
**PROTRACTED OCCUPATION THAT LEADS TO *DE FACTO* STATE CREATION:
THE TURKISH REPUBLIC OF NORTHERN CYPRUS, AN INTERNATIONAL LEGAL
EVALUATION**

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ABSTRACT: *The history of Cyprus is replete with foreign invasions and occupation. Modern history has Great Britain in control over the island, betwixt a long-term period of antagonism and hostility over the island's control between Greece and Turkey. Greek Cypriots have for many years sought enosis, or union with Greece, while the minority Turkish community's ethnic community goal has been taksim (partition) between the two ethnic groups. A crucial temporal dividing point came in 1974 when following a coup d'etat against the Greek Cypriot leadership leading to some instability which was then followed by a Turkish military invasion in order to protect the island's Turkish population. Once order was restored and with Ankara's backing, the Turkish Cypriots created the Turkish Republic of Northern Cyprus. Because of the manner in which the political action occurred, only Turkey provided diplomatic recognition, thus bringing up the legal issue of non-recognition and a discussion of the use of force to achieve a political objective.*

KEY WORDS: Cyprus, Turkish republic, northern Cyprus, Turkish foreign policy, Greek foreign policy, occupation, international law, *de facto state*

INTRODUCTION

Occupation in its varied forms¹ has taken on increased interest in the post-World War II era, at multiple legal² and political levels. We are interested to portray the international legal

¹ For a general discussion, see YUTAKA ARAI-TAKAHASHI, *THE LAW OF OCCUPATION: CONTINUITY AND CHANGE OF INTERNATIONAL JURIDICAL LAW AND ITS INTERACTION WITH INTERNATIONAL HUMAN RIGHTS LAW* (2009); EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* (2012); TRISTAN FERRARO, *OCCUPATION AND OTHER FORMS OF ADMINISTRATION OF FOREIGN TERRITORY* (2012); Marco Sassòli, *Legislation and Maintenance of Public Order and Civil Life by Occupying Powers*, 16 EUR. J. INT'L L. 661 (2005); Yaël Ronen, *A Century of the Law of Occupation*, 17 Y.B. INT'L HUMAN. L. 160 (2014); Yutaka Arai-Takahasi, *Unearthing the Problematic Terrain of Prolonged Occupation*, 52 ISR. L. REV. 125 (2019). There is belligerent occupation (*occupatio bellica*) as discussed in YORAM DINSTEIN, *THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION* (2009); Adam Roberts, *What is Military Occupation?* 55 BRIT. Y.B. INT'L L. 249 (1985); Then there is military occupation; Edmund H. Schwenk, *Legislative Power of the Military Occupant Under Article 43, Hague Regulations*, 54 YALE L. J. 393 (1944-1945).

implications of the current status of the Turkish Republic of Northern Cyprus (TRNC; in Turkish, the *Kuzey Kıbrıs Türk*).³ Our analysis will take on an examination of the form of international law affecting the status of the bi-communal and bi-zonal nature of the geopolitical condition of the island of Cyprus restricted to the period from the end of British colonial rule to the Annan proposal (1994) for mediation of the conflict between the two principal ethnic groups, the Greek Cypriot community⁴ and its counterpart, the Turkish Cypriot community as a minority element.⁵ The characterization of ethnic groups is pretty much based upon the frequent attention given over to bi-communalism, which is not to demean or fail to recognize other minority groups within the Cypriot population.⁶ At least one scholar, critical of the nuances attached to emerging

² Re belligerent occupation, *see* Concerning Armed Activities on the Territory of the Congo (Dem. Rep. of the Congo v. Uganda), Judgment, 2005 I.C.J. 168 (Dec. 19) and Legal Consequences of the Construction of a Wall in the Occupied Territories, Advisory Opinion, 2004 I.C.J. 136 (July 9); a question considered by the European Court of Human Rights: must a territory under military occupation have a military presence? *Chiragov and Others v. Armenia*, 13216 Eur. Ct. H.R. 5 (June 16, 2015); *Sargsyan v. Azerbaijan*, 40167 Eur. Ct. H.R. 6 (Dec. 14, 2011). For a decision that a military occupation exists for as long as the occupying military has the capability to intervene in the interest of the occupying power, *see* Prosecutor v. Mladen Natelić aka “Tuta,” Case No. IT-98-34-T, Decision, ¶217 (Int’l Trib. for the Former Yugoslavia, Mar. 31, 2003).

³ *See generally* KYPROS CHRYSOSTOMIDES, *THE REPUBLIC OF CYPRUS: A STUDY IN INTERNATIONAL LAW* (2000); FRANK HOFFMEISTER, *LEGAL ASPECTS OF THE CYPRUS PROBLEM* (2006); ADEL SAFTY, *THE CYPRUS QUESTION: DIPLOMACY AND INTERNATIONAL LAW* (2011); CYPRUS AND INTERNATIONAL LAW (Reşat Arım ed., 2002); Füsün Arsava, Evaluation of the Cyprus Problem as per International Law, 51 ANKARA ÜNİVERSİTESİ HUKUK FAKÜLTESİ DERGİSİ 43-51 (1996) (In Turkish); Marios Eriviades, , *Legal Dimensions of the Cyprus Conflict*, 10 TEX. INT’L L. J. 227 (1975); R. St. J. Macdonald, *International Law and the Conflict in Cyprus*, 19 CAN. Y.B. INT’L L. 3 (1982); Lawrence Hargrove *et al.*, *Cyprus in International Law and the Prospects for Settlement*, 78 AM. SOC’Y INT’L L. PROC. 107-132 (1984); Loucas Tsilas, *Greek-Turkish Relations in the Post-Cold War Era*, 20 FORDHAM INT’L L. J. 1589 (1996-1997); Patrick Tani, *The Turkish Republic of Northern Cyprus and International Trade Law*, 12 ASPER REV. 119 (2012); Erhan Bora, *Cyprus in International Law*, 1 ANKARA B. REV. 27 (2013). For the historical setting *see* TUFAN EKICI, *THE POLITICAL AND ECONOMIC HISTORY OF NORTH CYPRUS: A DISCORDANT POLITY* (2019); Nicos Moudouros, *The “TRNC” in the Turkish Cypriot Context: A Moment of Multiple and Contradictory Interpretations*, 3 E. MEDITERRANEAN GEOPOL. REV. 34 (2018); Monroe Leigh, *The Legal Status in International Law of the Turkish Cypriot and the Greek Cypriot Communities in Cyprus* (July 20, 1990), <http://www.cypnet.co.uk/ncyprus/history/cyproblem/etekun/chp5.html>.

⁴ Yiannis Papadakis, *Greek Cypriot Narratives of History and Collective Identity: Nationalism as a Contested Process*, 25 AM. ETHNOLOGIST 149 (1998). Therein is also an important distinction between the Greek Cypriot community’s orientation between Hellenocentric and Cyprocentric. On the Annan Plan *see* Ahmet Sözen & Kudret Özersay *The Annan Plan: State Succession or Continuity*, 43 MIDDLE EASTERN STUD. 25 (2007).

⁵ The Turkish population was established on Cyprus as a result of Ottoman Turkish conquest in 1570-1571. A Turkish Cypriot identity can be found in published form in 1935 in a Turkish Cypriot newspaper *SES (Voice)*, in an article by Uliyiye Mithat, Aug. 24, 1935, at 1. For general background, *see* AHMET DJAVIT AN, *THE TURKISH CYPRIOT COMMUNITY IN HISTORICAL PERSPECTIVE AND THE CHANGES IN ITS STRUCTURE AND IDENTITY* (Pol’y Paper Series 2/2018) (Oct. 2018); Charles Fraser Buckingham, *The Cypriot Turks*, (43) J. ROY. CENT. SOC’Y 126 (1956). For an understanding of “minority” status as an idea related to population, *see* Francisco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, U.N. Doc. E/CN.4/Sub.2/384/Rev. 1, at ¶ 568 (1979). *See also* Jelena Pejic, *Minority Rights in International Law*, 19 HUM. RTS. Q. 671 (1997).

⁶ Roland L. N. Mitchell, *A Muslim-Christian Sect in Cyprus*, 63 THE NINETEENTH CENTURY AND AFTER 751 (1908); Emel Akçali, *The ‘Other’ Cypriots and Their Cyprus Questions*, 19 CYPRUS REV. 57 (2007); Andrekos

challenges to the criteria for statehood, to include comments on how the status of national minorities “underlined by the self-definition of established states as nation-states, striving to embody their national unity by cultural standardization, the assimilation of subgroups, and sustained *nation-building* is an on-going consideration.”⁷ We completed our narrative portion with the Annan Plan since the historical evolutionary record since those developments have been adequately covered elsewhere.⁸ During the period in which we address our concerns we believe is sufficient for the presentation of enough international legal matters.

Background

The ethnic differentiation and resulting cultural tensions between the Greek and Turkish Cypriot communities⁹ had been a common occurrence at least throughout the period of British colonial control.¹⁰ In 1955 the Church of Cyprus (Eastern Orthodox) called for a referendum to determine whether “union” with Greece (*enosis*) would be acceptable to the obvious majority Greek Cypriot population.¹¹ The Greek Cypriot acceptance as noted in the vote tally only strengthened the resolve of the Turkish Cypriots to demand protection from the Turkish government in Ankara¹² through their goal of *taksim* (partition), mutually exclusive of *enosis*. Following Turkey’s strategic outlook, it positioned itself southward toward the Aegean spaces intentionally it had to contend with Greece who was ceded the Dodecanese Islands under the Treaty of Paris in 1947; now Cyprus had to assume a principle role. Nihat Erim, as Adnan Menderes, Turkey’s Prime Minister’s special advisor on Cyprus advised that the partition of Cyprus should be a

Varnava, *The State of Cypriot Minorities: Cultural Diversity, Internal-Exclusion and the Cyprus ‘Problem,’* 22 CYPRUS REV. 205 (2010).

⁷ Öyvind Österud, *The Narrow Gate: Entry to the Club of Sovereign States*, 23 REV. INT’L STUD. 157, 169 (1997).

⁸ Kivanç Ulusoy, *Turkey and the Turkish Republic of Northern Cyprus: A Thorny Relationship*, 40 J. S. ASIAN & MIDDLE EASTERN STUD. 66 (2016).

⁹ Adamantia Pollis, *The Social Construction of Ethnicity and Nationality: The Case of Cyprus*, 2 NATIONALISM AND ETHNIC POL. 67 (2007).

¹⁰ ANREKOS VARNAVA, BRITISH IMPERIALISM IN CYPRUS, 1878-1915: THE INCONSEQUENTIAL POSSESSION (2009); *Annexation of Cyprus by Great Britain*, 9 AM. J. INT’L L. 204 (1915).

¹¹ RUPERT EMERSON, FROM EMPIRE TO NATION: THE RIGHT TO SELF-ASSERTION OF ASIAN AND AFRICAN PEOPLES 295-328 (1960); Achilles C. Emilianides, *The Cyprus Question Before the House of Commons, 1954-1955*, in GREAT POWER POLITICS IN CYPRUS: FOREIGN INTERVENTIONS AND DOMESTIC PERCEPTIONS 11-13 (Michalis Kontos, Nicos Panayiotides & Haralambos Alexandrou eds., 2014). *Enosis* is meant to be, essentially, the Hellenization of Cyprus, a nationalistic notion of a recreation of the Greek empire, the “Megali Idea,” first mentioned by Rigas Ferros, a Greek poet in the form of a map in 1791. The map encompasses a wide swath of geography as Greek territory (Western Anatolia, West-East Thrace, Aegean Islands, Crete, Rhodes, Cyprus). Anastasia Stouraiti & Alexaner, *The Imaginary Topographies of the Megali Idea: National Territory as Utopia*, in SPATIAL CONCEPTIONS OF THE NATION: MODERNIZING GEOGRAPHIES OF GREECE AND TURKEY 11-34 (Nikiforas Diamandouros, Thalia Dragonas & Çağlar Keyder eds., 2010). See also Anita Walker, *Enosis in Cyprus: Dhali, A Case Study*, 28 MIDDLE EAST J. 474 (1984); Paschalis Kitromilides, *Greek Irredentism in Asia and Cyprus*, 26 MIDDLE EASTERN STUD. 3 (1990); Reed Coughlan & William Mallison, *Enosis, Socio-Cultural Imperialism and Strategy: Difficult Bedfellows*, 41 MIDDLE EASTERN STUD. 575 (2006).

¹² IOANNIS D. STEFANIDES, ISLE OF DISCORD: NATIONALISM, IMPERIALISM AND THE MAKING OF THE CYPRUS PROBLEM 211 (1999).

minimum goal with the **maximum** taking on a strategic hold over Cyprus in order to avoid Greece being able to encircle Turkey.¹³ Again, for Greece, its connection has been the strong majority population on the island.¹⁴ It was during this time—throughout the 1950s—that the Greek Cypriots created a paramilitary nationalist organization, EOKA (*Ethnikí Orgánosis Kypriakou Agonos*), supporting the idea of *enosis*. EOKA¹⁵ proceeded then to take violent action against the island’s Turkish community.¹⁶ In self-defense, the Turkish Cypriot leadership initiated a campaign with the slogan “from Turk to Turk campaign” and created a guerilla organization, *Volkan* (volcano) later called the Turkish Resistance Organization (TMT; in Turkish, *Türk Mukavemet Teşkilâtı*)¹⁷ in order to build an economic and political basis for which they could more easily demand partition. The escalation of tensions reached critical mass and led to talks between the parties when on February 5, 1959 discussions took place in Zurich¹⁸ to find a *compromis* which the Greek Cypriots subsequently sought to leverage its dominance to weaken any attempt by the Turkish Cypriots to display with force their connection to the “Fatherland.” The desire to continue on brought the participants to London on February 1959 in an attempt to bring the effort to fruition¹⁹ and ultimately led to treaty creations. The Zurich-London Accords stipulated or called for an independent and sovereign Cyprus creatively connected to both Greece and Turkey. However, following Article I of the Treaty of Guarantee²⁰ the Republic of Cyprus (ROC) was required to renege on the respective ideological goals of *enosis* and *taksim*. Additionally, relying on Article 185 (¶. 1, 2) of the ROC Constitution,²¹ the state was to be a separate entity, independent from any external authority, augmented by Article

¹³ MAKARIOS DROUSIOTIS, *THE DARK SIDE OF EOKA 187-190* (1988) (In Greek); Stefanides, *id.* at 207-228; Sukru Elektag, *Two and One-Half War Strategy*, 1 PERCEPTIONS 33-57 (1996).

¹⁴ CONSTANTINE MELAKOPIDES, *THE CYPRUS PROBLEM IN GREEK FOREIGN POLICY* 71-89 (1992).

¹⁵ EOKA-A (National Organization of Cypriot Fighters) was given inspiration in 1952 in Athens but was created in 1955 by the Greek Orthodox Church to oppose British colonial control over Cyprus. EOKA-B served as a Greek Cypriot underground movement poised to initiate ethnic cleansing. ROBERT HOLLAND, *BRITAIN AND THE REVOLT IN CYPRUS. 1954-1959* (1998); ANDREKOS VARNAVA, *A HIST. OF LIBERATION STRUGGLE OF EOKA: 1955-1959* (2004).

¹⁶ Andrew R. Novo, *Friend or Foe? The Cyprus Police Force and the EOKA Insurgency*, 23 SMALL WARS & INSURGENCY 416 (2012).

¹⁷ DAVID FRENCH, *FIGHTING EOKA: THE BRITISH COUNTERINSURGENCY CAMPAIGN ON CYPRUS, 1955-1959*, at 258-259 (2015). Adamantia Pollis, *Cyprus: Nationalism vs. Human Rights*, 1 UNIVERSAL HUM. RTS. 89 (1979).

¹⁸ For the text, see Zürich Agreement, <http://www.cypnet.co.uk/ncyprus/history/republic/agmt-zurich.html>.

¹⁹ The text of the Zurich-London Accords can be accessed at GREAT BRITAIN, PARL. PAPERS, CYPRUS, July 1960, Cm. 1093 and Aug. 16, 1960, Cm. 1252. While the Zurich-London accords had the normative interest of reducing hostilities and avoiding conflict, they were not without critics. See e.g. ANDREAS J. JACOVIDES, *TREATIES CONFLICTING WITH PREEMPTORY NORMS OF INTERNATIONAL LAW AND THE ZURICH-LONDON ‘ACCORDS’* (1966); John Milton & Tassos Kypriandis, *Greek and Greek-Cypriot Political Strategies on Independence: Class, Nation and Statehood*, in BEYOND A DIVIDED CYPRUS: A STATE AND SOCIETY IN TRANSFORMATION 99, 112 (Nicos Trimikliniotis & Umut Bozkurt eds., 2012).

²⁰ Treaty of Guarantee, Aug. 16, 1960, 382 U.N.T.S. 3, No. 5475.

²¹ The ROC Constitution, also known as the “Zürich” constitution because of its influenced origin, is found in MARIOS C. ADAMIDES, *THE CONSTITUTION OF THE REPUBLIC OF CYPRUS IN MODERN GREEK AND ENGLISH* (2004); POLYVIOS POLYVIU, *CYPRUS: IN SEARCH OF A CONSTITUTION: CONSTITUTUITONAL NEGOTIATIONS AND PROPOSALS, 1960-1975*, 3 (1973)..

II of the same Treaty of Guarantee. So very important because of its absence was the constitution's provision of an operational plan for the possibility of bi-communal dysfunction,²² a structural occurrence that should have been foreseen. Thus, while recognizing the separateness of distinct ethnic communities therein was built the potential for antagonism and a lack of impetus for cooperation.

By August 16, 1960 British colonial rule over Cyprus ended²³ and the ROC emerged as a power-sharing governing system,²⁴ with a new constitution²⁵ creating a consociational democracy with two separate ethnic communities, supported by Greece, Turkey and Great Britain. This new constitution seemed to form the basis for the extreme positions of either ethnic communities with Article 173 recognizing the existence of separate municipalities²⁶ but according to Article 179, the constitution remained the supreme law in the ROC. It was patently obvious that given the structural presence of a bi-zonal and a bi-communal existence on the island, a western-styled, federated democracy was not in the offing. The ROC's constitution, when combined with both the Treaty of Establishment and the Treaty of Guarantee, was importantly influenced by the proposals found in Britain's Prime Minister Harold Macmillan's diplomatic effort, The Macmillan Plan.²⁷ The new ROC in an attempt to assuage the Turkish community on the island, provided them a number of concessions essentially offering them an opportunity to participate in the legislature and insure their protection as a minority.²⁸ The Turkish response was to rely on the Treaty of Guarantee, Article 4 combined with the Zurich and London agreements, previously adopted and sought a firmer protection of its ethnic brethren.²⁹ Simultaneous with the

²² ACHILLES C. EMILIANIDES, BEYOND THE CONSTITUTION OF CYPRUS 38 (2006) (In Greek). This condition has been handled in a more constructive manner with conflict resolution procedures provided. See HANNA LERNER, MAKING CONSTITUTIONS IN DEEPLY DIVIDED SOCIETIES 30-51 (2011). There is also a provision that was intended to observe inter-communal respect. Loukis, Loucaides, *Guarantees Against Racial Discrimination Under the Legal System of Cyprus*, 5 CYPRUS L. REV. 2659 (1987).

²³ Treaty Concerning the Establishment of the Republic of Cyprus (Treaty of Nicosia), Aug. 16, 1960, 382 U.N.T.S. 8, No. 476; SUTTON, BRITAIN'S COLD WAR IN CYPRUS AND HONG KONG 1-14 (2017).

²⁴ The British Cyprus Act of 1960, UK Public General Acts 1960 c 52 (Regnal 889 Eliz 2); HARALAMBOS ATHANASOPOULOS, GREECE, TURKEY, AND THE AEGEAN SEA 19 (2001); David Wippman, *International Law and Ethnic Conflict in Cyprus*, 31 TEX. INT'L L. J. 141 (1996).

²⁵ For the text of the constitution see <http://www.kypros.org/Constitution/English/>. See also Thomas Adams, *The First Republic of Cyprus: A Review of an Unworkable Constitution*, 19 WEST. POL. Q. 475 (1966).

²⁶ Diana Markides & G.S. Georghallides, *British Attitudes to Constitution-Making in Post-1931 Cyprus*, 13 J. MOD. GREEK STUD. 63 (1995).

²⁷ The Macmillan "Partnership Plan" discussed in British government circles can be found in CAB 129/93 C(58) 106, May 12, 1958; HAROLD MACMILLAN, RIDING THE STORM, 1956-1959, at 657-701 (1971). For the text of Macmillan's Speech, Cyprus Plan, see NY TIMES, June 20, 1958, at A3.

²⁸ UN Mediator on Cyprus to the Secretary General, U.N. Doc. S/6253, paras. 92-93, (March 26, 1965). Thomas D. Grant, *Internationally Guaranteed Constitutive Order: Cyprus and Bosnia as Predicates for a New Nontraditional Actor in the Society of States*, 8 J. TRANSNAT'L L & POL'Y 1 (1998-1999).

²⁹ UN SCOR 19th Sess. 1045th mtg. at 34-40, U.N. Doc. S/PV.1099 (Feb. 18, 1964). For a broader understanding of the Turkish relationship to Cyprus see REBECCA BRYANT & METE HATAY, *TURKISH PERCEPTIONS OF CYPRUS 1948 TO THE PRESENT* (2015). For a legal analysis of Turkish rationale from a Greek perspective see IAKOVOS KAREKLAS, *INTERNATIONAL LAW & DIPLOMACY ON THE TURKISH MILITARY*:

termination of the British control was the conclusion of an alliance contract between Greece, Turkey and Cyprus allowing for a joint military headquarters on the island to ensure a stable and peaceful order.³⁰

The ties that loosened the British protective umbrella over the island left the Turkish Cypriots with the fearful memory of Smyrna³¹ or deportation as was the case with Cretan Turks.³² In effect, from the viewpoint of Crawford, the island's governing system had been "internationalized."³³ Without a firm governing structure in place, internal security or the lack thereof led to a resurgence of inter-communal clashes.³⁴ And so in but three years, the Greek Cypriots found the constitution unworkable for them and, therefore, the Archbishop Makarios³⁵ as President of the Greek Cypriot Community, sought to amend the constitution with "thirteen points" or "thirteen amendments."³⁶ The intention was clearly to transform a republican governing system based on bi-communalism to a Greek Cypriot unitary state. The background to this proposal was, however, somewhat clouded by what was infamously known as the Akritas Plan (also known as Bloody Christmas), a Greek Cypriot subversive operation, created by the Greek Cypriot Minister of the Interior, intended to foment Turkish Cypriot outrage which as planned would bring the Greek Cypriots out to force the former to accept their minority status and ultimately *enosis*.³⁷ Makarios made it patently clear his most personal interest when he stated: From the Turkish "until the devastation of the small Turkish race, the most terrible enemy of Hellenism, our duties for the heroes of EOKA would not be considered as

INTERVENTION OF CYPRUS (Working Paper 18/2011. Hellenic Foundation for European and Foreign Policy) (2011).

³⁰ Treaty of Military Alliance (with Additional Protocols), Aug. 16, 1960, 397 U.N.T.S. 287, No. 5712 (1961), also found its condition in the ROC's constitution, Article 181, §21.

³¹ Tozun Bahcheli & Nicholas X. Rizopoulos, *The Cyprus Impasse: What Next?* 13 WORLD POL'Y J. 27 (1996/1997).

³² Suha Bölükbaşı, *The Johnson Letter Revisited*, 29 MIDDLE EASTERN STUD. 507 (1993). An argument has been put forth that İnönü may have called off the invasion even before the receipt of the letter. WILLIAM HALE, *TURKISH FOREIGN POLICY* 174-200, at 184 (2000).

³³ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 166, 169 (1979).

³⁴ RICHARD A. PATRICK, *POLITICAL GEOGRAPHY AND THE CYPRUS CONFLICT, 1963-1971*, at 53 (1976); Norma Salem, *The Constitution of 1960 and its Failure*, in *CYPRUS: A REGIONAL CONFLICT AND ITS RESOLUTION* 117-125 (Norma Salem ed., 1992)

³⁵ In 1950 Michael Mouskos, Bishop of Kition (Larnaca), was elected Archbishop Makarios III of Cyprus.

³⁶ ZAIM NECATIGIL, *THE CYPRUS QUESTION AND THE TURKISH POSITION IN INTERNATIONAL LAW* 21-22 (1989). Interestingly, The Church of Cyprus was mandated to serve the needs of the Greek Cypriot Community, thereby and presumably excluding the Turkish Cypriot Community. Archbishop Makarios as President of the Greek Cypriot Community *ergo* could not serve the needs, spiritually or politically, as the leader of the Cypriot People.

³⁷ For the text of the plan *see The Akritas Plan*, PATRIS (Nicosia), April 24, 1966 (In Greek); NECATİM. ERTEKÜN, *THE CYPRUS DISPUTE: AND THE BIRTH OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS*, 2d ed. 165-173 (1984); GLAFKOS CLERIDES, 1 *CYPRUS: MY DEPOSITION* 207 (1989); James M. Boyd, *Cyprus Episode in Peacekeeping*, 20 INT'L ORG. 4 (1966); Kamil Serteğlolu & İlhan Ozturk, *Application of Cyprus to the European Union and the Cyprus Problem*, 39 EMERGING MARKETS FINANCE AND TRADE 58 (2003); Costas M. Constantinou, *Aporias of Identity: Bicommunialism, Hybridity and the Cyprus Problem*, 42 COOP. & CONFLICT 18-19 (2007).

completed.”³⁸ The Cypriot perspective held this legislative approach that would have denied their community the status of being an “equal partner of the Republic,”³⁹ forcing many, upon the advice from Ankara, to retreat into Turkish ethnic enclaves.⁴⁰ The Greek position, which was one speaking as a majority population, was as such granting equality and would necessarily reduce their status in rank.⁴¹

Great Britain, *assisting* the new government to achieve two important goals of self-determination and human rights protection, created accordingly the London Accords which accepted the Zurich formula. The acceptance of the Zurich-London Agreement by the Turks was premised on the condition that the ROC would proceed temporarily before agreeing to the full independence of the Turkish Cypriot community.⁴² Still another sentiment supplementing this understanding by Ankara was found in a document entitled the “Interim Phase Plan,” dated September 14, 1963, originating from the office of the Vice President of the ROC, in which it was recorded that if and when the ROC’s constitution was abolished, a separate state, outside the framework of the Zurich-London Agreement would be created for the Island’s Turkish minority.⁴³ United Nations Security Council passed a resolution endorsing the plan,⁴⁴ subsequently supported by both the Greeks and Turks though for separate reasons. Within a week, tensions on the island boiled over with Greek Cypriots attacking Turkish Cypriots in several locations which only added to the chaos.⁴⁵ While the situation on the island was unstable, in Athens the *junta* in Greece was opposed to the Makarios regime seeing it as an obstacle to the settlement of outstanding Cypriot issues and a rapprochement between Athens and Ankara. So, on July 15, 1974, despite the Zurich-London Agreements, Andreas Papandreou, the son of George Papandreou, the Prime Minister of the government in Athens, and on his own sent troops and arms to Cyprus--only removed on December 12, 1964. This action immediately caused the Turks to mobilize with a similar response by the Greeks. It was only after US President Johnson intervened with a

³⁸ KIRIAKOS CAMBAZIS, DIVERGENCE OF A MYTH 67 (2013) (In Turkish).

³⁹ The text of the 13 points was published in 1 CYPRUS TO-DAY 1-8 (1963); A memorandum Submitted by President Archbishop Makarios III to Vice-President Mustafa Fazıl Küçük on Nov. 30, 1963, “Suggested Measures to Facilitate the Smooth Functioning of the State and Remove Certain Causes of Intercommunal Friction.” 13 Points (30 November 1963), http://www.pio.gov.cy/assets/pdf/cyproblem/13_points.pdf. Joseph S. Joseph, *Cyprus: Domestic Ethnopolitical Conflict and International Politics*, 15 PATHWAYS FROM ETHNIC CONFLICT: INSTITUTIONAL REDESIGN IN DIVIDED SOCIETIES 376 (2009); Christis Enotiades, *Can the Cyprus Problem be Resolved?* 3 ANKARA B. REV. 33 (2010).

⁴⁰ Russell King & Sarah Ladbury, *The Cultural Reconstruction of Political Reality: Greek and Turkish Cyprus Since 1974*, 55 ANTHRO. Q. 4 (1982). See also Anna Batta, *Patterns of Marginalization and Inclusion in New States*, 16 ETHNOPOL. 471 (2017).

⁴¹ Sözen & Özersay, *supra* note 4 at 125.

⁴² AHMET AN, WHERE IS CYPRUS GOING? 99-100 (2002) (In Greek).

⁴³ *Id.*, 106-111.

⁴⁴ UN S.C. Res. 186.

⁴⁵ RICHARD A PATRICK, POLITICAL GEOGRAPHY AND THE CYPRUS CONFLICT, 1963-1971, at 53 TURKISH-AMERICAN RELATIONS AND CYPRUS 87-121 (1988); PIERRE OBERLING, THE ROAD TO BELLAPAI: THE TURKISH CYPRIOT EXODUS TO NORTHERN CYPRUS (E. Euro. Monograph No. 125) 172 (1982); Bölübaşı, *supra* note 32 at 87-121.

strongly worded letter to the government in Ankara to back down was the situation deescalated.⁴⁶ The Greek military operation in concert with the Cypriot National Guard conducted a *coup d'état*—or perhaps a *putsch*--led by a Greek Cypriot leader, Brigadier General Dimitrios Ioannidis, overthrowing the government of President Makarios and thereby excluding Turkish Cypriots from political representation. There then came Nikos Sampson, a EOKA leader who proclaimed the existence of a “Hellenic Republic of Cyprus.” Hence, the clear intent of the insurgents was to cede the island to Greece, i.e. *enosis*. Despite the Greek position, Makarios made his view on *enosis* somewhat clearly and how and why he believed that it could not assume a primary policy role which was an evolved stance from whence he was elected president. In fact, *enosis*, was understood to be as much an anti-colonial stratagem as it was a truly ideological goal.⁴⁷

The Turkish reaction was at first diplomatic, requesting Great Britain to intervene, yet who subsequently declined.⁴⁸ The Turkish Prime Minister Bülent Ecevit made it clear that Turkey would not look with favor on any intervention⁴⁹ that would harm the Turkish Cypriot community.⁵⁰ Since the Turkish Cypriot population amounted to be about 18 percent of the island’s total population, it makes the argument that Turkey’s primary policy to invade / island was for the protection of its Turkish community less than totally credible. It is a fact though that they did represent a popular minority. During this period, the economic situation for the island is clearly one in which the Turkish community diminished significantly while the Greek Cypriots enjoyed a disproportionate greater lifestyle.⁵¹ Meanwhile, the ROC, while recognized internationally, but not Turkey, political leader attempted to provide a modicum of bicomunal leadership, which however, was not totally successful. The felt marginalization by the Turkish community assumed a position, as best they could, to establish local autonomy over their enclaves, but nonetheless was ultimately rejected by the ROC.⁵² The tense conditions continued with both communities characterizing their respective situations in equally tragic terms as victims of the other’s treatment.⁵³

⁴⁶ ADREAS PAPANDREOU, *DEMOCRACY AT GUNPOINT: THE GREEK FRONT* 134 (1973); Oberling, *id.* at 114-115. It was this dramatic event that led Kryianos C. Mackrides to decry the collapse of the ROC with the governmental overthrow. *THE RISE AND FALL OF THE CYPRUS REPUBLIC 1* (1977).

⁴⁷ The full text of Makarios’ letter spelling out his view is found in RAUF R. DENKTASH, *THE CYPRUS TRIANGLE* 128-136 (1982).

⁴⁸ JAN ASMUSSEN, *CYPRUS AT WAR: DIPLOMACY AND CONFLICT DURING THE 1974 CRISIS* 29 (2008); Şevki Kıralp, *Cyprus Between Enosis, Partition and Independence: Domestic Politics, Diplomacy and External Interventions (1967-1974)*, 19 *J. BALKAN AND NEAR EASTERN STUD.* 591 (2017).

⁴⁹ For an international legal analysis on intervention as a policy option, see PRIYANKA SAMANT, *INTERVENTION LAW: THEORY AND PRACTICE* (2019).

⁵⁰ NASU USLU, *THE CYPRUS QUESTION AS AN ISSUE OF TURKISH FOREIGN POLICY AND TURKISH-AMERICAN RELATIONS 1959-2003*, at 124-125 (2003).

⁵¹ KRYACOS MARKIDES, *THE RISE AND FALL OF THE CYPRUS REPUBLIC* 77 (1977).

⁵² Patrick, *supra* note 34 at 174.

⁵³ Christopher de Bellargue, *Conciliation in Cyprus*, 22 *WASH. Q.* 185 (1999).

The turbulent conditions then limited Turkish options and burgeoned into a decision by Ankara to initiate a unilateral military operation⁵⁴ against the northern portion of Cyprus on July 20, 1974 and again on August 1974 ostensibly to protect the Turkish Cypriot minority⁵⁵ that felt insecure and sought a partition (*taksim*)⁵⁶ in order to return the constitutional order believed to have prevailed. Important to note here is the self-imposed limit on the extent of the Turkish military's advance. The military objective was limited as it was to the island's northern region in which most Turkish Cypriot enclaves were found but sufficient to prosecute the target à propos Turkey's policy. The military action taken by the government in Ankara was **not** done in tandem with the Turkish Cypriot community's leadership, which could be considered necessary for a demand for for which self-determination.⁵⁷ Having said that, within an international political context of the Cold War and the role of Turkey in NATO, the United States took great notice for the potential imposition of *enosis*.

Aware of Turkish contingency plans toward Cyprus, the US was willing to block the proposed invasion leaving Turkey to cause for thought. In discussions in Washington with Greek Prime Minister George Papandreu, presidential advisor and former Secretary of State Dean Acheson offered a plan to resolve some of the more pressing issues.⁵⁸ Turkey was also fearful of the Greek Colonels' *junta* and its Greek Cypriot acolytes who might force *enosis* and reverse the gains made by Turkish Cypriots over the past decade. In support of their goal of community protection, the Turkish Cypriots created the semblance of self-government with a General Committee.⁵⁹ Once the Turkish military established control over 37 percent of Cyprus, it became established that Turkey had some extent of territorial control in least in the northern sector.⁶⁰ As soon as the Turkish military had established its presence over a sizeable portion of northern Cyprus, its status progressed from an invading force to that of an occupying power, thus requiring it to establish its authority to govern. As soon as this condition could be credited, it

⁵⁴ We say unilateral since there is no evidence that the Turkish Cypriot leadership nor obviously the ROC invited or requested the Turkish government to make the decision it did. If not an invasion or an incursion, it was sufficiently analogous to be considered an "armed attack," a condition set out in the Nicaragua case, *supra* note 91 at 14, ¶ 195.

⁵⁵ The Turkish Cypriot population had been subject to violent attacks by their Greek compatriots during a period of heightened violence. Adamatia Pollis, *Colonialism and Neo-colonialism: Determinants of Ethnic Conflict in Cyprus*, in *SMALL STATES IN THE MODERN WORLD: THE CONDITION OF SURVIVAL*, 2d ed. 45-79 (Peter Worsley & Paschalis Kitromiledes eds., 1979); Peter Laizos, *Intercommunal Killing in Cyprus*, 23 *MAN* 639 (1988); Nadav Morag, *Cyprus and the Clash of Greek and Turkish Nationalisms*, 10 *NATIONALISM AND ETHNIC POLITICS* 545 (2010); Ali Dayoğlu, Mustafa Çiraakli & Umut Koldaş, *Turkish Nationalism and the Cyprus Question: Change, Continuity and Implications for Engagement with North Cyprus*, 18 *ETHNOPOL.* 1 (2019).

⁵⁶ ZENON STAVRIDES, *THE CYPRUS CONFLICT: NATIONAL IDENTITY AND STATEHOOD* 10-54 (1976).

⁵⁷ Mileno Sterio, *On the Right to External Self-Determination: "Selfistans," Secession and the Great Powers' Rule*, 19 *MINN. J. INT'L L.* 137, 170 (2010).

⁵⁸ 16 *FRUS*1964-1968, *supra* note 55 at 78-97; GEORGE PAPANDEOU AND THE CYPRUS QUESTION: DOCUMENTS, 1954-1965, at 233-270 (Paolos Patrides ed., 1998) (In Greek).

⁵⁹ Necatagil, *supra* note 36 at 9.

⁶⁰ Lea Brilmayer, *Consent, Contract, and Territory*, 74 *MINN. L. REV.* 1 (1989) supplemented by her *Secession and Self-Determination: A Territorial Interpretation*, 16 *YALE J. INT'L L.* 177 (1991).

was recognized that Turkey assumed responsibility for the effective protection of the civilian population of the occupied territory. Here then is an important factor with respect to the expected length of the occupation.⁶¹ Turkish officials let it be known that the military presence was meant to be for the duration of the perceived threat to the Turkish Cypriot population by Greek elements in Cyprus and its supporters in Athens.⁶²

Here it becomes important to note that the longer the occupation remains in place, it appears that the perceived threat and the initial reason for it simply sustains its credulity. In opposition to the conditions of belligerent occupation, the occupation under consideration here is mitigated by the ethnic connection between the foreign occupying force and the territory and population of the occupants, thus the occupying force cannot be necessarily considered “hostile.” The opposing force, the ROC and presumably Greece and the Greek Cypriot community was not a part of the goal of the occupying force and is, in fact, formally separated. In any case, it becomes ponderable whether the required conditions of belligerent occupation apply to the situation herein.⁶³ Therefore, the condition in Cyprus could most likely be considered a situation of “peaceful occupation.”⁶⁴ It was the opinion of the eminent jurist Philip Jessup that given the experience of state practice in the contemporary world that the traditional understanding of *jus post bellum* may not be operative under newly created conditions such as found here with Cyprus.⁶⁵ Awarding a direct international legal position on the transition from armed conflict to a resultant occupation finds an almost total lack of universal agreement in some codified form.⁶⁶

There was to be sure legal commentary that found the Turkish use of the military to be without proper justification⁶⁷ and condemnation was found in a number of UN Security Council

⁶¹ Leyda claims that “occupation” is meant to be a temporary condition with limited administration. Jose Alejandro Carballo Leyda, *Clarifying a Widespread Misunderstanding*, 23 EUR. J. INTL L. 179 (2012), but see contra Eyal Benvenisti, *The Laws of Occupation and Commercial Law Reform in Occupied Territories: A Reply to Jose Alejandro Carballo Leyda*, 23 EUR. J. INT’L 1999 (2012), followed by Leyda, *The Laws of Occupation and Commercial Law Reform in Occupied Territories: A Rejoinder to Eyal Benvenisti*, 23 EUR. J. INT’L L. 211 (2012).

⁶² Oberling, *supra* note 43 at 72; Nick Squires, *Turkey Will Only Withdraw Troops from Cyprus if Greece Does the Same*, THE TELEGRAPH (London), Jan. 13, 2017, <http://www.telegraph.co.uk/news/2017/01/13/turkey-will-withdraw-troops-cyprus-greece-does-turkish-president>. Turkish armed forces in northern Cyprus are officially known as the Cyprus Turkish Peace Force” (*Kıbrıs Türk Barış Kuvvetleri*).

⁶³ The elements of such an occupation are spelled out in the following: Konstantinos Mastorodimos, *How and When do Military Occupations End*, 21 SRI LANKA J. INT’L L. 109 (2009).

⁶⁴ Arai-Takahashi, *infra* note 1 at 42; F. Llewellyn Jones, *Military Occupation of Alien Territory in Time of Peace*, 9 TRANSACTION GROTIUS SOC’Y 149 (1923). See also Roberts, *supra* note 1 at 261 where he lists 17 different types of occupations. Eugene Kontorovich simply notes occupation as temporary, prolonged, or indefinite. *Economic Dealings with Occupied Territories*, 53 COLUM. J. TRANSNAT’L L. 592 (2015).

⁶⁵ Phillip Jessup, *Should International Law Recognize an Intermediate Status Between War and Peace?* 48 AM. J. INT’L L. 98, 102 (1954). See generally HANNE CUYCKENS, REVISITING THE LAW OF OCCUPATION 101-121 (2017).

⁶⁶ Carsten Stahn, ‘*Jus Ad Bellum*,’ ... ‘*Jus in Bellum*’ ... ‘*Jus Post Bellum*’?—Rethinking the Conception of the Law of Armed Forces, 17 EUR. J. INT’L L. 941-943 (2006).

⁶⁷ WILLIM MALLINSON, PARTITION THROUGH FOREIGN AGGRESSION: THE CASE OF TURKEY IN CYPRUS (2010); Ann Van W. Thomas & A. J. Thomas, *The Cyprus Crisis 1974-75: Political-Juridical Aspects*, 29

Resolutions.⁶⁸ The United Nations pronounced the action to be a secessionist effort, perhaps even coordinated with some element of the Turkish Cypriot community. But there is also the claim that the legal argument covered a political motive.⁶⁹ The argument is proffered that since there was no colonial control of Cyprus at the time, Ankara's options were limited by the Turkish Cypriots' demand for protection and their concerns with a unilateral declaration of independence though without consent of the Cypriot government. It would seem at the outset that the TRNC's declaration of independence, seceding from the ROC was in violation of the Declaration on Principle of International Law Concerning Friendly Relations and Co-operation with the Charter of the United Nations.⁷⁰ The action by the Turkish military was forcefully rejected by the European Parliament, the Commission and the Foreign Ministers of the member states⁷¹ while simultaneously recognizing the sovereignty of the ROC. Hence, without a conclusive determination, there is no absolute objection for such a declaration,⁷² apart from the fact that there was judicially objected opinion found in *Cyprus v. Turkey*.⁷³ Domestic politics in Turkey as evidenced by public opinion had grown militant as news of anti-Turkish Cypriot agitation and violence surged and there was open support for the government to provide military support to the Turkish community on the island.⁷⁴ Again with a new government in Ankara under the İnönü supervision, the Prime Minister faced the dogged task of creating a stable parliamentary coalition and facing an outraged display of public opinion, seeing Turkey embarrassed by western powers following a diplomatic meeting in London looking to address the Cyprus question.⁷⁵ The decision to act accordingly was to claim a remedial secession⁷⁶ in

SW. L. J. 529-531 (1975). R. St. J. MacDonald, *International Law and the Conflict in Cyprus*, 19 CAN. Y. B. INT'L L. 29 (1982). The United Nations immediately called for a ceasefire, UN S.C. Res. 357 (Aug. 14, 1974).

⁶⁸ See e.g. UN S.C. Res. 353 (July 20, 1974), UN S.C. Res. 354 (July 23, 1974), UN S.C. Res. 355 (Aug. 1, 1974), UN S.C. Res. 358 and 359 (Aug. 15, 1974), UN S.C. Res. 360 (Aug. 16, 1974), UN S.C. Res. 361 (Aug. 30, 1974), and UN S.C. Res. 364 (Dec. 16, 1974).

⁶⁹ Marios Evriviades, *A Legal Dimension of the Cyprus Conflict*, 10 TEX. INT'L L. J. 264 (1975).

⁷⁰ UN G.A. Res. 25/2625 (Oct. 24, 1970) but see *contra* UN S.C. Res. 1244 (June 10, 1999) and J. Cançado Trindale's opinion in I.C.J.'s Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion), 2010 I.C.J. Rep. 403 (July 22).

⁷¹ EC BULL. 11-1983, points 2.2.34, 2.4.1, and 2.4.2; 1983 O.J. C342/52. The European government's recognition of the ROC is recorded in EC BULL. 3-1984, point 2.3.4 and 1994 O.J. C289/13.

⁷² Antonello Tancredi, *Neither Authorized nor Prohibited—Secession in International Law after Kosovo, South Ossetia and Abkhazia*, 18 IT. Y. B. INT'L L. 37 (2008).

⁷³ Loukis Loucaides, *The Judgment of the European Court of Human Rights in the Case of Cyprus v. Turkey*, 15 LEIDEN J. INT'L L. 225 (2002) which can be augmented for argument purposes by the case *Ilascu v. Moldova and Russia*, 414 Eur. Ct. H. R. at 1 (2004).

⁷⁴ STANFORD J. SHAW & EZEL KURAL SHAW, 2 HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY. REFORM, REVOLUTION AND REPUBLIC: THE RISE OF MODERN TURKEY 1808-1975, at 430 (1977).

⁷⁵ FERAZ AHMAD, THE TURKISH EXPERIENCE IN DEMOCRACY, 1950-1975, at 221 (1977); Shaw & Shaw, *id.*, 413-414.

⁷⁶ For a general discussion of remedial secession see GRACE BOLTON & GËZIM VISOKA, RECOGNIZING SECESSION OR EARNED SOVEREIGNTY? (Southeast European Studies at Oxford Occasional Paper No. 11/10) 17-21 (2010); ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 120 (1995); John Dugard & David Raič, *The Role of Recognition and Non-Recognition With Regard to Secession*, in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW 45-67, 108-109 (Christian Walker,

direct opposition to the accepted principle of respect for the territorial integrity of the state. Thus, secession⁷⁷ became a very serious act, albeit a hostile one. There is also a prevailing view that intervention to protect a minority from an external political actor, in the case under study an ethnic guarantor, may under some circumstances be acceptable nonetheless legally debated.⁷⁸

There is a distinction to be made here that is important: The Turkish action was not taken for purpose of conquest,⁷⁹ rather in some sense a fear of encirclement from the sea and ultimately part of a long-term Turkish strategy.⁸⁰ With reference to Turkish intent, on February 22, 1992 the Turkish Prime Minister Süleyman Demirel spoke before the Turkish State Security Court stating that: “The Republic of Turkey is not in a state of war with any country, Southern Cyprus included.”⁸¹ For the Turkish military,⁸² Cyprus was allegorically a dagger threatening Turkey’s “soft belly” and the Karpas peninsula serving as the point of a blade.⁸³ The Turkish rationale was, at least publicly, based on Article IV (2) of the 1960 Treaty of Guarantee,⁸⁴ prioritizing a

Antje von Ungern-Steinberg, & Kavus Abuslov eds., 2014); Christian Tomuschat, *Secession and Self-Determination*, in *SECESSION: INTERNATIONAL LAW* 1, 3 (Marcelo Kohen ed., 2006); Dietrich Murswiek, *The Issue of a Right to Secession—Reconsidered*, in *MODERN LAW OF SELF-DETERMINATION* 21, 25-27 (Christian Tomuschat ed., 1993); Gerd Seidal, *A New Dimension of the Right of Self-Determination in Kosovo? in KOSOVO AND THE INTERNATIONAL COMMUNITY, A LEGAL ASSESSMENT* 203, 206-212 (Christian Tomuschat ed., 2002); Michel Seymour, *Secession as a Remedial Right*, 50 *INQUIRY* 395, 410 (2007); Andreas Yfantidis, *The Limits of Self-Determination and the Case of Forced Separation: The Example of Northern Cyprus*, 6 *OPEN J. POL. SCI.* 161 (2016). *See contra* SIMONE F. VAN DEN DRIEST, *REMEDIAL SECESSION: A RIGHT TO EXTERNAL SELF-DETERMINATION AS A REMEDY TO SERIOUS INJUSTICES?* (2013). The rules that govern remedial secession are set out in Jure Vidmar, *Remedial Secession in International Law: Theory and (Lack of) Practice*, 6 *ST ANTONY’S INT’L REV.* 37 (2010); Nicolás Brado & Sergi Morles-Gálvez, *The Right to Secession: Remedial or Primary?* 18 *ETHNOPOL.* 107 (2019).

⁷⁷ Ioanna Cismas, *Secession in Theory and Practice: The Case of Kosovo and Beyond*, 2 *GÖTTINGEN J. INT’L L.* 531 (2010); Theodore Christakis, *The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say About Secession?* 24 *LEIDEN J. INT’L L.* 73 (2011).

⁷⁸ Antonio Cassese, *Ex iniuria ius oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community*, 10 *EUR. J. INT’L L.* 23 (1999); Richard A. Falk, *Kosovo, World Order, and the Future of International Law*, 93 *AM. J. INT’L L.* 847 (1999); Thomas M. Franck, *Lessons of Kosovo*, 93 *AM. J. INT’L L.* 857 (1999); Louis Henken, *Kosovo and the Law of “Humanitarian Intervention,”* 93 *AM. J. INT’L L.* 824 (1999); Ruth Wedgwood, 93 *AM. J. INT’L L.* 828 (1999).

⁷⁹ SHARON KORMAN, *THE RIGHT OF CONQUEST: THE ACQUISITION OF TERRITORY BY FORCE IN INTERNATIONAL LAW AND PRACTICE* (1996).

⁸⁰ AHMET DAVUTOĞLU, *THE STRATEGIC DEPTH* (2010); S.K.N. Blay, *Self-Determination in Cyprus: The Dimensions of an Old Conflict*, 10 *AUST. Y. B. INT’L L.* 67 (1983).

⁸¹ *Islamic Republic of Iran Shipping Lines v. Turkey*, 47 *Eur. H. R. Rep.* 24 (2008); *Eur. Ct. H. R.* 1081 (Dec. 13, 2007).

⁸² The Turkish has had a symbiotic relationship to the government over the years. *See* SAIT AKŞIT & COSTAS MELAKOPIDES, *THE INFLUENCE OF TURKISH MILITARY FORCES ON POLITICAL AGENDA-SETTING IN TURKEY, ANALYZED ON THE BASIS OF THE CYPRUS QUESTION* (2008).

⁸³ ANDREW BOROWIEC, *CYPRUS: A TROUBLED ISLAND* 114 (2000).

⁸⁴ Treaty of Guarantee, *supra* note 20, also contained in the ROC’s constitution, Article 181 as well as the Zürich Accord, §21. This particular provision expressly called for joint consultations with Greece, Turkey and Great Britain before any action taken. Only after the failure of such a meeting could unilateral action be taken. And as noted Turkish Prime Minister Ecevit flew to London on July 17, 1974 for such a consultation, not offered. Necatigil,

legal justification, seeking to protect the island's minority population.⁸⁵ But not only was there an interest in the country's ethnic brethren in Turkish eyes, Cyprus always represented a strategic asset in the eastern Mediterranean, along energy routes and its general geographic location.⁸⁶ A projected oil pipe line bringing Caspian Sea oil and natural gas from Azerbaijan's Shah Deniz field to the Turkish bay and hub-port Erzurum at Ceyhan Bay⁸⁷ only increased the strategic importance of northern Cyprus⁸⁸ especially if *enosis* would occur bringing an inimical force possibly blocking the way for the furtherance of key Turkish interests. Cyprus has also been a part of the Turkish historical narrative. The island was in a way a part of the Ottoman Empire from 1571 to 1878 when it was ceded to Great Britain with Turkey giving up any claim to sovereignty to the island in 1923.⁸⁹ Cyprus is also positioned proximate to Greece, Turkey's traditional rival and populated largely by Greeks, thus always representing a potential annoyance if not a threat.⁹⁰ Nonetheless, the continued presence of Turkey as an occupied authority has morphed into a position that has meant to cause human rights abuses⁹¹ and the treatment of Greek Cypriots in the TRNC certainly has not gone without serious complaint. an

The blatant use of force by Turkey flies in the face of Article 2(4) of the United Nations Charter and when combined with the non-binding UN G.A. Res. 25/2525 sees this style of political action as a firm measure of customary international law, on the other hand also recognized as a principle of international law by the I.C.J.⁹² and codified by the International Law Commission.⁹³

supra note 36 at 94. The Turkish justification expressed support from the Consultative Committee of the Council of Europe as it passed Resolution 573 (1974), paras. 2-3 (July 29, 1974) as reported in the Political Affairs Committee Doc. 3464 (July 29, 1974).

⁸⁵ ALTAY NEVZAT, NATIONALISM AMONGST THE TURKS OF CYPRUS: THE FIRST WAVE (2005).

⁸⁶ Hüseyin Bağı & Şaban Kardaş, *Exploring Turkey's Role in Peace Keeping Operations: Towards a Framework of Analysis*, in CONTEMPORARY ISSUES IN INTERNATIONAL POLITICS: ESSAYS IN HONOR OF SEYF TAŞHAN 125-146 (2004); Mümtaz Soysal, *The Future of Turkish Foreign Policy*, in THE FUTURE OF TURKISH FOREIGN POLICY 9-37 (Lenore Martin & Dimitris Kerialis eds., 2004); Işıl Kazan, *Cyprus and the Eastern Mediterranean*, *Seen From Turkey*, in THE EUROPEAN UNION AND THE CYPRUS CONFLICT: MODERN CONFLICT, POSTMODERN UNION 54-70 (Thomas Diez ed., 2002); Kivanç Ulusoy, *The Cyprus Conflict: Turkey's Strategic Dilemma*, 18 J. BALKAN AND NEAR EASTERN STUD. 393 (2016).

⁸⁷ Tuncay Babalı, *Implications of the Baku-Tiblisi-Ceyhan Main Oil Pipeline Project*, PERCEPTIONS 29 (March 2005); Emre Işeri & Panagiotis Andrikopoulos, *Energy Geopolitics of the Eastern Mediterranean: Will Aphrodite's Lure Fuel Peace in Cyprus?* 5 ORTADOĞ ANALZ 37 (2013); Ellen Scholl, *The Legacy of the Southern Gas Corridor*, 17 TURK. POL'Y Q. 39 (2018).

⁸⁸ AYLA GÜREL & LAURA LE CORNU, TURKEY AND EASTERN MEDITERRANEAN HYDROCARBONS (2013).

⁸⁹ Umut Unser, *The Genealogy of Turkish Nationalism: From Civic and Ethnic to Conservative Nationalism in Turkey*, in SYMBOLIC ANTAGONISMS: COMPETING NATIONALISMS IN TURKEY 103, 124 (Ayse Kadioğlu & E. Fuat Keyman eds., 2011).

⁹⁰ Pinar Bilgin, "Only Strong States Can Survive in Turkey's Geography": The Uses of "Geopolitical Truths" in Turkey, 26 POL. GEOG. 740-756 (2007).

⁹¹ Van Coufoudakis, *European Human Rights Law and Turkey's Violations in the Occupied Areas of Cyprus*, in THE DIVERSITY OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF PROFESSOR KALLIOPI K. KOUFA 303-318 (Aristotle Constantinides & Nikos Zaikos eds., 2009).

⁹² Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v USA), (Merits Judgment), 1986 I.C.J. Rep. 14, at paras. 191-193 (Feb. 26).

Once it is established that the action taken by a state was illegal when it was pursuant to a state creation, it becomes incumbent upon other states not to accept such action with diplomatic recognition.⁹⁴ It also must be noted that the changes in the territorial status of the ROC contradicts the accepted rule on the non-use of force.⁹⁵

Following the initial intrusion by Turkey and recognizing the deleterious effect of armed conflict on the international system a set of conferences were held in Geneva to resolve the related contentious issues. The first was held between July 25 and 30, 1974, and attended by the foreign ministers from Greece, Turkey and Great Britain with the stated goal of arranging a cease-fire, erecting a security zone separating the opposing forces, and removing the Greek Cypriot siege-force surrounding Turkish Cypriot villages. Without any agreement able to be reached, the conference ended, though with a somewhat standard declaration.⁹⁶ A second conference was held, again in Geneva, between August 8 and 14, 1974, this time attended by the foreign ministers from Greece, Turkey and Great Britain. But this time they were joined by the Turkish Cypriot leader Rauf Denktaş⁹⁷ and the Greek Cypriot President Glafcos Clerides. This meeting failed in the sense that there was no general agreement reached between the two ethnic Cypriot communities. Talks reached a deadlock following an intransigent position held by the Turkish Foreign Minister, Turan Gunes.⁹⁸ Turkey, thereupon, sent in its military to northern Cyprus within two hours.⁹⁹ An alternative and purely speculative interpretation of Turkey's politico-military objective in August 1974 was less than the protection of the island's Turkish population. Rather it was part of the ultimate goal of gaining control over Cyprus in order to deny Greece control of the eastern Mediterranean Basin.¹⁰⁰

One issue used resultant from the Turkish action has become known to be population transfer.¹⁰¹ For both the Greeks and the Turks, the memory of the 1923 exchange of populations was

⁹³ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Act with Commentaries*, 2 Y. B. INT'L L. COMM'N Article 41, ¶ 2 (2001).

⁹⁴ Stefan Talmon, *The Duty not to "Recognize as Lawful" a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation Without Real Substance?* in *THE FUNDAMENTAL RULES OF THE INTERNATIONAL LEGAL ORDER: JUS COGENS AND OBLIGATIONS ERGO OMNES OBLIGATIONS* 99 (Christian Tomuschat & Jean-Marc Thouvenin eds., 2006)

⁹⁵ Ronen, *supra* note 1, at 71-101.

⁹⁶ A. Haluk Ulman, *Geneva Conferences, July-August 1974*, 4 DIŞ POLITIKA 49-50 (1975).

⁹⁷ Joshua W. Walker, *A Turkish Cypriot Perspective: Rauf Denktaş and Nancy Crawshaw on Cyprus*, 4 ALTERNATIVES 78 (2005). For a discussion of the "Exchange of Populations Agreement," see *TURKISH REPUBLIC OF NORTHERN CYPRUS, QUESTIONS OF CYPRUS: A DOCUMENTED STUDY OF 28 YEARS (1960-1988)* 30-31 (1988).

⁹⁸ JAMES CALLAGHAN, *TIME AND CHANCE* 331-357 (1987).

⁹⁹ BRENDAN O'MALLEY & IAN CRAIG, *THE CYPRUS CONSPIRACY: AMERICA, ESPIONAGE AND THE TURKISH INVASION* 187 (1999); Ümit Haluk Bayülken, *Cyprus and the United Nations*, 4 DIŞ POLITIKA 132 (1975).

¹⁰⁰ Fouskas *supra* note 55 at 100.

¹⁰¹ LOUKIS G. LOUCAIDES, *ESSAYS ON THE DEVELOPING LAW OF HUMAN RIGHTS* 118 (1995); Michael Cernea, *Internal Refugee Flows and Development-Induced Population Displacement*, 3 J. REFUGEE

memorialized in each other's ethnic histories. During the critical period following the 1974 invasion, Anatolian Turks migrated to the TRNC for labor in hotels and gardens¹⁰² and other benefits that could have only come at a cost to the formerly Greek Cypriot residents.¹⁰³ Related to the placement of Turkish settlers has been the establishment of ever-increasing Turkish population in northern Cyprus. While not exactly following condition of war, the policy initiated does appear to be violative of the Fourth Geneva Convention.¹⁰⁴ By August 16, 1974, the Turkish military had established a firm foothold on the northern side of the island¹⁰⁵ creating a "homeland" for the Turkish Cypriot population. It was during 1964 that an interim peacekeeping force, the Joint Truce Force, a combined command from Great Britain, Greece, and Turkey was put into place, soon thereafter replaced by the UN peacekeeping force, UNFICYP (United Nations Force in Cyprus).¹⁰⁶

The lack of an acceptable agreement between the Turkish military and the ROC allowed for the *status quo in situ* being recognized as a *de facto* partition.¹⁰⁷ It was at this time that the UN's

STUD. 920 (1990); Nerges Canefe, *Refugees or Enemies: The Legacy of Population Displacements in Contemporary Turkish Cypriot Society*, 7 S. EUR. & POL. 1 (2002).

¹⁰² Özyay Mehmet, Mehmet Tahiroğlu, Fatma Güven Lisamler, and Salih Katircioğlu, *Labor Mobility and Labor Market Convergence in Cyprus*, 8 TURK. STUD. 43 (2007). It might be mentioned that this method of colonization was employed by the Unity and Progress Association before the foundation of the Turkish Republic to ethnically cleanse Anatolia of its Armenian and Greek populations.

¹⁰³ CHRISTALLA YAKINTHOU, POLITICAL SETTLEMENTS IN DIVIDED SOCIETIES: CONSOCIATIONALISM AND CYPRUS (2009); METE HATAY, BEYOND NUMBERS: AN INQUIRY INTO THE POLITICAL INTEGRATION OF THE TURKISH 'SETTLERS' IN NORTHERN CYPRUS (2005); King and Ladbury, *supra* note 40, at 3; Sarah Ladbury & Russell King, *Settlement Renaming in Turkish Cyprus*, 73 GEOG. 363 (1988); Roger Zertter, *Refugees and Forced Migrants as Development Resources: The Greek Cypriot Refugees from 1974*, 4 CYPRUS REV. 7 (1992) and this author's *The Greek-Cypriot Refugees: Perceptions of Return Under Conditions of Protracted Exile*, 28 INT'L MIGRATION REV. 307 (1994) and his *Reconceptualizing the Myth of Return: Continuity and Transition Amongst the Greek-Cypriot Refugees of 1974*, 12 J. REFUGEE STUD. 1 (1999); Neophytos Loizides, *Contested Migration and Settler Politics in Cyprus*, 30 POL. GEOG. 391 (2011); Helge Jensehaugen, *The Northern Cypriot Dream—Turkish Immigration 1974-1980*, 26 CYPRUS REV. 57 (2014).

¹⁰⁴ Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

¹⁰⁵ Turkey, in effect, domesticated the space in northern Cyprus by its occupation and state creation. Moriel Ram, *Colonial Conquests and the Politics of Normalization: The Case of the Golan Heights and Northern Cyprus*, 47 POL. GEOG. 21 (2015).

¹⁰⁶ Established per UN S.C. Res. 186 (Mar. 4, 1964). UNFICYP, although an international peacekeeping organization operates within the framework of the TRNC's legal establishment. Stefan Talmon, *Impediments to Peacekeeping: The Case of Cyprus*, in 8 INT'L PEACEKEEPING: THE Y.B OF INT'L PEACE OPNS. 58-59 (Harvey Langhotz, Boris Kondoch & Alan Wells eds., 2002). See generally FARID MIRBAGHERI, CYPRUS AND INTERNATIONAL PEACEKEEPING, 1964-86 (1998); [Col.] G.I.A.D. Draper, *The United Nations Force in Cyprus*, 6 MIL. L. & L. WAR REV. 51 (1967); John Theodorides, *The United Nations Peacekeeping Force in Cyprus*, 31 INT'L & COMP. L. Q. 765 (1982). For a discussion whether UN peacekeeping forces are an occupying force, see Francis Seyersted, *United Nations Forces: Some Legal Problems*, 37 BRIT. Y.B. INT'L L. 351 (1961). For background see James Ker-Lindsay, *The Origins of the United Nations in Cyprus*, in THE WORK OF THE UN IN CYPRUS: PROMOTING PEACE AND DEVELOPMENT 50-73 (Oliver Richmond & James Ker-Lindsay eds., 2001).

¹⁰⁷ Once in control, the Turkish military declared a cease fire, *Special Research Report No. 3: Cyprus: New Hope After 45 Years on the Security Council Agenda*, SECURITY COUNCIL REPT. (3) (Sept. 4, 2008); SATISH

Security Council passed Resolution 353, calling for a cease fire, respect for the ROC's sovereignty, and the end of foreign military intervention.¹⁰⁸ The fact that the Turkish military had effective control to the extent of its presence in northern Cyprus was firmly expressed in case law before the European Court of Human Rights.¹⁰⁹ Yet if this is the case, indeed, then the ROC cannot have a similar degree of control over the entire island, unacceptable as it appears to Greece, its ethnic components on Cyprus and elsewhere. The International Court of Justice (I.C.J.) established two tests for "effective control" in occupation situations with two cases predominant in understanding of at least one of the tests.¹¹⁰ A similar, subsidiary test, considered a "agency" test was proposed by the Prosecutor and Judge in the Tadić case.¹¹¹ There are still two other forms of dependency measured by the limits of control by the occupying power: One is the "strict control" test¹¹² while the other is the "ultimate (overall) authority and control" test.¹¹³

The Turkish military presence was later concretized with the establishment of the Turkish Federated State of Cyprus (TFSC) on February 13, 1975 as proclaimed by the Council of Ministers and the Legislative Assembly of the Turkish Cypriot Administration without, however, demanding independence.¹¹⁴ Although the Turkish military was certainly an agent of occupation and maybe a military occupant, it wasn't the outcome of an armed conflict between two warring states. Hence a requirement for a clarified interpretation of the Laws of War¹¹⁵ to be interpreted was expected. It must be argued for the character of occupation is not belligerent occupation (*occupation bellica*) which occurs during periods of hostility (*flagrante bello*) and which does not comport *stricto sensu* in the Cyprus example. And, there was no consent by the ROC, yet implicit from the Turkish Cypriot community. Without an active war-like condition in place, the

SANDRA & MALA CHANDRA, INTERNATIONAL CONFLICT AND PEACE-MAKING PROCESS: ROLE OF THE UNITED NATIONS 286 (2006); JOHN REDDAWAY, BURDENED WITH CYPRUS: THE BRITISH CONNECTION 154 (1987).

¹⁰⁸ UN S.C. Res. 353 (July 20, 1974).

¹⁰⁹ Eugenia Michaelidou Developments Ltd. and Tymvios v. Turkey, 39 Eur. H.R. Rep. 36 (2004) and Demades v. Turkey (Merits and Just Satisfaction) (App. No. 16219/9), <http://cmiskp.echr.coe.int/tkp197/default.htm>. But see contra Jenna C. Borders, *Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots*, 36 N.C. J. INT'L L. & COM. REG. 689 (2010-2011).

¹¹⁰ Nicaragua case, *supra* note 93 and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro), 2005 I.C.J. 2 (Dec. 19).

¹¹¹ Prosecutor v. Tadić, Case No. IT-94-1-I, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, (Int'l Crim. Trib. For the Former Yugoslavia Oct. 2, 1995). A supportive view is evinced by Marko Milanović, *State Responsibility for Genocide*, 17 EUR. J. INT'L L. 553 (2006).

¹¹² Nicaragua case, *supra* note 93 at paras. 109-110, setting out the three necessary requirements.

¹¹³ Behrami and Behrami v. France and Saramati v. France, Germany and Norway, 1999 Eur. Ct. H.R.182, 71412/01, at paras. 133, 134; 45 Eur. H.R. Rep. SE 85 (2007).

¹¹⁴ Documented by the UN Secretary General Report, U.N. Doc. S/11624 (Feb.18, 1975), Annex B; Zaim Nedjati & Geraint Leathes, *A Study of the Constitution of the Turkish Federated State of Cyprus*, 5 ANGLO AM. L. REV. 67 (1976); Gillian M. White, *The Turkish Federated State of Cyprus: A Lawyers View*, 37 THE WORLD TODAY 135 (1981). The Turkish administrative measure found a denunciation by the UN Security Council, UN S.C. RES. 367 (Mar. 12, 1975).

¹¹⁵ JEAN PICTET, THE LAWS OF WAR (1961).

regulations of occupation must be placed in the context of Turkey acting in a manner aligned with the interests of the Turkish Cypriot community, not the Greek Cypriot community which occupied a separate area of the island. Under the circumstances set out herewith, the Turkish military did not operate as a “hostile” force toward the population of northern Cyprus, although this could be so construed by the ROC. Thus, while Article 2 of the Fourth Geneva Convention requires the occupying power to protect the civilian population of the occupied territory, the effect on the demographic nature of the area was altered with a distinct transfer of populations from North to South and vice versa¹¹⁶ and missing persons.¹¹⁷ According to a report by a Finnish consultant, M. Jaakko Laakso, to the Council of Europe, the Turkish military after its occupation was in place began a process of colonization.¹¹⁸ Initially Turkey sent in experts to evaluate economic opportunities to be exploited.¹¹⁹ Even archeologists were dispatched to examine sites that fit the Turkish historical narrative.¹²⁰ The domestic influence of Islam in Turkey, although a secularized state, did represent a sizeable constituency that required satisfaction. So that in northern Cyprus, churches, chapels, and monasteries were converted into mosques¹²¹ as well as making additional *imams* available to serve for religious festivals.¹²² Villages, regardless of their ethnic identity were subject to name changes indicating a Turkish character.¹²³ The change of the

¹¹⁶ Loucaides, *supra* note 74; Borowiec, *supra* note 84 at 2; Theodora A. Christtou, *An Attempt to End Turkey’s Impunity for Population Transfers into Occupied Cyprus*, 3 CYPRUS HUM. RTS. L. REV. 90 (2013). For the question of missing Greek Cypriot citizens see ADEL SAFTY, *THE CYPRUS QUESTION: DIPLOMACY AND INTERNATIONAL LAW* 246 (2011); Andrea Stylianou, *Update on the Missing Persons of Cyprus from the 1974 Turkish Invasion*, in GREEK RESEARCH IN AUSTRALIA: PROCED. OF THE EIGHTH BIENNIAL INT’L CONF. OF GREEK STUD. FLINDERS U. JUNE 2009, at 166 (2009).

¹¹⁷ Varnava and Others v. Turkey, 50 Eur. Ct. H.R. 21 (2010); NIKOLA KYRIAKOU, ENFORCED DISAPPEARANCES IN CYPRUS: PROBLEMS AND PROSPECTS OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS (2011); VIRGINIA BALAFOUTA, *THE MISSING PERSONS IN CYPRUS AND THE RIGHT TO THE TRUTH* (Eastern Mediterranean Pol’y Note, No. 38) (May 2019).

¹¹⁸ COUNCIL OF EUROPE, PARL. ASSEMB., *COLONISATION BY THE TURKISH SETTLERS OF THE OCCUPIED PART OF CYPRUS*, Rept. Doc. 9799 (May 2, 2003); Hatay, *supra* note 104 at 11; In a highly polemical and condemnatory statement Christopher Hitchens, political writer, does not hide his displeasure with the Turkish position. CYPRUS 102-103 (1984); CHRISTOS P. IOANNIDES, *IN TURKEY’S IMAGE: THE TRANSFORMATION OF OCCUPIED CYPRUS INTO A TURKISH PROVINCE*. SUBSIDIA BAICANICA, ISLAMICA & TURCICA, 4th ed. 179, 254 (1991).

¹¹⁹ GÜL İNAÇ, *NARRATIVES OF DIPLOMATS: REPRESENTATIONS OF NATIONALISMS AND TURKISH FOREIGN POLICY IN CYPRUS, 1970-1991* (2010).

¹²⁰ MICHAEL E. JANSEN, *WAR AND CULTURAL HERITAGE: CYPRUS AFTER THE 1974 TURKISH INVASION* (2005); Charles Fraser Beckingham, *The Turks of Cyprus*, 87 J. ROYAL ANTHRO. INST. OF GR. BRIT. & IR. 165 (1957).

¹²¹ AHMET DJAVIT AN, *THE DEVELOPMENT OF TURKISH CYPRIOT SECULARISM AND TURKISH CYPRIOT RELIGIOUS AFFAIRS* (Eastern Mediterranean Pol’y Note, 8, Cyprus Cent. for Eur. & Int’l Aff.), July 21, 2016; Ioannides, *supra* note 119 at 5; Charles Fraser Beckingham, *Islam in Cyprus*, 2 ISLAMIC Q. 153 (1955) and his *Islam and Turkish Nationalism in Cyprus*, 5 DIE WELT DES ISLAM 65 (1957); Birol Yeşilada, *Islam and Turkish Cypriots*, 56 SOC. COMPASS 49 (2009).

¹²² Behrooz Moravidi, *Social Structure and Social Change*, in *THE POLITICAL, SOCIAL AND ECONOMIC DEVELOPMENT OF NORTHERN CYPRUS* 269 (Clement H. Dodd ed., 1993).

¹²³ Hitchens, *supra* note 119 at 42; Yael Navaro-Yaslin, *The Materiality of Sovereignty: Geographical Expertise and Changing Place Names in Northern Cyprus*, in *SPATIAL CONCEPTIONS OF THE NATION: MODERNIZING*

character of the island and the basic nature of either community's existence to include property would become source of contention,¹²⁴ all leading to what appears to be a firmer Turkish characterization of northern Cyprus.¹²⁵ This condition thus must be qualified as redundant since alteration of the territory *ante* is in opposition to accepted treaty stipulations.¹²⁶ The ethnic connection between the occupier and the population of the occupied territory seems to exclude the characterization of "alien occupation."¹²⁷ If this matter was not sufficiently complicated, a condition even has to be raised whether or not the introduction of Turkish military presence constituted a military operation.¹²⁸

The ever presence of tensions on the island did not end an attempt to find a solution to resolve as any issues as could be reached through negotiations. Beginning with UN Security Council Resolution 367,¹²⁹ a proposed series of five rounds of inter-communal talks were held in Vienna,¹³⁰ with a sixth that developed.¹³¹ Still Denktaş as the Turkish Cypriot leader, contacted his counterpart in order to continue talks regarding negotiations that set out "The Four Guidelines."¹³² Following was the effort by UN Secretary General Kurt Waldheim who created a meeting between Denktaş and Spyros Kyprianou, as the new President of the Greek Cypriot community that produced a "Ten-Pont Agreement,"¹³³ meant to supplement "The Four Guidelines" as a basis for the continuation of negotiations. Under the auspices of UN Secretary General's Special Representative Hugo Gobbi, inter-communal talks proceeded between George Ionnides, for the Greek Cypriot side and Umit Suleyman Anan for his Turkish counterpart which produced a "partial interim agreement." This all led to an "evaluation" on October 22, 1979. The result this set of efforts was placed in the Secretary General's reports to the General Assembly on November 8, 1979¹³⁴ and then on November 25, 1980.¹³⁵ The evaluation was ultimately recognized as the Secretary General's Interim Agreement report.¹³⁶

GEOGRAPHIES IN GREECE AND TURKEY 127-145 (Nikiforos Diamandouros, Thalia Dragonas, and Caglar Keyder eds., 2010).

¹²⁴ AYLÄ GÜREL & KUDRET ÖZERSAY, THE POLITICS OF PROPERTY IN CYPRUS: CONFLICTING APPEALS TO "BIZONALITY" AND "HUMAN RIGHTS" BY TWO CYPRIOT COMMUNITIES (2006).

¹²⁵ Navaro-Yaslin, *supra* note 124 at 127-143.

¹²⁶ An interesting commentary here is found with 4 THE GENEVA CONVENTIONS OF 12 AUGUST 1949: COMMENTARY 63 (Jean Pictet ed., 1958)..

¹²⁷ SIVAKUMARAN SANDESH, THE LAW OF NON-INTERNATIONAL ARMED CONFLICT 217 (2012).

¹²⁸ JULIA GRIGON, L'APPLICABILITÉ TEMPORELLE DU DROIT INTERNATIONALE HUMANITAIRE 315 (2014).

¹²⁹ UN S.C. Res. 367 (Mar12, 1975).

¹³⁰ Michalis S. Michael, *The Road to Vienna: Intercommunal Talks Between 1974-1977*, 4 CYPRUS REV. 93 (1992).

¹³¹ Nancy Crawshaw, *Cyprus After Makarios: Prospects for a Settlement*, 34 THE WORLD TODAY 31 (1978); *New Set of Cyprus Talks is Opened in Vienna*, NY TIMES, April 1, 1977, at 4.

¹³² Documented by the UN Secretary General Report, U.N. Doc. S/12323 (Apr. 30, 1977), ¶. 5.

¹³³ Documented by the UN Secretary General Report, U.N. Doc. S/13369 (May 31, 1979), ¶. 51 (5).

¹³⁴ U.N. Doc. A/34/620 (Nov. 8, 1979).

¹³⁵ U.N. Doc. A/35/659 (Nov. 25, 1980).

¹³⁶ U.N. Doc. A/36/702 (Nov. 20, 1981).

The governing system as established proved to be less than effectual so that on November 15, 1983 the sovereign independence of the Turkish Republic of Northern Cyprus (TRNC) was declared.¹³⁷ The Turkish Government was certainly supportive of the newly established government in the TRNC.¹³⁸ The Turkish action was immediately met with a complaint by the Cypriot government before the United Nations,¹³⁹ the United Nations itself, calling for respect for ROC's territorial integrity,¹⁴⁰ and other European political institutions,¹⁴¹ citing violations according to the European Convention, as found in *Cyprus v. Turkey*,¹⁴² as well as by the U.S. Congress.¹⁴³ On the same day the TRC created a constitution for itself.¹⁴⁴ Once the TRNC had a constitution it was able to present itself as a self-governing authority exercised on the basis of popular sovereignty.¹⁴⁵ The declaration of independence was just another event and documented that not only to escalate a delicate problem but also one that brought about strong opposition.¹⁴⁶

¹³⁷ The Declaration's text is included in U.N. Doc. A/38/586/16148 (Nov. 16, 1983). George S. Swan, *Constitutional Majority Rule and the Cyprus Constitution: The 1983 Cyprus Crisis in Critical Perspective*, 5 BC THIRD WORLD L. J. 1 (1984). An explanation for the declaration was provided by the Turkish Cypriot Parliament found in Ronen, *supra* note 1.

¹³⁸ REP. TURKEY, MIN. OF FOR. AFF., HOW DID THE SITUATION CHANGE AFTER JULY 1974, <http://mfa.gov.tr/how-did-the-situation-change-after-1974-en.mfa>.

¹³⁹ See U.N. Doc. S/5488, Dec. 26, 1974. For a critical statement on the UN Security Council's position see Elihu Lauterpacht, *The Turkish Republic of Northern Cyprus—The Status of the Two Communities in Cyprus* (July 10, 1990), <http://www.mfa.gov.tr/chapter2.en.mfa>.

¹⁴⁰ UN S.C. Res. 541 (Nov. 18, 1983) and reiterated in UN S.C. Res. 550 (May 11, 1984). See also YAËL RONEN, *TRANSITION FROM ILLEGAL REGIMES UNDER INTERNATIONAL LAW* 63 (2011); Vita Gudeleviciute, *Does the Principle of Self-Determination Prevail Over the Principle of Territorial Integrity?* 2 INT'L J. BALTIC L 48 (2005).

¹⁴¹ The Committee of Ministers of the Council of Europe, the European Communities, and the Commonwealth Heads of Government. DAVID RAIČ, *STATEHOOD AND THE LAW OF SELF-DETERMINATION* 124-125 (2002).

¹⁴² 1 Eur. Comm'n H. R. Dec. & Rep. 1, 10-14 (July 10, 1976) and the displacement of Greek Cypriots as found in *Loizidou v. Turkey*, 23 Eur. H. R. Rep. 513 Eur. Ct. H. R. (1997). Subsequently, this decision and failing to deal adequately with property claims, the Court ruled against Turkey in *Xenides Arestis v. Turkey*, 2005 Eur. Ct. H. R. 46347 (Dec. 22, 2005). In response, TRNC enacted Law 67/2005 Compensation, Exchange and Restitution of Immovable Properties, which included the establishment of a Immovable Properties Commission. Nasia Hodjigeorgiou, *Remedying Displacement in Frozen Conflict: Lessons from the Case of Cyprus*, 18 CAMBRIDGE Y.B. EUR. LEGAL. STUD. 152, 158-159 (2016).

¹⁴³ Condemnation of the "Turkish Federated State of Cyprus," Concurrent Resolution 288, H.R. Con. Res. 288, 98th Cong. (1984) (enacted).

¹⁴⁴ CONSTITUENT ASSEMBLY OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS, THE CONSTITUTION OF THE TURKISH REPUBLIC OR NORTHERN CYPRUS (Nov. 15, 1983).

¹⁴⁵ Nina Caspersen, *States without Sovereignty*, in UNRECOGNIZED STATES IN THE INTERNATIONAL SYSTEM 73-89 (Nina Caspersen & Gareth Stansfield, 2011).

¹⁴⁶ UN S.C. Res. 541 (Nov. 18, 1983) but see *contra* Christian Rumf, *Comments on the Legal Status of Cyprus: Issues of Conflict and Their Causes*, in THE EU ACESION OF CYPRUS –KEY TO THE POLITICAL AND LEGAL SOLUTION OF AN "INSOLUBLE" ETHNIC CONFLICT? 56 (Thomas Gierich ed., 2006). See also; Dieter Blumenwitz, *Cyprus: Political and Legal Realities*, 4 PERCEPTIONS (1999); James Ker-Lindsay, *Great Powers, Counter Secession and Non-Recognition: Britain and the 1983 Unilateral Declaration of Independence of the "Turkish Republic of Northern Cyprus,"* 28 DIPLOMACY & STATECRAFT 431 (2017).

When a similar issue came up, this time in Kosovo, the I.C.J. took up the matter and issued an Advisory Opinion in which they concluded that what was done was in no way violative of any principle of international law.¹⁴⁷ The political division also established a formal separation of the two ethnic communities¹⁴⁸ separated by the presence of the UNFICYP along what has been called the Green Line, essentially a buffer zone.¹⁴⁹

Meanwhile, under Turkish supervision and administration, there has been an attempt to create a stable economic¹⁵⁰ and social system in northern Cyprus.¹⁵¹ The economic dependence of the TRNC on its patron and guarantor Turkey creates a complex relationship yet to be fully examined.¹⁵² Otherwise, Turkey has long recognized that Cyprus has a settled bi-zonal and bi-communal establishment.¹⁵³

¹⁴⁷ On the Accordance with International Law of the Unilateral Declaration in Respect of Kosovo (Advisory Opinion) 2010 I.C.J. 141 (July 22). Negat Doğan, *Ramifications of the ICJ Kosovo Advisory Opinion for the Turkish Republic of Northern Cyprus*, 6 ANKARA B. REV. 59 (2013).

¹⁴⁸ Stefan Talmon, *The Duty not to "Recognize as Lawful" a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation Without Real Substance? in THE FUNDAMENTAL RULES OF THE INTERNATIONAL LEGAL ORDER: JUS COGENS AND OBLIGATIONS ERGO OMNES OBLIGATIONS* 126 (Christian Tomuschat & Jean-Marc Thouvenin eds., 2006)

¹⁴⁹ Rodrigo Bueno-Lacy & Henk van Houtum, *The Global Green Line: The Imperial Cartopolitical Puppeteering of Cyprus*, 24 GEOPOLITICS 586 (2019).

¹⁵⁰ Andreas Theophanous, Yiannis Tirkides & Theodore Pelagidis, *The Economy of the "Turkish Republic of Northern Cyprus"*, 25-26 J. MOD. HELLENISM 157 (2008-2009).

¹⁵¹ Tozun Bahcheli, *Under Turkey's Wing: The Turkish Republic of Northern Cyprus, the Struggle for International Acceptance*, in DE FACTO STATES: THE QUEST FOR SOVEREIGNTY 165 (Tozun Bahcheli et al. eds., 2004); Sean Byrne, *Power Politics as Usual in Cyprus and Northern Ireland: Divided Islands and the Roles of External Ethno-Guarantors*, 6 NATIONALISM & ETHNIC POL. 1 (2000); Umut Bozkurt, *Turkey: From the 'Motherland' to the IMF of Northern Cyprus?* 26 CYPRUS REV. 83 (2014).

¹⁵² The best economic analysis of the TRNC's economy is found in Erdal Güray, *The Economy of the Turkish Republic of Northern Cyprus*, in ISOLATED PART OF CYPRUS 79-100 (Stanislav Tkachenko & Muhitten Torga Özağlam eds., 2012); See also FARID MIRBAGHERI, *CYPRUS AND INTERNATIONAL PEACEMAKING* 141 (1998); CENTRAL INTELLIGENCE AGENCY (CIA), *THE CIA WORLD FACTBOOK 2010*, at 184 (2009); Werner Gumpel, *Economic Performance and Competitiveness in the TRNC*, in *CYPRUS AND THE EUROPEAN UNION: NEW CHANCES FOR SOLVING AN OLD CONFLICT?* 66 (Heinz Jurgen Axt & Hansjörg Brey eds., 1997); Hannes Lacher & Erol Kayak, *Transforming Identities: Beyond the Politics of Non-Settlement in North Cyprus*, 10 MEDITERRANEAN POL. 165 (2005); Alina Lehtinen, "Turkish Cypriots Unhappy with Isolation, Austerity Measures," *Southeastern Eur. Times*, Mar. 10, 2011, http://setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/03/10/features-01.

¹⁵³ This was credited by Turkish leader Mesut Yilmaz who declared such in 2002. George Kyris, *The European Union, Turkey, and the Cyprus Problem: The Failure as Catalyst*, in *TURKEY AND THE EUROPEAN UNION: FACING NEW CHALLENGES AND OPPORTUNITIES* 15 (Firat Cengiz & Lara Hoffmann eds., 2013).

Recognition of the TRNC¹⁵⁴

Diplomatic recognition under the ambit of international law has traditionally been covered by two theories, declaratory and constitutive: the former is simply the belief extended by a state, claiming its existence within its territorial control, a theory that is not always acceptable to state practice. The second approach relies on the discretion¹⁵⁵ of external states acceptance of a newly created political entity as a legitimate state.¹⁵⁶ Many judicial commentators favor the declaratory theory,¹⁵⁷ though sometime with qualifications.¹⁵⁸ While recognition of the TRNC can satisfy the requirement of the declaratory theory, under the constitutive theory it is doubtful that recognition follows. However, there are political entities that are totally ignored regardless of the approach taken, i.e., Palestine and Chechnya. It is thus seen that political reality does not always correspond to legal niceties as taken by Klabbbers.¹⁵⁹ Clearly the result of the Turkish military incursion into Cyprus—regardless of any observer’s judgment—effectuated the international legal principle of non-recognition for political consequences of forceful exercise of authority.¹⁶⁰ So when on February 13, 1975 Turkish Cypriots formed the State of Northern Cyprus¹⁶¹ discussions followed between Makarios and Denktaş that led to an agreement on February 12, 1977, known as the High Level Agreement, a bi-zonal and bi-communal federal system.¹⁶² But four months later Makarios passed away with Nikos Sampson¹⁶³ appointed *de facto* President by the *junta*, then replaced via an election with Spyros Kypriano, former Cyprus’ foreign minister

¹⁵⁴ See generally from a Turkish perspective, NECATIGIL, *supra* note 36; Cansu Akgün, *The Case of TRNC in the Context of Recognition of States Under International Law*, 3 ANKARA B. REV. 7 (2010); Ioannis Moutsis, *Turkish Cypriot Identity After 1974: Turkish Cypriots, Turks of Cyprus or Cypriots*, 10 SYNTHESIS 116 (2017). The Greek position is covered in KYPROS CHYRSOSTOMIDES, *THE REPUBLIC OF CYPRUS: A STUDY IN INTERNATIONAL LAW* (2000).

¹⁵⁵ Unlimited discretion, however, can lead to unmitigated political manipulation. M. Kelly Malone, *The Rights of Newly Created Democratic States Prior to International Recognition and the Serb-Croatian Conflict*, 6 TEMP. INT’L & COMPL. L. J. 91-92 (1992).

¹⁵⁶ For an analysis of both theories, see Hersch Lauterpacht, *Recognition of States in International Law*, 53 YALE L. J. 385 (1944).

¹⁵⁷ MARTHA J. PETERSON, *RECOGNITION OF GOVERNMENTS: LEGAL DOCTRINE AND STATE PRACTICE, 1815-1995*, at 26 (1977).

¹⁵⁸ JAMES L. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE*, 6th ed.139 (1963).

¹⁵⁹ JAN KLABBERS, *INTERNATIONAL LAW* (2013).

¹⁶⁰ The action can be similarly characterized as an invasion or a liberation. It should be noted that while the UN Security Council strongly objected to Turkey’s operation, it never referred it to an “invasion.” See e.g. Barry Bartman, *Facing New Realities: Turkish Republic of Northern Cyprus and Unrecognized States in the International System*, 4 PERCEPTIONS (1999). The sole reference in United Nations consideration is found in the “Definition of Aggression,” UN G.A. Res. 3314 (Dec. 14, 1974).

¹⁶¹ NECATI MÜNÜR ERTEKÜN, *THE CYPRUS DISPUTE: AND THE BIRTH OF THE TURKISH REPUBLIC OF NORTHERN CYPRUS* (1984); ÖZAY MEHMET, *SUSTAINABILITY OF MICRO-STATES: THE CASE OF NORTH CYPRUS* (2009). The creation of the TRNC was also, it must be said, was because of the notable lack of municipal progress made by its predecessor, the TFSC. Ronen, *supra* note 1 at 135, 139.

¹⁶² The text can be found at https://antifon.blogspot.com/2011/02/cyprus_high_level_agreements_of_1977.html.

¹⁶³ Known by the Turkish Cypriots by the nickname “the butcher of Omorphita.”

and at the time President of the House of Representatives. In any case, in 1979 further negotiations reaffirmed the same High Level Agreement.¹⁶⁴

The principle or doctrine of non-recognition was expressed in the early 20th century by the United States decrying Japanese aggression toward China and named after the country's Secretary of State Henry L. Stimson.¹⁶⁵ Opposition and rejection of the existence of the TRNC's recognition has been documented numerous times in UN Security Council resolutions¹⁶⁶ as well as in domestic courts in Great Britain¹⁶⁷ and the United States.¹⁶⁸ Additionally and importantly, the European Parliament, the organization's Commission as well as its members' Foreign Ministers in concert with the notion of European Political Cooperation, expressed their distinct disapproval.¹⁶⁹ As could be anticipated, the ROC adamantly urged the international community to avoid diplomatic recognition.¹⁷⁰ Recognition in the prevailing view in international law is a political act but also given an international delict of a wrongful act, i.e., the use of armed force against the ROC, whether or not provoked in some manner, can only bring about non-recognition. The lack of recognition may not deflect from the character of legitimacy, given the existence of a self-created domestic legal system. In civil matters

¹⁶⁴ 10-Point Agreement of 10 May 1977, under the auspices of UN Secretary General Kurt Waldheim, available at *supra* note 163.

¹⁶⁵ David Turns, *The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law*, 2 CHINESE J. INT'L L. 1995 (2003). The doctrine took on a life of its own when the I.C.J. took up the occupation of Namibia by South Africa, Legal Consequences for States of the Continued Presence of South-Africa in Namibia Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16 (June 21), followed by an important development opined by the I.C.J.'s President Rosalyn Higgins in the case *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9), Separate Opinion by Judge Higgins at 216, with additional commentary from the International Law Commission's Articles on State Responsibility, Art. 40 and 41, found in *THE INTERNATIONAL LAW COMMISSION ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES* 249-253 (James Crawford ed., 2002).

¹⁶⁶ UN S.C. Res. 365 (Dec. 13, 1974), UN S.C. Res. 367 (Mar. 12, 1975), UN S.C. Res. 541 (Nov. 18, 1983), rejecting the secessionist move, and UN S.C. Res. 550 (May 11, 1984) calling upon member states not to recognize the breakaway regime. For a general discussion of the UN's Security Council's treatment of recognition of statehood, see Christine M. Chinkin, *The Security Council and Statehood*, in *SOVEREIGNTY, STATEHOOD AND RECOGNITION: ESSAYS IN HONOUR OF JAMES CRAWFORD* 155-171 (Christine M. Chinkin & Frya Baetens eds., 2015).

¹⁶⁷ In matters of a commercial nature see *Hesperides Hotel v. Aegean Turkish Holidays Ltd.*, 1978 All ER 277, 283; *Calgar and Others v. Billingham (Inspector of Taxes)*, 1996 STC 150, 172, 183 and a functional relationship shown in *Geoffrey Marston, United Kingdom Materials on International Law*, 67 BRIT. Y.B. INT'L L. 715 (1996). But note that British courts recognized a civil matter of divorce effected by TRNC domestic law, *Emin v. Yeldağ*, 1 FAM. L. REP. 956 (2002).

¹⁶⁸ *Autocephalous Greek Orthodox Church v. Goldman & Feldman Arts*, 917 F.2d 278, 293 (7th Cir. 1990).

¹⁶⁹ EUR. COMM'N BULL. Pts. 2.2.34, 2.4.1, 2.4.2 (Nov. 1983); 1983 O.J. C 342/52.

¹⁷⁰ See the statement by the Greek Cypriot Attorney-General on April 7, 2005.

<http://www.cyprusembassy.net/home/index.php?Module=article&id=2410>.

regarding the rights of both Greek and Turkish citizens on Cyprus, the European Court of Human Rights has also found serious fault with Turkey.¹⁷¹

While history rejects stasis, historians recognize evolution which has meant that the state-centric Westphalian nation-state system has been subjected to paradigmatic change, regardless of the stability that was brought about with its initiation.¹⁷² Following the end of World War II, formerly colonial-held territories were granted independence, largely because of the efforts of national liberation movements to include international organizations and multinational corporations that were recognized in some form. Afresh, in the post-Cold War era there have been various political conditions that allowed non-state organizations' views to be heard in diplomatic fora. Additionally, political reality has offered an alternative to formal diplomatic recognition with something called "engagement without recognition."¹⁷³ It is believed in some circles that there are variations on the theme of legitimacy as attached to diplomatic recognition.¹⁷⁴ Indeed, along this line of thought there may be suitable approaches to allow for non-standard political entities to interact internationally.¹⁷⁵ It is under some circumstances allowable to be "recognized as a member of the club of states in so far as no legitimate external authority controls its constitutional foundation."¹⁷⁶ On a practical level and by inference, the UN's Security Council in an effort to reach a compromised settlement, has acknowledged the existence within the ROC a bi-communal and bi-zonal constitutional format and an equal footing.¹⁷⁷ In order to protect the UN's peacekeeping force on the island, UNFICYP, and ensure the continued success of its effort, the UN called on both communities to cooperate by not attacking the UNFICYP and thus avoid violence.¹⁷⁸ Nevertheless, the value of recognition is

¹⁷¹ Loizidou *infra* note 143. For a commentary on both cases see Linda J. Kirk, *Legal Violations of Human Rights Violations in Cyprus: Loizidou v Turkey and Cyprus v Turkey*, GREEK RESEARCH IN AUSTRALIA: PROCED. OF THE FOURTH BIENNIAL CONFERENCE OF GREEK STUDIES 79-92 (Elizabeth Close, Michalis Tsianikas, and George Frazis eds., 2001).

¹⁷² In looking at the theoretical underpinnings of a non-traditional approach to an alternative to state construction, one needs to examine MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATIONS* (1947) and JOEL MIGDAL *STATE-IN-SOCIETY: STUDYING HOW STATES AND SOCIETY TRANSFORM AND CONSTITUTE ONE ANOTHER* (2001). One academic scholar well versed in our subject sees the genre of political statehood in its contemporary context. Crawford, *supra* note 33, at 31.

¹⁷³ Alexander Cooley & Lincoln A. Mitchell, *Engagement Without Recognition: A New Strategy Toward Abkhazia and Eurasia's Unrecognized States*, 33 WASH. Q. 59 (2001); James Ker-Lindsay, *Engagement Without Recognition: The Limits of Diplomatic Interaction with Contested States*, 91 INT'L AFF. 267 (2015); Eiki Berg & Scott Pegg, *Scrutinizing a Policy of "Engagement Without Recognition": US Requests for Diplomatic Action With De Facto States*, 14 FOR. POL'Y ANAL. 288 (2018); George Kyris, *Sovereignty and Engagement Without Recognition: Explaining the Failure of Conflict Resolution in Cyprus*, 17 ETHNOPOL. 426 (2018).

¹⁷⁴ Nina Caspersen, *Degrees of Legitimacy: Ensuring Internal and External Support in the Absence of Recognition*, 66 GEOFORUM 184 (2015).

¹⁷⁵ For a discussion on this theme see Eiki Berg & Raul Toomla, *Forms of Normalisation in the Quest for de facto Statehood*, 44 THE INT'L SPECTATOR 27 (2009).

¹⁷⁶ Österud, *supra* note 7 at 170.

¹⁷⁷ UN S.C. Res. 649 (March 12, 1990); UN S.C. Res. 716 (Oct. 11, 1991); UN S.C. Res. 750 (Apr. 10, 1992).

¹⁷⁸ UN S.C. Res. 1178 (June 29, 1998).

severely limited when international comity is denied to unrecognized states.¹⁷⁹ The governing authorities of the TRNC realizing their isolation from the lack of recognition have sought ways to develop the internal trappings of structural development, characterized as “state building.”¹⁸⁰ But operating behind a not so subtle veil, Turkish Cypriot officials, intentionally avoiding using the formal nomenclature of the TRNC, referred to themselves as the “Republic of Cyprus” or even “Cyprus.”¹⁸¹

The famed German international law specialist George Jellinek established what has become known as the “three elements” doctrine for understanding the requirements for recognizing a state: a defined territory, a permanent population, and effective government.¹⁸² Applying these criteria, without any political considerations, would allow for the TRNC to claim statehood. And even after a critical review we would look askance as the requirement for “effective government,” finding that the United Nations seemed to set this matter aside when it accepted Bosnia Herzegovina as a member.¹⁸³ The backside of the Peace of Westphalia¹⁸⁴ has been the Montevideo Convention on the Rights and Duties of States,¹⁸⁵ setting forth the widely-accepted—though not unanimous¹⁸⁶--minimal legal conditions for statehood.¹⁸⁷ The Convention became at the time and for a reasonably long period afterward the widely recognized basis for determination of statehood.¹⁸⁸ The convention has been recognized as a component of customary international law, in other words, necessary but not sufficient elements for the acceptance of statehood. As such it is connected to culture and the temporal nuances of new times which bring new realities. The Convention has indeed been the most recent approach to set out the conditions for acceptance of statehood.

¹⁷⁹ Hans Martin Blix, *Contemporary Aspects of Recognition*, 130 RECUEIL DES COURS 655 (1970).

¹⁸⁰ Statebuilding is defined simply in SIMON CHESTERMAN, YOU, THE UNITED NATIONS, TRANSITIONAL ADMINISTRATION AND STATE-BUILDING 5 (2004); Daria Isachenko, *The Production of Recognized Space: Statebuilding Practices of Northern Cyprus and Transdnistria*, 2 J. INTERVENTION & STATEBUILDING 353 (2008).

¹⁸¹ 1994 E.C.R. I-3316, ¶. 13.

¹⁸² ALLGEMEINE STAATSLEHRE, 3d ed. 396 (1914) reiterated in the Montevideo Convention, *supra* note 184; the Permanent Mandates Commission, R. Said Rute, *League of Nations: The Permanent Mandates Commission*, 17 J. ROYAL CENT. ASIAN SOC'Y 440 (2930); and the Badinter Committee, Conference on Yugoslavia Arbitration Commission: Opinions on Questions, Arising from the Dissolution of Yugoslavia, 33 I.L.M. 1488 (1992).

¹⁸³ Hillgruber, *supra* note 187 at 493-394.

¹⁸⁴ Creating the idea of the state. Rather than cite a single source for a complex set of meetings and documents, we offer the following as a referent, Leo Gross, *The Peace of Westphalia, 1648-1948*, 42 AM. J. INT'L L. 20 (1948).

¹⁸⁵ Dec. 26, 1933, 165 L.N.T.S. 20.

¹⁸⁶ Sourced by THOMAS D. GRANT, THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION 121 (1999). *See also* Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403, 405-422, 435-447 (1999).

¹⁸⁷ Jure Vidmar, *The Concept of the State and its Right of Existence*, 4 CAMBRIDGE J. INT'L & COMP. L. 547 (2018).

¹⁸⁸ Christian Hillgruber, *The Admission of New States to the International Community*, 9 EUR. J. INT'L L. 491 (1998).

A political entity can offer evidence satisfying the four requirements of the Montevideo Convention but not enough to guarantee the existence of statehood.¹⁸⁹ An essential element of statehood is the legal condition of sovereignty, understood to be the absolute authority within its territory with no outside interference, which cannot be claimed given the stance of the ROC. Effective control most certainly requires a domestic governing structure that does exist within the TRNC,¹⁹⁰ despite the guarantor role of Turkey. Describing the territorial control of the TRNC within its established extent does satisfy the requirement in so far as the conditions on the ground permit, in so far as the decision in the Island of Palmas case.¹⁹¹ Sovereignty is brought about through the act of diplomatic recognition, which in this case is questionable given the lack herewith. But, since the appearance of many different formations of political entities has now been offered, it is incumbent on observers to rethink and recalculate the outline of the notion of a state in the current international political context, the basis of consideration of the existence of statehood which is again, recognition.¹⁹²

An argument for the existence of a state referenced as the TRNC can be established following a series of documents and statements.¹⁹³ There is factually a distinct Turkish population in northern Cyprus, limited somewhat by the population transfer resultant from the Turkish incursion. In so far as the nationality of the entire population of the TRNC is Turkophile in nature nevertheless is irrelevant.¹⁹⁴ The territory of the TRNC while neither demarcated or delimited is monitored by the UNIFCYP. In one respect, a question arises well beyond our concern here is whether the boundary monitored by the UNIFCYP sets a geographical limit to the territory. It should be noted here that in the I.C.J. case of the North Sea Continental Shelf the High Court commented to wit that there is no rule that a territory must be so delimited or defined.¹⁹⁵ In terms of a governing structure, following the inter-communal violence in 1963, the Turkish Cypriot community established a series of institutional organizations resembling a

¹⁸⁹ CHRISTOPHER L. BLAKESLEY ET AL., *THE INTERNATIONAL LEGAL SYSTEM: CASES AND MATERIALS* 188 (2001).

¹⁹⁰ Bülent Evre, *Political System of the Turkish Republic of Northern Cyprus, in ISOLATED PART OF CYPRUS* 42-47 (Stanislav Tkachenko & Muhittin Özsağlam eds., 2011).

¹⁹¹ *The Island of Palmas (U.S. v. Neth.)*, Perm. Ct. of Arbitration, 2 U.N. Rep. Int'l Arb. Awards 829 (1928).

¹⁹² KLABBERS *supra* note 160 at 72.

¹⁹³ The Geneva Declaration, July 30, 1974, Ertekün, *supra* note 162 at 248-249; UN G.A Res. 3212 (Nov. 1, 1974); Communiqués, Feb. 1977, The Guidelines Agreed Between President Denktaş and the Late Archbishop Makarios on 12 Feb. 1977, Ertekün, *id.* at 27 and the Ten-Point Agreement of 19 May 1979, *id.* 360; intercommunal talks, Public Statements and Comments Made on Both Sides Regarding the Current Intercommunal Talks and the Subjects Under Discussion, *id.* 402-473 and Some Public Statements and Press Comments Made on the Comprehensive Turkish Cypriot Proposals of 5 August 1981, *id.* 474-487; and the Draft Framework Agreement on Cyprus, Statement by Ozer Koray, Representative from TRNC, at UN S.C. Mtng., U.N. Doc. S/PV 2591 (June 14, 1985) and Draft Agreement on Cyprus Presented by the Secretary-General on 29 March 1986, U.N. Doc. S/18102/Add.1 (Nov. 6, 1986).

¹⁹⁴ IAN BROWNLIE, *PRINCIPLES OF INTERNATIONAL LAW* 70 (2008). *See* in particular Ahmet Atasoy, *Population Geography of the Turkish Republic of Northern Cyprus*, 16 MUSTAFA KEMAL U. J. SOC. SCI. INST. 29 (2011) (In Turkish). Whatever else can be descriptive of the population in the TNRC, legally it must be "settled." ANTHONY AUST, *HANDBOOK OF INTERNATIONAL LAW*, 2d ed. 15-16 (2010).

¹⁹⁵ *North Sea Continental Shelf (Judgment)*, 1969 I.C.J. 3, ¶ 46 (Feb. 20).

governing authority, i.e. The Provisional Cypriot Administration (Dec. 24, 1967),¹⁹⁶ later the Autonomous Turkish Cypriot Administration (Dec. 20, 1974),¹⁹⁷ and finally The Turkish Federated State of Cyprus (Feb. 13, 1975).¹⁹⁸

The existence of a governing authority is questioned because of its protected character by virtue of the Turkish military presence and support of the Turkish government as its patron. According to Shaw, it is not necessary to have a government in order for recognition to take place.¹⁹⁹ But also as one international legal scholar has argued, a political entity that has been under occupation by an external power can achieve state sovereignty if the previous sovereign, in this case the ROC, would approve;²⁰⁰ however, it has not recognized the TRNC. Without ROC's recognition of the independence of the TRNC, customary international law considers such a government illegal.²⁰¹

Talmon brings to the fore an interesting argument flowing from the baseline document, the Montevideo Convention, namely a requirement for statehood to exist is the ability to interact with other states in the international political system. The logic of this requirement is stretched, however, when considering how such a political entity can comply without diplomatic recognition having already taken place. Is such a political unit doomed to exist in the neither world indefinitely?²⁰² By comparison and in support of our notion presented here, the UN Charter, Article 4, makes membership in the organization dependent on statehood. However, we point out that Croatia as well as Bosnia and Herzegovina were recognized by members of the European Community as independent states while both were effectively controlled by non-government forces.²⁰³

The key element remains convincingly recognition by other states²⁰⁴ if for no other reason than recognition has been a pre-condition for the demand for self-determination.²⁰⁵ It has been

¹⁹⁶ Nurit Kliot & Y. Mansfield, *The Political Landscape of Partition: The Case of Cyprus*, 16 POL. GEOG. 495 (1997).

¹⁹⁷ Borowiec, *supra* note 84 at 98; Ali Çakoğlu & Ahmet Sözen, *The Turkish Cypriot General Elections of December*

2003: Setting the Stage for Resolving the Cyprus Conflict? 9 S. EUR. SOC'Y & POL. 122 (2004).

¹⁹⁸ White, *supra* note 115.

¹⁹⁹ MALCOLM SHAW, INTERNATIONAL LAW 2 (2008); Nina Caspersen, *Degrees of Legitimacy: Ensuring Internal and External Support in the Absence of Recognition*, 66 GEOFORUM 184 (2015).

²⁰⁰ Crawford, *supra* note 33 at 75.

²⁰¹ DANIEL HÖGGER, RECOGNITION OF STATES: A STUDY ON THE HISTORICAL DEVELOPMENT IN DOCTRINE AND PRACTICE WITHOUT SPECIAL FOCUS ON THE REQUIREMENTS 30-32 (2015)).

²⁰² Stefan Talmon, *The Constitutive Versus the Declaratory Theory of Recognition: Tertium non Datur?* 75 BRIT. Y.B. INT'L L. 116 (2004).

²⁰³ See generally RICHARD CAPLAN, EUROPE AND THE RECOGNITION OF NEW STATES IN YUGOSLAVIA (2005).

²⁰⁴The full extent of external representation can be found in TURKISH REPUBLIC OF NORTHERN CYPRUS. DEPUTY PRIME MINISTER AND MINISTRY OF FOREIGN AFFAIRS, MISSIONS ABROAD, <http://mfa.gov.ct.tr/consular-info/missions-abroad/>.

continuously found that the TRNC is only recognized by Turkey which can be easily understood and established. Less important in terms of rank, however, and it must be pointed out that six states and a European Union Support Office have some form of representation in the TRNC, while the TRNC has 15 representations in 11 different states.²⁰⁶ While recognized as the “Turkish Cypriot State,” the TRNC maintains observer status with the Organisation of Islamic Conference (OIC).²⁰⁷ Both Pakistan and Bangladesh were at one time ready to recognize the TRNC, but their decision was reversed when faced with American pressure to do so; a similar situation can be found with Paraguay.²⁰⁸ While Gambia was ready to recognize the TRNC, when the ROC objected, they withdrew its initiative.²⁰⁹ Azerbaijan has failed to offer recognition for fear a precedent would be set to expect a similar action toward Nagoro-Karabakh as an independent republic.²¹⁰

When non-recognition²¹¹ is employed as a positive foreign policy, it is implicit that the political entity is enjoined from complying with the rules and obligations of recognized states. All of this means that there must be a rational explanation in place allowing for a substantially better benefit achieved from non-recognition than what could be expected from recognition.

De Facto²¹² States and International Law

Recognition of both states and governments is further bifurcated between a provisional condition as established by virtue of basic or temporary existence, hence *de facto* status. Once a more formal set of conditions can be found to exist, recognition can advance to a permanent existence, *de jure* status, nonetheless, non-recognition does not obviate the existence of a *de facto* state,²¹³ but existing with a minimum legal personality. There is a territory and a population governed by a political institution, albeit under questionable conditions and designation but being contested means there is a lack of internal sovereignty.²¹⁴ The practical and pragmatic aspects of

²⁰⁵ MIKULAS FABRY, RECOGNITION OF STATES: INTERNATIONAL SOCIETY AND THE RECOGNITION OF NEW STATES 9 (2010).

²⁰⁶ *Id.*, <http://www.trncinfo.com/eng/index.htm>.

²⁰⁷ OIC, http://www.oic-oci.org/page_detail.asp?p_id=179; Mahmut Bali Aykan, *The OIC and Turkey's Cyprus Cause*, 25 THE TURK. Y. B. 17 (1995).

²⁰⁸ ISHTIAK AHMAD, THE DIVIDED ISLAND: A PAKISTANI PERSPECTIVE ON CYPRUS 175 (1999).

²⁰⁹ Abdul Kadir, Mehmet Cakar & Nejat Basim, *An Unusual Bi-National Military Cooperation: The Case of Turkish-Gambian Relations*, in MILITARY COOPERATION IN MULTINATIONAL PEACE OPERATIONS: MANAGING CULTURAL DIVERSITY AND CRISIS RESPONSE 117, 124 (Joseph Soeters & Philippe Marrisart eds., 2008).

²¹⁰ Fariz Ismailzade, *Turkey-Azerbaijan: The Honeymoon is Over*, 4 TURK. POL'Y Q. 73 (2005).

²¹¹ “Non-recognition” was cited as a general principle of international law by none other than Lauterpacht, *supra* note 157 at 409-435.

²¹² There are other designators operating in the literature such as contested states, unrecognized states, and partially recognized states. To see a discussion of TRNC as a contested state, see Deon Geldenhuys, *Northern Cyprus*, in DEON GELDENHUYS, CONTESTED STATES IN WORLD POLITICS 1 (2009).

²¹³ Kontorovich, *supra* note 65 at 589.

²¹⁴ Direnç Kanol & Nur Köprülü, *Quality of Democracy in Unrecognized States: Lessons from Northern Cyprus*, 17 SE. EUR. AND BLACK SEA STUD. 389 (2017)

recognition demands some sort of an acceptable and accepted state practice. Law, it is found to be the case, most often follows political developments and the time gap between the two knows not any limit. For in fact, the law may be inadequate to address any number of issues.

States across the globe face the reality of the emergence of very different styles of existence of political entities. While not all *de facto* states are so isolated as the TRNC because of the lack of diplomatic recognition, the ascension to *de jure* status would most likely force the elimination of this stigma. The characterization of the relationship of existing states to *de facto* states is the concern for the territorial integrity and its guarantee in opposition to self-determination,²¹⁵ but most importantly, a demand for political legitimacy. *De facto* status has certain limitations on the exercise of governing authority for the sake of international interaction: “formal recognition by other states, *de facto* states’ representations abroad and formal representations in *de facto* states...existence of a patron; and memberships in international organizations.”²¹⁶ In addition there are economic considerations to include: “foreign trade activities...and the turnover of trade per capita.”²¹⁷ A third area of consideration involves the public sphere activities: “the spread of information and flow of people, including direct flight connections, (in-)dependence of postal and telecommunication means, as well as border regulations.”²¹⁸ What is expected of states when faced with the more complex condition of secession²¹⁹ and the decision to recognize one party or the other or not to do so?²²⁰ In the case under review, should the Turkish Cypriots be given self-determination for purposes of human rights of a minority population²²¹ and thus be placed in the position to enjoy wide-spread recognition, which would mean the Cyprus government accepts the existence of the TRNC; under the circumstances, it therefore would relinquish governing authority over the entire island.

International Law Intersections in the Cyprus Dispute

At the top of the list of international legal questions regarding the establishment of the TRNC is the connection between it and the legality of the Turkish incursion. A controversial topic emerges when we consider that Cyprus was a signatory to the Treaty of Guarantee, employed by Turkey for its justification for its use of its military against Cyprus. The action, therefore, did violate Cyprus’s independence and sovereignty. But if Turkey’s position is accepted, a conclusion can be drawn exculpating it from violation, since its act was pursuant to a treaty stipulation. But there

²¹⁵ Lorie M. Graham, *Self-Determination for Indigenous Peoples After Kosovo: Translating Self-Determination “Into Practice” and “Into Peace,”* 6 ILSA J. INT’L & COMP. L. 455, 465 (2000).

²¹⁶ Berg & Toomla, *supra* note 176 at 27, 30.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Secession is understood here as “the creation of a new and independent entity through the separation of part of the territory and population of an existent State, without the consent of the latter.” Kohen, *supra* note 77 at 42.

²²⁰ Stefan Oeter, (*Non-*) *Recognition Policies in Secession Conflicts and the Shadow of the Rights of Self-Determination*, in RECOGNITION IN INTERNATIONAL RELATIONS: RETHINKING A POLITICAL CONCEPT IN A GLOBAL CONTEXT 125-140 (Christopher Daase *et al.*, eds, 2015); Nina Caspersen, *From Kosovo to Karabakh: International Responses to De Facto States*, 56 SÜDOSTEUROPA 58 (2008).

²²¹ Anne Peters, *Humanity as the A and Ω of Sovereignty*, 20 EUR. J. INT’L L. 513 (2009).

is a contra position to wit that Cyprus by virtue of accedence to the treaty noted, removed its self-preservation privilege.²²² There remains the important fixture of international law, namely the UN Charter's Article 2(4) which can be considered *jus cogens* and hence prioritizing conflicting treaty obligations.²²³ Indeed, one prominent legal author argues that states are even prohibited from engaging in treaty creation to avoid a preemptory norm.²²⁴ This approach is further strengthened by the position that a preemptory norm can not be designed away by virtue of a treaty.²²⁵

If it is or can be argued that the intervention²²⁶ was illegal in any form, then it follows that the resulting connected political action was theretofore illegal regardless of whether there were conditions to satisfy the requirements for statehood. The matter clearly goes to the issue of legitimacy of the existence of the TRNC. This condition also leads back to whether diplomatic recognition has been warranted. The ROC had the unequivocal duty to provide protection to its Turkish minority population,²²⁷ the centerpiece of Turkey's proclaimed justification for its military operation. Failure to comply with its full obligation, however, seems insufficient to create the elements for Turkey's action, at least without confirmation that there was no alternative, i.e., the continuation of negotiations.²²⁸ It is next to impossible to extricate the

²²² ANN VAN SYNEN THOMAS & A. J. THOMAS, JR., NON-INTERVENTION: THE LAW AND ITS IMPACT IN THE AMERICAS 91-92 (1956).

²²³ The superiority of the UN Charter over treaties is found in the Charter's Article 103. U.N. Doc. A/5509, Supplement No. 9, at 11-12 supplemented by the work of [SIR] ARTHUR WATTS, THE INTERNATIONAL LAW COMMISSION 741 (1999) and Nagendra Singh, who as President of the I.C.J., observed in a separate opinion in the Nicaragua case, *supra* note 91 at 247, that the concept of non-use of force was to be considered *jus cogens*.

²²⁴ LORD MCNAIR, THE LAW OF TREATIES 215 (1961).

²²⁵ YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 103 (1994); [Sir] Gerald G. Fitzmaurice, *Third Report on Law of Treaties*, 2 Y.B. INT'L L. COMM'N 20-40 (1958). There is also the statement via Article 65 of the Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, inferring that such a treaty may be considered invalid.

²²⁶ A question that exceeds our aim here is: What differentiates the legal separation between an "invasion" and an "intervention" is covered in Eiki Berg, *Examining Power-Sharing in Persistent Conflict: De Facto Pseudo-Statehood Versus De Jure Quasi-Federation*, 21 GLOBAL SEC. 212 (2007). Given the strong condemnatory rhetoric found in the UN Security Council's resolutions on Turkey's military operation, there was no mention or use of the term "invasion," parsing words, splitting meanings in order to draw attention away from what on the surface violates black letter law. Turkey, a long-term antagonist of Greece, and a connected protector of the Turkish minority on Cyprus should also take into consideration that it attempted to deny the Greek potential for interposing itself in the eastern Mediterranean. But in doing so, it has been argued, violated the ROC's sovereign control over the entire territory of Cyprus. Thus, the legalese employed fails to serve the real needs of Cypriots in either the North or South of the island. See the UN Secretary General's Report U.N. Doc. S/1999/707 (June 22, 1999), para¶. 7.

²²⁷ NIKOLAS KYRIAKOU & NURCAN KAYA, MINORITY RIGHTS: SOLUTIONS TO THE CYPRUS CONFLICT (2011). The ROC consistently agreed to provide the necessary protection to the Turkish Cypriot population, Report by the UN Mediator on Cyprus to the Secretary General, paras, 92-93, U.N. Doc. S/6253 (Mar. 26, 1965).

²²⁸ For general background see *Minority Schools in Albania*, Advisory Opinion, 1935 P.C.I.J. (ser A/B) No. 64 (Apr. 6); Francesco Caportoti, Special Rapporteur of the United Nations Sub-Committee on Prevention of Discrimination and Protection of Minorities (Jan. 1, 1979), U.N. Doc. E/CN. 4/Sub. 2/384/Rev. 1; United Nations Minorities, GA

international political aspects of the issues here as has been adequately brought out above. Where does one draw the distinction between law and politics, while of the utmost interest, is well beyond what can be offered in the course of this discussion. It may be after observation, that international law because of its inadequacy go address certain issues follows international politics as a set of guiding principles to be followed when the benefit provided is of such a normative value that it only adds to the national image. In our subject here, Cyprus is interspersed between NATO and its western interests together with Turkey and Greece looking southward and eastward. All along whenever the situation found it necessary and useful, international law was cited either as a justification or a rationalization.

There is an important topic that remains with the issue of the bi-communal governing system in Cyprus. While both Greek and Turkish Cypriot communities seek national self-determination²²⁹ with the associated principle of diplomatic recognition, there remains the issue of the presence of the Turkish military as an occupier in the TRNC. While the connection between self-determination and recognition of states is *arguendo* a position taken by some, it is not by any means an accepted principle of international law.²³⁰ What has apparently become a default position is that a people has the inherent right of self-determination to create the political authority they believe best suits their situation given a set of conditions perceived to be oppressive.²³¹ The law of occupation has remained rather staid since its relative promulgation in 1907²³² and again in 1949,²³³ although both legislative actions were based upon the previous existence of war or at least armed conflict between states.²³⁴ As so cogently pointed out by Boon,

Res. 47/135 (Dec. 18, 1992); PATRICK THORNBERRY, *INTERNATIONAL LAW AND THE RIGHT OF MINORITIES* (1993).

²²⁹ The demand for self-determination has become a bone of contention especially as a part of the decolonization process in the post-World War II era. THÉODORE CHRISTAKIS, *LE DROIT À L'AUTODÉTERMINATION EN DEHORS DES SITUATIONS DE DÉCOLONISATION* (1999). The demand has not, however, been without its critics. Sanford R. Silverburg, *In Perpetuation of Myth: National Self-Determination de lege ferenda*, 2 *GLENDALÉ L. REV.* 273 (1978); Hurst Hannum, *Rethinking Self-Determination*, 34 *VA. J. INT'L L.* 1 (1993).

²³⁰ For an argument that the two concepts are closely aligned *see* FABRY, *infra* note 206 at 9. An argument in support of the Turkish Cypriot community is found in METIN TAMKOÇ, *THE TURKISH CYPRIOT STATE: THE EMBODIMENT OF THE RIGHT OF SELF-DETERMINATION* (1988).

²³¹ LEE BUCHEIT, *SECESSION: THE LEGITIMACY OF SELF-DETERMINATION* 220-223 (1978); ALAN BUCHANAN, *JUSTICE, LEGITIMACY, AND SELF-DETERMINATION: MORAL FOUNDATIONS FOR INTERNATIONAL LAW* 354 (2004); CHRISTOPHER WELLMAN, *A THEORY OF SECESSION* 3 (2005); Dugard and Raič *supra* note 77 at 237, supplemented by Anthony Cassese, *Political Self-Determination: Old Concepts and New Developments*, in *UN LAW/FUNDAMENTAL RIGHTS: TWO CONCEPTS IN INTERNATIONAL LAW* 137 (Anthony Cassese ed., 1979); Thomas Franck, *Postmodern Tribalism and the Right of Secession*, in *PEOPLES AND MINORITIES IN INTERNATIONAL LAW* 13 (Catherine Brölmán ed., 1993); Christopher J. Borgen, *Imagining Sovereignty, Managing Secession: The Legal Geography of Eurasia's "Frozen Conflicts"*, 9 *OREGON REV. INT'L L.* 477, 483 (2007).

²³² Convention Respecting the Laws and Customs of War on Land (Hague IV), Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277.

²³³ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T.S. 3516, 75 U.N.T.S. 287.

²³⁴ The actual line between war and peace in respect to occupation can be confusing. For an historical evaluation *see* [LT. COL.] J.F. MAURICE, *HOSTILITIES WITHOUT DECLARATION OF WAR: AN HISTORICAL*

the generally accepted law of occupation fails to take into consideration the role played in international politics by international organizations in transition periods of post-conflict periods²³⁵ and fails to accept modern examples of occupation.²³⁶ Because the oft-noted context of occupation is the period subsequent to armed conflict, there is little positive geared to creating a democratic system of rule or the development of a western-style of government, but leaving little that would be allowed by the occupying power.²³⁷

A determination required in this case is to qualify the exact nature of the continued Turkish military presence in northern Cyprus. Recall that when Turkey proceeded to inject its military in Cyprus, the self-proclaimed rationale was humanitarian intervention.²³⁸ The conditions were not war-like; there was no serious national military opposition, and the Turkish military was met sympathetically by their ethnic brethren. But it could be argued that the situation was an “emergency,”²³⁹ calling for, at least from a Turkish perspective, humanitarian intervention, justifying a unilateral measure, since there is no evidence that either the ROC government or the leadership of the Turkish Cypriot community invited the action by Turkey. In any case, with the occupation considered not a belligerent one, the occupant’s powers are to limit the administrative control Turkey would have legally held during the period of occupation.²⁴⁰ Without the determination of the existence of belligerent occupation, it would seem like the application of international humanitarian law and human rights law is somewhat mooted, save perhaps for the treatment of Greek Cypriots living in the TRNC. To the extent that not only is there a permanent presence of the Turkish military, but also a much-needed dependence upon external support from Ankara so that the complete independence of the TRNC is called into question.

ABSTRACT OF THE CASES IN WHICH HOSTILITIES HAVE OCCURRED BETWEEN CIVILIZED POWERS WITHOUT DECLARATION OF WAR OR WARNING (1883).

²³⁵ Tristian Ferraro, *Enforcement of Occupation Law in Domestic Courts: Issues and Opportunities*, 41 ISRAEL L. REV. 331, 332 (2008).

²³⁶ Grant, *supra* note 185 at 9.

²³⁷ Brett H. McGurk, *Revisiting the Law of Nation-Building: Iraq in Transition*, 45 VA. J. INT’L L. 451, 454 (2004-2005).

²³⁸ For an examination of the international legal doctrine of humanitarian intervention as it relates to Cyprus see Jon Holbrook, *Humanitarian Intervention and the Recasting of International Law*, in RETHINKING HUMAN RIGHTS 136-154 (David Chandler ed., 2002); Jean-Pierre L. Fonteyne, *The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter*, 4 CAL. W. INT’L L. J. 203 (1973-1974); W. D. Verwey, *Humanitarian Intervention Under International Law*, 32 NETH. INT’L L. REV. 357 (1985); Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, 100 AM. J. INT’L L. 107 (2007)..

²³⁹ THOMAS G. WEISS & CINDY COLLINS, HUMANITARIAN CHALLENGES & INTERVENTION (2018); CONTEMPORARY STATES OF EMERGENCY, THE POLITICS OF MILITARY AND HUMANITARIAN INSTITUTES (Didler Fassin & Mariella Pandoffi eds., 2003); Füsün Türkman, *Cyprus 1974 Revisited: Was It Humanitarian Intervention?* 2005 PERCEPTIONS 61; Siret Hursoy, *Etnik Realite Kapsaniuda Kibris Soruner*, (21) REV. INT’L L. & POL. 35 (2010) (In Turkish and English).

²⁴⁰ Leyda, *supra* note 62.

It should also be noted that in European juridical circles there are non-derogations in place to apply here.²⁴¹ That there may be currently a condition situated in between the traditional law of war so noted above²⁴² and contemporary and complex political examples is yet to be explored²⁴³ but covered by case law cited by Boon.²⁴⁴ The basic issue of the use of force for political purposes in contemporary international law can be found in the UN Charter's Article 2(4) balanced against state practice. There is the proposition examined by Professor Franck who views the historical examples presented as a commentary on the devolution of the premise.²⁴⁵ Nor can the use of force be absolutely denied states, according to Reisman.²⁴⁶ There remains the issue of ROC's sovereignty and its inherent right of protection from external intervention into its essential domestic affairs,²⁴⁷ notable for its confrontational character and the documented conditions of unfair treatment of a minority population. Here then is the rub: Is there an absolute rule denying humanitarian intervention on the face of well-documented oppressive treatment of a minority? If intervention is found to be acceptable for reasons already cited, it is an uncontested conclusion that the ROC's sovereignty is impaired.

Legal observers²⁴⁸ look to the Hague Convention, Article 42²⁴⁹ in particular, to provide some form of notation on the beginning of a period of occupation. The gravamen for the ROC is when does an occupation end? While the answer appears to be obvious, i.e. when the foreign occupation forces remove themselves,²⁵⁰ the actual response in the case under review remains problematic. In the view of the United Nations, the continued presence of the Turkish military as an occupation force was found to be deplorable²⁵¹ and the organization even went so far as to demand their removal.²⁵² A question that requires a full explanation is whether the Turkish military occupation authorities exercise the function of governing and is in "effective control"²⁵³

²⁴¹ See the Eur. Conv. on H.R. (1950), Arts. 2, 3, 4(1), and 7; the Int'l Conv. On C. & Pol. R. (1966), Arts. 6, 7, 8(1) & (2), 11, 15, 16 and 18.

²⁴² Pictet *supra* note 116.

²⁴³ See e.g. Grant T. Harris, *The Era of Multilateral Occupation*, 24 BERKELEY J. INT'L L. 1 (2006).

²⁴⁴ Kristin E. Boon, *The Future of the Law of Occupation*, 46 CAN. Y.B. INT'L L. 107, 108 (2009).

²⁴⁵ Thomas S. Franck, *Who Killed Article 2 (4)? Or: Changing Norms of Governing the Use of Force by States*, 67 AM. J. INT'L L. 835 (1984).

²⁴⁶ W. Michael Reisman, *Coercion and Self-Determination: Construing Charter Article 2(4)*, 78 AM. J. INT'L L. 644 (1984) but see *contra* Oscar Schachter, *The Legality of Pro-Democratic Invasion*, 78 AM. J. INT'L L. 645-660 (1984).

²⁴⁷ MICHAEL GLENNON, LIMITS OF LAW, PREROGATIVES OF POWER: INTERVENTIONISM AFTER KOSOVO 3-35 (2002).

²⁴⁸ LASSA OPPENHEIM, 2 INTERNATIONAL LAW. 7th ed. 434-436 (1952).

²⁴⁹ Hague Convention *supra* note 230.

²⁵⁰ Oppenheim *supra* note 242 at 436.

²⁵¹ UN G.A. Res. 33/15 (Nov. 9, 1978) and UN G.A. Res. 34/30 (Nov. 20, 1979).

²⁵² UN G.A. Res. 37/253 (May 13, 1983).

²⁵³ On "effective control" see Crawford, *supra* note 33 at 112. Effective control by an occupying authority is subject to controversial interpretations. Théodore Christakis, *The State as a 'Primary Fact': Some Thoughts on the Principle of Effectiveness*, in Kohen, *infra* note 77 at 139-140 and Thomas D. Grant, *States Newly Admitted to the United Nations: Some Implications*, 39 COLUM. J. TRANSNAT'L L. 178-179. For examples, how much "control" is necessary to be "effective"? On this item, see Dinstein, *supra* note 1 at ¶ 98; Marten Zwanenburg, *The Law of*

and exclusive governing authority²⁵⁴ though implied by several provisions of the Fourth Geneva Convention, there can be a condition of “vertical sharing of authority.”²⁵⁵ The context of the effectiveness was the extent of the political and military success regardless of the normative judgments that could be leveled.²⁵⁶

The minority status of Turkish Cypriots facing an antagonistic majority Greek Cypriot population and governing authority only energized the demand for separation which in political-judicial terms meant self-determination, therein designates that all people have this right. If as argued by one international law scholar,²⁵⁷ the ROC as an internationally recognized state represents a people contained in a territory with sovereign integrity,²⁵⁸ then no sub-population group can disassemble itself for purposes of self-determination. But a state may not deny a people within its jurisdiction this right.²⁵⁹ The legal principle of *carence de souverainete* may apply if the conditions set by the ROC are so intolerable to the Turkish Cypriot community, yet to be fully established.²⁶⁰

CONCLUSIONS

There have been innumerable and noble positions put forth to solve, mediate, but not necessarily manage the ongoing conflict on Cyprus.²⁶¹ Perhaps the best recognized approach was taken by

Occupation Revisited: The Beginning of an Occupation, 10 Y.B. INT’L HUMAN. L. 99, 11007) and Eyal Benvenisti, *The Law on the Unilateral Termination of Occupation*, in VERÖFFENTLICHUNGEN DES WALTHER-SCHÜKING-INSTITUTS FÜR INTERNATIONALES RECHT AN DER UNIVERSITÄT KIEL 2 (Andreas Zimmermann & Thomas Giegerich eds., 2009).

²⁵⁴ Daphna Shraga, *Military Occupation and UN Transitional Administration—The Analogy and its Limitations*, in PROMOTING JUSTICE, HUMAN RIGHTS AND CONFLICT RESOLUTION THROUGH INTERNATIONAL LAW 479, 481 (Marcelo G. Kohen ed., 2007).

²⁵⁵ Articles 6(3), 47, 50, and 56, Fourth Geneva Convention, *supra* note 105.

²⁵⁶ HEATHER A. WILSON, INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS 29 (1988).

²⁵⁷ MICHAEL AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW, 5th ed. 254 (1984).

²⁵⁸ Burke A Hendrix, *International Law as a Moral Theory of State Territory*, 2 GEOPOL. 141 (2001).

²⁵⁹ *Id.*, 256.

²⁶⁰ THOMAS MUSGRAVE, SELF-DETERMINATION AND NATIONAL MINORITIES (2000); Gudmunder Alfredsson, *International Law, International Organizations and Indigenous Peoples*, 36 J. INT’L AFF. 113 (1982); Robert A. Friedlander, *Proposed Criteria for Testing the Viability of Self-Determination as it Applies to Disaffected Minorities*, 25 CHITTY’S L. J. 235 (1977).

²⁶¹ CLEMENT H. DODD, STORM CLOUDS OVER CYPRUS, A BRIEFING, 2d ed., 102-110 (2002); MUHÁLIS STAVROU MICHAEL, RESOLVING THE CYPRUS CONFLICT: NEGOTIATING HISTORY (2009); FURKAN ŞENAY & MEHMET UĞUR EKİNCİ, THE LAST CHANCE FOR A UNITED CYPRUS: NEGOTIATIONS FOR A FEDERAL SOLUTION (2014); H. Paul Castleberry, *Conflict Resolution and the Cyprus Problem*, 17 WEST. POL. Q. 118 (1964); Tozun Bahcheli, *Searching for a Cyprus Settlement: Considering Options for Creating a Federation, Confederation, or Two Independent States*, 30 PUBLIUS 216 (2000); A. Marco Turk, *Cyprus Reunification is Long Overdue: The Time is Right for Track III Diplomacy as the Best Approach for Successful Negotiation of this Ethnic Conflict*, 28 LOY. L.A. INT’L & COMP. L. REV. 205 (2006); Elie Kedourie, *The Cyprus Problem and its Solution*, 41 MIDDLE EASTERN STUD. 649 (2007); Marta Bordignon, *The Cypriot Issue in the Current European Geopolitical Order: Towards a Final Resolution?* 15 TRANSIT. STUD. REV. 417 (2008); Greg

the United Nations and the Annan Plan that proposed a two-state federal republic. Referenda were held April 24, 2004 in the respective communities with the Greek community agreeing to the proposal while the Turks turned it down.²⁶²

The Turkish occupation, if the stated reason for it is to be believed, i.e., protection of the ethnic community on the island, cannot be reasonably resolved given the lengthy historic enmity displayed, the condemnatory conclusion is fair to assume. And to know the real reason behind Ankara's decision would require access to the most sensitive areas of that government's foreign policy forum which obviously cannot be obtained, leaving speculation the only option. The continued status of the lack of widespread diplomatic recognition of the TRNC has undoubtedly retarded the progress to achieve *de jure* legal status as a state.²⁶³ While the United Nations has requested members not to recognize the TRNC which has created a collective obligation, the resulting effect has been to place a damper on any possible bi-lateral relationship that could develop. This condition also limits the ability of the TRNC even to cooperate in any number of ways with non-recognized states.²⁶⁴ Conversely, the treaty that in the course of a negotiation process, compromise is a rich possibility that may lead to a reasonable outcome of a difficult situation. In the case of Cyprus, however, the intercommunal conflict is made resolute by each community's clearly identified and intractable interests. Mediation efforts historically have proven barren of any positive result.²⁶⁵ None of this precariousness necessarily reduces the important contribution that international law offers all parties to the Cyprus confrontation. What remains is not magic or a miracle, but a rational plan that is sufficiently reasonable to provide minimal satisfaction to all participating powers and thereby disrupt and replace the equilibrium that has seen its place established. It is when parties to the conflict, noted above, maintain a maximalist position²⁶⁶ and from which a compromise is unacceptable because of the cost is undervalued when compared to the benefit, that negotiations reach a level requiring courage and

Mills, *In Hope of an Olive Branch? The Cyprus Problem in International Relations*, 7 S. AFR. J. INT'L AFF. 147 (2000); Ali Çarkoğlu & Ahmet Sözen, *The Turkish Cypriot General Elections of December 2003: Setting the Stage for Resolving the Cyprus Conflict?* 9 S. EUR. SOC'Y & POL. 122 (2010); Amanda Paul, *Cyprus and the Never-Ending Search for a Solution*, 3 CAUCASUS INT'L J. 129 (2013-2014); Ozan Örneçi, *Cyprus Dispute: Towards a Solution*, 3 INT'L MULTILINGUAL J. 103 (2016).

²⁶² UNITED NATIONS, REPORT ON THE SECRETARY-GENERAL KOFI ANNAN ON HIS MISSION OF GOOD OFFICES IN CYPRUS, U.N. Doc. S/2004/437 (May 28, 2004); CHRYSOSTOMOS PERICLEOUS, THE CYPRUS REFERENDUM: A DIVIDED ISLAND AND THE CHALLENGE OF THE ANNAN PLAN (Andrekos Varnava & Hubert Faustmann eds., 2009); ROBERT I. ROTBERG, REUNIFYING CYPRUS: THE ANNAN PLAN AND BEYOND (2009); Nicos Trimikliniotis, *Pro: Rethinking the Viability of the Constitutional Arrangement*, in *id.* 107-121.

²⁶³ See generally Pål Kolstø, *The Sustainability and Future of Unrecognized Quasi-States*, 46 J. PEACE RES. 723 (2006).

²⁶⁴ Blix, *supra* note 180.

²⁶⁵ For a full examination of the various plans for conflict resolution, see Ronald J. Fisher, *Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse*, 38 J. PEACE RES. 307, 312 (2001).

²⁶⁶ For a useful collection of policy positions by Cypriot disputants, see Sözen & Özersay, Table 1 *supra* note 4 at 127-128.

ingenious ability. Nevertheless, these conditions do not preclude an acceptable outcome with international law as a guide.

**Thanks, you the valiant of the warlike isle
That so approve the Moor O, let the Ravens
Give defence against the elements,
For I have lost us him on the dangerous sea.
Cassio in Othello, Act. 2, Scene 1**