:
"We are not seceding from the independent island of Cyprus, from the Republic of Cyprus, or will not do so if the chance is given to us to re-establish a bi-zonal 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 non-aligned as they, as sovereign as they in the northern State of Cyprus, but we shall keep the door wide open to re-establishing unity under a federal system". cccxi

On 18 November 1983 the Council adopted resolution 541 in which it deplored the declaration of the Turkish Cypriot authorities for the "purported secession" of part of the Republic of Cyprus; considered that declaration as legally invalid and called for its withdrawal; called for the urgent and effective implementation of its resolutions 365 (1974) and 367 (1975); requested the Secretary-General to pursue his mission of good offices; called upon the parties to co-operate fully with the Secretary-General in his mission of good offices; called upon all states to respect the sovereignty, independence, territorial integrity, and non-alignment of the Republic of Cyprus and not to recognize any Cypriot State other than the Republic of Cyprus; and called upon all States and the two communities in Cyprus to refrain from any action which might exacerbate the situation.

In fact the main criticism that can be leveled against the Security Council's above resolution is that it only dealt with the "wrongs" of the Turkish Cypriot side. It was, in the historical circumstances of the situation, not fair to attribute responsibility to the Turkish Cypriot community for conduct said to be "incompatible" with the Treaty without at the same time assessing the relevance of the situation to the conduct of the Greek Cypriot community and in particular, its deliberate disregard of the terms of the Cyprus Constitution throughout the period of twenty years preceding the establishment of the Turkish Republic of Northern Cyprus. Since the Security Council attached importance to the conduct of the Turkish Cypriot community with the treaties, it should have attached the same importance to the compatibility with the treaties of the conduct of the Greek Cypriot community. By refusing to do so, the Security Council not only failed to apply in an objective and even-handed manner the substantive legal requirements to which it had itself made reference; it also failed to adhere to the standard of equal treatment that it had repeatedly affirmed in its use, in relation to the negotiations between the two sides, of the words "on an equal footing". Had the Security Council taken a balanced view of the situation in 1983, it would have found that the conduct of the Greek Cypriot community had for the past twenty years been "incompatible" with the 1960 settlement. There can be no legal basis for holding one party to the terms of an agreement without predicating the requirement of an equal degree of compliance by the other.

In determining that the establishment of the Turkish Republic of Northern Cyprus was "legally invalid", and in attaching to that determination the sanction that States should not recognize it, the Security Council was evidently purporting to act in a judicial capacity. Yet, in so acting the Council did not act in the manner appropriate to the performance of a judicial function. The "judgment", in the form of a draft resolution, was prepared and was in circulation...
before the debate even took place - a proceeding that is in no way compatible with the judicial process of ascertaining facts and weighing arguments before reaching a reasoned conclusion.

However, the rigour of the above referred Security Council resolution has been mitigated to a certain extent by the continuation of the talks under UN auspices, without insisting on the "withdrawal" of the declaration of statehood, as was called by the Council.

In conclusion one may say that the international community has been ignoring the letter and spirit of the Zurich and London agreements, first, by recognizing the Greek Cypriot administration as the "Government of Cyprus" since 1964, and second, by discriminating against the Turkish Cypriots and thereby pushing them into isolation, as a result of which a process of political and administrative evolution, as of necessity, began with the setting up of the Turkish Cypriot administration. This process culminated in the proclamation of the Turkish Republic of Northern Cyprus. The international community, particularly the Western powers, must therefore bear some responsibility for the consolidation of separation. Had they treated the Greek and Turkish administrations as integral components of one state, in the bi-communal provisions of the agreements, the trend towards separation could have been contained and the chances of a settlement based on eventual reunification facilitated. In view of this, the position of the two parties became more and more polarised by passage of time and became more difficult to bridge.

Other Initiatives

Rather exacerbated by the lack of settlement, the UN Secretary-General suggested a number of options which the Security Council could examine "in view of the deeply unsatisfactory situation." These included "international consultations, with the possibility of an international conference". Furthermore, the Security Council, intending to put pressure on the North, declared that it would be necessary to "consider alternative ways to promote the implementation of its resolutions on Cyprus".

Since then the European Community, now the European Union (EU), has been playing an active role towards a Cyprus settlement, particularly because Greece is a member of the Union and Turkey applied on 14 April 1987 for full membership.

On 3 July 1990 the Greek Cypriot side submitted its application on behalf of the whole of Cyprus to the European Community. The Turkish Cypriot side's objections to the Greek Cypriot application did not prevent the European Council from processing and furthering that application.

A joint EC/Cyprus parliamentary Committee, composed of Greek Cypriot and European parliamentarians, was formed in March 1992. In a press conference on 17 March the two co-chairmen of the Committee, in rather strident remarks, stressed the "constructive and important role" this Committee could play with a view to "preparing and encouraging Cyprus' accession to
the European Community” and pointed out that the Community should examine Cyprus’ application irrespective of the internal problems of the country.

A judgment of the Court of Justice of the European Communities of 5 July 1994 has in effect consolidated the embargo on North Cyprus by ruling that as regards exports of produce from the North, phytosanitary certificates and certificates of origin must be stamped, or issued by the authorities of the "Republic of Cyprus", meaning the Greek Cypriot authorities. At its Corfu meeting on 24-25 June 1994 the European Council noted that the next phase of enlargement of the Union will involve Cyprus and Malta. The Council further reaffirmed that any solution of the Cyprus problem must respect the sovereignty, independence, territorial integrity and unity of the country.

On 6 February 1995 the Council of Ministers of the European Union, meeting in Brussels, took a decision of principle providing for the lifting of the Greek veto of the customs union agreement between the Union and Turkey, and having made a linkage between the two issues, decided that membership process of Cyprus of the Union should begin six months from the convening of the inter-governmental meeting of the Union in 1996.

In December 1997 the European Council at Luxembourg decided to invite "Cyprus" (Greek Cypriot Administration) to take part in the proposed European Conference.

The EU has been urging the parties to reach a negotiated settlement, and has been exerting pressure on Turkey, an associate member of the EU, to use its influence over the Turkish Cypriot side towards this end. The confirmation of the EU of its intention to open accession negotiations with "Cyprus", as reflected in its report entitled "Agenda 2000", sounded the death knell of the indirect talks then being held at Glion (Switzerland) between Clerides and Denktash.

The Helsinki Declaration of the EU of December 1999 confirmed the progress of accession negotiations with "Cyprus" and 5 other States and affirmed that "a political settlement will facilitate the accession of Cyprus to the European Union". The European Council also declared that "if no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition".

Besides the EU, the United States, as well as, the United Kingdom are playing their role in urging the parties to reach a negotiated settlement of the Cyprus conflict. These countries have their own special coordinators or representatives who are monitoring the situation and exerting their influence on all of the concerned parties. However, their recognition of the Greek Cypriot Administration as the Government of Cyprus has not been very conducive in creating sufficient incentive on the Greek Cypriot side to reach an agreement with the Turkish Cypriots.

Another important point is how the initiatives of the UN on the one part, and the EU, on the other, can be reconciled. The position of the EU is that a settlement of the Cyprus conflict will facilitate accession, but that if no agreement is reached within a certain time frame Cyprus
may become a member of the EU in its present status, settlement not being a condition for membership. Such an eventuality is likely to widen the rift between the two parties.

Cyprus is a particular issue as the prospect of EU enlargement draws nearer. It goes without saying that the EU and the UN are separate processes, each following its distinct dynamic and logic. In the case of the UN, it is also based on a mandate. However, they should not work for cross purposes; there should be an agreement on a settlement before accession to the EU falls for decision.

The UN has been urging both sides to try to make progress in the search of a Cyprus agreement since the talks at Troutbeck (near New York) between 9-12 July 1997, and later at Glion (in Switzerland) between 11-15 August, under UN auspices failed to achieve any concrete results. Attempts to re-activate the talks continued. Proximity talks were held in Geneva between 31 January and 8 February 2000 under UN auspices, but it had not been possible to resume the talks. After various consultations, on 4 September 2001 the UN Secretary-General conveyed to Clerides and Denktash his invitation to resume the search for a comprehensive settlement by engaging in a new and reinvigorated phase of his good offices, beginning with separate meetings with the two leaders in New York on 12 September. This was declined by President Denktash, because the talks had little chance of success on the existing basis. Due to the terrorist attack in New York on 12 September, however, no meeting could take place in New York. On 26 September, members of the Security Council encouraged the Secretary General to continue his efforts using the guidelines set forth in Council resolution 1250 of 29 June 1999. Alvaro de Soto, the Secretary-General's Special Representative traveled to Cyprus, Turkey and Greece in early November. President Denktash, on his own initiative wrote directly to Clerides on 8 November, proposing face-to-face meetings on the island without preconditions. After an exchange of letters, the two leaders agreed to meet in the United Nations Protected area of Nicosia on 4 December 2001. Face-to-face talks began on 16 January 2002, in the presence of the UN Secretary-General's Special Representative who has been attending the meetings as an observer. Both sides have agreed on the confidentiality and on news black-out regarding the talks. They have also agreed on the "integrated whole" principle, which means that any agreement on a particular issue will not be binding until agreement has been reached on all aspects of the conflict. The first round ended on 19 February and the second round began on 1 March. During the first round each side tabled its position on the various issues. The second round was intended to be an exercise in bridging the gaps between the viewpoints of the two sides. In this new process it would be up to the parties to reach an agreement and that the UN is not expected to put down proposals, or try to force an agreement on the parties, because any agreement, in order to be a viable one, has to be reached freely by the parties themselves.

At the end of the second round Alvaro de Soto briefed the members of the UN Security Council. The President of the Council issued a statement on 4 April 2002, expressing once more the Council's full support for the negotiating process. But they expressed concern that progress was slow, and urged the leaders to intensify their negotiations before the June target
date to narrow the differences between them on all issues that must be resolved as part of a comprehensive settlement which takes full consideration of relevant United Nations resolutions and treaties. The reference to "relevant United Nations resolutions" was intended to give support to the Greek Cypriot vision of a federal settlement with a single international personality and sovereignty of the future republic, rather than the Turkish Cypriot vision of a partnership State with a single international personality abroad - with certain checks and balances regarding representation and voting procedures at international organizations - and internally, the sovereign and autonomous existence of two states.

The third round started on 9 April under the shadow of the above referred Presidency statement, and EU pressures regarding the enlargement process of the EU which would, in all probability, include Cyprus in its present status. During his short visit to Cyprus, the UN Secretary-General, Kofi Annan, urged the two parties on 16 May 2002 to work to resolve the four core issues by the end of June. He listed these issues as (a) governance, (b) security, (c) territory, and (d) property. In view of the EU enlargement process, both parties are being pressurised to work for an overall settlement by the end of the year, the latest. Otherwise, the impetus would be lost and the opportunity might not easily recur.

Cyprus is once more on the cross-roads. The success of this new process would depend largely on the acceptance, in all respects, of the equality of the two partner peoples, and the attitude of all those concerned towards achieving this goal.

Notes

UN doc.NC1/L.172(XI) and resolution 1287 (XIII).

S/5575, resolution 186(1964). The terms of the mandate were further clarified by an aide-memoire of the Secretary-General, (1964) III International Legal Materials, No.3. This was the first time that all five permanent member of the Council unanimously voted to set up a peace-keeping force.

It has been argued that UNFICYP was also established in the context of a threat to the peace under Article 40 of the Charter, i.e. as a provisional measure for maintenance of the peace [see, R. Higgins, United Nations Peacekeeping, Documents and Commentary, Europe 1946-1979, OUP (1981), vol.4, pp.143-144].

After the proclamation of the Turkish Republic of Northern Cyprus (TRNC), the authorities made it clear that UNFICYP would be allowed to operate in North Cyprus only as "guests" of the TRNC. The TRNC has been insisting that a separate status of the forces agreement should be concluded with the TRNC. The Turkish Cypriot position has been that UNFICYP can operate on both sides of the island only on the basis of the consent of both parties, a fundamental principle of peace-keeping (see e.g. letter of the New York Representative of the TRNC to the President of the Security Council, dated 14 June 2000). The Turkish Cypriot view was reflected in addendums to the relevant reports of the UN Secretary-General (see e.g.1999/1203/Add.1 dated 15 December 1999, which also noted the request of the Turkish Cypriot
authorities to work with UNFICYP to develop modalities of its operation in North Cyprus. However, upon objection of the Greek Cypriot Administration, there was no reference to the above referred Addendum in the relevant resolution 1303 of 9 June 2000. In his subsequent reports the Secretary-General did not publish any addendum and no reference was made to the need for obtaining the consent of the Turkish Cypriot party. In response the Turkish Cypriot authorities imposed certain restrictions on UNFICYP.


S/5950.

Cyprus Mail, 5 March 1964.

By June 1964 the strength of UNFICYP was 641; by June 1967, 462; by June 1987, 232; by December 1994, 120; and by November 2001, 122.

As to further clarification of the mandate and the mission of good offices, see the UN Secretary-General’s report S/26777 of 22 November 1993, paras. 39-49.

Opening Statement of the UN Secretary-General at the meeting held in New York on 26 February 1990.

S/21183.

Resolution 649, para. 3; and resolution 716, paras, 3 and 4.

S/14778 of December 1981, para. 56; and S/15182 of 1 June 1983, paras. 60, 61 and 63.

These initiatives are dealt with in the author’s *The Cyprus Question and the Turkish Position in International Law*, Oxford University Press, second revised ed. 1998.

See e.g. resolution 939 of 29 July 1994; and resolution 1117 of 26 June 1997.


See e.g. resolutions 1000 (23 June 1995); 1092 (23 December 1996); and 1178 (29 June 1998).

See e.g. resolution 889 of 15 December 1993.

Though the “Republic of Cyprus” was represented by the Greek Cypriot Administration, Turkey voted in favour of this resolution.

Turkey voted against this resolution.
The earlier resolution used the word "urges".

Resolution 31/12 of 12 November 1976; resolution 32/15 of 9 November 1977; resolution 33/15 of 9 November 1978; and resolution 34/30 of 20 November 1979.

The Turkish Cypriot representative in New York could be invited only to the deliberation of the Security Council under Art. 37 of the Council's Rules of Procedure.

A37/63 of 10 May 1983.

Jordan, Morocco, Saudi Arabia and Tunisia.

A37/253.


S/PV 2500 of 18 November 1983, para. 31. Turkey recognized the new republic 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 November 1983, which was circulated as UN Doc.A36/602 of 23 November 1983.

S/PV 2500 of 18 November, para. 61.

Ibid, paras. 61-62.

See also O.Ertuğ, Perceptions, vol.VI, No.3 (September-November 2001), pp.135-146, at pp.141-142. Ertuğ says that the peacekeeping and peacemaking functions of the UN both suffer from the same malady, that is, "their failure to adopt to the changed circumstances on the island, and the inability and the unwillingness to treat the two parties to the Cyprus dispute on a fair and equal basis". Ertuğ also poses the question whether a peacekeeping force, half of whose annual expenses are covered by the Greek Cypriot Administration and Greece, can function impartially.


Resolution 889 of 15 December 1993. However, the Secretary-General had stated some ten years earlier that the intercommunal talks represented the best available means for achieving an agreed, just, and lasting settlement of the Cyprus conflict [Report of the Secretary-General of 22 November 1993 (S/26777)].

Case C-432/92, The Queen V. Minister of Agriculture, Fisheries and Food, ex parte, Anastasiou (Pissouri) Ltd. and Others (1994) ECR 1-3087. See also S. Talmon, "The Cyprus Question before the European Court of Justice", European Journal of International Law, vol.12, No.4, September 2001.


UNIFICYP AND THE PROBLEM OF CONSENT

Prof. Dr. Ali L. KARAOSMANOĞLU

Introduction

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

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

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

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

More precisely, we seek to answer the following questions:

- What is the political and legal relevance of consent in peacekeeping operations in general?
To what extent has the UN observed the three fundamental principles of traditional peacekeeping in the Cyprus case? If it deviated from them, to what extent and in what ways?

Has a deviation, if any, impaired the legality and political appropriateness of UNFICYP?

Finally, these three questions will necessarily lead to a reevaluation of the Turkish claim that UNFICYP was not completely impartial in its dealings with the two Cypriot communities primarily because the Security Council Resolution 186 overlooked the consent of the Turkish community in creating the peacekeeping Force.

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

**The Political Relevance of Consent**

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

“This, it should be noted, is not a device for defeating aggressors – and certainly not for coercing great powers... but for assisting the major powers in avoiding the extension and sharpening of their conflicts and the consequent degeneration of whatever stability they may have been able to achieve in their mutual relationships... The greatest potential contribution of the United Nations in our time to the management of international power relationships lies not in implementing collective security..., but in helping to improve and stabilize the
working of the balance of power system, which is for better or for worse, the operative mechanism of contemporary international politics. The immediate task, in short, is to make the world safe for the balance of power system, and the balance system safe for the world."cxxx

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

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

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

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

In traditional peacekeeping operations, the influence of the UN cannot amount to the imposition of a solution upon the conflicting parties. For that reason, cooperation of the parties
directly concerned, even if one of them is a de facto entity, is politically necessary. De facto entities, like incumbent governments, effectively control a part of the state territory. They have their own population, a political elite, businessmen, and public opinion makers. Their actions inevitably affect the evolution of the conflict and regional stability for better or for worse. Their disregard would enormously complicate the conflict regulation task of the UN. The Organization should either cooperate with both sides, the de facto entity as well as the incumbent government, or shift from traditional peacekeeping to enforcement action.

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

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

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

Chapter VI of the Charter empowers the Security Council relating to the peaceful settlement of disputes the continuation of which is “likely to endanger the maintenance of international peace and security”. Under these provisions, the Council has mediatory functions and, unlike chapter VII, it only enjoys purely recommendatory powers vis-à-vis the disputing
parties. The non-mandatory nature of the powers of the Security Council arises not only from the explicit wording of chapter VI provisions, but also from the rules of general international law concerning the peaceful settlement of disputes. Therefore, in order to be applicable, recommendations of the Security Council under chapter VI would require the consent or acceptance of the parties concerned.

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

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

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

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

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

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

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

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

It has always remained quite clear to the member states that “the maintenance of international peace and security” which is the primary purpose of the UN does not amount to the prohibition of internal conflicts. The Organization, however, has in most cases established links between domestic situations and international peace and regarded internal conflicts as matters of “international concern”. Not only the actual fact of external intervention in an internal conflict but also the mere danger of external intervention or the risk of escalation have been perceived by the organs of the United Nations as an actual or potential threat to
international peace and security. From this standpoint, the issue for the Organization has been political rather than legal. As pointed out earlier, the UN has pursued a strategy of localizing internal conflicts by obviating the competitive intrusion of the interested powers.\textsuperscript{cxxxi}

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

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

The organs of the UN may put an item on the agenda and discuss any matter of international concern or adopt resolutions enunciating their positions on that matter even if it is related to an internal conflict. Similarly, they may investigate any situation from the headquarters without sending a mission to the scene of conflict. They may perform all these activities without requiring the consent of the parties involved.\textsuperscript{cxxxi} The fulfilment of the condition relating to the aims (international concern) would not however suffice to initiate and continue an investigation or observation mission on the spot, a peacekeeping operation or an intermediary assistance (good offices, mediation, and conciliation). The conflicting parties should not be regarded bound to tolerate such activities of the Organization on the territories they control. In those cases, the Organization could overcome the impediment of domestic jurisdiction (article 2 (7)) only in two ways: either by deciding an enforcement action under chapter VII or by having the consent of the parties to the internal conflict.
Without the consent of the de facto entity, the peacekeeping force could operate only in the territories controlled by the incumbent government. Any forceful action into the territories controlled by a de facto entity would impair the impartiality of the peacekeeping force and constitute an interference with the internal affairs of the country in violation of article 2 (7). The Force could legally act in that way if it is authorized by the Security Council under articles 39 and 42.

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

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

Unlike ONUC, UNFICYP avoided to a great extent undesired involvement in domestic affairs. It strictly refrained from using armed force except in self-defense; and it used persuasive methods in dealing with the communities for its redeployment, interposition, local disarmament and surveillance activities. The overall performance of UNFICYP, however, has
not been completely unbiased and impartial. The UN policy in general and UNFICYP in particular have at times caused discontent and uneasiness on the Turkish side because of the Organization’s partial observance of the principle of consent.

The Security Council Resolution 186

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

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

The first preambulatory clause of the Resolution suggested that “additional measures” should be “promptly taken to maintain peace and to seek out a durable solution”. For that purpose, the Council recommended the establishment of a United Nations peacekeeping force (parag. 4) and the appointment of a mediator (parag. 7). Their major purpose was to achieve a “durable” peace in Cyprus. The objective of the peacekeeping operation was to prepare favourable conditions for the UN’s intermediary assistance and intercommunal negotiations. Both recommendations were envisaged as peaceful settlement measures and, as such, they required the consent of the parties directly involved. In Resolution 186, there was no reference whatsoever, explicit or implicit, to enforcement in terms of chapter VII. Moreover, the Security Council mentioned neither “an imminent external intervention” nor “a possible aggression”. From even the first lines of the Resolution, it was quite clear that the Council was not envisaging an action to protect any of the communities against an external attack. It was rather taking measures to minimize violence on the Island to contribute to the smooth implementation of the peaceful settlement procedures between the two communities.
Paradoxically, however, the Security Council recommended the creation of UNFICYP with the sole “consent of the government of Cyprus” and recognized the Greek Cypriot administration as the only representative of the Republic of Cyprus, disregarding the bi-communal nature of the state according to the Constitution of 1960. Similarly, the Security Council recommended “further that the Secretary-General designate, in agreement with the Government of Cyprus and the governments of Greece, Turkey, and the United Kingdom, a mediator”. The consent of the Turkish community was again disregarded in the designation of a mediator.

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

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

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

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

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

Like many UN resolutions, the Security Council Resolution of 4 March was the result of a compromise which avoided controversial issues. Its main purpose was to get a peacekeeping force to Cyprus as soon as possible. It refrained from addressing questions such as: who constituted the government of Cyprus or was the Makarios administration legal or
unconstitutional. The Resolution, however, upset the legal-political balance between the conflicting parties by overlooking the consent of the Turkish community. Nevertheless, it is to be noted that, in practice, the UN continued to recognize the Greek Cypriot administration as the legitimate representative of the Republic of Cyprus, while also consulting the Turkish community leaders whenever it was necessary.

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

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

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

UNFICYP’s Performance before 1974

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

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

If, in spite of all these measures and others, the parties resumed hostilities, UNFICYP intervened to obtain a cease-fire through diplomatic ways (persuasion and negotiation). In an aide-mémoire presented by the Secretary-General in April 1964, it was emphasized that the Force should avoid any action designed to influence the military-political balance in Cyprus. UNFICYP had to cooperate with all the parties to the conflict and its soldiers should take no action which would be likely to bring them into conflict with either community in Cyprus. The Force could deploy its troops in new positions and interpose them between the clashing elements of the two communities only with the consent of the parties. When hostilities broke out, the UNFICYP officers first tried to find a solution by negotiating with the local community leaders. If these local efforts proved to be unsuccessful, negotiations were then held in Nicosia at a higher level between the representative of the Secretary-General (or the Commander-in-Chief of the Force) and the representatives of both communities.
After 1974

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

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

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

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

After the general cease-fire on 16 August 1974, the cease-fire lines and the military status quo were determined through a series of local agreements between UNFICYP and the parties concerned. In the area between the lines the United Nations, with the consent of the parties, established a buffer zone where UNFICYP is interposed and has taken on the responsibility of maintaining the military status quo, “including innocent civilian activity and the exercise of property rights without prejudice to an eventual political settlement concerning the disposition of the area”. UNFICYP has, along the cease-fire lines and buffer zone, numerous observation posts and regularly patrols in the area to monitor violations and agricultural activities with a
view to safeguarding security requirements of both sides. UNFICYP also provides its intermediary assistance to the parties, whenever necessary, in order to facilitate the supply of electricity and water across the cease-fire lines. Furthermore, the Force continues to carry out various humanitarian and police functions. As a result of the Exchange of Population Agreement, concluded in Vienna between Greek and Turkish Cypriot leaders on 2 August 1975, the UNFICYP organized and supervised the voluntary transfer of Turkish Cypriots from the south to the north and the remaining Greek Cypriots from the north to the south.

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

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

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

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

**Appraisal and Conclusion**

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

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

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

Another solid argument would be the one that is based on the international law concept of de facto entity (regime, authority, or state). State practice indicates that unrecognized entities governing a specific territory should be treated as “partial subjects of international law”. They may be held responsible for their actions and may conclude agreements. Recognition is a declaratory act. Non-recognition does not imply that “such an entity will have no status under
international law”. \textsuperscript{cxxxi} Since 1964, the authorities of Turkish community have exercised effective power and control on certain parts of the island, initially over the enclaves and, after 1974, over the northern part of the island. In spite of the fact that the Turkish Cypriot administration is unrecognized by the international community as the legitimate government of Cyprus, it has undoubtedly been a \textit{de facto} entity (authority, regime, state), wielding effective power and control and having its own territory, population, and working democratic state institutions.

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

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

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

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

The UN’s ambivalent approach to the requirement of consent did not destroy legal foundations of UNFICYP. It, however, certainly undermined the legality of the peacekeeping operation and created doubts about its political appropriateness. To a great extent UNFICYP owed its relative success to Turkish protagonist’s moderation and cooperation despite the UN’s
lopsided management of the Cyprus conflict. Since 1974, however, the Turkish military presence on the island has been the major factor that contributed to the maintenance of the non-war situation and stability.

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

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

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

NOTES


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


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


Ibid., p. 153 and 166-169.


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


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


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


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

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


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

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

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

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

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

S/6228, parag. 274.


S/7350, parag. 29.

S/7350, parag. 29.


S/6228, parag. 247.

S/7001, parag. 106.

S/6102, parag. 43-44.

S/6102/Add. 1.

S/5653.


Ibid., p. 163.

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

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

*The Blue Helmets*, op.cit., p. 164.
See letter dated 28 December 2000 from the Permanent Representative of Turkey to the UN addressed to the Secretary General and Annex II to that letter signed by President Rauf Denktas (A/55/717-S/2000/1241).

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


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INEQUALITY OF STATUS:
IMPEDEMENT TO A SOLUTION IN CYPRUS

Prof. Dr. Mümtaz SOYSAL*  

Initiatives to solve the Cyprus issue through negotiations have never reached a conclusive stage because of an important impediment: the inequality of status between the Turkish Cypriot and the Greek Cypriot "administrations". Such an inequality could perhaps be easier to understand from a realistic point of view throughout the whole period of 1963-1974 when the Turkish Cypriots were ousted by force of arms from the government and the legislature of the Republic of Cyprus, and were compelled to live in enclaves under provisional forms of self-government they created in order to run their own affairs. But even at that stage there were no solid moral grounds for the denial of equal treatment of the Turkish Cypriots by the third parties: the course of events had led both sides to assume forms of administrations which were open to mutual accusations of illegitimacy when it came to considerations of compliance with the constitutional order: if the Turkish Cypriots were considered as rebels who had run away from the institutions of the Republic and restorted to expedient forms of temporary administration outside the constitutional structure, this was because the other side had committed much more unconstitutional acts of violence to convert a bicomunal partnership into a purely Greek Cypriot state. One could even say that morality was more on the Turkish Cypriot side because, being deprived of their participation in government, they were obliged to build their own institutions of governance in order to survive under straneous circumstances.cxxxi

Had the same community proclaimed the "Turkish Republic of Northern Cyprus" (TRNC) immediately after the July or August 1974 operations rather than waiting until 15 November 1983, this would have been an equally acceptable act of necessity in response to an attempt of uniting the whole island with Greece, attempt which had been defeated by the legitimate military intervention of Turkey at the cost of many lives.

But in contrast with the morality aspect of the situation, the international legal aspect was quite different: The United Nations Security Council denounced the declaration of independence and the birth of TRNC by its Resolution 541 adopted on 18 November 1983 and called upon all states "not to recognize any Cypriot state other than the Republic of Cyprus". This was followed by Resolution 550 precluding international assistance to the newly declared
These two resolutions have ever since constituted the basis of the economic, commercial, cultural and communicational embargoes imposed by international organizations and all states with the exception of Turkey, without making a distinction between "not assisting" a government and condemning its people to complete isolation from the rest of the world.

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Quite apart from the exigencies of the Turkish Cypriot part for a viable solution for the future of the island, the fact that the TRNC has remained so long unrecognized by the international community and was frequently referred to as a "so-called state" by its southern neighbour certainly created a psychological factor that rendered concessions and conciliations difficult for the side that felt wounded and frustrated. The longing for a legitimate sovereign status has dominated all other considerations.

Some points need to be emphasized to underline the frustration engendered by the denial of the legitimacy of a state created after such a long struggle for righteous existence.

First of all, one should not forget that even before the United Kingdom relinquished its sovereignty over the island it had explicitly recognized in 1956 that there were two communities in Cyprus and that "any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status".

This is how, upon the signing of the 1960 Treaties and the passage of 1960 Cyprus Act by the British Parliament, sovereignty over Cyprus, with the exception of the British Sovereign Base Areas, was transferred from the United Kingdom to the Turkish Cypriot and Greek Cypriot communities conjointly. All the basic documents and treaties creating the 1960 "state of affairs" were signed and initialled by the three guarantor powers and the leaders of the two communities. In the context of Cyprus, the status of "community" has assumed a cultural, religious, linguistic, social and political identity character for the two peoples of Cyprus that, by being parties to the 1960 international Treaties, became subjects of international law. Sovereignty during the three years of the partnership after the founding of the Republic has been exercised conjointly by the two sides. Therefore there is no basis on which it could be said that one of the two peoples, or any institution which any one of them has usurped or created, is sovereign while the other is not, or that, one community enjoys sovereignty or legal control over the other. The "state of affairs" created by the 1960 Treaties was deliberately so engineered as to prevent either one of the two communities from imposing its will on the other. The Turkish Cypriot side was obliged to establish its own administration after the Greek Cypriot side usurped the title of the "Republic of Cyprus". Thus, after the ending of 1960 partnership in 1963, there exist in Cyprus two distinct and separate political entities based on the will of two peoples, as confirmed in the reports of the United Nations Secretary-General since 1964, as well as the
Geneva Declaration of 30 July 1974 by the guarantor powers after the first military intervention by Turkey in accordance with the 1960 Treaties.

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Against these realities and the deep belief of the Turkish Cypriot people in the legality and legitimacy of their state, the international community of nations and international institutions have acted in a manner to enhance the pretension of the Greek Cypriot Administration to be the sole representative for the whole island.

The first and main official text which is interpreted by that administration as constituting an internationally approved basis for its unilateral claim to represent the whole island is the United Nations Security Council Resolution 186 of 4 March 1964 on UNFICYP (UN Forces in Cyprus) which refers four times to the "Government of Cyprus" when in fact recognizing the credentials of the wholly Greek Cypriot Government. At the time of the voting of that Resolution, Turkey and the Turkish Cypriots were assured that the "Government of Cyprus" meant the constitutional government composed of "both Turkish Cypriot and Greek Cypriot elements". This assurance was not confirmed by the practice and the Greek Cypriot Government continued to be treated by the United Nations as "the" government for the whole island.

The favourable opinion pronounced by the European Commission on the 1990 application by the Greek Cypriot Administration for the accession of "Republic of the Cyprus" to the European Union in the name of the whole island without the consent of the Turkish Cypriot side is another example of the international disregard of the carefully written legal texts that intended to ensure the equality of status between the two communities. In this instance, Article 8 of the Zurich Agreement of 1959 on the Basic Structure of the Republic of Cyprus gave the right of veto to the Turkish Vice-President of the Republic in the case of the participation of Cyprus in international organizations in which Turkey and Greece did not both participate, and Article 1/2 of the Treaty of Guarantee obliged the Republic to undertake "not to participate, in whole or in part, in any political or economic union with any State whatsoever", thus prohibiting the participation in the European Union, which is a community of many states, including Greece. If that prohibition is so deviously circumvented, this would be an open breach of the balance between Turkey and Greece in the Eastern Mediterranean which was one of concerns safeguarded by that Treaty.

It is obvious that this acceptance of a wholly Greek Cypriot State's application for a European Union membership and especially the Helsinki Conclusions of 1999 which did not consider a bilaterally acceptable solution of the problem as an absolute condition for admission as a full member have essentially reduced the Cypriots' "enthusiasm" for resolving the conflict. This became apparent throughout the direct negotiations since January 2002.
On top of these grave political and legal examples of uneven treatment committed by the United Nations and the European Union and their respective member states with the exception of the Republic of Turkey, came the erroneous interpretation of the status by the international judicial organs such as the European Court of Justice in Luxemburg and the European Court of Human Right in Strasbourg. Both courts based their judgments on the "politically motivated" Security Council resolution concerning the non-recognition of the TRNC, rather than discussing the status problem on purely legal grounds in accordance with the generally accepted concepts of international law.

The Luxemburg Court, in its 1994 Anastasiou case on the importation of plants, fruit and potatoes into the territory of a member state, ruled that the United Kingdom could only accept certification from a "recognized" Government. In an "Opinion Report" commissioned by the Greek Cypriot Administration to three academic lawyers, Professors James Crawford, Gerhard Hafner and Alain Pellet, the European Court of Justice is quoted with approval for saying that "The problems resulting from the de facto partition of the island must be resolved exclusively by the Republic of Cyprus, which alone is internationally recognised."cxxxi

The same emphasis on that politically motivated Security Council resolution of non-recognition is very striking in the Strasbourg Court's Judgment of 18 December 1996 which denied the validity of TRNC appropriation of Mrs Loizidou's property in Kyrenia: "...It is evident from international practice and the various strongly worded resolutions...that the international community does not regard the Turkish Republic of Northern Cyprus as a state in international law and the Republic of Cyprus has remained the sole legitimate Government of Cyprus".cxxxi

It is unfortunate that both courts have too readily accepted the political resolution of an international organ such as the United Nations Security Council instead of going into a serious legal discussion of the validity of the TRNC's acts on their own merits. They neglected the necessity of seriously dwelling on the relationship between recognition and statehood, and the intrinsic impact of recognition or non-recognition on the legality of a state action. Does recognition have a constitutive, cognitive or declaratory function? Is it of a legal or political nature? The 1933 Montevideo Convention on the Rights and Duties of the States affirms that "The political existence of the State is independent of recognition by other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer the services, and to define the jurisdiction and competence of its courts.".cxxxi

The same Convention cites the qualifications that a State should possess to be considered an entity of international law:

a) A permanent population;
b) A defined territory;
c) A government;
d) The capacity to enter into relations with other States.
The TRNC possesses all of these qualifications: but none of them remains undisputed by the Greek Cypriot Administration.

It has a fairly homogenous permanent population, composed of the earlier inhabitants of the territory of the present State at the time of the former Republic of Cyprus, plus those Turkish Cypriots who came to the North as a consequence of the exchange of populations agreed by the two sides at the Second Round of the Vienna Talks of 5-7 June 1975\textsuperscript{cxxx}, and mainland Turks who settled in the North of the island after the territorial partition.

The new State has a defined territory which, although demarcated by a cease-fire line, has remained unaltered for the last 28 years and is considered by the constitution of the State as "the indivisible territory of the Republic". Any border adjustment by an eventual peace agreement will certainly not affect its basic character of being the territory of a State.

Its government has the attributes of a genuinely democratic administration responsible before a democratically elected legislature, and a clean record of rule of law and respect for human rights.

Its diplomatic relations at ambassadorial level is by necessity confined to the Republic of Turkey as the only state that recognizes it; but it has representatives and offices in many countries as well as at the level of international or supranational organisations such as the United Nations and the European Union. This way, it certainly has the "capacity" to enter into relations with other countries, but not always the "accorded possibility" to do so.

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The famous "Stimson doctrine" which considers that the recognition of a state created through illegal use of force is incompatible with international law seems to be frequently invoked in the discussions on the status of the TRNC. Whatever the merits of this doctrine in judging the legality of a military action that led to the emergence of a state in the north of the island, arguments have to be measured against the advantages of a peaceful solution which may be facilitated by a more realistic approach to the question of status. Rather than endlessly arguing on the legitimacy of past actions and trying to find reasons for mutual inculpations, starting with a fresh appraisal of the present situation is certainly more likely to produce concrete results for a rapid and effective solution. It is with this spirit that the last Turkish Cypriot initiative for direct talks has been undertaken. The talks have to continue with the same spirit if a realistic outcome of the negotiations is desired.

Of course, the principal question to be formulated in this respect relates to the basic nature of enterprise: What is the ultimate aim of the negotiations? Is it the restoration of the past or the building of the future? Unless the two sides come to an agreement on this very point, the chances of success are bound to remain very dim throughout the talks.

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This is why the main Turkish Cypriot position paper put forth at the negotiation table on 29 April 2002 starts with the following sentence: "We believe that the comprehensive settlement we seek will offer the best framework for a secure, stable and prosperous 'future' for the two peoples of Cyprus." No mention is made of past events and no arguments are cited to incriminate the other side. This is a search for a new future through a "Founding Agreement" that "will serve as the basic political and legal framework on the basis of which the two Founding States, as sovereign entities, will achieve their association under a new Partnership State."

Although no preconditions were set for the resumption of this last round of talks, the words "the two Founding States, as sovereign entities" summarize the essence of the Turkish Cypriot position: the New Partnership should be based on the will of the "Founding States" and these have to be considered as "sovereign entities". Implicit behind these formulations is the request for the recognition of the TRNC as a "sovereign state" before an agreement is concluded for the future of the island, not for the sake of justifying the past claims or questioning the legitimacy of the other state, but for the solidity of the future partnership. How can a new partnership be solidly established on the free will of two partners without each one of them recognizing the other as a sovereign entity? If a new partnership is to be established through some sort of a "constitutive" process, then the "sovereign equality" of the "constituent" partner states derives from the very nature of this legal exercise: the Partnership itself, to be able to represent to the outside world a "single international personality" in the name of the two peoples of the island, has to rest on a certain transfer of sovereignty stemming from its constituent parts. This is why the Turkish Cypriot party requests that the Founding Document creating the New Partnership should "explicitly acknowledge, recognize and give effect to the equal status of the two peoples of Cyprus and their respective Constituent States".

There are several implications and consequences of this "new partnership" approach in the Turkish Cypriot vision of the future. For instance, the Partnership State is conceived as being competent in matters "which are assigned to it by the Partner States" and it will be sovereign "to the extent defined in the Founding Document". The Partner States shall be competent in all matters except those "explicitly assigned by them to the Partnership State." Residual powers will rest with the equal Partner States which will exercise their authority and jurisdiction with respect to their retained powers and political structures. They will have equal status, identical powers and functions. The authorities of one Partner State cannot represent or speak for the other and claim jurisdiction or sovereignty over the other.

These strict requirements may sound excessive at first sight, especially in view of the fact that at present there is only one "Republic of Cyprus" on the island, recognized by the rest of the world, except by Turkey. However, the other essential fact is that on the same island there exists, in the North, another state, the TRNC, unrecognized by its southern neighbour and the rest of the world, but recognized by Turkey. If a new partnership is desired, this puzzle can only be solved by the mutual recognition of the future partners, each addressing the other side by its
name, and signing the partnership agreement by their own present names as “The Republic of Cyprus” and “The Turkish Republic of Northern Cyprus”. They cannot tell their people that did not exist, but they can tell them that new names are required for the constituent states of the New Partnership also with a new name. The international community should encourage this process rather than taking side with one name or the other.

This realistic approach by the Turkish Cypriot side deserves to be backed by all those desiring peace and stability in Eastern Mediterranean. To turn the clock clockwise rather than the other way is easier; equally, state succession problems in a unification process are less difficult to solve than in a process of separation.

NOTES
cxxxi The institutional administrative organization of the Turkish Cypriots since the armed onslaught of 21 December 1963 has passed through the following stages:

a. The formation of a "General Committee", headed by Vice-president Dr. Fazıl Küçük and the three Turkish Cypriot mininsters of the Republic of Cyprus.

b. "The Legislative Assembly" of the Turkish Cypriot community, established by the Turkish Cypriot members of the House of Representatives who had been ousted from the legislature of the Republic and the members of Turkish Communal Chambers.

c. "The Provisional Turkish Cypriot Administration", declared in 28 December 1967, after the attack by a combined Greek and Greek

d. Cypriot force on the Turkish village of Kophinou in the Larnaca district.

e. General elections of 5 July 1970 for "the Legislative Assembly of the Turkish Cypriot Administration".

f. The proclamation of the "Autonomous Turkish Cypriot Administration" on 1 October 1974, following the Turkish military operations of July and August 1974.

g. The proclamation of the "Turkish Federated State of Cyprus" on 13 February 1975 and the drafting of its Constitution by a Constitutional Assembly, approved by a referendum on 8 June 1975.

The proclamation of the "Turkish Republic Northern Cyprus" on 15 November 1983 and approval of its Constitution by a 70.18 % majority in a referendum on 5 May 1985.

cxxxi "That status is significant is suggested by the importance attached to sovereign equality by smaller powers." (Evan Luard, Conflict and Peace in the Modern International System: A Study of the Principles of International Order. New York, Macmillan Press, 1988, p.3)


SOLUTIONS JURIDIQUES POUR UN CHYPRE VIVABLE
BASEES SUR LE NOUVEAU PARTENARIAT

Prof. Dr. Hülseyin PAZARCI

Introduction

A la suite des événements tragiques du mois de décembre 1963 et l’apparition de deux gouvernements, chypriote turc et chypriote grec, sur l’île de Chypre ils n’ont pu jusqu’aujourd’hui trouver une solution juste et acceptable pour un Chypre viable.

Les positions opposées des deux parties se sont cristallisées dans ces dernières années pour une solution en faveur d’un Etat unitaire pour les chypriotes grecs et pour une solution en faveur d’un Etat confédéral pour les chypriotes turcs. Chacune se basant essentiellement sur le passé et interprétant, en ce qui concerne l’aspect juridique, les instruments juridiques établissant la République de Chypre de 1960 ont essayé jusqu’aujourd’hui de montrer la justesse de leurs positions.

Cette situation qui bloquait nécessairement l’aboutissement à une solution paraît être modifiée dernièrement par l’approche de M. Kofi Annan, le Secrétaire général des Nations Unies, dans le cadre de sa mission de bons offices lorsqu’il parle d’un nouveau partenariat (new partnership). Ce concept remonte en fait jusqu’au 15 juillet 1992 lorsque M. Boutros Boutros Ghali, le Secrétaire général de l’ONU de l’époque, proposait aux parties un paquet d’idées sur un accord-cadre intégral (overall framework agreement). En effet il y était prévu que “The Overall Framework Agreement is an integrated whole which ... will result in a new partnership and a new constitution ...”. Cependant les idées exprimées dans ce paquet qui concrétisaient en détail la solution proposée ne convenant pas aux deux parties en cause le nouveau partenariat de ce contenu n’a pu aboutir.

Le concept de nouveau partenariat exprimé de nouveau par M. Kofi Annan, le Secrétaire général des Nations Unies le 12 septembre 2000 à l’occasion de pourparlers indirects (proximity talks) paraît assouplir ce blocage puisqu’il y est laissé aux parties d’élaborer le contenu du nouveau partenariat à déterminer par les négociations entre les parties à égalité politique. Il est donc important de savoir les éléments essentiels à prendre en considération par les deux parties lors de la négociation pour une solution juste et viable à Chypre.
Section I: Éléments Essentiels Pour Une Solution Juste Et Viable

Lorsque les parties doivent élaborer les instruments juridiques de Chypre basé sur le nouveau partenariat ils doivent tenir compte de certaines données absolument nécessaires sans lesquelles une solution juste et viable ne peut être imaginée.

Si l’on évalue à l’égard des Chypriotes turcs les conditions *sine qua non* d’un Etat chypriote commun aux deux peuples on observe que leur première préoccupation est de conserver leur identité nationale. Cette préoccupation apparaît dès le début de la revolte des Chypriotes grecs contre les Anglais en vue de l’indépendence de l’île dans les années 1950 et se fortifie avec la démarche de la Grèce auprès des Nations Unies à partir de 1954 en vue de l’obtention du droit de l’auto-détermination d’un peuple unique de Chypre qui revenait à la négation de l’identité distincte des Chypriotes turcs.


La troisième préoccupation des Chypriotes turcs est relative à leur représentation lors de la présence de Chypre devant les instances internationales. Ce souci apparu avec la décision no. 186 du Conseil de Sécurité en 1964 lorsqu’elle prévoit l’envoi de l’UNFICYP sur le seul consentement du gouvernement des Chypriotes grecs présenté en tant que Gouvernement de Chypre et se fortifie avec la représentation de la République de Chypre devant toutes les instances internationales par le gouvernement formé uniquement des Chypriotes grecs.

Enfin, la quatrième préoccupation des Chypriotes turcs apparaît avec le recours unilatéral des Chypriotes grecs en vue de l’adhésion de Chypre à l’Union européenne et de l’acceptation de principe de leur candidature par les instances communautaires. Il s’agit cette fois-ci aussi bien d’une préoccupation de la représentation lors de l’accomplissement des formalités d’adhésion que de la préoccupation de la continuation de leur identité et de leur compétence sur leur territoire ainsi que l’utilisation commune de la compétence sur Chypre dans son entièreté.

Ces préoccupations des Chypriotes turcs les poussent inévitablement de chercher assurer les intérêts légitimes sur ces quatre points à travers quelques concepts dont ils ne peuvent s’en passer. Il s’agit des principes d’égalité de statut entre les deux peuples et de bi-zonalité de leurs territoires respectifs. Mais pour que ces principes déploient leurs effets continuellement les
Chypriotes turcs ont aussi besoin qu’ils ne soient pas changeables d’une manière unilatérale dans le temps.

A travers du principe de l’égalité de statut les Chypriotes turcs visent essentiellement assurer leur identité nationale mais aussi leur droit d’exercice des compétences territoriales sur leur territoire ainsi que la participation égale aux décisions communes pour Chypre dans son ensemble. A travers du principe de bi-zonalité ils visent assurer la séparation nette des territoires respectifs de chaque gouvernement lors de l’exercice de leurs compétences.

Le principe de l’égalité de statut compris tel quel qu’on vient de préciser écarte définitivement le traitement des Chypriotes turcs en tant que minorité. Car, le régime juridique de minorité en visant assurer l’égalité de traitement des groupes présentant des particularités par rapport à la majorité impose aussi au groupe minoritaire un devoir de fidélité à l’État. Autrement dit, une minorité n’a normalement pas le droit d’auto-détermination ni le droit de sécession. Par ailleurs, même s’il n’existe pas en droit international positif une définition du concept de minorité, selon la définition de Capotorti, Rapporteur spécial des Nations Unies en la matière, qui est largement partagée par la doctrine la condition de minorité requiert une position non-dominante par rapport à la majorité. Or, les Chypriotes turcs qui ont toujours eu le droit d’auto-détermination tels que montrent les traités de 1959-1960, ne se sont jamais soumis à une position de domination par rapport à la majorité de Chypriotes grecs. Dès le début les Chypriotes turcs ont ainsi refusé le statut de minorité et se sont fait admis en tant qu’une des deux communautés formant l’État de Chypre de 1960. En continuant exiger l’égalité de statut avec les Chypriotes grecs les Chypriotes turcs confirment donc toujours leur position de refus d’être considérés comme une minorité.

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Quant au concept de communauté, bien qu’il soit admis et soutenu dans le cadre de l’égalité de statut pendant longtemps par les Chypriotes turcs, il ne paraît plus suffisant à assurer leur existence à la lumière des derniers développements. En effet, soucieux de garder leur identité nationale distincte, les Chypriotes turcs ont peur d’être graduellement effacés dans le cadre de l’Union européenne. Il est ainsi possible que, comme suite du principe de libre circulation des personnes et de la liberté d’établissement, les Chypriotes grecs s’établissent en peu de temps au sein de la communauté chypriote turque et puissent influencer leurs décisions par leurs puissant moyens économiques et sociaux. Les Chypriotes turcs ont aussi peur qu’une fois l’adhésion de Chypre réalisée qu’on tient de moins en moins compte de leur identité au sein des organes de l’Union européenne tant qu’ils n’assurent pas cette identité distincte par l’adoption des institutions politiques plus sûres.

Le principe de bi-zonalité que les Chypriotes turcs réclament est basé sur le même souci d’identité et ainsi que sur le souci de sécurité. Ils désirent assurer que chaque partie a son territoire bien distinct avec des compétences territoriales bien définies et inaltérables dans le temps tant que les deux parties ensemble n’en décident autrement. Il s’agit donc pour les
Chypriotes turcs d’une bi-zonalité qui couvre l’essentiel des compétences utilisées dans la vie quotidienne. Ce souci est accru depuis la question de l’adhésion à l’Union européenne.

Ces préoccupations sur l’identité et la sécurité des Chypriotes turcs voient s’ajouter une autre préoccupation depuis le recours d’adhésion unilatéral des Chypriotes grecs à l’Union européenne. Il s’agit du risque de se voir effacé au sein de l’Union européenne à travers les décisions ultérieures prises par les organes de celle-ci. C’est pourquoi les Chypriotes turcs veulent s’assurer dès le début qu’on y tient compte de leur souci et qu’on admet Chypre comme membre une fois que les deux parties se sont entendus sur une solution et cela soit considérée comme l’acquis communautaire concernant Chypre.

Quant aux préoccupations des Chypriotes grecs il n’apparaît en réalité aucune préoccupation vitale pour pouvoir continuer leur existence. Mais, si l’on poussée la recherche plus loin ils expriment avoir à la rigueur le souci de leur sécurité vis-à-vis de la Turquie et le souci de l’efficacité des rouages de l’Etat chypriote. En ce qui concerne la préoccupation des Chypriotes grecs vis-à-vis des Chypriotes turcs, comme ils visent l’unité de l’Etat et l’intégrité territoriale et soumettre les Chypriotes turcs à un régime de minorité, cette préoccupation de domination ne peut se justifier comme légitime. Basés sur lesdites préoccupations les Chypriotes grecs réclament essentiellement la reconstruction d’un Etat chypriote unitaire et une représentation internationale et communautaire unique. Quant à leur préoccupation de leur sécurité vis-à-vis de la Turquie il préfère un système de garantie sécuritaire internationalisé.

Section II: Solutions Juridiques Possibles En Tenant Compte Des Conditions Actuelles

Comme on vient de voir, les préoccupations essentielles des Chypriotes turcs concernent l’identité nationale, la sécurité, la représentation internationale et la condition juridique future au sein de l’Union européenne et les poussent réclamer notamment l’égalité de statut entre les deux peuples de Chypre et la bi-zonalité du territoire de Chypre. Par contre, les préoccupations essentielles des Chypriotes grecs qui concernent la recherche de la sécurité et de l’efficacité d’un Etat unitaire non seulement ne repondent aux soucis des Chypriotes turcs, mais n’apportent pas non plus une contribution significative pour l’existence-mêmes du peuple des Chypriotes grecs. Car, leurs exigences se résument en fait dans la recherche d’un status quo ante qui n’a déjà pas pu répondre aux préoccupations des deux parties. C’est pourquoi il paraît bien nécessaire de chercher la solution ailleurs en tenant compte des principales préoccupations des deux peuples à la fois, si l’on veut être réaliste.

Lorsqu’on procède à la recherche d’une solution satisfaisante et viable la solution idéale, du moins du côté des Chypriotes turcs, paraît être la formation d’une confédération.

Bien qu’il n’existe pas une définition satisfaisante de la confédération, comparée à la fédération, elle paraît "une union plus lâche qu’une fédération". Caractérisée généralement par les compétences limitées et essentiellement aux affaires étrangères, à la défense et parfois à
l’économie, offrant la possibilité de sécession, les organes collectifs ayant plutôt les relations avec les organes des États membres et pas directement avec les habitants un système confédéral apparaît comme une association coopérative en vue d’administrer en commun certains domaines, mais sans envisager de nation-building. Cet inexistence d’une seule nation homogène et prouvée par les événements que les deux peuples n’arrivent pas coexister dans le cadre d’un Etat unitaire la confédération parait être la seule formule sûre capable d’assurer la recherche de la part des Chypriotes turcs de l’identité nationale, de la sécurité, de la représentation internationale adéquate et d’un statut sûr au sein de l’Union européenne. La formule de la confédération parait aussi répondre aux préoccupations des Chypriotes grecs lorsqu’il s’agit de les assurer de leur sécurité vis-à-vis de la Turquie.

Cependant, si les Chypriotes grecs insistent sur la formation d’un Etat unitaire et ne concèdent finalement pas pour la formule confédérale pure, il ne reste qu’à chercher une voie acceptable par les deux parties et qui retiendrait certaines particularités fédérales et confédérales à la fois. Mais pour pouvoir arriver à une solution juste et viable il est nécessaire d’y inclure certaines conditions sine qua non.

La première de ces conditions paraît être l’adoption d’un système constitutionnel prévoyant la bi-zonalité définitive et l’exercice des compétences territoriales définitives par les autorités de chaque partie. Dans ce cadre les parties bénéficiant de l’égalité politique totale doivent participer à tous les organes et à toutes les décisions centrales. Quant aux compétences des autorités Chypriotes turcs et grecs, elles doivent être identiques. Dans ce cadre chaque partie doit en tout cas déterminer elle-même son propre gouvernement, son administration propre et les instances judiciaires propres, compétents uniquement sur son territoire respectif. L’État central de Chypre doit se composer d’une manière durable de deux territoires distincts et de deux autorités politiquement égales distinctes.

La seconde condition sine qua non est que cette construction étatique de Chypre doit être inalterable lorsque Chypre ferait membre de l’Union européenne. Il est ainsi essentiel que, soit à titre de l’acquis communautaire soit par la suite à travers des décisions communautaires, on ne doit pas altérer le nouveau système étatique de Chypre. Il est donc nécessaire que la liberté de mouvement, la liberté d’établissement et le droit de propriété tels quels dans l’acquis communautaire doivent être assouplis à l’égard du nouvel État de Chypre afin de ne pas donner lieu à l’envahissement du territoire Chypriote turc par les Chypriotes grecs et au changement de la structure politico-juridique établie. Pour que l’assouplissement à ces règles de l’Union européenne soit durable et inaltérable par les décisions des organes communautaires il est nécessaire que la nouvelle structure de Chypre ainsi définie doit être adoptée par un accord conclu entre Chypre, l’Union européenne et probablement les États garants tels que la Turquie, la Grèce et la Grande Bretagne afin de l’introduire dans le domaine de l’acquis communautaire. Le même genre d’assouplissement à ce genre de libertés et de droits de l’homme doit être assuré à l’égard de la Convention européenne des droits de l’homme et de ses protocoles annexes. Car, comme l’arrêt du 18 décembre 1996 de la Cour européenne des droits
de l’homme sur l’Affaire Loizidou a montré, si l’on n’apporte pas certaines exceptions au droit de la propriété dans le cadre de la Convention et ses protocoles annexes les Chypriotes grecs peuvent toujours recourir à la Cour et altérer la situation établie. Il est donc nécessaire que la question des refugiés soit résolue de telle manière que les individus ne puissent plus faire marcher le mécanisme de la C.E.D.H. en ce qui concerne les libertés de mouvement, d’établissement et le droit de propriété. Ce qui paraît bien possible si on résout la question par un système d'échange et de compensation et sans laisser des propriétés aux uns chez les autres.

La troisième condition *sine qua non* se présenterait dans le cas où une personnalité juridique internationale unique de Chypre est admise par les deux parties. Dans un tel cas il est tout d’abord possible d’imaginer à l’exemple de la Belgique, que chaque partie puisse être représentée auprès des autres États et des organisations internationales dans les domaines relevant uniquement de leurs compétences. Cela pourrait se réaliser soit au nom de l’État chypriote central soit même directement au nom de la partie chypriote grecque ou turque intéressée. Mais si le sujet relève essentiellement de l’État central il est alors absolument nécessaire que les deux parties précisent leur position commune ensemble et la représentation de Chypre central à ce sujet soit faite avec la participation des représentants des deux parties dans la délégation unique. Par ailleurs, en ce qui concerne les missions diplomatiques permanentes, encore à l’instar de la Belgique, il est nécessaire que les deux parties puissent avoir ses représentants auprès de l’ambassadeur de Chypre central qui doit être nommé en alternance d’une partie ou de l’autre.

Quant à la représentation de Chypre central au sein des organes de l’Union européenne, les modèles belge et allemand paraissent être encore d’une grande utilité. Il est ainsi concevable qu’au sein du Conseil la représentation soit réalisée par le ministre concerné de Chypre central lorsqu’il s’agit d’un sujet relevant uniquement du domaine de la compétence de l’État central, mais la position commune soit fixée d’avance avec le consensus des deux parties chypriotes grecque et turque. S’il s’agit d’un sujet relevant en partie de Chypre central il est possible de représenter Chypre au sein du Conseil par un ministre de l’État central, assisté des représentants des deux parties chypriotes grecque et turque ou, à l'inverse, représenter Chypre par le ministre ou représentant d’une des parties si le sujet concerne davantage cette partie et le laisser d’être assisté d’un représentant de l’État central. Il est evidemment nécessaire dans ce modèle que lorsqu’un sujet concerne directement et uniquement une des parties chypriotes grecque ou turque chacune prenne sa place au sein du Conseil. Mais si le sujet, tout en étant de la compétence respective des parties composantes de l’État de Chypre, intéresse également les deux parties à la fois il serait nécessaire qu’elles puissent être représentées par un représentant unique de Chypre central agissant suivant leurs directives communes et assisté par les représentants des deux parties. En ce qui concerne la représentation de Chypre à la Commission la plus raisonnable des solutions paraît être l’alternance. La même solution est aussi possible pour la Cour et ainsi que pour le tribunal de première instance.
En ce qui concerne la représentation diplomatique de Chypre il est bien entendu nécessaire qu'une mission permanente de l'Etat central doît la faire. Mais, pour suivre les sujets relevant de leurs compétences respectives, il est possible de concevoir la présence des représentants des Chypriotes grec et turc au sein de la délégation unique comme cela le cas de la Belgique ou de permettre même à la représentation directe et séparée de chaque partie composante pour les affaires relevant de leurs compétences respectives comme cela est le cas pour les bureaux des Länder allemands auprès de l'UE.

La quatrième condition *sine qua non* concerne la sécurité du nouvel Etat de Chypre ainsi que celle des deux parties composantes. A cet égard l'équilibre établi entre la Turquie et la Grèce avec la participation de la Grande Bretagne dans les traités de garantie et d'alliance parait toujours essentielle et lesdits traités doivent être reconduits dans leur essence dans la nouvelle *partnership*. Cela est d'autant plus nécessaire si l'adhésion du nouvel Etat de Chypre à l'Union européenne se réalise avant celle de la Turquie. Le cas échéant les Chypriotes turcs se sentiront davantage insecures sans la présence fondamentale de la Turquie pour la garantie de nouvel état des choses (*state of affaires*).

Enfin la cinquième condition *sine qua non* est relative à la "succession" aux actes et aux biens des deux parties chypriote grecque et turque aussi bien par le nouvel Etat de Chypre que par chacune des parties composantes. En effet, sans entrer dans une discussion stérile s'il s'agit ou non d'une succession d'Etats, il est techniquement nécessaire de déterminer la portée juridique des actes juridiques accomplis par chacune des autorités chypriotes grecque et turque depuis la séparation des deux communautés du système de 1960 et l'effet à donner aux biens et aux archives des deux parties depuis lors.

Dans ce cadre de la suite à donner aux actes accomplis par les autorités des Chypriotes grecs et turcs, il est tout d'abord nécessaire de déterminer la situation des traités conclus par les deux parties. Concernant les traités conclus par les autorités chypriotes grecques sous le nom de la "République de Chypre" il paraît logique de distinguer les traités multilatéraux et les traités bilatéraux.

Les traités multilatéraux de valeur universelle ou régionale auxquels la Turquie et la Grèce font parties et qui n'altereraient pas la structure du nouvel Etat de Chypre peuvent être admis en vigueur pour le nouvel Etat de Chypre. Par contre, les traités multilatéraux de nature de modifier la structure du nouvel Etat doivent être réévalués et les Chypriotes grecs et turcs doivent chercher les solutions possibles dès maintenant concernant leurs avenirs. En effet, comme l'arrêt de la C.E.D.H. sur l'affaire Loizidou a montré, l'application pure du Premier Protocole annexé à la C.E.D.H. sur la propriété serait de nature d'altérer les fondements du nouvel Etat de Chypre lorsqu'on considère la position des Chypriotes turcs à cet égard. Il en est de même lorsqu'on considère le rapport du 6 avril 2001 du Comité consultatif de la Convention cadre relative à la protection des minorités nationales ratifiée par les Chypriotes grecs et qui trouve déjà incompatibles certains articles de la Constitution de 1960 avec ladite Convention. Or il est très possible que ce genre d'incompatibilité serait poursuivi avec le nouveau système et
même peut-être approfondi. On peut certainement trouver d'autres traités multilatéraux de même nature.

Quant aux traités bilatéraux conclus par les Chypriotes grecs au nom de la République de Chypre, étant par hypothèse conclus uniquement en considération des intérêts des Chypriotes grecs et sans participation des Chypriotes turcs ils doivent normalement prendre fin à moins qu'à la suite de l'examen de chacun les parties Chypriotes turque et grecque décident autrement. En ce qui concerne les traités et accords conclus par les Chypriotes turcs avec la Turquie ils doivent logiquement suivre le sort des traités bilatéraux conclus par les Chypriotes grecs.

Lorsqu'on évalue la suite à donner aux actes des autorités chypriotes turque et grecque, il est nécessaire en second lieu de déterminer le sort des lois, décrets, arrêtés, etc... émanant de ces autorités depuis fin 1963 jusqu'à la formation du nouvel État de Chypre. Il ne fait pas de doute que ceux qui sont incompatibles avec les nouveaux instruments formant le nouvel État doivent être mis hors de vigueur. Cependant, comme ils constituent aussi les fondements des droits acquis individuels il est rationnel de les considérer en principe valable pour le passé à moins qu'ils n'altèrent le nouveau système établi. Dans ce dernier cas il est nécessaire que les Chypriotes grecs et turcs doivent trouver les solutions en même temps qu'en établissant le nouvel État dans un accord à conclure.

En ce qui concerne le sort des décisions judiciaires des tribunaux chypriotes grecs et turcs, pour les décisions judiciaires déjà prises le principe de l'autorité de la chose jugée étant valable elles doivent normalement être exécutées. Cependant lorsque de telles décisions judiciaires concernent les individus qui se trouvent établis sur le territoire de l'autre partie ou les propriétés situées sur le territoire de l'autre partie leurs executions peuvent troubler l'ordre public de cette partie. Il paraît donc nécessaire de trouver d'avance des solutions négociées concernant ce genre de décisions judiciaires et notamment pour les décisions pénales ou pour les décisions relatives à la propriété privée. Quant aux affaires judiciaires en instance, celles qui sont relatives au droit de propriété et celles qui visent les individus établis sur le territoire de l'autre partie doivent être jugées suivant les principes que les Chypriotes grecs et turcs doivent adopter par la négociation en même temps qu'on forme le nouvel État de Chypre.

Lorsqu'il est question de la suite à donner aux biens publics des Chypriotes grecs et turcs chaque partie doit normalement garder les immeubles publics se trouvant sur son territoire ainsi que les meubles publics. Cependant comme l'autorité centrale aurait besoin d'immeubles administratifs et de meubles les Chypriotes grecs et turcs doivent décider par négociation sur ces biens. Quant aux armes, munitions et véhicules militaires leur sort doit être décidé dans le cadre de l'ordonnancement de la sécurité et de l'organisation de la défense du nouvel État de Chypre.

En ce qui concerne les dettes publiques que chaque partie a contractées auparavant la raison dicte que chacune garde sa responsabilité à moins qu'il s'agisse d'un intérêt commun qui releverait dans le nouvel ordonnancement du domaine de l'État central.
Pour les archives publiques qui comprennent les inscriptions cadastrales, les titres de propriété, les cartes et plans, les statistiques, les actes de naissance ou de décès, les décisions de succession, les archives judiciaires ainsi que les documents administratifs il paraît le plus logique que chaque partie garde normalement les siens et que dans les domaines qui relèveraient désormais de l'État central elle passe une copie conforme.

Conclusion

Comme il ressort de ce qui précède le concept de nouveau partenariat dont le contenu est essentiellement laissé aux parties à être élaboré paraît offrir une chance réelle pour une solution viable à Chypre. Les responsables Chypriotes grecs et turcs doivent profiter de cette occasion afin d’élaborer leur solution négociée. Mais en le faisant ils doivent tenir compte, d’une manière réaliste, des réalités bien établies de Chypre et de la possibilité d’adhésion d’un Chypre avec ses deux Etats composants à l’Union européenne. Sans considération de ces données aucune solution ne paraît possible.

NOTES

cxxi V. F. Capotorti, Study on the rights of persons belonging to ethnic, religious and linguistic minorities, New York, UN, Sales No. E.91.XIV.2, 1991, p. 96.


cxxi V. N. Schmitt, ibid, pp. 40-42.


JURIDICAL SOLUTIONS FOR A VIABLE CYPRUS BASED ON THE NEW PARTNERSHIP

(Resume of the Article in English)

Introduction
Following the tragic events of December 1963 and the formation of two governments on Cyprus, the Turkish Cypriot and the Greek Cypriot governments, the two parties have not been able to find a just and acceptable solution for a viable Cyprus. In the last few years the Greek Cypriots wanted to have a unified State whereas the Turkish Cypriots opted for a Confederal State. Lately Mr. Kofi Annan, the Secretary General of the United Nations spoke of a new partnership. This may modify the situation. This concept already dates back to 15 July 1992 when the then Secretary General Mr. Boutros Boutros Ghali had proposed the Set of Ideas: “The Overall Framework Agreement is an integrated whole which ... will result in a new partnership and a new constitution ...”. This did not materialize. The new partnership concept reiterated by Mr. Annan on 12 September 2000 on the occasion of the proximity talks may open the way for a solution, since the content of the new partnership will have to be decided in the negotiations between the politically equal parties. It is therefore important to know the basic elements which have to be considered in the negotiations.

Section 1: Basic Elements For A Just And Viable Solution

For the Turkish Cypriots:

1. National identity
2. Security
3. Representation of Cyprus at international meetings
4. Cyprus membership to the European Union

On these four points, the Turkish Cypriots try to defend their legitimate interests through the equality of status between the two people and the bi-zonality of the territory. Equality of status would serve to protect their national identity, their right to exercise their powers on their territory and their equal participation to common decisions for the whole of Cyprus. Equality of status also confirms the juridical position of the Turkish Cypriots as agreed in the 1959-60
Agreements, of being a community and not a minority. The principle of bi-zonality would guarantee the clear separation of the respective territories where each government would exercise their powers. Bi-zonality would also be a guarantee for their identity and security. The importance of equality of status and bi-zonality became more apparent with the unilateral application of the Greek Cypriots for membership of the European Union. A solution to the problem on these principles have to be found before admission of Cyprus to EU.

For the Greek Cypriots there is objectively no threat to their existence on the island.

Section II: Possible Juridical Solutions Under The Present Conditions

For the Turkish Cypriots the ideal solution would be a Confederation that would guarantee their national identity, security, international representation and a safe place in the European Union. Confederation could be defined as “a union more loose than a federation”. The Greek Cypriots insists on a unitary state. It would therefore be necessary to look for a solution that could have the particularities both of federation and confederation. But to arrive to a just and viable solution there are some sine qua non conditions.

First condition: there should be two distinct territories and two equal politically distinct authorities. They should have identical powers, separate government, administration and judiciary; they should participate in equal terms to the central organs and decisions.

Second condition: this state structure of Cyprus would not be altered when Cyprus joins the European Union. To prevent the adverse effects of freedom of movement, establishment and property rights, this state structure should be adopted in an agreement between Cyprus and the European Union and probably the guarantor countries Turkey, Greece and the United Kingdom. The same should be done with regard to the European Convention on Human Rights.

Third condition comes into play if the parties decide on the single international juridical personality of Cyprus. As the Belgian example would show, each party would be represented in other States and international organizations on matters relating to their own competence.

Fourth condition relates to security of Cyprus and of the two constituent parts. The Treaties of Guarantee and Alliance should be essentially kept in the new partnership.

Fifth condition concerns “succession” to acts and properties of the two parties since the separation from the 1960 system. Treaties concluded by the Greek Cypriots under the title of “the Government of Cyprus” will have to be scrutinized. Laws promulgated by the two parties will be reviewed. Solutions should be found for judicial decisions.
Conclusion
The concept of new partnership offers a real chance for a viable solution for Cyprus. The two parties would negotiate the content of the concept. They should take into account the well established facts in Cyprus and the possibility of accession of Cyprus to the European Union with its two constituent States.
The Cyprus problem is still on the agenda of world politics.

Turkish and Greek Cypriot leaders struggling to find a solution for this problem, against the Greek intransigence, have to jump some big hurdles to reach an agreement.

The first big problem is the shape or the constitutional structure of the state to be formed.

The Greeks insist on the idea of a single state based on the principle of federation, giving the Turks the status of minority with a certain degree of home rule in the Turkish part of the island. The Turks want the Turkish Republic of Northern Cyprus to be recognised as an equal partner in the future state.

If both sides agree on the shape of the new state, other problems such as territory, property, security, etc. shall come on the table.

In the course of the negotiations, the Turkish side recently proposed a system of government based on the concept of "commonwealth" which, constitutionally, is a free association of equal partners.

This term in modern political use is generally confined to a permanent union of sovereign states with linguistic, religious, traditional and cultural diversity, for certain common purposes where the stress is laid on the sovereign independence of each constituent partner.

In this system of government the principal organs of the Partnership State are the "Partnership Assembly" and the "Partnership Council", both elected by the citizens of the partner states, and the decisions taken by these organs are subject to the approval of the respective organs of the partner states.

People in the Turkish Republic of Northern Cyprus as well as the people in Turkey strongly believe that in a country like Cyprus with peoples of widely divergent traditions, cultures, religions and languages, a high degree of cooperation can only be achieved by preserving their national identities and national sovereignty.
Indeed, Cyprus, which is situated less than forty miles from the Turkish mainland with a population of about seven hundred thousand of which the Turks constitute almost one forth of it and own 38 per cent of its arable land, had never been part of Greece nor Greek territory in any sense.

In fact, the Turks had been the sovereign of Cyprus from 1571 to 1914. They had taken the Island from the Venetians who had been there since 1489.

Before the Venetians there was the long Lusignan period from 1192 A. D. onwards.

From 394 A. D. to 1192 A. D. the Island changed hands between Moslem invaders, Richard I and Night Templers.

The Roman period which started in 58 B. C. and continued until 372 A. D. was equally devoid of any Greek rule. So it is clear that, from a historical perspective, Cyprus has never been a Greek island.

Turkish rule in the island was transferred to Britain with the Treaty of Lausanne in 1923.

During the years following World War II Greek Cypriots formed secret para-military organisations under the leadership of Archbishop Makarios and Colonel Grivas to overthrow the British rule, eliminate the Turkish population of the island and thus prepare ground for the ENOSIS which is unification with Greece.

Archbishop Makarios, who later became the President of the Republic of Cyprus and ousted from this office in 1974 by Nicos Sampson, the fanatic leader of the Greek guerrillas, with the support of the Greek junta, had declared on October 20, 1950, the very day he was elected as the Archbishop of the Greek Orthodox Church:

"I take the holy oath that I shall work for the birth of our national freedom and shall never waiver from our policy of annexing Cyprus to mother Greece."

Thus, the fight for driving the British out of Cyprus and for uniting Cyprus to the motherland Greece was on. Once the fight against the British was over, the fight against the Turks would be sharp and ruthless.

Following these activities a resolution also was passed expressing the hope that the interested parties, i.e. Great Britain, Greece and Turkey together with Greeks and Turks of Cyprus should find a fair and just solution by peaceful negotiation.

This prepared the path for Zurich and London agreements of 1959 which Turkey, Greece, Britain together with the leaders of Cyprus Turkish and Greek communities agreed on a constitution for an independent Cyprus in which the Turks were to enjoy self-government.

The constitution accepted a three party guarantee for the promulgation of its provisions and also created a Constitutional Court of three members, two being from each community, with a neutral president to prevent any violation of its terms.
But the Greeks and especially President Makarios were not pleased with the new constitution. They immediately tried to alter the constitution in order to diminish the constitutional rights of the Cypriot Turks.

The situation became so unbearable that Professor Ernst Forsthoff, President of the Constitutional Court, resigned from his post "because of anti-Turkish policy of President Makarios".

With the resignation of Professor Forsthoff a vital safeguard for the protection of Turkish rights was removed.

Then, a series of large scale organised atrocities against the Turkish population by the EOKA and other Greek terrorist forces started. Turkey wanted to intervene in accordance with the tri-partite guarantee agreement, but President Johnson, in June 1964 asked Turkey to refrain from military moves.

Turkish Cypriots suffered severely all this time and lost many lives and properties until July 1974 when Nicos Sampson staged a coup in accord with the Junta officers of Greece to give a final solution to the Cyprus problem by joining it to Greece.

At this stage Turkey used her legitimate rights under the Treaty of Guarantee and intervened in Cyprus to protect the Turkish population from massacres, to prevent further bloodshed and also to put an end to the idea of occupation and annexation of the island by Greece.

Thus, peace and security was established on the island and endless intercommunal and international negotiations started.

The failure of creating a unified Cyprus state with Turco-Greek collaboration up to the present day is due to the insistence of one party on the acceptance of its sovereignty as a separate identity and the irrevocable condition of the other party for a federal administration which would leave the Turkish community with nothing more than minority rights.

The basis and conditions for the creation of a stable government in Cyprus can be traced in the history and the fabric of the Cyprus people as described above.

At present, it is a fact that there exist two separate sovereign states based on their communal identities and aspirations.

These two separate sovereign states, each with its linguistic, religious and cultural diversity united with a central organisation, could be the only possible system which would bring a durable peace to the island.

Such a unity may be established by an agreement signed by the two sovereign states together with the guarantor powers.
The aim of the agreement would be to establish the outward unit and independence of Cyprus, to maintain internal peace and order, to protect the sovereignty and rights of the partner states and to promote their common prosperity.

With this founding agreement the partnership state may guarantee the partner states their sovereignty, their constitutions and the rights and freedoms of their peoples.

Under this agreement the partner states may conclude with their parent states agreements concerning matters of legislation, justice and administration, provided that they bring such agreements to the notice of the partnership state's appropriate agencies.

All official intercourse between the partner states and foreign governments or their representatives may take place through the agencies of the Partnership State.

But partner states may, however, correspond directly with subordinate authorities and officials of foreign states with respect to legislation, justice and administration.

The central organs of the partnership state may be the Partnership Assembly, Partnership Council and Partnership Court.

The Assembly may be composed of members elected by the citizens of the member states for a 2-4 year period.

Representation of the states in the Assembly may either be equal or according to their population. Their number may also be differently fixed according to mutual acceptance.

The Assembly may elect among its members a President and a Vice-President for the duration of the Assembly.

The President and the Vice-President may not be a member from the same state and their position may alternate after each election period.

The power of the Assembly could be to legislate in matters concerning the Partnership State which do not fall within the authority of the partner states' legislative organs.

The decisions of the Assembly may be effective only after their approval by the respective constitutional organs of the two partner states.

The Partnership Council may consist of 10-12 members elected in equal numbers by the partner states, for a period equal to the duration of the Assembly.

The Council may elect a chairman and a vice-chairman from different states.

The chairman of the Council may be the President of the Partnership State during his term of office.

The office of presidency may alternate between the member states.

Other members of the Council may each assume the control of a particular department of central administration.
The Council may also act as the executive organ of the Partnership State.

The decisions of the Council may be subject to the approval of the executive organ of each partner state in order to be legally binding and effective.

There may be a central bureaucracy attached to the office of the President to carry the decisions of the Council.

There may also be a Partnership Court composed of justices appointed by both partner states to adjucate civil and administrative matters concerning the Partnership State.

The system described above, in very general terms, is a prototype for the statehood and administration of communities with diverse cultures and backgrounds.

As this system, with some divergency, is accepted in various countries with similar problems, there may be no logical, legal or political reason why it may not be accepted in Cyprus.