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THE CYPRUS CRISIS 1974-75: POLITICAL-JURIDICAL ASPECTS*

by

Ann Van Wynen Thomas** and A.J. Thomas, Jr.***

ON July 15, 1974, Greek officers, who commanded the Greek Cypriot National Guard, staged a *coup d'état* overthrowing the legitimate Government of the Republic of Cyprus and attempting to assassinate the democratically elected President of that Republic, Archbishop Makarios. The coup and attempted assassination were instigated on instruction from the military junta then ruling in Greece. The purpose of these actions was to impose on Cyprus a government more favorable to that military junta and thereby bring about *enosis* (union) with Greece.¹ Makarios, being forewarned of the plot, escaped, and with the help of the British was flown to London.² Thus began another episode in the long, tragic and bizarre history of the island of Cyprus. Five days later, the actions of the Greeks led to counter-action by the Turks in the form of a Turkish military invasion with some 40,000 men and 300 tanks, bringing with them all the human sufferings and barbarities of war.³

It is the purpose of this study to explore these actions of Greece and Turkey from the standpoint of their legality or illegality according to the principles of international law. Preceding a study of the international legal aspects of the Cyprus crisis, a presentation of the history of the situation becomes necessary.

I. HISTORICAL AND POLITICAL ASPECTS

Background. The island of Cyprus occupies a strategic position in the eastern Mediterranean, five hundred miles from Greece but only forty miles from Turkey. It has a total area of 3,572 square miles with a maximum length of one hundred thirty-eight miles and a maximum width of fifty-nine miles. Of its estimated population of 650,000, eighty percent speak Greek and follow the Greek Orthodox religion, eighteen percent speak Turkish and are Moslems. The remainder is made up of Armenians, Maronites and British.

Cypriot recorded history has been traced to the thirteenth century B.C. when the first Greek colonization took place. Prior to the first century A.D.

* This Article was inspired by some of the issues raised at an International Symposium on Cyprus sponsored by the Athens Panteios School of Political Science, Athens, Greece, March 1-14, 1975, which the authors attended as guests of that school.

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1. N.Y. Times, July 16, 1974, § 1, at 16, col. 2.
2. *Id.*, July 18, 1974, § 1, at 1, col. 8.
3. *Id.*, July 21, 1974, § 1, at 1, col. 8.

it was ruled by Assyrians, Egyptians, Phoenicians, Persians, Macedonians and Romans. Byzantine rule followed that of Rome and in turn gave way to a dynasty of crusaders which lasted until 1489 when the island was taken over by the Venetians. Another change of sovereignty occurred in 1571 when the island was conquered by the Ottoman Turks, a rule which was to continue for three hundred and seven years, and during which there emerged the Turkish Cypriot community to exist side by side with the Greek speaking community.⁴ Turkish rule ended in 1878 when Turkey agreed that Cyprus should be occupied and administered by Great Britain as a base, thus facilitating British promises to protect the Ottoman Empire from Russian aggression.⁵ In November 1914, upon Turkey's entry into World War I on the side of the Central Powers, the island was formally annexed by Britain, and in 1925 it was made into a British crown colony.⁶

Following World War II, the British rulers were faced with more and more cries for *enosis*—the right of Hellenic Cyprus to return to "Mother" Greece. The countering force was Turkish insistence upon partition of the island between Greece and Turkey to protect the Turkish Cypriot minority. These demands led to civil strife fomented for the most part by a Greek terrorist organization, EOKA, led by Archbishop Makarios and a Greek Army Colonel, George Grivas. In 1957, after ten years of sporadic guerrilla warfare, the British finally agreed to change the sovereign status of the island. There was to be no *enosis* with Greece, nor any partition. Rather, Cyprus was to become an independent nation. But its independence was to be burdened with certain restrictions to allay the fears of the Turkish Cypriot minority.⁷

In 1959, following long discussions with Archbishop Makarios, representing the Greek Cypriots, and Dr. Fazil Kutchuk, the leader of the Turkish Cypriots, a tripartite meeting of representatives of the Greek Government, the Turkish Government and the British Government drew up a new Constitution⁸ for the island and three important treaties, the Treaty of Guarantee,⁹ the Treaty of Alliance,¹⁰ and the Treaty of Establishment.¹¹ At the end of the meeting, the Constitution and the treaties were presented

4. Ehrlich, *Cyprus, the "Warlike Isle": Origins and Elements of the Current Crisis*, 18 STAN. L. REV. 1021 (1966).

5. In the Turkish-British agreement there was a stipulation that Cyprus was to pay to Turkey a yearly sum of 92,799 pounds, 11 shillings, and thruppence. This was such a burden on the island's economy that for over 70 years the development of the country was thwarted by lack of funds. For a discussion of the resolution of this problem see Georghallides, *The Commutation of Cyprus's Payment of the Turkish Debt Charge*, 4 ENETHPIE 379 (1970-1971).

6. For a complete 4-volume history of Cyprus see G. HILL, *A HISTORY OF CYPRUS* (1952).

7. Turnbull, *Cyprus and the British*, 1 BRITISH HISTORY ILLUSTRATED 52 (1974).

8. The Constitution is set forth in 3 A. PEASLEY, *CONSTITUTIONS OF NATIONS—EUROPE* 138-221 (rev. 3d ed. 1968). For an excellent short discussion of these articles see P. POLYVIU, *CYPRUS, THE TRAGEDY AND THE CHALLENGE* 16-33 (1975); Ehrlich, *supra* note 4, at 1031-37.

9. Treaty of Guarantee, Aug. 16, 1960, 382 U.N.T.S. 4, No. 5475.

10. Treaty of Alliance, set forth in ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, *CYPRUS: THE DISPUTE AND THE SETTLEMENT* 72-120 (1959).

11. Treaty Concerning the Establishment of the Republic of Cyprus, Aug. 16, 1960, 382 U.N.T.S. 10, No. 5476.

to both Cypriot community representatives who accepted all documents with some reservations.

Under the Treaty of Guarantee the Republic of Cyprus undertook to ensure its independence and to refrain from participation "in whole or in part in any political or economic union with any State whatsoever."¹² The other parties agreed to recognize and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and undertook to prohibit any activity aimed at promoting, directly or indirectly, either union of Cyprus with any other state or partition of the island. In the case of a breach of this Treaty the United Kingdom, Greece, and Turkey agreed to consult with respect to measures necessary to ensure its observance. The three guaranteeing powers reserved the right, if concerted action was not possible, to take action with the sole aim of re-establishing the state of affairs established by the Treaty. The Treaty of Alliance called for Cypriot-Greek-Turkish cooperation to defend the island against aggression, and the Treaty of Establishment provided for British control and sovereignty over two military bases. Greece and Turkey were also to maintain small military contingents on the island, 950 Greek and 650 Turkish officers and men respectively.¹³

The Treaty of Guarantee and the Treaty of Alliance were incorporated into the Cypriot Constitution. The Constitution provided for a Greek Cypriot President elected by the Greek Cypriot majority and a Turkish Cypriot Vice President elected by the Turkish Cypriot minority. Each had a right of veto over foreign affairs, defense and internal security. A Council of Ministers composed of members from both communities in a 30%-70% ratio was to be established by the respective communities, but with the stipulation that a Turkish Cypriot official should hold one of the three important ministries: foreign affairs, defense or finance. In addition, the Constitution guaranteed a number of posts for the Turkish minority in the army (40%), the police force (30%), and the civil service (30%). It called for a unicameral legislative body of 50 members with a 70-30% ratio of Greek Cypriot to Turkish Cypriot representatives. The minority community was also given legislative and administrative autonomy in matters of personal estates, local taxation, and control over religious, educational and cultural affairs.

With goodwill this solution might have worked; but, from the first, deep suspicions divided the two communities. The Greek Cypriot majority felt that the Constitution prohibited majority rule and fostered the maintenance of a state within a state. The Turkish Cypriot minority feared that without such constitutional guarantees they would have no rights at all. The two factions grew increasingly uncooperative with each other, and in 1963 Archbishop Makarios proposed constitutional changes to eliminate some of the privileges of the Turkish Cypriot community and an abrogation of the Treaties of Alliance and Guarantee. The Turkish Cypriots, sensing a grave threat to their existence, rejected the changes, and almost immediately intercommunal

12. Treaty of Guarantee, Aug. 16, 1960, 382 U.N.T.S. 4, No. 5475.

13. Treaty of Alliance, set forth in ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, CYPRUS: THE DISPUTE AND THE SETTLEMENT 72-120 (1959).

strife again broke out. Civil strife became endemic on the island with peak periods of intensity in 1963-64 and in 1967. As a result of these upheavals, many Turkish Cypriots abandoned their farms and villages and gathered for self-protection in small enclaves.¹⁴

The strife on Cyprus led to a consideration of the problem by the Security Council of the United Nations which eventually established a United Nations Peace-Keeping Force on the island with a mandate to prevent fighting and to contribute to the maintenance of law and order. However, the United Nations forces were not able to prevent Turkish air attacks and bombings of the island in 1964 which the Turks claimed were being carried out to protect a Turkish Cypriot enclave under attack by Greek Cypriot troops.¹⁵ Nor was the United Nations Peace-Keeping Force able to prevent another outbreak of hostilities in 1967.¹⁶

In April 1967 a military coup took place in Greece which had repercussions on the Cypriot scene. Among the supporters of the Greek military junta was the now General George Grivas who was the leader of the Greek Cypriot National Guard, a force established by Makarios to circumvent the constitutional requirements of minority representation in the Cypriot army and police force. Grivas had never viewed an independent Cyprus as an adequate substitute for *enosis*, and in defiance of both the United Nations Peace-Keeping Force and orders from President Makarios, he sent a National Guard patrol through a Turkish enclave. Shots were fired. The National Guard opened an attack on the enclave. Two days of fighting elapsed before the United Nations Force could achieve a cease-fire and force the National Guard troops to withdraw from the besieged area. There was an immediate threat of invasion by Turkey unless Greece removed General Grivas and withdrew all Greek forces from Cyprus in excess of those established by the 1959 agreements, and unless Makarios disbanded the National Guard.¹⁷

The Greek Military Government, which was weak and unpopular at home and abroad and in no state to go to war with Turkey, recalled General Grivas, at least on a temporary basis. Although withdrawal of Greek forces represented a major step away from *enosis*, the pressures from abroad were so great that the troops were removed. Thereafter tensions on the island abated to some extent, but the problems between the two Cypriot communities remained, as Makarios refused to disband his Greek Cypriot National Guard.¹⁸

There continued to exist the problem of the Turkish Cypriot refugees who had fled from their homes to Turkish enclaves for protection. These enclave areas possessed insufficient resources to support the increased populations

14. L. MILLER, *CYPRUS: THE LAW AND POLITICS OF CIVIL STRIFE* 9-10 (1967).

15. Secretary General, Report to the Security Council Concerning the Situation in Cyprus, 22 U.N. SCOR, Supp. Jan.-Mar. 1964, at 24, U.N. Doc. S/5516 (1964).

16. Secretary General, Report to the Security Council Concerning the Situation in Cyprus, 22 U.N. SCOR, Supp. Oct.-Dec. 1967, at 215, U.N. Doc. S/8248 (1967).

17. Duncan-Jones, *The Civil War in Cyprus*, in *THE INTERNATIONAL REGULATION OF CIVIL WARS* 148 (E. Luard ed. 1972).

18. *Id.* at 155.

and depended upon Turkish economic aid for maintenance. In the words of a Turkish Cypriot spokesman:

There were 50,000 Cypriots in the Greek sector in daily fear of their lives seeking asylum in the Turkish region of Cyprus. More than 20,000 were new refugees who had all their property looted by Greek gunmen. For the last 11 years, 24,000 Turkish Cypriots had been living as displaced persons in temporary refugee accommodations under unhygienic conditions and every time the Turkish community applied for rehabilitation, the reply of the Greek Cypriot administration was that the problem could not be solved before a political solution of the Cyprus question was reached.¹⁹

After the 1967 incidents, the Greek Cypriots no longer presented a united front. President Makarios, having abandoned the idea of *enosis* in favor of an unfettered independent state, was opposed by right wing Cypriot extremists who re-established the pre-independence terrorist organization, now called EOKA-B, and facilitated the clandestine return of General Grivas in 1971. There were numerous plots and attempts to assassinate Makarios, and there were several clashes between the members of EOKA-B and pro-Makarios Greek Cypriots.²⁰

In early July 1974, Makarios demanded that the military junta in Greece recall the 650 Greek officers who had remained in Cyprus to train and command the National Guard. He complained that these Greek officers and their EOKA-B friends were planning to overthrow his government. Exactly ten days later the coup and attempted assassination took place.²¹ The Greek officers established a new Cypriot Government headed by Nicos Sampson, an EOKA-B leader. The elevation of Sampson to head of state indicated to the Turks that *enosis* was about to take place and triggered the Turkish invasion of Cyprus to assure that no such union would occur.²² The Turkish invasion raised the grim specter of war between Turkey and Greece, a war for which Greece was not prepared. In turn this so unsettled political conditions in Greece that the military government was ousted, and Constantine Karamanlis was recalled from exile to form a Greek government of national unity. With the collapse of the Greek military junta came the collapse of the Sampson regime, and the taking over of the Cyprus Government by Acting President Glafcos Clerides who held office until Makarios returned to the island in December 1974.²³

However justified may have been the original Turkish invasion, there was little justification for the resumption of hostilities after the initial cease-fire demanded by the United Nations Security Council on July 22, at which time the Turkish forces had established a wedge from the port of Kyrenia to the capital, Nicosia. But the Turks continued to reinforce the military units on

19. 11 U.N. MONTHLY CHRONICLE, Dec. 1974, at 28.

20. N.Y. Times, July 16, 1974, § 1, at 1, col. 8.

21. *Id.*, July 17, 1974, § 1, at 1, col. 4.

22. 11 U.N. MONTHLY CHRONICLE, Dec. 1974, at 28.

23. N.Y. Times, July 20, 1974, § 1, at 9, col. 1.

the island and continued to expand the width of the Kyrenia-Nicosia corridor.²⁴

On July 26, the three guarantor governments met in Geneva in an attempt to resolve the problems which arose from these interventions. Agreement was reached on the implementation of the cease-fire and on the establishment of a demarcation line separating opposing forces.²⁵ Political issues were left in temporary abeyance to be taken up later in Geneva on August 8. At that time the Turks presented a demand that Cyprus should remain an independent nation but it should be composed of two federated states, one Greek Cypriot and the other Turkish Cypriot, each state to have full autonomy within its borders. The area of the Turkish Cypriot state would encompass 34% of the territory of the island, despite the fact that the Turkish Cypriot population comprised only 18% of the whole. The 34% demand was based on the assertion by the Turks that Turkish Cypriots had owned at least that amount of the island before being dispossessed of territory under the last ten years of the Makarios regime. As an alternative to this federal proposal, the Turks also offered a cantonal system which would contemplate the occupation of several cantons by Turkish Cypriots. These proposals were unpalatable to both the Greeks and the Greek Cypriots, and the conference broke down on August 14.²⁶ The same day the Turkish army marched across the entire northern portion of Cyprus until its forces occupied 40% of the island, including some of its most productive territory. On February 13, 1975, the Turkish Government issued a declaration on behalf of the Turkish Cypriots proclaiming the establishment of a Federated Turkish Cypriot State in the Turkish occupied area. Thus, Turkey did by arms what she had failed to accomplish by diplomacy.

Some 200,000 Greek Cypriots, or about 40% of the Greek Cypriot population, who were living in the area the Turks occupied, were obliged to leave their homes and take refuge in other parts of the country. The economic life of the island became a shambles and massive international aid was required to keep the people of Cyprus from starving.²⁷ There can be little doubt that grave atrocities occurred on both sides. But as soon as Greek Cypriot atrocities came to light, Acting President Clerides immediately agreed to an independent investigation by the United Nations or by the International Red Cross and condemned with abhorrence all such acts. He challenged the Turks to permit the United Nations and the Red Cross to investigate their acts of atrocity but permission was refused.²⁸ The Turks violated a number of international rules concerning the conduct of hostilities, particularly those rules and regulations which deal with humanitarian treatment of the people

24. *Id.*, July 24, 1974, § 1, at 1, col. 8.

25. *Id.*, July 29, 1974, § 1, at 5, col. 9.

26. *Id.*, Aug. 15, 1974, § 1, at 4, col. 1.

27. Cyprus Public Information Office, Nicosia, *The Economic Consequences of the Turkish Invasion of Cyprus* (Oct. 1974).

28. P. POLYVIU, *supra* note 8, at 192. See also 11 U.N. MONTHLY CHRONICLE, Dec. 1974, at 31; SENATE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., CRISIS ON CYPRUS: A STUDY MISSION REPORT PREPARED FOR THE USE OF THE SUBCOMM. TO INVESTIGATE PROBLEMS CONNECTED WITH REFUGEES AND ESCAPEES 23 (1974).

of occupied territory, and the prohibitions against looting, plundering, and forced expulsion of inhabitants from their homes.²⁹

The Greek Cypriots described the underlying purpose of the Turkish invasion and occupation as being one "to eliminate the indigenous population and colonize the occupied territory with Turks from the mainland of Turkey, to be supplemented by Turks from Cyprus."³⁰ It has also been claimed that with the world-wide depression, Turkish workers who had been working in the European common market countries were returning to Turkey, and in order to prevent internal domestic problems, farming land in Cyprus formerly belonging to Greek Cypriots was to be turned over to them.³¹

The United States' Role. The United States policy with respect to Cyprus has been dismal at best. The objectives of this nation have been mainly to preserve the North Atlantic Treaty Organization (NATO), to which both Greece and Turkey belong, and to this end to attempt the difficult task of maintaining a reasonably friendly relationship between Greece and Turkey.³² With American NATO bases in both Turkey and Greece, a tranquil Cyprus was necessary if these bases were to be used to their full effectiveness in any emergency which might threaten either or both of these NATO nations. But even with these considerations a harmonious relationship between Turkey and Greece in NATO was almost impossible of achievement. Nothing dissipated the latent animosity between these two neighbors.

Any overtures made by the United States to suggest solutions were regarded with great suspicion by Greece, Turkey and Cyprus. This atmosphere of suspicion has been heightened by the conspiratorial theory of international politics which perceives the CIA as being omnipresent and omnipotent in the political affairs of all three nations. It has been alleged that the CIA has manipulated the internal and foreign policies in all three nations, created unrest and deposed governments at will.³³ Such accusations were based on the claim that the CIA from the moment of Cypriot independence had conspired to obtain American bases on the island for strategic use in Middle Eastern affairs. The Turks claimed that the CIA was responsible for establishing the military regime in Athens in 1967, and that back in 1964 it had prevented Turkey from carrying out an amphibious operation against Cyprus. The Greeks and Greek Cypriots claimed that the rash attempt of the Greek colonels to grab power in Cyprus in July 1974 was actually planned and instigated by the CIA, and when it failed in its objective, the invasion of Cyprus by Turkish troops was encouraged by the Agency. This undocumented charge was deduced from the fact that the American Mediterranean fleet did nothing to stop the invasion.³⁴ On the

29. 2 L. OPPENHEIM, *INTERNATIONAL LAW-DISPUTES, WAR AND NEUTRALITY* 405, 436, 438, 451, 513 (7th ed., H. Lauterpacht ed., 1952).

30. 11 U.N. MONTHLY CHRONICLE, Dec. 1974, at 11.

31. Address by G. Tenekides, The Athens Panteios School of Political Science, International Symposium on Cyprus, March 10-14, 1975.

32. F. BEER, *INTEGRATION AND DISINTEGRATION IN NATO* 17 (1969).

33. G. HARRIS, *TROUBLED ALLIANCE: TURKISH AMERICAN PROBLEMS IN HISTORICAL PERSPECTIVE, 1945-1971*, at 139 (1972); N.Y. Times, May 3, 1967, § 3, at 1, col. 8.

34. N.Y. Times, Mar. 9, 1975, § 4, at 4, col. 3.

part of Turkey, the fact that on February 5, 1975, Congress cut off military aid to Turkey when it invaded Cyprus was seen as further evidence of American determination, one way or another, to dominate Turkish political life on the national as well as the international level.³⁵

Actually from 1963 onward the United States was rather wary of injecting itself into the forefront of any dispute on Cyprus for fear of alienating either Greece or Turkey. Nevertheless on June 5, 1964, when Turkey was on the verge of invading Cyprus, President Lyndon Johnson sent a letter to İsmet İnönü, the Prime Minister of Turkey, expressing grave concern over Turkish plans. He stated: "I must tell you in all candor that the United States cannot agree to the use of any United States supplied military equipment for the Turkish intervention in Cyprus under present circumstances."³⁶ The Johnson letter was effective in averting the planned military action of the Turks at that time but created a sharp division in Turkish-American relations as it was viewed by many in Turkey as an intervention in that nation's sovereign affairs.³⁷

Later in June 1964 President Johnson met separately with Greek Prime Minister George Papandreu and Turkish Prime Minister İsmet İnönü and suggested that talks on the Cyprus issue be held at Geneva under the aegis of the United Nations mediator with the participation of Dean Acheson, the former United States Secretary of State. Again the Cyprus Government was not invited to participate. Acheson drew up a plan which called for the union of Cyprus with Greece in exchange for cession of the tiny Greek island of Castelarizon to Turkey, and provided that two Turkish cantons be established on Cyprus, that a Cypriot military base be ceded to Turkey, and that compensation be paid to those Turkish Cypriots who wished to emigrate to Turkey. The plan was immediately denounced by Makarios and led to another outbreak of fighting on Cyprus in which Turkey resorted to air strikes against the Greek Cypriot community. The Acheson Plan increased anti-Americanism not only in Turkey but also in Cyprus and Greece. Thus in August 1964 the Acheson mission came to an unsuccessful close.³⁸

After the military coup in Greece in April 1967 the United States was again caught in an uneasy position between the two NATO allies. This time President Johnson dispatched Cyrus Vance as his personal representative to attempt to promote a settlement between Greece and Turkey and to counsel peaceful negotiations. At the same time the Secretary General of the United Nations appointed his Special Representative to help solve the crisis, and the Secretary General of NATO offered his good offices. All three men worked closely together to obtain the tentative agreement that Greece would pull out

35. N.Y. Times, Feb. 6, 1975, § 1, at 13, col. 1.

36. Letter from Lyndon Johnson to Turkish Prime Minister İsmet İnönü, June 5, 1964, in 20 MIDDLE EAST J. 386 (1966). See also T. EHRlich, CYPRUS 1958-1967: INTERNATIONAL CRISES AND THE ROLE OF LAW 83 (1974).

37. J. DAVIDS, THE UNITED STATES IN WORLD AFFAIRS—1964, at 53-67 (1965); G. HARRIS, *supra* note 33, at 118; ROOS, ROOS & Field, *Students and Politics in Turkey*, 97 DAEDALUS 184, 193 (1968).

38. Acheson, *Cyprus: The Anatomy of the Problem*, 46 CHICAGO BAR RECORD 349 (1965).

its troops illegally stationed on the island, Turkey would disband its invasion force and the Cypriot National Guard would be reduced. But Makarios refused to consent to any bilateral effort between Greece and Turkey to bind him.³⁹ Nevertheless the situation was defused until 1974. But in all three nations anti-Americanism continued to flourish and grow, posing a continuing and serious challenge to the NATO alliance.

All of these factors may have influenced Washington not to take a stronger stand against the 1974 Turkish invasion. Moreover, the 1974 Cyprus crisis began at the time of the collapse of the Nixon presidency, and American foreign policy seemed to be virtually suspended during the most crucial days of the crisis. Following the Turkish invasion the Department of State made a rather feeble attempt to find a common ground between Greece and Turkey in an effort to save NATO's southeastern defenses, but it ran into formidable obstacles posed by all three governments whose view on the ultimate solution for Cyprus remained as far apart as ever. The net result of Washington's efforts or lack of efforts has been an alienation of all three nations. The Karamanlis government which took over from the military junta in Greece was so unhappy with American failure to stop the Turkish invasion that the Government withdrew Greek military units from NATO. And in April 1975 the Greeks withdrew permission for the United States Sixth Fleet to use the harbor of Elefsis, seventeen miles west of Athens. Various other American facilities were shut down, such as the airbase at Hellinikon operated by the Air Transport Command, the ballistic missile range and the telecommunications base in Crete, air and naval facilities at Suda Bay in Crete, naval communications bases at Marathon near Athens, and an artillery base near Salonika. It pared down the privileges, immunities and exemptions formerly granted to American personnel, and declared that the remaining five American installations in Greece were to be placed under Greek commanders.⁴⁰

As for Turkey, it was so angered by the congressional arms embargo that in February 1975 it prohibited any ships of the Sixth Fleet to drop anchor in either Istanbul or Ismir.⁴¹ President Ford sought to obtain congressional permission to resume military aid to Ankara, but Congress has been reluctant to lift the ban. It has been claimed that the ban on Turkish aid was pushed through Congress by an alliance of the small, potent Greek lobby and the large, potent Israeli lobby. These two lobbies were so effective that even the Turkish threat of closing down highly sensitive American bases along the Turkish Soviet border could not persuade Congress to reconsider its decision. Furthermore, the President was warned that any congressional debate on the repeal would make Turkey the whipping boy, stirring up even harsher anti-American feelings among the Turks.⁴²

39. T. EHRLICH, *supra* note 36, at 111-12.

40. TIME, May 12, 1975, at 35; N.Y. Times, March 9, 1975, § 4, at 4, col. 3; *id.*, April 20, 1975, § 4, at 17, col. 1; *id.*, May 11, 1975, § 4, at 3, col. 1.

41. Time, May 12, 1975, at 35.

42. Evans & Novak, *Ethnic Policies Growing Menace*, Sherman Democrat, April 10, 1975, at 8, col. 7.

The Turkish military and diplomatic experts drew up various contingency plans in the event that no congressional repeal came into being. The United States had maintained more than twenty military installations in Turkey, many of which were considered to be of vital importance to the western alliance. Failure of Congress to lift the arms ban in spite of pleas by the Ford Administration brought about the threatened Turkish retaliation in July 1975. The Turks assumed control over all American military bases and suspended all American military operations. Premier Suleyman Demirel of Turkey even rejected the offer of a fifty million dollar grant of weapons by President Ford in return for reopening the bases. Ford had offered the arms grant under legislation which permitted him to provide arms to friendly nations when the executive branch considered such aid absolutely vital to the national security.⁴³ The Turks refused the grant on the basis that they were unwilling in principle to accept as a gift what they were quite willing and able to pay for.⁴⁴ The Turks claimed that the congressional arms embargo which not only halted military aid to Turkey but also banned the sale of military hardware on a commercial basis violated its common defense agreements with the United States which commits the United States to supply military equipment to its NATO allies.⁴⁵ Even if the arms embargo should be removed, the relationship between Ankara and Washington will probably not be the same because Turkish domestic politics would rule out reopening all of the bases. Such bases as the Turks would consider essential to the NATO alliance might be reopened but under NATO rather than American control.⁴⁶

In an attempt to alleviate some of the strains in the relationship of the United States with its two NATO allies, Secretary of State Henry Kissinger met in Austria in March 1975 with the Greek Foreign Minister, Dimitrios Bitsios, and made a short visit to Ankara for talks with the Turkish Foreign Minister.⁴⁷ Thereafter he proposed that further negotiations looking toward a settlement of the problem be resumed under the auspices of the United Nations Secretary General, Kurt Waldheim. Dr. Waldheim suggested that the talks should start in Rome between April 10 and 13. The Turkish Cypriots accepted these proposals and also approved of Vienna as an additional venue for consideration. Both of these locations were at first unacceptable to the Greeks and the Greek Cypriots who wanted negotiations to be held either in New York City, where there is a large vocal Greek-American population, or in Geneva or Paris, where Greek Cypriots have diplomatic representatives. This counter proposal was rejected by the Turkish Cypriots on the basis of the General Assembly Resolution 3212 which provided that talks between the Turkish Cypriot community and the Greek Cypriot

43. N.Y. Times, Aug. 1, 1975, § 1, at 1, col. 1.

44. N.Y. Times, Aug. 3, 1975, § 4, at 3, col. 1.

45. 112 Manchester Guardian Weekly No. 10, March 8, 1975, at 12, col. 4; The Christian Science Monitor, March 28, 1975, § 1, at 1, col. 3.

46. N.Y. Times, July 29, 1975, § 1, at 1, col. 2.

47. International Herald Tribune, March 12, 1975, at 1, col. 3; 72 DEPT. STATE BULL. 473-74 (1975).

community be "on an equal footing."⁴⁸ It was claimed that since the Turkish Cypriot community did not have diplomatic missions abroad, acceptance of the Greek demand of resuming the talks at a capital where Greek Cypriots had a diplomatic mission would be against the "equal footing" principle. Under pressure from the United Nations, the Greeks finally agreed to Vienna as a negotiating site, and negotiations between Mr. Glafkos Clerides for the Greek Cypriots and Mr. Rauf Denktaş for Turkish Cypriots began in that city on Monday, April 28, 1975.⁴⁹

Great Britain's Role. The British policy toward Cyprus since it granted the island its independence can be described as confused and haphazard. When, in December 1963, the United Nations Security Council was requested to meet in emergency session to discuss the raging civil strife on Cyprus and the apparent imminent threat of invasion by Turkey, Britain requested a delay of the meeting in order to give the British a chance to attempt to ameliorate the situation. An armed British force was established with orders to help restore order on the island, and the British called a conference in London in an attempt to resolve the crisis through peaceful negotiation.⁵⁰ This conference was a failure in all respects. Britain would not agree with Makarios that the Constitution had been foisted upon Cyprus and could no longer be considered binding, nor would it agree with Turkey that Turkey should invade the island under the Treaty of Guarantee. The British suggested that a NATO peacekeeping force be allowed to replace the British, but Makarios insisted that if an international force were to be sent to Cyprus it should be under the auspices of the United Nations.⁵¹

Upon the failure of the London Conference, the British Government requested an early meeting of the Security Council to discuss the Cyprus issue. Britain laid the problem before the United Nations as a final resort, only when all other attempts at peacekeeping and negotiation had failed, and when Britain itself was no longer interested in continued bearing of the expense necessary to control the situation.

The Cyprus Issue and the United Nations. After much debate, the Security Council on March 4, 1964, passed a resolution calling upon all members to refrain from any action or threat of action likely to worsen the situation in the Republic of Cyprus or endanger international peace. The resolution requested the Government of Cyprus to take all necessary measures to maintain law and order and stop violence and bloodshed. It recommended the creation of a peacekeeping force under United Nations auspices and the appointment of a United Nations mediator to attempt to resolve the issues.⁵²

48. G.A. Res. 3212, 29 U.N. GAOR Supp. 31, U.N. Doc. A/9631 (1974).

49. N.Y. Times, April 9, 1975, § 1, at 46, col. 1; *id.*, April 29, 1975, § 1, at 3, col. 6; *id.* May 11, 1975, § 4, at 3, col. 1.

50. C. FOLEY, LEGACY OF STRIFE 168 (1964); J. STEGENGA, THE UNITED NATIONS FORCE IN CYPRUS 35-36 (1968); Psomiades, *The Cyprus Dispute*, 48 CURRENT HISTORY 269 (1965).

51. L. MILLER, *supra* note 14, at 47; Duncan-Jones, *supra* note 17, at 149; Gordon, *The U.N. in Cyprus*, 19 INT'L J. 326, 332 (1964); TIME, Feb. 21, 1964, at 34.

52. 19 U.N. SCOR, Supp. Jan.-Mar. 1964, at 102, U.N. Doc. S/5575 (1964); 19 U.N. SCOR, Supp. Apr.-June 1964, at 105, U.N. Doc. S/5679 (1964).

As the financing of the peacekeeping force had to be met by the governments providing the contingents, most governments who were in a position to provide such a force were reluctant to undertake such a task. Apparently the Security Council resolution had been passed upon the assumption that the United States would foot the bill, but the United States refused. The Secretary General made personal appeals for voluntary contributions from likely countries, and eventually he obtained sufficient financial support to cover the initial costs.⁵³ Even then there were problems related to the qualifications required of such a force. The Greek Cypriot Government was unwilling to allow African or communist troops or troops of a NATO power to come to the island. While Secretary General U Thant desperately sought out satisfactory forces, the British announced that unless a United Nations force arrived quickly they would withdraw all their troops to their sovereign bases on the island. The Turks, of course, became increasingly impatient with the inaction. But eventually, by March 27, 1964, the United Nations Force in Cyprus (UNFICYP) became operational with Canadian, Irish, Swedish and Finnish troops.⁵⁴

The functions of UNFICYP which the Security Council resolution of March 4, 1964, established were to prevent recurrence of fighting, to contribute to the restoration and maintenance of law and order, and to return the island to normal conditions. This ambiguous mandate permitted each side to interpret it in terms favorable to itself. The Makarios government viewed the mandate as putting the force at its disposal to crush domestic rebellion and to restore "order." The Turkish Cypriots viewed it as a mandate of UNFICYP to return to the ante bellum normalcy of 1963. The Greek Cypriots insisted that "normal" meant a unified, unitary state with majority rule which was "normal" in democratic nations.⁵⁵ No clarification on these contentions came from the Security Council and hence the Secretary General established his own guide lines for the UNFICYP role. He stated that the troops could shoot in self-defense only and that they could not take any action which was likely to bring them into direct conflict with either Greek or Turkish Cypriots except to protect themselves or to avert violations of arrangements previously accepted by both communities. The force was not to serve the special interests of any community, group or interest in Cyprus. It was not to be an arm of the Makarios government, nor was it to serve Turkish Cypriot aims of reinstating the 1960 Constitution or securing a de facto partition. The mandate to prevent a recurrence of fighting was to be fulfilled by interposing the United Nations troops between two belligerents and by patiently working to reduce tensions and confrontations. The mandate to restore and maintain law and order was not the law and order of the 1960 Constitution, nor the law and order of the Makarios regime, but rather to assist in the protection of life and property against violence from any source. And the duty to return to normal conditions did not mean either the

53. J. STEGENGA, *supra* note 50, at 73; Duncan-Jones, *supra* note 17, at 151.

54. J. STEGENGA, *supra* note 50, at 77; Gordon, *supra* note 51, at 340.

55. J. STEGENGA, *supra* note 50, at 102-19; Duncan-Jones, *supra* note 17, at 152.

pre-December 1963 constitutional normality, nor the normality of a unitary government ruled by the Greek Cypriot majority, nor the normality of a federal government with two distinct states. It meant rather, that day-to-day life on Cyprus be returned to normal. Thus the UNFICYP was used merely to establish calm, stability and normal daily living. The greater problem of a lasting settlement was the assigned province of the United Nations Mediator working with all parties, not UNFICYP.⁵⁶

The first United Nations Mediator, Finnish diplomat Sakari Tuomioja, died in August 1964, and was replaced by Galo Plaza, a former president of Ecuador. Galo Plaza reported to the United Nations in March 1965.⁵⁷ After summarizing the background of the crisis and the rigid positions of all sides, he set forth certain *personal* proposals which he felt should guide subsequent discussions. He made five key suggestions: (1) any political settlement should be arranged by the two Cypriot communities first and only then ratified by the mainland governments rather than the reverse as had been the case in 1959; (2) the restrictive treaties should be abrogated or at least modified; (3) the principle of self-determination, and by extension the majority's right to opt for *enosis*, should be recognized, but the majority should agree voluntarily to refrain from exercising the *enosis* option; (4) the federal form of government that the Turkish Cypriot community desired was both impractical and undesirable as it would necessitate population resettlement and might lead to increased pressure for partition of the island; (5) the Turkish Cypriot community should be willing to trade its disproportionate blocking power for constitutional and international safeguards of its legitimate rights.

The Greek Cypriot leaders agreed with all points except that they should voluntarily renounce *enosis* merely to reassure the Turkish Cypriot community. But the Turkish Cypriot community rejected the report immediately as totally unacceptable even as a basis for discussion. Furthermore, they demanded that Galo Plaza be replaced. In spite of efforts of the Secretary General to defend Plaza's initiative, the Turks and the Turkish Cypriots refused to deal with him and he eventually resigned. He was not replaced, and official United Nations mediation was abandoned for the time being.⁵⁸

In 1968 leaders of the two Cypriot communities again resorted to discussions in an effort to resolve their differences. But by 1971 these talks had arrived at a deadlock which could not be overcome without some new impetus. The Secretary General of the United Nations suggested that the

56. 19 U.N. SCOR, Supp. Apr.-June 1964, at 12, U.N. Doc. S/5653 (1964).

57. 20 U.N. SCOR, Supp. Jan.-Mar. 1965, at 199, U.N. Doc. S/6253 (1965).

58. Plaza finally submitted his resignation. . . . His plan for Cyprus made excellent sense—indeed the future he foresaw for the island, as an independent unitary state, but with real safeguards guaranteed by the UN for the minority, is that which the parties themselves have more or less come round to now—but his job was to mediate, not to judge. He failed to take into account the realities of the situation. It may have been the ideal solution in theory, but it was not at that time a possible one; and no solution, however sensible in theory, is any good without the agreement of the parties to the dispute.

Duncan-Jones, *supra* note 17, at 164.

talks be enlarged to include the Secretary General's Special Representative, and that the Greek and Turkish Governments should each make available a constitutional expert to attend the talks in an advisory capacity. The role of the Special Representative was merely that of good offices exercised on the Secretary General's behalf and with no intention that he should act as a mediator or put forth substantive proposals concerning solutions to the problem.⁵⁹ This suggestion was acted upon, although little progress was made up to the moment when the Greek junta attempted the assassination of Makarios which spurred the eventual Turkish invasion of the island.

As one of the three powers that guaranteed the security of the Republic of Cyprus it would seem that the British, with troops available on their bases on Cyprus, could have done more to discourage Turkish invasion. Immediately following the coup the Turkish Prime Minister flew to London to consult with the British about the situation. No authoritative reports of the results of this consultation exist, but apparently some assurance of British non-action must have been given, for shortly thereafter the Turkish troops invaded the island. If the British could not have persuaded the Turks against taking this step, it would seem they could have at least prevented Turkey's expansion of the occupation after the initial landing and the cease-fire had gone into effect. Britain had a large force on the island and could have reinforced the small body of UNFICYP troops which unsuccessfully attempted to stop the two sides from fighting. The British claimed that strategic consideration involving British domestic politics, overextended commitments abroad, and NATO considerations prevented her from so doing.⁶⁰

Following the Turkish invasion, a great many Turks still living in Greek Cypriot areas fled to the British bases for protection. In September of 1974 the Turks suggested that these refugees be sent to the Turkish mainland, presumably intending to return them thereafter to the Turkish occupied area of Cyprus. At that time, the British refused, pointing out that the Greek Cypriot Government was prepared to extend every guarantee and safeguard concerning the safe return of the Turkish Cypriots to their homes in the Greek Cypriot portion, including international supervision. In spite of these guarantees, less than a thousand of the ten thousand Turkish Cypriots on the British bases left voluntarily. Thus, in January 1975 the British agreed to transfer the refugees to the Turkish mainland. There were angry reactions from the Greek Cypriot community which viewed such action as a violation of the Treaty of Establishment by the British. That Treaty contained an express prohibition against the use of the bases for civilian airports. By transporting by air the civilian refugees to Turkey, the Greek Cypriots believed that the British were in effect converting the bases into airports for civilian use. Furthermore, the Greek Cypriots viewed this airlift as an act of intervention in Cypriot affairs, and hence violative of the non-intervention principle of international law. The British countered with the response that

59. Introduction to the Report of the Secretary-General on the Work of the Organization, 26 U.N. GAOR Supp. 1A, at 28-30, U.N. Doc. A/8401 (1971).

60. N.Y. Times, July 17, 1974, § 1, at 1, col. 6; P. POLYVIU, *supra* note 8, at 215.

the airlift was carried out for purely humanitarian reasons, for the refugees were living under canvas in severe winter weather and were suffering from cold and disease.⁶¹

When the government of Archbishop Makarios was overthrown by the Greeks, the Secretary General of the United Nations requested the Security Council to meet so he could keep them apprized of what was occurring on the island.⁶² The Council considered the situation for two weeks and adopted eight resolutions on the Cyprus problem calling upon all states to respect the sovereignty, independence and territorial integrity of Cyprus, and demanding an immediate end to foreign military intervention in the Republic. The withdrawal of all foreign military personnel without delay was requested.⁶³ The General Assembly of the United Nations also debated the Cyprus situation in November 1974 and in its resolution, among other things, requested the Secretary General to continue to lend his good offices to the parties concerned, expressed the hope that further negotiations under United Nations auspices would take place, and recommended that the negotiations take place on an equal footing between the representatives of the two communities in order to reach a mutually acceptable political settlement based on their fundamental and legitimate rights. Both bodies called upon all parties to continue to cooperate fully with the peacekeeping force on Cyprus, and both bodies expressed the hope that the refugees could return to their homes in safety.⁶⁴

Following the unilateral establishment of the Federated Turkish Cypriot State in February 1975, the government of Archbishop Makarios requested and again obtained a series of meetings of the United Nations Security Council on the grounds that Turkey had violated the resolutions of the General Assembly and Security Council, and, moreover, that the Turkish declaration was a prelude to a Turkish Cypriot separatist move.⁶⁵

Mr. Vedat A. Celik was invited to speak to the Security Council as a representative of the Turkish Cypriots. He denied the Greek Cypriot allegation stating that the proclamation of the Federated Turkish State of Cyprus was a purely internal reorganization of the autonomous Turkish administration. It was not a unilateral declaration of independence, nor was it an autonomous state, so it did not run counter to any United Nations resolution, all of which had reaffirmed the sovereignty, territorial integrity or independence of Cyprus. Nor could it be considered as violative of the Constitution of Cyprus because, according to Mr. Celik, that document had been destroyed by Archbishop Makarios in December 1963. Moreover, after his return to Cyprus in December 1974, Archbishop Makarios had further defied the

61. N.Y. Times, Jan. 15, 1975, § 1, at 10, col. 7; P. POLYVIOTIS, *supra* note 8, at 215.

62. 11 U.N. MONTHLY CHRONICLE, Aug-Sept. 1974, at 3, 4.

63. S.C. Res. 353, 29 U.N. SCOR, 1781st meeting 7 (1974); S.C. Res. 354, 29 U.N. SCOR, 1783rd meeting 7 (1974); S.C. Res. 355, 29 U.N. SCOR, 1789th meeting 8 (1974); S.C. Res. 357, 29 U.N. SCOR, 1792nd meeting 8 (1974); S.C. Res. 358, 29 U.N. SCOR, 1793rd meeting 8 (1974); S.C. Res. 359, 29 U.N. SCOR, 1793rd meeting 8 (1974); S.C. Res. 360, 29 U.N. SCOR, 1794th meeting 9 (1974); S.C. Res. 361, 29 U.N. SCOR, 1795th meeting 9 (1974).

64. G.A. Res. 3212, 29 U.N. GAOR Supp. 31, U.N. Doc. A/9631 (1974).

65. 12 U.N. MONTHLY CHRONICLE, March 1975, at 3.

Constitution by setting up a National Council to further "the national cause" and had formed a new cabinet constituted purely of Greek Cypriots.⁶⁶ He went on to maintain that experience had proven that the two national communities could not live peacefully together and that the only way to bring peace and quiet to the island was for them to live side by side in a biregional federation free to develop and prosper without pressure, discrimination or domination of one by the other. The Turkish Cypriot spokesman also declared that the statehood proclamation did not preclude further negotiations between the two communities looking toward an equitable solution of the problem. The only two principles that were not negotiable were: (1) Cyprus must become a biregional and bicomunal federation, and (2) existing guarantees provided for in international agreements must be maintained.⁶⁷

In this new series of debates the representative of the Makarios government, Mr. Glafkos Clerides, offered to dismantle the National Guard and to hand over its arms to an enlarged UNFICYP and agreed to expansion of that force by addition of non-aligned contingents, Moslem contingents and others, provided that Turkey would in turn withdraw its 40,000 troops. The Turks refused on the grounds that within the Greek Cypriot sector there existed at least two well-armed secret armies which even Makarios could not control. Hence, merely dismantling the National Guard would not assure the safety of the Turkish Cypriot community.⁶⁸

After four weeks of debate and private consultation, the Security Council adopted a new resolution in March 1975,⁶⁹ requesting that Secretary General Waldheim use his good offices to restore negotiations between the Greek Cypriots and the Turkish Cypriots, and that these negotiations be pressed forward under his personal auspices and with his direction as appropriate. The resolution reaffirmed support for Cyprus sovereignty, independence, territorial integrity and non-alignment, and asked all states to respect them. It specified that no attempt should be made to partition the island or to unite it to another country. The resolution also asked for swift execution of earlier United Nations decisions on Cyprus which included calls for the prompt withdrawal of foreign troops and for the safe return of refugees to their homes. The Security Council expressed regret at the Turkish Cypriot Federated State move as tending to compromise negotiations, the aim of which, it said, must be a freely agreed settlement. Glafkos Clerides of Cyprus indicated his disappointment that the resolution did not set a deadline for troop withdrawal and for refugee return, but promised his government's full cooperation. Mr. Celik, the Turkish Cypriot spokesman, said he could not accept the resolution as it stood because of a reference to the Government of Cyprus, an entity which could speak only for the Greek Cypriots. Nevertheless, he pledged full corporation with Secretary General Kurt Waldheim in his efforts to revive negotiations between the two communities.⁷⁰

66. *Id.* at 9.

67. *Id.* at 8, 9, 11, 12, 14.

68. *Id.* at 5, 6, 10, 14.

69. S.C. Res. 367, 30 U.N. SCOR, 1820th meeting (1975).

70. U.N. Weekly News Summary, Press Release WS/701, March 14, 1975, at 2.

Under the chairmanship of the United Nations Secretary General, Mr. Glafkos Clerides of the Greek Cypriot community and Mr. Rauf Denktaş of the Turkish Cypriot community met in eight closed sessions in the old Hapsburg imperial palace in Vienna the last days of April and the first days of May 1975. During these conferences, each kept in touch with the Greek and Turkish Governments respectively, but neither of these Governments participated at the conference. The final communique indicated that the two leaders had agreed to establish a joint panel to study their opposing proposals for an eventual central government. The negotiators also agreed in principle to reopen the Nicosia airport which had been closed since the Turkish invasion in July 1974, but were unable to agree on how it should be reopened. Mr. Denktaş demanded half of the management positions at the airport, a demand which Mr. Clerides rejected. The two men failed to come to any understanding on the future of the 200,000 refugees on Cyprus, and the removal of the 40,000 Turkish troops. Furthermore the difficulties of reaching a settlement were magnified by the publication in a Turkish Cypriot magazine of a new Constitution for the Turkish Federated State of Cyprus. This Constitution was taken by the Greek Cypriot leaders as an indication of a further hardening of Turkey's attitude toward any reasonable solution of the problem.

Although denied by both sides at the conference, Greek-Turkish problems in other areas have influenced the search for a just and equitable solution of the Cyprus issue. There are a complex of Greek-Turkish disagreements in existence, including the delimitation of the continental shelf for oil rights, and the demilitarization of border zones. In any event, the two parties agreed to meet again in June and July 1975 for further discussions.⁷¹

During these meetings some slight progress on humanitarian issues was made. The leaders of the opposing Greek and Turkish Cypriot communities agreed that the 9,000 Turks remaining in the Greek area of the island would be permitted to go to the Turkish section if they wished, and the 10,000 Greek Cypriots still in the Turkish controlled northern section would be permitted to remain there if they desired with assurances of a normal life, or they could move to the south of their own free will. The United Nations Peace-Keeping Force on Cyprus was to supervise the transfer and was given guarantees of free access to Greek Cypriot villages and habitations in the Turkish Cypriot sector. Discussions continued over the powers and functions of a federal government, the Turkish Cypriot proposals for a transitional government, and the delimitation of the future ethnic zones. But decisions on these matters were postponed until further meetings under United Nations auspices could be held in New York in September 1975.⁷²

II. LEGAL ASPECTS

Greek Action. The 1974 *coup d'état* staged by the Greek military government in Cyprus was a clearcut case of illegal intervention, whereby Greece

71. N.Y. Times, May 11, 1975, § 4, at 2, col. 1.

72. U.N. Weekly News Summary, Press Release WS/722, August 8, 1975, at 2.

sought to impose her will upon the internal affairs of Cyprus for the purpose of altering the conditions therein. This act was an encroachment upon the sovereign prerogative of Cyprus, to her internal independence, since each state has the right to adopt and organize its own government as it sees fit, free from pressures and compulsions from other states.⁷³ A 1965 resolution of the General Assembly would cover the Greek interference:

1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned;

2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, *no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another state . . .*⁷⁴

The Greek intervention also falls within the rubric of "aggression"—delictual conduct which violates the right of territorial integrity or political independence or sovereignty of a state, thus placing the security of the state in danger.⁷⁵ Attempts to overthrow governments by armed force, by terroristic methods of assassination of its leaders, would certainly fall within the meaning of aggression.⁷⁶ Even the rather restricted General Assembly definition of aggression would encompass the situation.⁷⁷ Article 2 declares that a first use of armed force in contravention of the United Nations Charter is *prima facie* evidence of aggression. Article 3(a) then classifies an attack by the armed forces of a state against the territory of another state as aggression. More directly applicable, however, is article 3(e) which states that "[t]he use of armed forces of one State, which are within the territory of another state with the agreement of the receiving State in contravention of the conditions provided for in the agreement . . ." shall qualify as an act of aggression. The Greek officers charged with the coup were in Cyprus to train and command its National Guard, not to overthrow its Government.⁷⁸

Attempts to overthrow a government by assassination of the head of a state have been called aggression by an international organization. In 1960 the Organ of Consultation of the Organization of American States found that governmental officials of the Dominican Republic had been engaged in a

73. On the principle of intervention and its meaning at international law see A.V.W. THOMAS & A.J. THOMAS, JR., *NON-INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS* 67-78 (1956).

74. G.A. Res. 2131, 20 U.N. GAOR Supp. 14, at 11, U.N. Doc. A/6014 (1965) (emphasis added) (as set forth in 54 DEPT. STATE BULL. 128-29 (1966)).

75. On the principle of aggression and its meaning at international law see A.V.W. THOMAS & A.J. THOMAS, JR., *THE CONCEPT OF AGGRESSION IN INTERNATIONAL LAW* (1972).

76. *Id.* at 66-67.

77. G.A. Res. 3314 (1974), set forth in 72 DEPT. STATE BULL. 158-60 (1975).

78. See text accompanying note 21 *supra*.

plot to overthrow the Government of Venezuela which included the attempt on the life of the President of that country as well as providing arms for the coup. The Dominican Republic was condemned as having committed acts of intervention and aggression. Collective enforcement measures to be taken by the other American Republics against the Dominican Republic were ordered.⁷⁹

The Greek action in Cyprus can also be considered to be in violation of article 2(4) of the United Nations Charter which demands United Nations' members to refrain in their international relations from threats of force or the use of force against the territorial integrity or political independence of any state. Moreover, as Greece was a signatory of the Treaty of Guarantee, Greece also transgressed that Treaty which endorses the territorial integrity and political independence of Cyprus.⁸⁰

Turkish Action. Greek intervention led to a counter intervention—an invasion of Cyprus by the armed forces of Turkey. The Turkish representative before the United Nations Security Council stated that this armed invasion was taken "to end decades of strife provoked by extremist elements."⁸¹ He went on to say that Turkey as guarantor under the Treaty of Guarantee was, in taking this action, simply fulfilling its legal responsibility; that its action was not taken as an aggression but to end an aggression.⁸²

Article IV of the Treaty of Guarantee upon which Turkey depended for legality provides:

In the event of a breach of the provisions of the present Treaty, Greece, Turkey, and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions.

In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present treaty.⁸³

The validity of these treaty provisions have been subjected to contest. In 1963 when the Cyprus case first came before the Security Council, the Cypriot representative claimed that Article IV of the Treaty was invalid as contravening the principle of *jus cogens*, i.e., violation of peremptory norms of international law.⁸⁴ Article 53 of the Vienna Convention of the Law of Treaties in speaking of the principle of *jus cogens* declares:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of

79. 43 DEPT. STATE BULL. 358 (1960). See also A.V.W. THOMAS & A.J. THOMAS, JR., *THE ORGANIZATION OF AMERICAN STATES* 350-51 (1965).

80. 382 U.N.T.S. 4-6 (1960).

81. 11 U.N. MONTHLY CHRONICLE, Aug.-Sept. 1974, at 22.

82. *Id.*

83. 382 U.N.T.S. 6 (1960).

84. U.N. SCOR, 1098th meeting 15-21 (1964). The representative of Cyprus is also quoted in 2 A. CHAYES, T. EHRLICH & A. LOWENFELD, *INTERNATIONAL LEGAL PROCESS* 1250-54 (1969). For discussion of the invalidity of such treaties as that of the Treaty of Guarantee see G. ZOTIADIS, *INTERVENTION BY TREATY RIGHT—ITS LEGALITY IN PRESENT DAY INTERNATIONAL LAW* (1965); Zotiades, *The Treaty of Guarantee and the Principle of Non-Intervention*, 3 *CYPRUS TODAY* 1 (1965).

the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.⁸⁵

The peremptory norms of international law said to be violated by article IV of the Treaty of Guarantee were articles 2(1) and 2(4) of the United Nations Charter. Article 2(1) declares the organization to be based on the sovereign equality of states, and article 2(4) prohibits the threat or use of force against the sovereignty, territorial integrity or political independence of a state. Additionally, the customary rule of international law which prohibits forceful interventions into the internal affairs of a state may have been violated by the Treaty. Attention was also directed to article 103 of the Charter which provides that the Charter shall control in the case of conflict between obligations assumed thereunder and obligations under any other international agreement entered into by members.

In its 1963 consideration of the Cyprus issue, the Security Council abstained from expressing an opinion as to the validity or invalidity of the Treaty, but later, in 1965, when the General Assembly was seized of the Cyprus question, that body by a divided vote implied treaty invalidity on the basis of *jus cogens*. It adopted a resolution which took "cognizance of the fact that the Republic of Cyprus, as an equal Member of the United Nations, is, in accordance with the Charter of the United Nations, entitled to enjoy, and should enjoy, full sovereignty and complete independence without any foreign intervention or interference."⁸⁶ States were also called upon to conform with their obligations under articles 2(1) and 2(4) "to respect the sovereignty, unity, independence and territorial integrity of the Republic of Cyprus and to refrain from any intervention directed against it."⁸⁷

Although the Vienna Convention of the Law of Treaties may become a significant landmark for international law, it still has not yet entered into force because it has not obtained the necessary number of ratifications. Thus, applicability of the principle of *jus cogens* depends upon its acceptance as part and parcel of customary public international law, and over this theory there is much controversy. Although it has been pointed out that probably a majority of publicists favor some rule to the effect that a treaty cannot derogate from a fundamental norm of international law, still there are many opposed on the ground that it is not possible to define in judicial terms the substance of peremptory international norms. There is little evidence of state practice on the matter.⁸⁸

85. Conference Doc. A/CONF. 39/27, 23 May 1969, as contained in UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES, FIRST AND SECOND SESSIONS, VIENNA, 26 MARCH-24 MAY 1968 AND 9 APRIL-22 MAY 1969, OFFICIAL RECORDS, DOCUMENTS OF THE CONFERENCE 289, 296 (1971).

86. G.A. Res. 2077, 20 U.N. GAOR Supp. 14, at 9, U.N. Doc. A/6014 (1965).

87. *Id.*

88. For discussion of the principle of *jus cogens* see T. ELIAS, THE MODERN LAW OF TREATIES 177-87 (1974); I. SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 110-31 (1973); Schwelb, *Some Aspects of International Jus Cogens as Formulated by the International Law Commission*, 61 AM. J. INT'L L. 946 (1967).

The Cypriot representative also claimed that article IV of the Treaty of Guarantee was an unequal or "leonine" treaty, that is, a treaty in which unequal bargaining power of the parties enables the stronger to foist upon the weaker a treaty with terms contrary to the interests of the latter and which in addition are in opposition to principles of justice.⁸⁹ The inequality of bargaining power in effect works a coercion on the weaker power and such coercion becomes ground for invalidation of the treaty. There has been some support for such a viewpoint, but the notion that treaties may be rendered void because of coercion is not widely accepted.⁹⁰ To accept such a rule would mean that any treaty between a great and a small power would always be open to charges of invalidity.⁹¹

Even if one proceeds on the assumption that *jus cogens* is a principle of international law, a further consideration must be given to the Cypriot claims that the Treaty of Guarantee is void. Does the Treaty indeed derogate from the peremptory norms as alleged? To base invalidity upon contrariety with the Charter principle of sovereign equality is troublesome.⁹² There seems to be little agreement as to its meaning. It does fuse together two fundamental concepts of international law—state sovereignty and equality of states. Some have concluded from a perusal of the San Francisco proceedings which brought forth the United Nations Charter that new rights in addition to those imposed upon states in other articles of the Charter are not conferred by this statement. Moreover, experience has indicated that the principle of sovereign equality has served primarily as an argument for a restrictive interpretation of the powers of the organs of the United Nations rather than as a safeguard of sovereignty and equal rights of states. But others, although recognizing the lack of consensus as to what sovereign equality entails, have concluded that at the least it protects the independence of states from foreign interventions.⁹³ Taking either viewpoint, however, the norm of non-intervention which is a peremptory norm of international law as well as the peremptory norm of article 2(4) prohibiting the use of force can be considered contravened by a treaty giving a right to use armed force against a state to the extent that these norms do inhibit use of force. In those instances where force might not be prohibited the treaty would be valid. Moreover if one proceeds upon the assumption that *jus cogens* is not a rule of international law and that the Treaty of Guarantee is still valid, it can be argued that the Turkish invasion was illegal because it is contrary to article 2(4) and to the non-intervention principle if no legal exception under these principles can be found which would give legality to such use of force.

89. See note 84 *supra*.

90. See I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 594-95 (2d ed. 1974); Schwelb, *supra* note 88, at 966.

91. Ehrlich, *supra* note 4, at 1060-62.

92. The Charter of the United Nations states: "The Organization is based on the principle of the sovereign equality of all its Members." U.N. CHARTER art. 2, para. 1. For discussion of the meaning of this article see L. GOODRICH, E. HAMBRO & A. SIMONS, *CHARTER OF THE UNITED NATIONS* 37-40 (3d ed. 1969). See also T. EHRLICH, *CYPRUS 1958-1967*, at 73-74 (1974).

93. A.V.W. THOMAS & A.J. THOMAS, JR., *supra* note 73, at 70-97.

At general international law, armed interventions were normally illegitimate except under special circumstances. Intervention was considered as legal when exercised in pursuance of the right of self-defense and as a sanction. The United Nations Charter seriously proscribes any armed intervention by the language of article 2(4), yet the Charter establishes two exceptions, that is, when the force is used in the exercise of the right of individual or collective self-defense as expressly permitted by article 51, and when force is used in the execution of collective enforcement measures by the United Nations itself as authorized by the Charter.⁹⁴ Thus if resort to armed force is so restricted, Turkey can only claim that its use of armed force was legal through a right of self-defense.

Article 51 of the United Nations Charter permits the inherent right of *individual* self-defense if an armed attack occurs against a member of the United Nations until the Security Council takes the necessary measures to maintain international peace and security. Has Turkey been subjected to an armed attack so as to permit an exercise of the right of self-defense? Neither its territory nor its political independence has been subjected to attack. The victim was Cyprus. Although Turkey does not appear to have relied upon a right of *individual* self-defense to justify its armed invasion, still its representative before the Security Council used words which might indicate that Turkish action was so predicated:

Turkey's preoccupation with Cyprus was primarily and foremost with the security, rights and legitimate interests of the Turkish community in Cyprus.⁹⁵

The Government of Turkey saw no alternative to the peaceful solution of the problem. It had no territorial claim over Cyprus; its first and foremost anxiety was the security and well-being of the Turkish Cypriot community⁹⁶

Thus the security of the Turkish Cypriot community demanded armed defense in face of the alleged violent attacks by the Greek Cypriots and Cypriot National Guard.

Traditional international law did include within the right of self-defense a state's defense of its nationals from violence in the territory of a foreign state where the foreign state was unable or unwilling to extend the necessary protection. A state could meet not only attacks against its territory, its armed forces, vessels or aircraft, but also against its citizens. This right of self-defense was grounded upon the notions that nationals of a state are an extension of the state itself and represent a part of the state as important as its territory; that an injury to citizens is an injury to the state; and finally, that an essential function of the state, indeed a reason for its being, is the protection of nationals. Hence, when a state fails to comply with the applicable international law as regards the lives of foreigners within its

94. U.N. CHARTER arts. 39, 42, authorize the Security Council to take measures including the use of force in order to maintain or restore international peace and security in the face of threats to and breaches of the peace or acts of aggression.

95. 11 U.N. MONTHLY CHRONICLE, Aug.-Sept. 1974, at 42.

96. 12 U.N. MONTHLY CHRONICLE, Jan. 1975, at 5.

territory, the state of nationality may, in extreme circumstances, exercise the right of self-defense and protect them with armed force.⁹⁷ This right is also permitted by article 51 of the United Nations Charter.

However, any attempt to base the Turkish intervention on a right of self-defense cannot be justified, for the rule permits such an exercise only on behalf of the exercising state's nationals or citizens. It is not extended to nationals of other states. The Turkish Cypriots are nationals of *Cyprus* not Turkey. Therefore, in order to justify its forceful intervention on behalf of citizens of Cyprus, Turkey would have to rely upon other grounds.

At traditional international law the legal right of humanitarian intervention was asserted and was at times acted upon. It was held that when a state, although acting within its sovereign prerogatives, so violated the rights of humanity beyond all limits of reason and justice whether the violations applied to its own nationals or nationals of other states, a right to intervene by members of the family of nations was lawful.⁹⁸ However, in spite of this recognition of a right of humanitarian intervention by customary international law, strict principles of modern treaty law such as the United Nations Charter ban on the threat or use of force could be interpreted as prohibiting the landing of troops even for humanitarian purposes. Furthermore, a strict interpretation of the non-intervention principle would also bar humanitarian intervention. Nevertheless there are certain jurists who defend the right of humanitarian intervention as an unwritten exception to all rules whether set forth by customary or by particular international law. But other jurists oppose this view, pointing out that in the twentieth century many nations recognize terror as a legitimate method of government, and even the most revolting violations of the common laws of decency and humanity committed by a government against its own people or against foreigners who are not nationals of a protesting state would not be sufficient legal justification for unilateral humanitarian intervention in face of the international rules barring forceful interventions. If the society of nations desired to exclude humanitarian intervention from these prohibitions they would have done so expressly.⁹⁹

The United Nations Charter also recognizes a right of *collective* self-defense.¹⁰⁰ If collective self-defense means no more than that a state has a right of self-defense and that other states have a right to come to its assistance when it is subjected to an illegal armed attack, then an argument can be made that the Turkish action was an exercise of such a right.¹⁰¹ The Turkish Prime Minister in explanation of the invasion stated:

97. I. BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 289 (1963); D. BOWETT, *SELF-DEFENSE IN INTERNATIONAL LAW* 87-105 (1958); Waldock, *The Regulation of the Use of Force by Individual States in International Law*, 81 *RECUEIL DES COURS* 455, 466-67 (1952).

98. On humanitarian interventions see A.V.W. THOMAS & A.J. THOMAS, JR., *THE DOMINICAN REPUBLIC CRISIS 1965 LEGAL ASPECTS* 18-23 (The Hammarškjöld Forums 1966).

99. *Id.* See also A.V.W. THOMAS & A.J. THOMAS, JR., *supra* note 73, at 372-90.

100. See U.N. CHARTER art. 51.

101. See H. Kelsen, *THE LAW OF THE UNITED NATIONS* 792 (1950); H. Kelsen, *PRINCIPLES OF INTERNATIONAL LAW* 61 (2d ed., Tucker ed., 1967).

It is acknowledged all over the world that the coup which recently took place was manufactured by the dictatorial régime of Athens. In fact it was much more than a coup: it was the forcible and flagrant violation of the independence of Cyprus This is not an invasion but an act against an invasion. This is not an aggression but an act to end aggression When the takeover by the Nikos Sampson administration took place, with the dramatic ousting of Archbishop Makarios, and when it became clear that the invasion by Greece—and 'invasion' was the word used by Archbishop Makarios to describe what Greece was doing—would not cease despite protracted negotiations in various capitals and in the Council, Turkey exercised its legal rights under the Treaty of Guarantee, with the sole aim of returning the island as a whole to constitutional rule and protecting the Turkish community's right within that framework.¹⁰²

Although article 51 of the United Nations Charter is silent concerning the necessity of a request for aid by the attacked state as a precondition of an exercise of collective self-defense, it has been maintained that an explicit request is requisite even when there is a long standing mutual defense treaty.¹⁰³ The requirement that aid must be requested by the injured party has been set forth in order to prevent possible simulated aggression which might occur under the guise of conferring aid upon a victim of a supposed attack. If such a request is a condition for legality, then a state acting in the absence of such a request would be in violation of the Charter of the United Nations. There was clearly no request for Turkish intervention from the governing authority of the Republic of Cyprus.

Collective self-defense can also be interpreted in a manner differing from collective defense in that it actually signifies that two or more states can take collective action in the right of self-defense. Then a request from the state actually under attack would not appear requisite. Following this line of thought, a neighboring state might act in self-defense if it could show some legal interest of its own being invaded. Ordinarily if one state is subjected to an illegal armed attack by a second state, this would not be an invasion of the legal rights of a third state. However, it has been recognized that a third state may act in self-defense to assist another state in repelling an aggression when there exists a close relationship between the two states based on solidarity, for the legal interests of both would be violated by an armed attack against either one of them. If the security of a group of states is dependent in fact upon the security of each and every one of them, a violation of the rights of any member of the group would be a violation of all, permitting joint efforts for protection.¹⁰⁴ Thus if Cyprus were subjected to an aggression then Turkey would suffer a violation of its own legal rights and could exercise its right of collective self-defense to protect not only against injury to itself but also against injury to Cyprus with no request from the latter. If the Treaty of Guarantee in fact created such a close relationship

102. 11 U.N. MONTHLY CHRONICLE, Aug.-Sept. 1974, at 22.

103. Fawcett, *Intervention in International Law*, 103 RECUEIL DES COURS 347, 369 (1961).

104. Bowett advances such a position. See D. BOWETT, *supra* note 97, at 200-48.

then perhaps a right of self-defense can be upheld. Whether the Treaty did create a mutual security relationship is subject to dispute. The three guarantors were not seeking to guarantee their own security or the security of the region. They were seeking to set up a regime under which the two Cypriot communities could live side by side, and the right of intervention was given only to maintain the *status quo*, that is, to maintain the regime. Thus one can hardly conclude that the legal interests of Turkey were in any way endangered by the illegal *coup d'état* sponsored by Greece sufficient to justify collective self-defense.

There is another troublesome aspect. The exercise of a legal right of self-defense, individual or collective, must always be proportionate. The act of self-defense must not be excessive, going no further than to avert or suppress the attack.¹⁰⁵ Is a prolonged occupation of a large part of Cypriot territory by 40,000 men of the Turkish military proportionate to an exercise of a right of self-defense against a forceful *coup d'état* carried out on the order of the Greek military government, particularly at a point in time when that government has fallen and the duly elected President of Cyprus, Makarios, against whom the coup was attempted, has been restored to power? It would take a glib orator to contend that proportionality had been met under such conditions.

It has also been asserted that the Treaty of Guarantee creates a regional arrangement. Several such regional organizations exist. Nations of a region cooperate for certain purposes including peacekeeping in the area. A regional arrangement has been defined in the following way:

There shall be considered as regional arrangements organizations of a permanent nature grouping in a given geographic area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical, or spiritual affinities, make themselves jointly responsible for peaceful settlement of any dispute which may arise between them and for the maintenance of peace and security in their region, as well as for the safeguarding of their interests and the development of their economic and cultural relations.¹⁰⁶

The Treaty of Guarantee concerns three nations of the Mediterranean area as well as the United Kingdom which has important interests in the area. Although such arrangements generally tend to promote the common interests of the various countries in the region rather than the interests of only one state, still changes in the status quo of Cyprus would vitally affect peace in the region. Thus the Treaty of Guarantee can be considered to be directed to the maintenance of regional peace and the security of state members of the organization, as well as maintaining peace between the communities in Cyprus. However, this is a somewhat dubious argument in the light of the language of the Treaty itself which, as previously noted,

105. See H. Kelsen, *PRINCIPLES OF INTERNATIONAL LAW* 80-82 (2d ed., Tucker ed., 1967).

106. UNCIO, Interim Report to Committee III/4 by Subcommittee III/4/A, Doc. 533, III/4/A/9, at 3 (Documents, XII, at 850).

reveals an intention to protect Cyprus rather than the guarantor countries. Moreover, such regional arrangements generally do not permit unilateral action (other than individual and collective self-defense) without consultation by the members and without a decision based upon a certain majority vote.¹⁰⁷ Under the somewhat anomalous provisions of the Treaty of Guarantee consultation is required before action can be taken, but if concerted action does not prove possible the guarantors reserve the individual right to act in order to preserve the state of affairs in Cyprus.

If the Treaty of Guarantee does create a regional agency or arrangement, and if the Treaty is valid, would this give legality to the Turkish action? It must be reemphasized that the use of force other than in an exercise of the right of individual or collective self-defense or in pursuance of the collective measures under United Nations auspices seems to be barred by the United Nations Charter. That Charter does authorize regional arrangements or agencies if their purposes accord with Charter provisions, but article 53 provides that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council." If Turkey could bring its case under individual or collective self-defense, of course its action would be valid under article 51. But if its action was not individual or collective self-defense but "enforcement action," then it would be illegal unless taken with Security Council authorization. Turkey had no such authorization.

Although there is authority that non-forceful measures of regional organizations may not fall within any definition of "enforcement action," there is strong support for the view that any use of physical force must fall within a definition of "enforcement," and, therefore, the use of physical force can only be legally taken with prior Security Council authorization.¹⁰⁸ However, the International Court of Justice in *The Certain Expenses* case has limited the meaning of "enforcement action" to those actions taken by the Security Council under its powers as conferred by chapter VII of the United Nations Charter against a threat or breach of the peace or an act of aggression. In speaking of United Nations peacekeeping operations in the Congo, the Court declared that such operations did not constitute enforcement action:

[Such operations] did not include a use of armed force against a State which the Security Council, under Article 39, determined to have committed an act of aggression or to have breached the peace. The armed forces which were utilized in the Congo were not authorized to take military action against any State. The operation did not involve 'preventive or enforcement measures' against any State under Chapter VII and therefore did not constitute 'action' as that term was used in Article II.¹⁰⁹

107. On the Organization of American States and the system of peace and security in the Western Hemisphere see A.V.W. THOMAS & A.J. THOMAS, JR., *supra* note 79, at 249-76.

108. *Id.* at 269-71. See also H. KELSEN, *THE LAW OF THE UNITED NATIONS* 921-23 (1950).

109. Advisory Opinion on Certain Expenses of the United Nations, [1962] I.C.J. 151, 170-71.

In the 1965 Dominican Republic crisis the Malaysian representative speaking before the United Nations called the operations of the peacekeeping force of the regional organization, the Organization of American States, to be not "enforcement" action but "conciliatory" action.¹¹⁰ In that case the regional force was used in a situation of "civil disorder, political chaos, bloodshed and internecine war," and thus, perhaps could not be equated with enforcement action against an aggressor state or peace-breaking or peace-threatening state.¹¹¹

Moreover, in the Cuban missile crisis case a spokesman of the United States refused to designate the armed quarantine of Cuba by the Organization of American States an "enforcement action." It was called an action designed to maintain peace in the hemisphere taken under the regional agency's co-jurisdiction with the Security Council in an effort to preserve peace.¹¹² Can the armed invasion by Turkey of Cyprus be considered as a measure not taken against an aggressor or a state breaching or threatening to breach the peace, but to preserve the status quo under the Treaty, to protect the Turkish community and to end civil strife therein? According to the Turkish representative, it was not taken as aggression but to end an aggression.¹¹³ Can it further be agreed that it was action taken as provided by the Treaty creating a regional organization under that organization's co-jurisdiction with the Security Council to preserve peace? The co-jurisdiction contention is shaky at best. Regional agencies are obliged to conform to the Charter.¹¹⁴ The consensus is that under the Charter the superior body is granted the right to use force, and states are prohibited from such use by article 2(4) other than as permitted by the right of individual or collective self-defense under article 51. Co-jurisdiction would seemingly place the world and regional organizations on the same legal level. Such a conclusion is difficult to accept. If the Turkish use of armed force was an enforcement measure it apparently would require Security Council authorization for legal regional action. The statements by the International Court of Justice which might justify the Turkish action seem hardly apropos to the case of what in reality is a unilateral armed intervention by a single state in the affairs of another state taken to enforce a treaty right.

Actually Turkey has not rested its invasion of Cyprus upon a right of self-defense or upon purported and dubious rights under a regional arrangement, but upon the Treaty of Guarantee. The Turkish Prime Minister expressed it in these words: "Turkey is a co-guarantor of the independence and constitutional order of Cyprus. Turkey is fulfilling her legal responsibility by taking this action."¹¹⁵ Another Turkish representative before the United Nations used similar language: "Turkey exercised its legal rights under the Treaty of Guarantee, with the sole aim of returning the island as a

110. U.N. Doc. S/PV/1222, at 67-68 (1965).

111. On this aspect of the Dominican situation see A.V.W. THOMAS & A.J. THOMAS, JR., *supra* note 98, at 42-49.

112. Chayes, *Law and Quarantine of Cuba*, 41 FOREIGN AFFAIRS 550, 556 (1963).

113. See text accompanying note 102 *supra*.

114. U.N. CHARTER art. 52(1).

115. 11 U.N. MONTHLY CHRONICLE, Aug.-Sept. 1974, at 22.

whole to constitutional rule and protecting the Turkish community's right within that framework."¹¹⁶

Turkey has claimed that the Treaty of Guarantee does not contravene the United Nations Charter, and further that the use of armed force in accordance with the terms of the Treaty is not contrary to article 2(4) of the Charter. As has been noted previously, one line of authority takes a rigid point of view with respect to the use of force, asserting that the only possible legal uses under the Charter are the collective enforcement measures authorized thereby or force used in a legitimate exercise of the right of individual or collective self-defense.¹¹⁷ It might well be true that this viewpoint was largely in accord with the intent of the framers. On the other hand, there are less rigid interpretations of the Charter's ban on the use of force. The language of article 2(4) prohibits force *only* when directed against the territorial or political independence of a state, or in any other manner inconsistent with the purposes of the United Nations. Turkey has maintained that its intervention by armed force is permitted under the Treaty of Guarantee and that since its armed intervention was not directed against the territorial integrity or political independence of Cyprus it does not violate the United Nations Charter. To the contrary, Turkey's use of force was action in aid thereof, inasmuch as the Treaty of Guarantee had as its purpose the maintenance of Cypriot independence and territorial integrity. Turkish action taken under the Treaty to reestablish the state of affairs created by the Treaty, *i.e.*, to prevent and do away with a foreign intervention designed to abrogate that state of affairs, could not be action against Cypriot territorial integrity or political independence. Indeed it was action to maintain such.¹¹⁸

Still a question remains as to whether this use of force could accord with the final phrase of article 2(4): was it consistent with the purposes of the United Nations? The 1960 accords, the state of affairs which the Treaty of Guarantee was to protect, were aimed at the protection of the Turkish Cypriot minority. The accords sought to eliminate strife and violence between the communities so that the island could have internal peace. The Turks argue that since such strife could undermine peaceful relations between Turkey and Greece, a side effect of the accords was the maintenance of international peace. The achievement of such a purpose can hardly be inconsistent with the purposes of the United Nations.¹¹⁹ Forceful action to assure the carrying out of such purpose when conducted under an authorizing treaty and in accord with its terms could not be considered as opposed to United Nations purposes unless the Charter does indeed prohibit all use of force except that in self-defense or collective enforcement measures. It has been contended in some quarters that the rigid view of the Charter's total ban of force would pre-

116. *Id.*

117. *See* text accompanying note 108 *supra*.

118. 20 U.N. SCOR, 1234th meeting 23-24 (1965) (setting forth the Turkish position on this point as argued previously before the Security Council). *See also* T. EHRlich, *supra* note 36, at 76.

119. *See* discussion by Ehrlich, *supra* note 4, at 1072-74.

vent a state from protecting even its legitimate interests. It would seem that the vindication of treaty rights such as those guaranteed under the 1960 accords and the Treaty of Guarantee would be legitimate interests of the guarantors. Justice, for example, is also listed as a purpose of the United Nations, and if a state cannot protect its legitimate rights or obtain protection for them through collective measures or otherwise, then the principle of justice can hardly be said to exist.¹²⁰

If one accepts the view that the use of armed force to uphold the Treaty of Guarantee *would not* necessarily be illegitimate under the Charter, then as long as Turkey was acting within the terms of the Treaty her actions were legal. Conversely, if Turkey failed to abide by the terms of the Treaty, then her actions were illegal. It will be remembered that the Treaty of Guarantee calls upon the United Kingdom, Greece and Turkey "to consult together with respect to the representations or measures necessary to ensure observance of [its] provisions." But in the event concerted action is not possible each party "reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present treaty."¹²¹

An initial problem concerns the meaning of the word "action" as used in the Treaty. Does the action which the Treaty permits include the use of armed force? There is controversy as to what the parties intended in this respect and no evidence from the negotiating history is helpful. Commentators of Greek and Greek Cypriot origin have taken the viewpoint that the word "action" was not intended to include armed action. If it were, the guarantors would have specifically spelled it out. Moreover they continually assert that if the Treaty did permit armed action it would be violative of articles 2(4) and 103 of the United Nations Charter.¹²² When the Cyprus case was before the Security Council in 1964 a Greek representative flatly declared that the intention of the guarantors was not to permit a use of armed force.¹²³ The British representative at the meeting seemed to disagree and implied that in certain circumstances the Treaty contemplated the use of armed force and such use would not violate the United Nations Charter.¹²⁴

According to one commentator the guarantors could not agree as to what "measures" should be permitted and thereby left the meaning of "action" ambiguous. This, it is urged, would militate against an interpretation allowing the use of force, for any such ambiguity should be interpreted in opposition to a limitation of Cypriot sovereignty.¹²⁵ However, this same author goes on to say that the conditions of bloodshed on the island at the time the Treaty was negotiated would make it very plausible that the parties did intend to permit a use of force if necessary to restore the state of affairs which the Treaty and the accords sought to bring about, and thus assure a peaceful Cyprus and the end of violence between the communities.¹²⁶

120. For a discussion of this thesis see J. STONE, *AGGRESSION AND WORLD ORDER* 92-103 (1958).

121. See text accompanying note 9 *supra*.

122. P. POLYVIU, *supra* note 8, at 71-72.

123. 19 U.N. SCOR, 1097th meeting 32 (1964).

124. *Id.*

125. T. EHRLICH, *supra* note 36, at 68-69.

126. *Id.*

Assuming that armed force was intended to be within the meaning of "action," still certain conditions precedent are set forth before armed action can be taken. Under the Treaty, Turkey was required to consult with the other two parties to determine what representations or measures were necessary to ensure the observance of the Treaty provisions. Only in the event that concerted action was not possible did there arise a right of unilateral action. The record shows that the Turkish Prime Minister did consult with the British Government following the *coup d'état*. The other coguarantor, Greece, however, was not present. The British intended that Greece should be brought into the consultation, but the Turkish invasion occurred before this could be accomplished. There was an exchange of views carried on separately by "shuttle diplomacy" between the Greeks and the Under-Secretary of State of the United States and between Turkey and the Under-Secretary. However, this can hardly be considered a consultation between co-guarantors envisaged by the Treaty.¹²⁷ Thus the condition precedent of consultation was not met prior to Turkey's armed action.

Since there was no proper consultation how could it be known whether common or concerted action to ensure observance of the Treaty provisions could have been possible? Turkey's unilateral action could not be considered legitimate unless such common or concerted action was impossible. Furthermore, Turkey's right to unilateral action was only permissible under the Treaty's terms in order to re-establish "the state of affairs created by the treaty" to maintain the status quo in Cyprus. This status quo certainly included the continuation and maintenance of the independence, territorial integrity and security of Cyprus as well as the state of affairs which were created by the basic articles of the Constitution. Initially, perhaps there may have been justification for the Turkish action on these grounds. If the action was taken to end the illegal Greek intervention and to prevent *enosis*, then it would accord with Turkey's pledge to guarantee the political independence of Cyprus and to re-establish the constitutional order by returning to the status quo. This is precisely what Turkey has claimed: "Turkey exercised its rights under the Treaty of Guarantee, with the sole aim of returning the island as a whole to constitutional rule and protecting the Turkish community's right within that framework."¹²⁸

Their case was somewhat weakened by the fact that the leaders of the coup did state that there was no intent to change the constitutional order set up by the accords and guaranteed by the Treaty or to bring about immediate *enosis*. Nevertheless, there still remains the Greek intervention and the resulting violation of Cypriot political independence which could well justify Turkish action to end such intervention, particularly in the light of EOKA-B assertions that the Greek coup was intended to effectuate *enosis* with Greece, forbidden by the Treaty. Thus, although some legal arguments can be made upholding the initial armed action of Turkey, after the coup failed and the former constitutional regime was re-established a legal basis for further

127. For these exchanges see P. POLYVIU, *supra* note 8, at 69.

128. 11 U.N. MONTHLY CHRONICLE, Aug.-Sept. 1974, at 22.

armed occupation could no longer be sustained. This is particularly true in view of the fact that the Turkish action brought about a radical change in the state of affairs created by the Treaty, and considering the fact that Turkey has repeatedly stated that there can be no return to the status quo ante in Cyprus.¹²⁹

Turkey has divided the island into two separate geographic zones and has declared Cyprus a federal state composed of two areas. Each area is to have a primarily Greek or Turkish population. A unitary Cyprus has disappeared for the time being. Moreover, Turkey demands an entirely new constitutional framework for Cyprus, stating that there can be no return to the original document, for the events of 1963 when President Makarios refused to observe certain of the provisions of the Constitution in effect killed that Constitution. An anomaly is apparent. In one breath Turkey invokes the Treaty of Guarantee to re-establish the constitutional regime of Cyprus and in the next it claims a right to establish a whole new regime on the ground that the Constitution is inoperative.

Turkey can point to the rule of international law that the material breach of a treaty by one of the parties, in this instance the Greeks or the Greek Cypriots, suspends the operation of the treaty.¹³⁰ But if the treaty is suspended, then Turkish action cannot be based thereon. In the absence of a treaty right her claims to legitimacy cannot be sustained and even under the Treaty they are tenuous at best.

The United Nations and Turkish Action. Turkey has clearly ignored the resolutions of the Security Council and the General Assembly, primarily the Security Council's Resolution 353¹³¹ and the General Assembly's Resolution 3212 (XXIX).¹³² The resolution of the Security Council expresses concern with respect to a situation which "led to a serious threat to international peace and security." Among other things, this resolution called for a cease-fire on Cyprus and demanded "an immediate end to foreign military intervention." Furthermore, a request was made for withdrawal of all foreign military personnel from the island other than those there under authority of international agreement. The resolution of the General Assembly among other things urged the speedy withdrawal of foreign armed forces and military personnel and a cessation of foreign interference.

If these resolutions are binding, then Turkey in failing to end her armed intervention and withdraw military personnel violated her obligations assumed under the Charter, particularly article 25 by which the members of the United Nations agree to accept and carry out the decisions of the Security Council taken in accordance with the Charter. The resolutions of the General Assembly in the peacekeeping area, no matter how worded, are recom-

129. 12 U.N. MONTHLY CHRONICLE, March 1975, at 4.

130. 1 L. OPPENHEIM, INTERNATIONAL LAW 947-48 (8th ed., H. Lauterpacht ed., 1955).

131. 11 U.N. MONTHLY CHRONICLE, Aug.-Sept. 1974, at 23-24.

132. 11 U.N. MONTHLY CHRONICLE, Dec. 1974, at 35-36.

mendations only, and as such are not considered legally binding when directed at a member or members although they should have moral force and effect.¹³³ In contrast, the Security Council's resolutions may well be legally binding. Under articles 41 and 42 the Security Council may decide that certain collective measures should be taken in order to maintain or restore international peace in the face of an aggression, a threat to the peace or a breach of the peace. An order to take such collective measures is legally binding.¹³⁴

The Security Council did not state the article of the Charter upon which Resolution 353 was based. It was not an enforcement measure as defined by articles 41 and 42 which would be a decision calling for a collective use of armed force or lesser collective coercive measures such as those of an economic or diplomatic nature against a peace threatener, peacebreaker or an aggressor. The resolution would then seem to fall under article 40 as a provisional measure. In previous Security Council cases the Council has based resolutions calling for cease-fires and withdrawal of armed forces upon this article. Article 40 declares:

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, *call* upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.¹³⁵

A *call* for provisional measures has been interpreted to mean no more than a recommendation for provisional measures. Such an interpretation would make such a call non-binding, for recommendations by their nature are not binding. However, the use of the word "call" would seem to signify something more than a mere recommendation. In previous cases, where *calls* for provisional measures have been made by the Security Council they have been considered binding upon those against whom directed, and there is general agreement today that they should be considered as obligatory when it is clear that the Council's resolution is founded on article 40. This would of course be clear if the Security Council cited article 40 as the basis for the resolution, but this is not the case. But even in the absence of such indication, a resolution has been given binding effect if a formal determination and statement was set forth in the resolution that it was taken because of a threat to the peace, a breach of the peace, or an act of aggression. This would demonstrate that the measure was taken under chapter VII of the charter entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." If it was not a measure taken under articles 41 and 42 of chapter VII then it must be a provisional measure under article 40 of chapter VII. Resolution 353 stated that the Security

133. See L. GOODRICH, E. HAMBRO & A. SIMONS, *supra* note 92, at 126.

134. *Id.* at 209; *cf.* U.N. CHARTER art. 25.

135. U.N. Charter art. 40 (emphasis added).

Council was concerned with "a situation which has led to a threat to international peace." Even under article 40 the language of the resolution must be couched in legally binding terms; it must be mandatory against those to whom it is directed. A mere *request* to withdraw foreign military personnel could hardly be considered as creating a legal obligation to withdraw. On the other hand, a *demand* for an end of foreign military intervention, as was involved in this case, would be a command meant to be obeyed.¹³⁶ Turkey failed to follow the command of the Council to end its foreign military intervention in Cyprus. Thus it violated the resolution of the Security Council and in effect violated the United Nations Charter.

The Turks, however, apparently interpreted the provision of the resolution as being non-obligatory unless certain other conditions were met. In December 1974 the Security Council by Resolution 365 endorsed the General Assembly's resolution and called for its speedy implementation.¹³⁷ The Assembly urged an end to foreign interference in Cyprus and commended that negotiations take place on an equal footing between the representatives of the two communities to reach a mutually acceptable political settlement. In Resolution 364 the Council also reaffirmed other resolutions, including 353.¹³⁸ Thus, it would seem that the Council was still demanding an end to foreign intervention. Speaking in regard to the General Assembly resolution and its endorsement by Council resolution, a spokesman for Turkey declared that:

there were two equal national communities in Cyprus; the constitutional system of Cyprus primarily concerned the Turkish and Greek Cypriot communities; political settlement should be sought and found in Cyprus through intercommunal negotiations on an equal footing.

As progress was made towards a peaceful settlement, as a feeling of security was re-established, all foreign forces would be withdrawn and the humanitarian problem, including the problem of refugees, would be solved. The questions of refugees and of withdrawal of forces were political and could only be solved within the framework of a final political settlement.

One does not need to be a prophet to be able to anticipate what could and would happen if the Turkish forces were to be withdrawn tomorrow or if 150,000 Greek Cypriot refugees were to return to the north.¹³⁹

In other words, Turkish troops need not be withdrawn until there is a political settlement which will permit them to withdraw, thus apparently interpreting the Security Council's call as non-binding or at least not binding until the political settlement is also reached.

There was some support for this view in light of the fact that the Security Council in later meetings refused to set a definite time limit¹⁴⁰ for withdrawal of the Turkish forces despite urgings of certain delegations to do so.

136. On the obligatory effect of resolutions of the Security Council under article 40 of the Charter see L. GOODRICH, E. HAMBRO & A. SIMONS, *supra* note 92, at 306-08.

137. 12 U.N. MONTHLY CHRONICLE, Jan. 1975, at 3.

138. *Id.* at 15.

139. 12 U.N. MONTHLY CHRONICLE, March 1975, at 8.

140. Guyana and Tanzania urged that a time limit be set. *Id.* at 19-20.

Moreover, if the Turkish representative's statement is correct as to the spirit or interpretation of the General Assembly's resolution, the endorsement and the call for implementation thereof as soon as possible by the Council can suggest that the call for the ending of foreign intervention was conditioned upon an acceptable political settlement. Such a position, however, is hard to maintain in view of the words of the Council as well as the General Assembly which demand and urge the end to such foreign intervention.

III. CONCLUSION

It is a sad commentary on the state of the world that the Cyprus crisis, like so many other world crises, brings forth little beyond a torrent of words on the international level. In face of aggression compounded, illegality following illegality, one can only hark back to the plaint of Eliza Doolittle of "My Fair Lady," when she declares "Words, words, words, I'm so sick of words . . . show me." One longs to see some showing of a resolution of this fifteen-year-old problem. The United Nations has spoken in strongly worded resolutions. The Great Powers have all had their say. The Greeks and the Turks have spouted vitriol one to the other. The protagonist communities argue, contend and wordily advance their respective positions. Still the people of Cyprus suffer.