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# Cyprus, the "Warlike Isle": Origins and Elements of the Current Crisis

Thomas Ehrlich\*

## INTRODUCTION

Men have been fighting on, about, and over Cyprus for centuries. It is an example par excellence for those who hold to an insular theory of world conflict—that most islands breed international disputes and that most international disputes are bred on islands. Cuba, Hispaniola, Quemoy, and Matsu support the theory—all are recent insular irritants to the world's peace.

However one views the role of islands in global politics, Cyprus has always been a bloody battleground. It was conquered by Egypt, colonized by Greece, and annexed by Rome before the first century A.D., and for the next two thousand years a succession of absentee landlords ruled its shores. The strength and wisdom of their dominion varied, but not their basic purpose—hegemony over the Eastern Mediterranean by controlling its major island command post. From before the Byzantine era through successive occupations by Richard the Lionhearted, the Templars, Franks, Venetians, Turks, and British, Cyprus has been passed with abandon among ruling powers.<sup>1</sup>

In 1960 Cyprus became a sovereign state for the first time in its history. The British grant of independence was, however, tied to a complex series of international agreements. These Accords—signed by Greece, Turkey, the United Kingdom, and representatives of the Greek and Turkish communities on Cyprus—structured and limited both internal Cypriot affairs and Cypriot relations with other nations. They were concluded amid high hopes that they would bring peace as well as independence to a land that had known neither.

But violence erupted on Cyprus three years later, in December 1963. Within days the Island became the center of a major international crisis. The conduct of world affairs had developed, if not advanced, from the time when the Great Powers of Europe sent a flotilla of gunboats to settle a civil insurrection on Crete. Yet a multilateral force was unquestionably required to keep the peace on Cyprus. After several false starts the United Nations sent such a force and began its effort to resolve—or at least to contain, if not resolve—the crisis. The organization has been engaged in that undertaking ever since.

The crisis involves a number of interacting relationships, each of which should

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1. The definitive chronicle of the Island through 1948 is HILL, *A HISTORY OF CYPRUS* (1949) [hereinafter referred to as HILL], in four volumes.

The phrase "warlike isle" is from *Othello*, act II, scene I. In some editions "worthy" appears in place of "warlike."

be considered in an analysis of the total conflict.<sup>2</sup> First, of course, the crisis concerns Greek and Turkish Cypriots on the Island and several centuries of their living together—originally as vanquished and victor, then as common subjects of Great Britain, and finally, since independence, as majority and allegedly persecuted minority.

Second, the crisis affects the bonds between Greece and Greek Cypriots on the one hand and Turkey and Turkish Cypriots on the other. Nothing is more important to an understanding of the current situation on the Island than a realization of the strength of these bonds. Most Greek Cypriots consider themselves Greeks living on Cyprus, even though their ancestors have lived there for centuries. The same is true for most Turkish Cypriots and their view of Turkey as their fatherland.

Third, the crisis involves the relations between the British, Cypriot, Greek, and Turkish governments—the four signatories to the 1960 Accords. This apparent neighborhood quarrel has had substantial ramifications throughout all aspects of their common concerns. It has affected, for example, Greeks living in Turkey, Turks living in Greece, the strategic position of Great Britain as fee holder of two military bases on Cyprus, and the place of Cyprus as a member of the British Commonwealth.

Fourth, the crisis concerns the Cypriot Government's relations with the other countries of the world, particularly the nonaligned nations, whose support Cyprus has actively sought, and the Soviet Union, which it has petitioned for military assistance as well as political and economic aid.

Fifth, the crisis concerns the United States and its relations with its allies on the one hand and with the Soviet Union on the other. A war between Greece and Turkey could rapidly explode into a full-scale conflict involving both the United States and Russia. Yet in dealing with the dispute, our aims and those of our North Atlantic allies have not always been the same, and the arrangements that we have sought for settlement have not invariably coincided with their views. Even for the United States alone there have been conflicting, or at least not wholly consistent, purposes. America, for example, views Turkey as a more important military ally than Greece, certainly with respect to possible armed conflict with the Soviet Union. And Archbishop Makarios' maneuverings with Russia have hardly endeared him to our military and political strategists. But Greece is also an important ally of the United States—and there are several hundred thousand Greek-Americans who will not let our Government forget it.

Sixth, the crisis has threatened the unity of NATO. A war between two of its members could jeopardize the strategic arrangements developed by the Alliance over the last two decades. Although such a conflict has so far been checked, the crisis has already proved a substantial drain on the energies and resources of the NATO nations.

Finally, the crisis continues to occupy a major place on the agenda of the United Nations and affects, therefore, relations among all its members. The

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2. See BALL, RESPONSIBILITIES OF A GLOBAL POWER 16-17 (U.S. Dep't of State Pub. 7777, General Foreign Policy Series, Nov. 1964).

organization has sought both to keep the peace on the Island and to find a permanent solution to the conflict. On the whole it has met with success in the first undertaking and failure in the second.

The reach of law is significant in analyzing the crisis from the varying perspectives of these relationships. Law has operated to limit and define the objectives of the nations concerned and the optimal means for realizing those objectives. And law has also been an impressive force in establishing and utilizing institutional arrangements for containing and trying to resolve the conflict within a framework of fast-moving affairs controllable by no one party. Proof that law operates in international affairs is often difficult to isolate; the fact that states treat it as having operational force may be the clearest kind of evidence. We will see, for example, that much of the debate in the United Nations concerning the crisis has focused on essentially legal issues. Acceptance of these issues as legal has implied a series of procedural and substantive limits on their consideration and resolution. Diplomacy, economic and military pressures, and strong doses of propaganda have, however, also played important roles in the crisis. From time to time throughout the dispute, each has been predominant. It would be seriously misleading to try to separate these forces from law, to isolate legal problems from the total context in which those problems arose. Such parched abstractionism can lead only to bad law—in international as in municipal affairs.

This Article is divided into five main sections: First, a brief view of the events that led up to Cypriot independence; without this background it is virtually impossible to understand the events that followed; second, an examination and evaluation of the intricate arrangements concluded in 1960 to settle conflicting interests both within the Island and beyond its shores; third, a consideration of the 1960 settlement in operation, the causes of the outbreak of violence in 1963, and the subsequent international efforts to contain the conflict; fourth, a study of the main legal issues that played and continue to play a central role in debates concerning the crisis, both in and out of the United Nations.

Some of the questions raised in these first four sections might be classed as concerns of public international law and international organizations. Others involve the domestic laws of the separate countries involved. But all of the problems must be considered of a piece to gain insight into the crisis as a whole. Study of the 1960 Accords, for example, is important not only because much of the controversy concerning the crisis has turned on their terms, but also because they still form the basic structure for the conduct of government on the Island and may continue to do so for many years in the future. Alternatively, a new settlement may be concluded that discards all or a portion of these Agreements. The possible terms of such a settlement cannot be considered, however, without a knowledge of the 1960 arrangements and how they worked in practice.

The final section of the Article analyzes the elements of a possible new solution to the crisis. What may be the significance of law in the development of such a solution? Any new settlement must be "political" in the sense that political forces will be the primary pressures brought to bear in the negotiations. But law may provide both a procedural mechanism to focus and contain these forces and

a rational means of structuring the components of a possible solution. Moreover, the appeal for world support by opposing parties may depend, in significant degree, as it has in the past, on the strength and coherence of their legal positions. Finally, law may help to interweave the elements of a solution with the fabric of the Island's on-going affairs. Recognition of the limitations on the reach of law in this situation is essential; but to acknowledge these limitations is not to declare law irrelevant.

One may, of course, hope that whatever the final settlement of the Cyprus crisis, analysis of its origins and elements will be of value in considering other international disputes. A number of the issues involved have obvious relevance in different contexts. In other cases the relationship is less apparent, but may be no less real. Some of these analogues are examined in the course of this analysis, others are marked by only a reference, and, necessarily, some are left for the reader to draw. It is important to develop these common ties among different problems, but it is also important to recognize the dangers inherent in such undertakings. The effort to provide conceptual cohesion through comparison may provide useful insights into international problems, but it may also blur distinctions, particularly regarding major crises in which the factual basis for conceptualism is subject to rapid change. In any event, this Article focuses primary attention on the Cyprus crisis itself, rather than on its resemblance to past international problems or its implications for future ones.

### I. THE ISLAND UNDER BRITISH RULE

Statistics concerning Cyprus are deceptive. It is hard to believe that a territory so small and with so few people could so disturb the peace of the world. About 594,000 people live on the Island's 3,600 square miles; approximately eighty per cent are of Greek descent; virtually all of the rest are of Turkish extraction.<sup>3</sup> Cyprus has few natural resources; copper is its only significant exportable asset. Lack of water is a perennial problem, and only six per cent of its soil is irrigable. Tourists go there for its climate, and archaeologists for its antiquities, but neither group produces substantial income for the Island, and their influx has been regularly cut off by political disturbances. During the last two decades, it has hardly been a place one could consider going for a rest. The average annual per capita income is 400 dollars, but over half the inhabitants live on farms and subsist on about 200 dollars per year.<sup>4</sup>

Cyprus does have one important asset—its strategic location. It is the third largest Mediterranean island and is well situated for policing the entire Levant. It was this asset that led to the British acquisition of the Island in 1878 by the Final Act of the Berlin Conference. In exchange for both tribute and British agreement to aid in Turkey's defense against Russia, the Sultan agreed "to assign the Island of Cyprus to be occupied and administered by England."<sup>5</sup> The Convention was to be terminated and Cyprus restored to Turkey when Turkey regained three

3. Republic of Cyprus, *Statistical Summary for the Month of August 1965*, at 2; *CYPRUS, A HANDBOOK ON THE ISLAND'S PAST AND PRESENT 21-22* (Greek Communal Chamber 1964).

4. See MEYER, *THE ECONOMY OF CYPRUS 17* (1962).

5. Convention of Defensive Alliance Between Great Britain and Turkey With Respect to the Asiatic Provinces of Turkey, June 4, 1878, art. 1, in 82 *ACCOUNTS AND PAPERS 3-4* (1878). For a com-

Armenian territories from Russia. Until then, Britain would control Cyprus, though titular sovereignty would remain in Turkey. From the outset, however, England refused to honor many of Turkey's international commitments concerning Cyprus, and thereby earned the approbation of numerous international legal theorists.<sup>6</sup> When Turkey allied with Germany at the outset of World War I, Britain renounced the 1878 Convention and annexed the Island.<sup>7</sup>

As early as 1830, substantial sentiment was voiced on the Island for union with Greece, or enosis. Pressure for enosis built up steadily and unremittently in the next century. The roots of the desire for union cannot be found among the ruins of ancient Greece; Aphrodite's island was never a part of Hellenic Greece. Though Greeks colonized the Island, they regarded Cypriots as an alien people. The Hellenic ties of Greek Cypriots are rooted in the Byzantine period rather than classical times. Today, religion and language are the major forces unifying Greece and Cyprus—and their centripetence is substantial.

At least once during the First World War, Great Britain offered to transfer Cyprus to Greece in exchange for Greek support of Serbia.<sup>8</sup> The Greek rejection of this offer, at least in retrospect, may be one of the great tragedies of Cypriot history, for enosis at that time might have eliminated much of the bloodshed of the next half-century. Though by a 1921 treaty Russia transferred to Turkey two of the three Armenian territories referred to in the 1878 Convention, England remained sovereign over Cyprus.<sup>9</sup> And in March 1925 the Island was declared a British Crown Colony.

plete history of the background and consequences of the Convention see LEE, *GREAT BRITAIN AND THE CYPRUS CONVENTION POLICY OF 1878* (1934).

Disraeli was prime minister at the time and masterminded the deal with Turkey. Ironically, three decades before, he had stated through the hero of one of his novels that "the English want Cyprus, and they will take it as compensation." DISRAELI, *TANCRED* (1847), quoted in ALASTOS, *CYPRUS IN HISTORY* 298 (1955).

The British maneuver was strikingly similar to United States accession over the Panama Canal Zone, and the problems faced by British authorities as a result of the Cypriot propensity to fly the Greek flag are parallel to the difficulties recently faced by United States authorities in the Zone. Compare 4 HILL 504 *with* Investigating Committee Appointed by the International Commission of Jurists, Report on the Events in Panama, January 9-12, 1964, at 15-19 (1964).

6. See 4 HILL 403-08. By a Supplementary Agreement, concluded in August 1878, the Sultan transferred to Great Britain "full powers for making Laws and Conventions for the Government of the island . . ." 4 HILL 302. The legal status of the Island, however, remained uncertain in the eyes of many theorists. See, e.g., LAWRENCE, *THE PRINCIPLES OF INTERNATIONAL LAW* 72 (7th ed. 1923) ("He would be a bold jurist who would undertake to give a direct answer to the simple question whether Cyprus was a British or a Turkish possession.").

7. "Such annexations [as that of Cyprus] without the consent of the State which in law owns the territory are certainly unlawful in time of peace, and of doubtful legality in war. However this may be, they are not a regular mode of acquiring territory." I OPPENHEIM, *INTERNATIONAL LAW* 567 n.3 (8th ed. Lauterpacht 1955). The annexation was acknowledged by Turkey by article 115 of the Treaty of Sèvres, June 28, 1919, in 2 *THE TREATIES OF PEACE, 1919-1923*, at 821, 966 (Martin ed. 1924), and by article 20 of the Treaty of Lausanne, July 24, 1923, 28 L.N.T.S. 12, 25 (1924).

8. See ALASTOS, *CYPRUS IN HISTORY* 339-44 (1955). The offer to Greece has been characterized by supporters of enosis as an acknowledgment of Cyprus' Hellenic ties, *id.* at 344, but the British are quick to respond that the offer was withdrawn after it was rejected, see, e.g., U.N. GEN. ASS. OFF. REC. 9th Sess., Plenary 43, 53 (A/PV.477) (1954).

Enosisers are fond of quoting Sir Winston Churchill's address to the Cypriot Legislative Council in 1907: "I think it is only natural that the Cypriot people who are of Greek descent should regard their incorporation with what may be called their mother-country as an ideal to be earnestly, devoutly and fervently cherished." See, e.g., Rossides, *The Island of Cyprus: A Historical Summary*, 25 ATHENS 4, 5 (1964).

9. The treaty, concluded March 16, 1921, is printed in 16 Martens N.R.G. (3<sup>e</sup> sér.) 37.

In 1916 Britain secretly agreed not to begin negotiations for the cession of Cyprus without the

In 1931, just one hundred years after the first clear cries for enosis were heard from Cyprus, Greek Cypriots burned the Governor's House in large-scale demonstrations for union with Greece.<sup>10</sup> After World War II, such riots were commonplace. A plebiscite among Greek Cypriots in 1949 must have shattered any British illusions about perpetual rule—ninety-six per cent of the eligible voters favored union with Greece.<sup>11</sup>

A year later the head of the Greek Orthodox Church in Cyprus died and a new leader, Archbishop Makarios III, was chosen. Only thirty-seven years old, he quickly became the leader of the Greek Cypriot people in secular as well as spiritual affairs. To many, he became—and remains—a living argument for the separation of church and state.

The Archbishop's position concerning enosis has never been completely certain to outside observers. At times he has supported union with Greece; at times his public statements have been less clear.<sup>12</sup> Some analysts of the Cypriot scene have suggested that his political ambitions extend beyond the Island, and that he would favor enosis only if he could become prime minister of the new union. Eleutherios Venizelos, a Cretan, became prime minister of Greece after his successful campaign for the union of Crete with Greece. Archbishop Makarios may hope to follow this path, although he has publicly denied such ambitions.<sup>13</sup> Perhaps the only certain facts are that he holds the loyalty of the Greek Cypriots and, therefore, that the fate of the Island cannot be considered without considering him.

Regularly in response to Greek Cypriot demands for enosis, Great Britain stated that possession of the Island was essential to fulfilling British obligations in the Eastern Mediterranean and the Middle East.<sup>14</sup> During World War II it was a vital air base, refueling station, and support center. After the war, as the British

prior consent of the French Government. See 4 HILL 524. This agreement was confirmed in article 4 of the Franco-British Convention of December 23, 1920, CMD. No. 1195, at 3 (1921).

10. See ALASTOS, *CYPRUS IN HISTORY* 352 (1955). To check the agitation of the enosists, British authorities adopted a series of repressive measures that included prohibition of Boy Scout groups under foreign auspices except with the governor's permission. See 4 HILL 553.

11. See ALASTOS, *CYPRUS IN HISTORY* 379-81 (1955). During and after the War a number of books and pamphlets supporting enosis were published in the United States by Greek-American groups. See, e.g., Young, *The Union of Cyprus with Greece*, in *GREECE OF TOMORROW* 54 (Chase ed. 1943).

12. The United Nations mediator in the current Cyprus crisis, Mr. Galo Plaza Lasso, apparently spent some time discussing the question of enosis with the Archbishop, but Mr. Galo Plaza's report is unclear concerning the Archbishop's current views on the matter. See U.N. Doc. No. S/6253, at 53-54 (1965). See also FOLEY, *LEGACY OF STRIFE: CYPRUS FROM REBELLION TO CIVIL WAR* 27 (1964). A collection of "policy statements" by the Archbishop was published by the Turkish Tourism and Tourist Office, New York City, to prove that "all his efforts have been directed towards the materialization of Enosis, [although] he sought to create the false impression that he is in favor of an independent State of Cyprus separate from Greece." *Foreword* to *Cyprus: Greek Expansionism or Independence I* (1965).

13. See Wall, *Cyprus Problem = Makarios Problem*, N.Y. Times, Oct. 18, 1964, § 6 (Magazine), pp. 38, 110.

14. "Cyprus is a strategic necessity to us if we are to discharge our treaty obligations. The strength of my country in that part of the world is still one of the main bulwarks of peace." Mr. Lloyd, United Kingdom Permanent Representative to the United Nations, U.N. GEN. ASS. OFF. REC. 9th Sess., Plenary 43, 54 (A/PV.477) (1954). There has been some dissent on this point, even within British military circles. Field Marshal Sir Claude Auchinleck wrote in 1956: "Unless I, as a soldier, am grossly at fault in my estimate of the value of Cyprus as a military base, I would say that it has none, or practically none, of the requisites of an efficient base for the deployment and subsequent employment in military operations of either sea, land or air forces or all three." *The Sunday Times* (London), Dec. 16, 1956, p. 8, col. 7.

Empire contracted, Cyprus became an increasingly important British outpost. And in 1956 the Island was the obvious replacement for Suez as headquarters for the British Middle Eastern Command. But the enosists were implacable, and they had substantial supporters.

Greece, of course, was their principal ally. Her rejection of the British offer in 1915 never dimmed her expressions of moral indignation at subsequent British intransigency on the matter. In the 1950's Greece found a new forum, the United Nations, and a new formula, "self-determination," to advocate her Hellenic dream. With more passion than accuracy, the Greek Prime Minister wrote to the United Nations Secretary-General in 1954 that "Greece alone has been the lasting element, the unalterable factor, the only permanent reality in the island of Cyprus. It would not be enough to repeat that Cyprus belongs to the Greek world; Cyprus is Greece itself."<sup>15</sup> Basing Greece's request upon "the past, present and future of the Hellenic nation," he urged that "the principle of equal rights and self-determination of peoples," as expressed in article 1(2) of the United Nations Charter, be applied to Cyprus.<sup>16</sup> By this he meant a vote of the Cypriot people, under United Nations auspices, to decide their future. In light of the 1949 plebiscite, there could have been little doubt about the outcome of such a vote.

In a debate before the General Committee of the General Assembly that raised fundamental issues of United Nations jurisdiction and competence, Great Britain opposed inclusion of the question on the General Assembly agenda on two main grounds.<sup>17</sup> First, by the Treaty of Lausanne, Greece as well as Turkey had recognized that Cyprus was sovereign British territory. To allow Greece to raise this issue would contravene paragraph 3 of the Preamble to the Charter—"justice and respect for the obligations arising from treaties . . ." Second, claimed the British representative, discussion of this issue would violate the prohibition in Charter article 2(7) against United Nations intervention in "matters which are essentially within the domestic jurisdiction of any state . . ."<sup>18</sup> Greece countered that "with regard to the sanctity of treaties . . . the interests of the [Cypriot] inhabitants . . . were paramount . . ." Apparently, the argument was that under article 103, the principle of self-determination must prevail over inconsistent treaties.<sup>19</sup> Regarding article 2(7), the Greek representative contended that the prohibition against intervention "did not extend to all other provisions of the Charter."<sup>20</sup> Article 10 authorizes the General Assembly to consider any issues "within the scope of the present Charter," and self-determination of the Cypriot

15. U.N. Doc. No. A/2703, at 2 (1954).

16. *Id.* at 1.

17. U.N. GEN. ASS. OFF. REC. 9th Sess., Gen. Comm. 8-9 (A/BUR/SR.93) (1954).

18. The British representative also contended that an Assembly debate on the matter would jeopardize relations between the Island's two communities and between Greece and her allies. *Ibid.*

19. *Id.* at 10-11. Article 103 of the Charter provides: "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." Issues concerning the applicability of articles 2(7) and 103 arose again during the current crisis, and it is interesting to compare the positions taken by the nations concerned in 1954 with their views a decade later. See text accompanying notes 264-65 *infra*.

20. *Id.* at 10.



people was such an issue. Furthermore, he maintained that the word "intervene" should be understood as meaning "dictatorial interference, or action amounting to a denial of the independence of the State. But it could not be seriously contended that consideration of an item by the General Assembly with a view to implementing the basic provisions of the Charter could constitute such interference."<sup>21</sup>

Greece won a tactical battle by gaining inclusion of the issue on the agenda, but she lost the war, for the General Assembly declared that "for the time being, it does not appear appropriate to adopt a resolution on the question of Cyprus . . ." <sup>22</sup> For the next four years Greece tried to obtain a General Assembly recommendation in support of her position. Each year she failed.<sup>23</sup> It seems likely from a reading of the debates, however, that Greece failed not because her legal arguments, particularly those regarding article 2(7), were unpersuasive, but because an insufficient number of members believed that the Assembly could deal effectively with the problem. In those years newly independent Asian and African nations did not command a majority in the Assembly. We shall see that in the 1965 Assembly consideration of the Cyprus crisis the debates reached a quite different result on closely related issues, and the increased numerical strength of the nonaligned nations was a substantial contributing factor.

In many ways, British rule over her "Cinderella Colony"<sup>24</sup> was exemplary. When Cyprus became independent in 1960, she had good roads, a high rate of literacy, and many other important attributes absent in her mainland neighbors.<sup>25</sup> At the same time, however, a series of maladroit maneuvers by Her Majesty's Government in the late 1950's virtually assured that the umbilical operation would be bloody. And it was.<sup>26</sup>

Even ignoring the benefits of hindsight, the handwriting in 1954 should have

21. *Ibid.* There is little international agreement on the scope of domestic jurisdiction today even within the context of the United Nations. See generally Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States, *Consideration of Principles of International Law*, U.N. Doc. No. A/5746, at 109-48 (1964); HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 58-103 (1963); RAJAN, *UNITED NATIONS AND DOMESTIC JURISDICTION* (1958). But there is agreement among most nations that General Assembly discussion does not constitute "intervention" within the meaning of article 2(7). See HIGGINS, *op. cit. supra* at 69-70. For a statement of the United States position see U.N. GEN. ASS. OFF. REC. 18th Sess., 6th Comm. 250-53 (A/C.6/SR.825) (1963) ("intervention" includes only "interference of an imperative character").

22. U.N. GEN. ASS. OFF. REC. 9th Sess., Supp. No. 21, at 5 (A/2890) (1954). Both the British and the Greek representatives claimed success. "I believe that the vote which has just taken place," said Mr. Nutting, the British representative, "represents a great and important victory for common sense. It shows how much support there is in this Assembly for the view put forward by the United Kingdom from the outset that, legal considerations altogether apart, a full-dress discussion on Cyprus could achieve no useful purpose." The Greek representative, Mr. Kyron, responded: "The affirmative vote of the representative of the United Kingdom is a formal recognition on the part of his Government of the fact that what the United Kingdom Government has persistently called a domestic issue, and one closed forever, has now become a wide-open international problem." U.N. GEN. ASS. OFF. REC. 9th Sess., Plenary 539-40 (A/PV.514) (1954).

23. The relevant United Nations records from 1954 to 1956 are contained in SOHN, *CASES ON UNITED NATIONS LAW* 812-44 (1956). See also 1957 *UNITED NATIONS YEARBOOK* 72-76 (1958); 1958 *UNITED NATIONS YEARBOOK* 71-76 (1959).

24. The appellation is from 4 HILL ix.

25. See MEYER, *THE ECONOMY OF CYPRUS* vi (1962).

26. British reprisals against members of EOKA, the Greek Cypriot terrorist organization that supported enosis, are vividly described in FOLEY, *op. cit. supra* note 12, at 84-86.

been clear. In July of that year the British Minister of State for Colonial Affairs announced a plan for a "modified constitution" on the Island. But in the same breath he declared that "there 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."<sup>27</sup> With something less than prescience, the Minister failed to "see any reason to expect difficulties in Cyprus as a result of this statement . . ."<sup>28</sup> Riots throughout the Island immediately followed, and whatever political capital could have been gained by announcing a "modified constitution" was more than offset.<sup>29</sup>

In 1956 Lord Radcliffe, acting at the request of the British Prime Minister, prepared a brilliant and strikingly original constitution for the Island.<sup>30</sup> While recognizing British sovereignty, it attempted, with remarkable success, to achieve "a fair balance between the different and often conflicting interests which are involved."<sup>31</sup> But acceptance by the Greek Cypriot leader, Archbishop Makarios, was essential, and at the time he was residing on the Seychelles Islands, having been deported there by the British on the ground of engaging in seditious activities.<sup>32</sup> Under the circumstances it would have been remarkable if he had taken the Radcliffe proposals seriously.<sup>33</sup>

From the beginning of 1957 through the end of 1959 new settlement proposals were made by the British, Greeks, and Turks. The NATO Secretary-General, Paul-Henri Spaak, also suggested the outline of a "provisional solution."<sup>34</sup> It was obvious then, as it is now, that this festering sore in the right flank of NATO defenses could, at any time, break out into a major conflict between three Alliance

27. 531 H.C. DEB. (5th ser.) 507-08 (1954). Both of the quoted statements are followed by "[Hon. Members: 'Oh!']."

28. *Id.* at 511.

29. See ALASTOS, *CYPRUS IN HISTORY* 384-86 (1955).

30. Radcliffe, *Constitutional Proposals for Cyprus*, CMND. 42 (1956).

31. Statement by the Secretary of State for the Colonies, 562 H.C. DEB. (5th ser.) 1268 (1956). Lord Radcliffe is reported to have said that his draft constitution "had all the symmetry of a Chippendale chair; you could not touch the design without destroying the whole effect." FOLEY, *op. cit. supra* note 12, at 86-87.

32. The Greek Government brought two applications against the British Government before the European Commission on Human Rights, claiming that the deportation of the Archbishop, the maltreatment of prisoners, and the imposition of curfews were violations of the European Convention on Human Rights. But the basis for the 1960 settlement was negotiated before any action could be taken, and the issues were then moot. See 2 YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 174-99 (1960); ROBERTSON, *THE LAW OF INTERNATIONAL INSTITUTIONS IN EUROPE* 74-75 (1961).

33. See ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, *CYPRUS: THE DISPUTE AND THE SETTLEMENT* 22 (1959). The Archbishop is said to have received the proposals from London "together with a new official [British] pamphlet denouncing him as the instigator of terrorism and a major obstacle to the return of peace on the island. It ran into thousands of words of polemics against the Archbishop, and, for good measure, the whole Greek Orthodox Church. On the back cover, over the Cyprus Government imprint, the authors had tastefully printed the Ten Commandments. It seemed well calculated to put the Archbishop in his place, which was certainly not at the negotiating table, and . . . visitors were hardly surprised to be told that Makarios required no 'explanation' of the proposals: he had already read and rejected them." FOLEY, *op. cit. supra* note 12, at 88.

Greece rejected the Radcliffe proposals even before any Cypriots saw them, mainly on the grounds that the governor would have maintained veto power and a guarantee of self-determination was not included. Turkey, not surprisingly, approved the proposals with only a few modifications. See ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, *op. cit. supra* at 31.

34. See *Discussion on Cyprus in the North Atlantic Treaty Organization, September-October 1958*, CMND. 566 (1958).

powers. The possibility of an intra-NATO war had obviously not been considered when the North Atlantic Treaty was drafted, however, and the obligations of the parties in this circumstance were by no means clear.<sup>35</sup>

Periods of uneasy peace alternated with outbreaks of violence on the Island during these three years. EOKA, the National Organization of Cyprus Fighters, led by General Grivas, was by far the most effective force against British rule.<sup>36</sup> A Turkish underground organization, VOLKAN, conducted a similar campaign of violence against Greek Cypriots.<sup>37</sup>

When the Radcliffe proposals were announced, the British Government stated that the Greek Cypriots would be given a chance to choose union with Greece if the proposals worked well over a period of time—but, in the event they did opt for enosis, the Turkish Cypriots would also be allowed a separate vote. And if they chose to join Turkey, the Island would be divided.<sup>38</sup> This was the first suggestion of partition by the British, and it was supported by Turkey with increasing force in the years just before 1960.

The Greek Government maintained with continuing tenacity, however, that self-determination was the only acceptable solution. In December 1957 it succeeded in persuading a voting majority in the General Assembly to accept a resolution expressing 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."<sup>39</sup> But the resolution failed to gain the two-thirds vote necessary to make it a General Assembly "recommendation with respect to the maintenance of international peace and security" under Charter article 18 (2).<sup>40</sup>

The British position slowly weakened in the face of increasing pressure on and off the Island. Not the least of the stimuli was the stand of the British Labor Party that "the people of Cyprus, like all other peoples, have a right to determine

35. Greece and Turkey were not original signatories to the North Atlantic Treaty. T.I.A.S. No. 1964, 34 U.N.T.S. 243 (1949). Article 5 of the Treaty provides that "an armed attack against one or more [of the Parties] . . . shall be considered an attack against them all . . ." When Greece and Turkey became members of NATO in 1951 this provision was expanded to include an "armed attack . . . on the forces, vessels or aircraft of any of the Parties, when in or over . . . the Mediterranean Sea . . ." Article II of the Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey, T.I.A.S. No. 2390, 126 U.N.T.S. 350 (1951). For reasons that are not at all clear to the outside observer, however, an attack against Mediterranean islands under the jurisdiction of a Party is not covered under article 5, unlike an attack against "islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer."

Article 5 provides that in the event of an "armed attack" against one of the Parties, the Parties agree "in the exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations . . . [to] assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."

36. See THE MEMOIRS OF GENERAL GRIVAS (Foley ed. 1965). This is a fascinating account of EOKA's terrorist efforts by a man who is—in the eyes of many, including his own—a military genius. General Grivas states that Archbishop Makarios was, from the birth of EOKA in 1955, deeply involved in its activities. See, e.g., *id.* at 29.

37. See ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, *op. cit. supra* note 33, at 40.

38. See 562 H.C. DEB. (5th ser.) 1268 (1956). The British Government also made it clear, however, that it did not view partition as "the best solution." See 565 H.C. DEB. (5th ser.) 343 (1957).

39. U.N. Doc. No. A/3794, at 2 (1957).

40. See 1957 UNITED NATIONS YEARBOOK 72-76 (1958). The vote was 31 in favor, 23 opposed, and 24 abstentions. *Id.* at 75.

their own future."<sup>41</sup> A shift that began in March 1957 with permission for Archbishop Makarios to return from exile was followed by several modifications of the Radcliffe proposals. And at the end of 1958 Great Britain blessed a "preliminary investigation" by the Greek and Turkish Governments of ways in which a settlement might be reached.<sup>42</sup> Most important, the British Government made it clear that, provided her "military requirements were met, in a manner which could not be challenged, by the retention of bases under British sovereignty, together with the provision of the necessary rights and facilities for their operation, . . . [she was] prepared to consider the transfer of sovereignty by Her Majesty's Government over the rest of the island."<sup>43</sup>

## II. THE 1960 ACCORDS

The negotiating efforts of the Greek and Turkish Governments culminated in a Zurich meeting of Foreign Ministers Karamanlis and Menderes during February 1959. The Greeks were in a strong position at the conferences. Not only was eighty per cent of the Island's population Greek, but the campaign for enosis had obviously taken its toll on British willingness to maintain her colony. Moreover, there was every indication that the campaign could be substantially intensified. The Turks, however, also had a powerful bargaining weapon—the threat that they would gain British agreement to partition if a settlement were not reached. The Turkish Government had maintained a steady public campaign in favor of dividing the Island in the years just before the settlement. Turkey argued, in fact, that partition was a compromise on her part: Cyprus should really be ceded to Turkey because it was formerly Turkish, never Greek, territory. Furthermore, Cyprus is forty times closer to Turkey than to Greece. But Turkey was willing to accept partition, and that could be achieved by a number of different arrangements. The Turkish Foreign Minister even suggested that two independent states, like Haiti and the Dominican Republic, might be created.<sup>44</sup>

In any event, the Greek and Turkish Prime Ministers quickly reached agreement on the basic outlines of a final settlement. On February 11, 1959, they initialed drafts of a "Basic Structure of the Republic of Cyprus," a "Treaty of Guarantee between the Republic of Cyprus and Greece, the United Kingdom and Turkey," and a "Treaty of Alliance between the Republic of Cyprus, Greece and Turkey."<sup>45</sup>

The Basic Structure included twenty-seven "Points," the last of which was that "All the above Points shall be considered to be basic articles of the Constitution of Cyprus."<sup>46</sup> Without the agreement of all four signatories to the 1960 Accords, basic articles cannot be changed. The constitutional provisions elabo-

41. British Labor Party, Press Release, November 27, 1957, quoted in ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, *op. cit. supra* note 33, at 39.

42. ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, *op. cit. supra* note 33, at 55.

43. 600 H.C. DEB. (5th ser.) 618 (1959).

44. Interview With Turkish Foreign Minister Zorlu by William Hillman, reprinted in Turkish Information Office, Cyprus and Turkey, 1958, on file in the Library of the Hoover Institution at Stanford University.

45. *Conference on Cyprus*, CMND. 679 (1959).

46. *Id.* at 9.

rated from the twenty-seven Points are analyzed in detail below. It is enough to say at this point that the Basic Structure set forth a carefully devised series of interrelated checks and balances designed to protect the Turkish minority. A central though unwritten premise, however, was that both sides would exercise restraint—otherwise the Cypriot government could not function at all.

The draft Treaty of Alliance called for cooperative measures to protect the Island, including a permanent tripartite military headquarters with 950 Greek troops and 650 Turkish troops. By the proposed Treaty of Guarantee, the Republic of Cyprus, Greece, Turkey, and the United Kingdom would undertake to prohibit all activity tending to promote "directly or indirectly either union . . . or the partition of the Island."<sup>47</sup> The three Guarantor Powers would also "recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus . . ." In the event of any breach of the Treaty provisions they would consult together, but "in so far as common or concerted action may prove impossible," each would reserve "the right to take action with the sole aim of re-establishing the state of affairs established by the present Treaty."<sup>48</sup> As we shall see, this final provision became a primary focus of attention during the crisis that began in December 1963.

Representatives of Greece, Turkey, Great Britain, and the Greek and Turkish communities on Cyprus met at Lancaster House in London immediately after the Zurich Conference. Great Britain agreed to the Zurich proposals on several conditions, including British sovereignty over two base areas on the Island.<sup>49</sup> Great Britain also insisted that an additional article be included in the Treaty of Guarantee to assure that Greece, Turkey, and Cyprus would "respect the integrity of the areas to be retained under the sovereignty of the United Kingdom . . ." <sup>50</sup> The British conditions and the additional Treaty article were accepted by the other parties.<sup>51</sup>

One can detect an almost audible sigh of relief in reading Prime Minister Macmillan's statement at the signing ceremony. He praised the leaders of the three countries involved and of the two Cypriot communities, adding: "After all, it is the Cypriots who live in Cyprus. For their happiness and progress we are all responsible. That is why I rejoice, if I may say so humbly, at the courage and imagination which has inspired their leaders to-day. I feel sure that they will have their reward."<sup>52</sup> In retrospect Mr. Macmillan must wonder at his optimism.

The agreement reached at London called for Cypriot independence as soon as possible, and in all events prior to February 1960. But negotiations concerning

47. *Id.* at 10.

48. *Ibid.*

49. *Id.* at 11-13 (Document III).

50. *Id.* at 13 (Document IV).

51. *Id.* at 13-14 (Documents V-VII).

52. *Conference on Cyprus*, CMND. 680, at 3 (Document I) (1959). Three multinational committees were established to work out final arrangements "for the transfer of sovereignty in Cyprus." *Conference on Cyprus*, CMND. 679, at 14 (Document VIII) (1959). The result of their deliberations, which lasted more than a year, is a 220-page document containing the draft treaties, the draft Cypriot constitution, fifteen draft exchanges of notes, and several draft statements. All of the settlement documents are contained in *Cyprus*, CMND. 1093 (1960). The Treaties of Establishment and Guarantee are also contained in CMNDS. 1252, 1253 (T.S. Nos. 4, 5 of 1961) respectively.

the final drafts of the documents continued past that deadline. Among the stickiest issues was the initial British demand for 160 square miles of sovereign base areas and the Archbishop's reluctance to allow more than eighty.<sup>53</sup> A compromise of ninety-nine square miles was finally agreed upon, and the several dozen other necessary arrangements were resolved on July 1, 1960. Cyprus became independent a month and a half later when all the Accords were formally signed at Nicosia.<sup>54</sup> Elections had been held on Cyprus the previous December and, to no one's surprise, Archbishop Makarios and Dr. Kutchuk were chosen President- and Vice-President-elect.<sup>55</sup> They took office immediately upon the ratification of the final documents.

These instruments should be examined in some detail, for much of the recent debate concerning the Island has involved their provisions. The Cypriot Constitution is the place to begin. At the same time, the Accords must all be considered of a piece. Not only did each signatory's agreement to any one document depend on the successful negotiation of the others, but the Accords also contain numerous internal references to each other. For example, under article 181 of the Constitution, a basic article, the Treaties of Guarantee and Alliance have "constitutional force."

In the main, the Constitution follows the Basic Structure proposed at Zurich and approved at London. Almost every one of the 199 articles was drafted with a view to maintaining a delicate but immutable equilibrium between the interests of the Greek majority and the Turkish minority. Communal distrust permeates the entire document.

The first article<sup>56</sup> provides: "The State of Cyprus is an independent and sovereign Republic with a presidential régime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided."<sup>57</sup> The vice-

53. See Cranshaw, *The Republic of Cyprus: From the Zurich Agreement to Independence*, 16 THE WORLD TODAY 526, 534-39 (1960).

54. Under the Cyprus Act, 1960, 8 & 9 Eliz. 2, c. 52, Queen Elizabeth, by Order in Council, named August 16, 1960, as the date of Cypriot independence. STAT. INSTR. 1960, No. 1368. The United States recognized the Cypriot Government immediately. See 43 DEP'T STATE BULL. 388 (1960). Cyprus was and remains a member of the British Commonwealth, although some Greek Cypriots have urged withdrawal from the union. See, e.g., N.Y. Times, July 17, 1964, p. 2, col. 6.

55. *Cyprus*, CMND. 1093, at 3 (1960). Article 187(1) of the Constitution provides: "Any person elected . . . as first President or first Vice-President of the Republic . . . under any law in force immediately before the date of the coming into operation of this Constitution shall be deemed to be the President of the Republic or the Vice-President of the Republic . . ." See also article 195.

In the December 1959 elections three parties opposed each other for the Greek vote. See The Times (London), Nov. 27, 1959, p. 12, cols. 5-6. The party of Archbishop Makarios, EDMA, supported "implementation of the Zurich and London agreements . . . and maintenance of the Hellenic character of the State . . ." *Ibid.* The Archbishop received 67% of the Greek votes cast. His principal opponent, John Clerides of the Cyprus Democratic Union, received virtually all of the remaining votes. The Progressive Party of the Working People ran a poor third. See *id.*, Dec. 15, 1959, p. 10, col. 1. See generally Cranshaw, *supra* note 53, at 528-32.

56. Article 1 is one of the basic articles. Under article 182 basic articles "cannot, in any way, be amended, whether by way of variation, addition or repeal." Certain paragraphs of some articles are basic, while other paragraphs in the same articles are not. All articles referred to in the subsequent text and footnotes that are, in whole or in relevant part, basic articles are denoted by an asterisk (e.g., art. 182\*).

57. Article 2 defines the two communities as follows: "(1) The Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek-Orthodox Church; (2) The Turkish Com-

president, however, cannot act as president in the event of the latter's temporary absence or incapacity. This role is filled by the president of the House of Representatives, a Greek, elected by the Greek Representatives (arts. 44(2)\*, 72). In the event of his temporary absence or incapacity, his functions are performed "by the eldest Representative of the . . . [Greek] Community unless the Representatives of such Community should otherwise decide" (art. 72(3)). A similar chain of succession is provided for the vice-presidency (arts. 44(2)\*, 72).

An elaborate set of "fundamental rights and liberties" is included in part II of the Constitution. In comparison to our Bill of Rights, or even to the Universal Declaration of Human Rights, they seem inordinately detailed. Article 23(6)\* provides, for example, that "in the event of agricultural reform, lands shall be distributed only to persons belonging to the Community as the owner from whom such land has been compulsorily acquired." And while article 19(1) assures "the right to freedom of speech and expression in any form," four additional paragraphs are devoted to defining what this right means.

Executive powers under the Constitution can be separated into four categories: First, those exercised jointly by the president and vice-president, such as high-level appointments and reduction or increase of the security forces (art. 47); second, those granted to the president (art. 48); third, those granted to the vice-president (art. 49); and fourth, those granted to a ten-man Council of Ministers (seven of whom are appointed by the president and three by the vice-president), including all the residual executive powers (art. 54).

In practical terms, the powers of the two chief executives are coterminous<sup>58</sup> and include the powers: To designate and dismiss Ministers from the chief executives' respective communities (arts. 48(a), 49(a)); to veto decisions of the Council of Ministers and the House of Representatives concerning foreign affairs, defense, and security (arts. 48(d), (f), 49(d), (f), 50\*, 57\*); to require the Council of Ministers, the House of Representatives, and the Communal Chambers to reconsider their decisions (arts. 48(e), (g), 49(e), (g), 51\*, 57\*, 105); to refer to the Supreme Constitutional Court the budget or any other law or decision of the House on the ground that it discriminates against one of the communities (arts. 48(h), (i), 49(h), (i), 138\*, 141, 143); and to refer to that Court any conflict with another organ of the government. The president (the vice-president) may also refer to the Court a claim that the Turkish (Greek) Communal Chamber has adopted an unconstitutional law or decision (art. 142). In practical effect, of course, these powers are all safeguards for the Turkish minority, since from

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munity comprises all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Moslems."

Between 2% and 3% (estimates vary) of the Cypriot population is of neither Greek nor Turkish ethnic origin. This minority includes Armenians, Maronites, Latins, and others. Within three months after independence, Cypriot citizens had to "opt to belong to either the Greek or the Turkish Community as individuals . . ." (art. 2(3)). Members of a "religious group" were deemed to have abided by the option of that group unless they signed a declaration to the contrary. The British were apparently particularly concerned about the rights of these groups. See *The Rights of Smaller Religious Groups in Cyprus*, in *Cyprus*, CMND. 1093, at 175 (1960).

58. An example of the difference between their powers is that only the president may convene a Council meeting, though the vice-president may request that he convene one. Arts. 48(b), 49(b), 55.

the outset it has been unlikely that the president would ever oppose the Greek Cypriot majority in the Council or House.<sup>59</sup>

The House of Representatives includes thirty-five Greek and fifteen Turkish Representatives (art. 62\*). It exercises all legislative powers except those expressly reserved to the Communal Chambers (art. 61\*). All decisions are by majority vote, except that modifications of the electoral laws and any law relating to municipalities or taxes require separate majorities of both the Greek and the Turkish Representatives (art. 78\*). The requirement that tax legislation be approved by separate majorities has become one of the major issues in the current crisis.<sup>60</sup>

Separate Greek and Turkish Communal Chambers have authority over "(a) all religious matters; (b) all educational, cultural and teaching matters; (c) personal status; (d) the composition . . . of courts dealing with civil disputes relating to personal status and to religious matters," and the imposition of taxes to pay for these activities (art. 87\*).<sup>61</sup> Each community, of course, elects its own Chamber.

The attorney-general (art. 112\*), auditor-general (art. 115\*), governor of the Issuing Bank of the Republic (art. 118\*), accountant-general (art. 126\*), and their deputies, all appointed jointly by the president and vice-president, are the other individual government officers named in the Constitution. The four deputies cannot belong to the same communities as their principal officers. A Public Service Commission, composed of seven Greeks and three Turks and appointed jointly by the president and the vice-president, is to ensure that the seven-to-three ratio is maintained, insofar as practical, throughout all grades in the public service (arts. 123\*-25). The same ratio is stipulated for the police force (art. 130\*), but, for no reason apparent on the face of the document itself, forty per cent of the 2,000-man armed forces must be Turkish Cypriots (art. 129\*).<sup>62</sup> Compulsory military service is forbidden except with the consent of both the president and the vice-president (art. 129\*).

The Supreme Constitutional Court is composed of one Greek, one Turk, and a neutral president, who may not be a Cypriot, British, Greek, or Turkish citizen or subject (arts. 133(1), (3)). It has authority in three main areas, and in each its jurisdiction is exclusive (art. 136). First, it may consider a variety of constitutional issues referred to it by the president or vice-president (arts. 137\*-43).<sup>63</sup> Second, it has authority over constitutional questions raised in proceedings

59. On occasion, however, the House has overruled the president by an intercommunal majority. See DESMITH, *THE NEW COMMONWEALTH AND ITS CONSTITUTIONS* 290 (1964).

60. See text accompanying notes 84-85 *infra*.

61. Substantial bodies of family law had been developed by the separate Turkish family courts and Greek ecclesiastical courts that were established on the Island for many years prior to 1960. See Emilianides, *Interracial and Interreligious Law in Cyprus*, 11 *REVUE HELLÉNIQUE DE DROIT INTERNATIONAL* 286 (1958).

62. Possibly it was thought that this small army would be used primarily to quell disturbances between Greek and Turkish Cypriots and that it was, therefore, preferable to maintain a more nearly even balance than 70:30.

63. Portions of articles 138 and 139, which concern specific types of issues that may be referred to the Court, are also basic. Other governmental authorities may refer constitutional issues to the Court



before other courts (art. 144). Third, the Court's jurisdiction extends to any complaint that an administrative act or omission is unconstitutional or "in excess or in abuse of powers" (art. 146).

In a number of respects, the Court has extraordinary powers in its exercise of this jurisdiction. It may, for example, return to the House for reconsideration any measure referred to it, on the ground that the measure is discriminatory (arts. 137\*-38\*). Furthermore, the Court not only acts as arbiter of jurisdictional disputes among the other organs of the government, it also makes final decisions in the event of irresolvable disputes within the Public Service Commission concerning the filling of public-service posts (art. 125(3)).<sup>64</sup>

A High Court of Justice, composed of two Greeks, one Turk, and one neutral with two votes,<sup>65</sup> is the "highest appellate court in the Republic . . . [with] jurisdiction to hear and determine . . . all appeals from any court other than the Supreme Constitutional Court" (art. 155). The High Court also determines the composition of lower courts established to try civil cases in which the plaintiff and defendant belong to different communities and criminal cases in which the accused and the injured party belong to different communities (arts. 155(3), 159(3)\*, (4)\*). These courts must be composed of judges from both communities, though an equal number of judges need not be selected from each community. Lower courts exercising civil or criminal jurisdiction in cases in which both plaintiff and defendant or defendant and injured party belong to the same community must be composed solely of a judge or judges from that community (arts 159(1)\*, (2)\*).<sup>66</sup>

Each Communal Chamber adopts its own laws "for the establishment, composition and jurisdiction of courts to deal with civil disputes relating to personal status and to religious matters . . ." (art. 160(1)\*).<sup>67</sup> A series of "miscellaneous provisions" offer a variety of other detailed protections for the Turkish Cypriot minority. The most important is the requirement that separate Turkish Cypriot

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in certain circumstances. Under article 147, for example, the attorney general or deputy attorney general may, upon a resolution by the Greek (Turkish) Representatives, move for a Court determination that the president (vice-president) is permanently incapacitated or absent. Under article 139(1) the Court has jurisdiction over "any conflict or contest of power or competence arising between the House of Representatives and the Communal Chambers or any one of them and between any organs of, or authorities in, the Republic."

64. Article 125 is a perfect example of communal distrust on the Island. Any decision whether a public-service post is to be filled by a Greek or a Turkish Cypriot must be made by a majority of the Public Service Commission including two of its three Turkish Cypriot members. Otherwise, it is referred to the Court. These rules are complicated, however, by a series of ambiguous qualifiers that make the provision virtually incomprehensible.

65. Under article 153(3) the neutral judge cannot be a citizen or subject of Cyprus, Greece, Turkey, or the United Kingdom. It is difficult to determine any rational basis for using a formula for the High Court's composition different than that for the composition of the Supreme Constitutional Court. In the event of conflicting views among the judges, the neutral judge's decision is determinative in both courts. (There would, of course, be a difference if the neutral judge abstained.) This, however, was hardly the only decision that the constitutional drafters may have made on other than a rational basis.

66. Presumably, criminal cases in which there is no "injured party" except the state (counterfeiting, for example) are included under this provision, although the Constitution is unclear on the point.

67. Separation is carried to the point that only Greek court officers may execute the orders of a court composed of Greek judges, and only Turkish court officers may act on behalf of a Turkish court (art. 159(6)).

municipalities be established in each of the Republic's five largest towns (art. 173(1)\*).<sup>68</sup>

The "final provisions" of the Constitution stipulate that even the nonbasic articles may not be amended except by vote of two-thirds of both communities' members in the House of Representatives (arts. 182(2)\*, (3)\*), and that "the integral or partial union of Cyprus with any other State or the separatist independence is excluded" (art. 185\*). A series of "transitional provisions" provides for the orderly shift from a Crown Colony to an independent Republic. All laws in force at the date of independence remain in force until amended or repealed, unless inconsistent with other provisions of the Constitution (art. 188(1)). Similarly, all existing courts "continue to function as hitherto but constituted, as far as practicable, in accordance with the provisions of this Constitution" (art. 190).

With the exception of minor wording changes, the drafts of the Treaties of Guarantee and Alliance adopted at Zurich and London became the final versions. The Treaty of Establishment between the United Kingdom, Greece, and Turkey, on the one hand and the Republic of Cyprus on the other was the vehicle used to bind the Republic to a series of international commitments.<sup>69</sup> The most important of these obligations, at least to the United Kingdom, concerns the British bases and the British rights on Cypriot territory that are necessary to maintain the bases.

An effort to trace the roots of the Constitution would be a complex exercise in comparative law. The document is "unique in its character,"<sup>70</sup> for the Island's problems are quite unlike the problems facing other constitution makers.

Two major influences are apparent, however: The European Convention on Human Rights and the draft constitution proposed by Lord Radcliffe. The Treaty of Establishment specifically provides that "the Republic of Cyprus shall secure to everyone within its jurisdiction human rights and fundamental freedoms comparable to those set out in Section I of the European Convention . . ." (art. 5).<sup>71</sup> And many of the articles in part II of the Constitution, which deals with "Fundamental Rights and Liberties," are close adaptations, some almost literal, of language in the Convention.<sup>72</sup>

68. A proviso to this article calls on the president and the vice-president to "examine the question whether or not this separation of municipalities . . . shall continue," but does not provide any mechanism for change. Since article 173(1) is a basic article, it is difficult to determine what the drafters could have intended.

69. *Cyprus*, CMND. 1093, at 13-85 (1960). Article 3 of the Treaty provides that the four countries will "undertake" to consult and co-operate in the common defence of Cyprus." Article 8 assures that the Cypriot Government will assume the obligations and enjoy the international rights assumed and enjoyed by the United Kingdom regarding the Island.

The chicken-and-egg problem of simultaneously declaring the independence of the Cypriot Republic and binding her to the 1960 Accords was handled by references to the Constitution and the Treaty of Establishment in articles I-III of the Treaty of Guarantee, to the Treaty of Guarantee in the preamble to the Treaty of Establishment, and to all three treaties in the Constitution (arts. 181\*, 195, 198).

70. YDIT, *INTERNATIONALISED TERRITORIES* 81 (1961). (Emphasis omitted.) This work raises an interesting analogy between the 1960 Accords and the international occupation and government of Crete between 1897 and 1909. *Id.* at 82-83.

71. One commentator has written that the human rights guarantees in the Cypriot Constitution also owe "something to the Greek and Turkish Constitutions, particularly to the former." DE SMITH, *op. cit. supra* note 59, at 203. But it is difficult to pinpoint these roots to the exclusion of other documents such as the Basic Law of the Federal Republic of Germany.

72. See 1960 *YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 676-705 (1961).

Although Lord Radcliffe's proposals were never adopted while the Island was under British rule, a number of his ideas found their way into the new Constitution. The powers of the Supreme Constitutional Court in enforcing fundamental rights, for example, were patterned after his concept of a special tribunal to adjudicate such issues.<sup>73</sup> Similarly, the Constitution follows his proposal that the communal courts be maintained to handle most intracomunal litigation.

The efforts of the Constitution's drafters to articulate and define with precision may seem foreign to those accustomed to a document that provides "for the future partly by not forecasting it and partly by the generality of its language."<sup>74</sup> But the Cypriot Constitution must be judged against the background in which it was prepared. Turkish Cypriots generally viewed Greek Cypriots with deep distrust, even hatred. The feelings of the Greeks were no less strong. For generations organized violence had been a daily part of life on the tiny island. It is not surprising that the decision was made to avoid an instrument whose "ambiguities and lacunae . . . left ample scope for the unfolding of life."<sup>75</sup>

Furthermore, for more than two millennia, Cypriots had no experience with self-government, except on the local level. The Turks and Turkish Cypriots who helped draft the Constitution could hardly have placed sole reliance on broad standards of governmental conduct when Cyprus had neither a legal tradition of applying such standards nor the homogeneity that makes consensus on their content possible. In presenting his 1956 constitutional proposals, Lord Radcliffe stated:

It seems to me only fair to all those who may be concerned in carrying out the experiment that they should be presented at the outset with as clear a picture as pencil can draw of the range and limits of their respective functions, rather than that the frontiers should be left to be defined by trial and error or constitutional convention. For I fear that under the stress of such day-to-day exploration the constitution itself might begin to crack.<sup>76</sup>

The Turks and Turkish Cypriots were obviously worried about just this problem. They believed that general norms, to be defined over time by some appropriate authority, were not enough. They insisted on institutional protection built into the Constitution through Turkish representation at every level of the government and Turkish veto power over all crucial decisions.

One commentator has criticized the Constitution's drafters on the ground that they "succeeded in erecting a wall around each ethnic community, giving neither any chance of assimilation whatsoever."<sup>77</sup> But even a cursory glance at

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73. Compare Radcliffe, *Constitutional Proposals for Cyprus*, CMND. 42, at 43 (1956), with CYPRUS CONST. art. 146. See also Blümel, *Die Verfassungsgerichtsbarkeit in der Republik Zypern*, in CONSTITUTIONAL REVIEW IN THE WORLD TODAY 643, 668 n.110, 678 n.144, 682 n.151, 693 n.186 (Max-Planck-Institut. 1962).

74. FRANKFURTER, *LAW AND POLITICS* 117 (1939). Yet several Greek writers have referred to the Constitution as an "Anglo-Saxon inspiration." See, e.g., Antonopoulos, *Les Tendances Constitutionnelles des États Ayant Accédé Récemment à L'Indépendance*, 15 REVUE HELLÉNIQUE DE DROIT INTERNATIONAL 307, 311 (1962); Ténékidès, *La Condition Internationale de la République de Chypre*, 6 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 133, 155 (1960).

75. FRANKFURTER, *LAW AND POLITICS* 117 (1939).

76. Radcliffe, *supra* note 73, at 7.

77. Papastathopoulos, *Constitutionalism and Communalism: The Case of Cyprus*, 16 U. TORONTO L.J. 118, 130 (1965).

Cypriot history over the past four centuries reveals that the wall was there long before the Constitution. Turkish and Greek Cypriots lived in separate villages or separate sections of the larger municipalities, shopped at separate stores, worked in separate businesses, were born in separate hospitals and buried in separate cemeteries. After the period of terrorism and violence that preceded independence, few could have imagined that integration could have easily followed. It is hard to fault those who opted instead for "separate but equal" and fortified the wall between the two communities with constitutional protections. If anything, perhaps, the wall was not high enough.

At the same time, however, it is tempting to say that the scheme never had any chance of lasting success—that a constitution that requires the ethnic origin of the coroner in a coroner's inquest to be that of the deceased could only fail (art. 154(5)). The document is incredibly detailed, often repetitious, and occasionally ambiguous.<sup>78</sup> The extent of the guarantees of Turkish Cypriot rights raises a far more serious issue. Simple assurance of Turkish representation in the government proportionate to the Turkish population would not, without more, have provided adequate protection against discrimination. Yet such protection would seem to have been possible without the elaborate system of checks by which the minority can paralyze the government. Was it necessary, for example, to give the Turkish members in the House of Representatives an absolute veto power over all tax legislation? Would it not have been enough to protect against discriminatory taxes through the Supreme Constitutional Court's power to void any law that discriminated against one of the two communities?

Notwithstanding these weaknesses, the 1960 settlement represented an imaginative resolution of many difficult problems. Given patience and a spirit of compromise on each side, there seems no reason why it could not have worked. It was not a model of draftsmanship, but viewing the circumstances in which it was prepared, more could hardly have been expected. There was general agreement when the settlement was concluded, however, that substantial good will would be necessary on the part of both communities to make the arrangements work. As we shall see, what little good will there was in 1960 between Greek and Turkish Cypriots was quickly dissipated. Furthermore, the success of the settlement depended on maintenance of two interacting sets of guarantees: First, the constitutional guarantees of Turkish Cypriot authority over a wide range of local affairs and veto power over key national affairs; and, second, the international guarantees in the Treaties of Guarantee, Alliance, and Establishment. By the Treaty of Guarantee Cyprus undertakes to ensure "respect for its Constitution," and Greece, Turkey, and the United Kingdom "recognize and guarantee" not only the "independence, territorial integrity and security of the Republic of Cyprus," but also "the state of affairs established by the Basic Articles of the Constitution." By the Treaties of Alliance and Establishment, Greek, Turkish, and British troops are permanently stationed on the Island. If the constitutional guarantees in favor of the Turkish Cypriots are violated, the international guar-

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78. Compare art. 187(1) with art. 195. And see note 68 *supra*, concerning article 173(1)\*; note 64 *supra*, concerning article 125.

antees become operative. At least, this was the plan of the negotiators at Zurich and London.

### III. THE PRELUDE, THE ONSET OF VIOLENCE, AND THE INTERNATIONAL RESPONSE

#### A. *The 1960 Accords in Operation: 1960-1963*

For about two and a half years, the settlement worked reasonably well. The Island's financial burdens were to some extent eased by a British agreement to grant twelve million pounds to the Republic over a four-year period and one and a half million pounds to the Turkish community.<sup>79</sup> President Makarios and Vice-President Kutchuk appeared together on ceremonial occasions, and General Grivas, leader of the underground movement that supported enosis, left for Greece.<sup>80</sup>

More important, the constitutional machinery for keeping the peace between Greek and Turkish Cypriots did just that. The operation of the Supreme Constitutional Court is a good example and also offers an interesting illustration of some of the difficulties faced on the Island after more than seventy years of British rule. As we have seen, the Constitution calls for three judges on the Court—one Greek Cypriot, one Turkish Cypriot, and a neutral president. The Constitution also provides that the neutral judge must be chosen jointly by the Republic's president and vice-president. Archbishop Makarios and Dr. Kutchuk agreed on Professor Ernest Forsthoff, a leading German scholar in constitutional and administrative law from the University of Heidelberg. Professor Forsthoff faced a series of difficult problems when he arrived in Cyprus in September 1960. He was trained in the civil law, and some of the concepts in the Constitution are more akin to civil-law traditions than those of the common law. But most of the lawyers on the Island had practiced solely in the English courts of colonial Cyprus and were used to common-law traditions and methods. Furthermore, substantial bodies of law had developed in each of the communities that were quite different both from each other and, in many respects, from either the common or the civil law.<sup>81</sup>

Among the first issues the Court had to face was whether to allow dissenting opinions, as is the common-law tradition, or not, as is the civil-law practice. Professor Forsthoff urged the Greek and Turkish judges to follow the civil-law custom on the theory that, entirely apart from the merits of the issue as an abstract matter, dissenting opinions would weaken the Court's ability to lessen friction between the two communities. In disputes involving both Turkish and Greek parties the community whose party lost would inevitably expect an impassioned dissent by the judge from that community, and this could only make the Court's

79. See *Cyprus*, CMND. 1093, at 211, 221 (1960).

80. He returned in 1964, during the current crisis, to take command of Greek "volunteer" forces and the Greek Cypriot national guard. See *N.Y. Times*, March 27, 1966, p. 13, col. 1.

81. See note 61 *supra*. The history in this and the following paragraph was recounted to me by Dr. Edgar Kull of the University of Heidelberg, who was the first legal assistant to Professor Forsthoff during his term as president of the Supreme Constitutional Court.

job more difficult. This reasoning prevailed, and in over one hundred cases the Court filed unanimous opinions. Many of those suits involved significant issues between Greeks and Turks, and for a time the Court acted as an important moderating influence.<sup>82</sup>

The first overt sign that all was not in perfect harmony on the Island occurred in the spring of 1961, when the Turkish Cypriots expressed increasing concern that the public service was not being filled in a 70:30 ratio as required by the Constitution (art. 123(1)\*).<sup>83</sup> In retaliation, the Turkish members of the House of Representatives refused to support an extension of the Island's tax laws. The President, however, ordered taxes to be collected under the pre-1960 income tax law, on the ground that the right to a separate vote on tax matters did not include "the right to use this privilege over other unconnected demands."<sup>84</sup> In February 1963 the Supreme Constitutional Court ruled that the pre-1960 law was no longer in force and that there was, therefore, no machinery for the assessment or collection of taxes.<sup>85</sup>

Later that same year the Council of Ministers voted to establish an army in which soldiers from the two communities would be integrated.<sup>86</sup> But Dr. Kutchuk vetoed this decision, as was his right under article 49(d) of the Constitution, on the ground that an integrated army would be unable to function. As a result, Archbishop Makarios announced that he would not establish an army at all.<sup>87</sup>

In the wake of these controversies the Archbishop gave the first indication that

82. The Court's independence during this period is illustrated by its decision concerning a supplementary appropriations statute to provide funds for the two Communal Chambers. See Vice-President of the Republic, and the House of Representatives, Supreme Constitutional Court, Dec. 14, 1961, 2 Reports of the Supreme Constitutional Court of Cyprus 144 [hereinafter cited as R.S.C.C.]. Article 88 of the Constitution requires a minimum allocation to the Chambers of £2 million, in a ratio of 4:1, but authorizes increases above that amount, allocated "in such manner as the House of Representatives may decide." The Vice-President referred the statute to the Court under article 138, charging that it unconstitutionally discriminated against the Turkish Cypriot community. The House denied the allegation of unconstitutional discrimination, presumably on the basis that article 88 grants to the House exclusive jurisdiction over the matter. Furthermore, the House claimed that the issue was improperly before the Court since article 138 concerns the budget only, and the statute was not part of the budget. (The Vice-President could have avoided this problem by bringing his action under article 137, which applies to any law or decision of the House that is allegedly discriminatory.) The Court agreed that the statute was not part of the budget, but nonetheless went on to hold the statute unconstitutional on the ground not of discrimination but of invalid procedure in adoption. In introducing the legislation to the House, the Council of Ministers had included an allocation provision, and the Court held that this violated the implied requirement in article 88(2) that the House consider the issue of allocation as an independent body. On the merits there is little to be said in favor of such a strict interpretation of the Constitution's separation of powers. The Court itself stated that although the Council could not incorporate an allocation in the bill it introduced in the House, it could recommend an allocation "in appropriate terms." *Id.* at 148. Such a distinction seems wholly unnecessary in terms of the practical operations of government. But the decision is a perfect example of the way the Court sought, as a completely independent body, to resolve intercommunal problems.

83. The Turkish Cypriot position in this controversy is discussed at length in a pamphlet, *The Turkish Case, 70:30, and the Greek Tactics*, published by the Turkish Communal Chamber in 1963. Archbishop Makarios presented the opposing arguments in Makarios, *Proposals To Amend the Cyprus Constitution*, International Relations (Athens), April 1964, pp. 8, 20-23.

84. The Observer (London), April 2, 1961, p. 4, col. 1. Article 188(2) provides that "any law imposing duties or taxes may continue to be in force until the 31st day of December, 1960."

85. Vasos Constantinou Kyriakides, and the Republic of Cyprus, Supreme Constitutional Court, Feb. 8, 1963, 4 R.S.C.C. 109.

86. The Constitution provides that the 2,000-man army shall be made up 60% of Greek Cypriots and 40% of Turkish Cypriots, but it does not specify whether the communal contingents are to be integrated. See art. 129(1)\*.

87. See The Times (London), Oct. 23, 1961, p. 9, col. 5.

he would not acquiesce in Turkish Cypriot vetoes over the decisions of the majority, even though they were in accordance with the provisions of the Constitution. In January 1962 he charged that the 1960 Agreements conferred rights on the Turkish Cypriots "beyond what is just" to protect them, and "since the Turkish minority abuses these constitutional rights and creates obstacles to the smooth functioning of the state, I am obliged to disregard, or seek revision of, those provisions which obstruct the state machinery and which, if abused, endanger the very existence of the state."<sup>88</sup>

At issue were three key provisions: articles 123(1)\* and 78(2)\*, which require the 70:30 ratio in the public service and separate majorities in the House of Representatives for all tax bills, and article 173\*, which requires the establishment of separate Turkish municipalities in the five largest towns. It was the third issue, more than any other, that proved the major problem.

The Archbishop and the Greek Cypriot majority in the House refused from the outset to establish separate Turkish Cypriot municipalities in these towns, presumably on the ground that this would give the Turkish Cypriots too much authority on the local level. The issue came to a head at the beginning of 1963 when the Cypriot Council of Ministers invoked a pre-independence statute and declared that these towns were "improvement areas" to be governed by special boards established by the Council.<sup>89</sup> Under this arrangement Turkish Cypriots would have had no control over the administration of their own sectors in these towns.

In response, the Turkish Communal Chamber both adopted its own "Turkish Municipal Law" and applied to the Supreme Constitutional Court for a ruling that the Council's order was void. On April 25, 1963, the Court upheld the Chamber's application on four separate bases. The fourth and strongest ground was that the Council's order violated the constitutional requirement that separate municipalities be established in the five towns.<sup>90</sup>

For the first time, the Greek Cypriot judge dissented. "[T]he true effect of Article 173.1 is that the Turkish inhabitants are entitled to 'separate' municipalities in the five largest towns, only if there are to exist at all in such towns municipalities, as an institution of local government."<sup>91</sup> The contention that one of the Constitution's basic articles could be circumvented by the simple device of failing to establish municipalities seems absurd in view of the significance the Turkish Cypriots attached to the provision. Nevertheless the dissent, after more than two years of unanimity, was obvious evidence of increasing differences between the two communities.

88. *Id.*, Jan. 5, 1962, p. 10, col. 5.

89. See *id.*, Jan. 3, 1963, p. 7, col. 3; *id.*, Jan. 1, 1963, p. 9, col. 5. The statute invoked was the Villages (Administration and Improvement) Law, THE STATUTE LAWS OF CYPRUS c. 243, § 4 (1959).

90. The Court's other grounds were: (1) The Council's order was not properly promulgated because the vice-president had refused to sign it, although he had no right to refuse under article 57 of the Constitution; (2) regulation of municipal administration was reserved to the House of Representatives under articles 78, 87, 89, and 173-77 of the Constitution; and (3) the pre-independence law was not intended to apply to towns. The Turkish Communal Chamber and the Council of Ministers, Supreme Constitutional Court, April 25, 1963, 5 R.S.C.C. 59, 74-77. The Court's opinion includes no reasoning to support its conclusion that an order of the Council is invalid if not promulgated by the vice-president, and it is by no means clear what action to force his signature would be appropriate. But the other grounds of the Court's opinion are separately as well as collectively persuasive.

91. 5 R.S.C.C. at 96.

On the same day, the Court ruled that the Turkish Communal Chamber's "Turkish Municipal Law" was also unconstitutional because the Chamber could act concerning municipalities only "after general legislation of the House of Representatives concerning the municipalities . . . has been made."<sup>92</sup> And the Turkish judge dissented in this case. He had become, like his Greek Cypriot counterpart, a public advocate for his community's position.

It has been alleged that Greek Cypriots brought political pressure to bear on Dr. Forsthoff in order to influence his decision.<sup>93</sup> Whether or not this is true, he resigned soon thereafter, and his successor was not appointed until December 10, 1963.<sup>94</sup> By that time, the die had been cast.

### B. *The Explosion*

Tension had been rapidly building up through the summer and fall of 1963. But if any single event can be said to have set the stage for violence, it was the Archbishop's announcement of December 5, 1963, to the Guarantor Powers that he proposed thirteen major revisions of the Constitution.<sup>95</sup> A few of these changes, such as authorizing the vice-president to act for the president in the event of

92. The House of Representatives, and the Turkish Communal Chamber, Supreme Constitutional Court, April 25, 1963, 5 R.S.C.C. 123, 128. A second ground for the Court's decision was that the "Turkish Municipal Law" was not published in the Cypriot Republic's Official Gazette, although the Court did not suggest how the Chamber might have forced such publication. *Id.* at 127. See also Dr. Fuat Celaledin, and the Council of Ministers, Supreme Constitutional Court, April 25, 1963, 5 R.S.C.C. 102, decided the same day, in which a divided Court held that no Turkish municipality had been validly established in Nicosia.

93. See DESMITH, *THE NEW COMMONWEALTH AND ITS CONSTITUTION* 294-95 (1964); *The Times* (London), Dec. 17, 1963, p. 10, col. 5. Dr. Edgar Kull, Professor Forsthoff's first legal assistant, wrote that Archbishop Makarios "continued to declare in public that he would not abide by the decision of the Supreme Constitutional Court [in the municipalities case]. This, together with tensions in the Court and . . . [a] libel on Dr. Heintze, who at that time was the assistant to Professor Forsthoff, caused the President finally to resign." Letter to the Author, Nov. 29, 1965.

94. The successor was Mr. Justice Jacobs, judge of the Supreme Court of New South Wales. *The Times* (London), Dec. 17, 1963, p. 10, col. 5.

95. The proposed revisions were as follows:

"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 deputise 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 and not as at present the President by the Greek Members of the House and the Vice-President by the Turkish Members of the House." See art. 72.

"4. The Vice-President of the House of Representatives should deputise 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(1)\*.

"7. The administration of Justice should be unified." This revision would affect a number of articles, some of which are basic.

"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 Defence Forces should be determined by a Law." See art. 130\*.

"10. The proportion of the participation of Greek and Turkish Cypriots in the composition of the Public Service and the Forces of the Republic should be modified in proportion to the ratio of the population of Greek and Turkish Cypriots." 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 be taken by simple majority." See art. 125.

"13. The Greek Communal Chamber should be abolished." See art. 86.

Makarios, *supra* note 83, at 8-25.



the latter's temporary absence or incapacity, would actually provide the Turkish Cypriots with more protection than before. But six revisions would repeal basic articles for which the Turks fought hard at Zurich and London—the vice-president's power to veto, the requirement of separate majorities in the House for passage of key legislation, separate municipalities, separate judicial systems, a limited security force, and thirty per cent of the public service. As must have been expected, the Turkish Government promptly rejected the proposals.<sup>96</sup> The Archbishop refused the rejection.<sup>97</sup> Within days, the fighting began.

As one commentator wrote, "A trivial incident sparked the outbreak, but the tinder was dry and plenty of fuel lay to hand." Two Greek Cypriot policemen, according to his report, "asked some Turkish Cypriots to produce their identity cards. The Turks refused; an argument followed, and a crowd began to gather. The policemen, finding themselves surrounded, drew their guns. Shots were fired, it seems, by both sides. Two Turks were killed and a policeman seriously injured."<sup>98</sup> The next day, fighting broke out all over Nicosia and quickly spread to other parts of the Island.

A Christmas Eve peace call by both Archbishop Makarios and Dr. Kutchuk failed to stop the bloodshed. A similar call by the British, Greek, and Turkish Governments was also unsuccessful. Turkish supersabre jets flew low over Nicosia, and rumors of an imminent Turkish invasion spread throughout the Island. Armed Greek and Turkish troops, on the Island by virtue of the Treaty of Alliance, soon became involved in the fighting. Cyprus had, within a matter of days, become the focus of an international crisis.

On Christmas Day, when it was apparent that violence was increasing throughout Cyprus, the three Guarantor Powers informed the Cypriot Government "of their readiness to assist, if invited to do so, in restoring peace and order by means of a joint peacemaking force under British command" and composed of British, Greek, and Turkish contingents already present on the Island under the Treaties of Establishment and Alliance.<sup>99</sup> In the British view, the Guarantor Powers would be acting as a "regional arrangement" established under the Treaty of Guarantee and authorized by chapter VIII of the United Nations Charter.<sup>100</sup> The Government of Cyprus accepted the proposal, and the force was

96. See *The Times* (London), Dec. 7, 1963, p. 7, col. 3. See also U.N. SECURITY COUNCIL OFF. REC. 18th year, 1085th meeting 8-9 (S/PV.1085) (1963).

97. See *The Times* (London), Dec. 24, 1963, p. 6, col. 6.

98. FOLEY, *LEGACY OF STRIFE: CYPRUS FROM REBELLION TO CIVIL WAR* 166, 168 (1964).

99. See U.N. Doc. No. S/5508, at 2 (1964).

100. See 688 H.C. DEB. (5th ser.) 530-31 (1964). Article 53 of chapter VIII provides that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council." During the House of Commons debates Minister Butler was pressed to "give an assurance that the proposed force will not be sent till the authorization by the Security Council is received." The Minister refused to respond, claiming that "this question is purely hypothetical." *Id.* at 815-17.

A year before, United States representatives had contended that the quarantine of Cuba was not "enforcement action" by a regional arrangement within the meaning of article 53. See Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515, 520-22 (1963). They also maintained that even if the quarantine had been "enforcement action," it would not have been precluded by article 53 since the Security Council "authorization" required by that provision need be neither "prior" nor "express." See *ibid.* Minister Butler may have been concerned that a direct response to the question referred to above would have cast doubt on the United States legal position in the Cuban crisis.

The analysis in part IV(C) *infra* concludes that regional arrangements are a useful analogy in

immediately established. A few days later the British announced a conference of the Guarantor Powers and representatives of the two communities on the Island "to help in a solution of the problems of Cyprus." Meanwhile, the four Governments had jointly requested the United Nations Secretary-General to appoint a representative "to observe the progress of the peace-making operation."<sup>101</sup>

At the London Conference it soon became clear that the differences between the Island's two communities were too deep for easy resolution. Some peacekeeping force would have to remain on Cyprus for a substantial period. The British Government, obviously concerned about carrying so much of the burden itself, developed a plan with the United States for an enlarged peacekeeping force drawn from NATO nations.<sup>102</sup> It was never wholly clear whether and to what extent this force would be responsible to the Cypriot Government, to the Guarantor Powers, to the other countries supplying contingents, or to NATO. Although Greece and Turkey supported the plan, it appeared from the outset as an Anglo-American scheme and has been criticized on precisely this ground.<sup>103</sup> Few other European governments wished to become involved, and, at least in retrospect, there would seem to have been little chance of acceptance by Archbishop Makarios. He wanted to take his case to the United Nations where, as soon became clear, he hoped to gain the organization's condemnation of the 1960 Accords. To this end he carefully sought to maintain his position as leader of a nonaligned nation. And he gained strong support from the Soviet Union, which repeatedly warned the NATO powers to stay out of the internal affairs of Cyprus.<sup>104</sup> An attempt was made to make the proposal more palatable to the Cypriot Government by stipulating that the Guarantor Powers would not "exercise their rights of unilateral intervention under article IV of the Treaty of Guarantee" for a three-month period while a solution was being negotiated with the assistance of a mutually acceptable mediator.<sup>105</sup> In spite of this sweetener, the Archbishop lost no time in rejecting the plan. He concurred in the stationing of an international force on the Island, but insisted that it be under the Security Council, that it not include Greek or Turkish troops, and that its mandate include protection of the territorial integrity of Cyprus and assistance in restoring normal conditions.<sup>106</sup>

In these circumstances Great Britain had two alternatives. The first was to sup-

examining the Treaty of Guarantee, but that the mechanism established by the Treaty is not within the compass of chapter VIII.

101. U. N. Doc. No. S/5508, at 3 (1964).

102. Secretary of State for Commonwealth Relations and for the Colonies Duncan Sandys offered two reasons for inviting "certain other members of the NATO Alliance to provide the necessary troops, though not, of course, as a NATO operation or under NATO control. . . . The first was that these countries had forces close at hand and immediately available. The second was that all NATO members had a direct interest in stopping an inter-communal conflict in Cyprus which, if allowed to develop, could all too easily lead to a clash between two NATO allies." 689 H.C. DEB. (5th ser.) 841 (1964). The British representative to the Security Council did not, however, even mention NATO in describing the plan to the Council, but referred instead to "an enlarged peacekeeping force drawn from countries friendly to Cyprus." See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1095th meeting 10 (S/PV.1095) (1964).

103. See Windsor, NATO and the Cyprus Crisis, Adelphi Paper No. 14, November 1964, p. 13.

104. See, e.g., Letter From the U.N. Representative of the U.S.S.R. to the President of the Security Council, Feb. 8, 1964, in U.N. Doc. No. S/5534 (1964).

105. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1095th meeting 10 (S/PV.1095) (1964).

106. *Id.* at 10-11.

port a United Nations peacekeeping force in Cyprus. Such forces generally have required substantial time to organize. Yet it was reasonably foreseeable that if immediate action were not taken, thousands of Turkish Cypriots would leave their homes, either voluntarily or under threat of violence, and gather in armed camps; that virtually all Turkish Cypriot officials would leave their posts; and that whatever chance there was for a rapid settlement—one that might have involved minor revisions of the 1960 Accords—would be gone forever. Furthermore, establishment of past United Nations forces has occasioned difficult and complex problems, as witness the United Nations operation in the Congo, which was still going on in January 1964. It should have been evident at the time that such problems would be particularly acute for a United Nations force on Cyprus, since it would be stationed between two sides engaged in a full-scale civil war.

The availability of a second alternative depended on an interpretation of article IV of the Treaty of Guarantee, which authorizes each Guarantor Power, after consultations with the others, "to take action with the sole aim of reestablishing the state of affairs created by the present Treaty." Article IV is analyzed in some detail below.<sup>107</sup> That analysis supports the view that "action" under article IV may, in certain circumstances, properly include the use of force. The circumstances of January 1964 may have been appropriate for such action.<sup>108</sup> Greece would not have cooperated with Great Britain in a military operation on the Island, but Turkey clearly would have. The British, however, chose to condition any military action on the consent of the Cypriot Government. Yet article IV was intended to operate in just these situations when the Cypriot Government did not carry out its obligations under the 1960 Accords; in such cases it could hardly have been expected to consent to the use of force by the Guarantor Powers.

If Great Britain and Turkey had moved promptly and decisively with their forces on the Island, reinforced by troops from other bases, they conceivably could have compelled a quick settlement of the issues in dispute before the situation further deteriorated. There would have been little danger of a military response by Greece in contrast to the probable Greek reaction to unilateral Turkish intervention, and no responsible charge could have been raised that Great Britain was motivated by other than her sense of obligation as a Guarantor Power. On the other hand, intervention would have occasioned a good deal of anticolonial verbal abuse against a country that is particularly sensitive on that subject. More serious, strong Soviet opposition to such a move would have been certain. It might even have been denounced by the United States, and the British will not soon forget the aftermath of their Suez intervention. Furthermore, the last years of Great Britain's rule on the Island had been bloody, as we have seen, and she probably had little desire to go another round. These factors, a difficult internal political situation in Great Britain; uncertainty whether the problem could be resolved by

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107. See text accompanying notes 207-58 *infra*.

108. The legal basis for the action would have been similar to the basis for the 1962 quarantine of Cuba under the 1947 Rio Treaty. See Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, T.I.A.S. No. 1838, 21 U.N.T.S. 77. See also note 100 *supra*. The Rio Treaty is one of a series of agreements that together make up a regional arrangement, authorized by chapter VIII of the Charter. And the Treaty of Guarantee can be analogized to such an arrangement. There are, however, significant differences in the two situations, see text accompanying notes 238-41 *infra*.

two Guarantor Powers using force, and some hope that the United Nations would achieve a settlement no doubt all led to the British choice of the first alternative.<sup>109</sup>

Although speculation concerning the wisdom of this choice may be questionable, it is legitimate to ask why the decision was so long delayed. Almost two months passed between the outbreak of violence on the Island and the British appeal to the Security Council. And even then the British seemed to have turned to the Council in large part because they knew that Cyprus was about to do so.<sup>110</sup> After intensive rounds of diplomatic activity, both in and out of NATO, recourse to the United Nations appears to have been accepted by the British, and perhaps by the United States, as a last resort. Other remedies were exhausted, not as a prerequisite to United Nations jurisdiction, but because of a seeming desire to adopt any feasible alternative to United Nations involvement. The basis for this course is questionable. Certainly, Britain and the United States would have preferred to have resolved the matter within the familial confines of NATO. But the chances of such resolution were not great at any point after the conflict began, and the appearance of avoiding the United Nations at all costs seemed to belie British and American faith in the organization.

### C. *Creation of the United Nations Force in Cyprus*

On February 15, 1964, the British representative to the Security Council requested "an early meeting of the Security Council . . . to take appropriate steps to ensure that the dangerous situation which now prevails can be resolved with a full regard to the rights and responsibilities of both of the Cypriot communities, of the Government of Cyprus and of the Governments party to the Treaty of Guarantee."<sup>111</sup> The Security Council has been engaged in this undertaking ever since.

The debates in the Council reveal a depth of hatred between opposing parties rarely on display in that chamber of diplomacy.<sup>112</sup> Almost every Council meeting

109. One further issue should be raised—whether United Nations involvement in the crisis had preempted Guarantor Power authority to decide to use force under the Treaty of Guarantee. See text accompanying notes 243–51 *infra*. A Security Council meeting had been held on December 27, 1963, to consider Cypriot charges that Turkey had committed "acts of (a) aggression, (b) intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity . . .," but no specific proposals were made by any Council member. See Letter From the Permanent Representative of Cyprus to the President of the Security Council, Dec. 26, 1963, in U.N. Doc. No. S/5488 (1963); U.N. SECURITY COUNCIL OFF. REC. 18th year, 1085th meeting (S/PV.1085) (1963). Furthermore, in January 1964, at the request of the British, Cypriot, Greek, and Turkish Governments, the Secretary-General sent a personal representative to Cyprus "to observe the progress of the peace-making operation" and dispatched his deputy *chef de cabinet* to London to consult with officials of the four Governments on the role of this representative. See Secretary-General, *Report to the Security Council Concerning the Situation in Cyprus*, U.N. Doc. No. S/5516, at 2 (1964). See also the Soviet objection to these actions on the ground that "the question of the situation in Cyprus is now before the Security Council, and it is the Security Council which under the Charter is responsible for taking practical measures to maintain international peace and security." U.N. Doc. No. S/5526 (1964).

110. See Windsor, *op. cit. supra* note 103, at 13.

111. U.N. Doc. No. S/5543, at 2 (1964).

112. An exchange at an August 1964 session sums up earlier polemics. The Cypriot representative, Mr. Rossides, referred to statements by Mr. Eralp, the Turkish representative, as "use of the big lie"; Mr. Eralp responded that "the very fact that Mr. Rossides chooses to adopt the terminology of nazism is indicative of the mentality of his Government." U.N. SECURITY COUNCIL OFF. REC. 19th year, 1143d meeting 27, 39 (S/PV.1143) (1964). And the Soviet representative consistently made such charges as "the dangerous actions of the NATO Powers in Cyprus are aimed with cynical frank-

concerning the crisis began with a procedural wrangle that sometimes took several hours to resolve.<sup>113</sup> These controversies must have been as irritating to observers as they are to readers. At the same time, they may have been necessary preludes to substantive action. One has the feeling when reading the debates that mistrust and bitterness were so deep that no resolution of substantive problems was possible without some initial cooling-off period during which emotions could be controlled through discussion of seemingly trivial matters. Although issues were often formulated in legal terms and proponents of opposing positions seemed to be contending before a judicial tribunal, there was no agreement among these proponents on the legal standards the tribunal was to apply or even the ends to be served. All relied on norms embodied in the Charter. Yet their views concerning the appropriate application of those norms were often antithetical. In international as in domestic affairs, "general propositions do not decide concrete cases."

In these circumstances some mechanism was necessary to maintain discussion while an atmosphere for possible compromise slowly developed. In the main, this mechanism was conflict concerning the Council's *modus operandi*. And it worked remarkably well.

After many days of negotiation five of the six nonpermanent Council members (Bolivia, Brazil, The Ivory Coast, Morocco, and Norway) finally worked out a resolution acceptable to all sides, and it was adopted on March 4.<sup>114</sup> The resolution noted that "the present situation with regard to Cyprus is likely to threaten international peace and security." It called upon all members "to refrain from any action or threat of action likely to worsen the situation in the sovereign Republic of Cyprus" and upon "the communities in Cyprus and their leaders to act with the utmost restraint." It also recommended the creation, "with the consent of the Government of Cyprus, of a United Nations peacekeeping force in Cyprus." The force was "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." Its composition and size were to be established by the Secretary-General in consultation with the Guarantor Powers, and it was to be stationed on the Island for three months. All its costs were to be met by the governments providing troops and by the Government of Cyprus, except that the Secretary-General was authorized to accept voluntary contributions toward its expenses. Finally, the resolution recommended that the Secretary-General designate, in agreement with Cyprus and the Guarantor Powers, a mediator "for the purpose of promoting a peaceful solution and an agreed settlement of the problem confronting Cyprus."

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ness at nullifying the independence of the Republic of Cyprus, tying Cyprus to NATO and converting it into one of their military bridgeheads." U.N. SECURITY COUNCIL OFF. REC. 19th year, 1096th meeting 4 (S/PV.1096) (1964).

113. Controversies concerning the order of speakers were typical of these disputes. In spite of a clear procedural rule in the Council that "the President shall call upon representatives in the order in which they signify their desire to speak," Provisional Rule 27 of the Security Council, the issue was brought to a vote at least three times between February and August 1964 in debates on the Cyprus crisis alone. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1142d meeting 6 (S/PV.1142) (1964). At one point, after lengthy debate concerning minor drafting questions in a proposed resolution, Ambassador Stevenson exploded, "[T]ime is wasting while we talk. We have no pride of authorship . . . What is important is that we act swiftly and not fiddle or quibble while Cyprus burns." U.N. SECURITY COUNCIL OFF. REC. 19th year, 1143d meeting 19 (S/PV.1143) (1964).

114. U.N. Doc. No. 186 S/5575 (1964).

The terms of the resolution leave open whether Charter chapter VI or VII was the basis for the Council's involvement.<sup>115</sup> No doubt this was done consciously, and considered ambiguity concerning the source of the Council's authority seems both proper and wise. Certainly, United Nations organs are under no obligation to state the grants of power under which they operate. This procedure avoided dispute concerning the applicability of chapter VII, but left open the possibility of later "enforcement action" by the Council. Furthermore, it put the parties on notice that stronger measures might be used if they failed to accede to the Council's mandate.<sup>116</sup>

This was the first time that all five permanent members of the Council unanimously voted to set up a peacekeeping force. France and the Soviet Union abstained in a separate vote on the operative paragraph establishing the force, primarily because of the broad grant of power to the Secretary-General.<sup>117</sup> But both joined in supporting the resolution as a whole.

The United Nations Force in Cyprus (UNFICYP) did not become operational until March 27. The delay was in large part due to the difficulty of persuading nations to contribute troops. In the end, but only after substantial efforts by the Secretary-General, contingents from nine countries joined in creating the Force.<sup>118</sup>

A Status of Forces Agreement between the Secretary-General and the Cypriot Government, patterned on earlier agreements concerning the United Nations military forces in the Middle East (UNEF) and in the Congo (ONUC), was quickly negotiated.<sup>119</sup> And, following a precedent in the Congo operation, the Secretary-General appointed a mediator, Sakari S. Tuomioja, in accordance with the terms of the resolution.<sup>120</sup> Unlike prior peacekeeping efforts, however, the Secretary-General prepared a detailed *aide-mémoire* concerning the use of armed force by UNFICYP troops.<sup>121</sup> This document explicitly recognized an extremely important UNFICYP power—to interpose its troops between forces of the two communities in the event of a threat of armed conflict and forcibly to resist attempts to compel United Nations withdrawal. As a result, fighting was avoided in many instances because the contending parties did not want to risk shooting

115. See BOWETT, UNITED NATIONS FORCES 553 (1964). The resolution's preambular statement that the situation on the Island was "likely to threaten international peace and security" suggests that the Council was acting under chapter VI ("Pacific Settlement of Disputes"), rather than chapter VII ("Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression").

116. Short of "enforcement action," the consent of the Cypriot Government was requisite to collective measures under chapter VII as well as chapter VI; the resolution specifically conditioned creation of the force on that consent.

117. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1102d meeting 5 (S/PV.1102) (1964).

118. Military forces came from Canada, Denmark, Finland, Ireland, Sweden, and the United Kingdom. Police forces came from Australia, Austria, Denmark, New Zealand, and Sweden. Austria also provided a field hospital. See Secretary-General, *Report on the United Nations Operation in Cyprus (for the period March 11 to June 10, 1965)*, U.N. Doc. No. S/6426, at 4 (1965).

119. Compare Agreement Between the U.N. Secretary-General and Cyprus on Status of Forces, March 31, 1964, U.N. Doc. No. S/5634 (1964), with Agreement Between the U.N. and the Congo on Status of Forces, Nov. 27, 1961, 414 U.N.T.S. 229 (1961), and Agreement Between the U.N. and Egypt on Status of Forces, Feb. 8, 1957, 260 U.N.T.S. 61 (1957). The administrative problems of UNEF, ONUC, and UNFICYP are analyzed and compared in Nathanson, *Constitutional Crisis at the United Nations: The Price of Peace Keeping, II*, 33 U. CHI. L. REV. 249 (1966).

120. See U.N. Doc. No. S/5625 (1964). Mr. Tuomioja was the Finnish Ambassador to Sweden at the time. The Secretary-General's first choice, his deputy *chef de cabinet*, Mr. Rolz-Bennett, was rejected by the Turkish Government. See U.N. Doc. No. S/5593/Add. 1 (1964).

121. See U.N. Doc. No. S/5653, at 4-6 (1964).

United Nations forces. At the same time, however, the *aide-mémoire* made it clear that United Nations contingents could not move into an area once battle had begun between Greek and Turkish Cypriots unless both sides agreed, and thus UNFICYP was powerless to intervene during a number of clashes in the first months of the crisis. Furthermore, the Force had no power to arrest or disarm Cypriots except on the Force's premises.<sup>122</sup>

Financing the United Nations Force in Cyprus was, and remains, a difficult problem. It is clear that neither the Soviet Union nor France would have supported the March 4 resolution if the Force was to have been financed from the regular United Nations budget. The Force was established at the height of the article 19 controversy in which both countries refused to accept an International Court of Justice opinion that the UNEF and UNOC costs were legitimate expenses of the United Nations.<sup>123</sup> They were not likely to reverse this position in regard to UNFICYP. In fact both countries have refused to contribute anything to its costs on the ground that financing the Force is the sole responsibility of those nations that contribute contingents. In a 1964 report to the Security Council, the Secretary-General suggested that if sufficient contributions were not forthcoming he would "have no choice but to consider any expenses exceeding the total of the voluntary contributions received as a legitimate charge against United Nations revenues from whatever source derived. The bills will have to be paid."<sup>124</sup> But the Soviet representative to the Council made it quite clear that his Government would not accept this procedure.<sup>125</sup> Given this resistance, the Secretary-General apparently felt compelled to withdraw from his position. Instead, the United States and the United Kingdom have borne the brunt of the financial burden through voluntary contributions.<sup>126</sup> This is a less than satisfactory situation to those who consider collective financing an important element in United Nations peacekeeping operations. But it is certainly preferable to abandonment of such operations because of the organization's unwillingness to enforce assessments. This is particularly true from the perspective of the United States and the United Kingdom, which have so much to gain from peace on the Island. In any event, there may be no practical alternative in light of the recent resolution of the article 19 dispute.<sup>127</sup>

122. See U.N. Doc. No. S/5634, Annex I, at 6 (1964).

123. See Certain Expenses of the United Nations, [1962] I.C.J. 151.

124. U.N. Doc. No. S/5950, at 67 (1964).

125. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1153d meeting 17 (S/PV.1153) (1964); *id.*, 1159th meeting 12 (S/PV.1159) (1964).

126. As of November 19, 1965, total payments and pledges to the UNFICYP Special Account equaled \$34.59 million from 40 nations. Of this amount the United States contributed \$14.60 million and the United Kingdom contributed \$7.17 million. Except for contributions of \$3.50 and \$3.25 million from the Federal Republic of Germany and Greece respectively, no other countries contributed more than \$1 million. The nine nations providing contingents to UNFICYP have also borne substantial shares of their costs without charging the organization, and the United States, the United Kingdom, and Italy have provided air services to the Force at their own expense. The Secretary-General estimated that the costs to the organization of maintaining the Force from its inception until December 26, 1965, would equal \$41.50 million. See Secretary-General, *Report on the Financial Situation in Respect of the United Nations Operation in Cyprus, as at Nov. 19, 1965*, U.N. Doc. No. S/6954 (1965).

127. See U.N. Monthly Chronicle, Aug.-Sept. 1965, pp. 17-24.

### D. Problems Facing the United Nations on the Island

UNFICYP reached its planned level of approximately 7,000 in May 1964; its strength was gradually reduced in succeeding months, and at the end of 1965 it included about 5,800 men.<sup>128</sup> From the outset the Force has been beset with difficulties. The primary problem, as stated by the Secretary-General, is that "the United Nations Force in Cyprus is in the most delicate position that any United Nations mission has ever experienced, for it is not only in the midst of a bitter civil war but it is dangerously interposed between the two sides of that war."<sup>129</sup> The Turkish Cypriots demand that UNFICYP regard the Cypriot Government and all its actions as illegal; that Government wants the force to become an arm of the Cypriot army in crushing all Turkish Cypriot resistance.<sup>130</sup> A delicate balance between the two positions must be maintained. And with remarkable consistency, it has been. Since August 1964, there has been a relative, if uneasy, calm on the Island.<sup>131</sup> In large measure it has been due to the presence of UNFICYP.

United Nations representatives have also sought to mediate between the two communities in an effort to restore at least a semblance of normality to Cypriot economic and political life. They have worked, for example, to develop *ad hoc* measures to meet the practical problems of postal service and the like. But they have been unable to resolve many of the most serious problems on the Island that have resulted from the crisis.<sup>132</sup> Perhaps most critical, about 20,000 Turkish Cypriots left, or were forced from, their homes soon after the crisis began. Turkish Cypriot leaders claim that these displaced persons would be subject to further attacks if they returned to their homes.<sup>133</sup> The Cypriot Government alleges that these reports are unfounded and charges Turkey with encouraging the refugees to remain in armed camps, protected by Turkish Cypriot forces, to preserve the position that partition or federation are the only possible solutions to the crisis.<sup>134</sup>

128. See *id.*, June 1964, pp. 19-20; Secretary-General, *Report on the United Nations Operation in Cyprus (for the period June 11 to Dec. 8, 1965)*, U.N. Doc. No. S/7001, at 4-5 (1965).

The Force was extended by the Security Council on six occasions in 1964 and 1965. See Resolution 192 of June 20, 1964, U.N. Doc. No. S/5778; Resolution 194 of Sept. 25, 1964, U.N. Doc. No. S/5987; Resolution 198 of Dec. 18, 1964, U.N. Doc. No. S/6121; Resolution 201 of March 19, 1965, U.N. Doc. No. S/RES/201; Resolution 206 of June 15, 1965, U.N. Doc. No. S/RES/206; Resolution 219 of Dec. 17, 1965, U.N. Doc. No. S/RES/219. In March 1966 the Security Council extended the Force's term for another three months. See N.Y. Times, March 17, 1966, p. 14, col. 1.

129. U.N. Doc. No. S/5950, at 63 (1964).

130. See *id.* at 62-63.

131. As discussed below, Greek Cypriots attacked several Turkish villages on the northwest coast of Cyprus in August 1964, and the Turkish air force immediately responded by bombing the Island on two successive days. Since that time there have been sporadic incidents of fighting, but they have been quickly checked by the United Nations forces. See, e.g., Secretary-General, *Report on the United Nations Operation in Cyprus (for the period June 11 to Dec. 8, 1965)*, U.N. Doc. No. S/7001, at 15-23 (1965).

132. Both sides, for example, have imported substantial quantities of arms throughout much of the crisis. See, e.g., Secretary-General, *Report on the United Nations Operation in Cyprus*, U.N. Doc. No. S/5950, at 13-15 (1964). And reportedly about 30,000 Greek Cypriots were under arms at the end of 1965, as compared with about 12,000 Turkish Cypriot troops. See N.Y. Times, Nov. 23, 1965, p. 20, col. 5. Furthermore, Turkey has alleged that 15,000 Greek forces are on the Island in violation of the Treaty of Alliance. See U.N. GEN. ASS. PROV. REC. 20th Sess., 1st Comm. 153 (A/C.I/PV.1412) (1965). The Cypriot representative has "admitted that there are Greek troops in Cyprus beyond those which are provided for under the so-called 'treaty of alliance.'" *Id.* at 137.

133. See, e.g., U.N. SECURITY COUNCIL PROV. REC. 19th year, 1235th meeting 37-57 (S/PV.1235) (1965) (statement by Mr. Rauf Denktash, president of the Turkish Communal Chamber).

134. See, e.g., Public Information Office, Republic of Cyprus, *The Turkish Cypriot Refugees' Plight: Human Misery Used To Further Political Aims*, in Cyprus Bull., Oct. 16, 1965, p. 4.



Wherever the truth lies, and there may be some on both sides, the Cypriot Government unquestionably maintained a virtual economic blockade against these camps during much of the crisis. Although it periodically lifted certain of its restrictions, others soon took their place. As the Secretary-General reported to the Security Council in September 1964, these actions, "which in some instances have been so severe as to amount to veritable siege, indicate that the Government of Cyprus seeks to force a potential solution by economic pressure as a substitute for military action."<sup>135</sup>

Throughout 1964 and 1965 neither community allowed complete freedom of movement to the members of the other in the areas under its control, in spite of the best efforts of United Nations representatives.<sup>136</sup> Furthermore, the carefully conceived constitutional balance between Greek and Turkish Cypriot officials in the government collapsed when most Turkish Cypriot officials left, or were forced to leave, their posts.<sup>137</sup> At the end of 1965, few had returned. None of the fifteen minority members of the House of Representatives, for example, had participated in the work of the House since the outbreak of the crisis.<sup>138</sup>

In these circumstances, the Cypriot Government adopted a number of emergency measures, allegedly to meet the practical requirements of running the Republic during the crisis. In practical effect, these measures have carried out, purportedly on a temporary basis, the constitutional revisions proposed by Archbishop Makarios.<sup>139</sup> A 1964 statute, for example, merged the Supreme Constitutional Court and the High Court of Justice into a new Supreme Court of Justice for the period of the crisis.<sup>140</sup> The new court consists of the three Greek Cypriot judges and the two Turkish Cypriot judges from the two previous courts, the latter sitting "subject, however, to certain reservations of principle."<sup>141</sup> Dr. Kutchuk, who continues to regard himself as vice-president, although he has not

135. See U.N. Doc. No. S/5950, at 63-64 (1964). These economic restrictions were substantially eased, but by no means eliminated, during 1965. See Secretary-General, *Report on the United Nations Operation in Cyprus (for the period June 11 to Dec. 8, 1965)*, U.N. Doc. No. S/7001, at 32-33 (1965).

136. See, e.g., Secretary-General, *Report on the United Nations Operation in Cyprus (for the period June 11 to Dec. 8, 1965)*, U.N. Doc. No. S/7001, at 28-31 (1965).

137. See, e.g., Secretary-General, *Report on the United Nations Operation in Cyprus*, U.N. Doc. No. S/5950, at 30-31 (1964).

138. In July 1965 the Turkish Cypriot Representatives requested an opportunity to participate in House proceedings concerning certain proposed legislation, but the president of the House refused to agree to the request except on several conditions that were unacceptable to the Turkish Cypriots. See text accompanying notes 260-66 *infra*.

139. See Letter From Andreas Frangos, Counsellor, Embassy of Cyprus, Washington, to the Author, Jan. 7, 1966: These "amendments to the Constitution . . . have now been effected either by law passed by the House of Representatives or de facto. . . ."

"[They] must be considered as temporary measures to enable the Government of the country to function properly until a new Constitution is drafted and approved by the people of the country as a whole."

140. See Secretary-General, *Report on the United Nations Operation in Cyprus (for the period Sept. 10 to Dec. 12, 1964)*, U.N. Doc. No. S/6102, at 36-37 (1964). The jurisdiction of the other courts on the Island has also been temporarily revised, and "they now have jurisdiction over all citizens of the republic irrespective of their ethnic origin." Letter From Andreas Frangos, Counsellor, Embassy of Cyprus, Washington, to the Author, Nov. 30, 1965. Mr. Frangos also wrote that "all Turkish Cypriot judges are cooperating." Letter From Andreas Frangos, Counsellor, Embassy of Cyprus, Washington, to the Author, Jan. 7, 1966.

141. Secretary-General, *Report on the United Nations Operation in Cyprus (for the period Sept. 10 to Dec. 12, 1964)*, U.N. Doc. No. S/6102, at 37 (1964).

participated in the governmental affairs since the beginning of the crisis, strongly objected to this measure as a violation of the Constitution,<sup>142</sup> but apparently his protest was without effect. In this and similar problems the United Nations has been a forum in which each side can publicize its wrath at the actions of the other, but the organization has had little success in dealing with the underlying issues.

Although the United Nations presence on the Island has, therefore, acted to check recourse to armed force, it has only palliated some symptoms of the crisis and reached none of its basic causes. The problem is not, of course, unique to this crisis. In fact it seems endemic to the organization's peacekeeping efforts. The use of force has been contained in the Middle East, for example, but the roots of the dispute remain. On Cyprus UNFICYP has been an important moderating force and has used its good offices in numerous ways, such as bringing food to Turkish Cypriot refugees. But it has not been able to take effective measures even to reduce the means by which fighting may occur in the future. Without the power to disarm, to arrest, and to prohibit the importation of military equipment, it has been powerless to act in the ways action is needed. Yet it is clear that the Soviet Union opposes and would veto any expansion of the Force's mandate to give it the necessary authority.<sup>143</sup>

These problems are, in a sense, compounded by the very reliance that each side has placed on the United Nations to prevent the renewal of violence on the Island. As the Secretary-General has written, this reliance "could be a factor in reducing the sense of urgency of the contending parties about seeking solutions for the underlying differences that caused the eruption of violence in the first place."<sup>144</sup>

Perhaps the most serious danger to peace on the Island first arose at the very outset of the crisis—the threat of Turkish invasion of Cyprus under article IV of the Treaty of Guarantee. Such an action would almost certainly have resulted in a Greek-Turkish war, and might well have exploded into a much larger conflict. The Turkish Foreign Minister was reported to have announced on December 25, 1965, that "Turkey decided to use her own right of unilateral intervention on the basis of article IV of the Treaty of Guarantee, but she confined her intervention to a single warning flight of five jet fighters of the Turkish air force . . ."<sup>145</sup> On March 12, 1964, Turkey threatened to invade Cyprus under article IV unless "all . . . assaults . . . against the Turkish Community in Cyprus . . . [are] stopped . . . [and] an immediate cease-fire . . . [is] established . . ."<sup>146</sup>

142. *Id.*, Annex VI, at 7-8.

143. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1153d meeting 18-20 (S/PV.1153) (1964).

144. Secretary-General, *Report on the United Nations Operation in Cyprus (for the period June 11 to Dec. 8, 1965)*, U.N. Doc. No. S/7001, at 53 (1965).

145. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 57-60 (S/PV.1098) (1964).

146. See Letter From the Permanent Representative of Turkey to the Secretary-General, March 13, 1964, in U.N. Doc. No. S/5996, Annex, at 2 (1964). Turkey also demanded that "all sieges around any Turkish locality be lifted forthwith anywhere, that the liberties of complete movement, communication and correspondence be immediately restored and that the Turkish hostages and the bodies of those murdered be returned to the Turkish community without delay." *Ibid.*

Turkey backed away from this threat under strong Council pressure.<sup>147</sup> But she refused to be restrained five months later when Greek Cypriot forces attacked several Turkish Cypriot villages on the northwest coast of the Island. On August 7 and 8, 1964, the Turkish air force bombed the attackers, causing substantial loss of life to many unarmed civilians as well as to Greek Cypriot forces.<sup>148</sup> A cease-fire was negotiated on August 9, but only after the most intense pressure both within and without the United Nations.<sup>149</sup>

In 1964 alone, the Security Council considered the Cyprus issue at twenty-seven separate meetings, and by the end of 1965 the Council had passed ten resolutions concerning the crisis.<sup>150</sup> It is impossible to relay the full flavor of the debates—the extent of the acrimony displayed, and the seemingly endless patience of the participants. A major issue, of course, was what was actually taking place on the Island. But in the welter of charges and countercharges between Turkey and the Turkish Cypriots on the one hand and Greece and the Greek Cypriots on the other, it is difficult to reach any conclusion except that both communities have displayed extraordinary brutality.<sup>151</sup>

Apart from exchanges concerning such matters, debate in the Council has largely centered on a series of interrelated legal issues involving the Cypriot Constitution, the Treaty of Alliance, and the Treaty of Guarantee. An important dimension is added to consideration of these issues if we first examine, at least briefly, the extent of United States leverage in the crisis. American pressure has probably been more important than any other factor outside the Security Council in preventing a full-scale war between Greece and Turkey. American mediation efforts to resolve the dispute are discussed in part V(A) below; the next section will, therefore, be limited to an analysis of the legal, economic, and political restraints available to the United States.

### E. *The United States Role*

The position of the United States has been a difficult one. Two NATO nations have been on the brink of war. During the crisis, both withdrew substantial portions of the forces they had assigned to NATO.<sup>152</sup> As the most powerful member of the Alliance, the United States has substantial responsibilities to help to keep the peace among its allies. And these responsibilities have been focused by repeated Soviet charges that the crisis would never have begun had the NATO bloc not involved itself in the domestic affairs of the sovereign Republic of Cyprus.

Beyond these concerns, the United States was inexorably concerned in the

147. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1103d meeting (S/PV.1103) (1964), and the resolution that resulted from this meeting, U.N. Doc. No. S/5603 (1964).

148. See N.Y. Times, Aug. 9, 1964, p. 1, col. 8; *id.* Aug. 10, 1964, p. 1, col. 8.

149. *Id.* Aug. 11, 1964, p. 1, col. 8.

150. Besides the March 4, 1964, resolution and the resolutions cited in note 128 *supra*, the Council adopted the following resolutions concerning the crisis in 1964 and 1965: Resolution 187 of March 13, 1964, U.N. Doc. No. S/5603; Resolution 193 of Aug. 9, 1964, U.N. Doc. No. S/5868; Resolution 207 of Aug. 10, 1965, U.N. Doc. No. S/RES/207. See also the consensus adopted by the Council on August 11, 1964, U.N. SECURITY COUNCIL OFF. REC. 19th Sess., 1143d meeting 62 (S/PV.1143) (1964).

151. Both Greeks and the Greek Cypriots and Turks and the Turkish Cypriots have produced masses of propaganda concerning the atrocities committed by the other side. See, e.g., Union of Journalists of Athens Daily Newspapers, Satan Storms Cyprus (1964); The Diary of a Cypriot-Turk 1963-1965 (anon.) (1965).

152. See N.Y. Times, Aug. 18, 1964, p. 1, col. 2.

affair because it had supplied both Turkey and Greece with virtually all their military equipment and had trained their armed forces.<sup>153</sup> American assistance to these countries dates back to the Truman Plan of 1947.<sup>154</sup> The United States Aid Agreement with Greece was signed in July of that year, and a similar agreement with Turkey was executed one month later.<sup>155</sup> Since that time, American aid has steadily developed the military power of both countries. Between 1948 and 1964, more than 2.3 billion dollars of United States military assistance was provided to Turkey and approximately 1.3 billion dollars to Greece.<sup>156</sup>

The primary aim of the United States in supplying this aid was apparent from the outset. In President Truman's words, it was "to support free people who are resisting attempted subjugation by armed minorities or by outside pressures."<sup>157</sup> More specifically, resistance to Communism was the principal motivating purpose of our assistance. In this undertaking Turkey has a substantial military advantage over Greece. The Turkish population is more than triple the size of the Greek population, and the Turkish armed forces, about 500,000 men, are about three times as large as the Greek forces.<sup>158</sup>

The United States obviously did not intend its military assistance to be used in an intramural NATO clash. Nor did it intend American aid to be used against Cyprus or in defense of Cyprus against Turkey.<sup>159</sup> On several occasions the United States is reported to have dissuaded Turkey from invading the Island only by the strongest diplomatic pressure,<sup>160</sup> and presumably the fact that the invasion force would have been equipped with American-made arms was strongly emphasized by the United States. But, as we have seen, Turkey refused to be checked in August 1964, and the planes and bombs used in the Turkish air attack on Cyprus were unquestionably American-made.<sup>161</sup> The Greek Government immediately protested<sup>162</sup> and demanded that American military aid to Turkey be withdrawn. Similar sentiments were voiced in the United States; several Congressmen declared that the Foreign Assistance Act of 1961 required suspension of all such aid.<sup>163</sup>

153. See *Hearings on the Foreign Assistance Act of 1964 Before the House Committee on Foreign Affairs*, 88th Cong., 2d Sess., pt. IV, at 501-02 (1964); *Hearings on the Foreign Assistance Act of 1963 Before the Senate Committee on Foreign Relations*, 88th Cong., 2d Sess. 638 (1963).

154. 61 Stat. 103 (1947).

155. Aid Agreement With Greece, June 20, 1947, T.I.A.S. No. 1625; Aid Agreement With Turkey, July 12, 1947, T.I.A.S. No. 1629.

156. See Agency for International Development and Department of Defense, *Proposed Mutual Defense and Development Programs FY 1966*, Summary Presentation to the Congress, March 1965, at 226.

157. Message of the President to the Congress, *Recommendations on Greece and Turkey*, 16 DEP'T STATE BULL. 534, 536 (1947).

158. See N.Y. Times, Aug. 10, 1964, p. 12, col. 8. The precise military figures are classified. See *Hearings on the Foreign Assistance Act of 1964 Before the House Committee on Foreign Affairs*, 88th Cong., 2d Sess., pt. IV, at 522-23 (1964).

159. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1153d meeting 7-9 (S/PV.1153) (1964) (statement by Ambassador Stevenson).

160. See Acheson, *Cyprus: The Anatomy of the Problem*, 46 CHICAGO B. RECORD 349, 351 (1965). In June 1964 President Johnson invited Prime Ministers İnönü and Papandreu to Washington, but their visits brought the crisis no closer to a solution. See N.Y. Times, June 25, 1964, p. 1, col. 2.

161. The Greek air force planes that flew over the Island soon after the second Turkish attack were also American-made. See N.Y. Times, Aug. 10, 1964, p. 1, col. 8.

162. See *id.*, Aug. 9, 1964, p. 1, col. 5.

163. See 110 CONG. REC. 18662-64, 20892-93, 20928-34 (1964). Senator Keating called for passage of a concurrent resolution that "the historic American principle of self-determination should

The extent of United States control over the military equipment provided to Turkey is not, however, completely clear. The 1947 Aid Agreement between the two countries states in its preamble that "the furnishing of such assistance will help to achieve the basic purposes of the Charter of the United Nations . . . and . . . strengthen the ties of friendship between the American and Turkish peoples."<sup>164</sup> This is the only indication of the reasons for which aid is granted. The agreement also provides that "the Government of Turkey will make use of the assistance furnished for the purposes for which it has been accorded," but includes no clue concerning those "purposes."<sup>165</sup> On the face of the agreement, therefore, there is nothing to indicate that military assistance furnished under it must be used against Communist aggression only, that it can be employed for defensive purposes only, or even that it cannot be used against an ally of the United States.

Whatever the "purposes" of the agreement may be, however, article VI provides that:

Any or all assistance authorized to be provided pursuant to this agreement will be withdrawn:

- (1) If requested by the Government of Turkey;
- (2) If the Security Council of the United Nations finds (with respect to which finding the United States waives the exercise of any veto) or the General Assembly of the United Nations finds that action taken or assistance furnished by the United Nations makes the continuance of assistance by the Government of the United States pursuant to this agreement unnecessary or undesirable; and
- (3) . . . [I]f the President of the United States determines that such withdrawal is in the interest of the United States.

This is a fascinating provision in several respects. Subparagraph (2), and an identical provision in the United States Aid Agreement With Greece,<sup>166</sup> apparently are the only stipulations in any bilateral agreements by which an international organization may terminate a United States obligation to another country.<sup>166</sup> The agreement was signed at a high point of United States hopes for the

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be applied to Cyprus with unconditional and internationally assured guarantees for the freedom and security of life, religion, and property for all minorities on Cyprus." S. Con. Res. 98, 88th Cong., 1st Sess.; see 110 CONG. REC. 22065-66 (1964). The fact that the Greek-American population in the United States outnumbers the Turkish-American population by a substantial margin no doubt had a significant effect on the congressional support for the Greek-Cypriot position.

164. Aid Agreement With Turkey, July 12, 1947, T.I.A.S. No. 1629. This Agreement is similar to the United States Aid Agreement With Greece, but substantially different from the economic cooperation agreements concluded with Turkey, Greece, and other countries in 1948 and thereafter. See, e.g., Economic Cooperation Agreement With Turkey, July 4, 1948, T.I.A.S. No. 1794, as amended, Jan. 31, 1950, T.I.A.S. No. 2037, Aug. 16, 1951, T.I.A.S. No. 2392, Dec. 30, 1952, T.I.A.S. No. 2742.

165. Article III of the Agreement of Co-operation With Turkey, March 5, 1959, T.I.A.S. No. 4191, does provide, however, that "the Government of Turkey undertakes to utilize such military and economic assistance as may be provided by the Government of the United States . . . for the purpose of effectively promoting the economic development of Turkey and preserving its national independence and integrity." And paragraph 2 of the Mutual Security Agreement With Turkey, Jan. 7, 1952, T.I.A.S. No. 2621, sets forth six general undertakings by the Turkish Government, including "appropriate steps to insure the effective utilization of the economic and military assistance provided by the United States."

An exchange of notes signed by United States and Greek representatives just before the Aid Agreement With Greece was concluded states: "Aid given for military purposes will be used in the restoration and maintenance of internal order." See Aid Agreement With Greece, June 20, 1947, T.I.A.S. No. 1625, at 27 (notes signed at Athens May 26, June 15, and June 18, 1947).

166. See Aid Agreement With Greece, June 20, 1947, art. 10, T.I.A.S. No. 1625. The language

United Nations, and article VI clearly reflects that fact. The 1945 vision of the organization's future was, of course, soon shattered. It is by no means clear, however, why no pressure arose in the Security Council at the time of the Turkish bombings for a resolution that would have triggered this provision.

It is also unclear from the wording of article VI whether the United States' right of "withdrawal" of "any or all assistance authorized to be provided pursuant to this agreement" includes withdrawal of assistance already provided to Turkey or whether the right operates prospectively only. The words "to be provided" could apply to any time subsequent to signing the agreement or solely to the period subsequent to the President's decision to withdraw. The reference to a Security Council or General Assembly finding that "continuance of assistance" is "unnecessary or undesirable" looks to the latter interpretation, and this makes substantially more sense than the former. It is difficult to imagine how the United States would withdraw assistance previously provided to Turkey. Such an effort obviously might require more than diplomatic representation, for the occasion would probably arise only if, as in August 1964, such representations had failed. Furthermore, it seems likely that in many cases a refusal to furnish repair and replacement parts would be almost as effective within a short period as the removal of equipment already provided.<sup>167</sup>

In any event, the relevant prohibitions in the Foreign Assistance Act of 1961 are prospective only. Section 506(b)(2) bars the grant to any country of "defense articles" costing more than three million dollars unless the President determines that the articles will be used by that country "for the maintenance of its own defensive strength, and the defensive strength of the free world."<sup>168</sup> And subparagraph (d) of that same section prohibits "further assistance" to any country "in substantial violation of . . . any agreements entered into pursuant to" any foreign assistance act. Whether or not the Turkish bombing of Cyprus violated the United States Aid Agreement with Turkey, it is difficult to term the use of American-made planes and bombs as "maintenance of . . . [Turkey's] defensive strength," let alone "the defensive strength of the free world."

Perhaps more relevant, section 620(i) of the act prohibits assistance "to any country which the President determines is engaging in or preparing for aggressive military efforts directed against . . . (2) any country receiving assistance under this or any other Act. . . ."<sup>169</sup> In August 1964 Cyprus was receiving a

of these provisions is adopted, virtually verbatim, from § 5 of the 1947 Act To Provide Assistance to Greece and Turkey, 61 Stat. 103.

The reference in subparagraph (2) to "action taken or assistance furnished by the United Nations" may be read as being limited to some comprehensive United Nations aid program, but this seems a strained interpretation because it makes the word "action" superfluous. Note that the provision eliminates the possibility that the United States might, by employing its veto power in the Security Council, exercise absolute control over the organization's decision.

167. These conclusions appear equally applicable to the other international crises in which proposals have been made to "withdraw" United States aid. In the wake of the recent clash between India and Pakistan over Kashmir, for example, the United States "suspended" aid to both countries. See N.Y. Times, Sept. 8, 1965, p. 1, col. 5. Apparently no effort was made to take back military equipment already furnished.

168. Foreign Assistance Act of 1961, § 506(b)(2), 75 Stat. 436, 22 U.S.C. § 2314(b)(2) (1964).

169. Foreign Assistance Act of 1961, § 620(i), 75 Stat. 444, 22 U.S.C. § 2370(i) (1964).

small amount of United States foreign aid.<sup>170</sup> If the Turkish bombing was an "aggressive military effort" against Cyprus, therefore, section 620(i) was applicable. The definition of "aggression" has troubled international lawyers for centuries,<sup>171</sup> and the legislative history of the provision sheds little light on the meaning of the term.<sup>172</sup> In view of the conclusions concerning the bombing suggested in part IV(D)(4) below, however, it is hard to postulate a purpose for section 620(i) that would not include this situation. Yet the fact that presidential judgment is the trigger for terminating assistance—and this is the pattern of many similar legislative forays into the foreign affairs field—may indicate that Congress was content to express its own strong sentiments, largely for domestic consumption, and then to give the President fairly broad latitude in carrying out the measure.

In any event, the United States did not terminate its assistance to Turkey.<sup>173</sup> The executive branch no doubt believed that to do so would result in the loss of what leverage the United States still had over Turkey's actions in the crisis. Up to that time this leverage was significant. At least twice, Turkey was restrained by United States pressure from invading the Island. But American influence was substantially depleted by these efforts. In fact, it seems to have come dangerously close to running out. When the United States dissuaded Turkey from carrying out her invasion plans, America assumed, at least in Turkish eyes, an obligation to resolve the conflict in some other way and on terms favorable to Turkey. Any pressure that induces a nation to forgo the catharsis of self-help generates demands that it become the agent for peaceful change. And in the end, whether the pressure is the persuasive power of another country or the injunction of the Security Council, it can be effective only if it does develop modes for peaceful change. But the United States has failed to meet these demands in the Cyprus crisis, though not for want of trying. As a result, numerous anti-American demonstrations were staged in Ankara throughout the summer and fall of 1964,<sup>174</sup> and there was strong opposition in the Turkish press to United States efforts to restrain Turkey from military intervention.<sup>175</sup> And in January 1965 Turkey announced that it would no longer consider participating in the American-spon-

170. See General Agreement for Technical Cooperation With the Republic of Cyprus, June 29, 1961, T.I.A.S. No. 4792; Agency for International Development, U.S. Foreign Aid in the Near East and South Asia, pp. 28-29 (no date).

171. See, e.g., BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* (1963); Secretary-General, *Report on the Question of Defining Aggression*, U.N. Doc. No. A/2211 (1952). See generally STONE, *AGGRESSION AND WORLD ORDER* (1958).

172. The United Arab Republic was the target of the provision's sponsors, but it was recognized in Congress that President Nasser does not have a monopoly on "aggressive military efforts." See 109 CONG. REC. 21353-71 (1963). In fact, no determination to terminate assistance to the United Arab Republic has been made under the provision. Lack of a definition of "aggression" has not deterred Congress from subsequent legislation with similar phraseology. See 78 Stat. 1035 (1964), 7 U.S.C. § 1707 (1964), which prohibits sales of surplus agricultural commodities to any nation found by the President to be "an aggressor, in a military sense, against any country having diplomatic relations with the United States . . . ."

173. A fortiori, the United States did not suspend assistance to Greece on account of (a) flights of American-made Greek air force planes over Cyprus after the August bombings or (b) Greek threats to intervene if Turkey continued its attack on the Island. See N.Y. Times, Aug. 9, 1964, p. 28, col. 2.

174. See, e.g., *id.*, Aug. 29, 1964, p. 1, col. 7.

175. See, e.g., Guresin, *America Should Be Careful*, *Cumhuriyet* (Istanbul), Aug. 25, 1964 (English translation on file with the *Stanford Law Review*).

sored multilateral nuclear force.<sup>176</sup> The country that was at one time America's staunchest Near-Eastern ally was obviously reconsidering her interests. To a degree at least, this may be an example of what seems an increasingly common phenomenon—and perhaps not a bad one: A maturing nation, closely allied to the United States and substantially dependent on American assistance, realizing that the United States cannot have an unlimited commitment to it—no matter how closely it has adhered to American policy interests.

The other side of this same coin was the new interest that Turkey was showing toward her largest neighbor, the Soviet Union. The Turkish Foreign Minister went to Moscow in November 1964.<sup>177</sup> At the end of his visit, the two Governments issued a joint communiqué expressing support “for the independence and territorial integrity of Cyprus and for the legal rights of two national communities, and recognition of the existence of two national communities on the island.”<sup>178</sup> The Soviet Union had consistently opposed enosis, perhaps in part because it thought that the Communist Party in Cyprus would be more likely to flourish if the Island were not united with Greece<sup>179</sup> and in part to prevent Cyprus from becoming NATO territory. But although the motives of Turkey and the Soviet Union were substantially different, they found common cause in their objectives.<sup>180</sup>

At the same time, United States prestige in Greece fared no better. America had meddled in the crisis, and though this meddling may have saved Cyprus from an invasion, Greece wanted clear support for Cypriot “self-determination.” And the United States refused to comply. The Greek Prime Minister accused the United States of being pro-Turkish, anti-American demonstrations were held in the streets of Athens, and the Greek press flailed this country for its efforts in the dispute.<sup>181</sup> The crisis has, therefore, not only weakened the once close ties between Greece and Turkey, but may have also impaired American influence in both countries. It is doubtful that this impairment will lead to continuing Greek or Turkish unwillingness to join the United States on important matters of common interest. But bonds have been strained, and at least some of the effects will probably be permanent.

#### IV. LEGAL ISSUES BEFORE THE UNITED NATIONS

As we have seen, the crisis reached international proportions when Archbishop Makarios demanded thirteen revisions of the Cypriot Constitution. The majority of the changes involved basic articles of the Constitution that provided the fundamental internal protections for the Turkish minority. And the

176. See N.Y. Times, Jan. 14, 1965, p. 4, col. 6.

177. See *id.*, Nov. 1, 1964, p. 2, col. 3.

178. *Id.*, Nov. 7, 1964, p. 9, col. 2.

179. See Acheson, *supra* note 160, at 355.

180. Meanwhile, the Cypriot Foreign Minister also had traveled to the Soviet Union, as well as to the U.A.R. Out of these visits seemed to come support for the Cypriot position and at least reports of Soviet military assistance. See N.Y. Times, Sept. 1, 1964, p. 8, col. 3; *id.*, Oct. 1, 1964, p. 4, cols. 1, 4-6.

181. See *id.*, March 1, 1964, p. 1, col. 1; *id.*, March 4, 1964, p. 10, cols. 4, 7; *id.*, Feb. 27, 1964, p. 10, col. 3.



Republic of Cyprus was a party to the Treaty of Guarantee, which required her to "ensure . . . respect for her Constitution." It is hardly surprising that Turkey found this repudiation of solemn treaty commitments intolerable, and her representatives lost no time in saying so.

The intent of the Cypriot Government in the Security Council soon became clear. Mr. Kyprianou, the Cypriot representative, stated near the outset of the Council debates that the Cypriot "Constitution was foisted on Cyprus. . . . The combined effect of the Constitution and the Treaty of Guarantee is that a situation has been created whereby the constitutional and political development of the Republic has been arrested in its infancy and the Republic as a sovereign State has been placed in a straight jacket."<sup>182</sup> The Cypriot Government wanted no less than a Security Council declaration that the Agreements signed in 1960 were voidable by Cyprus in the exercise of her sovereign power as an independent republic.<sup>183</sup>

### A. *Validity of the 1960 Accords*

The basic argument of the Cypriot Government in support of its position is that the 1960 Accords were "arrived at in circumstances precluding free choice."<sup>184</sup> The traditional view of international legal theorists is that "a treaty is not rendered *ipso facto* void, or voidable by one of the parties, by reason of the fact that such party was coerced by the other party into concluding it, whether that coercion is applied at the time of signature or of ratification or at both times."<sup>185</sup>

182. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 20 (S/PV.1098) (1964).

183. Mr. Kyprianou claimed that "the imposition on the people of Cyprus of the Treaty of Guarantee and the Treaty of Alliance," as well as the actions of Turkey allegedly under these treaties, "are the sources of the trouble which has been threatening and is threatening the peace in that area of the world." *Id.* at 21. The obvious remedy in Cypriot eyes was to nullify the "sources of the trouble."

184. *Id.* at 19-20. There has been a good deal of controversy concerning the willingness with which Archbishop Makarios, leader of the Greek Cypriot delegation at the 1959 Lancaster Conference, signed the London Agreements. At the closing ceremonies he stated: "Yesterday I had certain reservations. In overcoming them I have done so in a spirit of trust and good-hearted good will towards the Turkish community and its leaders. It is my firm belief that with sincere understanding and mutual confidence we can work together in a way that will leave no room for dissension about any written provisions and guarantees. It is the spirit in the hearts of men that counts most. I am sure that all past differences will be completely forgotten." *Conference on Cyprus, Final Statements at Closing Plenary Session at Lancaster House*, CMND. 680, at 6 (1959). Writing four years later, however, he stated: "At the Conference at Lancaster House in February, 1959, which I was invited to attend as leader of the Greek Cypriots, I raised a number of objections and expressed strong misgivings regarding certain provisions of the Agreement arrived at in Zurich between the Greek and the Turkish Governments and adopted by the British Government. I tried very hard to bring about the change of at least some provisions of that Agreement. I failed, however, in that effort and I was faced with the dilemma either of signing the Agreement as it stood or of rejecting it with all the grave consequences which would have ensued. In the circumstances I had no alternative but to sign the Agreement. This was the course dictated to me by necessity." Makarios, *Proposals To Amend the Cyprus Constitution*, International Relations (Athens), April 1964, p. 8. Either his former statement minimized his "reservations" out of respect for his cognatories or his latter statement overemphasized his "misgivings" in an effort to justify his current views concerning the 1960 Accords. General Grivas has said that the Archbishop wrote at the time the Accords were negotiated that "he was pleased with the agreement on the whole." See MEMOIRS OF GENERAL GRIVAS 189 (Foley ed. 1965). But the General was so embittered at what he considered an unsatisfactory compromise that his account may have to be somewhat discounted. See also FOLEY, LEGACY OF STRIFE: CYPRUS FROM REBELLION TO CIVIL WAR 150 (1964).

185. McNAIR, THE LAW OF TREATIES 208 (1965). Lord McNair was referring to "coercion applied to the State itself, not . . . personal intimidation applied to its representative." *Id.* at 208-09. See also Harvard Research in International Law, *Law of Treaties, Part III*, 29 AM. J. INT'L L. SPEC. SUPP. 653, 657 (1935).

Article 36 of the International Law Commission's draft Law of Treaties provides: "Any treaty the conclusion of which was procured by the threat or use of force in violation of the principles of the

At the opposite extreme, however, some nations have contended that "unequal" treaties—agreements imposing burdens on states in substantially unequal bargaining positions—are *per se* void.<sup>186</sup> According to this argument, coercion is a ground for invalidating treaties, and states are "coerced" when they conclude agreements from substantially unequal bargaining positions.

If such a qualification on *pacta sunt servanda* is accepted, it is difficult to argue that the 1960 Accords were other than "unequal" since Cyprus was not an independent nation when the Agreements were negotiated, and a settlement acceptable to the British was a condition of independence. Furthermore, while other independent states have been created by treaty,<sup>187</sup> Cyprus is apparently the only such nation whose representatives did not participate in the negotiation of the treaty. Greek-Cypriot and Turkish-Cypriot representatives took no part in the Zurich Conference, where the Basic Structure was negotiated. Although they were present at the London Conference, they had not been elected by the Cypriot people to represent them.<sup>188</sup> More important, the choice offered Archbishop Makarios and Dr. Kutchuk was essentially to take the settlement or to refuse it. At the conclusion of the Conference, the agreement was sealed by a memorandum signed on behalf of the three Governments. The memorandum took "note" of declarations by Archbishop Makarios and Dr. Kutchuk that they "accept the documents [signed at the Conference] . . . as the agreed foundation for the final settlement of the problem of Cyprus."<sup>189</sup> But their only available alternative was rejection; they could not bargain over the settlement's content. On these grounds, the Cypriot representative charged in the Security Council that the Agreements were "unequal and inequitable treaties, as a result of which they cannot be regarded as anything other than invalid."<sup>190</sup>

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Charter of the United Nations shall be void." International Law Comm'n, *Report*, U.N. Doc. No. A/5509, at 10-11 (1963). This formulation tries to strike a balance between the importance of maintaining treaty obligations on the one hand and the obvious requirement that international agreements be concluded in a manner consistent with the Charter on the other. On the basis of the Commission's prescript, the Cypriot contention cannot be sustained. Although violence was part of the Island's daily diet for decades before the 1960 settlement was concluded, the settlement was not *procured* by force.

186. This is the view of a number of Soviet writers. See INTERNATIONAL LAW, A TEXTBOOK FOR USE IN LAW SCHOOLS 248 (Academy of Sciences of the U.S.S.R., Institute of State and Law, Kozhevnikov ed., Ogdon transl., no date); Talalayev & Boyarshinov, *Unequal Treaties as a Mode of Prolonging the Colonial Dependence of the New States of Asia and Africa*, [1961] SOVIET YEARBOOK OF INTERNATIONAL L. 169. See generally McWhinney, "Peaceful Coexistence" and Soviet-Western International Law, 56 AM. J. INT'L L. 951, 957 (1962). The United Nations debate concerning the French occupation of a military base at Bizerta includes a number of statements by other nations in support of this position. See, e.g., U.N. GEN. ASS. OFF. REC. 3d Spec. Sess., Plenary 63-64 (A/PV.1002) (1961) (statement by the representative of Guinea). See generally Lester, *Bizerta and the Unequal Treaty Theory*, 11 INT'L & COMP. L.Q. 847 (1962).

187. See, e.g., 2 WHITEMAN, DIGEST OF INTERNATIONAL LAW 165-67 (1963) (Indonesia).

188. The subsequent elections in December 1959 indicate, however, that Archbishop Makarios and Dr. Kutchuk would have been selected if the Cypriot people had been able to make a choice.

Furthermore, the Greek and Turkish Governments probably believed that they adequately represented the Island's two communities, a view that was apparently shared by most Turkish Cypriots as well as by the British. And, as we have seen, there is much in history to support this judgment. But should such representation be considered as meeting the minimum standards of self-determination? The question is troublesome, for there is as little accord on the content of those standards as on the appropriate occasions for the exercise of the Charter right of self-determination.

189. *Conference on Cyprus, Documents Signed and Initialled at Lancaster House*, CMND. 679, at 4 (1959).

190. U.N. SECURITY COUNCIL PROV. REC. 19th year, 1235th meeting 63-65 (S/PV.1235) (1965). "These treaties which contained onerous provisions were thus imposed on the majority of the people of Cyprus making the doctrine of unequal, inequitable and unjust treaties relevant." U.N. SECURITY

A requirement of absolute equality in bargaining power would, however, mean that almost every treaty between the United States or the Soviet Union and a developing nation would be void.<sup>191</sup> Such a qualification on the principle that international agreements must be observed would make the principle virtually meaningless. Yet, even though one rejects the notion that the 1960 Accords are void as "unequal" treaties, the question remains whether they should not be subject to renegotiation and revision. The issue is complex and troublesome. It is made no less difficult by the tendency of both sides to speak in absolutes. Traditional learning concerning the revision of treaties provides little help,<sup>192</sup> and there are simply too few instances for anything like confident generalizations—the issue must be focused on these treaties in these circumstances.

### B. *Revision of the 1960 Accords*

First, it is clear that whether or not the Greek Cypriots believed in 1960 that the Accords were unfair, they believe so now. And there is sufficient support for their position in the international community that they will not be mollified by recitation of doctrine concerning the sanctity of treaties. Second, a persuasive case can be made that *perpetual* restrictions on the rights of the Cypriot Republic, agreed to in exchange for the grant of independence, *ought* to be subject to revision, even though the agreements in which they are embodied do not provide for modification or renegotiation.<sup>193</sup> On the other hand, the provisions in the 1960 Accords were included not as the whim of an oppressive colonial power, but to assure peace and the protection of minority rights in a land that had known little of either. These objectives are hardly less necessary today than they were in 1960.

Third, and overshadowing other aspects of the problem, the institutional arrangements for the renegotiation and revision of treaties are primitive in the extreme. A variety of mechanisms might be suggested, but none bears much resemblance to the international legal process as it actually operates. The United Nations Charter, in fact, provides machinery for the peaceful resolution of such conflicts. Even if the crisis constituted a dispute "the continuance of which is likely to endanger the maintenance of international peace and security" under chapter VI, rather than "a threat to the peace" under chapter VII, the Security Council could have recommended "appropriate procedures or methods of adjustment."<sup>194</sup> And if it had acted under chapter VII, it could have made binding

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COUNCIL OFF. REC. 19th year, 1098th meeting 20 (S/PV.1098) (1965) (remarks of Mr. Kyprianou). Similarly, the Soviet representative asserted that the Agreements were "forced on" Cyprus. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1096th meeting 3 (S/PV.1096) (1964).

191. See Baxter, *Study of the Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations*, pt. 4, at 31-32 (1965).

192. "As a question of law, there is not much to be said upon the revision of treaties. . . . [I]t is a matter for politics and diplomacy . . ." McNAIR, *THE LAW OF TREATIES* 534 (1961).

193. Lester, *supra* note 186, at 855, suggests that agreements between "dominant States and their dependent territories . . . in which the dependent agreed to onerous restrictions upon its future sovereignty in exchange for the grant of independence by the dominant State, might raise the presumption of undue influence."

194. U.N. CHARTER art. 36, para. 1.

decisions concerning the procedures of revision, enforceable by appropriate sanctions under articles 41 and 42. But it is not readily conceivable that the Security Council would use this mandatory power in the present state of international affairs, except perhaps in the gravest kind of situation and then only as a last resort. Therefore, although this course of action was technically available, it was not practically within the Council's armory. And alternative institutional arrangements seem similarly beyond the horizon.

The problem, of course, is not limited to the revision of allegedly oppressive treaties. It affects the whole range of issues related to the peaceful settlement of disputes. Without adequate procedures for such settlement, reliance on self-help becomes, by default, a primary enforcement mode in international affairs; and in the Cyprus crisis the dangers of its exercise have been real and constant.

In these circumstances, it is the parties themselves that must negotiate a revision of the 1960 Accords, or a new settlement in their stead, if they are to be revised at all. Nations have, of course, from time to time agreed to modify purportedly unfair treaties. For example, the Panamanian grant of "titular sovereignty" to the United States in 1903 was a virtual condition of Panamanian independence,<sup>195</sup> and the Panamanians have been complaining about the terms of the agreement ever since. The United States, after perhaps too many years of delay, has recently agreed to negotiate a new pact and to abrogate the old one.<sup>196</sup> The bargaining positions of the United States and Panama are still far from "equal"—and they probably always will be. But at the very least, any new agreement will represent—as of the time it is concluded—the common, considered judgment of two independent nations, each of which can benefit from the other's resources. How well that judgment will satisfy the future will, of course, remain a question for the future.

It would seem reasonable to hold the parties to the 1960 Accords to a similar negotiating obligation—to sit down together and negotiate in good faith.<sup>197</sup> Such an obligation may arise not so much from the terms of the 1960 Accords themselves as from the whole regime of treaties. The interests, attitudes, and judgments of nations inevitably change over time in response to multiple stimuli, internal and external, and if international agreements are to represent viable joint undertakings, changes in their provisions must not be permanently precluded. The more specific those provisions—the less adaptable to reinterpretation in light of shifting circumstances—and the longer the term of an agreement,

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195. See Isthmian Canal Convention, Nov. 18, 1903, 33 Stat. 2234 (1903), T.S. No. 431; J. BAILEY, *A DIPLOMATIC HISTORY OF THE AMERICAN PEOPLE* 539-43 (4th ed. 1950). The analogy between the Panamanian and Cypriot situations is, in many ways, as striking now as it was when Cyprus was ruled by Great Britain. See note 5 *supra*. A 1936 treaty between the United States and Panama, for example, authorizes the American use of force on Panamanian territory in an emergency to safeguard the neutrality or security of the Panama Canal. General Treaty of Friendship and Cooperation With Panama, March 2, 1936, art. X, 53 Stat. 1825 (1939), T.S. No. 945 (effective July 27, 1939). See also Note From the Secretary of State to the Panamanian Minister, Feb. 1, 1939, para. 3, 53 Stat. 1863 (1939).

196. See 53 DEP'T STATE BULL. 624-25 (1965).

197. See article 67 of the Third Report on the Law of Treaties, by Sir Humphrey Waldock, Special Rapporteur, in 2 YEARBOOK OF THE INTERNATIONAL LAW COMM'N 47 (1965): "When one party to a treaty proposes a revision, 'the other parties are bound to consider in good faith, and in consultation with the party concerned, what action, if any, should be taken in regard to the proposal.'"

the greater the risk that it will be ignored by one of the parties unless all are willing to assume an obligation to renegotiate in good faith.

The importance of this obligation, if it is fulfilled, cannot be underestimated. The requirement of good-faith bargaining, imposed when the legal system is unwilling to prescribe the substance of the bargain, has been enormously useful in our domestic order, and there is no reason to suggest that it would be less so in international affairs. The problem, of course, is whether the setting in which the obligation operates can exert the pressure necessary to bring the parties to act upon it. Obviously, no international version of the NLRB is in prospect for such issues. But there may be an increasing sentiment among the nations not directly involved in the Cyprus crisis that the parties are under a duty to bargain in good faith. Sooner or later the parties' dependence on the cooperation of these nations in so many aspects of their international lives, if not simply a "decent respect for the opinions of mankind," may press them to acknowledge this duty.<sup>198</sup>

Quite apart from whether and when the parties will affirm a responsibility to bargain in good faith, it may be that there has been underway for the past two years a kind of international process for the revision of the 1960 Accords. It has been slow, diffuse, and movement is only occasionally discernible. But there are institutional forces at work to structure, at least loosely, that movement. First, the United Nations has intervened in the crisis so that the risk of the unilateral use of force to compel revision has abated. Second, several mediation efforts have been made, and although they are so far without effective results, they have produced some useful ideas and have made clear that others are unfeasible.<sup>199</sup> Third, the Security Council is seized of the crisis, and the standing of the parties in the Council has substantially shifted over time.<sup>200</sup> These shifts are inevitably reflected in the bargaining positions of the parties. Unilateral actions that might have been received with general approbation at an earlier stage are not accepted at a later time. And finally, the presence of United Nations troops on the Island combined with the Security Council's exercise of jurisdiction have operated not only to check the outbreak of violence, but also to limit the ability of the Cypriot Government to bring about *de facto* revision of the 1960 Accords. These forces have not prevented Government efforts to effect, on an *ad hoc* and "temporary" basis, Archbishop Makarios' thirteen constitutional revisions or its purported abrogation of the Treaties of Alliance and Guarantee. But without the United Nations intervention, these efforts might have gone substantially further.

This has been a messy and confused process of treaty revision, if it has been a process at all. Its conclusion is by no means discernible at present. Hopefully, a more orderly mode of resolution will be developed, and some procedural and substantive suggestions to this end are offered in the last part of this Article. In

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198. Turkish representatives have frequently stated that "nobody could argue that treaties are eternal and perpetual and that they could never be modified." See, e.g., U.N. GEN. ASS. PROV. REC. 20th Sess., 1st Comm. 98-100 (A/C.1/PV.1416) (1965).

199. See text accompanying notes 287-302 *infra*.

200. See text accompanying notes 260-69 *infra*.

the interim, however, the alternative of self-help has thus far been largely avoided. And this is by no means an unimportant achievement.

### C. Purported Cypriot Abrogation of the Treaty of Alliance

Immediately after fighting broke out in December 1963 the Turkish contingent—stationed on the Island under the Treaty of Alliance—moved out of its barracks. According to the Turkish representative, this move was made because the contingent “considered it extremely dangerous for its own security to remain in its barracks which were situated in an area controlled by the Greek Cypriot terrorists, and was forced to move on to a new garrison in a more secure sector of the Nicosia area.”<sup>201</sup> One observer has claimed that the real reason for the move was to protect the road to Kyrenia, a Turkish Cypriot stronghold.<sup>202</sup> In any event, the Treaty of Alliance is silent concerning the position of the Turkish and Greek contingents. A supplementary agreement “for the application of the Treaty of Alliance” provides only that “the Hellenic and Turkish Forces shall be garrisoned in the same area as near each other as possible and within a radius of five miles . . . .”<sup>203</sup> It appears unquestioned by the Cypriot Government that the Turkish contingent was stationed within a radius of five miles of the Greek contingent in Nicosia. Under all the circumstances, it is difficult to conclude that they were not “as near as possible.”

The Cypriot Government claims, however, that it has abrogated the Treaty on the ground of Turkish violations of a June 28, 1961, decision by a Committee of Foreign Ministers established under the Treaty. This decision provided that “the present camps of the Greek and Turkish contingents should be considered as their permanent camps unless and until decided otherwise by the Committee of Ministers.”<sup>204</sup> On this basis, the Cypriot Government contends that “the continued presence . . . of the Turkish contingent [away from its permanent camp] constitutes a violation of the territorial integrity of the Republic of Cyprus” and justifies Cypriot renunciation of the Treaty.<sup>205</sup> But the Ministers’ decision was not a treaty obligation, entirely apart from the obvious change in the circumstances between 1961 and 1964.<sup>206</sup> The violation of the decision cannot, therefore, fairly be held to be a violation of the Treaty. Moreover, except for general Soviet and Czech references to violations of Cypriot sovereignty by the presence of foreign troops under “unequal” treaties, no country has supported the Cypriot position on this issue.

201. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1136th meeting 9 (S/PV.1136) (1964).

202. See FOLEY, *op. cit. supra* note 184, at 170.

203. Agreement Between the Kingdom of Greece, the Republic of Turkey and the Republic of Cyprus for the Application of the Treaty of Alliance, Aug. 16, 1960, art. XV; copy on file with *Stanford Law Review*. Ironically, article XV also provides that these forces “shall share the same recreational and other facilities.”

204. Decision of the Committee of Ministers of the Treaty of Alliance, June 28, 1961, quoted in U.N. SECURITY COUNCIL OFF. REC. 19th year, 1136th meeting 38 (S/PV.1136) (1964).

205. *Id.* at 38–39.

206. Turkey was, of course, reluctant to raise the argument that a change in circumstances allowed it to violate the Ministers’ decision. *Rebus sic stantibus*—apparently never mentioned by Cypriot representatives in defense of Cypriot abrogation of the Treaties of Alliance and Guarantee—must have been on the tips of their tongues.

#### D. *Turkey's Rights Under the Treaty of Guarantee*

Article IV of the Treaty of Guarantee provides:

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

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

The issue whether Turkey may use force against Cyprus under this provision, and if so in what circumstances and in what manner, arose at the very outset of the crisis. At the first Security Council meeting concerning the dispute, the Cypriot representative, Mr. Kyprianou, took the offensive by claiming that a Turkish invasion fleet had been steaming toward the Island.<sup>207</sup> The facts of the matter—whether there was any such fleet, and if so whether it was being used as a threat or with the real intention of landing a military force—have never been made clear. The Turkish representative, Mr. Eralp, declaimed with some passion that Cyprus was merely crying wolf to avoid focusing Council attention on the real issue—mistreatment of the Turkish Cypriots.<sup>208</sup> Whatever the facts, Mr. Kyprianou did succeed in making the issue of Turkey's rights under article IV a main focus of Council debate. He sought to act as both public prosecutor and plaintiff and to position Mr. Eralp as defendant before a tribunal whose role was to judge the interpretation and validity of an international agreement.

A Security Council resolution declaring that Turkey had no right to use force under article IV of the Treaty of Guarantee would have served two Cypriot purposes. First, it would have lessened the risk of Turkish military action against the Island. The Cypriots were obviously deeply concerned about this threat—and with some justification, for the Island had no defenses against a Turkish air attack.<sup>209</sup> Second, such a resolution would have been a major step in gaining international concurrence, or at least acquiescence, in Cypriot renunciation of the Treaty of Guarantee and perhaps the other 1960 Agreements as well.

"Since this point has been made relevant to the whole issue," Mr. Kyprianou said during one debate,

I should like, with permission, to put a simple question to the Members signatories to the Treaty of Guarantee. . . . Is it the view of the Governments of Greece, Turkey and the United Kingdom that they have the right of military intervention under the Treaty of Guarantee, particularly, in view of the Charter? On this I must insist upon having an answer.<sup>210</sup>

Only the Greek representative gave an unequivocal answer. "Do we—the Greek Government—think that this article gives us the right to intervene militarily and

207. U.N. SECURITY COUNCIL OFF. REC. 18th year, 1085th meeting 3 (S/PV.1085) (1963).

"As in these cases, where the aim reports, 'tis oft with difference—yet do they all confirm a Turkish fleet, and bearing up to Cyprus." *Othello*, act I, scene 3.

208. U.N. SECURITY COUNCIL OFF. REC. 18th year, 1085th meeting 11-12 (S/PV.1085) (1963).

209. Russian-built anti-aircraft missiles were reportedly sent to Cyprus, see N.Y. Times, March 19, 1965, p. 1, col. 6, but this rumor was denied by the Soviet Union, *id.*, May 23, 1965, p. 36, col. 1.

210. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1097th meeting 28 (S/PV.1097) (1964).

unilaterally without the authorization of the Security Council? The answer is 'no.'<sup>211</sup>

The British representative's response carried the clear implication that, in certain circumstances, the Treaty did authorize the use of force and that such use would not necessarily be inconsistent with the United Nations Charter. But he added that "it is . . . not part of our present task in this Council to consider hypothetical situations . . . . The urgent task of this Council is . . . [to find] the best way of ensuring that occasion for interventions under Article IV would never arise."<sup>212</sup>

The Turkish representative refused to respond directly.<sup>213</sup> This reluctance to meet the question squarely was undoubtedly due in part to concern that Cyprus might have gained a Security Council resolution favoring her position if the issue had been brought to a vote. In any event, there was little chance that the Council would voice a consensus in support of Turkish military intervention. It was to Turkey's advantage, therefore, to avoid a showdown on the issue, just as it was to the advantage of Cyprus to force one. Beyond these considerations, Turkey wanted as a tactical matter to become plaintiff and prosecutor, forcing Cyprus into the position of defendant. Several times, therefore, the Turkish representative repeated this theme: "Ambassador Rossides has attempted to put us in the position of the accused. We are the 'aggressors.' We are the ones who 'threaten.' We are not; we are the ones who accuse. The facts are there to be seen and, as I have said, no eloquence can change them."<sup>214</sup> He tried to change the issue to whether the Cypriot representative "can . . . solemnly and officially declare that Turkish houses will not be burned down; that Turkish Cypriot villages will not be surrounded and left without water, food and light; . . . that an end will be put to bloodshed."<sup>215</sup> But debate still focused on article IV.

It is difficult to consider the dimensions of any provision in an agreement except in terms of concrete cases; international accords are no exception. And every trier reviewing an agreement provision must, explicitly or implicitly, both adopt presumptions and allocate burdens. In considering an action purportedly taken under article IV, it seems reasonable to give substantial deference to the judgment of the acting party in regard to the factual basis on which it acted. It also seems proper that the objecting party should have the burden of proving a violation of the Treaty's terms. Whether this allocation is equally valid in regard to an alleged violation of the United Nations Charter may depend in part on the nature of the violation. The prohibitions in the Charter against the use of force may, for example, be best served if a party to the Treaty of Guarantee must meet the burden of showing that its forcible action, purportedly under article IV, was not precluded by the Charter. And it may be that different conclusions on these issues are called for when one party seeks, rather than a response to another party's past

211. *Id.* at 32.

212. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 12 (S/PV.1098) (1964).

213. He answered, "We were asked some questions here. But the situation is too tragic to use that kind of stratagem." U.N. SECURITY COUNCIL OFF. REC. 19th year, 1097th meeting 30 (S/PV.1097) (1964).

214. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1103d meeting 13 (S/PV.1103) (1964).

215. *Ibid.*



action, a kind of declaratory judgment to preclude the future use of force under article IV.

Judgments on these procedural issues may differ, of course, depending on the body that considers the Treaty of Guarantee. In the current crisis the Security Council was, from the very outset, the primary forum. In analyzing the kind of Council review alternative actions under article IV might have occasioned, as well as the probable results of that review, the Turkish Government must have been acutely aware that the response of Council members would vary not only with the circumstances triggering the action, but also with the action's intensity. The more the action involved the threat or use of force and the broader the international interests involved, the less willing the Council would be to resolve the issues within a framework that took account only of Cypriot, Greek, and Turkish concerns.

At the outset of the crisis, most Council members seemed to accept not only the Cypriot efforts to position Turkey as defendant, but also the view that Turkish military action under article IV would, at least presumptively, be invalid. The following analysis considers the issue in two stages: First, apart both from the circumstances of any particular Turkish use of force and from the effect of United Nations involvement in the crisis; and, second, specifically in terms of the August 1964 Turkish bombing and possible future Turkish actions.

### 1. *The terms of article IV.*

Article IV provides two conditions precedent to the taking of unilateral "action," whatever the scope of that term. First, there must be a "breach of the provisions of the present Treaty," presumably by the nation against which the action is taken. In the view of Turkey, this precondition to her "action" against Cyprus had been met in the spring of 1964. Article I of the Treaty requires Cyprus to "undertake to ensure . . . respect for its Constitution." At the very least, this would seem to imply a substantial good-faith effort to make the Constitution work. A review of the events on the Island from 1960 to 1963 lends credibility to the Turkish position that the Cypriot Government did not make such an effort. Turkish Cypriot "abuses" of the Constitution were the Government's justification.<sup>216</sup> But they do not support, for example, the Government's refusal to implement a number of basic articles in the Constitution, such as the one requiring separate Turkish Cypriot municipalities in each of Cyprus' five largest towns.<sup>217</sup>

Second, unilateral action by one of the Guarantor Powers may occur only if "common concerted action may not prove possible" after "Greece, Turkey, and the United Kingdom [have] undertake[n] to consult together with respect to the representations or measures necessary to ensure observance of" the Treaty. Turkey could also defend a claim that this condition precedent had been satisfied at the beginning of 1964. As we have seen, Greek, Turkish, and British representatives conferred with representatives of the Cypriot communities in January 1964 "to help in the solution of the problems of Cyprus."<sup>218</sup> As an interim measure,

216. See *The Times* (London), Jan. 5, 1962, p. 10, col. 5.

217. See text accompanying notes 89-92 *supra*.

218. U.N. Doc. No. S/5508, at 3 (1964); see text accompanying notes 102-10 *supra*.

troops of the three Guarantor Powers, under British command, had sought to preserve the cease-fire and to restore peace. The fact that both efforts failed does not weaken the Turkish position that the second prerequisite to unilateral action had also been met.

## 2. *The intent of the parties.*

The Cypriot Government took the position that the term "action" in article IV—like "measures" in the preceding clauses—"could only mean the use of peaceful means . . ."<sup>219</sup> None of the Guarantor Powers brought to light any negotiating history concerning article IV,<sup>220</sup> though the Greek representative stated that "at Zurich, where I was present, our intention was not to create a situation in which, for one reason or another, one of us might be able, one fine day, to put troops on our warships and dispatch them to Cyprus."<sup>221</sup> No evidence has been produced to indicate that the parties were using the terms "action" and "measures" in the same sense they are used in the United Nations Charter; the fact that the *Expenses* case involved the meaning of both words seems more coincidental than revealing.<sup>222</sup>

It is at least possible that the parties simply could not agree on the scope of permissible action and, therefore, consciously accepted ambiguity with the hope that the issue would never arise. And it could be argued that the ambiguity should be interpreted against those who would impose a limitation on Cypriot sovereignty.<sup>223</sup>

The circumstances in which the Treaty of Guarantee was negotiated, however, make it seem probable that the Guarantor Powers contemplated use of force as a possible action under article IV. As we have seen, the Zurich-London settlement was reached at a time of bloodshed and violence on the Island. The constitutional guarantees of the Turkish minority were intended to stabilize the situation. But if these guarantees failed, the parties were entitled to intervene to restore the "state of affairs created by the Treaty." In light of the Island's history of strife, it seems unlikely that the parties believed diplomatic protests and economic sanctions would in all cases be adequate. The stationing of Greek and Turkish military forces on Cyprus under the Treaty of Alliance—when viewed together with the Treaty of Establishment, which provides for sovereign British bases on the Island—may provide some support for this view. If troops were needed on the

219. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 19 (S/PV.1098) (1964).

220. Apparently the *travaux préparatoire* of the Zurich and London Conferences have been sealed to outside inspection. See Blümel, *Die Verfassungsgerichtsbarkeit in der Republik Zypern*, in CONSTITUTIONAL REVIEW IN THE WORLD TODAY 643, 652 n.49 (Max-Planck-Institut 1962).

221. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1097th meeting 32 (S/PV.1097) (1964).

222. In *Certain Expenses of the United Nations*, [1962] I.C.J. Rep. 151, 162-65, the International Court contrasted the "action" reserved exclusively to the Security Council under Charter article 11(2) with the "measures" that may be recommended by the General Assembly under article 14 and concluded that the former category is limited to "coercive or enforcement action" under chapter VII.

223. See McNAIR, *THE LAW OF TREATIES* 462-63 (1961). The principle that ambiguous treaty provisions should be interpreted against the drafting party might also have been advanced by Cyprus. See *id.* at 464-65. Apparently, neither rule of interpretation has been voiced by the Cypriot Government. It has, however, maintained that military intervention would conflict with articles 2(4) and 2(1) of the United Nations Charter, see text accompanying notes 225-41 *infra*, and that article IV of the Treaty of Guarantee should, therefore, be interpreted to exclude such intervention. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 17 (S/PV.1098) (1964).

Island by any of the Guarantor Powers, they would already be present.<sup>224</sup> It also seems probable, however, that the kind of military intervention contemplated by the parties was a limited use of force appropriate to the end of restoring the *status quo ante*, and no more. They probably envisaged that this end could be achieved by small contingents of troops—and the Treaty of Alliance limits the number of Greek and Turkish forces on the Island to 950 and 650 respectively.

### 3. *The United Nations Charter.*

Cyprus has claimed that Turkish military intervention would violate both the "sovereign equality" accorded her under Charter article 2(1) and the prohibition against the "use of force" contained in Charter article 2(4).<sup>225</sup> On this basis, she alleges that article IV of the Treaty of Guarantee, to the extent it authorizes forcible action, is void under Charter article 103.<sup>226</sup>

For those who think that international consensus makes international law, there is, to say the least, no such consensus concerning the implications of sover-

224. The stated purpose of stationing the Greek and Turkish contingents on Cyprus was to "provide for the training of the army of the Republic of Cyprus." Treaty of Alliance, art. IV. Furthermore, the Treaty of Alliance was primarily aimed at protecting the Republic from *external* attack, unlike the Treaty of Guarantee, which was designed to assure that the Republic of Cyprus would maintain "its independence, territorial integrity and security, as well as respect for its Constitution." At the same time, however, the parties may have considered that Guarantor Power forces on the Island could be useful if it became necessary to reestablish "the state of affairs" referred to in the Treaty of Guarantee. This seems to be the meaning of a rather cryptic statement by the Greek representative to the First Committee of the General Assembly: "We must recognize that perhaps the most unfortunate provision of these [1960] Agreements was that which stipulated the presence on the island of two contingents, one Greek and one Turkish. The thought which prevailed at that time was that this constituted a necessary and appropriate guarantee." U.N. GEN. ASS. PROV. REC. 20th Sess., 1st Comm. 13 (A/C.1/PV.1409) (1965).

225. E.g., U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 16-17 (S/PV.1098) (1964). See also Ténékidès, *La Condition Internationale de la République de Chypre*, 6 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 133, 163 (1960) ("très graves abandons de souveraineté sans être expressément mandatés par le peuple cyprioite").

226. Article 103 may be read as restricted to cases in which the conflicting obligations are those of a single country. Thus, for example, a nation's Charter obligations to impose economic sanctions against another state might be inconsistent with its treaty obligations to trade with that state. Under such an interpretation, article 103 could not be applicable in the Cyprus situation, since the alleged conflict is between the Turkish obligations under Charter articles 2(1) and 2(4) and the Cypriot obligations to respect Turkey's rights under the Treaty of Guarantee. But this seems an unnecessarily restrictive reading of article 103 in light of its apparent purpose—to assure the primacy of the Charter.

Neither the Security Council nor the General Assembly has ever declared a treaty void under article 103, although the issue has been raised in both bodies. See, e.g., U.N. SECURITY COUNCIL OFF. REC. 1st year, 22d meeting 318-19 (1946) (Anglo-French Agreement of 1945); U.N. GEN. ASS. OFF. REC. 7th Sess., 1st Comm. 257 (A/C.1/SR.545) (1952) (Franco-Tunisian treaties of 1881 and 1883). During the General Assembly consideration of the Franco-Tunisian treaties the Australian representative contended that article 103 "gave no competence to the United Nations and merely stated that the Charter should prevail over agreements . . ." U.N. GEN. ASS. OFF. REC. 7th Sess., 1st Comm. 258 (A/C.1/SR.545) (1952). The Indian representative, however, urged that the United Nations could at least "call the attention of the Member State to that divergence . . ." U.N. GEN. ASS. OFF. REC. 8th Sess., 1st Comm. 39 (A/C.1/SR.633) (1953).

The Charter drafters expressly rejected a provision that would have required states, upon admission to the organization, to procure their release from treaties that were inconsistent with the Charter. See Doc. No. 934, IV/2/43, 13 U.N. CONF. INT'L ORG. DOCS. 701, 706-08 (1945). Such a provision was contained in article 20(2) of the Covenant of the League of Nations and, if it had been adopted at San Francisco, might have provided a basis for asserting that a nation must either allege at the time of its admission to the United Nations a conflict between the Charter and a treaty or be thereafter held to accept their consistency. The provision was rejected primarily on the ground that some inconsistencies might not become evident until an actual controversy arose. See *ibid.*; U.S. DELEGATION TO THE U.N. CONFERENCE ON INTERNATIONAL ORGANIZATIONS, REPORT TO THE PRESIDENT ON THE RESULTS OF THE SAN FRANCISCO CONFERENCE 155-57 (1945).

eign equality.<sup>227</sup> A number of states have contended that there is considerable substantive content in the provision, although they have not always agreed on its dimensions.<sup>228</sup> The San Francisco proceedings and the subsequent practice of the United Nations provide little support, however, for such a view.<sup>229</sup> They indicate that sovereign equality neither confers rights nor imposes obligations in addition to those created elsewhere in the Charter; rather, it assures that those rights and obligations will be shared without discrimination by all United Nations members, except of course on the basis of differences specified in the Charter.<sup>230</sup>

Article 2(4), however, raises more troublesome issues. That provision requires member states to "refrain in their international relations from the threat

227. See Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States, *Consideration of Principles of International Law*, U.N. Doc. No. A/5746, at 148-70 (1964). General notions of the equality of sovereign states were developed by 17th- and 18th-century nationalists, see DICKINSON, *THE EQUALITY OF STATES IN INTERNATIONAL LAW* 68-99 (1920), but the Four-Power declaration at Moscow in 1943 was apparently the first occasion when the phrase "sovereign equality" was included in an international understanding. See generally U.N. Doc. No. A/C.6/L.537, at 186-210 (1963); Baxter, *Study of the Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations*, pt. 4 (1965).

228. Compare the Czech and four-nation proposals in Special Committee on Principles of International Law, *supra* note 227, at 148-50.

229. The subcommittee that drafted article 2 defined "sovereign equality" to mean: "(1) that states are juridically equal; (2) that each state enjoys the rights inherent in full sovereignty; (3) that the personality of the state is respected, as well as its territorial integrity and political independence; (4) that the state should, under international order, comply faithfully with its international duties and obligations." Doc. No. 944, I/1/34(1), 6 U.N. CONF. INT'L ORG. DOCS. 446, 457 (1945). The only other element of "sovereign equality" on which the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States could reach agreement during its 1964 Mexico City meeting was that "each state has the right freely to choose and develop its political, social, economic and cultural systems." See U.N. Doc. No. A/5746, at 163 (1964).

The doctrine of sovereign equality has been referred to expressly in a number of General Assembly resolutions, but none sheds significant light on its substance. See, e.g., U.N. General Assembly Res. No. 1004 (ES-II), U.N. GEN. ASS. OFF. REC. 2d Emergency Sess., Supp. No. 1, at 2 (A/3355) (1956). The principle has also been invoked in debates before both the General Assembly and the Security Council, but it seems to have been employed in these instances more as a rhetorical device than as a substantive principle. A number of nations, for example, have challenged "unjust" or "unequal" treaties on the basis of article 2(1). See, e.g., U.N. GEN. ASS. OFF. REC. 18th Sess., 6th Comm. 221-22 (A/C.6/SR.820) (1963) (statement by the Cuban representative); U.N. SECURITY COUNCIL OFF. REC. 2d year, 175th meeting 1753-54 (S/PV.175) (1947) (statement by the Egyptian representative).

230. See U.N. GEN. ASS. OFF. REC. 18th Sess., 6th Comm. 256-57 (A/C.6/SR.825) (1963) (statement by the United States representative); U.N. GEN. ASS. OFF. REC. 7th Sess., 1st Comm. 258 (A/C.1/SR.545) (1952) (statement by the Australian representative) ("obligations . . . should not be confused with objectives, aims or purposes which did not amount to obligations"); BROMS, *THE DOCTRINE OF EQUALITY OF STATES AS APPLIED IN INTERNATIONAL ORGANIZATIONS* 162-66 (1959). For a criticism of theorists who confound "equality before the law" with "legal equality" see DICKINSON, *op. cit. supra* note 227, at 3-5; Baker, *The Doctrine of Legal Equality of States*, BRIT. YB. INT'L L. 1, 2 (1923-24).

Some treaty restrictions may be so onerous as to make meaningless the imposition of the obligations of United Nations membership. See HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 31-34 (1963). Miss Higgins states that because of the military facilities on Cyprus reserved to the United Kingdom under the Treaty of Establishment, the Cypriot Republic "would seem to come very close to the borderline of lack of true independence, yet no voice of protest was raised against the admission of Cyprus." *Id.* at 34. (Footnote omitted.) The Cyprus Government, in fact, has stated that "since . . . the sovereignty of Cyprus is not complete but is subject to foreign intervention owing to the existence of these [the 1960] Agreements, one may reasonably argue that Cyprus should not have been accepted as a member of the U.N." Cyprus Government Press Office, *The Roots of Evil*, Feb. 21, 1964. But the Cypriot Government has not suggested that it would withdraw from the organization on this basis but rather has turned the issue around and declared that because it is a United Nations member the Agreements are void. And since the San Francisco Conference, the political processes by which states have been admitted to the organization belie the notion that "sovereign equality" is a meaningful prerequisite to membership.

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." Cyprus has urged that Turkey's obligations under article 2(4) necessarily preclude any armed action under the Treaty of Guarantee.<sup>231</sup>

Turkey has maintained, however, that military intervention under article IV of the Treaty would not be "against the territorial integrity or political independence" of Cyprus, since the Treaty of Guarantee was designed to "insure the maintenance of [Cypriot] independence, territorial integrity and security," and action under the Treaty must, in the terms of article IV, be "for the sole aim of re-establishing the state of affairs created by the . . . treaty."<sup>232</sup> This argument has substantial appeal on the issue whether the *first* qualifying phrase in article 2(4) prohibits *all* uses of force under article IV. The question remains, however, whether military intervention under article IV could ever be consistent with the "Purposes of the United Nations," and, if so, under what circumstances and in what manner. Turkey has not met this issue squarely.

The Charter lists the maintenance of "international peace and security" first among the organization's Purposes. "Primary responsibility" for effecting this Purpose is assigned to the Security Council by article 24. Both the General Assembly and regional arrangements are also given express authority to maintain the peace in certain situations, but the article 51 reference to the "inherent right" of self-defense is the only explicit Charter acknowledgment that nations may separately employ force. On this basis some commentators have concluded that all unilateral uses of force, except in self-defense, are absolutely prohibited.<sup>233</sup> This is a seductive approach. Apart from questions concerning the scope and

231. See, e.g., U.N. SECURITY COUNCIL OFF. REC. 19th year, 1235th meeting 63-65 (S/PV.1235) (1964). See also Antonopoulos, *Les Tendances Constitutionnelles des États Ayant Accédé Récemment à l'Indépendance*, 15 REVUE HELLÉNIQUE DE DROIT INTERNATIONAL 307, 316 (1962); Constantopoulos, *The Right of Intervention*, International Relations (Athens), Aug. 1964, pp. 41, 43. But see Lavroff, *Le Statut de Chypre*, 65 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC 527, 543 (1961); cf. DESMITH, *THE NEW COMMONWEALTH AND ITS CONSTITUTIONS* 285 (1964).

Cyprus has maintained that article 37 of the International Law Commission's draft Law of Treaties supports her position. This article provides that "a treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted," and one of the examples referred to by the Commission is a treaty contemplating an unlawful use of force contrary to the principles of the Charter. International Law Comm'n, *Report*, U.N. Doc. No. A/5509, at 11-12 (1963). Mr. Kyprianou placed substantial stress on this language in Security Council debates. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 18 (S/PV.1098) (1964). But it is relevant only to the extent that the Charter prohibits armed intervention under Article IV of the Treaty of Guarantee, and, therefore, it adds nothing on that basic question.

Mr. Kyprianou also cited in support of his position a famous passage from the Corfu Channel Case, [1949] I.C.J. Rep. 4, 35: "The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has in the past given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law." See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1098th meeting 18-19 (S/PV.1098) (1964). But the language quoted is inapplicable in the present situation since "the alleged right of intervention" was based on the United Kingdom's view of its need to secure evidence to present to the Court, rather than on the enforcement of obligations under a treaty that specifically authorizes, in the Turkish view, armed intervention for that purpose.

Note that although article 2(1) was inapplicable to Cyprus until she became a member of the United Nations in 1960, see U.N. General Assembly Res. No. 1489, U.N. GEN. ASS. OFF. REC. 15th Sess., Supp. 16, at 65 (A/4684) (1960), article 2(4) limits the actions of members against "any state," whether or not a member.

232. U.N. SECURITY COUNCIL PROV. REC. 20th year, 1234th meeting 62 (S/PV.1234) (1965).

233. See the authorities cited and the critique of their views in STONE, *AGGRESSION AND WORLD ORDER* 92-103 (1958).

content of the self-defense exception, it establishes a broad and certain mandate for the peaceful resolution of international conflict, clearly a fundamental interest of the organization as a whole. Moreover, this view seems consistent with the negotiating history of the Charter.<sup>234</sup> But that history must be viewed in terms of the peacekeeping scheme projected by the Charter's framers. Under this scheme the five permanent Council members would cooperate in policing the world. It is doubtful whether the Council could have fulfilled this vision even if the American-Soviet solidarity postulated at San Francisco had lasted. In all events, the United Nations members had the wisdom and ingenuity to develop other machinery for giving effect to the organization's purposes. They viewed the Charter as a constitutive document of considered generality designed to deal with new and changing circumstances. The decline of the Security Council was matched by the growth of the peacekeeping capabilities of the General Assembly, through the "Uniting for Peace Resolution,"<sup>235</sup> and of regional arrangements under chapter VIII.<sup>236</sup> The development of these institutions and the limitations on their actions have been discussed elsewhere at length. The point here is that analysis of the terms of the Treaty of Guarantee and the intent of its drafters raises the possibility that the Treaty, and perhaps similar agreements,<sup>237</sup> may provide a third mechanism for the use of force consistent with the United Nations' Purposes.

The basic aim of the 1960 Accords was to protect the Turkish Cypriot minority and to establish conditions for the preservation of peace on an island riven by violence for centuries. The Accords provided a carefully conceived structure of guarantees designed to achieve that purpose. The internal guarantees included in the Constitution were the first line of defense against intercommunal strife. But if these failed of enforcement, the mechanism of protection established in

234. "[T]he unilateral use of force or similar coercive measures is not authorized or admitted. The use of arms in legitimate self-defense remains admitted and unimpaired. The use of force, therefore, remains legitimate only to back up the decisions of the Organization at the start of a controversy or during its solution in the way that the Organization itself ordains." Doc. No. 944, I/1/34(1), 6 U.N. CONF. INT'L ORG. DOCS. 446, 459 (1945) (report of Rapporteur of Committee I to Commission I).

235. U.N. GEN. ASS. OFF. REC. 5th Sess., Supp. No. 20, at 10 (A/1775) (1950). See generally Andrassy, *Uniting for Peace*, 50 AM. J. INT'L L. 563 (1956).

236. United States representatives contended that chapter VIII provided a sound legal basis for the 1962 quarantine of Cuba. See Chayes, *Law and the Quarantine of Cuba*, 41 FOREIGN AFFAIRS Q. 550, 554-57 (1963); Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515, 518-19 (1963). See also note 100 *supra*.

237. Only a few treaties of guarantee, in the traditional sense, appear to have been concluded in this century, although they were once a relatively frequent form of international undertaking. See the agreements cited in McNAIR, *THE LAW OF TREATIES* 239-54 (1961); I OPPENHEIM, *INTERNATIONAL LAW* 964-68 (8th ed. Lauterpacht 1955). None of these examples seems sufficiently analogous in both their terms and the circumstances in which they were concluded to warrant analysis here. Two points concerning this class of treaties should, however, be mentioned. First, several agreements, such as the Treaty of Locarno, Oct. 16, 1925, 54 L.N.T.S. 289 (signed by Germany, Belgium, Great Britain, France, and Italy), included both individual and collective guarantees. See Bishop, *The Locarno Pact*, 11 TRANSACT. GROT. SOC'Y 79, 95-96 (1926). Second, particular constitutions were among the subjects of protection of several early treaties of guarantee. In connection with such agreements, Sir Robert Phillimore wrote that "a Right of Intervention has been, and may be conceded by one nation to another, without entailing the loss of legal personality in the nation which concedes it—without reducing that nation to the *status* . . . of a State so protected as to be dependent.

"This is a construction of Guaranteeship opposed certainly to every presumption of public law, and one which can only be created—if, according to modern practice and usage, it can be created at all—by express words. Such a Treaty is fraught with mischief to the best interests both of Public and International Law." 2 PHILLIMORE, *INTERNATIONAL LAW* 85 (1882). (Emphasis in original.)

the Treaty of Guarantee was to come into operation—collective measures or, if multilateral agreement were not possible, unilateral action.

In this situation, have the parties, by a consensual arrangement expanded their unilateral authority to decide to use force beyond the confines of article 51? The broader the international implications of the dispute, the less satisfactory such a mechanism becomes. And if it is likely to threaten international peace, the Security Council is authorized to take action. But until this point, may not the Guarantor Powers employ the full range of sanctions available to them under the Treaty? In this inquiry, comparison with regional arrangements may be useful. The arrangements contemplated under chapter VIII concern affairs within a region rather than a single nation. This is a somewhat arid distinction, however, since violation of the Treaty of Guarantee could lead to a conflict involving three Mediterranean nations as well as the United Kingdom with its significant interests in the Mediterranean area. More significant, specific recognition of a right of unilateral action distinguishes the Treaty of Guarantee from the constitutive documents of regional arrangements.<sup>238</sup> Agreements such as the Rio Treaty of 1947,<sup>239</sup> which together with related accords provides the legal structure for the inter-American system, require at least the assent of a majority of their members for action under the aegis of the collectivity. The basic rationale for the use of force under regional arrangements is that "decisions are made by political processes involving checks and balances and giving assurance that the outcome will reflect considered judgment and broad consensus."<sup>240</sup> The unilateral decisions of a Guarantor Power under article IV provide no such assurance; on the contrary, individual action may not occur under the terms of article IV unless the Guarantor Powers are unable to agree on joint measures.

At the same time, however, the Treaty requirement of consultation does ensure a cooling-off period and an opportunity to weigh the views of all Guarantor Powers before unilateral action. Furthermore, article IV includes an important limitation on the action that may be taken pursuant to it. Such action must be "with the sole aim of re-establishing the state of affairs created by the present Treaty." And implicit in the restriction is a requirement that the measures taken be appropriate to that "sole aim."

Considered entirely apart from the circumstances of the current crisis, might not a Guarantor Power, in certain situations, reasonably conclude that the consensual arrangement embodied in the Treaty of Guarantee authorizes the use of force to reestablish the "state of affairs"? And might it not reasonably judge that such forcible action was consistent with the Purposes of the United Nations and with the Charter article 2(4)?<sup>241</sup> Resolutions of these issues in any particular situ-

238. Another distinguishing feature is that the operative provisions of article IV are not triggered unless one of the *parties* violates the terms of the Treaty. Other regional arrangements, such as the Arab League, to the extent that they permit the use of force, are concerned primarily with meeting threats of nonmember intervention within the region. See generally Khadduri, *The Arab League as a Regional Arrangement*, 40 AM. J. INT'L L. 756 (1946).

239. Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, 62 Stat. 1681 (1948), T.I.A.S. No. 1838.

240. Chayes, *supra* note 236, at 554.

241. "Collective measures" are, of course, the only means of suppressing "breaches of the peace" explicitly mentioned in article 1(1) of the Charter, but unilateral actions are not explicitly precluded by that provision.

ation will depend in large measure on the facts of that situation. We turn next, therefore, to the circumstances of such a use of force.

#### 4. *The August 1964 Turkish bombings.*

When Turkish planes attacked the Island, the Security Council had been seized of the crisis for more than six months. Under resolutions of March 4, March 13, and June 20, 1964, it was actively exercising jurisdiction over the matter.<sup>242</sup> By the first of these resolutions a United Nations peacekeeping force was on the Island, a mediator had been appointed by the Secretary-General, and all United Nations members had been called upon to "refrain from any action or threat of action likely to worsen the situation in the sovereign Republic of Cyprus, or to endanger international peace."

The Council's acceptance of jurisdiction appears determinative of Turkey's right to employ force in this situation. As we have seen, the Treaty of Guarantee may, because it is a consensual arrangement, expand the rights of Guarantor Powers to decide unilaterally to use force beyond the circumstances covered in article 51. But it would seem that the United Nations Charter must create Security Council jurisdiction to decide on the use of force that overlaps the Treaty grant. How can the Council fulfill its peacekeeping obligations under the Charter unless a Guarantor Power's decision in this situation is subject to Council review?<sup>243</sup>

In this sense, the Treaty of Guarantee and the Charter form a hierarchical structure in which the narrower institution's processes may be reviewed by those of the broader. This approach seems to have been contemplated by the Charter's drafters in framing the functions and authority of regional arrangements under chapter VIII.<sup>244</sup> It seems no less applicable to the kind of mechanism established under the Treaty. On this basis, if the Council is actively seized of a matter before the Guarantor Power decides, the right to act unilaterally must be pro tanto in abeyance. At what point Council involvement in the crisis preempted Guarantor Power authority to decide to use force under the Treaty may be questionable. But certainly it took place no later than March 27, 1964, when UNFICYP became operational pursuant to the Council's March 4 determination "that the present situation with regard to Cyprus is likely to threaten international peace and security."

The Turkish representative argued with some force before the Council that

242. See U.N. Doc. Nos. S/5575, S/5603, S/5778 (1964).

243. Preemption in article 51 cases does not, under the terms of that provision, occur "until the Security Council has taken measures necessary to maintain international peace and security." But must not the Council itself decide when this has occurred? See HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 205-06 (1963); RUSSELL & MUTHER, *A HISTORY OF THE UNITED NATIONS CHARTER* 465-66 (1958). But see BOWETT, *SELF-DEFENSE IN INTERNATIONAL LAW* 196 (1958): "[T]he preferable view . . . is that whether the necessary measures have been taken must be determined objectively, as a question of fact, and that both the S.C. and the defending state are able to reach their own decision on this." Compare the Charter article 12(2) restriction on the General Assembly's authority to make recommendation "while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter . . . ."

244. "Regional organizations continue subordinate to the United Nations by the terms of the Charter . . . . Like an individual state, the O.A.S. can be called to account for its action in an appropriate agency of the more encompassing organization." Chayes, *supra* note 236, at 557.



the Cypriot Government had launched a "large-scale offensive" against the Turkish Cypriot communities, particularly in the Kokkina-Mansoura area, "threatening to wipe out the inhabitants of the area, [and] the United Nations Peace-keeping Force has been unable to act."<sup>245</sup> He referred to an earlier statement in which he had said of Turkey's right to intervene under article IV: "That right is inalienable. But it need not be exercised so long as the United Nations peace-keeping operations in Cyprus can be carried out unhindered."<sup>246</sup> He went on to say, however, that

the Greeks of Cyprus have denied the United Nations Force the right to exercise its mandate so that the unquestionable right and even duty of Turkey to take action under the Treaty, even though carefully restrained, had to be brought into application. No country, in duty bound to go to the aid of its massacred kin, could be expected to remain aloof in the face of such an organized and brutal aggression, perpetrated with the aid of military equipment and personnel sent from Greece.<sup>247</sup>

And he carefully emphasized that Turkey had consulted with her co-Guarantor Powers, as is required under the Treaty, before resorting to the bombings.

It is difficult to weigh the charge that the Cypriot Government was persecuting Turkish Cypriots against the claim of the Cypriot Government that Turkish Cypriot terrorists "were carrying out a plan . . . to spread and intensify the rebellion in Cyprus, and resort to warfare and everything that goes with warfare . . . ."<sup>248</sup> A reading of the substantial amounts of material prepared by both sides indicates that there is some truth in the accusations of each party.<sup>249</sup> Study of this material, relevant press reports, and the Secretary-General's review of the matter,<sup>250</sup> however, leads to the conclusion that the deteriorating situation on the Island just prior to the August bombings was probably brought about in large measure by Cypriot Government actions contrary to the Security Council resolutions.

Assuming that the causes of the deterioration were primarily attributable to Greek Cypriots, however, the Council was still actively seized of the crisis and, under the analysis suggested above, Turkey's decision-making authority under the Treaty was preempted. The Council acted in the exercise of its jurisdiction

245. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1142d meeting 10 (S/PV.1142) (1964).

246. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1136th meeting 21 (S/PV.1136) (1964).

247. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1142d meeting 11 (S/PV.1142) (1964).

248. *Id.* at 18.

249. See, e.g., Letter From the Acting Permanent Representative of Turkey to the President of the Security Council, March 6, 1964, in U.N. Doc. No. S/5580 (1964); Letter From the Permanent Representative of Cyprus to the President of the Security Council, March 10, 1964, in U.N. Doc. No. S/5589 (1964).

250. Secretary-General, *Report on the United Nations Operation in Cyprus*, U.N. Doc. No. S/5950, at 21-24 (1964). The report states that "the Turkish Cypriot bridgehead around Kokkina and Mansoura was considered dangerous by the Cypriot Government. The Government claimed, with some justification, that the Turkish Cypriots had been smuggling arms and men into the bridgehead in order to strengthen their position." *Id.* at 21. Archbishop Makarios had assured the UNFICYP Commander, however, that "the Government had no intention of attacking any Turkish Cypriot positions and that should the Government find it necessary to do so it would give due warning to the Force Commander." *Id.* at 22. In fact, on August 6 Government forces mounted a surprise attack on the Turkish Cypriot positions and, despite "a strong written protest" to the Cypriot Government by the Commander, the attack continued through August 8, the first day of the Turkish air attacks. *Id.* at 23.

when it adopted the March 4 resolution. And the effect of the bombings was "to worsen the situation" from the standpoint of the international community—clearly the referent of the resolution. The bombings resulted in an ultimatum from Archbishop Makarios that the Cypriot Government would begin a full-scale offensive against Turkish Cypriots throughout the Island unless the bombings stopped immediately, and this would seem to have been predictable at the time. It may be that some standard of effective exercise of Council jurisdiction should be applied and that the existence of the Cyprus problem on the Council's agenda should not preclude a Guarantor Power's use of force if the Council is unable to deal with a critical aspect of the crisis. But the burden of proving these circumstances must necessarily be a heavy one, and it was not met by Turkey in August 1964.<sup>251</sup>

Two related, though less significant, issues are also involved. First, can the bombings fairly be described as "an action with the sole aim of re-establishing the state of affairs created by the present Treaty"? It seems reasonable to infer from this restriction that the "action" must be appropriately calculated to achieve the "aim." There would appear to have been little likelihood that the bombings would promote such a restoration of the status quo. Second, entirely apart from the terms of article IV, were the bombings reasonably related to their purported purpose—to prevent further repressive measures against Turkish Cypriots?<sup>252</sup> The actual result was quite the opposite, and this would seem to have been foreseeable.<sup>253</sup> Finally, the substantial loss of life and property that resulted from

251. Mr. Eralp did not, in fact, rely exclusively on article IV in the Security Council debates concerning the bombings. At one point he also termed the raids "a limited police action taken in legitimate self-defense." U.N. SECURITY COUNCIL OFF. REC. 19th year, 1142d meeting 12 (S/PV.1142) (1964). An obvious advantage in this approach was that Charter article 51 raises "the inherent right of individual or collective self-defense if an armed attack occurs" above other Charter obligations "until the Security Council has taken the measures necessary to maintain international peace and security." And since Turkey alleged that it was responding to an armed attack, it could avoid the question whether article 51 precludes the exercise of a broader right of self-defense under customary international law. Compare BROWNIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 272-75 (1963), with BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 184-93 (1958). At the same time, however, characterization of the Turkish action as self-defense raises not only issues of necessity and proportionality, but also the question whether the Security Council had precluded unilateral action under article 51 by taking "the measures necessary to maintain international peace and security." Apart from these considerations, there is at least some conceptual difficulty in describing the Turkish action as self-defense. The use of force to protect a nation's citizens has been justified on the ground that a state is no more than a collectivity of its nationals, and, therefore, protection of them is protection of the state itself. See BOWETT, *op. cit. supra* at 91-94. The ties that bind Turkish Cypriots to Turkey are strong. For many they may be stronger than their bonds with the Island. And in Turkish eyes their defense is undoubtedly the defense of Turkey. But it is questionable whether they should be viewed as an extension of Turkey's "self" since they lack "a nexus of nationality." See *id.* at 95. *But cf.* Legal Advisor, U.S. Dep't of State, Legal Basis for United States Actions in the Dominican Republic, May 7, 1965 (intervention justified on ground that it "was essential to preserve the lives of foreign nationals—nationals of the United States and of many other countries"). (Emphasis added.)

252. *Cf.* Fisher, *Intervention: Three Problems of Policy and Law*, in *ESSAYS ON INTERVENTION* 3, 26 (Stanger ed. 1964): In regard to the use of pressure short of force, "the more direct and immediate the relationship between the pressure adopted and the end sought the better." This concept is closely related to the twin doctrines of necessity and proportionality. See generally McDUGAL & FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 217-44 (1961). Although these principles traditionally have been applied to the use of force in self-defense, they have also been considered relevant in other contexts. See, e.g., Meeker, *supra* note 236, at 524: "[T]he quarantine itself was a carefully limited measure proportionate to the threat . . ." At least to the extent the bombings were unlikely to result in lessening the threats to the Turkish Cypriots, the Turkish action cannot be termed either necessary or proportionate.

253. See Secretary-General, *Report on the United Nations Operation in Cyprus*, U.N. Doc. No.

the bombings obviously must be weighed in any overall consideration of the matter.<sup>254</sup>

A combination of these factors led the Security Council to denounce the Turkish action and to appeal "to the Government of Turkey to cease instantly bombardment and the use of military force of any kind against Cyprus . . . ." <sup>255</sup> All its members apparently considered the bombings inconsistent with the Council's cognizance of the crisis, its specific mandate to the parties to refrain from action likely to endanger international peace, and the Charter Purpose of maintaining that peace. Except for occasional overflights by Turkish air force planes,<sup>256</sup> Turkey has complied with the Council's appeal.

##### 5. *Future action under article IV.*

Since September 1964, there have been no significant threats of unilateral military action by Turkey, although she has consistently maintained her position that such action is authorized by article IV.<sup>257</sup> One reason, of course, is the presence of the United Nations Peacekeeping Force on the Island. Turkey has continued to contend, however, that the Force must be not only operational but also *effective* in carrying out its mandate.<sup>258</sup> Mr. Eralp has been careful to emphasize Turkish restraint when these two conditions have been met and her reluctance to intervene even when she considered that the Force was not effective.

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5950, at 24 (1964). The Secretary-General stated that "these raids . . . inevitably led to a stiffening of the positions of the Cypriot Government, as might have been anticipated." *Id.* at 64.

254. See *ibid.*: "These raids on defenseless people killed and maimed many innocent civilians, destroyed much property . . ." Turkey claimed that its bombing was directed solely against military targets. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1142d meeting 12 (S/PV.1142) (1964). If this was the case, its bombers had extraordinarily poor aim. See photographs in Union of Journalists of Athens Daily Newspapers, *Satan Storms Cyprus*, 1964.

255. Security Council Res. No. 193, U.N. Doc. No. S/5868 (1964). See also the consensus adopted by the Council on August 11, 1964. U.N. SECURITY COUNCIL OFF. REC. 19th year, 1143d meeting 62 (S/PV.1143) (1964).

256. See Secretary-General, *Report on the United Nations Operation in Cyprus*, U.N. Doc. No. S/5950, at 24 (1964). On August 10 two Turkish planes were reported to have made a machine-gun attack on the Island, *ibid.*, but Turkey claimed that they were engaged only in "reconnaissance flights." U.N. SECURITY COUNCIL OFF. REC. 19th year, 1143d meeting 36 (S/PV.1143) (1964).

257. On September 10, 1964, just over a month after the bombings, the Turkish Government sent a memorandum to the Secretary-General declaring that within two or three days it would "undertake to deliver food supplies and other necessities to . . . besieged people" in the Kokkina area. U.N. Doc. No. S/5954 (1964). The memorandum stated that "when Turkey agreed to discontinue air intervention . . . [she] had been given to understand that the Greek Cypriot aggressors would withdraw to the positions they occupied prior to August 5, that the safety of the Turkish Cypriots in that area would be secured and that the inhuman economic blockade applied against the Turks of Cyprus would be lifted." Since these conditions were not met, Turkey proposed to deliver food to those subject to the blockade. Furthermore, she threatened that if the deliveries were prevented, "the Turkish Government will be compelled to take appropriate action in order to defend its rights and carry out the humanitarian duties which devolve upon it." The Secretary-General immediately responded that the Security Council's resolution of August 9 and the Council consensus of August 11 contained no reference to an understanding such as that referred to in the Turkish memorandum and that "implementation of the resolutions of the Security Council and of the Council consensus of 11 August cannot be made contingent on compliance by the parties with any provisions extraneous to these texts." U.N. Doc. No. S/5961 (1964). He emphasized that UNFICYP was doing all that it could to help in bringing food to the Turkish Cypriots in the Kokkina area, but that "in order to make possible such UNFICYP assistance, any plans by the Turkish Government for bringing supplies into Cypriot territory must have the consent of the Cyprus Government." *Id.* at 3-4. And he drew "attention to the possible dangerous consequences of any attempt to bring materials or supplies into Cypriot territory on any other basis." *Id.* at 4. The Turkish Government never carried out its threat.

258. See Letter From the Prime Minister of Turkey to the President of the Security Council, Aug. 10, 1964, in U.N. Doc. No. S/5875, at 2 (1964).

The issue whether a Turkish use of force under article IV is compatible with her Charter obligations might again come to a head, however, if the situation on the Island should deteriorate materially because of Cypriot Government measures in violation of the Council's injunction "to refrain from any action or threat of action likely to worsen the situation in Cyprus or endanger international peace." The critical factors would be the extent of the deterioration, the degree of the United Nations inability to deal with it, and the forceful measures actually employed by Turkey. If, for example, after the withdrawal of UNFICYP, the Cypriot Government should threaten a massacre of the Turkish Cypriot population and the Security Council were unable to meet the emergency because of a deadlock or veto, a limited Turkish use of force aimed solely at protecting Turkish Cypriots and, therefore, at restoring the "state of affairs" might arguably be consistent with both the preemptive authority of the Council and the maintenance of international peace. The problems involved in examining the August 1964 Turkish action, however, underscore the difficulties of considering such hypothetical situations.

### *E. The Crisis Considered in the Security Council and in the General Assembly—A Contrast*

Analysis of the 1965 Security Council debates concerning the crisis reveals increasing censure of the Cypriot Government by the Council as a whole. The General Assembly, on the other hand, adopted a resolution in December 1965 that was viewed, at least by the parties to the crisis, as substantially favorable to Cyprus.<sup>259</sup> The contrasting positions taken by the Security Council and the General Assembly in 1965 provide a basis for an assessment of their relative roles in the crisis.

#### *1. The Security Council.*

As we have seen, the Council's consideration of the crisis opened with Cyprus in the position of an aggrieved party seeking redress before a sympathetic audience. To a remarkable degree, however, this climate changed in 1965. In that year Cyprus was generally on the defensive and increasingly criticized for actions taken in violation of the 1960 Agreements.

A revealing illustration of this shift occurred in July and August 1965. The Cypriot Council of Ministers, under the chairmanship of President Makarios, proposed a bill to extend the terms of office of the president and the members of the House of Representatives, but not that of the vice-president.<sup>260</sup> The Council also proposed legislation to abolish all communal distinctions regarding elections

259. The General Assembly was not involved in the Cyprus crisis before December 1965, since the financing controversy blocked virtually all Assembly work during its nineteenth session. A number of Assembly delegates did, of course, refer to the crisis in statements at the opening of that session. See U.N. Monthly Chronicle, Jan. 1965, pp. 43, 55, 74, 99; *id.*, Feb. 1965, pp. 25, 36, 39-40, 43-45.

260. See Secretary-General, *Report on Recent Developments in Cyprus*, U.N. Doc. No. S/6569 (1965). Article 143(1) of the Cypriot Constitution authorizes the Supreme Constitutional Court to approve an extension of the terms of the Representatives in "urgent and exceptionally unforeseen circumstances," but this provision was apparently not invoked before the newly constituted Supreme Court of Justice.

for the presidency and membership in the House. The Turkish members of the House immediately requested, through UNFICYP, an opportunity to participate in the House proceedings concerning these bills. They stated that they would be prepared to attend House meetings on all issues, not simply on the proposed legislation. The President of the House, Mr. Clerides, would not agree to this request, however, unless the Turkish Cypriot members accepted several pre-conditions. The most important was acquiescence in the repeal of article 78 of the Constitution, a basic article requiring separate majorities in the House for certain types of legislation. Furthermore, Mr. Clerides informed the Secretary-General's Special Representative that "the Government . . . no longer recognized Dr. Kutchuk in his capacity as Vice-President" and that "the Turkish Cypriot members had no legal standing any more in the House."<sup>261</sup> In these circumstances, the Turkish Cypriot members did not appear during the House debates, and the legislation was adopted without opposition.<sup>262</sup>

Some measures were necessary to keep the machinery of government going on the Island. The five-year terms of the Representatives, established in article 65(1)\* of the Constitution, were due to expire in August 1965, and elections could not have been held at that time. If the status quo was to be maintained, the terms of the government's elected officials had to be extended. If this were all that had been attempted, it would be difficult to criticize the government's actions. Even if the extension had been adopted over the objection of the Turkish Cypriot members of the House, no substantial case could have been made that the action was likely to "worsen the situation in the sovereign Republic of Cyprus" in violation of the Security Council's March 4 resolution.

But the action taken by the Greek Cypriot members went far beyond maintenance of the status quo. It is hardly surprising that diplomatic protests were immediately made by the British and Turkish Governments, and that they then called for a meeting of the Security Council.<sup>263</sup>

At the Council meeting Mr. Kyprianou contended that the matter fell "exclusively within the domestic jurisdiction of the Republic of Cyprus" and thus could not, under article 2(7) of the Charter, be the subject of international inquiry.<sup>264</sup> But he found no support for his position. None of the Council members were willing to consider the legislation as solely a domestic matter—it was too intimately related to the disputed issues that had brought the crisis to the United Nations. And during the Council debates, the British, French, Soviet, and United States representatives were, in varying degrees, all critical of the Cypriot action.<sup>265</sup>

261. See Secretary-General, *Report on Recent Developments in Cyprus*, U.N. Doc. No. S/6569, at 3 (1965).

262. The Turkish Communal Chamber did, however, take the precaution of voting to extend the terms of its own members. See *id.* at 5-6.

263. See U.N. Docs. Nos. S/6571, S/6573 (1965).

264. U.N. SECURITY COUNCIL PROV. REC. 20th year, 1234th meeting 26 (S/PV.1234) (1965). At the same time, Mr. Kyprianou attempted to defend the actions of the House of Representatives, arguing, for example, that "the basis of the amendments to the Electoral Law was the elimination of racial division and racial discrimination." *Id.* at 27.

265. The British representative contended that the action "accorded neither with the spirit nor the letter of the Council's resolution of 4 March last year . . ." U.N. SECURITY COUNCIL PROV. REC. 20th year, 1235th meeting 7 (S/PV.1235) (1965). The French representative said that the developments "have jeopardized the favourable outlook [for a peaceful solution] . . ." *Id.* at 21. The

Even the Greek representative suggested that "one might conceivably have some misgivings as to the timing of the two legislative measures recently enacted in Cyprus, and especially the law containing certain transitory provisions amending the Island's electoral system."<sup>266</sup>

From an apparent position of plaintiff and prosecutor in the Council, the Cypriot Government became the defendant, and it is difficult to glean from the Council debates any consensus other than that she failed to acquit herself.<sup>267</sup> Furthermore, it appears to be the judgment of the Council as a whole that although the 1960 Accords are in desperate need of revision, they must be revised by *all* the parties. This has been the consistent view of the British and United States Governments.<sup>268</sup> Not until 1965, however, did it appear to gain substantial support from other Council members. Now, even the Soviet Union seems tacitly to accept it.<sup>269</sup>

This may be among the most significant aspects of the crisis, although it is easily overlooked in the confusion of charges and countercharges that has surrounded the conflict since its inception. There is no more fundamental principle in the liturgy of international law than that agreements among nations must be respected. Statements of the doctrine, however, often appear as affirmations of faith rather than of principle rooted in the basic structure of international law as it is practiced. And one who reads the views of legal theorists from some of the developing countries has a sharp sense of the limitations on their commitment to norms, including *pacta sunt servanda*, that matured long before their nations were born. The Council's considerations of the crisis provide no ringing collective affirmation of the doctrine. It seems fairly clear, in fact, that the Council members believe, in general, that the 1960 Accords must be subject to revision and change. But one does gain a sense from the Council debates that the place to start in dealing with the Cyprus problem is the existing treaty structure—that the Agreements cannot be rejected solely on the ground that they are no longer satisfactory to two of the parties.

Beyond this, the Council considerations of the crisis indicate that, over time, its deliberations may produce both considered collective judgments and shifts in those judgments as events develop. Delegates to the Council are, of course, primarily spokesmen for the nations they represent. But in the seemingly endless

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United States representative concluded that "this action could hardly qualify as 'restrained' within the terms of the March 4 resolution of the Security Council." *Id.* at 11. And the Soviet representative at least implied that the legislation "might complicate matters on Cyprus." *Id.* at 26.

266. U.N. SECURITY COUNCIL PROV. REC. 20th year, 1234th meeting 42-45 (S/PV.1234) (1965).

267. Another example occurred in November 1965 when the Cypriot Government was criticized by several Council members for expanding its fortifications in the Famagusta area. See U.N. SECURITY COUNCIL PROV. REC. 20th year, 1252d meeting (S/PV.1252) (1965).

268. See, e.g., the statement by the British representative: "[C]hanges can be brought about only through negotiation, or by any other method acceptable to the parties concerned; the treaties can neither be abrogated unilaterally nor disposed of in any other way. . . . [T]here must be respect for international treaties . . . ." U.N. SECURITY COUNCIL PROV. REC. 20th year, 1235th meeting 7 (S/PV.1235) (1965).

269. The Soviet Union has consistently maintained that "all foreign troops should be withdrawn from" Cyprus and all foreign bases there "liquidated," so "the people of Cyprus, both Greeks and Turks, may freely decide their domestic affairs, without any foreign interference." U.N. SECURITY COUNCIL PROV. REC. 20th year, 1235th meeting 22 (S/PV.1235) (1965). But since the visit to Moscow of the Turkish Prime Minister in November 1964, the Soviet representative to the Council has not stressed his earlier charge that the 1960 Agreements are void on the ground of inequality.

Council debates on Cyprus one can detect, over an extended period, the development of understandings that seem to represent the workings of a corporate body and to transcend the decision-making processes of its separate member states.

## 2. *The General Assembly.*

Against this background, the Cypriot Government made a substantial effort in the months preceding the opening of the General Assembly's twentieth session to gain support for its positions on the various issues in the crisis.<sup>270</sup> The validity of the 1960 Accords, in general, and Turkey's rights under the Treaty of Guarantee, in particular, were obviously of primary concern to Cyprus, and she hoped to obtain in the General Assembly the resolution on these issues that she had unsuccessfully sought in the Security Council.

During the period just before the Assembly debates, the Cypriot Government took several steps that marked significant shifts from its previous intransigence vis-à-vis both the Turkish Cypriots and Turkey. Perhaps most important, it declared in October 1965 "that it is ready and willing" to: (a) adopt a Code of Fundamental Rights, along the lines of the Universal Declaration of Human Rights, to protect the Turkish Cypriots; (b) allow the Turkish Cypriot community sole control over the "education, culture, religion, [and] personal status" of its members; (c) permit Turkish Cypriots "participation in Parliament" on the basis of proportionate representation; and (d) accept, for a transitional period, a United Nations Commissioner on the Island and other "appropriate machinery" to ensure enforcement of the rights of Turkish Cypriots.<sup>271</sup> The extent of practical protection that would be afforded Turkish Cypriots under the Code of Fundamental Rights may be open to question, particularly in light of the difficulties faced in enforcing the far more detailed statement of Fundamental Rights and Liberties in the 1960 Constitution. At the same time, however, the declaration as a whole seems to represent a significant effort by the Cypriot Government to meet some of the legitimate concerns of the Turkish Cypriots.<sup>272</sup>

In the General Assembly the United States and Great Britain joined four nonaligned nations in supporting a resolution that would simply have urged further United Nations mediating efforts to achieve "a peaceful and agreed solution of the problem of Cyprus" in accordance with the United Nations Charter.<sup>273</sup> The resolution was, according to the United States representative, "a

270. In particular, Cyprus sought support from the nonaligned nations, with whom she has consistently associated herself. Her success in this undertaking is evidenced in the declaration by the Cairo Conference of Heads of State or Government of Non-Aligned Countries, *Programme for Peace and International Cooperation*, Oct. 10, 1964, U.N. Doc. No. A/5763 (1964).

271. See U.N. Doc. No. A/6039 (1965).

272. The relation of the declaration to a possible new settlement is discussed in text accompanying notes 326-28 *infra*.

An example of the apparent shift from prior intransigence vis-à-vis Turkey was the Cypriot acquiescence in September 1965 to rotation of the Turkish contingent that was on the Island pursuant to the Treaty of Alliance. See Secretary-General, *Report on the United Nations Operation in Cyprus (for the period June 11 to Dec. 8, 1965)*, U.N. Doc. No. S/7001, at 12 (1965). Rotation of the contingent—opposed by the Cypriot Government on the ground that it had abrogated the Treaty of Alliance—was a periodic source of conflict during much of the crisis. See, e.g., Secretary-General, *Report on the United Nations Operation in Cyprus*, U.N. Doc. No. S/5950, at 10 (1964).

273. U.N. Doc. No. A/C.1/L.341/Rev.1 (1965). Turkey submitted her own resolution, U.N. Doc. No. A/C.1/L.336/Rev.1 (1965), but did not insist that it be put to a vote. See First Committee, *Report on the Question of Cyprus*, U.N. Doc. No. A/6166 (1965).

wholly neutral and impartial text designed, without prejudice, to return the issue to the Security Council, where it belongs, and to United Nations mediation as provided by the Council.<sup>274</sup>

A bloc of twenty-nine nonaligned nations proposed an alternative resolution,<sup>275</sup> however, and after an almost unbelievable procedural circus, this resolution was adopted in the First Committee and then in the General Assembly.<sup>276</sup> The only recommendation in the resolution was that the United Nations mediation work should continue. But the resolution also took "cognizance of the fact that the Republic of Cyprus, as an equal member of the United Nations, is, in accordance with the Charter, entitled to and should enjoy full sovereignty and complete independence without any foreign intervention or interference . . ." And paragraph 2 called "upon all States, in conformity with their obligations under the Charter, and in particular Article 2, paragraphs 1 and 4, to respect the sovereignty, unity, independence and territorial integrity of the Republic of Cyprus and to refrain from any intervention directed against it . . ." Turkey had argued at length against the resolution and considered its adoption a serious blow.<sup>277</sup> By the same token, Cyprus viewed the General Assembly's action as a major victory.<sup>278</sup> Unquestionably, the thrust of the resolution was against both Turkish military intervention and a solution that would include partition.<sup>279</sup> At the same time, however, analysis of its terms reveals that it raises the same problems that we have previously considered concerning the application of the Charter's provisions, particularly articles 2(1) and 2(4), to the exercise of Turkish rights under the Treaty of Guarantee.

More important, the voting in the First Committee and the General Assembly indicates that passage of the resolution was substantially less significant than either side was willing to indicate. Although 47 members of the General Assembly favored it, 54 abstained, 5 voted against it, and 11 were absent.<sup>280</sup> None of the permanent members of the Security Council voted for the resolution—the United States opposed it, and the other four abstained. And even among the six nonpermanent Council members only two nations, the Ivory Coast and Uruguay, favored the measure.

Most of the abstaining states presumably concluded that the terms of the reso-

274. U.N. GEN. ASS. PROV. REC. 20th Sess., 1st Comm. 96 (A/C.1/PV.1416) (1965).

275. U.N. DOC. NO. A/C.1/L.342/Rev.2 (1965).

276. First Committee, *Report on the Question of Cyprus*, U.N. Doc. No. A/6166 (1965); U.N. GEN. ASS. PROV. REC. 20th Sess., 1402d meeting 28-31 (A/PV.1402) (1965).

277. See U.N. GEN. ASS. PROV. REC. 20th Sess., Plenary 47-52 (A/PV.1402) (1965); N.Y. Times, Dec. 21, 1965, p. 4, col. 6.

278. See U.N. GEN. ASS. PROV. REC. 20th Sess., 1st Comm. 138-47 (A/C.1/PV.1412) (1965); *id.*, Plenary 53-55 (A/PV.1402) (1965). The Greek Prime Minister claimed that passage of the resolution meant that "the struggles carried on jointly with the Republic of Cyprus have been successfully concluded." N.Y. Times, Dec. 20, 1965, p. 15, col. 5.

279. The phrasing of paragraph 2 of the resolution makes it appear that the "unity" of Cyprus—presumably as opposed to its partition—is entitled to "the respect" of all states under Charter articles 2(1) and 2(4), although these provisions include no such term.

280. The negative votes were cast by Albania, Iran, Pakistan, Turkey, and the United States—strange bedfellows. The affirmative votes included 29 African and Arab states, 12 Latin-American nations, 2 Asian countries, and Cyprus, Greece, India, and Yugoslavia. U.N. GEN. ASS. PROV. REC. 20th Sess., 1402d meeting 31 (A/PV.1402) (1965). In the First Committee the vote was 47-to-6, with 51 abstentions. First Committee, *Report on the Question of Cyprus*, U.N. Doc. No. A/6166 (1965). Libya voted against the resolution in the First Committee, but abstained in the Assembly vote.



lution were sufficiently parallel to provisions of the Charter to preclude voting against it. They were apparently persuaded not to favor the resolution, however, by several concerns. First, the Soviet Union and other Communist nations indicated that the General Assembly should not become directly involved in the crisis because the Security Council was seized of the matter.<sup>281</sup> Second, a number of countries may have been influenced by the United States position that a resolution opposed by one of the parties should not be adopted because a final solution can occur only on the basis of a negotiated settlement.<sup>282</sup> And finally, the fact that *neither* the United States *nor* the Soviet Union supported the resolution—although for different reasons—obviously had an influence on other members. Whatever the reasons for the fifty-four abstentions, however, the resolution was supported by less than a majority of the United Nations members and cannot be said to represent the collective judgment of the international community.<sup>283</sup>

Beyond this, comparison of the Security Council and General Assembly considerations of the crisis may be indicative of some shift in the attitudes of the United Nations members concerning the relative roles of the two organs in keeping the peace. In the last decade the majority of the organization's members supported the view that "the role of guardian of the peace has passed to the General Assembly."<sup>284</sup> Having witnessed the Council's inability to act when action was needed, they did not hesitate to find other machinery for giving effect to the basic purposes for which the organization was established. In the Cyprus crisis, however, the peacekeeping machinery available to the Council was not paralyzed by a Soviet veto. The Council did act—in a hesitant and limited way, it is true, yet it managed to contain if not resolve the conflict. The crisis may, therefore, mark a limited resurgence of the Council that is indicative of the future exercise of its substantial Charter powers to maintain the peace.<sup>285</sup>

At the same time, however, the Council has not, as we have seen, been able to reach the roots of the crisis or even to check many of its most serious incidents. Although, for example, its members apparently view a negotiated settlement among the parties to the 1960 Accords as the only acceptable solution to the crisis, they have not blocked the Cypriot Government from putting into effect, at least on a temporary basis, all of the constitutional revisions proposed by Archbishop

281. See U.N. GEN. ASS. PROV. REC. 20th Sess., 1st Comm. 46 (A/C.1/PV.1418) (1965).

282. See U.N. GEN. ASS. PROV. REC. 20th Sess., Plenary 38-41 (A/PV.1402) (1965).

283. In 1965 the General Assembly also adopted a resolution declaring, *inter alia*, that "no State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention as well as all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned . . ." U.N. Doc. No. A/RES/2131 (XX) (1965). The vote was 109 (including Turkey) in favor, 0 against, and 1 abstention (the United Kingdom). During consideration of the resolution, "the representative of Cyprus suggested that a paragraph should have been included in the draft providing that treaties purporting to authorize intervention by states in the domestic jurisdiction of other states in violation of the Charter should be declared invalid and condemned as a sort of international friction and a threat to peace." U.N. Monthly Chronicle, Jan. 1966, p. 28. However, the suggestion was not adopted.

284. Vallat, *The Competence of the United Nations General Assembly*, 97 RECUEIL DES COURS 203, 246 (1959).

285. See Sisco, *The Resurgence of the United Nations Security Council*, 51 DEP'T STATE BULL. 55 (1964). A combination of factors, including the apparently increasing conscious parallelism of United States and Soviet aims in settling or containing international crises, the resolution of the article 19 dispute, and the enlarged membership of the Council, may all have contributed to this shift.

Makarios.<sup>286</sup> It may be that the Council's success in stopping the fighting, combined with its inability to do more, means that the "final" solution will be a continuation of the present uneasy situation while life on the Island slowly develops new patterns of stability. If the Security Council does no more than check the renewal of violence, allowing time to lessen the risks of a new explosion, it will have performed a valuable function.

Yet time has not been a particularly successful healer on Cyprus, nor has it resolved many of the fundamental issues that led to other United Nations peace-keeping operations. From the standpoint of world peace, a new settlement negotiated among the parties to the 1960 Accords would be plainly preferable to continued drift in the current manner. The final section of this Article analyzes a possible approach to a new settlement.

## V. ELEMENTS OF A NEW SETTLEMENT

Any speculation concerning the components of a solution has its dangers. This is particularly true for one without responsibility for action in a situation as volatile as the Cyprus crisis. At the same time, objective judgment may be possible by the very fact that the burden of decision is absent. On this basis the following comments, admittedly hesitant and uncertain, are made. They are not meant to suggest that there is any inevitably "right" settlement or to predict what settlement the parties will in fact conclude; too many factors bear on their minds and motives to permit such prediction. Rather, these comments are intended solely to provide some concrete focus for consideration of at least the dimensions of the problem and some possible ingredients of a solution.

As a first step it is useful to examine the two major mediating efforts that have already been made. Both failed, but a consideration of approaches that have not worked may provide some insight into a course that could succeed.

### A. *The Acheson Proposals*

In July 1964 President Johnson appointed former Secretary of State Dean Acheson to try to work out a permanent solution to the crisis with Greek and Turkish representatives.<sup>287</sup> The United Nations mediator, Mr. Sakari Tuomioja, was kept informed of these efforts, as was the British Foreign Office through Lord Hood. But no Cypriot representative was involved, presumably because it was felt that Archbishop Makarios might sabotage the enterprise—as, in fact, he apparently did. Mr. Acheson has written that "as the talks opened, one sensed that—theoretically, at least—the interests of Greece and Turkey in Cyprus might not be irreconcilable."<sup>288</sup> After a period of hard negotiations, he offered "the outline of a proposal" to the Greek and Turkish Governments. According to Mr. Ache-

286. Turkey has charged that "this Enosis plan is being systematically and relentlessly implemented, bit by bit, slice by slice, by methods of military encroachments, whenever the situation is suitable for this, by despicable methods of economic pressure and even starvation whenever world opinion seems to be diverted somewhere else and by outright aggression whenever the other two methods do not seem to yield results." U.N. SECURITY COUNCIL PROV. REC. 20th year, 1252d meeting 6-7 (S/PV.1252) (1965).

287. See N.Y. Times, July 4, 1964, p. 1, col. 4.

288. Acheson, *Cyprus: The Anatomy of the Problem*, 46 CHICAGO B. RECORD 349, 353 (1965).

son, it included three main elements: (1) "the union of most of Cyprus with Greece"; (2) "adequate provision for the well-being of [the Turkish Cypriots], . . . a matter not disputed in theory, though not easy in practice"; and (3) a "sequestered base for ground, air, and sea forces" on the Island, "unhampered by the need for tripartite consent at every turn."<sup>289</sup> Details of the plan were never made public, although the press purported to reveal its key elements.<sup>290</sup>

Turkey agreed to accept Mr. Acheson's proposals "as a basis of negotiation."<sup>291</sup> The Turkish Government reportedly insisted, however, that the base area on the Island be sovereign Turkish territory rather than held under some lease arrangement.<sup>292</sup> But, Archbishop Makarios, according to Mr. Acheson, effectively scuttled the Geneva negotiations by publicly denouncing them; the shaky Greek Government was apparently thereafter paralyzed.<sup>293</sup> Turkey was willing to continue negotiations, but Greece was both unable to control the Archbishop and unwilling to break free from his demands. "So the attempt to bring Greece and Turkey together soon straggled to an end in sandy deltas of frustration."<sup>294</sup>

### B. *The United Nations Mediator's Proposals*

The March 4, 1964, resolution of the Security Council called for the appointment of a mediator "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." The Secretary-General's choice, Mr. Tuomioja, apparently did little during the time Mr. Acheson was trying to negotiate a settlement, and he died soon thereafter, in September 1964.

His successor, Mr. Galo Plaza Lasso, submitted his report in March 1965, just one year after the appointment of Mr. Tuomioja.<sup>295</sup> Most of the report concerns the background of the crisis and the positions of the various parties concerned. But in a concluding section Mr. Galo Plaza indicates, "by implication and without any suggestion of seeking to impose upon the parties a course of action, some directions along which they should reasonably be expected to meet and try to seek agreement."<sup>296</sup> These "directions" follow a different path from those of Mr. Acheson, and Mr. Galo Plaza no doubt was making a conscious effort to avoid duplicating the earlier failure.

289. *Ibid.*

290. See, e.g., N.Y. Times, July 31, 1964, p. 1, col. 3; The Times (London), Aug. 13, 1964, p. 10, col. 7. Most of these reports stated that Mr. Acheson's proposals included: (1) Enosis; (2) a Turkish military base on Cyprus; (3) establishment in Cyprus of two "cantons" under Turkish Cypriot administrative control; (4) Greek cession to Turkey of Castellorizo, a Dodecanese island; and (5) compensation from the Greek Government for those Turkish Cypriots who chose to leave the Island and resettle elsewhere, presumably in Turkey. See also U.N. GEN. ASS. OFF. REC. 20th Sess., 1st Comm. 37 (A/C.1/PV.1407) (1965) (statement by the Cypriot representative).

291. See Acheson, *supra* note 288, at 353; N.Y. Times, Aug. 15, 1964, p. 1, col. 6.

292. See N.Y. Times, Aug. 15, 1964, p. 1, col. 6. It was also reported that Mr. Acheson specifically proposed a fifty-year Turkish lease of a 200-square-mile base on the peninsula in the north-eastern corner of the Island. See *id.*, Sept. 7, 1964, p. 18, col. 2.

293. Acheson, *supra* note 288, at 355.

294. *Ibid.*

295. United Nations Mediator on Cyprus, *Report to the Secretary-General*, U.N. Doc. No. S/6253 (1965).

296. *Id.* at 45. The ten points summarized in the next paragraph in text are included in the Mediator's Report. *Id.* at (1) 47; (2) 48, 61; (3) 55, 56; (4) 59; (5) 63; (6) 63; (7) 63; (8) 56; (9) 64-65; (10) 66.

First, Mr. Galo Plaza concluded that any new settlement must be agreed upon initially by the two communities of Cyprus and then by the other parties. Such a procedure would, he suggested, "preclude any suggestion that a settlement is being imposed from the outside." This, of course, was precisely Mr. Acheson's aim. Second, he stated that the 1960 Agreements "and the difficulties encountered in applying them constituted the origin of this crisis and have continued to influence its development." Any new settlement must, he said, necessarily include their abrogation, or at least modification. Furthermore, the rights of the Turkish Cypriot community under these agreements are "greatly superior to those which can realistically be contemplated for it in the future." Third, Mr. Galo Plaza asserted that any new settlement must exclude the possibility of enosis "at present or in the foreseeable future." Cyprus must be "a 'fully independent' state which would undertake to remain independent and to refrain from any action leading to union with any other State." Fourth, he rejected a federal system for the Island, as proposed by the Turkish Cypriots, on the grounds that it would require geographical separation of the communities and was adamantly opposed by Greek Cypriots. Compulsory movement of families from both communities would be necessary, thus imposing severe hardships. Federation would, moreover, "be a desperate step in the wrong direction," for it would "militate against the development of a peacefully united people." Fifth, there must be adequate protection for the Turkish Cypriot minority. Such protection should be in the form of "the incorporation in the Constitution of human rights and fundamental freedoms conforming with those set forth in the Universal Declaration of Human Rights . . . [and] vigilance to ensure equal treatment in appointments and promotions in the public services." Sixth, for a transitional period, a United Nations commissioner with a staff of observers and advisers should be stationed on the Island "for as long as necessary" to ensure protection of the minority's rights. Seventh, the Turkish Cypriot community should be assured, at least temporarily, of some representation in the Cypriot government. Eighth, Cyprus should remain permanently demilitarized to meet Turkey's security concerns. Ninth, the settlement should not be guaranteed by any group of Guarantor Powers, as was done in 1960. Rather,

the possibility could be explored . . . of the United Nations itself acting as the guarantor of the terms of the settlement. It might prove feasible, for example, for the parties to agree to lay before the United Nations the precise terms of the settlement and ask it not only to take note of them but also to spell them out in a resolution, formally accept them as the agreed basis of the settlement, and request that any complaint of violation or difficulty in implementation be brought immediately before it.

Finally, should the governments concerned reach agreement along these lines, "it would be essential to put to the people the basic settlement as a whole. They should be asked to accept or reject it as a single package, and not in its various parts."

Throughout the statement of these "directions," Mr. Galo Plaza emphasized that they were not "precise recommendations or even suggestions of a formal

kind for a solution to the problem of Cyprus." At most, he suggested, they might form "the basis for an exchange of views."<sup>297</sup>

Turkey, however, flatly rejected the report within a few days after it was issued.<sup>298</sup> In spite of Mr. Galo Plaza's disclaimer, the Turkish Government accused him of violating his mandate to promote "an agreed settlement" by expressing views that were not agreed. In this light, Turkey claimed that "Mr. Galo Plaza's functions as a Mediator have come to an end . . . ."<sup>299</sup>

The Cypriot Government, on the other hand, concluded that "most of the findings in the report of the Mediator constitute a constructive approach to the problems of Cyprus . . . ."<sup>300</sup> Cyprus objected to one recommendation only: that enosis be excluded as a possible option "at present or in the foreseeable future." The Cypriot memorandum concerning the report did not mention, however, that Mr. Galo Plaza had made this a *sine qua non* of his suggestions.

The second mediation effort was, therefore, no more successful than the first, and Mr. Galo Plaza resigned at the end of 1965.<sup>301</sup> In recent months, there have been sporadic reports of renewed consultations between the parties but no sign of significant progress toward a solution.<sup>302</sup>

### C. A Possible Approach

#### 1. Procedure.

As a first step, the development of some new procedural arrangement for resolving the crisis seems essential. Acting under Charter article 33, the Security Council has already called upon the parties to settle the dispute by peaceful means. It is doubtful, however, that the Council will go further and "recommend appropriate procedures or methods of adjustment" under Charter article 36(1), and even less likely that it will act under chapter VII to impose a settlement procedure.

In these circumstances, a provision in the Treaty of Establishment may offer a useful mechanism. The Treaty, signed by the Governments of Cyprus, Greece, Turkey, and the United Kingdom, provides that "any question or difficulty" concerning its interpretation "shall be referred for final decision to a tribunal appointed for the purpose."<sup>303</sup> The tribunal is to be composed of one representative nominated by each of the four Governments and an independent chairman nominated by the President of the International Court of Justice.

It is clear that any settlement must be accepted by all four parties in order to

297. *Id.* at 65-66.

298. See U.N. Doc. Nos. S/6267, S/6267/Add. 1 (1965).

299. U.N. Doc. No. S/6267, at 2. The Turkish-Cypriot Vice-President, Dr. Kutchuk, also rejected Mr. Galo Plaza's conclusions. See U.N. Doc. No. S/6279 (1965).

300. U.N. Doc. No. S/6275/Add. 1 (1965); see U.N. Doc. No. S/6275 (1965). The Greek response to the report was similar to that of Cyprus. See U.N. Doc. No. S/6280 (1965).

301. U.N. Doc. No. S/7054 (1965).

302. The Secretary-General recently instructed his personal representative in Cyprus, Mr. Carlos A. Bernardes of Brazil, to promote "discussions, at any level, of problems and issues of either a purely local or a broader nature." See N.Y. Times, March 5, 1966, p. 8, col. 3. Since this directive was accepted by all four signatories to the 1960 Accords, hopefully some new settlement proposal may emerge from it. Mr. Bernardes was not designated as "mediator," apparently because the Cypriot Government has refused to concur in the appointment of any successor to Mr. Galo Plaza.

303. See Treaty Concerning the Establishment of the Republic of Cyprus, art. 10, CMND. 1252, at 6-7 (T.S. No. 4 of 1961).

resolve the conflict. Any solution that does not gain at least their acquiescence has no chance of success. Furthermore, they have not and will not agree in advance to abide by the decision of any outside arbiter no matter how persuasive, prestigious, and impartial. And conciliation efforts by a United Nations mediator, by an American, and by a representative of NATO have all been rejected by one or more of the parties in the past. This is not to say that such efforts could not succeed in the future, but Cyprus and the Guarantor Powers might be more likely to agree to a mediating arrangement that they have already accepted in another context than to concur in any other arrangement. Although the Cypriot Government has charged that the entire 1960 settlement was inequitable, it has never claimed to have abrogated the Treaty of Establishment, unlike the Treaties of Alliance and Guarantee. The issues involved in a solution to the crisis extend, of course, far beyond a conflict over the terms of the Treaty of Establishment. But this treaty provides the only procedural mechanism in the 1960 Accords for settling disputes. Furthermore, that mechanism includes an independent party with impeccable credentials, currently Sir Percy C. Spender of Australia. In view of the extent to which each party has hardened in its position, such a mediating force may be essential.

No one can know whether all four Governments concerned would accept this arrangement. In the seeming absence of any acceptable alternatives, however, it may offer a feasible basis on which to proceed.

## 2. *Substance.*

As we have seen, a good deal can be said in favor of the 1960 Accords. Though far from perfect, they might well have provided a viable political structure for the Island. And for a time, they did. But in the end, the structure collapsed.

Each community blames the other. Archbishop Makarios claims that the Accords were unworkable because they allowed the machinery of government to be frustrated by less than one-fifth of the population. Dr. Kutchuk responds that the Greek Cypriots never really wanted the Accords to work and refused to resolve intercommunal problems in a spirit of good will and compromise. Any allocation of overall blame would be questionable; both sides, on occasion, acted and failed to act in ways that increasingly exacerbated the situation. But one point seems clear. There is not now, or in the foreseeable future, the kind of consensus on basic aims among the two communities that is essential for the minimal operation of peaceful government. The 1960 Accords failed, fundamentally, because the Cypriot people as a whole did not have the will to make them succeed. And there is no indication that they may gain that will over time. In fact, each side may gradually solidify its position, thus making a new settlement increasingly more difficult. If the crisis is to be permanently resolved, substantial cohesive pressures must be brought to bear from outside the Island, for they will not develop within it. There must be some new force that will alter the perspective and approach of all participants. There must, in short, be a new beginning.

*Enosis.* Mr. Galo Plaza, in spite of his protestations to the contrary, did propose the substance of a solution, just as Mr. Acheson did. And Mr. Galo Plaza ob-

viously thought that his proposal was within the realm of the possible for all parties, for he stressed the need for an *agreed* solution. He apparently concluded that he would meet the basic Turkish demands by excluding enosis. In retrospect, this was obviously a miscalculation.

It is true that the Turkish Government has publicly rejected enosis.<sup>304</sup> Yet Mr. Acheson's proposals included it, and they were accepted by Turkey as "the basis for negotiation." Turkish opposition to enosis may, therefore, be more a bargaining position than an unalterable conviction. This makes a good deal of practical sense. Protection of the Turkish Cypriot minority is obviously a primary concern of Turkey. Such protection would seem more likely under Greek rule than under the present Cypriot Government. About 100,000 Moslems of Turkish descent now reside in Thrace. At least until the current crisis they have apparently lived there in relative peace.<sup>305</sup> If enosis took place, the Turkish Cypriots would become part of the Moslem minority in Greece. They would no doubt be a problem to the Greek Government. But they would not be *the* problem as they are to the Cypriot Government. Moreover Greece, a country more than fourteen times the size of Cyprus, has many more international ties that could be endangered if she did not treat the Turkish Cypriots fairly.

These factors indicate that at least as compared to an independent Cyprus unfettered by the 1960 Agreements, Turkish Cypriot interests might actually be

304. See, e.g., the statements by Turkish Government officials in *Turks Say No to Enosis*, pp. 21-24 (undated pamphlet distributed by the Turkish Embassy in Washington). The Turkish Prime Minister, in fact, was reported to have stated that "Turkey would be prepared in principle to accept what he called an 'Austrian solution' for Cyprus." *N.Y. Times*, Jan. 24, 1966, p. 23, col. 7. This would apparently mean that an independent and neutral Cyprus would be precluded by treaty from union with Greece as Austria is precluded from union with Germany. See *Austrian State Treaty*, May 15, 1955, art. 4, [1955] 6 U.S.T. & O.I.A. 2369, 2410, T.I.A.S. No. 3298. As we have seen, however, by the *Treaty of Guarantee*, Cyprus "prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island," and Greece also undertook to prohibit such activity "so far as concerns" it. *Treaty of Guarantee*, arts. I, II, CMND. 1253 (T.S. No. 5 of 1961). These commitments have not stopped open agitation for enosis in both countries. Beyond this, Cyprus and Greece have been adamant in refusing to preclude union at some point subsequent to a new settlement, if not as part of the settlement itself. Thus their objection to Mr. Galo Plaza's recommendation that they renounce the possibility of enosis.

305. There are also approximately 96,000 Greek Orthodox inhabitants of Turkey. Most of these live in Istanbul, and all but about 20,000 are Turkish citizens. Both the Greek Orthodox minority in Turkey and the Moslem minority in Greece are protected by the provisions of section III of the *Treaty of Lausanne*, July 24, 1923, 28 L.N.T.S. 11 (1924). And by a 1930 treaty, Greek nationals in Turkey and Turkish nationals in Greece were granted the right to practice vocations otherwise reserved for each country's citizens. *Convention of Establishment, Commerce and Navigation Between Greece and Turkey*, Oct. 30, 1930, art. 4, 125 L.N.T.S. 371 (1931). In March 1964 the Turkish Government announced, in accordance with the terms of the *Convention*, that it was giving six months' notice of its intention to abrogate. At the same time, Turkey expelled a number of Greek nationals from Istanbul. Although the Turkish Government alleged that most of these individuals were engaging in "subversive activities," it acknowledged that retaliation for Greek support of the Cypriot Government was the prime motivating force. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1146th meeting 18 (S/PV.1146) (1964). As Ambassador Stevenson said in the Security Council, "It is almost an axiom of history . . . that people of one nation resident in the territory of another often become innocent victims of any sudden increase in tension or suspicion between those countries. Even while acting entirely within the letter of the international agreements, as we believe the Government of Turkey has done in this case, uprooting and deporting innocent and harmless people from their long-term homes is a spectacle that touches the humane instincts and evokes the profound sympathy of all of us." U.N. SECURITY COUNCIL OFF. REC. 19th year, 1147th meeting 13 (S/PV.1147) (1965). And in the wake of the crisis, Turkey began a campaign to prove discrimination against Moslems in Greece. Compare *Turkish Minority in Greece*, *Greek Minority in Turkey* (undated pamphlet distributed by the Turkish Embassy in Washington), with *Greek Information Services*, *The Greek Minority in Turkey and the Turkish Minority in Greece*, Jan. 1965.

advanced by enosis. On the other hand, Turkey and the Turkish Cypriots have consistently maintained that a federation is a better solution than either of these alternatives.<sup>306</sup> It is difficult to determine exactly what is meant by "federation." Mr. Galo Plaza interpreted it as necessitating the geographical separation of the two communities into states "separated by an artificial line cutting through interdependent parts of homogeneous areas including . . . the cities of Nicosia and Famagusta."<sup>307</sup> One of the major difficulties in establishing a federation on this basis is that Cyprus is "an ethnographical fruitcake in which the Greek and Turkish currants were mixed up in every town and village and often in every street."<sup>308</sup> Furthermore, Greek Cypriots have firmly opposed federation. And as Mr. Acheson wrote, "The failure of fifty thousand British soldiers to maintain British rule made plain that, while any solution would require some vigorous, even forceful, persuasion of somebody, coercion must be kept to a minimum."<sup>309</sup> Finally, any proposal rejected by both mediators would seem to have little chance of success in future settlement negotiations. For these reasons, enosis would ap-

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306. Dr. Kutchuk has stated, for example, that "the Turkish community feels that nothing short of federation . . . could give them adequate guarantees for the future. . . . [T]he Turkish federation proposal would not in any way entail the partitioning of the island but would only serve to pave the way for peaceful coexistence and cooperation between the two communities within the framework of a totally independent and sovereign State." U.N. Doc. No. S/6279, at 7 (1965).

307. U.N. Doc. No. S/6253, at 58 (1965); see N.Y. Times, Aug. 16, 1964, § 4 (News of the Week in Review), p. 4, col. 1 (map).

308. FOLEY, LEGACY OF STRIFE: CYPRUS FROM REBELLION TO CIVIL WAR 87 (1964). For a comparative analysis of the problems of protecting minorities in a federal system see LAPONCE, THE PROTECTION OF MINORITIES 67-84 (1960). Mr. Laponce concludes that "the limitations of the federal system come first from the fact that it cannot be used to protect all types of minorities. It presupposes a bloc minority identified with a geographical area and viable economically and politically." *Id.* at 83. This is hardly an accurate characterization of the Turkish Cypriot minority.

Two other elements of a possible solution to the current crisis should be briefly mentioned: Resettlement of the entire Turkish Cypriot population off the Island and a condominium. Transfer of all Turkish Cypriots from Cyprus would, of course, solve the Island's minority problem by eliminating the minority. This idea has been suggested as providing a sound solution to the Cyprus crisis. See Letter From Mr. Thomas G. Eby in N.Y. Times, Aug. 29, 1964, p. 20, col. 6. *But see* Letter From Mr. Alexander E. Economakis, *id.*, Sept. 4, 1964, p. 28, col. 6. They might be moved either to Turkey or to a Greek island that would be ceded to Turkey as part of a new settlement. Certainly the Turkish Cypriots who choose to leave Cyprus in the wake of any settlement should be assisted in doing so. See text following note 336 *infra*. But the difficulties that would be caused by forced population shifts strongly militate against such an undertaking. The burdens on individual families resulting from federation or partition would be many times multiplied by forced emigration from Cyprus. The history of the Greek and Turkish population transfers in the 1920's indicates that the human costs of such an effort would be enormous. See MACARTNEY, NATIONAL STATES AND NATIONAL MINORITIES 430-49 (1934).

Under an agreement establishing a Cypriot condominium, Greece and Turkey would own undivided interests in the Island and would rule it jointly. There would seem no inherent reason why the interests of Greece and Turkey should necessarily be equal, although two nations hold undivided one-half interests in the only condominium now in existence—the Anglo-French condominium over the New Hebrides. See 1 O'CONNELL, INTERNATIONAL LAW 360-61 (1965). But the problems necessarily encountered in bifurcating responsibility make the arrangement a less than satisfactory interim measure and one quite unsuited to promoting long-run stability on the Island. See generally Fox, *The Disposition of Enemy Dependent Areas*, 39 AM. J. INT'L L. 486 (1945). On the current governmental problems in the New Hebrides see N.Y. Times, Jan. 17, 1966, p. 9, col. 1.

309. See Acheson, *supra* note 288, at 353. Mr. Acheson reportedly did propose, however, that two cantons be established on the Island under Turkish Cypriot administrative control. See, e.g., N.Y. Times, Aug. 15, 1964, p. 1, col. 6. Such an arrangement would provide at least a measure of autonomy on the local level. Yet one of the major disputes that led to the current crisis was the constitutional requirement that separate Turkish Cypriot municipalities be maintained in the five largest towns. See text accompanying notes 89-94 *supra*. No doubt at least partly because of this experience the Cypriot Government has rejected the idea of Turkish Cypriot administrative units. It seems questionable at best, therefore, whether such a scheme could be negotiated. Other institutional arrangements discussed below would appear to offer a better solution to the problem of protecting Turkish Cypriot rights.



pear to provide a more viable basis for a new solution than establishment of a Cypriot federation.

*A Turkish military base.* Turkey apparently insisted to Mr. Acheson that any new settlement must include a Turkish military base on the Island. This appears to be a key element, from the Turkish viewpoint, that was lacking in Mr. Galo Plaza's report. Turkish demands for such a base seem rooted in two considerations. The first is security. The Turks have borrowed a Churchillian phrase in saying that Cyprus faces "their soft underbelly." Only forty miles from Turkey, the Island has been called "the cork in the bottle of Iskenderun."<sup>310</sup> Turkey has long been concerned that Cyprus might be used as a staging point for an attack against her territory.<sup>311</sup> A military base on the Island would help to minimize this risk.

The second Turkish concern is one of national honor. As we have seen, Turkey proposed partition of the Island before the 1960 settlement. Even her spokesmen now appear to agree, however, that another Germany, Korea, Palestine, or Vietnam is not called for. But even a small piece of sovereign Turkish territory on the Island could represent a symbolic partition and help to assuage her public pride.<sup>312</sup>

At the same time, however, Archbishop Makarios rejected the Acheson proposals; presumably one of his major objections was to the creation of a new foreign base on Cypriot territory. A possible resolution of this impasse might exist, however, through the transfer to Turkey of one or both of the British bases on the Island.<sup>313</sup> Under the 1960 Agreements such a transfer could not be made without the consent of the Cypriot Government,<sup>314</sup> but it would be contemplated only as part of a settlement agreed upon by that Government, as well as by Great Britain,

310. See N.Y. Times, Aug. 15, 1964, p. 2, col. 2.

311. See, e.g., Interview With Turkish Foreign Minister Zorlu by William Hillman, reprinted in Turkish Information Office, Cyprus and Turkey, 1958, on file in the Library of the Hoover Institution, at Stanford University.

312. See Acheson, *supra* note 288, at 353: "[T]he heart of Turkish resentment was over slights upon national honor . . ." The Turkish insistence upon owning the base rather than leasing it for a long term may have been founded in part on this consideration.

313. See N.Y. Times, Sept. 7, 1964, p. 18, col. 2.

314. As a general rule, sovereign states are free to transfer any of their sovereign territories to other sovereign states. See the authorities cited in 2 WHITEMAN, DIGEST OF INTERNATIONAL LAW 1088-89 (1963). Simultaneously with the execution of the Treaty of Establishment, however, the British and Cypriot Governments exchanged notes "concerning the Future of the Sovereign Base Areas." See Treaty Concerning the Establishment of the Republic of Cyprus, CMND. 1252, at 100-01 (T.S. No. 4 of 1961). The Cypriot note stated that "we wish, on behalf of the Government of the Republic of Cyprus, to assure you that the Republic of Cyprus will not demand that the United Kingdom should relinquish their sovereignty or effective control over the Sovereign Base Areas. In the event, however, that the Government of the United Kingdom, in view of changes in their military requirements, should at any time decide to divest themselves of the aforesaid sovereignty or effective control over the Sovereign Base Areas, or any part thereof, it is understood that such sovereignty or control shall be transferred to the Republic of Cyprus." In response, the British note stated that "the Government of the United Kingdom are in full agreement with the views contained in that [the Cypriot] Note." *Id.* at 101.

An argument could be made that these notes would not apply if the British decision were not based on "changes in their military requirements," but rather on their desire to contribute to a solution to the general Cyprus problem. It is doubtful, however, that such an argument would be persuasive in whatever forum the issue were raised. Furthermore, an exchange of notes "regarding the Administration of the Sovereign Base Areas" provides in an enclosure that "Her Majesty's Government declare that the main objects to be achieved are:—(1) Effective use of the Sovereign Base Areas as military bases. (2) Full co-operation with the Republic of Cyprus. (3) Protection of the interests of those resident or working in the Sovereign Base Areas." *Id.* at 96. It would be difficult to argue that the transfer of the bases would be consistent with any of these "main objects."

Greece, and Turkey. It might be more difficult for the Cypriot Government—at least in terms of sustaining international support—to object to the transfer of territory on the Island from one foreign power to another than to the creation of a new foreign enclave.

The Turkish base area proposed by Mr. Acheson was undoubtedly larger than the ninety-nine square miles included in the British base areas, and this would probably be a cause for Turkish concern. On the other hand, the British bases would give Turkey completely operational military facilities without the significant expense of building them. These include several harbors and a small airfield.<sup>315</sup> Furthermore, if the Cypriot Government's various "temporary" revisions of the Constitution continue in force without effective challenge while the parties remain stalemated, Turkey may conclude that time is not on her side. She may, therefore, prefer the present prospect of such a base to the uncertainty of continued drift.

It is difficult to determine whether the British Government would agree to transfer its bases to Turkey. Its representatives told Mr. Galo Plaza that since the bases "lie outside the territory of the Republic, they do not form part of the present dispute."<sup>316</sup> At the same time, however, Mr. Galo Plaza wrote that he was "encouraged to believe . . . that this question could, if it were to become a vital aspect of the settlement as a whole, be constructively discussed among the parties . . ."<sup>317</sup> He gave no indication, however, of the way in which he thought it might become such "a vital aspect."

In any event, the world has changed a good deal from the time when the United Kingdom considered Cyprus essential to the protection of British interests in the Levant.<sup>318</sup> On the one hand, those interests have diminished since the end of World War II. And on the other, military technology has made base areas such as those on Cyprus less significant.<sup>319</sup> Furthermore, the recent United Kingdom announcement of a substantial reduction in her overseas commitments included cuts in the British garrison on the Island.<sup>320</sup> She might, therefore, be willing to consider transfer of one if not both of the bases to Turkey.

Finally, if demilitarization of the rest of the Island were possible, as proposed by Mr. Galo Plaza, this might go far toward meeting Turkish security concerns. It could also limit the violence on the Island that has been so much a part of its past. "With a view to ensuring the maintenance of peace," four Greek islands

315. See *id.*, maps 1, 4. Under the Treaty of Establishment, however, the British have a number of rights incidental to ownership of the bases, such as unrestricted military use of the Nicosia airfield. See *id.*, Annex B. The Cypriot Government would be unlikely to allow transfer of these rights to Turkey.

316. United Nations Mediator on Cyprus, *Report to the Secretary-General*, U.N. Doc. No. S/6253, at 56 (1965).

317. *Ibid.*

318. Even in the 1950's there was dissent in British military circles from the view that Cyprus was of strategic importance to England. See note 14 *supra*. One commentator has written that the Suez crisis "showed the range of large-scale operations which could be mounted from Cyprus—even with several months of preparation—was . . . limited." Strange, *Suez and After*, 1957 YEARBOOK OF WORLD AFFAIRS 76, 100.

319. The development of a British fleet of submarines equipped with nuclear missiles is one example. See Polaris Sales Agreement With the United Kingdom, April 6, 1963, [1963] 14 U.S.T. & O.I.A. 321, T.I.A.S. No. 5313.

320. See Manchester Guardian Weekly, Feb. 24, 1966, p. 3, cols. 1-3.

were demilitarized under the 1923 Treaty of Lausanne,<sup>321</sup> and fourteen Dodecanese islands were transferred to Greece under the 1947 Treaty of Peace with Italy upon the condition that they remain demilitarized.<sup>322</sup> In both cases, the restriction seems to have been reasonably successful in achieving the intended purpose.<sup>323</sup> At the same time, however, it is probable that Greece would not agree to demilitarize Cyprus if a Turkish military base were to be established on the Island. In fact, Greece would be likely to contend that demilitarization would make a base unnecessary. As we have seen, however, a base might serve more than a security purpose for Turkey, and she would no doubt choose a base in preference to demilitarization.

*Protection of the Turkish Cypriots.* Both Mr. Acheson and Mr. Galo Plaza emphasized the importance of protecting the Turkish minority against persecution, though it is difficult to determine exactly what arrangements they had in mind. If enosis were part of the settlement, the Turkish Cypriots would become Greek citizens with rights under the Greek Constitution against discrimination based on religion, language, or ethnic origin.<sup>324</sup> The Greek Government claims to have scrupulously protected the Moslem minority in Greece, and until the outbreak of the Cyprus crisis, Turkey apparently did not dissent from this view.<sup>325</sup>

321. Art. 13, 28 L.N.T.S. 11, 21 (1924).

322. Treaty of Peace With Italy, Feb. 10, 1947, art. 14, T.I.A.S. No. 1648, at 133-34. See also *id.*, arts. 11, 49, and art. 3 of Annex VI, at 132, 145, 186. This treaty provides that "the terms 'demilitarisation' and 'demilitarised' shall be deemed to prohibit, in the territory and territorial waters concerned, all naval, military and military air installations, fortifications and their armaments; artificial military, naval and air obstacles; the basing or the permanent or temporary stationing of military, naval and military air units; military training in any form; and the production of war material. This does not prohibit internal security personnel restricted in number to meeting tasks of an internal character and equipped with weapons which can be carried and operated by one person, and the necessary military training of such personnel." *Id.*, Annex XIII D, at 224.

323. In 1964, however, Turkey charged that Greece had "concentrated troops and military equipment" on the Dodecanese islands in violation of the treaty. See U.N. SECURITY COUNCIL OFF. REC. 19th year, 1146th meeting 13 (S/PV.1146) (1964). Greece denied the charge, see N.Y. Times, April 3, 1965, p. 5, cols. 5-6, and apparently none of the other parties to the treaty has raised the issue publicly.

324. See Greek Constitution arts. 3-20, in 2 CONSTITUTIONS OF NATIONS 91-95 (Peaslee ed. 1956). Greek nationality law does, however, grant certain special privileges, such as easier naturalization, to "ethnic Greeks." See Kozoyris, Book Review, 6 AM. J. COMP. L. 600, 601 (1957).

Upon enosis, two sets of international guarantees would also become relevant. First, under article 45 of the Treaty of Lausanne, Greece agreed to confer on "the Moslem community in her territory" the rights assured to the Greek Orthodox community in Turkey under section III of the Treaty: Freedom of religion and movement, equal civil and political rights, adequate education in its own language, and application of its own law to family matters. See 28 L.N.T.S. 11, 37 (1924). The United Nations Commission on Human Rights concluded in 1950 that the minority guarantees undertaken by Turkey and Greece in section III were still in force. See U.N. Doc. No. E/CN.4/367, at 56-57, 66 (1950). There may be doubt, however, whether Cyprus would, after enosis, be considered as Greek "territory" within the terms of article 45.

Second, Greece is a party to the European Convention on Human Rights and, therefore, would be bound—upon enosis—to secure to Turkish Cypriots the rights set forth in section 1 of the Convention and in the 1952 Protocol. Greece is not, however, among the states that have recognized the competence of the European Commission of Human Rights to receive individual petitions under article 25 of the Convention. Furthermore, the Cypriot Republic undertook, in article 5 of the Treaty of Establishment, CMND. 1252, at 5-6 (T.S. No. 4 of 1961), to assure to all within its jurisdiction rights comparable to those defined in section I of the Convention and in the Protocol. And Cyprus itself ratified the Convention and Protocol in 1962. See 5 YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 40 (1963).

325. See Greek Information Services, The Greek Minority in Turkey and the Turkish Minority in Greece, Jan. 1965, pp. 20-23. For the current Turkish position see Turkish Minority in Greece, Greek Minority in Turkey (undated pamphlet distributed by the Turkish Embassy in Washington).

Furthermore, the Greek Government would presumably agree to affirm Turkish Cypriot "fundamental rights and freedoms," along the same lines as the Cypriot declaration in October 1965.<sup>326</sup> This declaration includes an array of rights as extensive, and as general, as those in the Universal Declaration of Human Rights, after which it was patterned. In all probability, however, the Turkish and Turkish Cypriot concerns in regard to these rights would center not so much on their scope as on the likelihood of effective enforcement.<sup>327</sup> Similarly, Greece would presumably be willing to grant Turkish Cypriots "autonomy with regard to matters pertaining to education, culture, religion, personal status and other related matters," as the Cypriot Government proposed in its declaration, but the determinative issue, from the standpoint of Turkey and the Turkish Cypriots, would probably be the institutional arrangements to assure that this autonomy would be respected.<sup>328</sup> In light of the Island's recent history, the Turkish Cypriots are likely to have little trust in the good faith of the Cypriot Government to carry out its declaration. They may, however, have less concern with respect to the Greek Government. Whether or not this is the case, some arrangement to involve an international organization on a continuing basis as guarantor of minority rights on the Island seems desirable.

*United Nations involvement.* In its October 1965 declaration the Cypriot Government announced its willingness to accept, "for a reasonably transitional period, United Nations guarantees."<sup>329</sup> Following Mr. Galo Plaza's recommendations, Cyprus stated it was prepared to accept

the presence in Cyprus of a United Nations Commissioner with an adequate staff of observers and advisers who will observe, on such terms as the Secretary-General may direct, the adherence to all rights [set forth in the declaration] . . . and for the purposes of assuring observance of human rights to adopt such appropriate machinery as the Secretary-General, on the advice, if necessary, of the United Nations Commission of Human Rights, may recommend.<sup>330</sup>

This idea might be an extremely useful one. It would seem essential that the commissioner have the power to deal with allegations of governmental discrimination against Turkish Cypriots qua Turkish Cypriots. Under such an arrangement individuals could bring complaints of discriminatory state action directly to the commissioner, whose staff could investigate the charges. The complaining individual

326. See text accompanying notes 271-72 *supra*.

327. During the First Committee debates on the twenty-nine-nation draft resolution subsequently adopted by the General Assembly, see text accompanying notes 275-83 *supra*, the Turkish representative limited his comments concerning the October 1965 Cypriot declaration to a plea that it not be mentioned in the resolution. He contended that to do so "would mean that the General Assembly approves the repudiation of the present legal status of the Turkish community and accepts that it be reduced to the status of a minority subjected to an implacable tyranny." U.N. GEN. ASS. PROV. REC. 20th Sess., 1st Comm. 91 (A/C.1/PV.1412) (1965). A preambular paragraph "noting" the Cypriot declaration was included in the General Assembly's resolution, having been adopted in the First Committee by a vote of 46-to-6, with 48 abstentions. See First Committee, *Report on the Question of Cyprus*, U.N. Doc. No. A/6166, at 9 (1965).

328. The Greek Government claims that the Moslem communities in Thrace have substantial autonomy in educational, religious, and family matters. See Greece Information Services, *The Greek Minority in Turkey and the Turkish Minority in Greece*, Jan. 1965, pp. 20-23.

329. U.N. Doc. No. A/6039, at 6 (1965).

330. *Ibid.* Neither Mr. Galo Plaza nor the Cypriot declaration specified what procedures should be adopted by the commissioner and his staff.

or group could be represented by private counsel, or perhaps by a member of the commissioner's staff if the staff's investigation indicated that the claim was meritorious and private counsel could not be afforded.<sup>331</sup> These proceedings should probably be held in secret to promote the chance of settlement. Only if the authorities on the Island refused to comply with an order of the commissioner would the matter be publicized in a commissioner's report to the Secretary-General or the Security Council. The main sanction to enforce such orders would, of course, be publicity. The threat of collective diplomatic and even economic sanctions would be possible, but past experience with such collective measures indicates they rarely can be imposed except in extreme cases.

It is difficult to say whether this scheme for the international guarantee of Turkish Cypriot rights would prove effective. The United Nations has never undertaken such a program,<sup>332</sup> but there is some precedent for it in the League of Nations efforts to protect the rights of minorities in Eastern Europe.<sup>333</sup> The League scheme has generally been considered unsuccessful, although it did check discrimination in a number of cases.<sup>334</sup> But so many of its difficulties were so closely tied to the overall weaknesses of the League that it is unwise to consider the experience as portending failure of United Nations guarantees in the Cyprus situation. Furthermore, a United Nations guarantee of the terms of a new Cyprus settlement would be a much more limited undertaking than the League arrangement. Finally, it would provide a more complete adjudication process, through a commissioner present on the Island, than was possible under the League system. Although there would be risks in the proposal, as there are risks in any significant international effort, it could be a major opportunity for a constructive United Nations role in resolving the crisis.<sup>335</sup>

331. A host of other questions, such as the need to exhaust local remedies, would also have to be resolved.

332. The *Plan of Partition With Economic Union for Palestine*, in U.N. GEN. ASS. OFF. REC. 2d Sess., Res. 181 (II) (1947), provided that the proposed Jewish and Arab states would make a declaration to the United Nations assuring various "religious and minority rights." *Id.*, pt. (1)(C), ch. 2. These rights were to "be under the guarantee of the United Nations, and no modifications shall be made in them without the assent of the General Assembly." *Id.*, pt. (1)(C), ch. 4. Furthermore, guarantees of equal civil, political, economic, and religious rights were to be included in the constitutions of both states. *Id.*, pt. (1)(B), para. 10(d). The Plan was never put into effect, however, because the Arab nations refused to accept it. See Leonard, *The United Nations and Palestine*, 454 INT'L CONC. 607, 640-62 (1949). For a summary of this and other cases in which United Nations guarantees of minority rights have been considered see CLAUDE, NATIONAL MINORITIES 177-91 (1955).

333. Chapter 1 of the Polish Treaty served as a model for the other Versailles treaties that guaranteed minority rights in a number of Eastern European countries. See U.S. DEP'T STATE, THE TREATY OF VERSAILLES AND AFTER 791, 798-801 (CONF. Series No. 92, 1947). See generally MACARTNEY, *op. cit. supra* note 308, at 212-72. The Council of the League was charged with ensuring enforcement of these provisions. Minorities could petition the Secretariat that the rights guaranteed to them under a Versailles treaty were being abused, and the Secretariat could bring the matter before the League Council if it could not otherwise be settled. *Id.* at ch. IX. The issue could also be brought directly before the Council by a member. Under each of the treaties the Council was given general enforcement power. Article 12 of the Polish Treaty, for example, provided that the Council could "take such action and give such direction as it may deem proper and effective in the circumstances." U.S. DEP'T OF STATE, *op. cit. supra* at 801. Under this provision disputes concerning "any difference of opinion as to questions of law or fact arising out of" the terms of chapter I were to be referred to the Permanent Court of International Justice, whose opinion was to be "final."

334. Concerning the reasons for the failure of the League minority guarantees see CLAUDE, NATIONAL MINORITIES 31 (1955); MACARTNEY, *op. cit. supra* note 308, at 420-23.

335. Numerous variations on such a scheme are, of course, possible. The commissioner could, for

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This, then, might be the substantive basis for a new settlement: enosis, transfer of the British bases to Turkey, protection of Turkish Cypriot rights, and United Nations involvement in the guarantee of these rights. Other elements such as demilitarization might also prove feasible. Such a settlement would include nothing that had been rejected by both mediators but would follow neither set of proposals completely and would include transfer of one or both of the British bases to Turkey as an important new element.

It is impossible, of course, to know whether such a proposal would have a real chance of acceptance by all sides. As we have seen, it is not even clear that Archbishop Makarios, the key personality in any consideration of the problem, now favors enosis, although a majority of the Cypriot people apparently do.<sup>336</sup> If such a settlement is negotiated, its implementation will not be a simple task. Provision should be made, for example, to compensate those Turkish Cypriots who choose to emigrate to Turkey rather than remain on the Island. It seems likely that funds to finance such a resettlement could be raised—from Greece, the United Kingdom, and the United States, if not from other countries as well. By December 1965 UNFICYP had already cost over forty million dollars. If nothing else, contributions to a resettlement fund would be a prudent investment in comparison to further expenditures for the Force.

One final point. Professor Roger Fisher has suggested that major international issues can often be best handled by "fractionating"—by treating them as groups of small disputes and dealing with each dispute separately.<sup>337</sup> In his view, if issues are defined in all-or-nothing terms, "we tend to make sure that we get nothing unless we are prepared to exert the force required to get all."<sup>338</sup> Under this approach the various possible elements of a settlement referred to above—including enosis, federation, partition, revision of the 1960 Accords, a condominium, a Turkish military base, demilitarization, neutralization, population transfer, different categories of Turkish Cypriot rights, and alternative international guarantees of those rights—would be separately considered, and agreement might be reached on some without resolving others. It seems unlikely, however, that any of the parties would agree to less than a simultaneous resolution of all these mat-

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example, report to the Secretary-General rather than to the Security Council, although the Soviet Union and France might be expected to object to such a procedure.

Alternatively, an organization other than the United Nations might be utilized to assure international protection of Turkish Cypriot rights. Greece might, for example, agree, as part of a new settlement, to permit individual Turkish Cypriot petitions to the European Commission of Human Rights. See note 324 *supra*. There are established, if too infrequently used, institutional arrangements under the European Convention on Human Rights for investigating and evaluating complaints that its terms have been violated. In 1958, for example, the Commission made an on-the-spot investigation on Cyprus in response to charges filed by Greece against the United Kingdom. See EUROPEAN COMMISSION OF HUMAN RIGHTS, DOCUMENTS AND DECISIONS 128-30 (1959); 2 YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 198 (1960). See also note 32 *supra*.

336. Arrangements would presumably be established to enable the Cypriot people to vote whether to accept any settlement concluded by the governments involved.

337. See Fisher, *Fractionating Conflict*, in INTERNATIONAL CONFLICT AND BEHAVIORAL SCIENCE 91 (Fisher ed. 1964). See also Fisher, *Slicing Up the Cuban Problem*, The New Republic, June 15, 1963, at 13.

338. Fisher, *Fractionating Conflict*, in INTERNATIONAL CONFLICT AND BEHAVIORAL SCIENCE 91, 94 (Fisher ed. 1964). Professor Fisher also suggests that "coupling" issues may occasionally—but only occasionally—be preferable to fractionation. *Id.* at 97-98, 104.

ters, since bargaining on any one would almost inevitably require decisions on the others.

In this situation the antithesis of "fractionating" may be needed. One of the difficulties in resolving the crisis may be that the dimensions of any solution are generally equated with the Cypriot shoreline. Bargaining possibilities regarding the Island's future, viewed alone, are limited. And the three nations primarily concerned, Cyprus, Greece, and Turkey, may have come dangerously close to freezing their own negotiating positions in a way that makes almost irreconcilable their separate paths to "peace with honor." At the same time, all three are acutely aware of the real dimensions of the crisis—that it poses a major threat to world peace. Perhaps the dimensions of the solution can be similarly expanded to provide a wider range of components for a workable bargain. Inclusion of matters unrelated to the conflict between Greek and Turkish Cypriots might make a new settlement substantially more attractive to these countries.

It is not possible to suggest all the elements that might be included in a solution devised on such a basis. Multilateral economic assistance is the most obvious example. An OECD consortium has already provided substantial assistance to Turkey, and more is needed.<sup>339</sup> Arrangements to coordinate the grant of this aid with the conclusion of a new settlement would not seem unrealistic.

There are no doubt many such arrangements that might be worked out within the range of resources available to countries not party to the crisis. In particular, it is the Western powers that must continue to seek out ways and means to promote a permanent settlement,<sup>340</sup> for these powers will suffer most if the current drift continues.

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339. See Stettner, *The OECD Consortium for Turkey*, *The OECD Observer*, April 1965, p. 3.

340. The recent report that the United States is planning to provide substantial assistance to Greece and Turkey for strengthening their military forces suggests one possible opportunity. See *N.Y. Times*, Feb. 28, 1966, p. 1, cols. 1-2.