

CYPRUS AND THE RULE OF LAW

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I. THE INVASION OF CYPRUS AND THE PERTINENT LAWS

A. Introduction

Iraq's invasion and occupation of Kuwait on August 2, 1990 was characterized by President George Bush as "naked aggression" and a violation of the United Nations Charter.¹ The United Nations Security Council unanimously condemned Iraq's actions and demanded Iraq's immediate and unconditional withdrawal from Kuwait.² Additionally, the Security Council voted for mandatory economic sanctions,³ authorized the use of force⁴ to achieve compliance with the sanctions through the naval blockade initiated by the United States, and, on November 29, 1990, authorized the use of force against Iraq if Iraq did not comply with Security Council resolutions to leave Kuwait by January 15, 1991.⁵

It is timely to analyze the analogous 1974 invasion and occupation of over a third of Cyprus by Turkey. Turkey, a large nation of 38,000,000 people, used military force against another small country, Cyprus, with about 650,000 people.⁶ It is also timely to examine the

1. N.Y. Times, Aug. 3, 1990, at A1, col. 6; White House Press Release, Aug. 1, 1990, 31 WEEKLY COMP. PRES. DOC. 1182, 1184 (Aug. 6, 1990).

2. S.C. Res. 660, 45 U.N. SCOR (2932d mtg.) U.N. Doc. S/21425 (1990) [hereinafter S.C. Res. 660]; N.Y. Times, Aug. 3, 1990, at A10, col. 1.

3. S.C. Res. 661, 45 U.N. SCOR (2933d mtg.) U.N. Doc. S/21441 (1990) [hereinafter S.C. Res. 661]; N.Y. Times, Aug. 7, 1990, at A1, col. 6.

4. S.C. Res. 665, 45 U.N. SCOR (2938th mtg.) U.N. Doc. S/21640 (1990) [hereinafter S.C. Res. 665]; N.Y. Times, Aug. 26, 1990, at A1, col. 6.

5. S.C. Res. 678, 45 U.N. SCOR (2963d mtg.) U.N. Doc. S/21969 (1990) [hereinafter S.C. Res. 678]; N.Y. Times, Nov. 30, 1990, at A1, col. 6. As of Nov. 29, 1990, the Security Council had passed 12 resolutions regarding Iraq's invasion and occupation of Kuwait.

6. The key factual difference between Iraq's aggression against Kuwait in 1990 and Turkey's aggression against Cyprus in 1974 is the reliance of the United States and other nations on oil from the Middle East. See N.Y. Times, Aug. 13, 1990, at A10, col. 1; Greenfield, *Another Kind of "Hostage"*, Wash. Post, Aug. 13, 1990, at A11, col. 1; Javetski, *Borris &*

actions taken to date by the United States and the United Nations and the relation of these actions to the rule of law in international affairs.

B. *The Legal Questions Posed*

This article addresses two broad questions. First, whether the Turkish government, by its 1974 invasion and occupation of over a third of Cyprus using American-supplied arms, violated United States laws, bilateral agreements between Turkey and the United States under those laws, and any international charters, treaties and conventions.⁷ Second, whether the government of the United States, through the actions of Secretary of State Henry A. Kissinger, violated its own laws in connection with Turkey's invasion and occupation of Cyprus. The last section of the article briefly discusses a future course of action.

Harbrecht, *Oil War: The World v. Iraq*, BUSINESS WEEK, Aug. 20, 1990, at 22-25; Buderl & Glasgall, *If Saddam Can be Stopped, Oil's Wild Ride May End*, BUSINESS WEEK, Aug. 20, 1990, at 26-27; Samuelson, *Why We Should Stay in the Gulf*, NEWSWEEK, Aug. 20, 1990, at 41. Kuwait is one of the major oil producing countries in the world. Cyprus has no oil. Furthermore, there was fear that Iraq's dictator, Saddam Hussein, would move militarily against Saudi Arabia, the United Arab Emirates, Bahrain, Qatar and Oman, and gain control of a major percentage of the world's oil production and reserves. Other factual differences are that Turkey was and is a member of the North Atlantic Treaty Organization [hereinafter NATO] and Iraq is not; Turkey does not have a land border with Cyprus, an island, while Iraq has a land border with Kuwait. Additionally, Iraq asserted a border dispute, violation of OPEC oil production quotas and irregular activity in drilling for oil. Turkey, citing the Treaty of Guarantee under the London-Zurich Agreements of 1959-1960, believed she had the right to use armed force to invade Cyprus after the Greek-led coup against the Makarios government.

7. Another significant legal aspect of the Cyprus problem, the looting and continuing destruction of the cultural and religious heritage of the Greek Cypriots in northern Turkish-occupied Cyprus, is not covered in this article. See Jansen, *Cyprus: The Loss of a Cultural Heritage* (Book Review), 2 U. MINN. MOD. GREEK STUD. Y.B. 314 (1986); ACADEMY OF ATHENS, CYPRUS - THE PLUNDERING OF A 9000-YEAR OLD CIVILIZATION (1985); Von Klaus Gallas, *Where the Heavens are Plundered*, FRANKFURTER ALLGEMEINE MAGAZIN, Mar. 30, 1990, at 78; Yasin, *Perishing Cyprus*, an article in four installments published in the Turkish Cypriot magazine OLAY, Apr. 26, May 3, May 10, and May 17, 1982, translated by the Cyprus Press and Information Office, (1989); *In the Sea of Turks*, Der Spiegel, Jan. 1, 1990, at 121; a 100-page report on looting and vandalism of Greek churches and graveyards in Turkish-occupied Cyprus, prepared for UNESCO by Jacques Dalibard, a Canadian authority on religious works of art, was suppressed by UNESCO. Wash. Post, May 13, 1976, at A25, col. 1. See also *Autocephalous Greek Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278 (7th Cir. 1990), *reh'g denied*, No. 89-2800 (Nov. 21, 1990) (Lexis, Genfed, USAPP file) (Court held in favor of the Greek Orthodox Church of Cyprus regarding four sixth-century A.D. mosaics looted from the Kanakaria Church in northern Cyprus); Speech, *The Destruction and Looting of the Culture and Archaeological Heritage of Cyprus*, by Patroclus Stavrou, Under Secretary to The President of Cyprus, at a conference entitled *Turkey's Violations of Human Rights and United States Foreign Policy* held by the American Hellenic Institute, Washington, D.C. (May 6, 1989).

C. *The 1974 Invasion and Occupation*

On July 2, 1974, the President of Cyprus, Archbishop Makarios, in a letter to General Phaidon Gizikis, the President of Greece, accused the Greek regime of trying to overthrow his government and demanded the removal of about 600 Greek military officers who commanded the Cypriot National Guard. On July 15, 1974, the Greek Cypriot National Guard, acting on instructions from the junta then ruling in Greece, did overthrow the Government of Cyprus in a *coup d'état*, attempted to assassinate President Makarios and installed Nicos Sampson, an ultra rightist as president.⁸ Rauf Denktash, the leader of the Turkish Cypriot community, which comprised eighteen percent of the population, stated that they were "following the situation closely with the Turkish authorities," that it was a Greek Cypriot affair, and that the Turkish Cypriots should "not . . . interfere in any way."⁹

On July 20, 1974, Turkey, using the illegal Greek initiated coup as a pretext, invaded Cyprus by sea and air with forces armed with United States supplied weapons and equipment.¹⁰ Turkey cited the Treaty of Guarantee under the London-Zurich Agreements of 1959-1960, which established the Republic of Cyprus, as giving her the right to invade.¹¹ On the same day, the United Nations Security Council adopted a resolution calling upon "all states to respect the sovereignty, independence and territorial integrity of Cyprus."¹² The Resolution called for a cease-fire, demanded "an immediate end to foreign intervention" in Cyprus and requested "the withdrawal without delay from . . . Cyprus of foreign military personnel" except those present under international agreement.¹³ On July 22, a cease-fire was declared and subsequently violated by Turkish armed forces.¹⁴ The

8. N.Y. Times, July 16, 1974, at A1, col. 8.

9. U.S. FOREIGN BROADCAST INFORMATION SERVICE (hereinafter F.B.I.S.), July 15, 1974, at 4. Denktash stated over Cyprus Bayrak Radio: "We are following the situation closely with the Turkish authorities. Our duty in this situation, which we believe is between Greek Cypriots, is to protect our internal security, to take care of our defense measures, and not to interfere in any way in inter-Cypriot Greek events." *Id.*

10. N.Y. Times, July 21, 1974, at A1, col. 8. See also R. McDonald, *The Problem of Cyprus*, 18-19 ADELPHI PAPERS 234 (1989) [hereinafter McDonald]: "In the first wave some 6000 men with 30 tanks were landed by sea and parachute drop. . . . Despite having accepted the [U.N.] cease-fire Turkey had reinforced its troop concentration and engaged in a series of advances to make its bridgehead more viable." *Id.*

11. See *infra* notes 106-118 and accompanying text.

12. S.C. Res. 353, 29 U.N. SCOR (1781st mtg.) at 7, U.N. Doc. S/11350 (1974) [hereinafter S.C. Res. 353].

13. *Id.*

14. N.Y. Times, July 23, 1974, at A1, col. 8. See *id.*, July 24, 1974, at A1, col. 8, July 25,

next day both the Greek junta and the Sampson regime fell.¹⁵ Pursuant to the 1960 constitution, Glafkos Clerides, President of the Cyprus House of Representatives, was installed as acting President of Cyprus. Former Greek Prime Minister Constantine Karamanlis was called home from his self-imposed exile in Paris and sworn in on July 24, 1974 to head a unity government.¹⁶ Meanwhile, Britain, Greece and Turkey entered into negotiations in Geneva, Switzerland. On July 30, 1974, the three nations ended the first phase of their talks and signed the Declaration of Geneva which called for a second cease-fire and for a halt to the expansion of occupied territory.¹⁷ Once again, Turkey's armed forces violated the cease-fire.¹⁸ At this point, Turkey held only five percent of Cyprus and the legitimate Cypriot government had been reinstated on July 23, 1974, which reestablished the constitutional state of affairs prior to the coup.

On August 8, 1974, Britain, Greece and Turkey began the second round of talks in Geneva. On August 13, 1974, Turkey issued a thirty-six hour ultimatum to Greece and Britain to accept Turkey's proposal, which was tantamount to partition, for six separate Turkish Cypriot "cantons" consisting of thirty-four percent of the island nation for the eighteen percent minority community.¹⁹ That same day, the United States State Department spokesman, Ambassador Robert Anderson, issued the following statement, cleared by Secretary of State Henry A. Kissinger, saying that the Turkish Cypriots needed more security (although there was no evidence of any danger to the Turkish Cypriot community):

The United States position is as follows: we recognize the position of the Turkish community on Cyprus requires considerable improvement and protection. We have supported a greater degree of autonomy for them. The parties are negotiating on one or more Turkish autonomous areas. The avenues of diplomacy have not been exhausted and therefore the United States would consider a resort to military action unjustified. We have made this clear to all parties.²⁰

1974, at A12, col. 7, July 26, 1974, at A1, col. 2, July 27, 1974, at A1, col. 2, July 28, 1974, at A1, col. 1, July 29, 1974, at A1, col. 5, July 30, 1974, at A1, col. 3; McDonald, *supra* note 10.

15. Wash. Post, July 24, 1974, at A1, col. 4-5.

16. *Id.*

17. Lewis, *Turks to Remain*, N.Y. Times, July 31, 1974, at A1, col. 1.

18. *Id.*, Aug. 1, 1974, at A1, col. 5.

19. *Id.*, Aug. 14, 1974, at 1, col. 8. The ultimatum was, in effect, an admission that its invasion of Cyprus was not to reestablish the *status quo ante* in accordance with the article IV of the Treaty of Guarantee of the London-Zurich Agreements of 1959-1960.

20. L. STERN, THE WRONG HORSE 132 (1977) [hereinafter STERN]. Stern also wrote that Anderson stated that "the United States has been playing an active role in the negotiations" and that Kissinger "has been in frequent contact with Turkish Prime Minister Ecevit,

On August 14, 1974, Turkey unilaterally broke off the negotiations and violated the cease-fire, launched a second more massive aggression without a pretext, occupied over thirty-seven percent of Cyprus - up from the less than five percent occupied as a result of the first attack of July 20, 1974, and forcibly expelled over 180,000 Greek Cypriots from their homes and properties.²¹ On that day and ensuing days, the United Nations Security Council passed resolutions demanding a cease-fire,²² and recorded "its formal disapproval of the unilateral military actions undertaken" by Turkey against Cyprus and urged compliance with its previous resolutions "including those concerning the withdrawal without delay from . . . Cyprus of foreign military personnel present otherwise than under the authority of international agreements."²³

Since the 1974 invasion, Turkey has occupied the northern third of Cyprus. During this seventeen year period of occupation, Turkey has brought an estimated 80,000²⁴ colonists/settlers from Turkey who have been given homes and lands taken from Greek Cypriots and foreign nationals including American citizens.

D. A Brief History of Cyprus

A brief account of the history of Cyprus is helpful in understanding the present situation. Cyprus is a small island in the eastern Mediterranean with an area of 3,572 square miles. The population of Cyprus in 1974 was about 650,000, with Greek Cypriots accounting for eighty percent of the population, Turkish Cypriots eighteen percent, and Armenians, Maronites and others comprising the remaining two percent.²⁵ Cyprus' Greek cultural heritage, which became the dominant influence on the island, can be traced to the first Greek colonization in the thirteenth century B.C. Cyprus has had a number of rulers including Assyrians, Egyptians, Phoenicians, Persians, Romans, Byzantines and Crusaders. In 1489 the island was taken over

including four times by telephone within the past twenty four hours." See also N.Y. Times, Aug. 14, 1974, at A3, col. 5. The N.Y. Times headline stated: "U.S. Backs Turks in Cyprus But Warns Against a War." *Id.* See generally C. HITCHENS, *HOSTAGE TO HISTORY* (2d ed. 1989).

21. N.Y. Times, Aug. 15, 1974, at A1, col. 8. The Turkish force comprised "some 40,000 men with 200 tanks." McDonald, *supra* note 10, at 19.

22. S.C. Res. 357, 29 U.N. SCOR (1792nd mtg.) at 8, U.N. Doc. S/11446 Rev. 1 (1974). S.C. Res. 358, 29 U.N. SCOR (1793rd mtg.) at 8, U.N. Doc. S/11448 (1974).

23. S.C. Res. 360, 29 U.N. SCOR (1794th mtg.) at 9, U.N. Doc. S/11450 Rev. 2 (1974).

24. See *infra*, note 142.

25. U.S. ARMY AREA HANDBOOK FOR CYPRUS 73 (1971). The 1970 census had the population at 628,000. *Id.*

and ruled by the Venetians until 1571 when the Ottoman Turks conquered Cyprus and ruled the island until 1878. At that time, Great Britain acquired Cyprus in an agreement with Turkey - the Convention of Defensive Alliance of 1878 between Great Britain and Turkey - known as the Cyprus Convention.²⁶ When Turkey entered World War I on the side of the Central Powers, Britain annexed Cyprus. In 1915, the British also offered Cyprus to Greece if Greece would enter the war on the Allied side. Although Greece did enter the war at a later date, the British refused to part with Cyprus, claiming that the offer had lapsed. Turkey recognized Britain's 1914 annexation of Cyprus in article 20 of the Treaty of Lausanne of 1923.²⁷ On March 10, 1925, Britain declared Cyprus a Crown Colony.²⁸

Britain bears the original and primary responsibility for the post-World War II tragedies that have befallen Cyprus. After Greece entered World War II, Britain called for Greek Cypriot volunteers to fight for "Greece and Liberty."²⁹ As a result, as many as 35,000 Greek Cypriots volunteered and fought in the British Army in World War II.³⁰ While other colonies were gaining their freedom after World War II, Cyprus was told by the British Minister of State for Colonial Affairs Harry Hopkinson, during a House of Commons debate, that "[t]here can be no question of any change of sovereignty in Cyprus" and that "there are certain territories in the Commonwealth which, owing to their particular circumstances, can never expect to be fully independent."³¹

26. Convention of Defensive Alliance between Great Britain and Turkey, June 4, 1878, 68 BRITISH AND FOREIGN STATE PAPERS 744 (1877-1878); 3 MARTENS NOUVEAU RECUEIL 274 (ser. 2nd) (commonly known as the Cyprus Convention of 1878).

27. The Treaty of Lausanne, July 23, 1923, 28 L.N.T.S. 12, 25 [hereinafter Treaty of Lausanne], states: "Turkey hereby recognizes the annexation of Cyprus proclaimed by the British Government on the 5th Nov., 1914." *Id.* at art. 20.

28. See generally G. HILL, A HISTORY OF CYPRUS (1952), (four-volume history of Cyprus); D. ALASTOS, CYPRUS IN HISTORY (1955); FOOTPRINTS IN CYPRUS (D. Hunt ed. 1982); C. KYRRIS, HISTORY OF CYPRUS (1985); S. PANTELI, THE MAKING OF MODERN CYPRUS (1990). See also for the post World War II period, M. ATTALIDES, CYPRUS (1979); G. CLERIDES, CYPRUS: MY DEPOSITION (1989), a three volume history and analysis.

29. As colonial subjects, Greek Cypriots could not have been drafted.

30. R. STEPHENS, CYPRUS: A PLACE OF ARMS 118 (1966) [hereinafter STEPHENS]. "[O]fficial recruiting posters called on the Greek Cypriots to volunteer and save the Greek motherland." *Id.* A Cyprus regiment fought in North Africa, Italy, Greece and elsewhere. Six hundred and fifty Greek Cypriots are buried in 15 countries. See 50TH ANNIVERSARY OF THE FORMATION OF THE CYPRUS REGIMENT 19 (1989).

31. 531 PARL. DEB. H.C. (5th ser.) 507-08 (1954). Britain's responsibility is compounded when seen in the context of Greece's role in World War II and in its post-World War II defeat of the communist guerrillas in the Greek civil war. On October 28, 1940, with Europe under the heel of Nazi Germany and with Britain fighting the Axis powers alone, Greece's reply of "OXI" ("No") to Mussolini's surrender ultimatum gave support to Britain

Following the Hopkinson "never" statement, Greece decided to bring an application for self-determination to the 1954 United Nations General Assembly session on behalf of the people of Cyprus.³² Britain opposed the Greek government's application for self-determination for the Cypriots. Although Turkey had renounced all rights to Cyprus, Britain claimed that the presence of an eighteen percent Turkish Cypriot minority was an obstacle to a solution.³³ A tripartite conference among Britain, Greece and Turkey was held in London in late August and early September 1955 to discuss the situation in the Eastern Mediterranean and Cyprus.³⁴ The conference ended in failure. Britain, however, accomplished her objective: greater Turkish

and the forces of freedom. Greece's successful counterattack against Mussolini's invading armies forced Hitler to attack Greece in the spring of 1941, thereby delaying Hitler's invasion of the Soviet Union from April to June, 1941, and requiring the diversion of valuable troops and equipment. As a result, Greece's role was a substantial factor in preventing Hitler's defeat of the Soviet Union. See A. ZAPANTIS, *HITLER'S BALKAN CAMPAIGN AND THE INVASION OF THE U.S.S.R.* 85-86 (1987) (citing E. RAEDER, *MY LIFE* 338 (1960)). Over 600,000 Greeks died in World War II, a staggering 9% of the then seven million population. In contrast with Greece, Turkey abandoned its treaty with Britain and France, remained neutral, and profited from both sides. In fact, Turkey supplied Hitler with chromium, a vital resource to Nazi Germany's armaments industry and war effort. See F. WEBER, *THE EVASIVE NEUTRAL* 44 (1979). Hitler's armaments chief, Albert Speer, provided Hitler a memorandum in November, 1943 on "Alloys in Armaments Productions and the Importance of Chromium Imports from the Balkans and Turkey," which stated that the loss of chromium supplies from Turkey would end the war in about 10 months. A. SPEER, *INSIDE THE THIRD REICH* 316-17, 405, 550 n.10 (1970).

Following World War II, Greece was involved in civil war against communist forces from 1945-1949 while the rest of Europe was rebuilding. Greece's defeat of the communists, with the assistance of American military aid but without American combat troops, was a major turning point in the post-World War II period. It prevented the communist takeover of Greece, including Crete, and thereby prevented the communists from taking control of the Eastern Mediterranean with its strategic proximity to the Middle East and oil resources.

32. 52 U.N. GAOR, U.N. Doc. No. A/2703 at 1 (1954). Since they were under colonial rule, the Greek Cypriots had no standing to bring the application themselves. The principle of equal rights and self-determination of peoples is enshrined in the United Nations Charter in the opening Chapter on Purposes and Principles, under article 1 on "The Purposes of the United Nations," and also figures in articles 55 and 56. Article 1, paragraph 2 states as among the founding purposes: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

33. See Treaty of Lausanne, *supra* note 27, at art. 16, which states:

Turkey hereby renounces all rights and title whatsoever over or respecting the territories situated outside the frontiers laid down in the present Treaty and the islands other than those over which her sovereignty is recognized by the said Treaty, the future of these territories and islands being settled or to be settled by the parties concerned. The provisions of the present Article do not prejudice any special arrangements arising from neighbourly relations which have been or may be concluded between Turkey and any limitrophe countries.

34. The Tripartite Conference on The Eastern Mediterranean and Cyprus, CMND, No. 5994 (1955). N.Y. Times, Sept. 8, 1955, at A1, col. 1.

involvement in the matter to blunt the Greek Government's efforts on behalf of self-determination for the people of Cyprus.³⁵

The Turkish government, to demonstrate its interest in Cyprus at the time of the tripartite conference, planned and organized riots against its Greek citizens and residents in Istanbul and Izmir. It exploded a bomb in the Turkish Consulate in Salonika, Greece, and a false report was spread that Kemal Atatürk's birthplace had been bombed and destroyed. The following account from an article in Harper's Magazine describes the carnage:

On the fifth of September 1955, a bomb exploded under singular circumstances inside the Turkish Consulate at Salonika in Northern Greece. The Turkish press and radio, over which the government is influential, blared out the incendiary and false report that the nearby birthplace of Kemal Atatürk, a sort of Turkish Mount Vernon on foreign soil, had also been destroyed. The events of the following day in Turkey were planned and executed with the same discipline the Nazis used in their onslaughts on the Jews. Squads of marauders were driven to the shopping area in trucks and taxis, waving picks and crowbars, consulting lists of addresses, and the police stood by smiling. Greek priests were reported circumcised, scalped, burned in bed; Greek women raped. The Greek Consulate was destroyed in Izmir. Just nine out of eighty Greek Orthodox churches in Istanbul were left undesecrated; twenty-nine were demolished. Ghouls invaded the huge Greek cemetery where Patriarchs of Constantinople are buried, opened mausoleums, dug up graves, and flung bones into the streets; corpses waiting burial were lanced with knives. There had been no comparable destruction of Greek sanctuaries since the fall of Constantinople.

The Turkish government did its best to keep the world from knowing. A familiar heavy hand fell upon the press, and editors who criticized Premier Menderes were jailed again.³⁶

35. See C. FOLEY, *LEGACY OF STRIFE* 35 (1964); N. CRAWSHAW, *THE CYPRUS REVOLT* 123-24 (1978) [hereinafter CRAWSHAW]. As C.L. Sulzberger stated in his column *Foreign Affairs*:

[T]he British privately encouraged the Turks to express their interest. That was all Ankara needed. Ever since Turkey has been whipping itself into a frenzy over Cyprus. Instead of being dismayed, the British Foreign Office — which had taken over the hot potato from the colonial office — was pleased to cite Turkey's arguments as further excuse for doing nothing about changing the island's status.

N.Y. Times, Aug. 24, 1955, at A26, col. 5.

36. Phillips, *What Is The Matter With Mary Jane? The Tragicomedy of Cyprus*, *HARPER'S MAGAZINE* 43, at 48 (June 1956). See also *N.Y. Times*, Sept. 7, 1955, at A1, col. 5; *Id.*, Sept. 12, 1955, at A8, col. 3. "The amount of damage has been assessed unofficially at \$300,000,000." *Id.*, Sept. 13, 1955, at A10, col. 6.

Ethnarch Archbishop Makarios of Cyprus and the British Governor of Cyprus, Field Marshall Sir John Harding, entered into negotiations in October 1955 on the future status of Cyprus. The negotiations broke down in late February 1956, as Britain was unwilling to commit to majoritarian controlled self-government for Cyprus.³⁷ Shortly thereafter, on March 9, 1956, Britain abducted, exiled and imprisoned the Archbishop.³⁸ As future events that year demonstrated, Britain apparently wanted unfettered use of Cyprus as a military base. On October 29, 1956, Britain, France and Israel invaded Egypt.³⁹ The decision to use Cyprus as a base for Britain's aggression against Egypt is well documented.⁴⁰ After the Suez debacle, which ended Prime Minister Anthony Eden's career, Britain decided that a base on Cyprus rather than Cyprus as a base was a more feasible alternative.

Mr. Lennox-Boyd, Britain's Secretary of State for the Colonies, continued Britain's well-known divide and rule policy. In discussing possible self-determination in the House of Commons on December 19, 1956, he stated that it should apply equally and separately to Greek and Turkish Cypriots and "must include partition among the eventual options." The seeds of partition were thereby sown.⁴¹

The Greek Government persisted in its application for self-determination, and Britain continued its opposition. In December 1957, the General Assembly passed a resolution stating the "earnest hope that further negotiations and discussions will be undertaken in a spirit of co-operation with a view to having the right of self-determination applied in the case of the people of Cyprus."⁴² Although the resolution passed by a majority vote of thirty-one to twenty-three with

37. 102 CONG. REC. 8,771-73 (1956) (Memorandum of the Ethnarchy of Cyprus on the Deportation of His Beatitude, Archbishop Makarios of Cyprus).

38. *NATO and the Rift Over Cyprus*, N.Y. Times, Mar. 10, 1956, at A1, col. 8. By tradition, the head of the Greek Orthodox Church is considered the Ethnarch, *i.e.*, the political leader of the community, when the people are under foreign rule.

39. N.Y. Times, Oct. 30, 1956, at A1, col. 8.

40. See M. FOOT AND M. JONES, *GUILTY MEN-SUEZ AND CYPRUS* (1957); C.L. COOPER, *THE LION'S LAST ROAR* (1978); R. FULLICK AND G. POWELL, *SUEZ: THE DOUBLE WAR* (1979); K. LOVE, *SUEZ: THE TWICE FOUGHT WAR* (1970); H. THOMAS, *THE SUEZ AFFAIR* (1967); G. REGAN, *GREAT MILITARY DISASTERS* (1987).

41. 562 PARL. DEB., H.C. (5th ser.) 1267-68 (1956). Evriviades, *The Legal Dimension of the Cyprus Conflict*, 10 TEXAS INT'L L.J. 227, 234-35 (1975). S. ZYDIS, *CYPRUS: CONFLICT AND CONCILIATION, 1954-1958, passim* (1967) [hereinafter ZYDIS]. If granted the right of self-determination, the 80% Greek Cypriot majority would have voted for "enosis," union with Greece, a long-held aspiration. The 18% Turkish Cypriot minority called for "taksim" or partition.

42. 12 U.N. GAOR (731st plen. mtg.) at 618, U.N. Doc. No. A/3794, at 2 (1957).

twenty-four abstentions, it did not achieve the two-thirds vote required under United Nations Charter article 18(2) to become a "recommendation with respect to the maintenance of international peace and security."⁴³

On the night of June 7, 1958, the Turkish Cypriots started the first intercommunal trouble by exploding a bomb at the Information Bureau of the Turkish Consulate in Nicosia. The Turkish Cypriots falsely blamed the Greek Cypriots for the act and began burning and looting Greek Cypriot shops and homes. The Greek Cypriots responded and before long fighting spread throughout the island.⁴⁴

On August 16, 1960, Cyprus gained its fettered independence from British colonial rule through the London-Zurich Agreements of 1959-1960 negotiated by Britain, Greece and Turkey, and presented to the Greek and Turkish Cypriots as a package to be agreed to without modification.⁴⁵ The Agreements barred both union with Greece and partition. The British were prepared to implement unilaterally the Macmillan partition plan if Archbishop Makarios refused to sign. Consequently, Archbishop Makarios signed for the Greek Cypriots and Dr. Fazil Kuchuck signed for the Turkish Cypriots. The constitution provided the eighteen percent Turkish Cypriot minority with a veto power over major governmental actions, including taxation, defense, security, foreign affairs and municipal matters, and contained a provision barring amendment of the basic articles. These undemocratic features of the constitution have been a major cause of the dispute between the Greek and Turkish Cypriots.⁴⁶

Predictably, the divisive constitution created problems.⁴⁷ The

43. See U.N. DEP'T OF PUB. INFO., 1957 U.N.Y.B. 72-76 (1958); Ehrlich, *Cyprus, the 'Warlike Isle': Origins and Elements of the Current Crisis*, 18 STAN. L. REV. at 1027-31 (1966) [hereinafter Ehrlich]; ZYDIS, *supra* note 41.

44. Twenty six years later, Rauf Denktash, then a young lawyer and now the Turkish Cypriot leader, admitted on British television that a friend of his had set the bomb. See *Cyprus: The Bitter Legacy* (BBC television broadcast, 1984).

45. Ehrlich, *supra* note 43, at 1060-61. STEPHENS, *supra*, note 30, at 160. McCaskill, *Cyprus Twenty-five Years Later: A Diplomat Looks Back*, [hereinafter McCaskill], in 2 THE RULE OF LAW AND CONDITIONS ON FOREIGN AID TO TURKEY 22-25, (Conference Proceedings of the American Hellenic Institute, Washington, D.C.) [hereinafter THE RULE OF LAW].

46. The constitution may be found in 3 CONSTITUTIONS OF NATIONS - EUROPE 138-221 (A. Peasley, 3d ed. 1968). See also S. DE SMITH, THE NEW COMMONWEALTH AND ITS CONSTITUTION (1964); P. POLYVIUO, CYPRUS, THE TRAGEDY AND THE CHALLENGE 16-33 (1975); Ehrlich, *supra* note 43 at 1031-40; S. KYRIAKIDES, CYPRUS: CONSTITUTIONALISM AND CRISIS GOVERNMENT (1968); McCaskill, *supra* note 45, at 26-29; Bureau of Intelligence & Research, U.S. Dep't of State, Pub. No. 8047, Analysis of the Cyprus Agreements (1959), reprinted in J. HELLENIC DIASPORA 9-31 (Winter 1984); C. TORNARITIS, CYPRUS AND ITS CONSTITUTIONAL AND OTHER LEGAL PROBLEMS (2d ed. 1980).

47. See generally *supra* note 46 and accompanying text.

Turkish Cypriots, among other things, would not cooperate on tax legislation. In November 1963, President Makarios submitted for discussion to the Turkish Cypriots thirteen proposed amendments to the constitution to correct its undemocratic features.⁴⁸ Although Makarios thought he had the support of the British High Commissioner, Britain remained silent on Makarios' proposals for constitutional reform. Turkey rejected the proposals, before any response from the Turkish Cypriots, and then the Turkish Cypriots followed suit.

In December 1963, an incident sparked the outbreak of intercommunal fighting which led Turkey to threaten an invasion. There were several overflights of Nicosia by Turkish air force planes during the last week of December. Diplomatic activity resulted in United Nations Security Council Resolution 186 of March 4, 1964,

48. The 13 proposed revisions were:

1. The right of veto of the President and the Vice-President of the Republic should be abandoned. *See art. 57.*
2. The Vice-President of the Republic should deputize for the President of the Republic in case of his temporary absence or incapacity to perform his duties. *See art. 44(2).*
3. The Greek President of the House of Representatives and the Turkish Vice-President should be elected by the House as a whole. Presently, the Greek members vote for the President of the House of Representatives and the Turkish members vote for the Vice President. *See art. 72.*
4. The Vice-President of the House of Representatives should deputize for the President of the House in case of his temporary absence or incapacity to perform his duties. *See art. 72.*
5. The constitutional provisions regarding separate majorities for enactment of certain laws by the House of Representatives should be abolished. *See art. 78.*
6. Unified Municipalities should be established. *See art. 173(I).*
7. The administration of Justice should be unified. This revision would affect a number of articles.
8. The division of the Security Forces into Police and Gendarmerie should be abolished. *See art. 130.*
9. The numerical strength of the Security Forces and of the Defense Forces should be determined by law. *See art. 130.*
10. The number of Greek and Turkish Cypriots in the Public Service and the Forces of the Republic should be proportioned according to the ratio of Greek and Turkish Cypriots in the population. *See art. 123.*
11. The number of the Members of the Public Service Commission should be reduced from ten to five. *See art. 124.*
12. All decisions of the Public Service Commission should require a simple majority. *See art. 125.*
13. The Greek Communal Chamber should be abolished. *See art. 86.*

See Ehrlich, supra note 43, at 1043-44. Makarios, Proposals to Amend the Constitution, International Relations (Athens), Apr. 24, 1964, at 8-25. See McCaskill, supra note 45, at 29; STEPHENS, supra note 30, at 179; CRAWSHAW, supra note 35, at 366; J. REDDAWAY, BURDENED WITH CYPRUS-THE BRITISH CONNECTION 138 (1986).

which quoted article 2(4) of the United Nations Charter against the "threat or 'use' of force," recommended the creation of a United Nations Peace-Keeping Force in Cyprus, and the designation of a mediator. As a result, a mediator was appointed and a United Nations Force was created, which became operational on March 27, 1964.

The intercommunal troubles continued. Turkey again threatened to invade in June, 1964, but was deterred by United States diplomatic efforts including a letter from President Lyndon Johnson. Nevertheless, Turkey did bomb Cyprus on August 8 and 9, 1964, and the United Nations Security Council passed a resolution calling on Turkey "to cease instantly" the bombing. The next crisis occurred in November 1967. President Johnson sent Cyrus Vance to Cyprus on a diplomatic mission to prevent the outbreak of further hostilities. Vance's mission was a success; between 1968 and 1974 talks were held to halt the intercommunal conflict and to achieve a new constitutional arrangement. Substantial progress was made. Nevertheless, the fateful events of 1974 precluded further progress on a negotiated settlement at that time.

II. TURKEY'S AGGRESSION VIOLATIVE OF UNITED STATES AND INTERNATIONAL LAWS

A. *United States Laws and the Bilateral Agreements Under Those Laws*

The Foreign Assistance Act of 1961,⁴⁹ as amended, and the Foreign Military Sales Act set forth the purposes,⁵⁰ terms and conditions of United States military assistance and military sales programs. The United States-Turkey bilateral agreement under those Acts is designed to make sure that the recipient country understands and agrees to the purposes and conditions that accompany United States arms transfers.

The language of both statutes is clear and unambiguous regarding the use of United States-supplied arms. The Foreign Assistance Act of 1961 proclaims the fundamental policy of the United States against aggression and against the use of force except for defensive purposes. The Act states in part:

The Congress of the United States reaffirms the policy of the United States to achieve international peace and security through the United Nations so that armed force shall not be used except for individual or

49. 22 U.S.C. § 2301 (1990).

50. 22 U.S.C. § 2751 (1990) (renamed The Arms Export Control Act).

collective self-defense. The Congress hereby finds that the efforts of the United States and other friendly countries to promote peace and security continue to require measures of support based upon the principle of effective self-help and mutual aid. It is the purpose of this part to authorize measures in the common defense against internal and external aggression, including the furnishing of military assistance, upon request, to friendly countries and international organizations.⁵¹

The provisions of section 505(d) of the Foreign Assistance Act and section 3(c) of the Foreign Military Sales Act are similar. Basically, these acts provide and proclaim that United States military equipment can only be used for defensive purposes. Any country which violates these acts is "immediately ineligible" for further assistance and sales.

Section 505(d) of the Foreign Assistance Act of 1961 provided in 1974 that:

Any country which hereafter uses defense articles or defense services furnished such country under this Act, the Mutual Security Act of 1954, as amended, or any predecessor foreign assistance Act, in substantial violation of the provisions of this chapter (22 U.S.C. 2311 *et seq.*) or any agreements entered into pursuant to any of such Acts shall be *immediately ineligible for further assistance*.⁵²

51. 22 U.S.C. § 2301 (1990).

52. 22 U.S.C. § 2314(d) (1990)(emphasis added). Section 304(a) of the International Security Assistance and Arms Export Control Act of 1976 (90 Stat. 751) (1976) amended § 505(d) to remove the "immediately ineligible for further assistance" language and thereby eliminated the mandatory nature of the penalty/sanction for misuse of our arms assistance and sales. Subsection (d) presently reads as follows:

(1) Assistance and deliveries of assistance under this chapter to any country shall be terminated as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, the Mutual Security Act of 1954, or any predecessor Foreign Assistance Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (A) by using such articles or services for a purpose not authorized under section 502 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 502, for a purpose not authorized under such agreement; (B) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (C) by failing to maintain the security of such articles or services. (2)(A) Assistance and deliveries of assistance shall be terminated pursuant to paragraph (1) of this subsection if the President so determines and so states in writing to the Congress, or if the Congress so finds by joint resolution.

(B) The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred.

Section 502 of the Foreign Assistance Act sets forth the purposes for which our assistance can be used. It reads in part:

Defense articles and defense services to any country shall be furnished *solely* for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security. . . .⁵³

Subsection 505(a) of the Foreign Assistance Act states that the recipient country shall agree not to use defense articles for non-authorized purposes without the consent of the President. It reads in part:

In addition to such other provisions as the President may require, no defense articles shall be furnished to any country on a grant basis unless it shall have agreed that — (1) it will not, without the consent of the President. . . . (C) use or permit the use of such articles for purposes other than those for which furnished.⁵⁴

Section 3(c) of the Foreign Military Sales Act provided:

[A]ny foreign country which hereafter uses defense articles or defense services furnished such country under this Act, in substantial violation of any provision of this Act or any agreement entered into under this Act, shall be immediately ineligible for further cash sales, credits, or guarantees.⁵⁵

1. *Violation of United States Laws*

The basic facts are not in dispute. Cyprus is an island separated from Turkey by forty miles of sea. There is no question of a disputed border or border incident. Nevertheless, Turkey transported its troops equipped with United States supplied arms and equipment to Cyprus, via ship and air, while its United States-supplied planes

(3) Assistance to a country shall remain terminated in accordance with paragraph (1) of this subsection until such time as—

(A) the President determines that the violation has ceased; and

(B) the country concerned has given assurances satisfactory to the President that such violation will not recur.

(4) The authority contained in section 614(a) of this Act may not be used to waive the provisions of this section with respect to further assistance under this chapter.

Section 304(b) similarly amended § 3(c) of the Foreign Military Sales Act, 22 U.S.C. §§ 2451-3900, at 310 (1990).

53. 22 U.S.C. § 2302 (1990)(emphasis added).

54. 22 U.S.C. § 2314(a) (1990).

55. 22 U.S.C. § 2753(c) (1974).

bombed military and civilian targets in Cyprus. American-supplied arms and equipment were used by Turkey in the initial invasion/aggression of July 20, 1974, and the renewed attack on August 14, 1974, after the coup had collapsed and the legitimate government restored. Turkey did not use these arms for "internal security," "legitimate self-defense," or "to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations."

Turkey used United States-supplied arms for aggressive purposes by invading a sovereign nation. Because Turkey's action did not come within any of the purposes set forth in section 502 of the Foreign Assistance Act of 1961, Turkey was in violation of that Act, and under section 505(d) of that Act, was "immediately ineligible for further assistance." Also as a result, under section 3(c) of the Foreign Military Sales Act, Turkey was "immediately ineligible for further cash sales, credits, or guarantees."⁵⁶

2. *Recognition by Congress; Reaction by the Administration*

In September through December, 1974, the Congress of the United States upheld the integrity of the Foreign Assistance Act of 1961 and the Foreign Military Sales Act in over a dozen votes,⁵⁷ in-

56. There is no legal distinction between the invasion/aggression of July 20, 1974 and the renewed aggression of August 14, 1974. Both involved unauthorized use of United States military arms and equipment and Turkey is culpable in each instance.

57. The following are the key votes in the Congress between September and December of 1974:

S. Res. 1897, 93rd Cong., 2d Sess., 120 CONG. REC. 31,923 (1974). Senate votes 64 to 27 to pass a non-binding resolution introduced by Sen. Thomas F. Eagleton (D-Mo), expressing the sense of the Senate that Turkey be immediately ineligible for further military assistance from the United States because it violated United States foreign aid laws and the bilateral agreement under those laws. N.Y. Times, Sept. 20, 1974, at A4, col. 2.

120 CONG. REC. 32,439-40 (1974). House of Representatives votes 307 to 90 to attach the DuPont-Rosenthal amendment to the continuing resolution on appropriations, H.J. Res. 1131. The amendment suspends military assistance and sales to Turkey "until the President certifies to Congress that substantial progress toward agreement has been made regarding military forces in Cyprus." N.Y. Times, Sept. 25, 1974, at A1, col. 8.

120 CONG. REC. 32,948 (1974). Senate votes 57 to 20 for an amendment to H.J. Res. 1131 suspending military assistance and sales to Turkey until Turkey is in compliance with United States laws and mandating that the Executive Branch apply the statutory penalty to any nation using American arms for purposes other than for which they were granted (Sept. 30, 1974). N.Y. Times, Oct. 1, 1974, at A1, col. 4.

120 CONG. REC. 33,272 (1974). Senate votes 59 to 29 to defeat a motion to recommit H.J. Res. 1131. President Ford announces he will veto the continuing resolution on appropriations if it contains language halting military assistance and sales to any country. N.Y. Times, Oct. 2, 1974, at A1, col. 8.

120 CONG. REC. 34,157 (1974). House of Representatives rejects Conference Commit-

cluding two near overrides of presidential vetoes. Congress finally en-

tee's "watered down" language by a vote of 291 to 69, and then the DuPont-Rosenthal amendment is agreed to by voice vote. N.Y. Times, Oct. 8, 1974, at A1, col. 1.

120 CONG. REC. 34,624 (1974). Senate rejects Conference Committee's "watered down" language by a vote of 62 to 16. N.Y. Times, Oct. 10, 1974, at A1, col. 3.

S.J. Res. 247, 93rd Cong., 2d Sess., 120 CONG. REC. 34,677 (1974). By a vote of 40 to 35, Senate passes the Mansfield motion, which authorizes the President to postpone the arms cut off to Turkey until December 15, 1974, if he determines such action would help the Cyprus negotiations. N.Y. Times, Oct. 10, 1974, at A1, col. 3.

120 CONG. REC. 35,429 (1974). House of Representatives rejects S.J. Res. 247 by a vote of 187 to 171. N.Y. Times, Oct. 12, 1974, at A1, col. 2.

On Oct. 14, 1974, President Ford vetoes H.J. Res. 1131 (Fiscal Year 1975 Continuing Resolution on Appropriations), which contains an amendment banning military aid to Turkey until the President certifies to Congress that "substantial progress" has been made toward agreement regarding military forces in Cyprus, and that Turkey is in compliance with the Foreign Assistance Act. N.Y. Times, Oct. 15, 1974, at A1, col. 1.

120 CONG. REC. 35,608-9 (1974). House of Representatives fails to override President Ford's veto of H.J. Res. 1131. The House's final vote of 223 to 135 falls 16 votes short of the two-thirds needed to override a veto, thus requiring a new continuing resolution on appropriations for the fiscal year 1975. N.Y. Times, Oct. 16, 1974, at A1, col. 5.

120 CONG. REC. 35,733 (1974). House of Representatives passes, by a vote of 194 to 144, a new amendment to H.J. Res. 1163 (Continuing Resolution on Appropriations) calling for a cut off of military aid to Turkey. N.Y. Times, Oct. 17, 1974, at A1, col. 3.

120 CONG. REC. 35,908 (1974). Senate rejects, by a vote of 40 to 27, the Mansfield Amendment, which would have allowed the President to delay the aid cut off to Turkey until December 10, 1974, and passes a new H.J. Res. 1163. N.Y. Times, Oct. 17, 1974, at A1, col. 3. President Ford vetoes the continuing resolution on appropriations for the second time (H.J. Res. 1163 was the second resolution) insisting that such action is detrimental to United States national security interests in the Mediterranean and that it will cause a deterioration of the political situation in Cyprus. *Id.*

120 CONG. REC. 36,018-19 (1974). House of Representatives, in a vote of 161 to 83, falls two votes short of overriding the second presidential veto of legislation containing provisions to cut off aid to Turkey. N.Y. Times, Oct. 18, 1974, at A1, col. 2. H.J. Res. 1167, 93rd Cong., 2d Sess., 120 CONG. REC. 36,023 (1974). In an agreement with the White House on a December 10, 1974 cut-off date, H.J. Res. 1167 passes in the House by a vote of 191 to 33 and by voice vote in the Senate. H.J. 1167 provides for a cut off of military aid to Turkey until the President certifies to the Congress that Turkey was in compliance with American foreign aid laws and that substantial progress has been made regarding military forces in Cyprus. H.J. Res. 1167 also contained a provision that postpones the ban on military aid to Turkey until Dec. 10, 1974, unless Turkey violates the Cyprus cease fire, increases its forces on Cyprus, or transfers any American "implements of war" to that island prior to that date. *Id.*; see also Oct. 18, 1974, at A1, col. 2.

On October 18, 1974, President Ford signs H.R. Res. 1167 into Public Law 93-448. N.Y. Times, Oct. 19, 1974, at A5, col. 1.

120 CONG. REC. 38,084 (1974). Senate passes, by a vote of 55 to 36, the Humphrey amendment to the Foreign Assistance Act of 1974 to delay the cut off of military aid and sales to Turkey until Feb. 5, 1975. N.Y. Times, Dec. 5, 1974, at A8, col. 1.

120 CONG. REC. 39,142 (1974). House of Representatives passes, by a vote of 297 to 98, the DuPont-Rosenthal amendment to the Foreign Assistance Act of 1974. The amendment is the same as the amendment in the continuing resolution on appropriations. N.Y. Times, Dec. 12, 1974, at A11, col. 1.

120 CONG. REC. 40,385 (1974). Congress passes the Foreign Assistance Act of 1974

acted Public Law 93-559 signed by President Ford on December 30, 1974, which contained provisions imposing an embargo on all military assistance and military sales to Turkey starting February 5, 1975, until "the President determines and certifies to the Congress that . . . Turkey is in compliance with the Foreign Assistance Act of 1961, the Foreign Military Sales Act, and any agreement entered into under such Acts, and that substantial progress toward agreement has been made regarding military forces in Cyprus."⁵⁸

The course of the congressional debate and Administration comments reveal the polarity of their positions on the issue of further aid to Turkey. On August 14, 1974, Congressmen John Brademas, Peter Kyros, Gus Yatron, Paul Sarbanes and Skip Bafalis introduced House Resolution 1319 expressing the sense of Congress "that all U.S. economic and military assistance and military sales to Turkey should immediately be stopped until all Turkish armed forces have been withdrawn from Cyprus."⁵⁹

On August 19, 1974, Secretary of State Henry Kissinger held a press conference during which reporter James McCartney asked Kissinger "whether the Foreign Assistance Act did not require the cutoff of American aid to Turkey as a result of its aggression in Cyprus."⁶⁰ Kissinger replied "I will have to get a legal opinion on that subject, which I have not done."⁶¹

George Ball, former Under Secretary of State (1961-1966), testified before the House Foreign Affairs Subcommittee on Europe on

with an amendment requiring the President to suspend all military assistance or sales of defense articles, as well as the issuance of any licenses for transportation of arms, ammunition and implements of war to Turkey. A provision authorizes the President to resume assistance if he determines that the government of Turkey is in compliance with the Foreign Assistance Act of 1961, as amended, the Foreign Military Sales Act, and any agreement entered into under such acts, and that substantial progress is made toward an agreement regarding military forces on Cyprus. (The amendment is the same as the amendment in the continuing resolution on appropriations). Congress authorizes the President to suspend the effective cut-off date until February 5, 1975 if he determines that such suspension could further negotiations for a peaceful solution to the Cyprus conflict. Twenty-five million dollars in humanitarian assistance is authorized for Cyprus. N.Y. Times, Dec. 18, 1974, at A1, col. 1.

President Ford signs the Foreign Assistance Act of 1974 into law (Pub. L. 93-559). N.Y. Times, Dec. 31, 1974, at A3, col. 7.

58. Act of Dec. 30, 1974, Pub. L. No. 93-559, (1974) U.S. CODE CONG. & ADMIN. NEWS (90 stat.) 2072-73, 6742-43, 6742-43.

59. 120 CONG. REC. 28,306 (1974); *Cyprus - 1974, Hearings Before the House Comm. on Foreign Affairs and its Subcomm. on Europe*, 93rd Cong., 2nd. Sess. 83 (1974) (statement of Rep. John Brademas) [hereinafter *Cyprus Hearings*].

60. Kissinger press conference, Aug. 19, 1974, referred to in STERN, *supra* note 20, at 142.

61. *Cyprus Hearings*, *supra* note 59, at 57.

August 20, 1974, that he would support legislation calling for a halt in military assistance to Turkey until an agreement acceptable to all parties was reached regarding the presence of foreign military forces on Cyprus.⁶²

On August 29, 1974, the sponsors of House Resolution 1319 wrote to Secretary Kissinger that Turkey had violated United States laws and was "immediately ineligible for further assistance."⁶³ A week later, a State Department official confidentially informed Senator Thomas F. Eagleton's chief foreign policy aide, Brian Atwood, "that the legal study of the Turkish military aid question had been completed in the Office of the Legal Advisor" and that "[i]ts conclusion was that by no stretch of the statutes or the legal imagination of the State Department's attorneys could military aid to Turkey be continued."⁶⁴ The official said:

he could not understand why the highest level of government could still not obey the law [and] that pressure was being applied at the top of the department to modify the conclusions more to the tactical requirements of Kissinger by returning the unsatisfactory opinion to the staff for revision. The message, as read by Eagleton's staff, was that an attempt was being made to fiddle with the legal opinion and the State Department staff was holding firm to its position.⁶⁵

On September 5, 1974, Eagleton initiated in the Senate the rule of law debate regarding Turkey by a statement he delivered on the the Senate floor.

On September 19, 1974 Kissinger appeared before a Senate Democratic Caucus (at his request) prior to a vote on Senate Resolution 1897, a non-binding sense of Congress resolution, that military aid and sales to Turkey be immediately suspended until Turkey complied with United States laws. Kissinger argued against the resolution. However, "during an exchange with Senator Eagleton . . . [Kissinger] admitted that the 'dominant interpretation within my legal department' agreed with Eagleton's contention that aid to Turkey is illegal since its invasion of Cyprus employed U.S.-supplied weapons which, under the aid legislation, can only be used for defensive purposes."⁶⁶ Kissinger added that in his view there were times in world history

62. *Id.* at 49-50.

63. 120 CONG. REC. 30,700 (1974).

64. STERN, *supra* note 20, at 143-44.

65. *Id.*

66. *Cyprus Hearings*, *supra* note 59, at 59; *see also* STERN, *supra* note 20, at 145; N.Y. Times, Sept. 20, 1974, at A4, col. 2; Wash. Post, Sept. 20, 1974, at A1, col. 1.

when diplomats had to act outside the law.⁶⁷ Despite requests from the Congress, Kissinger refused to transmit a copy of the State Department's legal opinion to the Congress.⁶⁸ The resolution passed by a vote of sixty-four to twenty-seven.

The Comptroller General of the United States also concluded that Turkey had violated section 505(d) of the Foreign Assistance Act of 1961 and section 3(c) of the Foreign Military Sales Act.⁶⁹ In his opinion, the violation lay in the diversion of United States-supplied

67. Telephone interviews with former Sen. Thomas F. Eagleton (D-Mo) (Oct. 3, 1990) and Brian Atwood, Sen. Eagleton's chief foreign policy legislative assistant (Sept. 19, 1990).

68. Kissinger ordered the State Department to withhold the release of a departmental legal ruling on whether Turkey was in violation of the Foreign Assistance Act of 1961, as amended, and of the Foreign Military Sales Act with respect to Turkey's use of United States furnished arms in its invasion and occupation of Cyprus. N.Y. Times, Dec. 2, 1974, at A7, col. 1. Senator Thomas F. Eagleton, Congressman Ben Rosenthal and others requested copies of the State Department's legal opinion to no avail. Stern wrote: "The legal study became a major point of contention in the recurrent jousts between the press office and the news media. Five months after the State Department's legal opinion was completed, the Department's spokesman Robert Anderson still found himself floundering with the issue. 'What is the justification,' one reporter asked in a heated exchange in February 1975, 'for keeping secret the results of a study that was ordered to determine whether or not a foreign government was in compliance with American law?' The study is not going to be made public Anderson said." STERN, *supra* note 20, at 143. Kissinger also refused to allow the Cyprus Desk Officer, Thomas A. Boyatt, to testify before congressional committees and refused to send to Congress a copy of Boyatt's memorandum in which he took issue with the direction of State Department policy on Cyprus. See Boyatt, *1974 In Retrospect and Its Importance Today*, in THE RULE OF LAW, *supra* note 45, at 7.

69. Opinion letter from Comptroller General to Senator Thomas F. Eagleton at 13, 16 (Oct. 7, 1974) [hereinafter Opinion Letter]. At pages 2 and 3 of the opinion letter the following provisions of the 1947 bilateral agreement are set forth:

Article I states:

The Government of the United States will furnish the Government of Turkey such assistance as the President of the United States may authorize to be provided in accordance with the Act of Congress approved May 22, 1947, and any acts amendatory or supplementary thereto. The Government of Turkey will make effective use of any such assistance in accordance with the provisions of this agreement.

The second paragraph of Article II states in part:

The Government of Turkey will make use of the assistance furnished for the purposes for which it has been accorded. (Emphasis in original.)

Article IV of the Agreement states:

Determined and equally interested to assure the security of any article, service, or information received by the Government of Turkey pursuant to this agreement, the Governments of the United States and Turkey will respectively take after consultation, such measures as the other government may judge necessary for this purpose. *The Government of Turkey will not transfer, without the consent of the Government of the United States, title to or possession of any such article or information nor permit, without such consent, the use of any such article or the use or disclosure of any such information by or to anyone not an officer, employee, or agent of the Government of Turkey or for any purpose other than that for which the article or information is furnished.* (Emphasis in original).

military assistance for use in Cyprus without obtaining the prior formal consent of the United States which was required by article IV of the July 1947 United States-Turkey bilateral agreement on Aid to Turkey.⁷⁰

The Comptroller General stated that subsection 505(d) of the Act also required a determination that the violations were "substantial" in order to render a country "immediately ineligible for further assistance."⁷¹ He then stated that any diversion of a substantial amount of military supplies would "constitute a 'substantial' violation of Section 505(d)" and that he believed "Turkey had diverted substantial quantities of military assistance items."⁷²

There was no real argument by the Administration supporters that Turkey had not violated the law. Instead, the Administration emphasized the strategic importance of Turkey and pressed for a suspension of the cutoff of aid to Turkey to give Kissinger time to negotiate. In asking for additional time, leading supporters of the Administration such as Senate Majority Leader Mike Mansfield and Congressman John Anderson, admitted that the law had been broken. As Majority Leader Mansfield stated on the Senate floor:

The position of the distinguished Senator from Missouri (Mr. Eagleton) which has won the overwhelming approval of Congress, is clear: These laws as applied to the hostilities on Cyprus require a cutoff of aid to Turkey. The foundation of this judgment is incontrovertible: This is a Nation of laws and not of men and when the law is clear, it must be followed whether it seems expedient or not at the time.⁷³

* * * * *

70. *Id.*

71. *Id.* at 13.

72. *Id.* at 15. The Comptroller General stated:

Any diversion of substantial quantities of military assistance items furnished by the United States from authorized purposes would thus constitute a "substantial" violation of section 505(d) under the intent expressed in the House report. Moreover, even though any substantial diversion thus seems sufficient in and of itself to trigger section 505(d), the purposes and use to which the diverted military assistance is applied would certainly also be relevant to the gravity of the violation. If such purposes and use [are] in contravention of the explicitly stated policies and purposes of the Foreign Assistance Act of 1961, the violation would undoubtedly be "substantial". It is our impression that Turkey has diverted substantial quantities of military assistance items furnished by the United States, although we have no official information as to the types and quantities of defense articles which are involved. In addition, as noted hereinbefore the particular purposes for which the items were diverted and the uses to which they were applied may well be in contravention of the policies and purposes of the Foreign Assistance Act of 1961.

73. 120 CONG. REC. 34,672 (1974). "[T]he legal case . . . was sufficiently compelling so

The joint resolution suspends until December 15 the application of the cutoff of funds prescribed in the Foreign Military Sales Act and the Foreign Assistance Act of 1961 as amended. . . . But in doing so, it acknowledges that these laws clearly prescribe a cutoff.⁷⁴

The *New York Times* in a series of editorials in September and October of 1974, condemned Kissinger's failure to apply the law mandating the cutoff of military aid to Turkey in response to its invasion of Cyprus. The editorials state in part:

Turkey Is Ineligible

Cutting off American military aid to Turkey may, as Secretary of State Kissinger contends, be "ineffective and counterproductive" so far as getting the Turks to roll back their occupation of Cyprus is concerned; but it is mandatory under the law. In pretending for nearly a month to be studying this question, the State Department is clearly stalling, as it has stalled at every point since the outset of the Cyprus tragedy when action was called for to demonstrate this country's disapproval of aggression.⁷⁵

Toward Cyprus Peace

The overwhelming (307 to 90) approval by the House of a binding cutoff in military aid to Turkey until "substantial progress" is made toward a Cyprus settlement dramatizes American revulsion against the massive Turkish aggression on the island. The action was also aimed at forcing Administration compliance with laws that mandate such a cutoff when a recipient country misuses American military assistance.⁷⁶

Turkey: Still Ineligible

The virulent White House opposition to efforts by decisive majorities in both houses of Congress to suspend military aid to Turkey has no basis in either law or logic. President Ford's repeated threats to veto a bill requiring such a cutoff can only be seen as an attempt to block Congress from a meaningful role in the shaping of foreign policy and a move to fend off a blow at the prestige of Secretary of State Kissinger.

* * * * *

that Kissinger never, in the course of the harshest conflict he experienced with Congress, chose to defend his policies on legal grounds." STERN, *supra* note 20, at 149.

74. 120 CONG. REC. 34,673 (1974). The statements took place during consideration of S.J. Res. 247, which authorized the President to suspend, in the case of Turkey, the application of the provisions of § 505(d) of the Foreign Assistance Act of 1961 and § 3(c) of the Foreign Military Sales Act.

75. N.Y. Times, Sept. 14, 1974, at A28, col. 1.

76. *Id.*, Sept. 26, 1974, at A28, col. 1.

[T]he law is clear and it should be obeyed. Congress should stick to its guns on the military aid issue - veto or no veto.⁷⁷

The Administration introduced legislation⁷⁸ only three weeks after the law went into effect to modify the Foreign Assistance Act of 1961 to allow arms shipments to Turkey. This action reflected the desire of the Administration to supply arms to Turkey regardless of its acts of aggression. Additionally, the Administration supported the amendment to section 505(d) that removed the mandatory nature of the sanction in the Foreign Assistance Act of 1961 for misuse of United States-supplied defense articles.⁷⁹

Cyrus Vance, who was later to become Secretary of State in the Carter Administration, and George Ball testified jointly before the House International Relations Committee⁸⁰ on the Administration-backed bill aimed at modifying the congressional arms embargo that Congress had enacted in the Fall of 1974.⁸¹ They stated their view that Turkey had violated the Foreign Assistance Act of 1961 and the Foreign Military Sales Act, as well as the bilateral agreements under those Acts. They expressed their deep concern that a precedent was being set for other nations to disregard the conditions of our military assistance and military sales programs. They also urged action to reinforce the fundamental principles of our military aid programs - namely that our arms are to be used for defensive purposes only and not for aggression, as Turkey had done.⁸² They proposed a three-month lifting of the embargo and its reimposition indefinitely if satisfactory progress had not been made to resolve the problem.⁸³

Ball and Vance stated:

Our one safeguard is that most of these arms are provided under explicit conditions that they will be used only for the purposes for which they are explicitly provided, which are solely for internal security, legitimate self-defense and to permit the recipient country to participate in collective security arrangements consistent with the

77. *Id.*, Oct. 13, 1974, at A16, col. 1.

78. *Id.*, Feb. 27, 1975, at A8, col. 1.

79. See *supra* note 52 and accompanying text. Congress passed the law in 1976.

80. The name of the committee had been changed from the House Committee on Foreign Affairs. It was changed back to the House Committee on Foreign Affairs, effective February 5, 1979, by House Resolution 89, 96th Congress.

81. *Suspension of Prohibitions Against Military Assistance to Turkey, 1975: Hearing on S. 846, H.R. 8454 and other bills and resolutions Before the House Committee on International Relations, 94th Cong., 1st Sess. 45 (1975)* [hereinafter *Suspension of Prohibitions*] (statements of George Ball and Cyrus Vance). See also *N.Y. Times*, July 11, 1975, at A2, col. 3.

82. See *Suspension of Prohibitions*, *supra* note 81, at 45-72.

83. *Id.* at 49, 50, 53, 56, 61, 63.

United Nations Charter which, of course, includes NATO. But that raises the central question: How can we preserve the credibility of these conditions if we are prepared to ignore them in the case of Turkey in a *highly visible* situation which all the world is watching?

That Turkey used the arms we provided in violation of the relevant American laws and of the express language of the bilateral agreement that governed their transfer is not in dispute. That issue has been settled by an opinion of the Comptroller General in unequivocal language.

The question now is: Should the Congress wipe out the penalties of violation which, in express terms, would render Turkey ineligible for further American weapons until the Turkish Government takes steps *to purge itself* by some serious move to settle its dispute with Greece and to remove its troops from Cyprus? To do so might dangerously undercut the conditions we have imposed on the use of all the arms we have provided up to this point under our various military aid and military sales programs.

* * * * *

Finally, and in many ways this is the most important point, we are seriously concerned that this so-called compromise would create a widespread impression that no nation that has acquired arms from the United States need any longer pay attention to the conditions on which those arms were made available but would be free to use them in pursuit of its own interests in local conflicts.⁸⁴

After persistent pressure from the Administration, Congress partially lifted the embargo on October 2, 1975 and the remaining restrictions in August 1978.⁸⁵

84. *Id.* at 46, 48 (emphasis added).

85. Pub. L. 94-104 (1975). On July 24, 1975, the House of Representatives defeated the Administration's proposal, S. 846, to lift the embargo on the sale of American arms to Turkey by a vote of 223 to 206. 121 CONG. REC. 24480-526 (1975). The Senate had passed S. 846, by a vote of 41 to 40, in May, 1975. 121 CONG. REC. 24,526 (1975); N.Y. Times, July 25, 1975, at A1, col. 1. The Administration had a new bill introduced in the Senate, S. 2230, which passed in late July by a vote of 47 to 46. Following the August recess, the House Committee on International Relations passed S. 2230 by a vote of 20 to 9 on September 17, 1975. On October 2, 1975, the House of Representatives passed S. 2230 by a vote of 237 to 176 which partially lifted the embargo for arms contracted by Turkey prior to the imposition of the embargo and permitted the issuance of licenses in connection with commercial sales. It did not authorize any military grant assistance and delayed resumption of government-to-government credit sales until enactment of new foreign military sales legislation for fiscal year 1976. 121 CONG. REC. 31457-60 (1975); N.Y. Times, Oct. 3, 1975, at A1, col. 8. President Ford signed S. 2230 on October 7, 1975. The embargo was fully lifted in August, 1978, following intense pressure from the Carter Administration. The Senate passed repeal legislation on July 25, 1978 by a vote of 57 to 42. 124 CONG. REC. 22510-57 (1978). On August 1, 1978, the House voted 208 to 205 to repeal the remaining rule-of-law embargo. As a presidential candidate, Carter had specifically endorsed U.N.G.A. Res. 3212, stating that: "Peace must be based on the United

3. *Bilateral Agreements on Aid to Turkey*

The Agreement on Aid to Turkey of July 1947, was entered into pursuant to the act of May 22, 1947. This act is a "predecessor foreign assistance act"⁸⁶ under section 505(d) of the Foreign Assistance Act of 1961. Therefore, military assistance to Turkey under the 1947 agreement has been subject to the terms of section 505(d). Violation of the agreement would render Turkey immediately ineligible for further assistance, as would violation of the Act itself.

The 1947 agreement required United States consent for any use of military assistance outside the specific purposes for which assistance was given. Thus, United States consent was required for Turkish deployment of United States military assistance in 1974.⁸⁷ The United States and Turkey entered into another agreement by an exchange of notes dated May 16, 1960 and June 16, 1960, in which the United States consented to a Turkish request to use certain American-supplied military assistance program materiel for Turkey's 650 man military force in Cyprus.⁸⁸ The agreement clearly establishes and confirms that Turkey cannot use or deploy American military assistance in Cyprus without the formal consent of the United States.⁸⁹

Nations General Assembly Resolution 3212 of 1 November 1974 endorsed by Cyprus, Greece and Turkey, calling among other things for the removal of all foreign military forces from Cyprus." Carter further said that the United States must work "to insure the independence, territorial integrity and sovereignty of Cyprus," that Greek Cypriot refugees should be allowed "to return to their homes," that the "United States must pursue a policy based on principle and in accord with the rule of law" and that "[i]f I am elected president I intend to enforce and carry out the provisions of my statement." Statement and speech by James Carter in Washington, D.C. (Sept. 16, 1976).

Presidential candidate Ronald Reagan stated that President Carter had "renewed on his [campaign] pledges" regarding Cyprus. Candidate Reagan stated: "The tragic situation in Cyprus has lasted six years. It must not continue. The foreign military forces on that island should be substantially reduced, and Cypriot refugees, be they Greek or Turkish, should be permitted to return to their homes and land. I support the full implementation of unanimously approved United Nations Resolution 3212 of November 1974 which '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; Urges the speedy withdrawal of all foreign armed forces and foreign military presence and personnel from the Republic of Cyprus, and the cessation of all foreign interference in its affairs.'" Reagan-Bush Committee news release (Sept. 26, 1980). President Reagan did not follow through on his pledge.

86. See Opinion Letter, *supra* note 69, at 3.

87. *Id.*

88. The Treaty of Alliance, one of three treaties comprising the London-Zurich Agreements, authorized 950 Greek troops and 650 Turkish troops to be stationed on Cyprus. The Treaty of Alliance, *reprinted in* ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, CYPRUS: THE DISPUTE AND THE SETTLEMENT 72-120 (1959) [hereinafter Treaty of Alliance].

89. The exchange of notes is *reprinted in* Hearings on United States Security Agreements and Commitments Abroad, Greece and Turkey, Before the Subcommittee on United States Se-

Consent was granted, limited to specified types and quantities of defense articles. The United States Ambassador's Note of May 16, 1960 added: "The materiel to be deployed initially to Cyprus has been agreed upon . . . and is listed in the attached schedule and any Military Assistance Program materiel Turkey may subsequently wish to deploy to Cyprus will have to be the subject of a separate request."⁹⁰

In 1964 Turkey's threat to intervene militarily in Cyprus brought a written response from President Lyndon Johnson to the Turkish Prime Minister, in a letter dated June 5, 1964, which stated in part:

I wish also, Mr. Prime Minister, to call your attention to the bilateral agreement between the United States and Turkey in the field of military assistance. Under Article IV of the Agreement with Turkey of July 1947, your Government is required to obtain United States consent in the use of military assistance for purposes other than those for which assistance was furnished. Your Government has on several occasions acknowledged to the United States that you fully understand this condition. I must tell you in all candor that the United States cannot agree to the use of any United States supplied military equipment for a Turkish intervention in Cyprus, under present circumstances.⁹¹

It is interesting to note that following President Johnson's letter of June 5, 1964, Turkey did not intervene militarily in Cyprus in 1964.

In his legal opinion of the status of the Turkish action in Cyprus in 1974 under United States law, the Comptroller General noted that such use of United States military assistance was not provided for under either the 1947 or 1960 agreements or the Foreign Assistance Act of 1961.⁹² Therefore, he concluded, such use constituted a diversion of assistance from its intended purpose for which consent was required prior to deployment.⁹³ The fact that consent was neither sought nor granted rendered the Turkish use of United States assistance in Cyprus violative of the 1947 and 1960 agreements as well as the Foreign Assistance Act of 1961 because use went beyond that authorized by the 1960 agreement.⁹⁴ The violation, believed by the Comptroller General to be substantial in terms of quantity and purpose, fell clearly within the scope of the penalty clause of section

curity Agreements and Commitments Abroad of the Senate Committee on Foreign Relations, 91st. Cong., 2nd Sess., pt. 7, 1780 (1970).

90. See Opinion Letter, *supra* note 69, at 4.

91. *Id.* at 6.

92. *Id.* at 12.

93. *Id.*

94. See Opinion Letter, *supra* note 69, at 13.

505(d) of the Foreign Assistance Act.⁹⁵

The illegal Turkish use of United States military equipment is underscored by an advisory legal opinion in 1974 by the Congressional Research Service as well as by the public's and the United Nations' responses to Turkey's aggression.

The Congressional Research Service of the Library of Congress, in response to an inquiry from Congressman Brademas, concluded that section 505(d) of the Foreign Assistance Act was mandatory in nature and that while "Congress provided little or no guidance for clearly distinguishing between" defensive and aggressive purposes, "[i]t is not unlikely that Congress had common sense standards in mind, i.e., general notions of the differences between offense and defense."⁹⁶ Turkey's aggressive actions were "highly visible," as Ball and Vance stated in their testimony, and fully reported in the media to the world community.

Additional support for the proposition that Turkey's use of force in Cyprus was illegal comes from the United Nations Security Council resolutions such as those passed on the day of Turkey's invasion of Cyprus, and on the date of Turkey's second aggression, calling for the recognition of the sovereignty, independence and territorial integrity of Cyprus and for the immediate withdrawal of all foreign troops not authorized by international treaty. Although these resolutions deal with the United Nations Charter and not United States laws, they do pertain to the question of the illegal use of force.

The violations by Turkey of United States laws are clear, blatant and "highly visible." The problem that needs to be addressed is how to enforce our laws in the realm of foreign affairs as efficaciously as we do in domestic matters.

B. United Nations Charter and Resolutions

1. United Nations Charter

A fundamental purpose of the United Nations Charter is to keep the peace and to prevent aggression, *i.e.*, to settle problems peacefully. The preamble of the United Nations Charter states in part that the basic aims of the Organization are:

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under

95. *Id.*

96. 120 CONG. REC. 30,700 (1974).

which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and . . . to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest.

Paragraph 1 of article 1 on the purposes of the United Nations Charter states that one purpose is:

- (1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

Article 2, paragraphs 3 and 4 of the Charter, which set forth the principles to be acted upon to achieve the purposes proclaimed in article 1, state:

- (3) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- (4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 51 of the Charter deals with individual and collective self-defense and states in part:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Turkey's use of military force to invade and occupy a large part of Cyprus directly violated the plain meaning of these provisions of the United Nations Charter, especially the sections that call for pacific methods of dispute resolution without resort to the use of force.

Turkey's actions could not be interpreted as individual self-defense under article 51 since, of course, Turkey was not attacked, nor was she under threat of attack. Similarly, collective self-defense was inapplicable. Furthermore, the principle of self-defense does not allow for defense of foreign nationals. The Turkish Cypriots are citi-

zens of Cyprus and Turkey cannot justify the invasion on the grounds of protecting the Turkish Cypriots.

Similarly, article 53 of the Charter, which permits the Security Council to use regional arrangements for enforcement action, is not available to Turkey. Even if the London-Zurich Agreements among Britain, Greece and Turkey were to be considered a regional arrangement, article 53 states that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council."

Turkey continues to be in violation of the United Nations Charter, whose key precepts are universally accepted as preemptory legal norms. As Sir David Hunt, former British High Commissioner in Cyprus, stated:

But the rule of law, as both philosophers and practical statesmen agree, can only be established when there are institutions to formulate it and maintain it. Almost as essential is for it to be universally recognized. These conditions have now prevailed for thirty-five years. The basis of international law is formulated in the Charter of the United Nations; and the same document provides for the organs to enforce it. All the sovereign nations of the world have voluntarily undertaken to observe the obligations which the Charter lays on them: that disputes are to be settled by peaceful means; that members undertake not to use force or the threat of force in contravention of the purposes of the United Nations; and that each member must assist the organisation in any action it takes under the Charter.

* * * * *

[T]here is a rule of law in the world and the guarantee of it is the United Nations. Applying these principles to the case of Cyprus it is clear and undeniable that the government of Turkey, by invading with military force the territory of the Republic of Cyprus, is in open and deliberate breach of the Charter.⁹⁷

2. *United Nations Resolutions Against Turkey's Aggression*

The United Nations Security Council and General Assembly passed a number of resolutions following Turkey's invasion of Cyprus. In summation, the resolutions called upon all states to respect the sovereignty, independence, and territorial integrity of Cyprus, de-

97. HUNT, *CYPRUS: A STUDY IN INTERNATIONAL RELATIONS* 10 (1980)(Sir David Hunt, the 1980 Montague Burton Lecture on International Relations in the University of Edinburgh)[hereinafter HUNT]. Hunt was Britain's High Commissioner in Cyprus from 1965 to 1966.

manded the immediate end to foreign intervention, and requested that foreign military forces withdraw without delay.⁹⁸ The resolutions are either explicitly or implicitly premised on the judgment of the Security Council and General Assembly that Turkey is in violation of the United Nations Charter.

Since 1964, over seventy United Nations Security Council resolutions involving Cyprus have been passed dealing with substantive matters and with periodic extensions of the United Nations Peace-Keeping Force. The more relevant Security Council resolutions passed before Turkey's invasion of Cyprus are Resolution 186 (Mar. 4, 1964), Resolution 193 (Aug. 9, 1964) and Resolution 244 (Dec. 22, 1967).

Security Council Resolution 186, passed two-and-a-half months after the intercommunal fighting started, referred to the relevant provisions of the Charter, quoted in full article 2, paragraph 4 that proscribes the "threat or use of force," and recommended the creation of a United Nations Peace-Keeping Force in Cyprus and the designation of a mediator.⁹⁹ A United Nations Force was created, which became

98. The Security Council resolutions refer to the removal of foreign military forces except those authorized by international treaty. The Treaty of Alliance, *supra* note 88, authorized 950 Greek personnel and 650 Turkish personnel only. Unanimous G.A. Res. 3212 (Nov. 1, 1974) refers to the removal of all foreign military forces. G.A. Res. 3212, 29 U.N. GAOR (2275th plenary mtg.) at 3, U.N. Doc. S/11557 (1974) [hereinafter G.A. Res. 3212].

99. S.C. Res. 186, 19 U.N. SCOR Supp. (1102d mtg.) at 102, U.N. Doc. S/5575 (1964); *see also* 19 U.N. SCOR Supp. (Apr.-June 1964) at 105, U.N. Doc. S/5679 (1964). S.C. Res. 186 reads as follows:

THE SECURITY COUNCIL,

Noting that the present situation with regard to Cyprus is likely to threaten international peace and security and may further deteriorate unless additional measures are promptly taken to maintain peace and to seek out a durable solution,

Considering the positions taken by the parties in relation to the Treaties signed at Nicosia on 16 August 1960,

Having in mind the relevant provisions of the Charter of the United Nations and its Article 2, paragraph 4, which reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,"

1. *Calls upon* all member states, in conformity with their obligations under the Charter of the United Nations, to refrain from any action or threat of action to worsen the situation in the sovereign Republic of Cyprus, or to endanger international peace;

2. *Asks* the Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order, to take all additional measures necessary to stop violence and bloodshed in Cyprus;

3. *Calls upon* the communities in Cyprus and their leaders to act with the utmost restraint;

4. *Recommends* the creation, with the consent of the Government of Cyprus, of a United Nations Peace-Keeping Force in Cyprus. The composition and size of the force

operational on March 27, 1964, and a mediator was appointed.

Security Council Resolution 193 reiterated the "urgent appeal to the Government of Turkey to cease instantly the bombardment of and the use of military force of any kind against Cyprus, and to the Government of Cyprus to order the armed forces under its control to cease firing immediately. . . ." and called for an "immediate cease-fire by all concerned."¹⁰⁰

There were several key Security Council resolutions following Turkey's invasion. Resolution 353,¹⁰¹ adopted July 20, 1974, the day of Turkey's invasion called "upon all states to respect the sovereignty, independence and territorial integrity of Cyprus," called for a cease-fire, demanded "an immediate end to foreign military intervention" in Cyprus and requested "the withdrawal without delay . . . of foreign

shall be established by the Secretary-General, in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom. The commander of the force shall be appointed by the Secretary-General and report to him. The Secretary-General, who shall keep the Governments providing the force fully informed, shall report periodically to the Security Council on its operation;

5. *Recommends* that the function of the force should be, in the interest of preserving international peace and security, to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions;

6. *Recommends* that the stationing of the force shall be for a period of three months, all costs pertaining to it being met, in a manner to be agreed upon by them, by the Governments providing the contingents and by the Government of Cyprus. The Secretary-General may also accept voluntary contributions for that purpose;

7. *Recommends further* that the Secretary-General designate, in agreement with the Government of Cyprus and the Governments of Greece, Turkey and the United Kingdom a mediator who shall use his best endeavours with the representatives of the communities and also with the aforesaid four Governments, for the purpose of promoting a peaceful solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people of Cyprus as a whole and the preservation of international peace and security. The mediator shall report periodically to the Secretary-General on his efforts;

8. *Requests* the Secretary-General to provide, from funds of the United Nations, as appropriate, for the remuneration and expenses of the mediator and his staff.

Id.

100. See S.C. Res. 193, 19 U.N. SCOR Supp. 1 (1143rd mtg.) at 152, U.N. Doc. S/5868 (1964) [hereinafter S.C. Res. 193].

101. See S.C. Res. 353, *supra* note 12. S.C. Res. 353 reads as follows:

THE SECURITY COUNCIL,

Having considered the report of the Secretary-General at its 1979th meeting about the recent developments in Cyprus,

Having heard the statement made by the President of the Republic of Cyprus and the statements by the representatives of Cyprus, Turkey, Greece and other member countries,

Having considered at its present meeting further developments on the island,

Deeply deploring the outbreak of violence and continuing bloodshed,

Gravely concerned about the situation which led to a serious threat to international

military personnel” except those present under international agreement. Resolution 354 (July 23, 1974) demanded immediate compliance with Security Council Resolution 353, paragraph 2, which called for a cease-fire; Resolution 357 (Aug. 14, 1974) deplored the resumption of fighting, once again demanded a cease-fire and called for resumption of negotiations; Resolution 358 (Aug. 15, 1974) deplored the noncompliance with Resolution 357 and “insist[ed] on the full implementation” of its resolutions 353, 354 and 357 “with the immediate and strict observance of the cease-fire”; Resolution 359 (Aug. 15, 1974) discussed casualties in the United Nations Peace-Keeping Force in Cyprus; Resolution 360 (Aug. 16, 1974) in which the Security Council “[r]ecorded its formal disapproval of the unilateral military actions” by Turkey against Cyprus and urged compliance with previous resolutions “including those concerning the withdrawal without delay . . . of foreign military personnel” except those present under international agreements; Resolution 361 (Aug. 30, 1974) covered “the plight of the refugees,” urging “appropriate measures to provide for their relief and welfare and to permit persons who wish to

peace and security, and which created a most explosive situation in the whole Eastern Mediterranean area,

Equally concerned about the necessity to restore the constitutional structure of the Republic of Cyprus, established and guaranteed by international agreement,

Recalling Security Council resolution 186 of 4 March 1964 and subsequent resolutions of the Security Council on this matter,

Conscious of its primary responsibility for the maintenance of international peace and security in accordance with Article 24 of the Charter of the United Nations:

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 and requests all states to exercise the utmost restraint and to refrain from any action which might further aggravate the situation;
3. *Demands* an immediate end to foreign military intervention in the Republic of Cyprus that is in contravention of operative paragraph 1;
4. *Requests* the withdrawal without delay from the Republic of Cyprus of foreign military personnel present otherwise than under the authority of international agreements including those whose withdrawal was requested by the President of the Republic of Cyprus, Archbishop Makarios, in his letter of 2 July 1974;
5. *Calls on* Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland to enter into negotiations without delay for the restoration of peace in the area and constitutional government in Cyprus and to keep the Secretary-General informed;
6. *Calls on* all parties to cooperate fully with UNFICYP to enable it to carry out its mandate;
7. *Decides* to keep the situation under constant review and asks the Secretary-General to report as appropriate with a view of adopting further measures in order to ensure that peaceful conditions are restored as soon as possible.

Id.

do so to return to their homes in safety," and noting that the United Nations High Commissioner has already been appointed as Coordinator of United Nations Humanitarian Assistance for Cyprus; and Resolution 365 (Dec. 13, 1974) which endorsed the unanimous General Assembly Resolution 3212 on the "Question of Cyprus" and urged "the parties concerned to implement it as soon as possible."

General Assembly Resolution 3212¹⁰² was unanimously passed on November 1, 1974. Among other things, Resolution 3212 "[c]all[ed] upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of . . . Cyprus" and "[u]rge[d] the speedy withdrawal of all foreign armed forces and foreign military

102. See G.A. Res. 3212, *supra* note 98. G.A. Res. 3212 reads as follows:

THE GENERAL ASSEMBLY,

Having considered the question of Cyprus,

Gravely concerned about the continuation of the Cyprus crisis, which constitutes a threat to international peace and security,

Mindful of the need to solve this crisis without delay by peaceful means, in accordance with the purposes and principles of the United Nations,

Having heard the statements in the debate and taking note of the Report of the Special Political Committee on the question of Cyprus:

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 presence and personnel from the Republic of Cyprus, and the cessation of all foreign interference in its affairs;

3. *Considers* that the constitutional system of the Republic of Cyprus concerns the Greek-Cypriot and Turkish-Cypriot communities;

4. *Commends* the contacts and negotiations taking place on an equal footing, with the good offices of the Secretary-General between the representatives of the two communities, and calls for their continuation with a view to reaching freely a mutually acceptable political settlement, based on their fundamental and legitimate rights;

5. *Considers* that all the refugees should return to their homes in safety and calls upon the parties concerned to undertake urgent measures to that end;

6. *Expresses* the hope that, if necessary, further efforts including negotiations can take place, within the framework of the United Nations, for the purpose of implementing the provisions of the present resolution, thus ensuring to the Republic of Cyprus its fundamental right to independence, sovereignty and territorial integrity;

7. *Requests* the Secretary-General to continue to provide United Nations humanitarian assistance to all parts of the population of Cyprus and calls upon all states to contribute to that effort;

8. *Calls upon* all parties to continue to cooperate fully with the United Nations Peace-Keeping Force in Cyprus, which may be strengthened if necessary;

9. *Requests* the Secretary-General to continue to lend his good offices to the parties concerned;

10. *Further requests* the Secretary-General to bring the present resolution to the attention of the Security Council.

G.A. Res. 3212 was endorsed by the Security Council (S.C. Res. 365) on Dec. 13, 1974.

Id.

presence and personnel from . . . Cyprus, and the cessation of all foreign interference in its affairs.”

To date, Turkey has failed to comply with these United Nations Security Council and General Assembly resolutions and continues to violate them.¹⁰³

3. *United Nations Resolutions on Missing Persons in Cyprus*

One of the most tragic aspects of Turkey's invasion of Cyprus is the unknown fate of missing persons. The Cypriot government identified 1614 missing Greek Cypriots and five missing American citizens of Greek Cypriot descent.

The United Nations passed several resolutions on the issue of missing persons. General Assembly Resolution 3450, passed on December 9, 1975, requested “the Secretary-General to exert every effort in close cooperation with the International Committee of the Red Cross in assisting the tracing and accounting for missing persons as a result of armed conflict in Cyprus” and to provide the Commission on Human Rights information as to the implementation of this resolution. Third Committee Resolutions¹⁰⁴ of December 12, 1977 requested the Secretary-General “to support the establishment of an Investigatory Body.” A year later, the Third Committee regretted the delay and urged the establishment of an investigatory body. A third resolution, on December 4, 1981, welcomed “the agreement establishing the Committee on Missing Persons in Cyprus,” regretted “that due to procedural difficulties no progress has been achieved towards the commencement of the Committee's investigative work,” and urged “the Committee to proceed, without any further delay, with its investigative work for the tracing of and accounting for missing persons in Cyprus.” A resolution of the Human Rights Commission adopted on October 3, 1981 protested “attempts to settle . . . Varosha [Famagusta] . . . as illegal and called for immediate cessation of such activities,” called for “the tracing of and accounting for missing persons . . . without any further delay,” proclaimed that the Commission is “alarmed by the . . . influx of great numbers of settlers,” and called for “the freedom of movement, the freedom of settlement and the right to property” for all Cypriots. Finally, General Assembly Resolution of December 17, 1982 expressed “concern that the Committee

103. See Van Wynen Thomas & Thomas, *The Cyprus Crisis 1974-75: Political-Judicial Aspects*, 29 SW. L.J. 513, 543-46 (1975) [hereinafter Van Wynen Thomas & Thomas].

104. See United Nations Committee on Social, Humanitarian and Cultural Affairs (Third Committee).

on Missing Persons . . . has failed to overcome procedural difficulties and has achieved no progress towards the commencement of its investigative work.”

Turkey has also failed to comply with the resolutions on missing persons. In regard to the United Nations resolutions on Cyprus, Hunt stated:

In the case of Cyprus the Security Council has spoken, on behalf of its members who are bound by its decision. In a series of resolutions dating since July 1974 it has laid down the requirements of justice. . . . I can summarize everything that matters under two heads: after calling on all states to respect the sovereignty, independence and territorial integrity of Cyprus the Council demands an immediate end to foreign intervention and the withdrawal without delay of foreign military personnel. The two parts hang together. A state cannot exercise its sovereignty, and its territorial integrity is violated, when part of its territory is under foreign military occupation. And the use of force, condemned by the Charter and renounced by all members of the United Nations, cannot be brought to an end until its instruments are withdrawn to the place from which the aggression was launched.¹⁰⁵

C. *London-Zurich Agreements (1959-1960), Including the Treaty of Guarantee*¹⁰⁶

Turkey has stated she had the right to invade Cyprus under article IV of the Treaty of Guarantee, one of the three treaties under the London-Zurich Agreements of 1959-1960. Before discussing the validity of Turkey's contention, it is important to note that the Foreign Assistance Act of 1961 and the Foreign Military Sales Act make no exception for, and are not subject to, the provisions of the Treaty of Guarantee. Whether or not Turkey had the right to use force in Cyprus under article IV of the Treaty of Guarantee, Turkey nevertheless violated United States laws and the bilateral agreements under those laws. Similarly, the United Nations Charter does not permit an exception under the Treaty of Guarantee.

The 1959-1960 London-Zurich Agreements comprise three treaties: (1) the Treaty of Establishment between Britain and Cyprus transferred sovereignty over the island, except for ninety-nine square miles retained by Britain to be used for military purposes (known as

105. See HUNT, *supra* note 97, at 12.

106. Conference on Cyprus, CMND. 679 (1959). See also Cyprus, CMND. 1993 (1960). The Treaty of Guarantee is in CMND. 1253 (1961). The Treaty of Establishment is in CMND. 1252 (1961).

The Sovereign Base Areas); (2) the Treaty of Alliance among Cyprus, Greece and Turkey established a tripartite headquarters and authorized the presence of 950 Greek troops and 650 Turkish troops on Cyprus; and (3) the Treaty of Guarantee among Britain, Greece and Turkey contained the ban on *enosis* (union with Greece) and partition.

Article IV, the final article of the Treaty of Guarantee, is the article relied on by the Turkish government to justify its use of force and invasion of Cyprus. It reads:

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.

Insofar 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.¹⁰⁷

According to Hunt, the second sentence was added at the insistence of Turkey.¹⁰⁸

Not only did the London-Zurich Agreements not authorize Turkey's use of force to invade Cyprus, but, as will be discussed, the Treaty of Guarantee, on its face, indicts Turkey. Turkey's argument that the Treaty of Guarantee, and in particular article IV, gave her the right to intervene in Cyprus with the use of force is untenable for a number of reasons:

(1) Article IV of the Treaty of Guarantee did not authorize "force" when it authorized "action." There is no mention of the word "force" in the Treaty.

(2) When Cyprus became a member of the United Nations in 1960, all provisions of the London-Zurich Agreements in conflict with or inconsistent with the Charter of the United Nations became null and void pursuant to article 103 of the United Nations Charter. Article 103 states: "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." If an interpretation of article IV of the Treaty of Guarantee could be made to justify the use of force then all or part of article IV used to justify force is in

107. *See id.*

108. *See HUNT, supra* note 97, at 8.

conflict and inconsistent with article 103 of the United Nations Charter and, consequently, is void *ab initio*.

Article 2(4) of the United Nations Charter, states that member states "shall refrain . . . from the threat or use of force." Article 51 of the Charter authorizes the use of force for purposes of self-defense only. Turkey cannot avail herself of article 51 since she was not attacked nor was she threatened with attack.

Additionally, the use of force is permitted under the Charter in article 53 in the chapter on Regional Arrangements. Article 53 is also not available to Turkey since the Treaty of Guarantee is not a regional arrangement under article 53. Even if the Treaty of Guarantee is considered a regional arrangement, article 53 states that "no enforcement action shall be taken under regional arrangements . . . without the authorization of the Security Council."

Professor R.St.J. MacDonald concludes that article IV "to the extent that it purports to authorize the use of armed force, is inconsistent"¹⁰⁹ with the United Nations Charter and void. He writes:

I thus reach the following conclusions: that obligations imposed by Article 2(4) have not been discharged on the basis of frustration, that by virtue of Article 103, Charter obligations prevail over treaty rights as well as treaty obligations, and that for one obligation to prevail over another inconsistent obligation is for it to render the latter invalid or void. Therefore, subject to what is said below on Article 51, Article 4 of the Treaty of Guarantee, to the extent that it purports to authorize the use of armed force, is inconsistent with Article 2(4) of the Charter and does not fall within the Article 53 exception. Even if the 1974 invasion was in compliance with Article 4, such compliance was not sufficient to render it legal.¹¹⁰

* * * * *

CONCLUSION ON THE LEGALITY OF THE TURKISH INVASION:
On the basis of the following reasoning, I conclude that the 1974 invasion of Cyprus was in contravention of international law: 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; the 1974 invasion was not in compliance with Article 53 of the Charter on regional arrangements, as it is doubtful that a regional arrangement was in being, and, in any

109. MacDonald, *International Law and the Conflict in Cyprus*, 19 CANADIAN Y.B. OF INT'L L. 3, 3-48 (1981). MacDonald and Hunt refer to article IV of the Treaty of Guarantee as article 4, using the arabic. The Treaty uses article IV, the roman.

110. *Id.* at 16.

event, prior authorization of the Security Council was not obtained for an enforcement action; there is no implied exception to Article 2(4) in regard to quasi-regional arrangements according to which enforcement action may be taken until the Security Council states otherwise; there is no implied exception to Article 2(4) in regard to the right to protect "legitimate interests"; that is, no implied right of self-help; the invasion was not in compliance with Article 51 on individual self-defense, as there was no armed attack on Turkey; if the customary right of anticipatory self-defense or the right to protect nationals are implied exceptions to Article 2(4), the factual requirements for the exercise of such rights were not satisfied; the invasion was not in compliance with Article 51 on collective self-defense as the Republic of Cyprus did not request Turkish aid; if there are implied exceptions to Article 2(4) in regard to the right of humanitarian intervention or the right to aid a people to achieve self-determination, they are not appropriate rights to invoke to justify the 1974 invasion, which was prompted not by international strife but by the Greek *coup d'état*. In reaching the conclusion that the 1974 invasion contravened international law, it should be emphasized that reliance has been placed on the provisions of the Charter rather than on any specific resolutions of the General Assembly or the Security Council.¹¹¹

Hunt also takes the position that the language and provisions of the Charter prevail over the Treaty of Guarantee. He said:

There is, however, a more fundamental objection to be brought against the Turkish thesis than an argument based on the wording of this one particular article and its interpretation. This is that the Treaty of Guarantee lacks all legal validity.

[T]his argument . . . rests on the principle that the obligations which all nations have accepted voluntarily on their accession to the United Nations are superior to all other obligations. Where there are conflicts between them the Charter is a *JUS COGENS*, laying down peremptory norms of international law from which no derogation is permitted.

* * * * *

There is therefore no escape from the two-pronged argument: first that Article 4 of the Treaty of Guarantee did not authorise the use of force; secondly that if force was sanctioned under that article, then the Treaty was void *ab initio* as inconsistent with the Charter.¹¹²

(3) On its face, the Treaty of Guarantee only authorized action

111. *Id.* at 29-30.

112. HUNT, *supra* note 97, at 11. See also Van Wynen Thomas & Thomas, *supra* note 103, at 529-46; and Ehrlich, *supra* note 43, at 1066-79, regarding the August 1964 Turkish bombings of Cyprus.

to restore the status *quo ante*. Article IV states that the right to take action is for “the sole aim of re-establishing the state of affairs created by the present Treaty.” Throughout the ensuing seventeen years, Turkey demonstrated that she never had any such intention. As Hunt states:

The parties announce that they reserve the right to take action. The nature of the action is undefined - there is certainly no reference to the use of force - but its purpose is defined, in restrictive terms, as having the sole aim of re-establishing the state of affairs created by the treaty. But neither in 1974 nor at any time since have the Turkish government either professed or practised this aim. They have on the contrary presented as their aim a form of settlement wholly contrary to the one defined in the treaty, and specifically excluded by it: territorial partition and the creation of a separate Turkish-Cypriot state.¹¹³

Taylor G. Belcher, former United States Ambassador to Cyprus concurred in this view.¹¹⁴

On August 13, 1974, three weeks after the legitimate government of Cyprus had been reinstated, Turkey issued a thirty-six hour ultimatum to Greece and Britain to accept Turkey’s proposal for six separate Turkish Cypriot “cantons” covering a third of Cyprus. The proposal was not to restore the status *quo ante*, but was tantamount to partition, which was barred by the London-Zurich Agreements.

(4) Turkey acted unilaterally in violation of the terms of the Treaty of Guarantee. Although Turkey apparently consulted with Britain, Turkey did not consult with Greece and therefore did not meet the requirements of article IV.¹¹⁵

(5) The Security Council preempted Turkey on March 4, 1964 when it passed Resolution 186 following the outbreak of intercommunal fighting in December 1963. Resolution 186 led to the creation of a United Nations Peace-Keeping Force in Cyprus¹¹⁶ and the designation of a mediator. Nevertheless, Turkey bombed northern Cyprus in August 1964.¹¹⁷ The Security Council then authorized the Secretary-General “to make an appeal to the Government of Turkey to cease instantly the bombardment of and the use of military force of

113. HUNT, *supra* note 97, at 11.

114. See generally *Cyprus and the Rule of Law*, in THE RULE OF LAW, *supra* note 45, at 1.

115. See Van Wynen Thomas & Thomas, *supra* note 103, at 542.

116. N.Y. Times, Mar. 28, 1964, at A5, col. 4.

117. *Id.*, Aug. 9, 1964, at A1, col. 8.

any kind against Cyprus. . . .”¹¹⁸

(6) The Treaty of Alliance only allowed Turkey a force of 650 on Cyprus.

(7) A normal rule of statutory interpretation is to choose the interpretation which preserves the legality of the statute. Since the use of force by United Nations member states to settle disputes is so clearly contrary to the Charter, it is reasonable to assume that the parties did not mean to put an interpretation on the word “action” in the treaty contrary to a fundamental purpose of the Charter.

D. North Atlantic Treaty

The North Atlantic Treaty Organization (NATO) is a regional alliance created under article 52 of the United Nations Charter for collective defense against aggression under article 51 of the Charter. The fundamental principles, objectives and purposes of the North Atlantic Treaty are to deter aggression and to support democratic government. The preamble and article 1 of the North Atlantic Treaty state:

The Parties to this Treaty reaffirm their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all Governments.

They are determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law.

They seek to promote stability and well-being in the North Atlantic area.

They are resolved to unite their efforts for collective defence and for the preservation of peace and security.

They therefore agree to this North Atlantic Treaty:

ARTICLE 1

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

Turkey violated article 1 of the North Atlantic Treaty by failing “to settle” the Cyprus problem “by peaceful means in such a manner that international peace and security and justice are not endangered” and also by her “use of force . . . inconsistent with the purposes of the

118. See S.C. Res. 193, *supra* note 100.

United Nations.” Turkey also violated the policy set forth in the NATO preamble.

As previously discussed, Turkey’s invasion of Cyprus infringed on the United Nations Charter (article 1, paragraph 1; article 2, paragraphs 3 and 4; and the preamble). As a result, Turkey also violated article 1 and the preamble of the North Atlantic Treaty.

Turkey contravened the fundamental policies against aggression and in support of “democracy, individual liberty and the rule of law” set forth in the preamble and underlying the North Atlantic Treaty. Turkey breached both the letter and the spirit of the Treaty. Although some argue that the North Atlantic Treaty applies to aggression against a member country only and not to aggression by a NATO member against a third party non-member, this interpretation is inconsistent with the plain meaning and purpose of the North Atlantic Treaty. Article 1 prohibits the use of force in “any international dispute.”

At a minimum, NATO should have suspended Turkey until its aggression in Cyprus had been “purged.”¹¹⁹ Instead, NATO assisted in supplying arms to Turkey after the Congress enacted an embargo in 1974.¹²⁰ Furthermore, NATO’s Secretary General Joseph Luns joined the Administration’s lobbying effort to persuade the Congress to lift the embargo against Turkey.¹²¹

Although Turkey continues to violate the North Atlantic Treaty by its presence in Cyprus, NATO has ignored the transgression. Turkey’s invasion of Cyprus is a stain on NATO’s history and will remain until Turkey ends its illegal occupation of Cyprus.

119. “Purge” is the word used by Ball and Vance in their testimony in Congress on July 10, 1975. See *Suspension of Prohibitions*, *supra* note 81, at 46.

120. NATO Secretary General Joseph Luns met with Turkish officials to discuss their defense requirements following the United States arms embargo. Luns said that West German arms had begun to compensate for the cutoff in American supplies. F.B.I.S., Apr. 29, 1975, at Z1. Luns stated: “I assure you and your government that an important number of NATO countries have undertaken to meet the arms shortage which was the result of Congress’ decision.” F.B.I.S., Apr. 29, 1975, at Z2.

121. In Washington, D.C., Luns “expressed his concern about Turkey’s disaffection with the U.S. as the result of the arms cutoff, but said he doubted that Turkey intended to develop nuclear weapons.” N.Y. Times, Feb. 28, 1975, at A3, col. 6. Luns was in Washington, D.C. and met with President Ford when Congress was considering the repeal of the embargo. N.Y. Times, June 20, 1975, at A2, col. 4.

*E. Human Rights Laws and Conventions*¹²²

1. The Foreign Assistance Act of 1961

Human rights considerations have become an integral part of United States foreign policy and are clearly set forth in our military assistance and military sales statutes. Section 116 of the Foreign Assistance Act of 1961 has been in effect since 1975.¹²³ Section 116 states that no assistance may be provided:

to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of persons, unless such assistance will directly benefit the needy people in such country.¹²⁴

Even tougher parallel provisions relate to military assistance. Section 502B(a)(1) of the Foreign Assistance Act of 1961 makes human rights an integral part of all United States foreign policy. It provides:

122. This article deals only with human rights issues pertaining to Cyprus. It does not deal with the question of human rights violations by the Turkish Government against Turkish citizens in Turkey, including the Kurds, of which there have been a number of reports. For more on this subject, see the following Amnesty International Reports: Continuing Violations of Human Rights in Turkey (1986) (AI Index No. EUR 44/33/87); Turkey: Brutal and Systematic Abuse of Human Rights (1989); Turkey: Human Rights Denied (Nov. 1988) (AI Index No. EUR 44/65/88); Saeedpour, *The Kurdish Way of Life in Turkey: A Tapestry of Tribulations*, *Kurdish Times*, Spring 1986, at 7; Speech, *Killing Them Softly - The Iraqi Kurdish Refugees in Turkey*, by Dr. Vera Saeedpour at a conference entitled "Turkey's Violations of Human Rights and United States Foreign Policy" held by the American Hellenic Institute, Washington, D.C. (May 6, 1989). See also Report of the Association of the Bar of the City of New York on *Torture in Turkey: The Legal Systems Response*, 45 RECORD 6-131 and its Selected Bibliography, app. 3, at 124-31 (1990).

123. Foreign Assistance Act of 1961, P.L. 87-195, 75 Stat. 424 (1961), as amended by International Development and Food Assistance Act of 1975, Pub. L. No. 94-161, § 310, 89 Stat. 860 (1975) (current version at 22 U.S.C. § 2151 (1988)) [hereinafter Foreign Assistance Act of 1961]. While this provision, and § 502B of the Foreign Assistance Act of 1961, as amended, were not in force at the time of Turkey's invasion of Cyprus in 1974, their terms apply to the continuing occupation of Cyprus, the continuing detention of persons, the continuing taking and use of Greek Cypriot homes and property, the continuing prevention by armed force of the return of people to their homes and property, the deprivation of freedom of movement and other violations. See *id.*; see also *infra* notes 125, 126 and 127 and accompanying text.

124. *Id.* The same content can also be found in § 112(a) of the Agricultural Trade Development and Assistance Act of 1954, as amended, Pub. L. 95-88, § 203, 91 Stat. 545 (1977) (current version at 7 U.S.C. § 1712 (1988)), which likewise prohibits food aid to states that grossly violate human rights unless it can be shown that it would directly benefit the needy.

(1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.¹²⁵

(2) Except under circumstances specified in this Section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. . . .¹²⁶

In concrete terms, the President:

is directed to formulate and conduct military assistance programs . . . in a manner which will promote and advance human rights. These programs are also designed to avoid identification of the United States with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in section 502B(a)(1) or otherwise.¹²⁷

The law prohibits security assistance to a country and to the “police, domestic intelligence, or similar law enforcement forces of a country,” as well as the export of crime control and detection instruments and equipment to a country, “the government of which engages in a consistent pattern of gross violations of internationally recognized human rights,” unless the President certifies that “extraordinary circumstances” warrant otherwise.¹²⁸

By its actions in Cyprus, Turkey is in clear and incontrovertible violation of section 116 of the Foreign Assistance Act of 1961. Turkey has engaged and continues to engage “in a consistent pattern of gross violations of internationally recognized human rights.” Similarly, Turkey’s actions in Cyprus make her ineligible under section 502B(a)(1) of the Act which provides that “no security assistance may be provided to any country the government of which engages in a

125. Foreign Assistance Act of 1974, Pub. L. No. 93-559, 88 Stat. 1795 (1974) as amended by the International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, § 301(a), 90 Stat. 748 (1976) (current version at 22 U.S.C. § 2304 (a)(2) (1988)) [hereinafter Foreign Assistance Act of 1974].

126. See Foreign Assistance Act of 1961, *supra* note 123, at § 502(B)(a)(2) (current version at 22 U.S.C. § 2304(a)(2) (1988)).

127. *Id.* at § 502(B)(a)(3) (current version at 22 U.S.C. § 2304(a)(3) (1988)).

128. *Id.* at § 502(B)(a)(2) (current version at 22 U.S.C. § 2304(a)(2) (1988)).

consistent pattern of gross violations of internationally recognized human rights." A list of Turkey's human rights violations include:

1. the abduction and prolonged clandestine detention without charges of five American citizens (the period of detention is now over seventeen years);¹²⁹
2. the abduction and prolonged and clandestine detention without charges of 1614 Greek Cypriots (the period of detention is now over seventeen years);
3. the taking by force of over 35,000 thousand Greek Cypriot homes and property in the occupied north of Cyprus (most of these homes have been taken for a period of over seventeen years);
4. the prevention by armed force of the return of the Greek Cypriots to their homes and lands in safety in the occupied north;
5. the giving or selling of these Greek Cypriot homes and lands to the illegal Turkish settlers and occupation forces in the occupied north of Cyprus;¹³⁰
6. the illegal use on a continuing basis by the illegal Turkish occupation forces and colonists of Greek Cypriot homes and property in the occupied north of Cyprus; and,
7. the illegal taking of property owned by United States citizens and the illegal use of such property by the Turkish occupation forces and the illegal Turkish colonists.

The Executive Branch has a duty to enforce the Foreign Assistance Act of 1961 and immediately halt all military and economic aid to Turkey because of Turkey's human rights violations in Cyprus. If the purported goal of United States foreign policy is to promote human rights, then Turkey's offenses against Greek Cypriots and continued occupation of Cyprus should not be ignored.

2. *European Convention on Human Rights*

On the transnational level, the regional European Convention For The Protection Of Human Rights And Fundamental Freedoms (European Convention on Human Rights) is, by the terms of its preamble, an extension of the United Nations Universal Declaration of Human Rights of 1948.¹³¹ The government of Cyprus filed three

129. 127 CONG. REC., 9,887 (1981); Det. Free Press, Feb. 15, 1981, at 3A, col. 1.

130. The Geneva Convention of 1949, § III, art. 49, 6 USTIA 3517, 3548 (1955) [hereinafter Geneva Convention]. The Geneva Convention prohibits colonization by the occupying power. *Id.*

131. The United Nations Charter stipulates legal obligations on the part of its members

applications to the European Commission on Human Rights.¹³² The Commission issued its report on the charges made in the first two applications on July 10, 1976.¹³³ In it, the Commission found Turkey guilty of violating the following articles of the European Convention on Human Rights:

- (1) Article 2 - by the killing of innocent civilians committed on a substantial scale;¹³⁴
- (2) Article 3 - by the rape of women of all ages from 12 to 71;¹³⁵
- (3) Article 3 - by inhuman treatment of prisoners and persons detained;¹³⁶
- (4) Article 5 - by deprivation of liberty with regard to detainees and missing persons - a continuing violation;¹³⁷
- (5) Article 8 - by displacement of persons creating more than 170,000 Greek Cypriot refugees, and by refusing to allow the refugees to return to their homes - a continuing violation;¹³⁸

to "promote . . . universal respect for and observance of human rights. . . ." U.N. CHARTER, art. 1, para. 55(c), 56. The United Nations Universal Declaration of Human Rights of 1948 defines the term "human rights and fundamental freedoms." G.A. Res. 217, U.N. GAOR (183rd plenary mtg.), at 71, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration]. Its provisions have been duplicated or amplified in subsequent international instruments, including the European Convention on Human Rights, which explicitly acknowledges the Universal Declaration as the matrix of principles of human rights. Consequently, when Turkey violates provisions of the European Convention, Turkey also violates comparable provisions of the Universal Declaration of Human Rights and the United Nations mandate on human rights.

132. The first application to the European Commission on Human Rights, No. 6780/74, was filed on September 17, 1974; the second application, No. 6950/75, was filed on March 21, 1975; and the third in October 1978.

133. The report was not officially published until January 20, 1979, after it had been considered by the Committee of Ministers of the Council of Europe.

134. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention on Human Rights]. Article 2(1) states: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally. . . ." *Id.*; see also Universal Declaration, art. 3, *supra* note 131, which states: "[e]veryone has the right to life, liberty and security of person."

135. See European Convention on Human Rights, *supra* note 134, at art. 3. Article 3 states, "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment." This is the counterpart to article 5 of the Universal Declaration, *supra* note 131.

136. *Id.*

137. *Id.* at art. 5(1). Article 5(1) states, "[e]veryone has the right to liberty and security of person." See also Universal Declaration, *supra* note 131, at art. 3. Moreover, article 9 of the Universal Declaration reads: "No one shall be subjected to arbitrary arrest, detention or exile." See Universal Declaration, *supra* note 131.

138. See European Convention on Human Rights, *supra* note 134, at art. 8(1). Article 8(1) states that, "[e]veryone has the right to respect for his private and family life, his home and his correspondence." *Id.* Universal Declaration, *supra* note 131, at art. 12, reads: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence. . . ." See also Universal Declaration, *supra* note 131, at art. 17(2) ("No one shall be arbitrarily deprived of his property"). *Id.* at art. 13(1) ("Everyone has the right to freedom of movement and residence within the borders of each State.")

- (6) Article 1 of the First Protocol to the Convention - by deprivation of possessions, looting and robbery on an extensive scale.¹³⁹

On January 23, 1977, the London Sunday Times published excerpts of the report and stated: "It amounts to a massive indictment of the Ankara government for the murder, rape and looting by its army in Cyprus during and after the Turkish invasion of summer 1974."¹⁴⁰

139. See European Convention on Human Rights, *supra* note 134, at art. 1 to the First Protocol to the Convention. This section states: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." *Id.* One newspaper described the looting: "Confidential United Nations military documents . . . disclose that looting is being systematically carried out on a massive scale by the Turkish and Turkish Cypriot authorities in the north of the island." The Sunday Times (London), Dec. 13, 1976, at 1, col. h. The documents:

state categorically that scores of Greek Cypriots are being forced to leave their houses . . . and that robbery is now wide-spread in parts of Turkish-held Cyprus. . . . [T]he documents . . . describe in detail how the Turkish authorities in Famagusta have for more than a year been organizing daily convoys of lorries to transport property from Greek Cypriot homes and shops. . . . The documents, which speak of Greek Cypriots being forced to sign applications to leave their homes in Turkish-held districts, also refer to attacks on Greek Cypriots. . . . [The documents] take the form of a summary of events in the United Nations' six military sectors and each is signed by an officer in the United Nations international police force.

Id. The U.N. confirmed the genuineness of the documents but had no comment on their contents. *Id.*

On March 4, 1991, the European Human Rights Commission decided to consider Application Numbers 15299/89, 15300/89 and 15318/89 from three individual Greek Cypriots against Turkey for violations of human rights in the Turkish-occupied areas of Cyprus. Article 25 of the Convention authorizes applications from individuals. Turkey ratified the European Convention on Human Rights on January 28, 1987, with certain territorial restrictions aimed at excluding Turkey from cases of alleged violations in the occupied areas of Cyprus. The Commission ruled that Turkey's territorial restrictions were invalid and that Turkey was subject to the provisions of the Convention for actions occurring after January 28, 1987, the date of Turkey's ratification of the Convention. The first and second applicants, two Greek priests, complained about their detention on July 19, 1989, and alleged ill-treatment and violations of articles 1, 3, 5, 6, 7, 9, and 13 of the Convention. The third applicant, Titina Loizidou, alleged violations of articles 3 and 5 regarding her detention during the "Women Walk Home" march on March 19, 1989, and continuing violations of article 1 of Protocol No. 1 ("Every natural or legal person is entitled to the peaceful enjoyment of possessions. . . .") regarding Turkey's refusing her access to her property in the occupied district of Kyrenia, Cyprus, after January 28, 1987. She is the first Greek Cypriot to sue Turkey over property rights. The Commission will now consider the merits of the applications. The government of Cyprus described the Commission's decision as "a significant landmark."

140. The Sunday Times, (London), Jan. 23, 1977, at 1, col. 1.

3. *Geneva Convention of 1949*¹⁴¹

The Geneva Convention of 1949, section III, article 49, prohibits colonization by an occupying power. Generally, section III of the convention deals with Occupied Territories. Article 49 states in its last paragraph: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." Today there are reported estimates of 80,000 illegal Turkish colonists in Cyprus.¹⁴²

III. DID THE UNITED STATES ADMINISTRATION, THROUGH THE ACTIONS OF SECRETARY OF STATE KISSINGER, VIOLATE UNITED STATES LAWS IN CONNECTION WITH TURKEY'S INVASION OF CYPRUS?

A. *United States Foreign Assistance Act of 1961 and The Foreign Military Sales Act*

As discussed above, Turkey's use of American-supplied arms and equipment in its aggression against Cyprus was not in accordance with the purposes of the Foreign Assistance Act of 1961. Section 502 of that Act limits the use of assistance to internal security, legitimate self-defense and regional and collective defensive arrangements. Furthermore, Turkey did not seek or obtain the requisite formal consent from the United States to use our arms for purposes not provided for in the Foreign Assistance Act and Foreign Military Sales Act. As a result, Turkey was acting in violation of section 505(d) of the Act and section 3(c) of the Foreign Military Sales Act and became "immediately ineligible" for further military assistance and sales.

Kissinger, as Secretary of State, was the primary official responsible for implementation of section 505(d) of the Foreign Assistance Act of 1961 and section 3(c) of the Foreign Military Sales Act of the United States.¹⁴³ Except for the President, Kissinger had final authority regarding these particular laws.¹⁴⁴

141. Geneva Convention, *supra* note 130.

142. The Turkish Cypriot newspaper *Yeniduzen* reported that of the 160,000 persons who live in the occupied area, 80,000 are Turkish Cypriots and 80,000 are settlers from Turkey. *Yeniduzen*, Feb. 14, 1990. The *Guardian*, in a report on the migration of Turks to the occupied part of Cyprus, listed the rate of migration as 1,500 to 2,500 a month and asserted that the plan was "to implant as many as 80,000" settlers. *Guardian*, Oct. 13, 1975, at 1, col. 5. The government of Cyprus has also estimated the number of colonists at 80,000.

143. See Exec. Order No. 10973, as amended, 3 C.F.R. 90 (1974), *reprinted in* 22 U.S.C. § 2381, note (Supp. II 1972); Exec. Order No. 11501, as amended, 3 C.F.R. 267 (1974), *reprinted in* 22 U.S.C. § 2751, note (1970 and Supp. II 1972).

144. *Id.*

Kissinger continued to authorize arms shipments to Turkey following Turkey's invasion of Cyprus. He failed to declare Turkey "immediately ineligible" for further assistance and sales as required under the plain language of section 505(d) of the Foreign Assistance Act and section 3(c) of the Foreign Military Sales Act. This was a violation of section 505(d) of the Foreign Assistance Act of 1961 and section 3(c) of the Foreign Military Sales Act. This clear and deliberate violation of United States laws led Congress to pass the embargo legislation against Turkey. Kissinger also violated his constitutional oath of office to faithfully uphold and execute the laws of the United States.¹⁴⁵

Kissinger not only acted illegally, but he also failed to deter the Greek junta from its planned coup against President Makarios. Kissinger's actions prior to the invasion encouraged Turkey to invade Cyprus in July 1974, and his actions thereafter further encouraged Turkey to renew its aggression on August 14, 1974. The *Los Angeles Times* reported that Kissinger knew in advance that the Turks planned to invade Cyprus in July 1974.¹⁴⁶ Nevertheless, Kissinger rejected an appeal from the United States Ambassador to Greece, Henry Tasca, to use the United States Sixth Fleet to stop the invasion.¹⁴⁷

In an editorial, the *New York Times* put the responsibility for the tragic events in Cyprus on Kissinger's shoulders. The editorial stated in part:

A Library of Congress analysis of pertinent legislation, inserted in the Congressional Record by Representative John Brademas of Indiana, supports the contention of Mr. Brademas and three colleagues in a letter to Mr. Kissinger that the cut off in aid to Turkey "is not discretionary as a matter of policy, but is mandatory under the terms of the Foreign Assistance Act. . . ."

Senator Thomas F. Eagleton of Missouri charges that President

145. In his confirmation hearings in September 1973, Kissinger stated the following in a colloquy with Senator Frank Church:

If what I have said to this Committee is to have any meaning, then it would be totally inappropriate for me as Secretary or as an advisor to the President to behave like a sharp lawyer and to try to split hairs and find some legal justification for something clearly against the intent of the law. So I think the better answer to you, Senator, is to say that when the law is clearly understood—and it will be my job to make sure that I clearly understand the intent of Congress—we may disagree with it, but once the intent is clear we will implement not only the letter but the spirit.

STERN, *supra* note 20, at 143.

146. L.A. Times, Nov. 22, 1974, at 1, col. 1.

147. *Id.*

Ford is being deliberately kept "uninformed" of the mandatory cutoff for Turkey "in order to protect erroneous policy judgments made by the foreign affairs bureaucracy." But it has been not so much the State Department bureaucracy that has so bungled American policy in the Cyprus crisis as Mr. Kissinger himself.

The stalling on the aid cutoff, in violation of the laws, is of a piece with Washington's earlier unwillingness to condemn Greece's disintegrating junta for the coup against the legal Government of Cyprus—a reluctance that encouraged Turkey to intervene on the island. It is also consistent with Washington's refusal to condemn Turkey's subsequent massive occupation of a third of Cyprus in flagrant breach of solemn cease-fire pledges.

Senator Eagleton, Representative Brademas and their colleagues are to be applauded for persisting in their demand for an end to Mr. Kissinger's illegal appeasement of Turkish aggression.¹⁴⁸

A review of the sequence of events leading up to the crisis is instructive. After the foiled assassination attempt against Cypriot President Makarios and the coup against his government, the British flew Makarios to London to meet with Prime Minister Harold Wilson.¹⁴⁹ The Turkish Cypriot leader, Rauf Denktash, stated that they were "following the situation closely with the Turkish authorities," that it was a Greek Cypriot affair and that the Turkish Cypriots should "not . . . interfere in any way."¹⁵⁰ Meanwhile, Nicos Sampson, an ultrarightist and discredited former member of the Greek Cypriot national liberation movement EOKA, was installed as President of Cyprus. The coup and Sampson's appointment were condemned by Britain and other nations throughout the world, except the United States.

While Britain was meeting with Makarios and condemning Sampson and the coup, Kissinger gave Turkey both time and the purported reason to invade Cyprus. Kissinger did not criticize the coup and the assassination attempts against President Makarios.¹⁵¹ In fact, Kissinger sought and obtained a postponement of the United Nations Security Council meeting from Monday, July 15, 1974, the day of the coup, to Friday, July 19, 1974.¹⁵² Kissinger instructed the United

148. N.Y. Times, Sept. 14, 1974, at A28, col. 1.

149. N.Y. Times, July 18, 1974, at A1, col. 6.

150. See F.B.I.S., *supra* note 9.

151. See STERN, *supra* note 20, at 112. In his recent book, former Soviet Foreign Minister Andrei Gromyko wrote that in May 1974, he asked Kissinger "Does the U.S. government support the independence and territorial integrity of Cyprus, or not?" Gromyko interpreted Kissinger's response as being in favor of partition and anti-Makarios. A. GROMYKO, MEMOIRS 301-03 (1989).

152. The Christian Science Monitor, July 19, 1974, at 1, col. 2; see also *Cyprus Hearings*, *supra* note 59, at 76.

States Ambassador in Nicosia to meet with the foreign minister of the renegade Sampson government,¹⁵³ and had "high American officials" leak to the *New York Times* that the United States was leaning towards Sampson, although no final decision had been made on which Cypriot government to recognize.¹⁵⁴ Subsequently, the United Nations accorded Makarios head of state status when he addressed the General Assembly on July 19, 1974, but Kissinger failed to do the same when Makarios met with him three days later at the State Department.¹⁵⁵

Kissinger undermined the United Nations-sponsored negotiations and cease-fire by approving a statement issued by State Department spokesman Robert Anderson. The statement indicated the United States' belief that the Turkish Cypriots needed more security even though there was no evidence of any threat to the Turkish Cypriot community. The statement appeared to offer United States' support of the Turkish proposal for partition and was followed the next day, August 14, 1974, by renewed Turkish aggression when Turkish forces broke out of the five percent of Cyprus they controlled and occupied over thirty-seven percent of Cyprus.¹⁵⁶ Additionally, Kissinger breached the Foreign Assistance Act of 1961 and the Foreign Military Sales Act and his constitutional oath of office by not stopping arms shipments to Turkey after Turkey's invasion of Cyprus with United States supplied arms. Kissinger also ignored the United Nations Charter and resolutions on Cyprus.

If the United States had joined Britain and the other members of the Security Council in immediate condemnation of the coup and in supporting Makarios as the elected leader of Cyprus, the Sampson government probably would have fallen before the end of the week. This would have removed any possible excuse for Turkey to invade Cyprus. Coincidentally, it would have finished the Greek junta gov-

153. N.Y. Times, July 18, 1974, at A1, col. 8.

154. *Id.*

155. See STERN, *supra* note 20, at 113.

156. *Id.* at 131-33. In an editorial on August 19, 1974, the N.Y. Times wrote: "In the first forthright statement to come out of official Washington, Secretary of Defense Schlesinger said yesterday that Turkey's advance on Cyprus 'has gone beyond what any of its friends or sympathizers is prepared to accept . . . the spillover of Turkish forces has gone beyond anything contemplated and has caused great distress.'" Kissinger effectively prevented Schlesinger's initiative from proceeding. According to Kenan Evren, former president and head of Turkey's military government, Turkish troops seized more territory, including Varosha (Famagusta), than they had orders to take. In the Turkish daily newspaper, *Milliyet*, (Oct. 1990), which published Evren's memoirs, he stated: "The truth is that the Turkish troops occupied more land than they planned to occupy." The then-Turkish Premier Bulent Ecevit said: "Let it be in our hands, we will give it back in the talks as a concession."

ernment as well. In any event, had the United States actively opposed Sampson, Turkey's aggression would have been prevented.

Kissinger never informed Turkey that the Foreign Assistance Act would be invoked and aid to Turkey would cease if Turkey invaded Cyprus. Instead, Kissinger's actions kept the Sampson government afloat long enough for Turkey to prepare and invade Cyprus. Former Under Secretary of State Ball testified before Congress that the United States Government should have publicly denounced the Greek junta-initiated coup against Makarios and told Greece: "You have got to unscramble this coup and restore constitutional government," while at the same time saying to Turkey, "You've got to hold off while we work this situation out."¹⁵⁷ In congressional testimony approximately one year later, Mr. Vance stated:

I would have acted differently than the Government did under these circumstances. It seemed to me that once the legitimate constitutional government of Cyprus was overthrown by a coup that the first and clear step that the United States should have taken was to denounce that action and to state very clearly that it expected the constitutional government to be restored. This would have been in conformity with what Great Britain had publicly stated and with what our other NATO allies had said.¹⁵⁸

Kissinger went even further. He did nothing to ensure the success of the Geneva negotiations nor did he try to prevent further use of force by Turkey; in fact, Kissinger seemed to have encouraged it. Because United States arms assistance was continuing and Kissinger was telling the world that the position of the Turkish Cypriots needed "considerable improvement and protection," the Turkish government had no incentive to negotiate a reasonable and fair solution.

With the Turkish invasion of Cyprus on July 20, 1974, General Ioannides' junta government in Greece fell. Former Prime Minister Constantine Karamanlis returned from self-imposed exile and was sworn in on July 24, 1974 to head a unity government. He was thereafter elected, in November 1974, to head the Greek government. Instead of working for a settlement between the restored democratic government in Greece under Prime Minister Karamanlis and the Turkish military dominated government,¹⁵⁹ Kissinger tilted fully to-

157. *Cyprus Hearings*, *supra* note 59, at pages 40-41.

158. *Suspension of Prohibitions*, *supra* note 81, at 51.

159. Turkey's National Security Council made the decisions on national security, defense and foreign affairs matters. It was chaired by the military chief of staff and a majority of its members were military officers. Hitchens, *Uncorking the Genie: The Cyprus Question and Turkey's Military Rule*, 122 *Merip Reports* 26 (Mar./Apr. 1984).

wards Turkey.

Because of Kissinger's refusal to halt arms shipments to Turkey, legislation was introduced in the House and Senate in September 1974, to enforce the law by embargoing arms to Turkey. From September to December, 1974, there were over a dozen votes in the House and Senate on the embargo that culminated in a congressionally enacted embargo in December 1974.¹⁶⁰

Throughout the congressional battle Kissinger fought the embargo legislation, personally lobbying Congressmen and Senators.¹⁶¹ After the embargo went into effect, the Administration immediately undermined it's force by stating that legislation would be introduced to repeal it.

On February 26, 1975, Kissinger had a bill introduced in Congress which would authorize the President to lift the arms embargo on Turkey.¹⁶² The Administration, led by Kissinger, mounted a massive drive to overturn the embargo¹⁶³ and scuttle the mandatory sanction for violating the United States' policy against aggression. Kissinger succeeded, the embargo was partially lifted on October 2, 1975.¹⁶⁴

By not enforcing the penalty provisions of the Foreign Assistance Act and the Foreign Military Sales Act against Turkey, Kissinger violated laws that go to the very heart of United States foreign policy. This policy, that weapons and aid from the United States are not to be used for offensive strikes, is fundamental not only to American foreign policy, but is also central to the purposes underlying the United Nations Charter, namely, that disputes be settled peacefully and not by the threat or use of force.

What can be done when a cabinet officer violates the law? Impeachment is possible but not easily available. Media involvement is important to highlight issues and seek investigations or the appointment of a special prosecutor. Congress can hold substantive and oversight hearings and call cabinet officers to testify and fully discuss alleged improprieties.¹⁶⁵ Congress can also call for a special prosecu-

160. See generally *supra* note 57 and accompanying text.

161. STERN, *supra* note 20, at 142.

162. N.Y. Times, *supra* note 78.

163. STERN, *supra* note 20, at 154-55. See also STERN, *supra* note 20, at 147: "Kissinger pulled all the stops in his struggle to assert executive supremacy over the foreign policy process even though the policies of the executive branch placed it in violation of the law. The similarities with Watergate in the eyes of Eagleton and other opponents of the administration were chilling." Kissinger also resorted to ethnic epithets when "[h]e lashed out repeatedly in those days at the 'Greek lobby' and the 'Greek congressmen.'" *Id.* at 141.

164. See *supra* note 85 and accompanying text.

165. The Iran-Contra hearings focused on the rule of law. A Special Prosecutor was

tor. The academic community can participate through testimony, interviews, letters to editors and articles in academic journals. Unfortunately, the academic community has been relatively silent about the plight of Cyprus over the past seventeen years.

B. President Bush's Actions Compared to Kissinger's Actions

In contrast to Kissinger's response to Turkey's invasion and occupation of Cyprus, President Bush's actions following Iraq's invasion and occupation of Kuwait were decisive in support of the United Nations Charter and the rule of law. Some of Kissinger's actions were in direct violation of United States laws and most were contrary to the policy and spirit of the United States foreign assistance laws, the United Nations Charter and the North Atlantic Treaty. On the other hand, President Bush immediately condemned Iraq's invasion as "naked aggression" and a violation of the United Nations Charter and international law. The White House issued the following statement within hours of Iraq's invasion of Kuwait:

The United States strongly condemns the Iraqi military invasion of Kuwait and calls for the immediate and unconditional withdrawal of all Iraqi forces. We have conveyed this message to the Iraqi Ambassador in Washington and to the Iraqi Government through our Embassy in Baghdad. We deplore this blatant use of military aggression and violation of the U.N. Charter. Together with Kuwait we are calling for an emergency session of the U.N. Security Council.¹⁶⁶

Bush mounted a massive diplomatic effort to obtain multinational support for the rule of law from the world community. Bush worked through the United Nations and with the Kuwait government officials who had fled to Saudi Arabia. As a result of his efforts, the United Nations Security Council met in emergency session on the morning of August 2, 1990. The Security Council unanimously passed, by a vote of fourteen to zero with Yemen not participating, Security Council Resolution 660¹⁶⁷ condemning Iraq's invasion and demanding Iraq's immediate and unconditional withdrawal from Kuwait.

The same day, Bush froze Iraqi and Kuwaiti assets under United

named to investigate former National Security Advisor Admiral John Poindexter, National Security Council staff aide Colonel Oliver North and others. Poindexter and North were indicted for alleged diversion of funds to the Contras in violation of the Boland Amendment restricting aid to the Contras.

166. See White House Press Release, *supra* note 1.

167. See S.C. Res. 660, *supra* note 2. Yemen's representative explained his abstention by stating that he had not received instructions from his government.

States jurisdiction and stopped all commercial dealings with Iraq.¹⁶⁸ Britain, France and Switzerland followed suit.¹⁶⁹

On August 3, 1990, Secretary of State James A. Baker III and Soviet Foreign Minister Edward A. Shevardnadze issued a joint statement in Moscow condemning "the brutal and illegal invasion of Kuwait by Iraqi military forces" and urged a worldwide stoppage of arms deliveries to Iraq. They stated that "[g]overnments that engage in blatant aggression must know that the international community cannot and will not acquiesce in nor facilitate aggression." The Soviets stopped arms deliveries to Iraq and joined the call for withdrawal of Iraqi troops from Kuwait.¹⁷⁰

Bush continued his diplomatic efforts through the United Nations and bilaterally. On August 6, 1990, the Security Council voted to impose mandatory economic sanctions on Iraq aimed at ending the occupation of Kuwait.¹⁷¹ A sanctions committee was also established. On August 7, 1990, Bush obtained a formal request from the Saudi Arabian government to send American troops and equipment to Saudi Arabia for defensive purposes to prevent and deter any armed attack on Saudi Arabia by Iraq.¹⁷² Such a request is in accordance with article 51 of the Charter. On August 9, 1990 the Security Council unanimously passed Resolution 662 deciding that Iraq's annexation of Kuwait "has no legal validity, and is considered null and void."¹⁷³ On August 12, 1990, Bush ordered United States forces to halt all shipments of Iraqi oil exports and all imports except some food shipments. Bush had received a letter that morning from the Emir of Kuwait requesting that the United States, in accordance with article 51 of the Charter and the right of individual and collective self-defense, enforce the United Nations-mandated economic sanctions against Iraq and Kuwait.¹⁷⁴ On August 18, 1990, the Security Council unanimously passed Resolution 664 demanding that Iraq "permit and facilitate the immediate departure from Kuwait and Iraq" of all

168. Exec. Order Nos. 12722 and 12723, 55 Fed. Reg. 31803, 31805 (1990). International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706 (1951 & Supp. 1990), the National Emergencies Act, 50 U.S.C. §§ 1601-1651 (1951), and 3 U.S.C. § 301 (1955 & Supp. 1990). *N.Y. Times*, Aug. 3, 1990, at 9, col. 1.

169. *Wash. Post*, Aug. 3, 1990, at A25, col. 6.

170. *N.Y. Times*, Aug. 4, 1990, at A6, col. 1. The joint statement is a reflection of United States-Soviet post-Cold War comity. The Soviet action was particularly significant since Iraq is considered their ally and the Soviet's have been Iraq's primary arms supplier.

171. *See* S.C. Res. 661, *supra* note 3.

172. *N.Y. Times*, Aug. 8, 1990, at A1, col. 6.

173. S.C. Res 662, 45 U.N. SCOR (2934th mtg.) U.N. Doc. S/21471 (1990).

174. *N.Y. Times*, Aug. 13, 1990, at A1, col. 6.

third country nationals.¹⁷⁵ On August 25, 1990 the Security Council passed Resolution 665, by a vote of thirteen to zero, authorizing the use of force to carry out the blockade of Iraq.¹⁷⁶ The Security Council called for "measures commensurate to specific circumstances" to achieve compliance with economic sanctions against Iraq.

Bush met with Soviet President Mikhail Gorbachev in Helsinki on September 9, 1990. They issued a joint statement condemning Iraq's invasion of Kuwait and reaffirmed their support for United Nations Security Council Resolutions and declared "that aggression cannot and will not pay." The joint statement read in part:

We are united in the belief that Iraq's aggression must not be tolerated. No peaceful international order is possible if larger states can devour their smaller neighbors.

* * * * *

Nothing short of the complete implementation of the United Nations Security Council resolutions is acceptable.

* * * * *

We call upon the entire world community to adhere to the sanctions mandated by the United Nations, and we pledge to work, individually and in concert, to ensure full compliance with the sanctions.

* * * * *

[W]e are determined to see this aggression end, and if the current steps fail to end it, we are prepared to consider additional ones consistent with the U.N. Charter. We must demonstrate beyond any doubt that aggression cannot and will not pay.¹⁷⁷

175. S.C. Res 664, 45 U.N. SCOR (2937th mtg.) U.N. Doc. S/21562 (1990).

176. See S.C. Res. 665, *supra* note 4. Cuba and Yemen abstained.

177. Joint Statement of Presidents Bush and Gorbachev, at Helsinki, Finland (Sept. 9, 1990):

We are united in the belief that Iraq's aggression must not be tolerated. No peaceful international order is possible if larger states can devour their smaller neighbors.

We reaffirm the joint statement of our foreign ministers of Aug. 3, 1990, and our support for United Nations Security Council Resolutions 660, 661, 662, 664 and 665.

Today, we once again call upon the Government of Iraq to withdraw unconditionally from Kuwait, to allow the restoration of Kuwait's legitimate government, and to free all hostages now held in Iraq and Kuwait.

Nothing short of the complete implementation of the United Nations Security Council resolutions is acceptable.

Nothing short of a return to the pre-Aug. 2 status of Kuwait can end Iraq's isolation.

We call upon the entire world community to adhere to the sanctions mandated by the United Nations, and we pledge to work, individually and in concert, to ensure full compliance with the sanctions. At the same time, the United States and the Soviet Union recognize that U.N. Security Council Resolution 661 permits, in humanitarian

On September 13, 1990, the Security Council passed Resolution 666, by a vote of thirteen to zero supporting the humanitarian efforts to supply foodstuffs to Iraq and Kuwait.¹⁷⁸ Three days later, the Security Council condemned aggressive acts by Iraq against diplomatic personnel in Kuwait.¹⁷⁹ Next, the Security Council entrusted its Sanctions Committee to examine requests for assistance from countries with special economic problems and to make recommendations to handle such situations.¹⁸⁰ On September 25, 1990, the Security Council, with thirteen of its fifteen members represented at the foreign minister level,¹⁸¹ passed Resolution 670 by a vote of fourteen to

circumstances, the importation into Iraq and Kuwait of food. The Sanctions Committee will make recommendations to the Security Council on what would constitute humanitarian circumstances. The United States and the Soviet Union further agree that any such imports must be strictly monitored by the appropriate international agencies to ensure that food reaches only those for whom it is intended, with special priority being given to meeting the needs of children.

Our preference is to resolve the crisis peacefully, and we will be united against Iraq's aggression as long as the crisis exists. However, we are determined to see this aggression end, and if the current steps fail to end it, we are prepared to consider additional ones consistent with the U.N. Charter. We must demonstrate beyond any doubt that aggression cannot and will not pay.

As soon as the objectives mandated by the U.N. Security Council resolutions mentioned above have been achieved, and we have demonstrated that aggression does not pay, the Presidents direct their foreign ministers to work with countries in the region and outside it to develop regional security structures and measures to promote peace and stability. It is essential to work actively to resolve all remaining conflicts in the Middle East and Persian Gulf. Both sides will continue to consult each other and initiate measures to pursue these broader objectives at the proper time.

N.Y. Times, Sept. 10, 1990, at A7, col. 1.

178. S.C. Res. 666, 45 U.N. SCOR (2939th mtg.) U.N. Doc. S/21747 (1990) (Cuba and Yemen opposed).

179. S.C. Res. 667, 45 U.N. SCOR (2940th mtg.) U.N. Doc. S/21774 (1990).

180. S.C. Res. 669, 45 U.N. SCOR (2942d mtg.) U.N. Doc. S/21811 (1990).

181. It was only the third time in the 45-year history of the United Nations that such a large number of foreign ministers represented the nations that comprise the Security Council. Secretary of State James A. Baker III took the seat for the United States. Soviet Foreign Minister Edward Shevardnadze presided over the meeting. Wash. Post, Sept. 26, 1990, at A1, col. 4. Shevardnadze also addressed the General Assembly and attacked Iraq with the strongest language the Soviet Union had used since the crisis began. He stated in part:

An act of terrorism has been perpetrated against the emerging new world order. This is a major affront to mankind. Unless we find a way to respond to it and cope with the situation, our civilization will be thrown back by half a century.

Iraqi actions are having and will have the gravest consequences for the people of Iraq and for millions of men, women and children in many countries of the world, for their hopes and their future. War may break out in the gulf region any day, any moment.

From this rostrum we would like to appeal once again to the leaders of Iraq. We are doing it as their old friends and as a country which has found the courage to condemn its wrongdoings against certain states in the past. We call upon them to hear reason, and to obey the demands of law and also of plain common sense, to take a

one.¹⁸² Resolution 670 imposed an embargo on air traffic to Iraq and Kuwait, tightened the economic blockade against the Iraqi government, called for the detention of Iraqi merchant ships, and emphasized that measures would be considered against countries evading the sanctions. On October 29, 1990, the Security Council set the groundwork for making Iraq legally liable for human rights violations and financial damages caused by the invasion and occupation of Kuwait.¹⁸³ One month later, the Security Council unanimously passed Resolution 677 to take steps to safeguard the demographic composition of Kuwait.¹⁸⁴ Finally, on November 29, 1990, following weeks of extensive diplomatic activity by the United States, the Security Council at the foreign ministers level passed, by a vote of twelve to two with one abstention, Resolution 678 authorizing the use of force if Iraq did not comply with all Security Council resolutions by January 15, 1991.¹⁸⁵ China did not exercise its veto.

At each step, President Bush stressed the illegality of Iraq's actions, the legal basis for United States actions, full support for and adherence to the Charter and Resolutions of the United Nations, and support for a multinational response to Iraq's aggression. In the span of a few months, President Bush, with the key support of Soviet President Mikhail Gorbachev, did more for the stature of the United Nations and the rule of law in international affairs than anyone since President Dwight D. Eisenhower condemned and reversed the invasion of Egypt by Britain, France and Israel in October of 1956.

It is worth recalling Eisenhower's words during the 1956 Middle East crisis. In his October 31, 1956 television and radio report to the nation on the Middle East crisis, Eisenhower said:

We believe these actions to have been taken in error, for we do

responsible and humane attitude, above all vis-a-vis the Iraqi people, who surely yearn for peace, tranquility and good relations with their neighbors.

Some may find that Iraq is being judged by a different, higher standard than that applied to other countries even in the quite recent past. My answer is this. It is good that we have reached this point; it is a good thing that we have adopted a universal human yardstick of good and evil; that we are calling aggression by its proper name and consider it necessary to condemn and punish its perpetrator and to help the victim of injustice.

N.Y. Times, Sept. 26, 1990, at A10, col. 1.

182. S.C. Res. 670, 45 U.N. SCOR (2943d mtg.) U.N. Doc. S/21816 (1990) (Cuba opposed); N.Y. Times, Sept. 26, 1990, at A1, col. 6.

183. S.C. Res. 674, 45 U.N. SCOR (2950th mtg.) U.N. Doc. S/21911 (1990). The vote was 13 to 0 with Cuba and Yemen abstaining. N.Y. Times, Oct. 30, 1990, at A1, col. 6.

184. S.C. Res. 677, 45 U.N. SCOR (2962d mtg.) U.N. Doc. S/21966 (1990).

185. See S.C. Res. 678, *supra* note 5. Cuba and Yemen opposed and China abstained.

not accept the use of force as a wise or proper instrument for the settlement of international disputes.

* * * * *

The present fact nonetheless seems clear. The action taken can scarcely be reconciled with the principles and purposes of the United Nations to which we have all subscribed. And beyond this we are forced to doubt that resort to force and war will for long serve the permanent interests of the attacking nations.

Now we must look to the future.

* * * * *

I assure you your Government will remain alert to every possibility of this situation and keep in close contact and coordination with the legislative branch of this Government.

We took our first measures in this action yesterday. We went to the United Nations with a request that the forces of Israel return to their own line and that hostilities in the area be brought to a close.

This proposal was not adopted because it was vetoed by Great Britain and by France.

It is our hope and intent that this matter will be brought before the United Nations General Assembly. There, with no veto operating, the opinion of the world can be brought to bear in our quest for a just end to this tormenting problem.

In the past the United Nations has proved to be able to find a way to end bloodshed. We believe it can and that it will do so again.

My fellow citizens, as I review the march of world events in recent years I am ever more deeply convinced that the United Nations represents the soundest hope for peace in the world. For this very reason I believe that the processes of the United Nations need further to be developed and strengthened.

I speak particularly of increasing its ability to secure justice under international law.

In all the recent troubles in the Middle East there have, indeed, been injustices suffered by all nations involved. But I do not believe that another instrument of injustice - war - is a remedy for these wrongs.

There can be no peace without law. And there can be no law if we were to invoke one code of international conduct for those who oppose us and another for our friends.

The society of nations has been slow in developing means to apply this truth. But the passionate longing for peace on the part of all peoples of the earth compels us to speed our search for new and more effective instruments of justice.

The peace we seek and need means much more than mere ab-

sence of war. It means the acceptance of law and the fostering of justice in all the world.

To our principles guiding us in this quest we must stand fast. In so doing we can honor the hopes of all men for a world in which peace will truly and justly reign.¹⁸⁶

The United States should follow the policy established by President Eisenhower; laws must be applied to friend and foe alike. If, in 1974, the United States had joined with the world community in condemning and trying to reverse Turkey's aggression in Cyprus, would Iraq's dictator, Saddam Hussein, have invaded Kuwait in 1990? The force of precedent should not be underestimated.

C. *Double Standard*

In the case of Cyprus, a double standard has been applied in Turkey's favor in the name of alleged strategic value.¹⁸⁷ American Presi-

186. N.Y. Times, Nov. 1, 1956, at A14, col. 5 (emphasis added).

187. As discussed, the Administration and Kissinger used the national security argument, centering it on Turkey's alleged strategic importance to the defense of the West and the United States in the Cold War era, to excuse their failure to obey the law. The additional tragedy of Cyprus is that the alleged strategic importance of Turkey is highly questionable. See D. Bolles, *Turkey as an Ally-Myth and Reality*, in *THE RULE OF LAW*, *supra* note 45, at 56. In the past, proponents of the security argument had stressed the importance of United States listening posts in Turkey for verification of any potential treaty. The facts are otherwise. As then Secretary of Defense Melvin Laird said: "We don't need Turkey to verify a SALT agreement. U.S. interests are not protected if we have to depend on a third country." Baltimore Sun, Aug. 20, 1975, at A4, col. 1. Dr. Herbert P. Scoville, former Director of Research for the CIA, stated in a letter to Congressman John F. Seiberling (D-OH) (121 CONG. REC. 24019-20 (1975)) that: "In sum, the Turkish bases have only marginal utility in verifying past or possible future SALT agreements. Other observation sites and satellites would appear much more useful. SALT cannot be reasonably used as a justification for making a decision on our Turkish aid program." Letter from Dr. Herbert Scoville to Rep. John Seiberling (July 20, 1975). Regarding United States listening posts in Turkey, Dr. Scoville also stated that: "[T]o say that they are essential for verifying past or future SALT agreements would appear to be such an exaggeration as to raise questions as to the sincerity of those making the statements." *Id.* Moreover, Turkey's actions these past decades demonstrate that she is an unreliable ally who has collaborated with the Soviet Union militarily. Turkey's relationships with the Soviet Union raise serious questions as to whether Turkey would have assisted the United States or NATO in a conflict with the Soviet Union. As long ago as 1974, strategic analyst Edward Luttwak wrote:

No longer presenting a direct threat to the integrity of Turkish national territory, and no longer demanding formal revision of the Straits navigation regime, the Soviet Union has nevertheless successfully exercised armed suasion over Turkey, even while maintaining a fairly benevolent stance, which includes significant aid flows. Faced with a sharp relative increase in Russian strategic and naval power, and eager to normalize relations with their formidable neighbor, the Turks have chosen to conciliate the Russians, and have been able to do so at little or no direct cost to themselves. It is only in respect to strategic transit that Turkey is of primary importance to the Soviet Union, and this is the area where the concessions have been made. Examples of such deflec-

dents, for example, pressed for the removal of Soviet troops from Afghanistan, Cuban troops from Angola and Vietnamese troops from Cambodia, while supporting Turkish occupation troops and colonists in Cyprus. The United States government calls for the rule of law, free elections, majority rule, and protection of minority rights in the

tion, where the Russians are conciliated at the expense of western rather than specifically Turkish interests, include the overland traffic agreement (unimpeded Russian transit to Iraq and Syria by road), the generous Turkish interpretation of the Montreux Convention, which regulates ship movements in the Straits, and above all, the overflight permissions accorded to Russian civilian and military aircraft across Turkish air space. The alliance relationship in NATO and with the United States no doubt retains a measure of validity in Turkish eyes, but it is apparent that its supportive effect is not enough to counteract Russian suasion, especially since the coercion is latent and packaged in a benevolent, diplomatic stance.

E. LUTTWAK, *THE POLITICAL USES OF SEA POWER* 60-61 (1974).

Examples of Turkey's unreliability for United States strategic purposes include:

- (1) During the 1973 Mid-East War, predating the Turkish invasion of Cyprus by one year, Turkey refused the United States military overflight rights to resupply Israel and granted the USSR overland military convoy rights to resupply Syria and Iraq, and military overflight permission to resupply Egypt. *See id.* A member of the Turkish Foreign Policy Institute in Ankara wrote: "During the Arab-Israeli war of 1973, Moscow's overflights of Turkish airspace were tolerated. On the other hand, during the same Middle East conflict, Turkey refused to allow the United States refueling and reconnaissance facilities during the American airlift to Israel." Karaosmanoglu, *Turkey's Security and the Middle East*, 52 FOREIGN AFF. 157, 163 (Fall 1983).
- (2) In the 1977-1978 conflict in Ethiopia, Turkey granted the Soviets military overflight rights to supply the pro-Soviet Ethiopian communists under Col. Mengistu, who eventually prevailed. C. MEYER, *FACING REALITY-FROM WORLD FEDERALISM TO THE CIA* 276-80 (1980).
- (3) Over NATO objections, Turkey has allowed to date three Soviet aircraft carriers, the *Kiev* on July 18, 1976, the *Minsk* on Feb. 25, 1979 and the *Novorosiisk* on May 16, 1983, passage rights through the Bosphorus and Dardanelles straits into the Mediterranean in violation of the Montreux Convention of 1936. *See generally* Wash. Post, July 19, 1976, at A16, col.1; N.Y. Times, Feb. 26, 1979, at A13, col. 1. The Soviet ships posed a formidable threat to the United States Sixth Fleet.
- (4) In 1979 Turkey refused to allow the United States to send 69 marines and six helicopters to American military facilities at Incirlik in Turkey for possible use in evacuating Americans from Iran. N.Y. Times, Feb. 13, 1979, at A8, col. 3.
- (5) Again, in 1979 Turkey refused the United States request to allow U-2 intelligence flights (for Salt II verification) over Turkish airspace "unless Moscow agreed." N.Y. Times, May 15, 1979, at A1, col. 3. This position was voiced over a period of months by Turkish officials, the opposition party and the military Chief of Staff, Gen. Kenan Evren. *See id.*
- (6) In May, 1989, Turkey rejected an American request to inspect an advanced MIG-29 Soviet fighter plane, flown by a Soviet defector to Turkey. N.Y. Times, May 28, 1989, at A12, col. 1.
- (7) The Turkish government refused repeated American requests for the installation of antennas in Turkey concerning 11 transmitters whose broadcasts would have been directed primarily to the Soviet Union and its eastern European satellites. The initiative by the United States Department of State sought to improve reception of programs broadcast by Radio Free Europe, Radio Liberty, and the Voice of America.
- (8) Turkey further damaged NATO by vetoing NATO's effort to put military bases on various Greek islands in the Aegean for defensive purposes against the Soviet navy.

Philippines, Nicaragua, Panama, the Eastern European nations and elsewhere, but accepts an eighteen percent Turkish minority in Cyprus with veto power over most major government decisions. The United States makes intense efforts to get our hostages in Lebanon released, but remains silent regarding five Americans kidnapped in Cyprus in 1974 by Turkey, our NATO ally.

While Kissinger bears the major responsibility for the tragic events of 1974, a number of career foreign service officers and defense department officials share the responsibility for the tragedy of Cyprus. Ultimately, their failure to support the rule of law and the United Nations Charter against Turkey's aggression has damaged American interests.

The Executive Branch of our government tries to create the perception of being a disinterested broker/mediator between Greece and Turkey. The reality is otherwise.¹⁸⁸ The American role as Turkey's ally is apparent since our aid subsidizes the costs of Turkey's illegal occupation and underwrites Turkish subsidies to the illegal Turkish Cypriot administration.¹⁸⁹ The United States bears a responsibility to redress the situation in Cyprus. It is in the interests of the United States in support of the rule of law to do so.

IV. THE ROAD AHEAD AND THE RULE OF LAW

The reaction of the world community to Iraq's aggression against Kuwait gives hope that Turkey's occupation of Cypriot territory will be ended through a peaceful and democratic solution in accordance with the United Nations Charter and resolutions on Cyprus. The

188. See STERN, *supra*, note 20, at 7. "One of the most important keys to an understanding of the Cyprus muddle is the realization that the United States, far from being a disinterested broker to the disputes of the past, was a deeply involved participant." *Id.*

189. Turkey has about 35,000 troops and 80,000 colonists in Cyprus. Former Under Secretary of State William Schneider, Jr., stated in testimony on February 21, 1984, before the House Foreign Affairs Subcommittee on International Security and Scientific Affairs, that it costs Turkey \$9,000 annually to maintain and equip one Turkish soldier. Thus, the cost to Turkey in 1984 to maintain its illegal occupation troops in Cyprus was \$315,000,000. Figuring the costs in 1990 per soldier at \$12,000, the cost to Turkey in 1990 will be \$420,000,000 for its 35,000 troops.

According to the International Institute for Strategic Studies (London), the Turkish Cypriot administration's total budget for 1988 was \$138,000,000, of which Turkey provided \$75,900,000. This consisted of \$46,000,000 of direct aid and \$29,900,000 in credits. United States military and economic aid to Turkey in 1989 amounted to \$563,000,000. Since money is fungible, the United States, in effect, paid for the entire cost of Turkey's maintaining 35,000 illegal occupation troops in Cyprus and for the subsidy Turkey pays to the illegal Turkish Cypriot administration. Specific figures are not available as to any annual payments to the illegal 80,000 Turkish colonists/settlers.

United States, with the full support of the Soviet Union, was able to mobilize the world community through the United Nations against Iraqi aggression and for the rule of law.

There is no fundamental legal difference between Iraq's aggression against Kuwait and Turkey's aggression against Cyprus that would militate against a comparable response against Turkey by the world community. To the contrary, Turkey's aggression has been compounded over a seventeen-year period, a fact which should weigh heavily against Turkey. Turkey's continuing occupation of over thirty-seven percent of Cyprus weakens the legal, moral, political and diplomatic positions of the United States in the Persian Gulf. The United States must insist that Turkey, our friend and ally, "purge" itself of its aggression by removing its troops and colonists from Cyprus at once without conditions. The withdrawal would be in accordance with the mandate of the United Nations Charter, numerous Security Council Resolutions, and the unanimous General Assembly Resolution 3212 endorsed by the Security Council.

The United States, the other four permanent members of the Security Council - the Soviet Union, Britain, France and China, and the world community should follow the Kuwaiti precedent by applying international legal norms to Turkey and condemn that nation for its "naked aggression" against Cyprus.

The invasion of Cyprus was in violation of a sovereign nation's territorial integrity. The long-standing illegal occupation by Turkish forces and continuing colonization by the aggressor country has exacerbated the problem. A solution is not difficult if the will to act is strong. It is legally and politically untenable to view the situation as a question of equal rights between the eighteen percent Turkish minority and the eighty percent Greek majority. Viable government is not possible if, as the Turkish government and the Turkish Cypriot regime have advocated, the Turkish Cypriot minority has veto power over most major government decisions, including taxation. It is also not a question of minority rights. Turkish Cypriots continue to enjoy minority rights and the Greek Cypriots have offered to have those rights guaranteed. The problem is simply one of territorial aggrandizement, a Turkish land grab through brute force.

A policy decision by the Security Council to enforce its resolutions calling for an end to Turkey's illegal occupation and colonization of Cyprus is needed. The constitutional issues can then be settled in accordance with the rule of law and the universally accepted democratic principle of majority rule with minority rights fully guaran-

teed.¹⁹⁰ Once this is done, the road to a peaceful solution is clear. The United States should buttress and reinforce its stance against Iraq by acting against Turkey in a parallel fashion.¹⁹¹

If Turkey cooperates, a solution could be reached amicably. If not, the diplomatic pressure should increase and be accompanied by economic pressure. The European Community has already indicated that consideration of Turkey's application for entry into the Community is linked to progress on the Cyprus question. The current president of the European Community's Council of Ministers, Luxembourg Foreign Minister Jacques Poos, recently announced that the European Community would soon mount an initiative to promote an overall Cyprus settlement within the framework of the United Nations resolutions. The European Parliament unanimously passed a resolution endorsing Mr. Poos' statement and calling on the Community's Council of Ministers and the foreign affairs ministers meeting in the European Political Cooperation group "to intervene actively and to take all necessary steps to ensure that the United Nations resolutions on the question of Cyprus are complied with immediately."¹⁹²

190. Then Vice President Bush made the following statement on July 7, 1988: "We seek for Cyprus a constitutional democracy based on majority rule, the rule of law, and the protection of minority rights. . . . I want to see a democratic Cyprus free from the threat of war." Speech at the 29th Biennial Clergy-Laity Congress, Greek Orthodox Archdiocese, Boston, July 7, 1988.

President Bush met with the Greek Foreign Minister Antonios Samaras on Jan. 30, 1991. A member of the Greek press corps asked Bush: "[D]oes your resolve for implementation of all U.N. resolutions include the Cyprus issue as well?" Bush responded: "[W]e've been looking at that for a long, long time. . . . [T]hat's a problem that I'd love to see solved, in keeping with these U.N. resolutions." White House Press Release, Jan. 30, 1991, remarks by the President to the Greek press corps.

191. At a dinner in honor of President George Vassiliou at the Kennedy Library on September 21, 1990, Senator Edward M. Kennedy stated:

We are all familiar with the unconscionable invasion by Turkish troops in 1974 and the Turkish occupation of the northern part of Cyprus, which continues to this day. The Bush Administration must give higher priority to Cyprus in America's foreign policy. Aggression is aggression is aggression. President Bush has made it clear that Iraq's invasion and occupation of Kuwait is unacceptable. And it is time he made clear to Turkey that their invasion and occupation of Cyprus is just as unacceptable. . . . We know the speed with which productive change can come, and we hope that it will come to Cyprus soon. In less than two weeks, East will meet West when Germany unites. It is also time for North to meet South on Cyprus. The Wall has disappeared in Berlin, and the Green Line must disappear in Cyprus.

Speech given by Sen. Edward M. Kennedy (Sept. 21, 1990).

192. See Declaration on Cyprus by the European Council at their meeting in Dublin (June 27, 1990); announcement at the Council of Ministers meeting, Brussels (Feb. 7, 1991). The European Parliament Resolution on Cyprus adopted March 14, 1991 states:

A. Aware that the international community has taken, as its authority for action in the Gulf, the resolutions of the Security Council of the United Nations on the invasion of Kuwait;

United Nations Secretary-General Javier Perez de Cuellar addressing the Heads of State Meeting of the Conference on Security and Cooperation in Europe (CSCE) on the occasion of the fifteenth anniversary of the Helsinki Final Act, 1975, referred to the Cyprus problem as one in which the CSCE had "responsibility . . . to render all the necessary support to the efforts for a peaceful and definitive settlement of this question now 27 years old."¹⁹³ If diplomacy and economic pressure fail then the Kuwaiti precedent should be followed and the Security Council should apply full economic sanctions against Turkey.

Ultimately, the two Cypriot communities must decide their relationships bearing in mind the demographic makeup of the island.¹⁹⁴

B. Acknowledging the need for the consistent and impartial application of international law;

C. Whereas Turkey has occupied a part of the Republic of Cyprus since 1974;

D. Observing the extent to which the international community has collaborated to implement and to apply the United Nations Security Council's resolutions on Kuwait, and understanding that equivalent determination should be shown in order to implement all relevant United Nations resolutions on Cyprus by peaceful means:

1. Calls on the Council and the Foreign Affairs Ministers meeting in EPC [European Political Cooperation] to intervene actively and to take all necessary steps to ensure that the United Nations resolutions on the question of Cyprus are complied with immediately;
2. Endorses the statement made by the President of the Council, Mr. J. Poos, on 7 February 1991 that the Presidency regards it as part of its duties to resolve any crises that affect Community and allied countries, including the Cyprus crisis, and that it intends to take an initiative on the basis of the relevant United Nations resolutions under the auspices of Secretary-General Perez de Cuellar;
3. Calls on the Council and EPC to support the proposals already put forward to convene a Conference on Security and Cooperation in the Mediterranean (CSCM), on the Helsinki model;
4. Instructs its President to forward this resolution to the Commission, the Council, EPC, the Governments of Cyprus and Turkey, the Secretary-General of the United Nations and all Members of the United Nations Security Council.

See also Note, Cyprus and the U.N.: A Case for Non-Military Collective Measures, 54 IND. L.J. 125 (1978-1979).

193. Speech by Secretary-General Javier Perez de Cuellar (Nov. 19, 1990). "[T]he first part of the Helsinki Final Act corresponds to, and is based on, the purposes and principles set forth in the Charter of the United Nations and reflects the common will of the States participating in CSCE to pursue and respect them in everything they do." *Id.*

194. The Turkish Cypriots have also been victims of Turkey's actions in Cyprus. Ozker Ozgur, leader of the Turkish Cypriot opposition party, in a speech at his party's district congress in Nicosia on April 14, 1989, accused the Denktash regime and the Ozal government in Turkey of cooperating in turning the north of Cyprus into a Turkish province. Ozgur stated that from 1974 to 1989, 30,000 Turkish Cypriots had emigrated; that if emigration continues at the same rate in five or ten years time the Turkish Cypriots would become a minority in the north of Cyprus; that an early solution to the intercommunal problem would stop the process. He said:

We are against the use of the workers and peasants from Turkey for the destruction of the identity of the Turkish Cypriots and in rendering the Turkish Cypriots ineffective as

To be democratic, any future constitution must provide for majority rule. President Makarios submitted in the fall of 1963 thirteen proposed amendments to the constitution to correct its undemocratic features.¹⁹⁵

Any settlement must remove minority vetoes of major government decisions from the constitution. Additionally, the apartheid policy applied by Turkey and the illegal Turkish Cypriot administration in Cyprus can no longer be tolerated. Denktash has prevented contact between Turkish and Greek Cypriots. Turkish Cypriots cannot work in or even visit free Cyprus. Freedom of movement, settlement and property for all lawful Cypriot residents in accordance with fundamental human rights is required.

The comprehensive report of the second United Nations Mediator, former president of Ecuador Galo Plaza, contains information and proposals which are useful today.¹⁹⁶ At the end of his report of March 1965, which summarized the background of the situation and the positions of the participants, Plaza made some personal observations for guidance of future discussions. One proposal suggested that the Turkish Cypriot community "trade its disproportionate blocking power for constitutional and international safeguards of its legitimate rights,"¹⁹⁷ *i.e.*, that the Turkish Cypriots trade veto provisions over major government decisions for ironclad minority rights guaranteed by outside institutions, including the United Nations.

An alleged paramount concern of the Turkish Cypriots is the protection of minority rights.¹⁹⁸ The substantive proposals made over

a communal entity. . . . We must tell the Turkish workers that the Denktash regime sees them as cheap labour and vote depots for their own selfish interests.

Yeniduzen, Apr. 17, 1989. It should be noted that Turkey said it invaded Cyprus to protect the security and interests of the Turkish Cypriots. In a united Cyprus the Turkish Cypriots, in addition to minority rights (including educational and cultural autonomy), would have an improved economic condition which would be enhanced even more if the application of Cyprus for entry into the European Community is approved.

195. *See supra* note 48 and accompanying text.

196. 20 U.N. SCOR, Supp. (Jan.-Mar. 1965), at 199, U.N. Doc. S/6253 (1965).

197. *Id.*; Van Wynen Thomas & Thomas, *supra* note 103, at 525.

198. The Turkish Cypriots also say they have a security problem. The Greek Cypriots and the Government of Cyprus, however, say they have a security problem stemming from Turkey's invasion and the illegal presence in Cyprus of 35,000 Turkish troops and 80,000 settlers/colonists. The Greek Cypriot proposal of demilitarization of Cyprus, a U.N. international force on Cyprus to assist in the maintenance of internal security, and effective international guarantees should alleviate the security concerns of both communities. *See* "Outline Proposals for the Establishment of a Federal Republic and for the Solution of the Cyprus Problem," Cyprus Bulletin, Feb. 1989, at 3 (spec. ed.). President George Vassiliou and his predecessor Spyro Kyprianou have included the demilitarization proposal in their addresses to the United Nations General Assembly. Galo Plaza states in his report that Archbishop

the years by the Greek Cypriots, however, encompass the language of the Universal Declaration of Human Rights and the European Convention on Human Rights. Protection of minority rights can be aided by allowing for appeal to outside institutions, including the United Nations. Up to now, Turkey has used this issue to create an excuse for its apartheid and partition policies. Most nations have minorities and many have minorities constituting a significant percentage of their population. For example, Turkey's Kurdish citizens comprise some twenty percent of its population;¹⁹⁹ minorities in the Soviet Union comprise a substantial percentage of its population; the United States has considerable minorities; and in South Africa the ruling white community comprises about twenty percent of the population of South Africa.

The London-Zurich Agreements were imposed on the Greek and Turkish Cypriots by outside governments and provided for minority veto government. Today, there is every reason to believe that the two communities, without outside interference, can arrange a workable democratic solution "based on majority rule, the rule of law and the protection of minority rights."²⁰⁰

President Bush, on the evening of January 16, 1991, the day the air war began against Iraqi forces, stated:

This is an historic moment. We have in this past year made great progress in ending the long era of conflict and cold war. We

Makarios and the other leaders of the Greek Cypriot community "agree that Cyprus . . . should be made a demilitarized and non-aligned country." See *supra* note 196, at paras. 92, 147 and 148.

Senator Bob Dole proposed demilitarization of Cyprus during the Senate debate on July 25, 1978, on the amendment, which passed, to remove the remaining arms embargo on Turkey. Dole voted against lifting the embargo and noted that "[n]egotiations between the two communities have remained stalemated over the presence of the Turkish occupation force." He stated: "The great need for demilitarization of Cyprus, involving withdrawal of both Greek and Turkish forces, must be stressed. . . . Once demilitarization of Cyprus is achieved, then the intercommunal talks between the Greek and Turkish Cypriot communities over the territorial and political settlement will proceed much more smoothly. This must be the goal of all parties: to achieve demilitarization of Cyprus as soon as possible. . . . The President should also encourage the strengthening of the U.N. security force on the island to assist the demilitarization and provide the protection necessary throughout this process. . . . We do not seek to dilute the role of the United Nations in bringing peace to Cyprus - we seek to strengthen it. That role would be much more difficult . . . if we were to resume arms sales and shipments to Turkey before her tens of thousands of forces are removed from the island. By upholding the rule of law, we encourage its application and effectiveness in the future." 124 CONG. REC. 22533-5 (1978).

199. Turkey has not offered its 20% Kurdish minority equal political rights, including veto powers, that it claims for the 18% Turkish minority.

200. See *supra*, note 190.

have before us the opportunity to forge for ourselves and for future generations a new world order, a world where the rule of law, not the law of the jungle, governs the conduct of nations.

When we are successful, and we will be, we have a real chance at this new order, an order in which a credible United Nations can use its peacekeeping role to fulfill the promise and vision of the U.N.'s founders.²⁰¹

President Bush in his State of the Union address to Congress and the Nation on January 29, 1991, said:

I come to this House of the people to speak to you and all Americans, certain that we stand at a defining hour.

* * * * *

For two centuries, we've done the hard work of freedom. And tonight, we lead the world in facing down a threat to decency and humanity.

What is at stake is more than one small country, it is a big idea: a new world order where diverse nations are drawn together in common cause to achieve the universal aspirations of mankind . . . peace and security, freedom and the rule of law. Such is a world worthy of our struggle and worthy of our children's future.

The community of nations has resolutely gathered to condemn and repel lawless aggression. [Iraqi President] Saddam Hussein's unprovoked invasion, his ruthless, systematic rape of a peaceful neighbor, violated everything the community of nations holds dear. The world has said this aggression would not stand, and it will not stand.

Together, we have resisted the trap of appeasement, cynicism and isolation that gives temptation to tyrants. The world has answered Saddam's invasion with twelve United Nations resolutions, starting with a demand for Iraq's immediate and unconditional withdrawal and backed up by forces from 28 countries of six continents. With few exceptions, the world now stands as one.

* * * * *

Most Americans know instinctively why we are in the gulf. . . . They know we must make sure that control of the world's oil resources does not fall into [Hussein's] hands only to finance further aggression. They know that we need to build a new, enduring peace based not on arms races and confrontation but on shared principles and the rule of law.

* * * * *

201. N.Y. Times, Jan. 17, 1991, at A14, col. 1.

We will succeed in the gulf. And when we do, the world community will have sent an enduring warning to any dictator or despot, present or future, who contemplates outlaw aggression.

The world can therefore seize this opportunity to fulfill the long-held promise of a new world order where brutality will go unrewarded and aggression will meet collective resistance.

* * * * *

Each of us will measure within ourselves, the value of this great struggle. Any cost—any cost—in lives is beyond our power to measure. But the cost of closing our eyes to aggression is beyond mankind's power to imagine.

This we do know: our cause is just, our cause is moral, our cause is right. Let future generations understand the burden and blessings of freedom.

Let them say, we stood where duty required us to stand. Let them know that together, we affirmed America, and the world, as a community of conscience.

The winds of change are with us now. The forces of freedom are together united. We move toward the next century more confident than ever that we have the will at home and abroad to do what must be done . . . the hard work of freedom.²⁰²

On February 27, 1991, President Bush announced to the nation that "Kuwait is liberated" and declared victory for the allied forces. He stated: "This is a victory for the United Nations, for all mankind, for the rule of law and for what is right."²⁰³ A week later, in his address to a joint session of the Congress, Bush said:

[A]ggression is defeated. The war is over.

This is a victory for every country in the coalition and for the United Nations, a victory for unprecedented international coopera-

202. N.Y. Times, Jan. 30, 1991, at A12, col. 1. Senate Majority Leader George J. Mitchell responded for the Democrats. He said, in part: "Before the war began, we debated openly, as democracy demands. We agreed that Iraq's aggression was brutal and illegal and that Iraq must leave Kuwait, by force if necessary. The difference was not in the goals but in the means: Whether force should be used immediately or only as a last resort if other means failed. No one will ever know if that other course would have worked. Now that the war has begun, we'll work to see that it's swift and decisive, with the least possible loss of life. . . . Out of the tragedy of war, we seek a world where the force of law is more powerful than the force of arms. We seek a world where justice and human rights are respected everywhere. Students massacred in China, priests murdered in Central America, demonstrators gunned down in Lithuania—these acts of violence are as wrong as Iraqi soldiers killing civilians. We cannot oppose repression in one place and overlook it in another." Wash. Post, Jan. 30, 1991, at A15, col. 1.

203. N.Y. Times, Feb. 28, 1991, at A12, col. 1.

tion and diplomacy, so well led by our Secretary of State James Baker. It is a victory for the rule of law and for what is right.

* * * * *

Until now, the world we've known has been a world divided - a world of barbed wire and concrete block, conflict and cold war.

Now, we can see a new world coming into view. A world in which there is the very real prospect of a new world order. In the words of Winston Churchill, a "world order" in which "the principles of justice and fair play . . . protect the weak against the strong. . . ." A world where the United Nations, freed from Cold War stalemate, is poised to fulfill the historic vision of its founders. A world in which freedom and respect for human rights finds a home among all nations.

The gulf war put this new world to its first test. And my fellow Americans: We passed that test.

* * * * *

We went halfway around the world to do what is moral and just and right. We fought hard and - with others - we won the war. We lifted the yoke of aggression and tyranny from a small country that many Americans had never even heard of, and we ask nothing in return.²⁰⁴

Cyprus is a key test for the new world order. Is the rule of law to be applied uniformly, or is there to be a continuation of the double standard for Turkey? Enforcing the United Nations resolutions on Cyprus against Turkey would demonstrate that the era of a double standard on the rule of law and aggression for an ally is over. It would add the important ingredient of credibility to our efforts in the Persian Gulf for a new world order. To be credible the rule of law must be applied to our friends and opponents alike. Enforcing the United Nations Charter provisions and resolutions on Cyprus could also alleviate tensions between Greece and Turkey and provide the basis for cooperation between these two nations to the obvious benefit of both their peoples and to the people of Cyprus.

204. N.Y. Times, Mar. 7, 1991, at A7, col.1.

The Security Council passed S.C. Res. 686, 46 U.N. SCOR (2978th mtg.) U.N. Doc. S/22298 (Mar. 2, 1991), demanding that Iraq implement all 12 previous Security Council resolutions stemming from Iraq's invasion and occupation of Kuwait, and passed S.C. Res. 687, 46 U.N. SCOR (2981st mtg.) U.N. Doc. S/22430 (Apr. 3, 1991) setting forth stringent military and financial conditions to end the Persian Gulf War, including the removal of Iraq's weapons of mass destruction and the payment of reparations by Iraq. N.Y. Times, Apr. 4, 1991, at A1, col. 6. Iraq agreed to the conditions in S.C. Res 687 on April 6, 1991. N.Y. Times, Apr. 7, 1991, at A1, col. 6.

The historic action of the world community against Iraq's invasion and occupation of Kuwait is an extraordinary precedent.²⁰⁵ The potential for using this precedent in Cyprus is great. A unified world could force Turkey to relinquish her involvement in Cyprus and let the Cypriots come to a solution under their own terms. The precedent value for the rule of law in international affairs, added to the Iraq/Kuwait precedent, would be highly significant.

205. See D. MOYNIHAN, ON THE LAW OF NATIONS (1990); Rosenblatt, *Book Review*, N.Y. Times, Aug. 26, 1990, at 1, col. 1; Strasser, *Iraq Clash Tests New Alliances-International law could emerge victorious*, Nat'l L.J., Sept. 3, 1990, at col. 1; Frank & Patel, *UN Police Action in Lieu of War: 'The Old Order Changeth'*, 85 AM. J. INT'L L. 63 (1991); Glennor, *The Constitution and Chapter VII of the United Nations Charter*, *Id.* at 74; Caron, *Iraq and the Force of Law: Why Give a Shield of Immunity*, *Id.* at 89; See L. HENKIN, S. HOFFMAN, J. KIRKPATRICK, A. GERSON, W.D. ROGERS & D. SCHEFFER, *RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE* (1989); D'Amato, *Book Review*, 85 AM. J. INT'L L. at 201.