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International Law & Diplomacy on the Turkish Military Intervention of Cyprus

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Summary

The present article examines the diplomatic and legal context to the Turkish intervention in Cyprus 1974. On the one hand, the main legal argument put forward by Turkey in order to justify the intervention, which was based on the Republic of Cyprus Treaty of Guarantee, is put under scrutiny; international legal theories on the legality of intervention envisaged by Treaty are judiciously presented. On the other, the diplomatic background to the Treaty in question is explored in the light of available Foreign Office Files, UN documents, UK Parliamentary Debates in an effort to verify whether a right to military intervention was expressly provided for. Then the conduct of Turkey is tackled on the hypothesis that she did have a right to intervene. Finally, it is stressed how the preceding discussion can be useful for security arrangements in the context of a settlement to the pending Cyprus question.

Key Words

International Law & Diplomacy, Turkish Military Intervention, Cyprus

At dawn of the 20th July 1974, Turkey, following the coup d'état of the 15th July 1974 engineered by the Greek military junta (then ruling Greece) to overthrow the democratically elected President Archbishop Makarios¹, proceeded to an armed attack² by air and by sea against the independent and sovereign Republic of Cyprus.

1. TURKISH JUSTIFICATIONS FOR THE INTERVENTION & CLAIMS REGARDING THE TREATY

Various justifications were given by the Turkish leadership for the purposes of the intervention. The then Prime Minister of Turkey Mr. Ecevit made the following official statement according to the statement of the Permanent Representative of Turkey Mr. Olcay at the meeting of the Security Council of the 20th September 1974:

“The Turkish armed forces started this morning an operation of peace in Cyprus in order to put an end to struggle of decades of years brought about by extremist elements. During the last steps of the Cyprus tragedy, these extremist elements started massacring their own people, the Greeks. It is admitted by everybody that the last coup has been staged by the dictatorial regime of Athens. As a matter of fact it was more than a coup: it was a violent and flagrant violation of the independence of the Republic of Cyprus and of the international treaties on which the Republic was founded. Turkey is co-guarantor of the independence and the constitutional order of Cyprus. Turkey taking action is fulfilling her legal responsibility. The Turkish Government has not resorted to the armed action until after all the other means were tried and proved unsuccessful. This is not an invasion but an act to put an end to invasion. The Turkish armed forces will not open fire unless being fired at. I am addressing all the Greeks in Cyprus who have been the victims of atrocities, of terrorism and dictatorship: bury in the past the dark days of inter-communal enmities and strife which were resorted to by the terrorists themselves. Join hand in hand with your Turkish brothers to speed up the victory and together build up a new free and happy Cyprus”³.

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

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

² The meaning of “armed attack” was considered in the *Nicaragua case*, I.C.J. Reports 1986, p.14 para.195.

³ S/PV, 1781, 86

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

The main argument put forward by Turkey in order to justify the 1974 military intervention in Cyprus is based on the Treaty of Guarantee of the Cyprus Republic. The Treaty, signed on 16 August 1960 between the United Kingdom, Greece, Turkey, and the Republic of Cyprus, forms an integral part of the constitutional order of the Republic.⁵ By Article I, the Republic of Cyprus undertook the obligation to maintain its independence, territorial integrity, and security as well as respect for its Constitution. Under article II, Greece, Turkey and the United Kingdom guaranteed the independence, territorial integrity and security of the Republic of Cyprus and also the state of affairs established by the basic articles of the Constitution. Article IV, which constitutes the strongest basis of the Turkish argument provides the following: *“In the event of a breach of the provisions of the present Treaty, Greece, Turkey and United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions. In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty”*.

Turkey first declared that intervention had been to guarantee the independence of the island. According to Turkey, the coup government of Mr. Sampson was no more than a puppet regime under orders from Greece, ready to rule the end of the island's independence and to annex it to Greece. In a Turkish government communiqué of 20 July it was stated that “the Turkish community in the island can no longer tolerate this situation which offends human dignity and threatens the lives and the very existence of its greater majority, and they, therefore, anticipate Turkey as a Guarantor Power, to liberate them as soon as possible”⁶. The Turkish government went on to state that *“Turkey as one of the guarantor powers had the decided to carry out its obligations under article IV(2) of the Treaty with a view to safeguarding the security of life and property of the Turkish community and even that of many Greek Cypriots”*⁷. The Turkish Cypriot leader Rauf Denktash wrote that ‘Turkey, as one of the guarantors of the Cyprus Republic, could not accept the *fait accompli* against the independence and sovereignty of the republic, nor could it stand by and watch Turkish Cypriots being killed’.⁸ He also says that Turkey was left with no alternative but to move alone under Article 4 (2) of the Treaty of Guarantee to protect the independence of the island and to put an end to the terrible destruction of life and property.⁹ Denktash further alleges that the Turkish villages were being attacked throughout the island by mobile units of the National Guard, the pattern of the onslaught

⁴ For the text of the communiqué see THE TURKISH YEARBOOK OF INTERNATIONAL RELATIONS, 14 (1974), p.125.

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

⁶ THE TURKISH YEARBOOK OF INTERNATIONAL RELATIONS, *ante*, p.130 (italics supplied).

⁷ *ibid.* p. 130

⁸ DENKTAS R., THE CYPRUS TRIANGLE (Nicosia, 1972), p. 68.

⁹ *Ibid.* p. 68 (It is said therein that “Turkey sent a *peace* force which landed in northern Cyprus”).

resembling that of 1963.¹⁰

2. TREATY OF GUARANTEE & INTERNATIONAL LAW

What is of crucial importance and need be examined is whether *unilateral military* intervention may be conferred by *treaty right*. In other words whether such a right (even if expressly stipulated) is in accordance with the principles of Public International Law.

a. Theories on the Legality of Military Intervention by Treaty Right.

It is commonly accepted in academic theories that armed intervention is legal when is done on the basis of a right provided for by treaty. The legality of such an intervention finds support in the overwhelming majority of academic writings, at least before the passing of the U.N. Charter.¹¹ Vattel is one of the advocates of such a view. Although he supports the principle of non-intervention, which he considers as flowing from Sovereignty- “the most precious principle that states ought to safeguard”- accepts the exception of intervention provided for by treaty.¹² Phillimore, also writing in the nineteenth century, considers intervention legal, in case this is guaranteed by treaty right.¹³ Diena, while is of the view that intervention violates the sovereignty and territorial integrity of States, regards intervention provided for by treaty as an exception to the rule of non-intervention.¹⁴ The preceding views are also shared by Oppenheim,¹⁵ Lawrence,¹⁶ Hodges,¹⁷

¹⁰ *Ibid.* pp. 69-70. The following is an excerpt from a report sent by Terence Smith from Limassol at the time and published in the *Herald Tribune* on 25 July 1974: “On the sun-baked dirt floor of the Municipal Soccer Stadium here, about 1,750 men from Limassol’s Turkish enclave and the surrounding Turkish villages are penned behind cells of barred wire. Their days are spent sheltering under the scorching sun that sends temperatures into high 90s. Although the men are dressed in street clothes and claim to be civilians, they are being held as prisoners of war by the Greek Cypriots”; DENKTASH, THE CYPRUS TRIANGLE, *supra*, p.71.

¹¹ Potter notes that the majority of experts on the subject matter readily tends to consider as legal any intervention provided for by treaty. (1930) II RECUEIL DES COURS, p. 657.

¹² See Vattel, E. de, *Le Droit des gens ou principes de la loi naturelle appliquee a la conduite et aux affaires des Nations et des Souverains* (Paris: 1863) p.22.

¹³ See PHILLIMORE, R., COMMENTARIES UPON INTERNATIONAL LAW (London, 1879), vol. I, p. 474.

¹⁴ See DIENA, DIRITTO INTERNAZIONALE (Milano, 1900) p.

¹⁵ See OPPENHEIM, INTERNATIONAL LAW, WAR AND NEUTRALITY, Vol. II (7th ed. H. Lauterpacht , London ,1952) p. 307.

¹⁶ See LAWRENCE, T.J., THE PRINCIPLES OF INTERNATIONAL LAW (London, 1920) p.121-23: “If a State has accepted a guarantee of any of its possessions, or of a special form of government, it suffers no legal wrong when the guaranteeing state intervenes in pursuance of the stipulations entered into between them. It is perhaps to this right to intervene in pursuance of a treaty that the course of action adopted towards Greece by the allied powers, Great Britain, France, and Russia, during 1915-1917, must be referred”. By the Treaty of London 1863, Greece was put under the guarantee of these powers as a ‘monarchical, independent, and constitutional state. Greece entered the great war on the side of Great Britain and her allies. The majority of the nation was enthusiastically in favour of the Entente cause, and of giving effect to a treaty with Serbia (an ally of Great Britain, France and Russia) under which Greece was bound to assist Serbia in the event of war between Serbia and a third power. On October 2, 1915, the British and French governments landed 150,000 troops at the Greek port of Salonika. They did this, with the hearty approval of Minister Venizelos and of an overwhelming majority of the Greek populace for the purpose of aiding Serbia that was at war with Austria and Germany.

and Westlake¹⁸ among others. Greek writers also hold the aforementioned views. Seferiades, having said that states have no right to intervene in the internal affairs of other states, conceded that intervention under a treaty is legal.¹⁹ Tenekides, though, states that the well established principle of non-intervention has been considerably strengthened by the United Nations Charter, writes the following: ‘International Law exceptionally accepts intervention if this is based upon agreement freely entered into or treaty providing for intervention in special circumstances’.²⁰ Professor Brownlie wrote that States may lawfully confer by treaty a right to intervene by the use of armed force within the territorial or other legally permitted limits of their jurisdiction. They may also give *ad hoc* consent to the entry of foreign forces on their territory, to the passage of foreign forces and to operations by foreign forces on their territory.²¹ Therefore, the charge of aggressive war against Thailand was disregarded by the International Military Tribunal at Tokyo on the ground that consent was given to the passage of Japanese forces through Thailand.²² Brownlie gives some examples indicating that a right to intervene by force on the territory of another state could properly be conferred by treaty. Article 3 of the Treaty of 22 May 1903, between Cuba and the United States provided: “*The government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty...*”²³ The Treaty of Friendship between Persia and the R.S.F.S.R., signed on 26 February 1921, provided as follows in Article 6: “*If a third party should attempt to carry out a policy of usurpation by means of armed intervention in Persia, or if such Power should desire to use Persian Territory as a base of operations against Russia, or if a Foreign Power should threaten the frontiers of Federal Russia or those of its Allies, and if the Persian Government should not be able to put a stop to such menace after having been once called upon to do so by Russia, Russia shall have the right to advance her troops into Persian interior for the purpose of carrying out the military operations necessary for its defence. Russia undertakes, however, to withdraw its troops from Persian territory as soon as the danger has been removed*”.²⁴ Another example is the General Treaty of Friendship and Co-Operation signed by the United States and Panama on

¹⁷ See HODGES, THE DOCTRINE OF INTERVENTION (New York, 1915)

¹⁸ See WESTLAKE, J. INTERNATIONAL LAW (Cambridge University Press 1910) Vol. I, p. 304: “The questions arising from reciprocal rights and obligations of states, it is said, are determined in a notable measure by the body of what are called political treaties, which are nothing else than the temporary expression of transitory relations between the different national forces. These treaties bind the freedom of action of the parties so long as the political coalitions which produced them remain without change”.

¹⁹ See SEFERIADES, PUBLIC INTERNATIONAL LAW (Athens, 1926), Vol. I, p. 319, and (1930) 34 RECUEIL DES COURS, p. 389.

²⁰ See TENEKIDES, VEMA (Greek Newspaper, 26.1.1963), p. 5; to the opposite direction goes the view expressed by the International Law Professor Constantopoulos by which the UN Charter expressly prohibits intervention

(CONSTANTOPOULOS, PUBLIC INTERNATIONAL LAW, Thessaloniki 1962, Vol. I, p. 278).

²¹ BROWNLIE, IAN, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (Oxford: Oxford University Press, 1963) p.317.

²² Judgment, SOHN, CASES AND MATERIALS ON UNITED NATIONS LAW, pp 916-17.

²³ This provision, however, did not appear in the later treaty of 29 May 1934: 28 A.J.I.L. (1934), Suppl., p. 97.

²⁴ Art. 1 of a Treaty of Guarantee and Neutrality between Persia and the U.S.S.R., signed in 1 Oct. 1927, confirmed the Treaty of 1921. A Soviet statement of Oct. 1958, referred specifically to the Treaty of 1927; THE TIMES, 3 Nov. 1958.

2 March 1936. Article 10 provided: “In case of an international conflagration or the existence of any threat of aggression which would endanger the security of the Republic of Panama or the security of the Panama Canal, the Governments of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests”. An identical provision in Article 7 of the Treaty of 1903 was the basis for the United States armed intervention in Panama in 1904 for the purpose of restoring order.²⁵ Further, the Agreement signed between Egypt and the United Kingdom on 19 October 1954²⁶, provided for the evacuation of British forces from the Suez Canal area. The United Kingdom was given the right to re-enter the area with military forces given an attack was made against by a State which was a member of the Arab Collective Security Pact, or Turkey.

Despite the above, the principles of self-determination²⁷ and equality of States²⁸ as stipulated in the U.N. Charter have put into doubt the right of military intervention conferred by Treaty. A number of jurists have denied that such a treaty is valid. Nevertheless, in Brownlie’s view, the right of forcible intervention on the territory of a state may still be lawfully conferred by treaty.²⁹

b. Arguments for the legality of intervention envisaged by Treaty

(i) Legitimate limitation of a State’s sovereignty.

It has been said that military intervention, constituting involvement in the internal affairs of a State, violates the principle of sovereignty. However, if intervention is done on the basis of a treaty right, the sovereignty of the state against which the intervention is launched is not violated, because the *treaty* right of intervention suggests legitimate and legal limitation of the state’s sovereignty.³⁰ Given that the state itself has *accepted* the diminution of its sovereignty, the intervention must be legal. Under such circumstances the state is obligated to accept the intervention. Contrary to the above argument, it has been asserted that a treaty envisaging a right to intervene is illegal, because it is in violation of general principles of law. Since international law acknowledges the principle of independence of states, it comes that a state has the obligation of self-preservation. The treaty envisaging intervention deprives a state from the exercise of self-preservation and administration.³¹ But those who advocate for the legitimate limitation of sovereignty of the

²⁵ OPPENHEIM, INTERNATIONAL LAW, *ante*, p.307; BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES, *ante*, p. 320.

²⁶ Cmd. 9298 (1954), abrogated by Egypt 1 Jan. 1957 A.J.I.L. (1957), p.672.

²⁷ U.N. Charter Article (12): “To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples...”

²⁸ U.N. Charter Article 2(1): “The Organisation is based on the principle of the sovereign equality of all its Members”.

²⁹ BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES, *ante*, p. 321; OPPENHEIM, INTERNATIONAL LAW, *ante*, p.307; Jessup, 32 A.J.I.L. (1938), p.117.

³⁰ On this, LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW, *supra*, pp. 118-119.

³¹ See THOMAS AND THOMAS, NON-INTERVENTION: THE LAW AND ITS IMPORT IN THE AMERICAS (Dallas, 1956), p. 91-92 (where it is argued that the state is even deprived of its international personality). Indeed, whether a state, under these circumstances, maintains to the utmost its independence and sovereignty, remains controversial.

state conceding a right of military intervention, say that there is no such thing as obligation to self-preservation.³² In the *Austro-German Customs Union Case*, Judge Anzilotti, in a separate Opinion, went so far as to assert that according to general international law each State is free to deny its independence, also described as sovereignty (*suprema potestas*), and even its own existence.³³

(ii) *Volenti non fit injuria*

Most authors base the legality of intervention by treaty right upon the consent of the State agreeing to the grant of a right of intervention to another state. The legal axiom *volenti non fit injuria* is not only a theoretical construction, but has constituted the legal basis of interventions in state practice.³⁴ Proponents of this legal axiom also suggest that entering into treaties is a right of independent states, which may by way of treaty confer a right of intervention to another state in the same way as they may by international agreement concede part of their territory to a third state.³⁵ Thus, a State not only gives away its sovereign rights, but, on the contrary, exercises its sovereign right of concluding a treaty. In the *Wimbledon Case*, the Permanent Court of International Justice held that “the right of entering into international engagements is an attribute of State sovereignty”.³⁶ In the *Perry Case*, which appeared before the Supreme Court of the United States, Chief Justice Hughes stated in his judgement: “the right to make binding obligations is a competence attaching to sovereignty”.³⁷

(iii) *Pacta sunt servanda*

One view dictates that since the intentions of two or more states coincide in an International Agreement, so that a right to intervention of one of the contracting parties into the internal affairs of the other may be agreed, law regulating their relations is therefore created. This law is binding. In accordance with the principle of *pacta sunt servanda* the contracting parties are obliged to fulfil the terms of the Agreement.³⁸ Interventions are illegal, unless the intervening state acquires special right to intervene according to public international law principles. Thus, it could be argued, the binding force

³² See LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW, *supra*, pp. 118-119: “Sometimes an independent state finds itself obliged to submit for a while to restraints imposed upon it by superior force, as when Prussia was forbidden by Napoleon in 1808 to keep an army of more than 40,000 men. Such limited and temporary restraints upon the freedom of action of a state are not held to derogate from its independence. The same thing may be said of the authority assumed by the U.S. on the American continent. There can be no doubt that in America a position of primacy has been assumed by the U.S. But occasional deference to these authorities does not deprive a state of its independent position under the law of nations”; Winfield, *The Grounds of Intervention in International Law 1924 BYBIL*, pp. 155-159.

³³ *Advisory Opinion*, (1931) 41 P.C.I.J. Reports, Series A/B, p.59.

³⁴ Instances of the kind are the Soviet intervention in Hungary 1956, the joint intervention of Great Britain, France and Israel in Egypt 1956, and the intervention of the United Kingdom in Jordan 1958.

³⁵ See THOMAS AND THOMAS, NON-INTERVENTION: THE LAW AND ITS IMPORTS IN THE AMERICAS, *ante*, p. 96.

³⁶ (1923) 1 P.C.I.J. Reports, Series A, p. 25

³⁷ (1934) 294 U.S. Supreme Court Reports, p.330, 353-354. To the same effect, see the Opinion of the Permanent Court of International Justice in the Case of the Greco-Turkish exchange of populations in 1923 (1923, 10 P.C.I.J. Reports, Series B, p.21).

³⁸ See HARVARD UNIVERSITY LAW SCHOOL, Research on International Law, (1935) 29 *A.J.I.L.*, Supplement Part III Law of Treaties, p. 671.

of international treaties may be said to sufficiently form the basis of the legality of intervention accorded by treaty.

Furthermore, the legality of intervention of this sort may be grounded upon the relevant principle of *modus et conventio vincunt legem*. The rationale behind this very legal principle is that, given the lack of a unified international legislature, the creation of legal rules governing relations between members of the international community depends to a great degree on international conventions, which do create legal relations among the parties to a convention. *Modus et conventio vincunt legem*, like *pacta sunt servanda* is a generally recognized principle, on condition that the content of the treaty is in conformity with legitimacy.

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

c. Arguments against the legality of intervention provided for by Treaty right.

(i) General Principles of Law

A valid treaty presupposes lawful provisions. It is true that states have the capacity, by virtue of sovereignty, to conclude treaties on any matter whatever. It is equally true, however, that in the international legal order there exist legal rules, which states -parties to a treaty- cannot, and should not, ignore. This view is pointedly expressed by the legal maxim *privatorum conventio juris publico non derogat*. The rationale underlying this axiom is that the international community, like every well ordered society, should see to the lawful and moral coexistence of its members. As *Lauterpacht* very well put it, "*the parties conclude a treaty not in a legal vacuum, but against a background of existing rules of international law*".³⁹ It may be true that the treaty has to be interpreted by reference to the intention of the parties. But the intention of the parties must be interpreted by reference to rules of international law, in so far as their application has not been expressly excluded.⁴⁰ Along similar lines, Verdross wrote that "*no juridical order can admit treaties between juridical subjects which are obviously in contradiction of the ethics of a certain community*".⁴¹

According to these *general principles of law*, a treaty comprising unlawful

³⁹ LAUTERPACHT, H., *THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY* (Oxford: Oxford University Press, 1933), p.109.

⁴⁰ *Ibid.* p.109. The above considerations, Sir Hersch Lauterpacht observes, will perhaps suggest to the reader a certain criterion for gauging the relative importance of the first two paragraphs of the enumeration of sources of law to be applied by the Permanent Court of International Justice according to Article 38 of its Statute. In particular, he may be inclined to think, not without good reason, that the order in which the first two sources of law have been placed, although technically correct, is not necessarily indicative of the function which they fulfil in the process of bringing about the decision.

⁴¹ A. Verdross, *Forbidden Treaties in International Law*, (1937) 31 A.J.I.L., p. 572.

provisions is void (*turpes stipulations nullius esse momenti*).⁴² Unquestionably, *general principles of law* are in force under international law;⁴³ customary law, the history of international arbitration and Article 38(1) of the Statute of the International Court of Justice attest to their legal validity.⁴⁴

The question which naturally follows is *which* are those international law principles violation of which renders a treaty void? Answer: the *peremptory norms of international law* otherwise known as *jus cogens*. The basis of these principles may be found in natural law. Article 53 of the Vienna Convention on the Law of Treaties, signed at Vienna in 1969⁴⁵, provides as follows: “A treaty is void if, at the time of its conclusion conflicts with a peremptory norm of international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”.⁴⁶ The definition of a peremptory norm is more skilful than appears at first sight. A rule cannot become a peremptory norm unless it is “accepted and recognized (as such) by the international community of states as a whole”, a requirement which is too logical to be challenged. At present very few rules pass this threshold.⁴⁷ There is considerable agreement on the *prohibition of the use of force*, of genocide, slavery, of gross violations of the right of people to self-determination, and of racial discrimination. Others would include the prohibition of torture.⁴⁸ The International Law Commission, in its commentary on the draft of the Vienna Convention, identified the Charter’s prohibition of the use of inter-State force as a “conspicuous example” of *jus cogens*.⁴⁹ The Commission’s

⁴² CORPUS JURIS CIVILIS, THE DIGEST OF JUSTINIAN, translated by Charles Henry Monro (Cambridge: The University Press, 1904-1909) 26 Pandects, 43,1 and 57 Pandects 17,2.

⁴³ See VERDROSS, FORBIDDEN TREATIES IN INTERNATIONAL LAW, *supra*, p.572.

⁴⁴ Article 38 (1) (c): “The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: the general principles of law recognized by civilized nations”.

⁴⁵ The Vienna Convention is the outcome of the work of the International Law Commission and two sessions of the United Nations Conference on the Law of Treaties held in 1968 and 1969.

⁴⁶ Text in *ILM* 8 (1969), 679; *A.J.I.L.*, p.875; BROWNLIE (ed.) BASIC DOCUMENTS IN INTERNATIONAL LAW (Oxford: Oxford University Press, 1985), p. 388.

⁴⁷ OPPENHEIM, INTERNATIONAL LAW Vol. I (9th ed. Sir Robert Jennings QC and Sir Arthur Watts QC London: Longman, 1996) p.1292: “There is no general agreement as to which rules have this character”; WATTS SIR ARTHUR, THE INTERNATIONAL LAW COMMISSION (Oxford: Oxford University Press, 1999 pp. 740-1): “The view that in the last analysis there is no rule of international law from which States cannot at their own free will contract out has become increasingly difficult to sustain, although some jurists deny the existence of any rules of *jus cogens* in international law, since in their own view even the most general rules still fall short of being universal”; H. Lauterpacht’s Report on the Law of Treaties, YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, hereinafter cited as *YBILC* (1953), ii, pp.154-5; Waldock’s Report, *YBILC* (1963), ii, pp. 52-3; SINCLAIR, THE VIENNA CONVENTION OF THE LAW OF TREATIES, (2nd ed. 1984) pp. 203-41; ROZAKIS, THE CONCEPT OF *JUS COGENS* IN THE LAW OF TREATIES (1976)

⁴⁸ In the *Barcelona Traction Case* 1970, in an obscure *obiter dictum*, the International Court of Justice referred to ‘basic rights of the human person’, including the prohibition of slavery and racial discrimination and *the prohibition of aggression* and genocide, which it considered to be ‘the concern of all States’, without, however, expressly recognizing the concept of *jus cogens*. However, in its Advisory Opinion in the *Legality of Nuclear Weapons Case*, the ICJ did not find it a need to address the question whether universally recognized principles of international humanitarian law (applicable in time of armed conflict) are part of *jus cogens* as defined in Article 51. (35 *I.L.M.*, 1996, p. 828, para.83).

⁴⁹ Report of the International Law Commission, 18th Session, [1966] II *YBILC* 172, pp. 248-9, 261.

position was quoted by the International Court of Justice in the Nicaragua case.⁵⁰ In his Separate Opinion, President Singh underscored that “the principle of non-use of force belongs to the realm of *jus cogens*”.⁵¹ Judge Sette-Camara, in another Separate Opinion, also expressed the firm view that the non-use of force can be recognized as a peremptory rule.⁵² Despite some reservations, this position seems to be the prevalent at present.⁵³ In the relevant draft of the International Law Commission, it is indicated that treaties providing for use of force in violation of the principles of the UN Charter, treaties for the commission of acts which constitute crimes under international law, treaties providing for slave trade, piracy *jure gentium*, and genocide, may be cited as examples of treaties that conflict with peremptory norms of general international law. Another view appears to be that a rule of *jus cogens* can be derived from custom.

In view of the above, it could be argued that the rule of general international law prohibiting the unilateral use of force, especially as laid down by Article 2(4) of the U.N. Charter, constitutes *jus cogens*.⁵⁴ The International Law Commission observes that the prohibition of the threat or use of force undoubtedly constitutes peremptory norm of international law “from which states cannot derogate by treaty arrangements”.⁵⁵ Thus, this legal rule cannot be invalidated by an international treaty. A pact of aggression concluded between Arcadia and Numidia against Utopia will not only be stigmatized as a violation of the Charter, as well as general international law, but it will also be void *ab initio*.⁵⁶ Authors such as *Guggenheim*, who see international law as dependent upon the consent and agreements of states, reject the peremptory nature of international customary law rules. Contrary to this position, *McNair* writes that states are not capable of evading peremptory norms of international law by the conclusion of special treaties.⁵⁷ Article 103 of the U.N.

⁵⁰ Nicaragua Case (Merits) I.C.J. Rep. 1986, p.14

⁵¹ *Ibid.*, p. 247

⁵² *Ibid.*, p. 199

⁵³ See AMERICAN LAW INSTITUTE, 1 RESTATEMENT OF THE LAW: THE FOREIGN RELATIONS LAW OF THE UNITED STATES 28 (3rd ed., 1986; L. Henkin, Chief Reporter).

⁵⁴ This peremptory norm may further be said to stem from the principle of state sovereignty.

⁵⁵ See U.N. Doc. A/5509, Supplement No. 9, p. 11-12; WATTS, THE INTERNATIONAL LAW COMMISSION, *ante*, p.741: “Some members of the Commission felt that there might be an advantage in specifying some of the most obvious and best settled rules of *jus cogens*. Examples suggested included (a) a treaty contemplating an unlawful use of force contrary to the principles of the U.N. Charter.

⁵⁶ See G.G. Fitzmaurice, “Third Report on Law of Treaties”, [1958] II YBILC, pp. 20-40; DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE (Cambridge: Cambridge University Press, 1994), p.103. 1979 Dig.

⁵⁷ See MCNAIR, THE LAW OF TREATIES (Oxford: Oxford University Press, 1961), p. 215: “There are, however, many rules of customary international law which stand in a higher category and which cannot be set aside or modified by contracting States; it is easier to illustrate these rules than to define them. They are rules, which have been accepted, expressly or tacitly, by custom as being necessary to protect the public interests of the society of States or to maintain the standards of public morality recognized by them. For instance, piracy is stigmatized by customary international law as a crime, in the sense that a pirate is regarded as *hostis humani generis* and can lawfully be punished by any state into whose hands he may fall. Can there be any doubt that a treaty whereby two States agreed to permit piracy in a certain area, or against the merchant ships of a certain State, with impunity, would be null and void? Or a treaty whereby two allies agreed to wage a war by methods which neglected the customary rules of warfare?” Also, authors like Georg Schwarzenberger, representing more or less a traditional view of international law, assert that treaties should not conflict with a peremptory norm of general international law (*jus cogens*), as the principle is expressed in the Vienna Convention on the Law of Treaties, 1969: “Notwithstanding the absence in international customary law of rules of *jus cogens* or of any rule requiring compliance of treaties with *jus cogens*, Article 64 of the Vienna Convention of 1969 on the Law of Treaties provides that if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with it

Charter may be cited as evidence of the existence of a peremptory norm of international law going against the conclusion of treaties providing for unilateral military intervention.⁵⁸

From the above discussion it may be inferred that article IV (2) of the Cyprus Treaty of Guarantee conflicts with jus cogens and is legally invalid. As a result, one could argue that Turkey may not claim a right for unilateral military intervention conferred by the Treaty of Guarantee. Even if the Treaty expressly provided for such a right (which is not the case), this would again be in plain violation of peremptory norms of international law. On the other hand, a possible counterargument could be that Cyprus was not a member of the United Nations at the time when the Zurich and London Accords were signed, and so the rules of jus cogens as embodied in the U.N. Charter could not have been applicable to the newly born Cyprus Republic. In answer to such possible allegation, it may be asserted that the peremptory rules of international law laid down by the U.N. Charter were nevertheless applicable to all other signatory States to the Treaty of Cyprus; Turkey, Greece, and the United Kingdom were already members of the United Nations Organization at the time, clearly bound by its principles. Of course as soon as Cyprus became a UN member state (in fact long before the 1974 Turkish intervention), the principles of the United Nations -including jus cogens- were to be directly applicable.⁵⁹ Another objection to the applicability of jus cogens in the case of Cyprus may be phrased as follows: Article 65 of the Vienna Convention relates to the procedure to be followed with respect to invalidity, termination, withdrawal from, or suspension of the operation of a treaty. The Convention, which incorporates the principle of the jus cogens into the law of treaties, makes it mandatory to refer a dispute to the International Court of Justice for a decision. Article 66 states that if, under paragraph 3 of Article 65 no solution has been reached within a period of twelve months following the date on which the objection was raised, any of the parties to a dispute concerning the application or the interpretation of articles 53 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration. On this basis, one line of argument is put forward (in fact by Necatigil),⁶⁰ that in the absence of a ruling of

becomes void and terminates” (GEORG SCHWARZENBERGER and BROWN, E.D., A MANUAL OF INTERNATIONAL LAW, 6th edn., London, 1976, pp. 139-40).

⁵⁸ *U.N. Charter, Article 103*: “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”. The Vienna Convention on the Law of Treaties 1969 provides that the rules which it sets out regarding the rights and obligations of states parties to successive treaties relating to the same subject matter are subject to this Article; see generally Oppenheim, *International Law* Vol. I, ante, p. 1216; GOODRICH, HAMBRO, AND SIMONS, CHARTER OF THE UNITED NATIONS (3rd ed., 1969), pp. 614-17, KELSEN, THE LAW OF THE UNITED NATIONS (New York, 1950), McNAIR, THE LAW OF TREATIES, ante, p. 216-18.

⁵⁹ This may form a separate argument against the legality of intervention provided for by Treaty right. Given the conventional character of the UN Charter, two treaties conflict: the UN Charter itself on the one hand, and the Cyprus Treaty of Guarantee, on the other. In such a case the Charter, considered as ‘higher’ law, prevails. The supremacy of the Charter over any other international agreement is established by Article 103 (*UN Charter*). Art. 103 refers both to past and future treaties conflicting with the Charter of the UN (on this last point, see McNAIR, THE LAW OF TREATIES, ante, p.218: “This provision contains no limitation as to time and operates both retrospectively and prospectively”; OPPENHEIM, INTERNATIONAL LAW, Vol. I (9th ed. Jennings and Watts), ante, p. 1216: “Article 103 is widely accepted as establishing the supremacy of the obligations of the Charter over any other contractual agreement of the members whether past or future, and whether between members *inter se* or with non-member states”; OPPENHEIM-LAUTERPACHT, INTERNATIONAL LAW Vol. I (7th ed. H.Lauterpacht) ante, p.807.

⁶⁰ See NECATIGIL, THE TURKISH POSITION IN INTERNATIONAL LAW, ante, p.118.

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

(ii) Treaties reached under Duress or Inequitable Treaties

The legal position of the Cyprus Government, as later expressed in the United Nations by Mr. Kyprianou, then Foreign Minister, was that the “Constitution was foisted on Cyprus... The combined effect of the Constitution and the Treaty of Guarantee is that a situation has been created whereby the constitutional and political development of the Republic has been arrested at its infancy and the Republic as a sovereign State has been placed in a strait jacket”.⁶¹ The Minister of Foreign Affairs also argued that the treaties “were imposed on the Cypriot people (thus) making the international legal doctrines of unequal, inequitable and unjust treaties relevant”. The resulting legal conclusion, according to Mr. Kyprianou, was that the 1960 Agreements were “unequal and inequitable treaties, as a result of which they cannot be regarded as anything but null and void.”⁶²

According to Oppenheim, real consent is a condition of the validity of a treaty.⁶³ An expression of consent procured by the coercion of its representative through acts or threats directed against him is generally agreed to be without legal effect, and Article 51 of the Vienna Convention on the Law of Treaties so provides: the Treaty is void not merely voidable.⁶⁴ Any treaty signed by a state under pressure exerted by another state is void.⁶⁵ Article 32(a) of the *Harvard Draft Convention on the Law of Treaties*, states: ‘Duress involves the employment of coercion...If the coercion has been directed against a person signing a Treaty on behalf of a State, and of with knowledge of this fact the treaty signed has been ratified by that State without coercion, the treaty is not to be considered as having entered into by the State in consequence of duress’.⁶⁶

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

⁶¹ UN SCOR, 1098th meeting, 5 Aug. 1965, para.20 (1964).

⁶² UN SCOR, 1235th meeting, para.25 (1964).

⁶³ OPPENHEIM-LAUTERPACHT, *INTERNATIONAL LAW*, ante, Vol. I, pp. 802-803; OPPENHEIM, *INTERNATIONAL LAW Vol. I* (9th ed. R.Jennings and A.Watts), ante, p. 1290.

⁶⁴ See OPPENHEIM, *INTERNATIONAL LAW*, supra, p.1290; LAUTERPACHT, H., *PRIVATE LAW SOURCES AND ANALOGIES OF INTERNATIONAL LAW* (London 1927); BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES*, ante, pp. 404-6; WATTS, *THE INTERNATIONAL LAW COMMISSION*, ante, p.737: “There is general agreement that acts of coercion or threats applied to individuals with respect to their own persons in their personal capacity in order to procure the signature, ratification, acceptance or approval of a treaty will unquestionably invalidate the consent so procured”.

⁶⁵ See relevant discussion in OPPENHEIM-LAUTERPACHT, ante, Vol. 1, p. 802; LAUTERPACHT, H., *PRIVATE LAW SOURCES AND ANALOGIES OF INTERNATIONAL LAW*, supra p. 74; McNAIR, *THE LAW OF TREATIES*, ante, p. 209, (1927) 26 *MLR*, pp. 139-151; Brierly, (1936) 58 *RECUEIL DES COURS*, pp. 203-210.

⁶⁶ Harvard Law School Research on International Law, ante, p.1148; Grotius maintained that ‘the law of nature required that there ought to be freedom of choice by the parties, and that their consent should not be induced by fear’ (*DE JURE BELLI AC PACIS*, ante, Book II).

conclusion, that the 1960 settlement was void.⁶⁷

(iii) Sovereign equality

Article 2(1) of the Charter of the United Nations declares that ‘the Organization is based on the principle of sovereign equality of all its members’. It has been stated that the obligation of the Treaty of Guarantee ‘to keep unalterable in perpetuity the constitutional structure and order’ purports to deprive Cyprus of one of the fundamental requirements of a state as an integral person, internal independence and territorial supremacy’.⁶⁸ This point is further elaborated; article IV of the Treaty of Guarantee conflicts both with customary international law and with article 103 of the UN Charter by violating the principle of ‘sovereign equality’ as laid down in article 2(1).⁶⁹

Indeed, the Republic of Cyprus does not have the capacity to amend the fundamental or so called ‘Basic Articles’ of its Constitution. However, absence of power of a state to change its constitution may not affect its sovereign equality. Also, absence of such power is not regarded as being incompatible with the concept of independence, a necessary requirement for statehood.⁷⁰

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

3. DID THE TREATY OF GUARANTEE PURPORT TO AUTHORIZE MILITARY ACTION?

The proper interpretation of certain expressions in the wording of Art. 4 is the subject of great controversy. ‘Representations’ may simply be a request to comply with a duty, but they could also take the form of a threat of violence, as and when the duty bound does not behave as it should.⁷¹ The word ‘measures is also ambiguous; as Articles 41 and 42⁷² of the United Nations Charter demonstrate, it may mean actions of a peaceful although coercive

⁶⁷ EHRlich, *INTERNATIONAL CRISES AND THE ROLE OF LAW, CYPRUS 1958-1967* (Oxford University Press, 1974), p.48: “In part, the logical reason may have been concern that Turkey and the United Kingdom would respond that if the settlement was invalid then Cyprus was still a British colony. But no one seriously urged that position; the Republic of Cyprus had been a member of the United Nations for over three years and its ‘sovereign equality’ was recognized by the Charter. Much more important, there were strong pressures from at least Turkey and England, and probably Greece as well, against abrogation of all the Accords.

⁶⁸ TORNARITIS C., *CYPRUS AND ITS CONSTITUTIONAL AND OTHER LEGAL PROBLEMS* (Nicosia, 1977), pp. 58-59.

⁶⁹ *Ibid.*, pp. 42, 60. See also JACOVIDES, A. J., *TREATIES CONFLICTING WITH PEREMPTORY NORMS OF INTERNATIONAL LAW AND THE ZURICH-LONDON AGREEMENTS* (Nicosia, 1966), pp.15-28.

⁷⁰ See Crawford, (1976) 48 *BYBIL*, p. 93, at 123-4.

⁷¹ RONZITTI N., *RESCUING NATIONALS ABROAD THROUGH MILITARY COERCION AND INTERVENTION ON GROUNDS OF HUMANITY* (Martinus Nijhoff Publishers, 1985) p. 128.

⁷² UN Charter, Article 42: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea or land forces as may be necessary to maintain international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

nature, as well as those which involve the use of force.⁷³

Terminological differences culminate over the interpretation of the right of each of the guaranteeing powers *to take action*. A vexed question remains whether the phrase *to take action* may also imply military action. The Greek side, as one would easily guess, answers in the negative. The Turkish side, of course, in the affirmative. The former is of the view that nothing in the Treaty warrants a forcible intervention by Turkey. Criton Tornaritis Q.C., formerly Attorney-General of the Cyprus Republic holds that irrespective of the validity of the Treaty of Guarantee, from the preamble and the provisions of which it appears that the guaranteeing powers were aiming at the protection of their own interests than the interests of the Republic of Cyprus, its Article IV invoked by Turkey does not grant the right to of armed intervention to the guaranteeing Powers.⁷⁴ Necatigil, says that the second paragraph of the article in question, by providing for the right of any of the guaranteeing powers *to take action*, is stronger in terms than the first paragraph. If only unilateral intercession was envisaged, then there was no reason why the second paragraph should not expressly speak of the right to unilateral intercession or... diplomatic representation. Upon this rationale, one could conversely that neither a right to unilateral military action is *expressly* provided for by Article IV (2).⁷⁵

Thus, great difficulty arises over ascertaining the intentions of the Treaty drafters which becomes even more acute in view of the very limited sources of information on the matter. The Treaty of Guarantee was initialled at the end of the Zurich Summit between Greece and Turkey of 5-11 February 1959; its content, however, was disclosed only after the London Conference.⁷⁶ The participants did not draw up an official record of the summit and the information available is unfortunately little. However, Stephen Xydis, shades light to the events. His account is the outcome of interviews with the Greek representatives⁷⁷. According to Xydis, Turkey submitted a draft to the Greek counterpart, probably after consulting the United Kingdom. The draft allowed the right to take unilateral action, without having previously determined if a common or concerted action was in fact possible. "At a certain point of the negotiations", Xydis goes on, "the Turkish side wanted specific reference to the right of resort to 'military' action for the purpose of restoring the state of affairs established by the treaty. The Greek side, however, contended that resorting to military action was prohibited by the U.N. Charter and was permissible only under a decision of the Security Council, if at all. Finally, the text was drawn up in its present form, with the Turks always having possible resort to the *ultima ratio* in mind, in contrast to the Greeks who did not".⁷⁸

⁷³ RONZITTI, *supra* p. 128; NECATIGIL, *supra* p.131.

⁷⁴ Tornaritis, *Whether any resort to armed intervention in Cyprus would be justified either under the Charter or under customary international law*, (1964) II CYPRUS TODAY, p.2.

⁷⁵ The *Textual* or "*plain meaning*" approach to Treaty Interpretation does not seem to be helpful in this case. It should be noted, however, that the International Court of Justice has more than once pronounced that the textual approach is regarded by it as established law (see, for instance, the *Admissions* case, I.C.J. Reports 1948, p. 57, and the *Competence* case, I.C.J. Reports 1950, p. 4).

⁷⁶ See *Conference on Cyprus: Documents Signed and Initialled at Lancaster House on February 19, 1959*, Cmnd.679, Miscellaneous No. 4, London, HMSO, 1959, pp. 5, 10.

⁷⁷ XYDIS, S.G., CYPRUS RELUCTANT REPUBLIC (London 1973)

⁷⁸ *Ibid.* pp. 409-410. On this point see also BITSIOS, D. CYPRUS: THE VULNERABLE REPUBLIC (1975), p.102; to the same effect, of interest is a report sent by Averoff, Foreign Minister of Greece, to Prime Minister Karamanlis, briefing him on the points that had arisen during the preparatory London talks: 'The most serious point that had arisen concerned paragraph 2 of the Treaty of Guarantee, which provided that each of the guarantors could act unilaterally in order to safeguard the constitutional

More illuminating perhaps are the Security Council Debates of 1963 and 1974. In 1963, Turkey militarily intervened in Cyprus allegedly to protect the lives of the Turkish Cypriots who had engaged in a bloody conflict against the Greek Cypriots.⁷⁹ A 'Joint Peace-Making Force under British command (to its credit) operated in Cyprus towards the end of 1963 and the beginning of 1964. It was composed of contingents from the three Guarantor States. This Peace-Making Force had the task of helping the Cypriot Government in its efforts to bring about peace between the two communities. In critical debates of 1964 on the Cyprus question, representatives of Turkey at the United Nations repeatedly stated that their government's freedom of action derived from the Treaty of Guarantee, whose validity was incontestable.⁸⁰ The Cypriot Government position was stated by the then Foreign Minister, Mr. Spyros Kyprianou. He said that his government firmly rejected Turkey's interpretation of article 4 of the Treaty of Guarantee.⁸¹ More interesting is the view of the Greek representative. In answer to the Cyprus representative, who demanded a declaration from the Guarantor States on the question whether the treaty gives the right of unilateral military intervention, he said: 'Do we the Greek government- think that this article gives us the right to intervene militarily, and unilaterally without the authorization of the Security Council? The answer is "no"'.⁸² Even more interesting and, indeed, revealing was the statement of the British government representative. Firstly, he said that "it was not under article IV of the Treaty of Guarantee that the United Kingdom Government sent its troops to Cyprus. We sent our troops because they were asked for and because they were generally considered to be necessary and helpful in preventing further serious strife."⁸³ Furthermore, he emphasised 'the action provided for in article IV(2) of the Treaty of Guarantee can only be taken in the event of a breach of the provisions of the Treaty, that is, in circumstances in which there is a threat to the independence, territorial integrity or security of the Republic of Cyprus as established by the Basic Articles of its Constitution; a right of intervention for this purpose, and for this purpose alone, is provided for in the Treaty. But the question of *military* intervention under article IV of the Treaty of Guarantee *would never arise if all concerned played their part as they have undertaken to do* (emphasis added).'⁸⁴ This very statement is quite clear. If the attitude of all the States concerned was in accordance with the commitments undertaken resort to force would not

order if the other guarantors did not agree as to the manner in which they should act. At the meeting of 12 February, obviously after consulting legal experts, the point was raised by the British that this provision was incompatible with the UN Charter and perhaps would prevent Cyprus from becoming a UN member. Mr Zorlu, Mr Palamas, Greek expert on UN matters, and Mr Averoff argued that there was no incompatibility. Mr Averoff declared, however, that should any article of the Zurich Agreements create difficulties for the entry of Cyprus to the UN it should be amended in such a way as to remove the difficulty' (STORY OF LOST OPPORTUNITIES, ed. p.)

⁷⁹ More of the international dimensions of the inter-communal strife, see below, chapter VI.

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

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

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

⁸³ S/PV. 1098, February 27, 1964, pp. 48-50. See also LAUTERPACHT, E. BRITISH PRACTICE IN INTERNATIONAL LAW

⁸⁴ *ibid.* pp.42-46. The representative of the British Government interestingly went on to say that 'the legal effect of the provisions of article IV of the Treaty of Guarantee, as in the case of other legal provisions, will depend on the facts and circumstances of the situation in which they are invoked, and there is nothing in article IV to suggest that action taken under it would necessarily be contrary to the United Nations Charter'.

be necessary. In case this should not happen, the problem arises of restoring the state of affairs created by the Treaty of Guarantee, if need be by measures which might comprise the use of force.⁸⁵

However, it is, I consider, necessary to refer in this regard to the legal advice given by Sir Elihu Lauterpacht to the Cyprus Government after a consultation in London on 25 January 1964. Lauterpacht considers that the Treaty of Guarantee is valid. He does not, however, consider that the Treaty of Guarantee gives the right to *armed* intervention.⁸⁶

On 20 July 1974, during the debates before the Security Council, the Greek Cypriot representative put forward that Turkey's action contravened the treaty itself, as well as the UN Charter. He argued that the right *to take action* denotes only the application of peaceful measures and, furthermore it does not include armed aggression, which is forbidden to member states, except in case of self-defence.⁸⁷ The Turkish representative, on the other hand, stressed that the Treaty of Guarantee gave Turkey the right to take military action, aiming at establishing constitutional administration in the island and protecting the rights of the Turkish Cypriots⁸⁸. The Greek government's attitude was less clear and partly contradicted the 1964 declaration. It did not maintain that Article IV (2) did not allow the right of intervention. Instead, the Greek representative pointed out that for unilateral action to be considered lawful, it would have to take place only after the collapse of negotiations between the three Guarantor States and would have to have the sole aim of re-establishing the status quo ante.⁸⁹ One could therefore allege that it would seem the Greek government did not deny existence -under Article VI(2)- of a right of military intervention, but, rather, that it contested its vindication in the particular case.⁹⁰

The United Kingdom did not take up a position with regarding the content of Article IV(2) of the Treaty of Guarantee. Nevertheless, great light is shed on the British position by the debates before the House of Commons, particularly by a report prepared by the Select Committee appointed to conduct an examination the Cyprus situation.⁹¹ The Foreign Secretary replied in the following manner to the Members of Parliament who asked him whether, under Art. IV (2), the United Kingdom had the right to use force as and when there was a breach of the Treaty of Guarantee: 'I dare say legally we had'.⁹² From a careful reading, though, of the Select Committees records, the Foreign Minister seemed to hesitate; not because he was not of the opinion that Article IV of the Treaty of Guarantee

⁸⁵ See RONZITTI, N. RESCUING NATIONALS ABROAD THROUGH MILITARY COERCION AND INTERVENTION ON GROUNDS OF HUMANITY, *ante*, p. 124.

⁸⁶ Lauterpacht, Eli, Written Opinion, 1964 (the Opinion may be found in CLERIDES G., CYPRUS: MY DEPOSITION, *ante*, Appendix f pp. 386-7)

⁸⁷ UNSC S/PV 1781; *UN Monthly Chronicle* 1974, vol. xi, No.8, 21-3. He proceeded to state that even though it could be assumed that the treaty gave a right to take military action, this right could be resorted to only for the protection of the Constitution.

⁸⁸ NECATIGIL, THE TURKISH POSITION IN INTERNATIONAL LAW, *ante*, p113.

⁸⁹ U.N. Doc. S/PV.1781, 20 July 1974, p.82 (where it is stated: 'neither of those prerequisites has been fulfilled...exhaustion of consultations did not precede the Turkish attacks nor were Turkey's plans aimed at the status quo ante, but, obviously, at the permanent occupation of large portions of Cypriot territory').

⁹⁰ See N.Ronzitti *ante*, p.121.

⁹¹ See, Report from the *Select Committee on Cyprus* together with the *Proceedings of the Committee*, Minutes of Evidence and Appendices, Session 1975- 76, Ordered by the House of Commons to be printed, 8th April 1976, H.M.S.O., London.

⁹² *Ibid.*, However, it has to be noted that the U.K., according to the Report of the *Parliamentary Debates*, would only intervene in order to overthrow the Sampson regime and protect the lives of the Turkish Cypriots.

gave a right to military intervention, but because he doubted if it was wise from a political standpoint to use such a right.⁹³ The parliamentary Committee stated: ‘Britain had a legal right to intervene, she had a moral obligation to intervene, she had the *military capacity* to intervene. She did not intervene for reasons which the government refuses to give.’⁹⁴ In a recent House of Lords Debate on the Cyprus question, Lord Caradon referred to article IV of the Treaty of Guarantee and said these:

*‘Having signed the treaty with the authority of Her Majesty’s Government I have naturally watched subsequent events in the island of Cyprus with dismay and shame that we should have given an undertaking and have failed so shamefully to carry it out’.*⁹⁵

Apart from the United Nations debates and the United Kingdom Parliamentary Papers so far considered, the available travaux préparatoires are of little help on ascertaining the intentions of the Treaty drafters concerning whether intervention must be by peaceful means alone or it may consist of measures amounting to the use of force. Even so, there exist documents of considerable gravity with regard to this point. During discussions by the London Joint Committee⁹⁶, of one particular annex, namely, Annex C on the status of forces, the Greek delegation proposed the inclusion of a provision dealing with the settlement of disputes. The Cyprus Official Committee, in which the views of Whitehall Departments are coordinated, considered the matter and concluded that the most satisfactory proposal was that a disputes article covering the whole Treaty and its Annexes should be included in the Treaty of Establishment.⁹⁷ The following is the crux of the said article: “*Any question of difficulty as to the interpretation or application of the provisions of the present Treaty shall be settled as follows: Any question or difficulty that may arise over the application or operation of the military requirements of the United Kingdom, or concerning the provisions of the present Treaty in so far as they affect the status, rights and obligations of United Kingdom forces or any other forces associated with them under the terms of this Treaty, or of Greek, Turkish and Cypriot forces, shall ordinarily be settled by negotiation between the tripartite Headquarters of the Republic of Cyprus, Greece and Turkey and the authorities of the armed forces of the United Kingdom*”.⁹⁸ So, if any such controversy came about (and actually did come about in the subsequent years) the interested parties would be under an obligation to settle their differences by means of peaceful negotiation and therefore resolve any difficulty regarding interpretation of Treaty provisions on armed forces rights and obligations. It may be deduced that the need for proper interpretation of Art. IV(2) should be resolved in this context. Further, the above mentioned article provides a mechanism by which a tribunal is set up in order to decide on

⁹³ It may be inferred that several statements (the present one included) of the United Kingdom, although not without a degree of ambiguity, lead one to believe that, in the eyes of the UK, Article IV permits military intervention on the part of the Guarantor States.

⁹⁴ Report from the *Select Committee on Cyprus* together with the *Proceedings of the Committee*, Minutes of Evidence and Appendices, Session 1975-76, *supra*, p. x (emphasis added).

⁹⁵ *Parliamentary Debates (Hansard), House of Lords* (Official Report), vol. 44, No. 80, 20 Apr. 1983, 618.

⁹⁶ The London Joint Committee, on which the United Kingdom, Greece, Turkey, the Greek-Cypriot and Turkish Cypriot communities were represented, was engaged in drafting the Treaty of Establishment of the Republic of Cyprus.

⁹⁷ See letter from Sir Gerald Fitzmaurice, Legal Adviser to the Foreign Office, to the Rt. Hon. Sir Reginald Manningham-Buller, Q.C., M.P., Attorney-General. {*Foreign Office (F.O.) 371/152871*, Public Records Office}.

⁹⁸ F.O. 371/15289, Public Records Office.

matters which negotiation cannot settle.⁹⁹ Unfortunately, the provisions of this article have not been complied with by Turkey either before the events of 1963-67 or her intervention in Cyprus 1974.

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

Be the case what it may, it must be noted at this stage that a cardinal mistake¹⁰⁰ was committed by the Greek side at the preliminary discussions in London between the Foreign Ministers of Greece, Turkey, and the United Kingdom, prior to the signature of the 1959 Accords. Had the Greek side supported the view of the British side that Article 2 of the Treaty of Guarantee was incompatible with the UN Charter, it would have been possible to define the term “take action” in such a way as clearly to exclude military intervention. This would have been necessary in order to make the treaty compatible with the UN Charter.¹⁰¹ In fact, the Legal Department of the UN, when the Treaty was subsequently deposited with the UN Secretariat, gave an opinion that the term “take action” could not be interpreted to mean military action. Such an interpretation would make the Treaty compatible with the UN Charter, and by virtue of its provision that in the event of a conflict between the provisions of the Charter and the any article of the Treaty, the Charter prevails, military intervention would be ruled out.

President *Clerides* summarized the matter quite pointedly and need be cited: *“Legally, a definition excluding the meaning of military intervention was not necessary, but politically it was imperative. The political history of the world shows that all aggressors attempt to allege a justifiable right for their act of aggression. A treaty which granted the right of unilateral “action” could be used to create confusion, and during that confusion temporarily justify actions which otherwise would have been manifestly an undisputed act of aggression. This is exactly what happened in 1974, when the Turkish forces invaded Cyprus, after the military coup of the Greek junta, which destroyed the constitutional order of the Cyprus Republic”*.¹⁰²

⁹⁹ *Ibid.*, ‘Any question or difficulty as to the interpretation or application of the provisions of the present Treaty on which agreement cannot be reached by negotiation between the military authorities in the cases described above, or by negotiation between the parties concerned through the diplomatic channel, shall be referred for final decision to a tribunal appointed for the purpose, which shall be composed of four representatives, one each to be nominated by the United Kingdom Government, the Greek Government, the Turkish Government, the Government of the Republic of Cyprus, together with an independent chairman nominated by the President of the International Court of Justice.

¹⁰⁰ This grave mistake is well spotted by Mr *Clerides* in his *CYPRUS: MY DEPOSITION*, ante, p. 75.

¹⁰¹ *Ibid.* p. 75.

¹⁰² *Ibid.* p. 75; As pointed out by a Greek-Cypriot scholar in international relations, “the particular circumstances of 1974 had made it necessary for Turkey to intervene, and her initial intervention was a legal one” (M. Evriviades, 1975 10 *Texas International Law Journal*, p. 264).

4. CRITERIA SET BY THE TREATY & THE CONDUCT OF TURKEY

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

By Art. 4, the Treaty of Guarantee expressly provides for joint consultations between Greece, Turkey and the U.K., before any action is taken following such a Treaty. The machinery of joint consultations should have been put in practice and only on a failure of such consultations could unilateral action have been undertaken. Obviously, this machinery was not initiated. As a matter of undeniable fact, the Turkish Premier, Mr Bulent Ecevit, flew to London on 17 July 1974 to seek British coordination under the Guarantee Treaty. It was made clear that if Britain was unwilling to act (which was the case) Turkey was in a position to intervene on her own.¹⁰³ As Mr. Callaghan, the British Foreign Secretary, said at the Geneva Conference, before Greece could be brought into the picture as guarantor, Turkey undertook unilateral action in Cyprus. The communication of views between the Turkish and Greek Governments via the mediation initiative of Mr. Sisco, the U.S. Under-Secretary of State, cannot be alleged to amount to the consultations envisaged by Art. 4.

On another point, in these terms spoke the United Kingdom representative during a Security Council debate on the situation in Cyprus, February 1964, in answer to the question of the Cyprus government delegate: "Is it the view of the Governments of Greece, Turkey and the United Kingdom that they have a right of military intervention under the Treaty of Guarantee in view, in particular, of the Charter?"¹⁰⁴ Here is what he said: "*I should like to draw the attention of members of the Council to the nature of the right provided for in article IV (2) of the Treaty of Guarantee and the limitations placed on the exercise of that right by that article. The right which is reserved to the guarantor powers is not an unlimited right of unilateral action but-and here I quote- "the right to take action with the sole aim of re-establishing the state of affairs created by the Treaty".*"¹⁰⁵ It follows that the extensive nature of the Turkish intervention was itself in contravention to the Treaty of Guarantee provisions, particularly Article IV (2).¹⁰⁶ It may also be said to have been contrary to Article II, by which Turkey, Greece and the United Kingdom undertook 'to prohibit activity aimed at promoting directly or indirectly either union of Cyprus with any other State or *partition* of the island'. The de facto military occupation and division of Cyprus until nowadays clearly violates the above provision. Even if there was initial justification for military intervention by Turkey (and, indeed there was), such justification had faded away on Mr. Clerides' accession to power in Cyprus (and

¹⁰³ NECATIGIL, THE TURKISH POSITION IN INTERNATIONAL LAW, *ante* p. 94

¹⁰⁴ U.N. Security Council, 1097th Meeting, Provisional Verbatim Record, S/PV. 1097.

¹⁰⁵ LAUTERPACHT, BRITISH PRACTICE IN INTERNATIONAL LAW, *ante*, pp. 8-9.

¹⁰⁶ The area of the so called "Attila line" comprises the whole of the northern part of Cyprus, covering 37% of the territory of the Republic. The most important natural resources, most of the orchards of olive groves, the most important mines, ports including the main ones of Famagusta, Kyrenia and Karavostassi, the main water resources, the most breathtaking archaeological sites and tourist centres are included within the area occupied by the Turkish forces.

the dismissal of the dictatorial regime). Clerides represented the reestablishment of legality and Constitutional Order. But, even if such a proposition is objected to, once the Geneva Conference of the Guarantor Powers was convened in 25th July 1974, and diplomatic initiatives were engineered in the context of the Treaty of Guarantee itself for the re-establishment of constitutional government, the Turkish armed intervention should perhaps have come to an end. Further, at the second round of the Geneva talks, when the United Kingdom was satisfied with the assurances given by the Greek Cypriot delegation for fair resolution of the Cyprus problem, and security of the Turkish Cypriots, the Turkish military forces should have terminated their operations.¹⁰⁷

Further, it would not be a paradox to classify the Treaty of Guarantee as a Regional Arrangement for the maintenance of peace and security, which is first among the purposes of the United Nations Organization.¹⁰⁸ So Turkey could rely upon this argument for unilaterally using force in Cyprus 1974. A counterargument lies in Article 53 of the UN Charter, which provides that 'no enforcement action shall be taken under regional arrangements or regional agencies without the authorization of the Security Council'. Security Council authorization for Turkish intervention was never given.¹⁰⁹

5. THE SUBSEQUENT ACTIONS OF TURKEY

Mention has already been made to the extensive nature of the Turkish intervention.¹¹⁰ However, it is necessary to explore a bit more whether Turkey's subsequent actions may be justified, even if the initial Turkish intervention was rendered lawful by the Treaty of Guarantee. The answer to this question seems to be in the negative because of the following.

Firstly, despite the fact that the Turkish Government was assured at the Geneva Conference for the reestablishment of constitutional government and the safety of the Turkish Cypriots, Turkey proceeded to a second round of military action. Explaining the reasons, which, in his view, necessitated the second operation, the Turkish Premier said: *"Having reached the conclusion that there is no use but only harm in maintaining the appearance of continuing a conference that is being internationally obstructed and the deliberations of which are unilaterally violated, Turkey has considered it her duty to fulfil by herself her prerogatives and duties as a guarantor power, and her responsibilities concerning the independence of Cyprus as well as the rights and security of the Turkish Cypriot people.*

The action now undertaken by Turkey is at least as rightful and legal as the action she started on July 20, as a guarantor power and strictly within the bounds of her authority as such power, for the same conditions exist today as on the 20th July - conditions that

¹⁰⁷ On the Geneva Conferences, see generally CLERIDES: CYPRUS: MY DEPOSITION, *ante*; NECATIGIL THE TURKISH POSITION IN INTERNATIONAL LAW, *ante*.

¹⁰⁸ See NECATIGIL THE TURKISH POSITION IN INTERNATIONAL LAW, *ante*, p. 126.

¹⁰⁹ See MacDonald, *International Law and the Conflict in Cyprus*, 1981 CANADIAN YEARBOOK OF INTERNATIONAL LAW, p. 29: "I conclude that the 1974 invasion of Cyprus was in contravention of international law; for for an invasion to be legal it must be consistent with the provisions of the United Nations Charter, whether express or implied; compliance with a treaty, on its own, is insufficient to render an invasion consistent with Article 2(4) of the Charter.

¹¹⁰ See p. 36 above.

formed the basis of the rightfulness and legality of her action. This new Turkish action is as legitimate as Turkey's initial move and is its logical conclusion".¹¹¹

In view of the preceding discussion in this section, the second phase of the armed campaign of Turkey was not *as rightful and legal* as her action of July 20. The Third Report of the U.K. House of Commons Foreign Affairs Committee 1987 attests to the validity of this assertion.¹¹²

Secondly, The mass killing and brutal treatment of innocent Greek Cypriot civilians during the hostilities, the uprooting of others from their homeland and subsequent reduction to the tragic status of refugee, the unascertained fate of missing persons, the destruction of cultural property, and the occupation until nowadays of large part of the Cyprus Republic territory rather seem to argue against a valid invocation of the Treaty of Guarantee Article VI (2) by Turkey. Whatever the answer to the question whether the Turkish intervention was rendered lawful by the Treaty of Guarantee, it needs saying that the humanitarian law of armed conflict as well as the European Convention on Human Rights still apply to the Turkish invasion and subsequent military presence in Cyprus.

Thirdly, the subsequent establishment of the so called Turkish Federated State of Cyprus (TFSC) in 1975, and of the "Turkish Republic of Northern Cyprus" (TRNC) in 1983, both acts condemned by the international community,¹¹³ rather suggest that the real aim of the Turkish intervention was not so much the restoration of constitutionalism or the protection of the Turkish Cypriot community;¹¹⁴ it could probably be the case, that the intervention was also dictated by other considerations.

6. STANCE TAKEN BY THE INTERNATIONAL COMMUNITY

It is noteworthy that the Parliamentary Assembly of the Council of Europe, by Resolution 573 of 29 July 1974, affirmed that the Turkish military intervention was the exercise of a right emanating from an international Treaty and the fulfilment of a legal and moral obligation. However, the member states did not maintain this view after the second round of military operations.

¹¹¹ Quote from the Turkish Prime Minister, Mr Ecevit's statement on 14 August 1974 (*Hurriyet* and *Milliyet* newspapers, 15 August 1974); see also Mr Ecevit's letter to R.Denktaş, leader of the Turkish Cypriot community, in R.Denktaş, *The Cyprus Triangle, ante*, Appendix 13.

¹¹² *Parliamentary Debates (Hansard), House of Commons*, No.23, 1986-87, para. 99: "it is our view - evidently shared by most of the international community- that the extension and entrenchment of the Turkish occupation of northern Cyprus in August 1974 and subsequently, was illegal both in terms of the 1960 Treaties and in terms of the UN Charter and general international law".

¹¹³ The U.N. Security Council in Resolution 367/1975 "regrets the unilateral decision of 13 February 1975 declaring a part of the Republic of Cyprus would become Federated Turkish State". The U.N. General Assembly Resolution 37/253 of 20 May 1983 reads: "The General Assembly deploring the fact that part of the territory of the Republic of Cyprus is still occupied by foreign forces...demands the immediate withdrawal of all occupation forces from the Republic of Cyprus; considers that the *de facto* situation created by the force of arms should not be allowed to influence or in any way affect the solution of the problem of Cyprus".

¹¹⁴ See MacDonald, *International Law and the Conflict in Cyprus, ante*, p.37: "It is concluded that, even if there is jurisdiction in customary international law or in the provisions of the Charter for the intervention in 1974, or for a continued presence in Cyprus, such continued presence over a protracted period of time is rendered legally doubtful by the Security Council resolutions adopted in regard to Cyprus since 1974".

The Resolutions of the U.N. Security Council and General Assembly indicate that the Turkish invasion was an illegal act. Mention shall be made only to some of them which characteristically stress the unlawfulness of the military intervention.¹¹⁵ Security Council Resolution 353 (1974), passed on the 20th of July 1974, reads as follows:

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

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

The Security Council by Resolution 365 (1974) adopts General Assembly Resolution 3212¹¹⁶, and by 367 (1974) reaffirms 365 of the Security Council and General Assembly’s 3212. Resolution 367 includes the following:

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

It is noteworthy that, although the United Nations Resolutions do not expressly go against the *Turkish invasion*, they amply illustrate that the intervention was an illegality. Further, it should be stressed that the words “calls upon”, used in the Resolutions, have, according to some scholars, binding force.¹¹⁷

¹¹⁵ See the Resolutions of the Security Council 353 (1974) of the 20th July 1974, 354 (1974) of the 23rd July 1974, 355 (1974) of the 1st August 1974, 358 (1974), 359 (1974) of the 15th August 1974, 360 (1974) of the 16th August 1974, 361(1974) of the 30th August 1974, 364 (1974) of the 16th December 1974.

The Geneva Conference at its first phase sought to find ways and means for carrying the above resolutions into effect, especially the Resolutions 353(1974) and 354(1974) for attaining a cease-fire agreement. It has, however, exceeded its authority in that, though the Security Council demanded *the immediate withdrawal* of the Turkish forces, in the Geneva Conference the three Foreign Ministers of Greece, Turkey and the United Kingdom were content in agreeing that measures should be taken for their *reduction by stages*.

¹¹⁶ UN General Assembly Resolution 3212 (1974): “1. Calls upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and to refrain from all acts and interventions directed against it; 2. Urges the speedy withdrawal of all foreign armed forces and foreign military personnel from the Republic of Cyprus and the cessation of all foreign interference in its affairs;”

¹¹⁷ GOODRICH AND HAMBRO, *THE CHARTER OF THE UNITED NATIONS*, ante, p. 545.

CONCLUSION

In spite of the above, it seems difficult to me to overlook the, admittedly, strong arguments advocating for the legality of armed intervention accorded by treaty right, especially the ones premised upon the principles of *pacta sunt servanda* and, perhaps more importantly, *volenti non fit injuria*. The latter surely indicates the vital role played by states themselves in the determination of their own fate and the development of international relations. Simultaneously, one should not overlook the particular and complex circumstances surrounding the 1960 Zurich-London Agreements, mainly the various interests of the parties to the Cyprus Treaty. Nevertheless, having regard to the equally powerful arguments militating against unilateral armed intervention envisaged by treaty, it may be *clearly concluded* that Turkey should not have exercised a right of intervention in Cyprus, 1974; however, such a proposition could remain subject to criticism, in view of the peculiarities of the Cyprus issue.¹¹⁸

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

One of the most important aspects of the Cyprus problem is that of *Security*. Would the Cyprus people like Greece and Turkey to guarantee the independence and integrity of the Cyprus State within the framework of a settlement? This, I think, given the unhappy past would not be a good idea. If, however, it would be deemed necessary that these two States play a significant role in the security of the island, then I would propose that a regional arrangement be reached along the lines of the existing Treaty of Guarantee, but expressly excluding *unilateral* military intervention.

On the other hand, would we like the British sovereign bases to remain on the island, even if this would appear to be a possibility? Despite the troubled relations between Britain and Cyprus in the uneasy years of the 1950s, which by now have been overcome (and, if not, they should be), the British presence on the island is, in my view, indispensable. The British have a crucial role to play in the maintenance of security, but they should give explicit assurances (in the form of a legal document, if need be) that they would not allow repetition of the bloody events of 1974. Furthermore, what would be the future of the common Defence doctrine, as it now functions, between Greece and Cyprus? Would that be affected by security arrangements in the context of a future settlement of the Cyprus issue? These matters should be thoroughly examined by all *interested* parties. The Cyprus Government especially should project drafts considering these pressing strategic implications.

It remains the case that survival is of utmost importance for a nation. In

¹¹⁸ Ronzitti, clearly adopting a pro-Turkish view, cites Wengler: “a treaty providing for a right to intervene against the will of a future government of the other State is regarded as prohibited by a jus cogens rule of general international law. Nonetheless, an exception may be valid if intervention is permitted to secure the upholding of an arrangement among different peoples each other exercising its right of self-determination, to live together in one State”. He then concludes that Wengler’s observation fits perfectly the case of Cyprus”. (RESCUING NATIONALS ABROAD THROUGH MILITARY COERCION AND INTERVENTION ON GROUNDS OF HUMANITY, *ante*, p. 134). For the issue of self-determination and its application to the Cypriot Communities, see below Chapters IV and VII of the present thesis.

international affairs, as in the Cyprus case, strategy considerations should be taken into account in conjunction with international law, the latter providing a basis for international politics and conversely the former conforming to international legality.

Το ΕΛΛΗΝΙΚΟ ΙΔΡΥΜΑ ΕΥΡΩΠΑΪΚΗΣ ΚΑΙ ΕΞΩΤΕΡΙΚΗΣ ΠΟΛΙΤΙΚΗΣ (ΕΛΙΑΜΕΠ) ιδρύθηκε το 1988 και λειτουργεί ως ένα ανεξάρτητο, μη κερδοσκοπικού χαρακτήρα ερευνητικό και επιμορφωτικό ίδρυμα. Μέσω του πολυετούς έργου του έχει αναδειχθεί σε σημαντικό φορέα πληροφόρησης, μελέτης και σχεδιασμού θεμάτων εξωτερικής πολιτικής, και θεωρείται ένα από τα πιο έγκριτα σε διεθνές επίπεδο κέντρα μελετών της Ελλάδας στον τομέα των Ευρωπαϊκών υποθέσεων και των διεθνών σχέσεων.

Το ΕΛΙΑΜΕΠ δεν εκφράζει, ούτε εκπροσωπεί συγκεκριμένες πολιτικές απόψεις. Επιχειρεί μόνο να λειτουργήσει ως θήμα ελεύθερου διαλόγου και ως κέντρο παραγωγής και ανταλλαγής ιδεών.

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