# INTERNATIONAL LAW ON THE TURKISH MILITARY INTERVENTION OF CYPRUS: The Argument from the Treaty of Guarantee

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**Abstract**

The present article examines the legal context to the Turkish invasion in Cyprus 1974. On the one hand, the main legal argument put forward by Turkey in order to justify the intervention, which was based on the Republic of Cyprus Treaty of Guarantee, is put under scrutiny; international legal theories on the legality of intervention envisaged by Treaty are judiciously presented. On the other, the diplomatic background to the Treaty in question is explored in the light of UN documents, UK Parliamentary Debates, available Foreign Office Files in an effort to verify whether a right to military intervention was expressly provided for. Then the conduct of Turkey is tackled on the hypothesis that she did have a right to intervene, though it is hereby proved that the Guarantee Treaty does not expressly provide for a right of military intervention. Finally, it is stressed how the preceding discussion can be useful for security arrangements in the context of the current negotiations for a settlement to the pending international Cyprus question.[1]

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At dawn of the 20th July 1974, Turkey, following the coup d'etat of the 15th July 1974 engineered by the Greek military junta (then ruling Greece) to overthrow the democratically elected President Archbishop Makarios,[2] proceeded to an armed attack[3] by air and by sea against the independent and sovereign Republic of Cyprus.

## 1. Turkish justifications for the intervention and claims regarding the treaty

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

[1] For a fuller account of the issue see Kareklas, *International Law and Politics on Salamis* (Nicosia: Kykkos Research Centre, 2007).

[2] Glafkos Clerides, in his book, *Cyprus: My Deposition* (Nicosia, 1990, vol. III, p. 343) states the following about the motives of the conspirators: "Bluntly, the real objectives of the conspirators were to oust Makarios and his Government in order to proceed with direct negotiations with Turkey, and use the good offices of the United States, to achieve Enosis of the major part of Cyprus with Greece, conceding a smaller part of Cyprus to Turkish sovereignty. At no time did the Greek junta have in mind to declare Enosis unilaterally and to accept the risk of having a military conflict with Turkey".

[3] The meaning of "armed attack" was considered in the *Nicaragua case*, I.C.J. Reports 1986, p.14 para.195.

"*The Turkish armed forces started this morning an operation of peace in Cyprus in order to put an end to struggle of decades of years brought about by extremist elements. It is admitted by everybody that the last coup has been staged by the dictatorial regime of Athens. As a matter of fact it was more than a coup: it was a violent and flagrant violation of the independence of the Republic of Cyprus and of the international treaties on which the Republic was founded. Turkey is co-guarantor of the independence and the constitutional order of Cyprus. Turkey taking action is fulfilling her legal responsibility. The Turkish Government has not resorted to the armed action until after all the other means were tried and proved unsuccessful. This is not an invasion but an act to put an end to invasion."*[4]

When, however, he was asked to say whether the intention was to restore Archbishop Makarios to power he declined to answer, as he declined to state whether Turkey intended pulling out its forces after gaining control of the island.

In a Turkish government communiqué issued immediately after the intervention by the Turkish Embassy in London it was stated that Turkey as one of the guarantor powers had decided to carry out its obligations under article IV (2) of the Treaty of Guarantee with a view to safeguarding the security of life and property of the Turkish community and even that of many Greek Cypriots.[5]

The main argument put forward by Turkey in order to justify the 1974 military intervention in Cyprus is based on the Treaty of Guarantee of the Cyprus Republic. The Treaty, signed on 16 August 1960 between the United Kingdom, Greece, Turkey, and the Republic of Cyprus, forms an integral part of the constitutional order of the Republic.[6] By Article I, the Republic of Cyprus undertook the obligation to maintain its independence, territorial integrity, and security as well as respect for its Constitution. Under article II, Greece, Turkey and the United Kingdom guaranteed the independence, territorial integrity and security of the Republic of Cyprus and also the state of affairs established by the basic articles of the Constitution. Article IV, which constitutes the strongest basis of the Turkish argument provides the following:

"*In the event of a breach of the provisions of the present Treaty, Greece, Turkey and United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions. In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty".*

Turkey first declared that intervention had been to guarantee the independence of the island. According to Turkey, the coup government of Mr. Sampson was no more than a puppet regime under orders from Greece, ready to rule the end of the island's independence and to annex it to Greece. In a Turkish government communiqué of 20 July it was stated that "the Turkish community in the island can no longer tolerate this situation which offends human dignity and threatens the lives and the very existence of its greater majority, and they, therefore, anticipate Turkey *as a Guarantor Power*, to liberate them as soon as possible".[7] The Turkish Cypriot leader Rauf Denktash wrote that "Turkey, as one of the guarantors of the Cyprus Republic, could not accept the *fait accompli* against the independence and sovereignty of the republic, nor could it stand by and watch Turkish Cypriots being killed".[8] He also says that Turkey was left with no alternative but to move alone under Article 4 (2) of the Treaty of Guarantee to protect the independence

[4] S/PV, 1781, 86

[5] For the text of the communiqué see *The Turkish Yearbook of International Relations*, 14 (1974), p.125.

[6] Article 181 of the Constitution provided that the treaty guaranteeing the independence, territorial integrity, and constitution of the Republic "shall have constitutional force".

[7] *The Turkish Yearbook of Internaional Realsitons*, *ante*, p.130 (italics supplied).

[8] Denktash, R. *The Cyprus Triangle* (Nicosia, 1972), p. 68.

of the island and to put an end to the terrible destruction of life and property.[9] Denktash further alleges that the Turkish villages were being attacked throughout the island by mobile units of the National Guard, the pattern of the onslaught resembling that of 1963.[10]

## 2. Treaty of Guarantee and International Law

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

### 2.1. Theories on the Legality of Military Intervention by Treaty Right

It is commonly accepted in academic theories that armed intervention is legal when is done on the basis of a right provided for by treaty. The legality of such an intervention finds support in the overwhelming majority of academic writings, at least before the passing of the U.N. Charter.[11] Vattel is one of the advocates of such a view. Although he supports the principle of non-intervention, which he considers as flowing from Sovereignty -"the most precious principle that states ought to safeguard"- accepts the exception of intervention provided for by treaty.[12] Phillimore, also writing in the nineteenth century, considers intervention legal, in case this is guaranteed by treaty right.[13] The preceding view is also shared by Oppenheim,[14] Lawrence,[15] Hodges,[16] and Westlake[17] among others. Greek writers also hold the aforementioned views. Seferiades, having said that states have no right to intervene in the internal affairs of other states, conceded that intervention under a treaty is legal.[18] Tenekides, though, who states that the well established principle of non-intervention has been considerably strengthened by the United Nations Charter, writes the following: "International Law exceptionally accepts intervention if this is based upon agreement freely entered into or treaty providing for intervention in special circumstances"[19] Professor Brownlie wrote that States may lawfully confer by treaty a right to intervene by the use of armed force within the territorial or other legally permitted limits of their jurisdiction. They may also give *ad hoc* consent to the entry of foreign forces on their territory, to the passage of foreign forces and to operations by foreign

[9] *Ibid.* p. 68 (It is said therein that "Turkey sent a *peace* force which landed in northern Cyprus").
[10] *Ibid.* pp. 69-70; Denktash, *The Cyprus Triangle*, *supra*,p. 71.
[11] Potter notes that the majority of experts on the subject matter readily tends to consider as legal any intervention provided for by treaty. (1930) II *Recueil des Cours*, p. 657.
[12] See Vattel, E. de, *Le Droit des gens ou principes de la loi naturelle appliquee a la conduite et aux affaires des Nations et des Souverains* (Paris: 1863) p.22.
[13] See Phillimore, R. *Commentaries Upon International Law* (London, 1879), vol. I, p. 474.
[14] See Oppenheim, *International Law, War and Neutrality*, Vol. II (7th ed. H. Lauterpacht , London ,1952) p. 307.
[15] See Lawrence, T.J., *The Principles of Intentenational Law* (London, 1920) p.121-23. By the Treaty of London 1863, Greece was put under the guarantee of these powers as a 'monarchical, independent, and constitutional State'. Greece entered the great war on the side of Great Britain and her allies. The majority of the nation was enthusiastically in favour of the Entente cause, and of giving effect to a treaty with Serbia (an ally of Great Britain, France and Russia) under which Greece was bound to assist Serbia in the event of war between Serbia and a third power. On October 2, 1915, the British and French governments landed 150,000 troops at the Greek port of Salonika. They did this, with the hearty approval of Minister Venizelos and of an overwhelming majority of the Greek populace for the purpose of aiding Serbia that was at war with Austria and Germany.
[16] See Hodges, *The Doctrine of Intervnetion* (New York, 1915).
[17] See Westlake, J. *International Law* (Cambridge University Press, 1910) Vol. I, p. 304.
[18] See Seferiades, *Public International Law* (Athens, 1926), Vol. I, p. 319.
[19] See *Tenekides*, *Vema* (Greek Newspaper, 26.1.1963), p. 5; to the opposite direction goes the view expressed by the International Law Professor Constantopoulos by which the UN Charter expressly prohibits intervention (Constantopoulos, *Public International Law,* Thessaloniki 1962, Vol. I, p. 278).

forces on their territory.[20] Therefore, the charge of aggressive war against Thailand was disregarded by the International Military Tribunal at Tokyo on the ground that consent was given to the passage of Japanese forces through Thailand.[21] Brownlie gives some examples indicating that a right to intervene by force on the territory of another State could properly be conferred by treaty. Article 3 of the Treaty of 22 May 1903, between Cuba and the United States provided:

> "*The government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty*…"[22]

Another example is the General Treaty of Friendship and Co-Operation signed by the United States and Panama on 2 March 1936. Article 10 provided: *"In case of an international conflagration or the existence of any threat of aggression which would endanger the security of the Republic of Panama or the security of the Panama Canal, the Governments of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests*". An identical provision in Article 7 of the Treaty of 1903 was the basis for the United States armed intervention in Panama in 1904 for the purpose of restoring order.[23] Further, the Agreement signed between Egypt and the United Kingdom on 19 October 1954,[24] provided for the evacuation of British forces from the Suez Canal area. The United Kingdom was given the right to re-enter the area with military forces given an attack was made by a State which was a member of the Arab Collective Security Pact, or Turkey.

Despite the above, the principles of self-determination[25] and equality of States[26] as stipulated in the U.N. Charter have put into doubt the right of military intervention conferred by Treaty. A number of jurists have denied that such a treaty is valid. Nevertheless, in Brownlie's view, the right of forcible intervention on the territory of a State may still be lawfully conferred by treaty.[27]

### 2.2. Arguments for the Legality of Intervention envisaged by Treaty

*(i) Legitimate limitation of a State's sovereignty.*

It has been said that military intervention, constituting involvement in the internal affairs of a State, violates the principle of sovereignty. However, if intervention is done on the basis of a treaty right, the sovereignty of the State against which the intervention is launched is not violated, because the *treaty* right of intervention suggests legitimate and legal limitation of the State's sovereignty.[28] Given that the State itself has *accepted* the diminution of its sovereignty, the intervention must be legal. Under such circumstances the State is obligated to accept the intervention. In the *Austro-German Customs Union Case*, Judge Anzilotti, in a separate Opinion, went so far as to assert that according to general international law each State is free to deny its independence, also described as sovereignty (*suprema potestas*), and even its own existence.[29]

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[20] Brownlie, Ian, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963) p.317.
[21] Judgment, Sohn, *Cases and Materials on United Nations Law*, pp 916-17.
[22] This provision, however, did not appear in the later treaty of 29 May 1934: 28 *American Journal of International Law, hereinafter cited as A.J.I.L.* (1934), Suppl., p. 97.
[23] Oppenheim, *International Law, ante*, p.307; Brownlie, *International Law and the Use of Force by States, ante*, p. 320.
[24] Cmd. 9298 (1954), abrogated by Egypt 1 Jan. 1957 (*A.J.I.L.* (1957), p.672).
[25] *U.N. Charter Article (12):* "To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples…"
[26] *U.N. Charter Article 2(1):* "The Organisation is based on the principle of the sovereign equality of all its Members".
[27] Brownlie, *International Law and the Use of Force by States, ante*, p. 321; Oppenheim, *International Law*, *ante*, p. 307; Jessup, 32 *A.J.I.L.* (1938), p.117.
[28] On this, Lawrence, *The Principles of International Law*, *supra*, pp. 118-119.
[29] *Advisory Opinion*, (1931) 41 *P.C.I.J.* Reports, Series A/B, p.59.

*(ii) Volenti non fit injuria*

Most authors base the legality of intervention by treaty right upon the consent of the State agreeing to the grant of a right of intervention to another State. The legal axiom *volenti non fit injuria* is not only a theoretical construction, but has constituted the legal basis of interventions in state practice.[30] Proponents of this legal axiom also suggest that entering into treaties is a right of independent States, which may by way of treaty confer a right of intervention to another State in the same way as they may by international agreement concede part of their territory to a third State.[31] Thus, a State not only gives away its sovereign rights, but, on the contrary, exercises its sovereign right of concluding a treaty. In the *Wimbledon Case*, the Permanent Court of International Justice held that "the right of entering into international engagements is an attribute of State sovereignty".[32] In the *Perry Case*, which appeared before the Supreme Court of the United States, Chief Justice Hughes stated in his judgement: "the right to make binding obligations is a competence attaching to sovereignty".[33]

*(iii) Pacta sunt servanda*

One view dictates that since the intentions of two or more States coincide in an International Agreement, so that a right to intervention of one of the contracting parties into the internal affairs of the other may be agreed, law regulating their relations is therefore created. This law is binding. In accordance with the principle of *pacta sunt servanda*, the contracting parties are obliged to fulfil the terms of the Agreement.[34] Interventions are illegal, unless the intervening State acquires special right to intervene according to public international law principles. Thus, it could be argued, the binding force of international treaties may be said to sufficiently form the basis of the legality of intervention accorded by treaty.

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

### 2.3. Arguments against the legality of Intervention provided for by Treaty right

*(i) General Principles of Law*

A valid treaty presupposes lawful provisions. It is true that States have the capacity, by virtue of sovereignty, to conclude treaties on any matter whatever. It is equally true, however, that in the international legal order there exist legal rules, which States -parties to a treaty- cannot, and should not, ignore. This view is pointedly expressed by the legal maxim *privatorum conventio juris publico non derogat*. The rationale underlying this axiom is that the international community, like every well ordered society, should see to the lawful and moral

[30] Instances of the kind are the Soviet intervention in Hungary 1956, the joint intervention of Great Britain, France and Israel in Egypt 1956, and the intervention of the United Kingdom in Jordan 1958.
[31] See Thomas and Thomas, *Non-Intervention: The Law and its Import in the Americas, ante*, p. 96.
[32] (1923) 1 *P.C.I.J.* Reports, Series A, p. 25
[33] (1934) 294 U.S. Supreme Court Reports, p.330, 353-354. To the same effect, see the Opinion of the Permanent Court of International Justice in the Case of the Greco-Turkish exchange of populations in 1923 (1923, 10 *P.C.I.J.* Reports, Series B, p.21).
[34] See Harvard University Law School, Research on International Law, (1935) 29 *A.J.I.L.*, Supplement Part III Law of Treaties, p. 671.

coexistence of its members. As Lauterpacht very well put it, "*the parties conclude a treaty not in a legal vacuum, but against a background of existing rules of international law*".[35] It may be true that the treaty has to be interpreted by reference to the intention of the parties. But the intention of the parties must be interpreted by reference to rules of international law, in so far as their application has not been expressly excluded. Along similar lines, Verdross wrote that "*no juridical order can admit treaties between juridical subjects which are obviously in contradiction of the ethics of a certain community*".[36]

According to these *general principles of law*, a treaty comprising unlawful provisions is void. Unquestionably, *general principles of law* are in force under international law;[37] customary law, the history of international arbitration and Article 38(1) of the Statute of the International Court of Justice attest to their legal validity.[38]

The question which naturally follows is *which* are those international law principles violation of which renders a treaty void? Answer: the *peremptory norms of international law* otherwise known as *jus cogens*. The basis of these principles may be found in Natural law. Article 53 of the Vienna Convention on the Law of Treaties, signed at Vienna in 1969, provides as follows: "A treaty is void if, at the time of its conclusion conflicts with a peremptory norm of international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".[39] The definition of a peremptory norm is more skilful than appears at first sight. A rule cannot become a peremptory norm unless it is "accepted and recognized (as such) by the international community of States as a whole", a requirement which is too logical to be challenged. At present very few rules pass this threshold. There is considerable agreement on the *prohibition of the use of force*, of genocide, slavery, of gross violations of the right of peoples to self-determination, and of racial discrimination . Others would include the prohibition of torture.[40] The International Law Commission, in its commentary on the draft of the Vienna Convention, identified the Charter's prohibition of the use of inter-State force as a "conspicuous example" of *jus cogens.*[41] The Commission's position was quoted by the International Court of Justice in the Nicaragua case.[42] In his Separate Opinion, President Singh underscored that "the principle of non-use of force belongs to the realm of *jus cogens*".[43] Judge Sette-Camara, in another Separate Opinion, also expressed the firm view that the non-use of force can be recognized as a peremptory rule.[44] Despite some reservations, this position seems to be the prevalent one at present.

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[35] Lauterpacht, H. *The Function of Law in the International Community* (Oxford: Oxford University Press, 1933), p. 109.
[36] A. Verdross, *Forbidden Treaties in International Law*, (1937) 31 *A.J.I.L.,* p. 572.
[37] See Verdross, *Forbidden Treaties in International Law, supra*, p. 572.
[38] *Article 38 (1) (c):* "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: the general principles of law recognized by civilised nations".
[39] Text in *ILM* 8 (1969), 679; *A.J.I.L.*, p.875; Brownlie (ed.) *Basic Documents in International Law* (Oxford: Oxford University Press, 1985), p. 388.
[40] In the *Barcelona Traction Case* 1970, in an obscure *obiter dictum,* the International Court of Justice referred to 'basic rights of the human person', including the prohibition of slavery and racial discrimination and *the prohibition of aggression* and genocide, which it considered to be 'the concern of all States', without, however, expressly recognizing the concept of *jus cogens*. However, in its Advisory Opinion in the *Legality of Nuclear Weapons Case*, the ICJ did not find it a need to address the question whether universally recognized principles of international humanitarian law (applicable in time of armed conflict) are part of *jus cogens* as defined in Article 51. (35 *I.L.M.*, 1996, p. 828, para. 83).
[41] Report of the International Law Commission, 18th Session, [1966] II *YBILC* 172, pp. 248-9, 261.
[42] Nicaragua Case (Merits) I.C.J. Rep. 1986, p.14.
[43] *Ibid.,* p. 247.
[44] *Ibid.*, p. 199.

In view of the above, it could be argued that the rule of general international law prohibiting the unilateral use of force, especially as laid down by Article 2(4) of the U.N. Charter, constitutes *jus cogens.*[45] The International Law Commission observes that the prohibition of the threat or use of force undoubtedly constitutes peremptory norm of international law "from which States cannot derogate by treaty arrangements".[46] Authors such as *Guggenheim*, who see international law as dependent upon the consent and agreements of States, reject the peremptory nature of international customary law rules. Contrary to this position, *McNair* writes that States are not capable of evading peremptory norms of international law by the conclusion of special treaties. Article 103 of the U.N. Charter may be cited as evidence of the existence of a peremptory norm of international law going against the conclusion of treaties providing for unilateral military intervention.[47]

From the above discussion it may be inferred that article IV (2) of the Cyprus Treaty of Guarantee conflicts with *jus cogens* and is legally invalid. As a result, one could argue that Turkey may not claim a right for unilateral military intervention conferred by the Treaty of Guarantee. Even if the Treaty expressly provided for such a right (which is not the case), this would again be in plain violation of peremptory norms of international law.

*(ii) Treaties reached under Duress or Inequitable Treaties*

The legal position of the Cyprus Government, as later expressed in the United Nations by Mr. Kyprianou, then Foreign Minister, was that the "Constitution was foisted on Cyprus… The combined effect of the Constitution and the Treaty of Guarantee is that a situation has been created whereby the constitutional and political development of the Republic has been arrested at its infancy and the Republic as a sovereign State has been placed in a strait jacket".[48] The Minister of Foreign Affairs also argued that the treaties "were imposed on the Cypriot people (thus) making the international legal doctrines of unequal, inequitable and unjust treaties relevant". The resulting legal conclusion, according to Mr. Kyprianou, was that the 1960 Agreements were "unequal and inequitable treaties, as a result of which they cannot be regarded as anything but null and void".[49]

According to Oppenheim, real consent is a condition of the validity of a treaty.[50]An expression of consent procured by the coercion of its representative through acts or threats directed against him is generally agreed to be without legal effect, and Article 51 of the Vienna Convention on the Law of Treaties so provides:

[45] This peremptory norm may further be said to stem from the principle of State sovereignty.
[46] See U.N. Doc. A/5509, Supplement No. 9, p. 11-12; Watts, *The International Law Commission*, *ante*, p. 741.
[47] *U.N. Charter, Article* 103: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". The Vienna Convention on the Law of Treaties 1969 provides that the rules which it sets out regarding the rights and obligations of States parties to successive treaties relating to the same subject matter are subject to this Article.
[48] UN SCOR, 1098th meeting, 5 Aug. 1965, para.20 (1964).
[49] UN SCOR, 1235th meeting, para.25 (1964).
[50]Oppenheim-Lauterpacht, *International Law, ante*, Vol. I, pp. 802-803; Oppenheim, *International Law* Vol. I (9th ed. R.Jennings and A.Watts)*, ante*, p. 1290.

the Treaty is void not merely voidable.[51] Any treaty signed by a state under pressure exerted by another state is void.[52] Article 32(a) of the *Harvard* Draft Convention on the Law of Treaties, states:

> '*Duress involves the employment of coercion…If the coercion has been directed against a person signing a Treaty on behalf of a State, and with knowledge of this fact the treaty signed has been ratified by that State without coercion, the treaty is not to be considered as having entered into by the State in consequence of duress*'.[53]

The argument of the Cyprus government implies that unequal treaties- agreements imposing burdens on states in unequal bargaining positions- are themselves void. However, the Cyprus Government representatives never pressed this position to its logical conclusion, that the 1960 settlement was void.

*(iii) Sovereign equality*

Article 2(1) of the Charter of the United Nations declares that 'the Organization is based on the principle of sovereign equality of all its members'. It has been stated that the obligation of the Treaty of Guarantee 'to keep unalterable in perpetuity the constitutional structure and order' purports to deprive Cyprus of one of the fundamental requirements of state as an integral person, internal independence and territorial supremacy'.[54] This point is further elaborated; article IV of the Treaty of Guarantee conflicts both with customary international law and with article 103 of the UN Charter by violating the principle of 'sovereign equality' as laid down in article 2(1).[55]

Indeed, the Republic of Cyprus does not have the capacity to amend the fundamental or so called 'Basic Articles' of its Constitution. However, absence of such power is not regarded as being incompatible with the concept of independence, a necessary requirement for statehood.[56] By now, there should be no doubt that unilateral military intervention provided for, even expressly, by treaty right is not in accordance with public international law principles.

**3. Did the Treaty of Guarantee purport to authorize military action?**

The proper interpretation of certain expressions in the wording of Art. 4 is the subject of great controversy. 'Representations' may simply be a request to comply with a duty, but they could also take the form of a threat of violence, as and when the duty bound does not behave as it should.[57] The word 'measures' is also

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[51] See Oppenheim, *International Law*, *supra*, p. 1290; Lauterpacht, H., *Private Law Sources and Analogies of International Law* (London 1927); Brownlies, *International Law and the Use of by States, ante*, pp. 404-6; Watts, *The International Law Commission, ante*, p.737: "There is general agreement that acts of coercion or threats applied to individuals with respect to their own persons in their personal capacity in order to procure the signature, ratification, acceptance or approval of a treaty will unquestionably invalidate the consent so procured".

[52] See relevant discussion in Oppenheim-Lauterpacht, *ante,* Vol. 1, p. 802; Lauterpacht, H., *Private Law Sources and Analogies of International Law*, *supra* p. 74; McNair, *The Law of Treaties*, *ante*, p. 209, (1927) 26 *MLR*, pp. 139-151; Brierly, (1936) 58 *Recueil des Cours*, pp. 203-210.

[53] Harvard Law School Research on International Law, *ante*, p.1148.

[54] Tornaritis, C. *Cyprus and its Constitutional and Other Legal Problems* (Nicosia, 1977), pp. 58-59.

[55] *Ibid.*, pp. 42, 60. See also Jacovides, A. J., *Treaties Conflicting with Peremptory Norms of International Law and the Zurich-London Agreements* (Nicosia, 1966), pp.15-28.

[56] See Crawford, (1976) 48 BYBIL, p.93, at 123-4.

[57] Ronzitti, N. *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Martinus Nijhoff Publishers, 1985), p. 128.

ambiguous; as Articles 41 and 42[58] of the United Nations Charter demonstrate, it may mean actions of a peaceful although coercive nature, as well as those which involve the use of force.[59]

Terminological differences culminate over the interpretation of the right of each of the guaranteeing powers *to take action*. A vexed question remains whether the phrase *to take action* may also imply military action. The Greek side, as one would easily guess, answers in the negative. The Turkish side, of course, in the affirmative. The former is of the view that nothing in the Treaty warrants a forcible intervention by Turkey. Criton Tornaritis Q.C., formerly Attorney-General of the Cyprus Republic holds that irrespective of the validity of the Treaty of Guarantee, from the preamble and the provisions of which it appears that the guaranteeing powers were aiming at the protection of their own interests than the interests of the Republic of Cyprus, its Article IV invoked by Turkey does not grant the right to armed intervention to the guaranteeing Powers.[60]

Thus, great difficulty arises over ascertaining the intentions of the Treaty drafters which becomes even more acute in view of the very limited sources of information on the matter. The Treaty of Guarantee was initialled at the end of the Zurich Summit between Greece and Turkey of 5-11 February 1959; its content, however, was disclosed only after the London Conference.[61] The participants did not draw up an official record of the summit and the information available is unfortunately little. However, international law and international relations scholar, Stephen Xydis shades light to the events. His account is the outcome of interviews with the Greek representatives.[62] According to Xydis, Turkey submitted a draft to the Greek counterpart, probably after consulting the United Kingdom. The draft allowed the right to take unilateral action, without having previously determined if a common or concerted action was in fact possible. "At a certain point of the negotiations", Xydis goes on, "the Turkish side wanted specific reference to the right of resort to 'military' action for the purpose of restoring the state of affairs established by the treaty. The Greek side, however, contended that resorting to military action was prohibited by the U.N. Charter and was permissible only under a decision of the Security Council, if at all. Finally, the text was drawn up in its present form, with the Turks always having possible resort to force as the *ultima ratio* in mind, in contrast to the Greeks who did not".

However, it is, I consider, necessary to refer in this regard to the legal advice given by Sir Elihu Lauterpacht to the Cyprus Government after a consultation in London on 25 January 1964. Lauterpacht considers that the Treaty of Guarantee is valid. He does not, however, consider that the Treaty of Guarantee gives the right to *armed* intervention.[63]

More illuminating perhaps are the Security Council Debates of 1974. On 20 July 1974, during the debates before the Security Council, the Greek Cypriot representative put forward that Turkey's action contravened the treaty itself, as well as the UN Charter. He argued that the right *to take action* denotes only the application of peaceful measures and, furthermore it does not include armed aggression, which is forbidden to member

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

[59] Ronzitti*, supra* p. 128*;* Necatigil*, supra*, p.131.

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

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

[62] Xydis, S.G., *Cyprus: Reluctant Republic* (London 1973)

[63] Lauterpacht, Eli, Written Opinion, 1964 (the Opinion may be found in Clerides, G., *Cyprus: My Deposition, ante*, Appendix f pp. 386-7).

States, except in case of self-defence.[64] The Turkish representative, on the other hand, stressed that the Treaty of Guarantee gave Turkey the right to take military action, aiming at establishing constitutional administration in the island and protecting the rights of the Turkish Cypriots.[65]

The United Kingdom did not take up a position regarding the content of Article IV (2) of the Treaty of Guarantee. Nevertheless, great light is shed on the British position by the debates before the House of Commons, particularly by a report prepared by the Select Committee appointed to conduct an examination of the Cyprus situation.[66] The Foreign Secretary replied in the following manner to the Members of Parliament who asked him whether, under Art. IV (2), the United Kingdom had the right to use force as and when there was a breach of the Treaty of Guarantee: "I dare say legally we had". From a careful reading, though, of the Select Committee's records, the Foreign Minister seemed to hesitate; not because he was not of the opinion that Article IV of the Treaty of Guarantee gave a right to military intervention, but because he doubted if it was wise from a political standpoint to use such a right. The parliamentary Committee stated: "Britain had a legal right to intervene, she had a moral obligation to intervene, she had the *military capacity* to intervene. She did not intervene for reasons which the government refuses to give".[67] In a recent House of Lords Debate on the Cyprus question, Lord Caradon referred to article IV of the Treaty of Guarantee and said these:

> "*Having signed the treaty with the authority of Her Majesty's Government I have naturally watched subsequent events in the island of Cyprus with dismay and shame that we should have given an undertaking and have failed so shamefully to carry it out*".[68]

Apart from the United Nations debates and the United Kingdom Parliamentary Papers so far considered, the available travaux preparatoires are of little help on ascertaining the intentions of the Treaty drafters concerning whether intervention must be by peaceful means alone or it may consist of measures amounting to the use of force. Even so, there exist documents of considerable gravity with regard to this point. During discussions by the London Joint Committee[69] of one particular annex, namely, Annex C on the status of forces, the Greek delegation proposed the inclusion of a provision dealing with the settlement of disputes. The Cyprus Official Committee, in which the views of Whitehall Departments were coordinated, considered the matter and concluded that the most satisfactory proposal was that a disputes article covering the whole Treaty and its Annexes should be included in the Treaty of Establishment.[70] The following is the crux of the said article:

> *"Any question of difficulty as to the interpretation or application of the provisions of the present Treaty shall be settled as follows: Any question or difficulty that may arise over the application or operation of the military requirements of the United Kingdom, or concerning the provisions of the present Treaty in so far as they affect the status, rights and obligations of United Kingdom forces or any other forces associated with them under the*

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[64] UNSC S/PV 1781; UN Monthly Chronicle 1974, vol. xi, No.8, 21-3. He proceeded to state that even though it could be assumed that the treaty gave a right to take military action, this right could be resorted to only for the protection of the Constitution.
[65] Necatigil, *The Turkish Position in International Law, ante*, p. 113.
[66] See, Report from the *Select Committee on Cyprus* together with the *Proceedings of the Committee*, Minutes of Evidence and Appendices, Session 1975- 76, Ordered by the House of Commons to be printed, 8th April 1976, H.M.S.O., London.
[67] Report from the *Select Committee on Cyprus* together with the *Proceedings of the Committee*, Minutes of Evidence and Appendices, Session 1975-76, *supra*, p. x (emphasis added).
[68] *Parliamentary Debates (Hansard), House of Lords* (Official Report), vol. 44, No. 80, 20 Apr. 1983, 618.
[69] The London Joint Committee, on which the United Kingdom, Greece, Turkey, the Greek-Cypriot and Turkish Cypriot communities were represented, was engaged in drafting the Treaty of Establishment of the Republic of Cyprus.
[70] See letter from Sir Gerald Fitzmaurice, Legal Adviser to the Foreign Office, to the Rt. Hon. Sir Reginald Manningham-Buller, Q.C., M.P., Attorney-General. {*Foreign Office* (F.O.) 371/152871, Public Records Office}.

*terms of this Treaty, or of Greek, Turkish and Cypriot forces, shall ordinarily be settled by negotiation between the tripartite Headquarters of the Republic of Cyprus, Greece and Turkey and the authorities of the armed forces of the United Kingdom".*[71]

So, if any such controversy came about (and actually did come about in the subsequent years) the interested parties would be under an obligation to settle their differences by means of peaceful negotiation and therefore resolve any difficulty regarding interpretation of Treaty provisions on armed forces rights and obligations. It may be deducted that the need for proper interpretation of Art. IV (2) should be resolved in this context. Further, the above mentioned article provides a mechanism by which a tribunal is set up, in order to decide on matters which negotiation cannot settle. Unfortunately, the provisions of this article have not been complied with by Turkey before the events of her intervention in Cyprus 1974.

**4. Criteria set by the Guarantee Treaty and the conduct of Turkey**

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

By Art. 4, the Treaty of Guarantee expressly provides for joint consultations between Greece, Turkey and the U.K., before any action is taken following such a Treaty. The machinery of joint consultations should have been put in practice and only on a failure of such consultations could unilateral action have been undertaken. Obviously, this machinery was not initiated. As a matter of undeniable fact, the Turkish Premier, Mr Bulent Ecevit, flew to London on 17 July 1974 to seek British coordination under the Guarantee Treaty. It was made clear that if Britain was unwilling to act (which was the case) Turkey was in a position to intervene on its own.[72] As Mr. Callaghan, the British Foreign Secretary, said at the Geneva Conference, before Greece could be brought into the picture as guarantor, Turkey undertook unilateral action in Cyprus. The communication of views between the Turkish and Greek Governments via the mediation initiative of Mr. Sisco, the U.S. Under-Secretary of State, cannot be alleged to amount to the consultations envisaged by Art. 4.

It follows that the extensive nature of the Turkish intervention was itself in contravention to the Treaty of Guarantee provisions, particularly Article IV (2). It may also be said to have been contrary to Article II, by which Turkey, Greece and the United Kingdom undertook "to prohibit activity aimed at promoting directly or indirectly either union of Cyprus with any other State or *partition* of the island". The de facto military occupation and division of Cyprus until nowadays clearly violates the above provision.

Despite the fact that the Turkish Government was assured at the Geneva Conference for the reestablishment of constitutional government and the safety of the Turkish Cypriots, Turkey proceeded to a second round of military action.[73]

The mass killing and brutal treatment of innocent Greek Cypriot civilians during the hostilities, the uprooting of others from their homeland and subsequent reduction to the tragic status of refugee, the

[71] F.O. 371/15289, Public Records Office.
[72] Necatigil, *The Turkish Position in International Law, ante* p. 94
[73] *Parliamentary Debates (Hansard), House of Commons*, No.23, 1986-87, para. 99: "it is our view –evidently shared by most of the international community- that the extention and entrenchment of the Turkish occupation of northern Cyprus in August 1974 and subsequently, was illegal both in terms of the 1960 Treaties and in terms of the UN Charter and general international law".

unascertained fate of missing persons, the destruction of cultural property, and the occupation until nowadays of large part of the Cyprus Republic territory rather seem to argue against a valid invocation of the Treaty of Guarantee Article VI (2) by Turkey.

The subsequent establishment of the so called Turkish Federated State of Cyprus (TFSC) in 1975, and of the "Turkish Republic of Northern Cyprus" (TRNC) in 1983, both acts condemned by the international community, rather suggest that the real aim of the Turkish intervention was not so much the restoration of constitutionalism or the protection of the Turkish Cypriot community;[74] it could most probably be the case that the intervention was also dictated by other considerations.

**6. Stance taken by the International Community**

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

The Resolutions of the U.N. Security Council and General Assembly indicate that the Turkish invasion was an illegal act. Mention shall be made only to some of them which characteristically stress the unlawfulness of the military intervention.[75] Security Council Resolution 353 (1974), passed on the 20th of July 1974, reads as follows:

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

Subsequent Resolutions of 1974 have confirmed Resolution 353.
The Security Council by Resolution 365 (1974) adopts General Assembly Resolution 3212.[76]

It is noteworthy that, although the United Nations Resolutions do not expressly go against the Turkish invasio*n,* they amply illustrate that the intervention was an illegality. Further, it should be stressed that the words "calls upon", used in the Resolutions, have, according to some scholars, binding force.[77]

[74] See MacDonald, *International Law and the Conflict in Cyprus*, *ante*, p. 37: "It is concluded that, even if there is jurisdiction in customary international law or in the provisions of the Charter for the intervention in 1974, or for a continued presence in Cyprus, such continued presence over a protracted period of time is rendered legally doubtful by the Security Council resolutions adopted in regard to Cyprus since 1974".
[75] See the Resolutions of the Security Council 353 (1974) of the 20th July 1974, 354 (1974) of the 23rd July 1974, 355 (1974) of the 1st August 1974, 358 (1974), 359 (1974) of the 15th August 1974, 360 (1974) of the 16th August 1974, 361(1974) of the 30th August 1974, 364 (1974) of the 16th December 1974.

[76] UN General Assembly Resolution 3212 (1974): "1. Calls upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and to refrain from all acts and interventions directed against it; 2. Urges the speedy withdrawal of all foreign armed forces and foreign military personnel from the Republic of Cyprus and the cessation of all foreign interference in its affairs;"
[77] Goodrich and Hambro, *The Charter of the United Nations, ante*, p. 545.

**7. Conclusion**

In spite of the above, it seems difficult to me to overlook the, admittedly, strong arguments advocating for the legality of armed intervention accorded by treaty right, especially the ones premised upon the principles of *pacta sunt servanda* and, perhaps more importantly, *volenti non fit injuria*. The latter surely indicates the vital role played by states themselves in the determination of their own fate and the development of international relations. Simultaneously, one should not overlook the particular and complex circumstances surrounding the 1960 Zurich-London Agreements, mainly the various interests of the parties to the Cyprus Treaty. Nevertheless, having regard to the equally powerful arguments militating against unilateral armed intervention envisaged by treaty, it may be concluded that Turkey should not have exercised a right of intervention in Cyprus, 1974; such a proposition could remain subject to criticism, in view of the peculiarities of the Cyprus issue.[78] However, even if military action can occasionally be provided for by treaty, a stipulation of this kind must essentially be in harmony with moral values and the political context of a given society. In my opinion, and according to an objective historicopolitical appraisal, the circumstances of Cyprus are such that a treaty right of unilateral military intervention could not be potentially provided for Turkey. Also, the state of Public International Law since the passing of the United Nations Charter clearly indicates that treaties providing for military intervention in the internal affairs of States, particularly their constitutional order, cannot be held as being legally valid or correct.

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

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

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

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[78] Ronzitti cites Wengler: "a treaty providing for a right to intervene against the will of a future government of the other State is regarded as prohibited by a jus cogens rule of general international law. Nonetheless, an exception may be valid if intervention is permitted to secure the upholding of an arrangement among different peoples each other exercising its right of self-determination, to live together in one State". He then concludes that Wengler's observation fits perfectly the case of Cyprus". (*Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity, ante*, p. 134). For the issue of self-determination and its application to the Cypriot Communities, see below Chapters IV and VII of the present thesis.

It remains the case that survival is of utmost importance for a nation. In international affairs, as in the Cyprus case, strategy considerations should be taken into account in conjunction with International Law, the latter providing a basis for international politics and conversely the former conforming to international legality.