



CYPRUS IN INTERNATIONAL LAW

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ABSTRACT

*The Cyprus issue is only a small item on the international law agenda but there is no other example in modern history of such a small piece of land with 135 UN Security Council resolutions about it, continuously affecting a geographical area at least 560 times larger than itself (the Middle East) and probably having an indirect impact on an area (the Eastern Mediterranean) even larger than that. However, the majority of the academic literature deals with the political aspects of the Cyprus issue and there are very few articles and/or essays that examine it as a case of international law, which is the main aim of this article. The article focuses on the events that caused Turkey to intervene in Cyprus in 1974 and the murder of the US Ambassador, examines the judgment of the European Court of Human Rights in the Loizidou case, and discusses the issues of sovereign state, recognition, *ratione temporis*, intervention and occupation whilst offering a critique of them.*

1. INTRODUCTION

It is commonplace to start an essay with some reference to the recent history of events, but the Cyprus issue cannot be understood without examining the humanitarian experiences that took place before Turkey's intervention in 1974, which according to most legal scholars is the year when the legal problems started. I personally have witnessed the bitterness of the recent history of the island since I lost my classmate Mustafa^[1] when we were only eight years old, and saw the holes of the five bullets that penetrated through my father's coat, leaving blood stains that decayed and turned dark black along the time. Over the long years the blood stains have faded to become almost invisible, however, the sorrow in Turkish Cypriots' memories stays alive since the Cyprus problem has remained unsolved for half a century.

The case of Cyprus attracted great concern as an international legal issue when Turkey took military action in Cyprus in 1974, and the legal arguments reached a climax when Turkey was held responsible for its intervention by the European Court of Human Rights (ECHR) in 1998. This essay discusses the legal arguments behind that judgment and makes a final analysis not solely on whether the decision was correct or not but whether it is based on strong and satisfactory grounds with sufficient reference to international law sources. One of the issues the ECHR ignored was the series of events that led Turkey to intervene which when considered in detail were strong enough to change the outcome of the judgment. A detailed examination of the background of the case from as early as the 1950s should be made not for the sake of general information but to illustrate explicitly how everything started. It would be much easier to discuss the Cyprus issue as a subject of international public law and prove that the Turkish Republic of Northern Cyprus (TRNC) is a fully sovereign state but that effort would be purely theoretical since there is an international court decision stating that TRNC is not a state according to international law. Whether a tribunal can decide the statehood of an entity deserves another academic study but with the ECHR judgment in hand, primarily it is inevitable to challenge that judgment and prove TRNC is a sovereign state in that context.

[1] Muratağa, Sandallar and Atlılar are the three Turkish villages that were attacked by a terror organization called EOKA-B which was founded by Greek Cypriots as a part of a plan named "*Acridas*" to eliminate all the Turkish Cypriots within 72 hours. The raid took place on August 14, 1974 and 126 innocent Turkish civilians were killed, one of them my eight-year-old class mate Mustafa. Only three people somehow managed to escape from the massacre in Atlılar. All the dead were buried in mass graves by bulldozers. The United Nations described the massacre as a crime against humanity, by saying "*constituting a further crime against humanity committed by the Greek and Greek Cypriot gunmen.*" The massacre was reported by international media, including The Guardian and The Times.

2. RECENT HISTORY AND THE FOUNDATION OF THE REPUBLIC OF CYPRUS

Cyprus is the third biggest island in the Mediterranean Sea and is widely acknowledged to have great strategic importance due to its closeness to the rich oil fields of the Middle East as well as the Suez Canal. Throughout history, nearly all the leading powers have occupied or at least attempted to occupy the island. In chronological order, Hittites, Assyrians, Egyptians, Persians, Arabs, Lusignans, Venetians, and Ottomans occupied the island at some time. The Ottoman conquest of the island took place in 1571 and the Ottomans ruled Cyprus successfully for more than three centuries. When the Ottoman empire started to experience military threats and rivalry from the Russian empire, the Ottomans made a lease agreement about Cyprus with the British who undertook to help the Ottomans against possible Russian aggression^[2] and thus started to govern Cyprus from 1878. However, when the Ottomans joined World War I against Britain, the British administration declared the leasing agreement to be invalid and took over the island. The island was, and still is, an important military base for Britain and was vital to control the security of its colonial interests. The British built a harbour in the eastern city of Famagusta in 1906 and the island's strategic importance doubled with military facilities giving the opportunity to control the Suez Canal, the crucial route to the most important colonies of the British empire, notably India as well as Australia. On November 5, 1914 the British took advantage of their military presence in the island and officially annexed it as a colony on the argument that the Ottoman empire was at war against Britain, allying with the Germans. It was part of British policy to promise the natives of the colonies their independence so as to convince them to join British military campaigns against Germany in World War I. Cyprus was no exception to this policy, and many Greek Cypriots joined Her Majesty's forces in both World Wars, hoping that Britain would offer them Cyprus and also that they would have the opportunity to unite the island with their motherland of Greece. In 1923, Turkey ceased to claim its legal rights over Cyprus^[3] as part of the provisions of the Treaty of Lausanne^[4], and in 1925 the island was declared a British crown colony.

There was a favourable atmosphere for the Greek Cypriots to put their historical aims into practice and the Church of Cyprus took the lead by organizing

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- [2] H. James Meyer, "Policy Watershed: Turkey's Cyprus Policy and the Interventions of 1974," WWS Case Study 3/00, 4. Available at: <http://www.princeton.edu/research/cases/cyprus.pdf>, accessed on December 20, 2011.
- [3] Article 20 of the Lausanne Treaty: "Turkey hereby recognises the annexation of Cyprus proclaimed by the British Government on the 5th November, 1914."
- [4] The Treaties of Peace 1919–1923, Vol. II Treaty of Peace with Turkey Signed at Lausanne, July 24, 1923 (New York: Carnegie Endowment for International Peace, 1924).

a referendum in 1955 to determine whether union with Greece (known as enosis) was desired.^[5] The Greek Cypriots voted in favor of enosis, with more than 90% voting in favour, but the Turkish Cypriots did not even attend the referendum and boycotted it. The British sensed the oncoming danger and offered the Greek Cypriots a restricted autonomy under a constitution but that was not welcomed by the leading extreme elements of the Greek Cypriots. The same year the EOKA^[6] organization was founded, declaring its main aim as independence and union with Greece, with or without the use of armed force. As a reaction to these events the Turkish Resistance Organization (TMT)^[7], unlike the EOKA calling for Taksim (partition in Turkish), was founded by the Turkish Cypriots as a defence unit. The island started to tremble with military preparations that created turmoil which was only temporarily suppressed by use of extra force by the British^[8].

On August 16, 1960, Cyprus attained independence after the Zürich and London Agreement between Great Britain, Greece and Turkey. The UK retained the two Sovereign Base Areas of Akrotiri and Dhekelia, while government posts and public offices were allocated by ethnic quotas, giving the Turkish Cypriots a permanent veto, 30% in parliament and administration, and granting the three “*mother-states*” guarantor rights.

3. THE ZÜRICH AND LONDON AGREEMENTS

The Zürich and London Agreement for the constitution of Cyprus^[9] started with an agreement on February 19, 1959 in Lancaster House in London, between Turkey, Greece, the United Kingdom and Cypriot community leaders (Archbishop Makarios III for the Greek Cypriots and Dr Fazıl Küçük for the Turkish Cypriots).

On that basis, a constitution was drafted^[10] and agreed together with two

[5] Rupert Emerson, “*From Empire to Nation: The Rise to Self-Assertion of Asian and African Peoples*” (Boston: Beacon Press, 1960), pp. 295-328.

[6] EOKA (Ethniki Organosis Kypriou Agoniston): Greek abbreviation for National Organization of Greek Cypriot Fighters. It was a Greek Cypriot nationalist paramilitary organization that fought a violent campaign during which many civilians murdered for the end of British rule of Cyprus followed by eliminating the Turkish population in the island. See dn:1.

[7] TMT was the local resistance force founded to defend Turkish Cypriots with small arms, since all imports were under Greek control, against armed attacks from Greeks and it was partially successful until 1974.

[8] Meyer, “*Policy Watershed*,” 6.

[9] The full text may be accessed at: <http://www.kypros.org/Constitution/English/>

[10] The Constitution was prepared in 15 months by a commission of experts representing the two communities, Greece, Turkey and the UK. A Swiss Professor of Constitutional Law, Prof. Marcel Bridel of Lausanne University, was the legal adviser to it.

further Treaties of Alliance and Guarantee^[11] in Zürich on February 11, 1960. Together with the Zürich and London Agreements, two other treaties were also agreed upon in Zurich. The Treaty of Guarantee was designed to preserve the territorial independence of the Republic of Cyprus. Cyprus and the guarantor powers (the United Kingdom, Turkey, and Greece) promised to prohibit the promotion of “*either the union of the Republic of Cyprus with any other state, or the partition of the Island*”.

Article IV of the Treaty of Guarantee states:

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

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

The Constitution provided for under the Agreements divided the Cypriot people into two communities on the basis of ethnic origin. The President had to be a Greek Cypriot elected by the Greek Cypriots, and the Vice-President a Turkish Cypriot elected by the Turkish Cypriots. The Vice-President was granted the right of a final veto on laws passed^[12] by the House of Representatives and on decisions of the Council of Ministers which was composed of ten ministers, three of whom had to be Turkish Cypriots nominated by the Vice-President.

In the House of Representatives, the Turkish Cypriots were elected separately by their own community. The House had no power to modify the basic articles of the Constitution in any respect and any other modification required separate majorities of two thirds of both the Greek Cypriot and the Turkish Cypriot members. Any modification of the Electoral Law and the adoption of any law relating to municipalities or any fiscal laws required separate simple majorities of the Greek Cypriot and Turkish Cypriot members of the House. It was thus impossible for representatives of one community alone to pass a bill.

The highest judicial organs, the Supreme Constitutional Court and the High Court of Justice, were presided over by neutral presidents – neither Greek-Cypriot nor Turkish-Cypriot – who by virtue of their casting votes were supposed to maintain the balance between the Greek and Turkish members of the courts. Whereas under the previous regime Greek Cypriot and Turkish Cypriot judges tried all cases irrespective of the origin of the litigants, the Constitution provided that disputes among Turkish Cypriots be tried only by

[11] No. 5475, Treaty of Guarantee, signed at Nicosia on August 16, 1960 by the parties: The Republic of Cyprus, Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland. The full text may be accessed at: [http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/484B73E4F0736CFDC22571BF00394F11/\\$file/Treaty%20of%20Guarantee.pdf](http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/484B73E4F0736CFDC22571BF00394F11/$file/Treaty%20of%20Guarantee.pdf)

[12] However the Turkish-Cypriot vice-president never had the chance to use that tool.

Turkish Cypriot judges, disputes among Greek Cypriots by Greek Cypriot judges only, and disputes between Greek Cypriots and Turkish Cypriots by mixed courts composed of both Greek Cypriot and Turkish Cypriot judges. Thus, to try the case of a petty offence which involved both Greek and Turkish Cypriots, two judges had to sit. The procedure was expensive and conducive to creating a biased judiciary.

In addition, separate Greek and Turkish Communal Chambers were created with legislative and administrative powers in regard to educational, religious, cultural, sporting and charitable matters, cooperative and credit societies, and questions of personal status. Separate municipalities were envisaged for Greek Cypriots and Turkish Cypriots in the five largest towns of the island. As the population and properties were intermixed, the provisions were difficult and expensive for the small towns of Cyprus to implement. Turkish Cypriots held 30% of the posts in the civil service and comprised 40% of the police force and army.

The United Nations Mediator on Cyprus, Dr Galo Plaza, described the 1960 Constitution created by the Zürich and London Agreements as “*a constitutional oddity*,”^[13] and reported that difficulties in implementing the treaties signed on the basis of those Agreements had begun almost immediately after independence^[14].

Within three years the functioning of the legislature started to fail, and in 1963, when the fiscal laws under Article 78 of the Constitution expired, the House of Representatives split along straight communal lines and failed to renew the income tax upon which the public finances depended. The Greek Cypriots managed to control the financial structure as the sole legitimate Government of Cyprus whereas the Turkish Cypriots strongly depended on aid from Turkey.

4. FIRST BLOOD

The Greeks have historically been planning to annex Cyprus to Greece. As early as 1881, the British High Commissioner in Cyprus informed the British Colonial Secretary that there were about 600 Hellenic subjects (meaning newcomers from Greece) on the island^[15]. Another report was sent in 1900 that the whole Greek school system was used as a Hellenic propaganda for enosis^[16].

[13] Para. 163 of Report to the U.N. Secretary-General in March 1965. Full text accessible at: <http://europenews.dk/files/Galo%20Plaza%20report.pdf>

[14] *Ibid*, paragraph 129.

[15] Michael Stephen, *The Cyprus Question. A Concise Guide to the History, Politics and Law of the Cyprus Question* (London, 2000, Northgate Publications), 6.

[16] It refers to the movement of the Greek-Cypriot population to incorporate the island of Cyprus into Greece. Similar movements had previously developed in other regions with ethnic Greek majorities such as the Ionian islands, Crete and the Dodecanese. These

It has also been reported that during the period from 1914 to 1939 around 80,000 Turkish Cypriots were forced to emigrate to Turkey^[17].

The Greek Cypriots saw British rule as the biggest obstacle to enosis and started a rebellion between 1950 and 1960 during which 371 British soldiers were killed^[18]. The rebels had the help of military elements from Greece under the command of General Georgios Grivas^[19] who was encouraged spiritually^[20] and financially^[21] to buy explosives and arms partly by the Cyprus President Archbishop Makarios and partly by the Greek government^[22] in Athens. The rebellion was not for independence but for enosis^[23] and this ambition also explains why, after the foundation of the Cyprus Republic as a free state, the Greek Cypriots started to kill the Turkish Cypriots as they were the next obstacle to their plan.

In 1963, inter-communal violence broke out which resulted in Turkish Cypriots being forced to move into enclaves^[24]. Cypriot President Archbishop Makarios III, who was also a fanatical pro-enosis leader^[25], never deviated from that goal^[26] ^[27]. He declared that he would not comply^[28] with the provisions of the Constitution of Cyprus which underlined the partnership status of the Turkish Cypriots and thus prohibited union of Cyprus with Greece, called for unilateral constitutional changes on the reasoning that the Constitution was unworkable. The statements made by President Makarios were accepted as one

regions were eventually incorporated into the Greek state.

[17] Stephen, *The Cyprus Question*. 7.

[18] Chris Summers, 'Can Cyprus overcome its bloody history?' BBC News, 23 November 2009, <http://news.bbc.co.uk/2/hi/8321765.stm> accessed on December 14, 2011.

[19] On November 15, 1967 the Greek Cypriot National Guard under his direct command overran two small villages on the critical Larnaca-Limassol-Nicosia intersection, resulting in the deaths of 27 people, mostly unarmed Turkish-Cypriot civilians as well as Turkish-Cypriot resistance fighters at Kofinou and Agios Theodoros. The immediate result of this event was Turkey's ultimatum, which prompted the Greek military government to recall both the Greek Division and General Grivas to Athens.

[20] Stanley Mayes, *Makarios, A Biography* (London and Basingstoke: Macmillan, 1981), 51.

[21] *Ibid.*, 58.

[22] Evangelos-Tossizza Averoff, *Lost Opportunities, The Cyprus Question, 1950–1963* (New Rochelle, NY: Caratzas 1986), 151.

[23] Stephen, *The Cyprus Question*. 8.

[24] Michael Moran, "How the Turkish Cypriots Were Deprived of their Constitutional Rights in 1964/5," in *Sovereignty Divided. Essays on the International Dimensions of the Cyprus Problem* (Lefkoşa, Turkey: CYREP, 1999), 1.

[25] Ahmet Gazioglu, *Two Equal and Sovereign Peoples. A Documented Background to the Cyprus Problem and the Concept of Partnership* (2nd edn, Lefkoşa, Turkey: CYREP, 1999), 1.

[26] Brendan O'Malley and Ian Craig, *The Cyprus Conspiracy. America, Espionage and the Turkish Invasion* (London: I.B. Taurus, 2007), 90.

[27] M. Necati Ertekin, *The Cyprus Dispute and the Birth of the Turkish Republic of Northern Cyprus*, 2nd edn (Oxford University Press, Oxford), 3.

[28] Zaim Necatigil, *The Turkish Republic of Northern Cyprus in Perspective* (Nicosia, 1985), 3, Publisher, Z.M. Nejatigil, 1985.

of the main reasons for the violence^[29] of the inter-communal hostilities which were ignited by Greek police officers murdering^[30] two unarmed Turkish civilians^[31] in Nicosia. The violence continued with a notorious incident where armed Greek Cypriots broke into the house of a Turkish army doctor (present subject to the provisions of the Treaty of Guarantee), killing his wife (shot in the head) and his three children together in the bath whilst the children desperately clung to their mother, and also a woman who lived next door^{[32], [33]}. It was directly after this event that my own father and his four friends went to see the factual situation. They were shot by Greek military elements from Greece, three of them dead and two seriously injured. The following January the dead bodies of 21 Turkish Cypriots were found in a mass grave^[34] their hands and feet tied and their bodies having the signs of heavy torture before they were shot in the village of Ayios Vasilios. The events which resulted from the breakdown of the Constitution caused 103 Turkish villages to be destroyed and 25,000 Turkish Cypriots to be made refugees in their own country, more than 364^[35] of them killed^[36]. The Vice-President publicly declared that the Republic of Cyprus had ceased to exist, and along with the three Turkish-Cypriot Ministers, the Turkish-Cypriot members of the House withdrew, as did Turkish-Cypriot civil servants since they feared being murdered too if they insisted on continuing their official duties.

In 1964, Turkey tried to intervene in Cyprus in response to the ongoing Cypriot inter-communal violence, as one of the Guarantors according to the Treaty of Guarantee. This initiative was stopped by a strongly worded letter from the US President, Lyndon B. Johnson on June 5, warning that the United States would not stand beside Turkey in the event of a consequential Soviet invasion of Turkish territory. Months after the killings, on March 27, 1964, UN Peace keeping Forces (UNFICYP) were deployed in Cyprus at flash points, but no investigation of any nature was made to find those responsible for the massacres of 1963 and none have, even up to now.

It is possible to increase the number of examples in which armed Greek Cypriots killed their Turkish neighbours without mercy. There were some fewer events that involved the Turkish Cypriot minority^[37] retaliating against the

[29] Meyer, "Policy Watershed," 10.

[30] Andrew Borowiec, *Cyprus. A Troubled Island* (Westport, CT: Praeger 2000) 53.

[31] UN Refugee Agency Refworld, Report: <http://www.unhcr.org/refworld/country,,CHR ON,CYP,469f387d1e,0.html> (accessed December 2011).

[32] O'Malley and Craig, *The Cyprus Conspiracy*, 92.

[33] The house is still preserved untouched in Nicosia and named 'The Museum of Barbarism'.

[34] O'Malley and Craig, *The Cyprus Conspiracy*, 93.

[35] Meyer, "Policy Watershed," 10.

[36] Necatigil, *The Turkish Republic of Northern Cyprus*, 5.

[37] The term minority is used here only to express the fact that Greek Cypriots outnumber Turkish Cypriots in the population. Turkish Cypriots are not legally defined as a "minority"

attacks and killing some Greek Cypriots although, even according to neutral observers, the Turkish Cypriots had no intention of making the first move, organizing themselves primarily for defence^[38]. However, this article does not aim to show how bloody or fierce were the massacres against the Turkish community, which is explicitly narrated by independent sources^[39] including a large body of publications. Instead, this article draws attention to the point that it was the Greek Cypriots who shed the first blood in Cyprus, motivated by their historical aim of achieving enosis. The first blood does not always justify the counter attack of the party whose blood was shed: there are many other issues within the legal context like proportionality and reasonability, which are elements of self-defence as a general term of criminal law, and which are reflected in international law^[40]. Before making that legal evaluation, however, it is important to demonstrate how fatal was the threat to Turkish Cypriots' lives triggered by the very first move because only then can it be understood whether it was inevitable for Turkey to intervene in Cyprus.

After the events settled down a difficult period started for Turkish Cypriots between 1963 and 1974. They formed their own government known as the General Committee^[41] and tried to tackle the problems of resettling over 20,000 refugees^[42] in addition to the financial problems of the civil servants who had lost their posts. Assistance came largely from Turkey and partly from UNFICYP. For seven years the Turkish Cypriots lived in poverty restricted to the cantons^[43] and with the fear of a repetition of the killings by the de-facto holders of the Cyprus Republic, that is Greek Cypriots, and did not receive a single coin from the legal Cyprus Republic. This period largely occupies my childhood memories: when crossing Greek areas my father's car was regularly checked by armed Greek soldiers. As a child I did not understand why there was only one Turkish film on the state television channel once a month and we were obliged to watch Greek television programmes for the other 29 days of the month. Apart from another attack made on a Turkish village in 1967, things seemed calm till 1974, but the gulf between the two communities widened.

On July 15, 1974 the Greek military junta carried out a coup d'état against

in any legal text including the Cyprus Constitution and on the contrary UN Security Council Resolution No. 774, August 25, 1992, speaks of two equal communities.

[38] Mayes, Makarios, A Biography, 161.

[39] Scott Harry Gibbons, *The Genocide Files, A Charles Bravos Modern History* (London: Charles Bravos, 1997).

[40] Oppenheim's *International Law*, Volume 1, Peace, ed. Robert Jennings and Arthur Watts (9th edn, Harlow, Essex: Longman, 1992), "Intervention," par. 131, "*Circumstances which may justify intervention*," 439.

[41] Necatigil, *The Turkish Republic of Northern Cyprus*, 9.

[42] Which was more than 10% of the whole Turkish Cypriot population at the time.

[43] M. Necati Ertekün, *The Cyprus Dispute and the Birth of the Turkish Republic of Northern Cyprus* (2nd edn, Oxford University Press, Oxford, 1983), 14-16.

Macarios, during which at least 2,000 of his supporters were killed in the four days of the coup^[44] by Greek militia. This time they were led by another pro-enosis leader known to have murdered Turkish civilians, Nicolaos Sampson, who later admitted that he was about to proclaim enosis before he had to quit^[45]. It would be naive to expect Greeks who had killed their Greek Christian brothers to show mercy to their historical enemy: Muslim Turks.

Following the coup Makarios fled the island and pointed out that even the Turks were in great danger^[46]. In response, Turkey decided to exercise its right of guarantee derived from Article 4 of the Treaty of Guarantee, and invited^[47] the UK to intervene^[48] in Cyprus together with it in order to protect Turkish Cypriots. This may still be interpreted as Turkey's willingness to preserve^[49] the legal status quo on Cyprus, according to the 1960 Zürich-London Agreement but, when the UK declined, Turkey started a full-scale military action on July 20, 1974.

The Turkish air force began bombing Greek positions on Cyprus, hundreds of paratroops were dropped in the area between Nicosia and Kyrenia, while off the coast of Kyrenia, 30 Turkish troop ships protected by destroyers landed 6,000 men as well as tanks, trucks, and armoured vehicles. Three days later, when a ceasefire had been agreed, Turkey had landed 30,000 troops on the island and captured Kyrenia, the corridor linking Kyrenia to Nicosia, and the Turkish Cypriot quarter of Nicosia itself. The junta in Athens, and then the Sampson regime in Cyprus, fell from power^[50]. In Nicosia, Glafkos Clerides assumed the presidency and constitutional order was restored to what it was before the Greek junta's coup, but the situation was nothing like it was before 1963. The EOKA was still on the scene, this time assassinating and murdering the US Ambassador Rodger Davies and his secretary^[51] on August 19, 1974 in protest over the position of the US during Turkey's intervention, illustrating that the constitutional order was never restored. The Greek-Cypriot forces were unable to resist the Turkish advance and, during two military actions that took five days overall, 37% of the island was taken over by the Turkish army^[52]. The supremacy of the Turkish army was more than enough to take over the whole island within the next few days, which is still the case. Nevertheless, the army

[44] Borowiec, *Cyprus. A Troubled Island*, 84.

[45] Necatigil, *The Turkish Republic of Northern Cyprus*, 11.

[46] Ertekün, *The Cyprus Dispute*, 32.

[47] Meyer, "*Policy Watershed*," 16.

[48] Jan Asmussen, *Cyprus at War, Diplomacy and Conflict during the 1974 Crisis* (London: I.B. Tauris, 2008), 291.

[49] *Ibid.*, 16.

[50] Meyer, "*Policy Watershed*".

[51] Nancy Crawshaw, *The Cyprus Revolt, An Account of the Struggle for Union with Greece* (XXX: XXX, G. Allen & Unwin, London, 1978), 393.

[52] *Ibid.*, 2.

stopped at a certain point, showing that Turkey's intention was not to occupy the whole island, an issue which even US Foreign Secretary Henry Kissinger was sure of^[53].

Around 180,000 Greek Cypriots moved from the north to the Cyprus Government controlled area in the south, whereas around 50,000 Turkish Cypriots moved to the areas under the control of the Turkish forces and settled in the properties of the displaced Greek Cypriots. Around 7,250 Turkish Cypriots moved into British Sovereign Bases as refugees and refused to return to their homes which were under the control of the Republic of Cyprus due to their fear of death, and insisted they would only move to the Turkish military controlled zone in the north^[54]. To this day, 1,534 Greek Cypriots and 502 Turkish Cypriots are missing as a result of the fighting. The events of the summer of 1974 dominate politics on the island, as well as Greco-Turkish relations.

The last major effort to settle the Cyprus dispute was the Annan Plan in 2004. It gained the support of the Turkish Cypriots but was rejected by the Greek Cypriots, who perceived it as disproportionately favorable to the Turks. On May 1, 2004 Cyprus joined the European Union (EU) together with nine other countries.

In March 2008, a wall that for decades had stood at the boundary between the Republic of Cyprus and the UN buffer zone was demolished. The wall had cut across Ledra Street in the heart of Nicosia and was seen as a strong symbol of the island's 32-year division. On April 3, 2008, Ledra Street was reopened in the presence of Greek and Turkish Cypriot officials.

The legality of the invasion is still widely debated. It depends on whether common or concerted action between the United Kingdom, Greece and Turkey had proved impossible and whether the outcome of the invasion safeguarded the independence, sovereignty and territorial integrity of the Republic of Cyprus. For that reason a significant number of scholars prefer to use the term "*intervention*" rather than "*occupation*"^[55].

In 1983, Turkish Cypriots issued the Declaration of Independence of the Turkish Republic of Northern Cyprus. This has been recognized by Turkey only. The United Nations declared the Turkish Republic of Northern Cyprus (TRNC) legally invalid and asked for its withdrawal. The UN Security Council has issued multiple resolutions that all states should refrain from recognizing the protectorate of Turkey in Cyprus.

However, apart from a few particular incidents,^[56] no one has been killed

[53] Asmussen, *Cyprus at War*, 255.

[54] *Ibid.*, 267.

[55] Eiki Berg, "*Examining Power-sharing in Persistent Conflicts: De Facto Pseudo-Statehood versus De Jure Quasi-Federalism*," *Global Society* 21 (2007): 212. Available: <www.law.nyu.edu/eecr/vol10num4/features/king.html>.

[56] There was a border protest organized by NGOs which was later provoked by Greek

in Cyprus from any of the two communities the four decades since Turkey's intervention.

5. THE LOIZIDOU CASE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

a. Facts

Titina Loizidou is a Cypriot national who grew up in the city of Kyrenia (which is not under the Republic of Cyprus's control after 1974) in northern Cyprus. In 1972 she married and moved with her husband to Nicosia. She owned some land in Kyrenia before the Turkish intervention in 1974. She claims her property in the north was occupied without her consent and construction started. Her ownership of the property is undisputed since she has certificates of registration issued by the Cypriot Lands and Surveys Department before 1974. She also alleges that she has been prevented in the past, and is still prevented, by Turkish forces from returning to Kyrenia and "*peacefully enjoying*" her property.

b. Application lodged

Based on the facts above, Loizidou lodged an application at the European Court of Human Rights (ECHR) against the Republic of Turkey (15318/89)^[57] claiming that Turkey—as the high contracting party has violated a number of provisions of the European Convention on Human Rights^[58] (the Convention) that aim to protect fundamental rights and basic freedoms. After a series of hearings the Court reached a final judgment on December 18, 1996 rejecting some part of the claim but it concludes by eleven votes to six that Turkey has violated Article 1 of Protocol No. 1 of the Convention^[59] and in a later judgment, awarded the applicant full compensation for the loss she suffered due to deprivation of her property. The subject matter of the case does not fall into the scope of this essay, rather the Court's reasoning for final judgment forms the core of this study.

nationalists by a Greek trying to climb up to a Turkish flag pole in order to grab the Turkish flag which resulted in the death of two Greek civilians.

[57] The judgment may be accessed at the official webpage of the European Court of Human Rights: http://www.echr.coe.int/ECHR/Homepage_EN

[58] Updated and full official text may be accessed at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

[59] First paragraph of Article 1 of Protocol No. 1: "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*" taxes or other contributions or penalt

c. Defence of the Turkish Government

The defendant government has put forward the following defences against the applicant's allegations:

1. Objection *ratione temporis*: Under Article 46 of the Convention, Turkey has declared on January 22, 1990, that it accepted the jurisdiction of the Court on facts which occurred subsequent to the time of deposit^[60] its declaration. The process of the “*taking*” of property in northern Cyprus started in 1974 and ripened into an irreversible expropriation by virtue of Article 159 (1) (b) of the TRNC Constitution^[61] of May 7, 1985 justified under the international law doctrine of necessity^[62].
2. Objection *ratione loci* and *ratione materiae*: The act referred to does not constitute an act of “*jurisdiction*” by Turkey within the meaning of Article 1 of the Convention^[63] since Northern Cyprus is outside of that jurisdictional territory (*ratione loci*) and its nature is not relevant to jurisdiction (*ratione materiae*).

[60] On January 22, 1990, the Turkish Minister for Foreign Affairs deposited the following declaration with the Secretary General of the Council of Europe pursuant to Article 46 of the Convention: On behalf of the Government of the Republic of Turkey and acting in accordance with Article 46 (art. 46) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, I hereby declare as follows: The Government of the Republic of Turkey acting in accordance with Article 46 (art. 46) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, hereby recognises as compulsory *ipso facto* and without special agreement the jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and application of the Convention which relate to the exercise of jurisdiction within the meaning of Article 1 of the Convention (art. 1), performed within the boundaries of the national territory of the Republic of Turkey, and provided further that such matters have previously been examined by the Commission within the power conferred upon it by Turkey.

This Declaration is made on condition of reciprocity, including reciprocity of obligations assumed under the Convention. It is valid for a period of 3 years as from the date of its deposit and extends to matters raised in respect of facts, including judgments which are based on such facts which have occurred subsequent to the date of deposit of the present Declaration.

[61] Article 159 (1) (b) of the TRNC Constitution: “*All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined ... and ... situated within the boundaries of the TRNC on 15 November 1983, shall be the property of the TRNC notwithstanding the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry Office shall be amended accordingly.*”

[62] This term is used to describe the basis on which extra-legal actions by state actors, which are designed to restore order, are found to be constitutional, initially based on the ideas of the medieval jurist Henry de Bracton. It has been used by Pakistan (1954), Grenada (1985) and Nigeria (2010).

[63] Article 1: Obligation To Respect Human Rights: “*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.*”

6. THE COURT'S ASSESSMENT

For the first objection, the Court decided that the present case concerns alleged violations of a continuing nature since the applicant can still be regarded as the legal owner of the land and was not allowed to enjoy freely her right of property even after 1990.

When examining the second and the third objections, the Court dealt in detail with “*the international response*” to the establishment of the TRNC. This could be summarized as:

1. The UN Security Council adopted Resolution 541 (1983) which deplores the declaration by the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus; Considers the declaration legally invalid and calls for its withdrawal and also calls upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus; Calls upon all States not to recognize any Cypriot State other than the Republic of Cyprus.

2. The UN Security Council adopted Resolution 550 (1984) calling for similar measures for not recognizing the exchange of “*ambassadors*” between Turkey and the TRNC.

3. The Committee of Ministers of the Council of Europe decided that it continued to regard the Government of the Republic of Cyprus as the sole legitimate Government of Cyprus and called for the respect of the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.

4. On November 16, 1983 the European Communities issued a statement in which they reject this declaration, and also to reiterate their unconditional support for the independence, sovereignty, territorial integrity and unity of the Republic of Cyprus. They continue to regard the Government of President Kyprianou as the sole legitimate Government of the Republic of Cyprus.

5. The Commonwealth Heads of Government Meeting in New Delhi in November 1983 issued a press communiqué stating the declaration was legally invalid and reiterated the call for its “*non-recognition*” and immediate withdrawal. They further called upon all States not to facilitate or in any way assist the illegal secessionist entity.

From the wording above, it is been understood that the Court has decided not to accept the TRNC as a state since it is not recognized and/or it is not accepted as legitimate by the international community. This is not just a subjective perception since the Court clearly states in its ruling (paragraphs 39–43):

In this respect it is evident from international practice and the various, strongly worded resolutions referred to above that the international community does not regard the “*TRNC*” as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus – itself, bound to respect international standards in the field of the protection

of human and minority rights. Against this background the Court cannot attribute legal validity for purposes of the Convention to such provisions as Article 159 of the fundamental law on which the Turkish Government rely...”

In regard to the third objection, the ECHR referred to the Turkish military presence in Northern Cyprus with more than 30,000 personnel controlling the whole of the occupied area and also to the fact that all civilians entering military areas are subject to Turkish military courts. The expressions used by the Court clearly illustrate that it attributes great importance to the military presence (paragraphs 60–63)

It is obvious from the large number of troops engaged in active duties in northern Cyprus that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the “TRNC” (see paragraph 52 above). Those affected by such policies or actions therefore come within the “*jurisdiction*” of Turkey for the purposes of Article 1 of the Convention (art. 1) ...

The Court accepted this as a strong argument for the existence of Turkey’s jurisdiction in the occupied area thus rejecting the objection of jurisdiction.

7. THE COURT’S PARADIGMS

The ECHR made several references to international law but failed to consider settled and accepted international law principles and thus based its ruling on incorrect reasoning. The main problem is that the Court did not investigate any other issue, such as the interpretation of the ‘time limit’ clause or the concept of “*facts subsequent to the time of deposit.*”

The time factor and the interpretation of exclusion clauses have previously been discussed by other international courts that were founded and started to function earlier than the ECHR. The International Court of Justice has examined the issue in two important cases (Mavrommatis Palestine Concessions^[64] and Phosphates in Morocco^[65]) defining a dispute as a disagreement on a point of law or fact between two persons. In the Mavrammatis case the Permanent Court of International Justice stated:^[66] “*The Court is of [the] opinion that, in*

[64] Judgment given by the Permanent Court of International Justice in 1924 (P.C.I.J., Ser. A, No. 2). The complete text of the judgment may be accessed at the official page of the Permanent Court of International Justice at:

http://www.icj-cij.org/pcij/serie_A/A_02/06_Mavrommatis_en_Palestine_Arret.pdf

[65] Judgment given by the Permanent Court of International Justice in 1938 (P.C.I.J., Ser. A/B). The complete text of the judgment may be accessed at the official page of the Permanent Court of International Justice at:

http://www.icj-cij.org/pcij/serie_AB/AB_74/01_Phosphates_du_Maroc_Arret.pdf

[66] Mavrommatis Palestine Concessions, judgment, 35.

cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment ...” In the Phosphates in Morocco case the Permanent Court of International Justice this time declared^[67] the basic rule for interpreting the *ratione temporis*: “*It is necessary always to bear in mind the will of the State which only accepted the compulsory jurisdiction within specified limits, and consequently only intended to submit to that jurisdiction disputes having actually arisen from situations or facts subsequent to its acceptance...*”, and thus accepts the objection.

It has been accepted that where the point of time is expressed by a phrase of an exclusion clause, the court will (is expected to) simply determine a fixed date^[68]. This is formulated in Roman law as: *Id certum est quod certum reddi potest*, meaning: “*what is certain can be rendered certain.*” The ECHR rejected Turkey’s objection^[69], finding there was a violation of a continuous nature, but failed to determine the exact date of commencement of the liability pursuant to the Convention. This leaves the high contracting party in a state of uncertainty and inability to predict when or if its liability starts or ends. This issue alone is a violation of the Article 6 of the Convention which prescribes the right to a fair trial which has been explained and emphasized in a number of the ECHR’s judgments. On the other hand, once the ECHR decided to consider the events before Turkey became a signatory to the Convention, it should have presented sound reasoning as to why it went as early as 1974 but not before that date, back to the year 1963, for instance, when the Cyprus problem started to brew. Weak reasoning is another strong violation of Article 6, this time on the part of the Court which is supposed to judge national courts on whether they obey that provision.

At the base of the whole conflict lies the partial intervention in Cyprus by Turkey in 1974. This is the fact and/or the event that took place on that date that caused the applicant to lose her actual (*de facto*) contact with her property. This is simply the fact, or in other words the central point of argument, that created the dispute and it took place long before Turkey’s recognition of the Court’s jurisdiction in 1990.

The ECHR, just like the International Criminal Court, is a prospective institution in that it cannot exercise its jurisdiction over events that occurred prior to the entry into force of its Statute or before its jurisdiction was officially recognized by the high contracting party^[70]. A similar understanding prevails

[67] Phosphates in Morocco, judgment, 24.

[68] Shabtai Rosenne, *An International Law Miscellany* (Dordrecht: Martinus Nijhoff, 1993) 38.

[69] That was one of the reasons for dissent by the judges (Bernhardt, Baka, Gölçüklü, Jamberk and Lopes Rocha) of the ECHR expressed as: “*The preliminary objection ratione temporis raised by Turkey is in my view legally well-founded...*”

[70] William A. Schabas, *An Introduction to the International Criminal Court* (4th edn,

in the foundation of the International Criminal Tribunal for the Former Yugoslavia^[71]. For the competence of that Tribunal to arise, it is necessary that the violations should have commenced since 1991 and its territory is also limited to the land surface, air space and territorial waters of former Yugoslavia^[72]. Therefore, the ECHR's interpretation of Turkey's time-limit clause should have reflected the generally accepted understanding and principle of the issue, not a unique and narrow comment that discourages other prospective states from signing the Convention.

The concept of continuing violation and its application is problematic in international law^[73] and the Court avoided examining and explaining how it concluded that there was a continuous violation but not an instantaneous act (that is alleged occupation^[74] in 1974). Since Turkey does not recognize the applicant's right to the property, this at worst can be considered as expropriation with or without just compensation, not a continual denial of access to property. My view on this issue is also supported by a similar opinion of the US in the case of *Mondev International* in which the applicant (*Mondev*) alleged that the US had breached its obligation under the North American Free Trade Agreement (NAFTA) to its detriment. The US rejected the principle of continuing violation. According to this theory, the applicant would be permitted to bring claims based on a supposed breach of obligation to make reparation not within three years of the original breach, but for as long as the respondent State refused to accede to the investor's demand^[75]. The response was clear: "*This is not precluded by the fundamental principles of treaty interpretation (and common sense).*"

On the other hand, the alleged continuous nature of the violation is problematic too. The Turkish Cypriot leader Rauf Denktaş and the Greek Cypriot leader (the President of Cyprus) Glafkos Clerides had agreed and signed a document during the third round of the Vienna peace talks in 1974 on a number

Cambridge University Press, 2011), 69.

- [71] UN International Criminal Tribunal for the Former Yugoslavia. For further information please refer to the official web page of the Tribunal: <http://www.icty.org/>
- [72] Gabriel Kirk McDonald and Olivia Swaak Goldman, *Substantive and Procedural Aspects of International Criminal Law, Volume II, Part 1, Documents and Cases* (The Hague: Kluwer Law International, 2000), 293.
- [73] Bernard H. Oxman and Beate Rudolf. "*Loizidou v. Turkey*," *American Journal of International Law* 9 (1997) 532-537.
- [74] Occupation is defined in Article 42 of the Annex to the Hague Convention IV of 1907: "*Territory is considered occupied when it is actually placed under the authority of the hostile army.*" However, Article 3 of the Treaty of Guarantee recognizes and legitimizes Turkey's right of intervention which already gives the right to have military elements in Cyprus. For that reason Turkey cannot be deemed an occupier and/or invader in Cyprus.
- [75] Sean D. Murphy, "*Contemporary Practice of the United States Relating to International Law, Retroactive Application of Treaty to Treaty Based Claim*," *American Journal of International Law* 97 (2003) 438.

of principles which openly state that Turkish Cypriots in the south were free to stay or move to the north^[76] while the Greek Cypriots in the north had the same freedom^[77] and the transfers were to be made under the monitoring of the UNFICYP to ensure they were voluntary. It was not alleged by Loizidou that she was specifically and actually forced to move to the south.

When assessing the second and third objections, the ECHR showed inconsistency by refusing to examine whether Turkey's intervention in Cyprus was on legal grounds or not. However, on the contrary, the Court insisted on discussing the issue that TRNC is not a sovereign state and furthermore it based its reasoning on non-legal concepts such as the international response and the recognition or legitimacy of TRNC, which are irrelevant in determining the legal presence of a sovereign state.

There are certain circumstances that justify intervention in international law: a state's right to protect its citizens abroad^[78], discretion of a state to protect its nationals^[79], collective self defence^[80], to assist others in their self determination^[81] and as a result of a treaty^[82]. Turkey had more than one justification, starting with the protection of Turkish nationals abroad and/or assisting Turkish Cypriots to use their right of self determination and/or self defence. Even Oppenheim considers^[83] Turkey's intervention resulted from the Treaty of Guarantee but adds the essence of a sceptical examination—something that the Court avoided doing. Oppenheim alleges that when a case can be defined as “*assistance on request*” the intervention is legal^[84] again and gives the following examples:

no unlawful intervention was involved when British forces went to the aid of Muscat and Oman in 1957 at the request of the Sultan; when British and American forces landed in Jordan and Lebanon in 1958 at the request of those states; when British forces assisted Uganda, Kenya and Tanganyika in 1964, and Zambia in 1965, at their request; when, during the Vietnam conflict, American forces assisted the Republic of Vietnam at its request; when, in 1968 and 1969, and again in 1983, French forces responded to requests for assistance from Chad, and also in 1978 in response to a request from Zaire...

In none of the above cases did the legally intervening forces act upon a treaty, neither did they act upon the justification of defending their citizens,

[76] Ertekün, *The Cyprus Dispute*, 39.

[77] Asmussen, *Cyprus at War*, 272-273.

[78] Oppenheim's *International Law*, Volume 1, Peace, 9th edn, 440.

[79] *Ibid.*, 442.

[80] *Ibid.*, 444.

[81] *Ibid.*, 445.

[82] *Ibid.*, 446.

[83] *Ibid.*, 447 (see dn:41)

[84] *Ibid.*, 436.

but still their acts are deemed legal. Turkey's position is superior to these cases in comparison, but the ECHR did not even consider the consent of the Turkish Cypriots who asked for Turkey's military and financial help in consensus and did not object to Turkey's military presence since 1974.

There are four accepted legal theories that deal with the concept of sovereign state; declarative theory, state practice, de facto and de iure states and constitutive theory. The declarative theory and constitutive theory are the leading competing theories of major concern of debate.

Nevertheless, the constitutive theory is highly criticized for its defects^[85]. New states are without rights and obligations under international law until they are recognized and this encourages them even to behaving more illegally (TRNC has been accused of not taking necessary measures for preserving the historical heritage of Cyprus and thus violating the 1970 UNESCO Agreement on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the 1995 UNIDROIT (International Institute for the Unification of Private Law) Convention on Stolen or Illegally Exported Cultural Objects^[86]. But, how can you accuse a state of acting illegally when you do not accept its legal status? This can be explained by the state practice which shows that recognition is primarily a political act on the part of the states. Why should the legal status of an entity be dependent upon the performance of such a political act? State practice shows that it may not be possible to ignore completely an unrecognized entity. It is not clear how many members of the international community must recognize the new entity and it is not right to esteem such a vague concept with the determinant of statehood.

The declarative model was most famously expressed in the 1933 Montevideo Convention^[87]. Although only the states of the American continent have signed the convention, as a restatement of customary international law, the Montevideo Convention merely codified existing legal norms and principles and therefore does not apply only to the signatories, but to all subjects of international law as a whole. This makes the declarative theory noteworthy and a good reason why it should be preferred to other theories.

The "*declarative*" theory defines a state as a person in international law if it meets the following criteria: (1) a defined territory; (2) a permanent population;

[85] Alina Kaczorowska, *Public International Law* (4th edn, Abingdon: Routledge, 2010), 227.

[86] Theresa Papademetriou, *Destruction of Cultural Property in the Northern Part of Cyprus and Violations of International Law* (XXX: XXX, 2009).

[87] The Montevideo Convention on the Rights and Duties of States was a treaty signed at Montevideo, Uruguay, on December 26, 1933, during the Seventh International Conference of American States. The Convention codified the declarative theory of statehood as accepted as part of customary international law. Article 3 of the Convention declares that statehood is independent of recognition by other states.

(3) a government; and (4) a capacity to enter into relations with other states. According to declarative theory, an entity's statehood is independent of its recognition by other states. This view is shared by Oppenheim when explaining the relation between concepts of statehood and recognition ^[88]:

There is no doubt that statehood itself is independent of recognition. International law does not say that a state is not in existence as long as it is not recognized, but it takes no notice of it before its recognition ... Recognition is given either expressly or implicitly ...

TRNC's borders are well defined and even accepted by the UN officials who have been patrolling the borders for the past half century, so there is a defined territory. The presence of the Turkish Muslim population of the island has not even been denied by the Cyprus Constitution of 1960, so the population which is agreed to be around a quarter of a million fulfils the second necessity of the declarative theory. Fully democratic and free elections have continuously been held in the north of the island since 1963 forming the legitimate and legal background of the legislative parliament and the government in the north, whereas none of the population of the north takes part in the elections of the Republic of Cyprus. The ECHR has refused to discuss the TRNC Constitution, which has continually been valid since the Constitutional Referendum of May 1985 in northern Cyprus, with 70.2 % of the Turkish Cypriots voting in favour^[89] but instead insisted on basing its judgment on the 1960 Cyprus Constitution which lasted for just three years and failed^[90] upon the systematic campaign by the Greeks^[91] against it in 1963 and has not been accepted by Turkish Cypriots since then. TRNC has sixteen representatives with diplomatic missions all over the world including two in the US. Moreover, TRNC has been accepted to participate^[92] in the Organization of Islamic Cooperation (OIC) under the name of "*Turkish Cypriot State*" which is a proof of its capacity to enter into relations with other states. OIC has 57 members, 56 of which are classed by the UN as member states. The OIC has a permanent delegation to the UN, and considers itself the largest international organization outside of the UN, representing 22% of the world's population. A joint and unanimous decision made by 56 UN member states accepting the TRNC as a separate

[88] Oppenheim, Lassa, *International Law. A Treatise*, Vol. I Peace, ed. Ronald E. Roxburgh (London: Longmans, 1920; repr. Clark, NJ: The Law Book Exchange, 2008), 133.

[89] Mümtaz Soysal, "*Political Parties in the Turkish Republic of Northern Cyprus and Their Vision of the Solution*," in *Cyprus, A Regional Conflict and Its Resolution*. Ed. Norma Salem (St. Martin's Press: New York, 1992), 41.

[90] Norma Salem, "*The Constitution of 1960 and Its Failure*," in *Cyprus, A Regional Conflict and Its Resolution*. Ed. Norma Salem (St. Martin's Press: New York, 1992), 117-126.

[91] H. D. Purcell, *Cyprus. Nations of the Modern World* (New York: Praeger, 1969), 308, 309.

[92] OIC Resolution No. 2/31-P on the situation in Cyprus adopted by the 31st Islamic Conference of Foreign Ministers, held in Istanbul on June 14-16, 2004.

state with its own flag distinct from that of the Republic of Cyprus is a “*recognition*” that no organization could disregard. Since the recognition is a political choice of a state, it is not necessary that it should be done in a formal way, even according to the constitutive theory, as recognition might as well be de facto, implied^[93],^[94] or on condition. Even the Republic of Cyprus gave such recognition, with special emphasis on the “*sovereignty and political equality of Turkish Cypriots*”^[95] on condition that the Turkish Cypriots would support the Republic of Cyprus’ application for membership of the EU in 1995. Apart from the OIC, Pakistan, Bangladesh, Saudi Arabia, Malaysia, Indonesia, Albania, Bosnia and Macedonia openly support^[96] TRNC despite the UN resolution. Briefly, TRNC, having five internationally recognized universities with thousands of students from all over the world, and being self sufficient in energy^[97], has accomplished much more than the majority of recognized states have been able to achieve after decades of effort^[98].

Fowler and Bunck’s definition^[99] of sovereign state seems parallel with the declarative theory in regard to the elements of territory, people and government, however, they mention a new school of thought that challenges the theory by adding the requirement of de jure independence^[100]. Nevertheless, they acknowledge that Turkish Cypriots have managed to prove that they are legally separate^[101] from the government of Cyprus, but that this together with Turkey’s recognition as a sovereign state is not enough for TRNC to become a member of the exclusive club of sovereign states, differentiating between becoming a sovereign state and being accepted.

Frank Hoffmeister^[102] when analyzing the TRNC makes reference to the

[93] Oppenheim, *International Law*, 3rd edn, 133.

[94] Kaczorowska, *Public International Law*, 222.

[95] Christopher Brewin, “*Turkey, Greece and the European Union*,” in *Cyprus. The Need for New Perspectives*, Ed. Clement H. Dodd (The Eothen Press: Huntingdon, Cambridgeshire, 1999), 159.

[96] Barry Bartmann, “*The Quest for Legitimacy, International Status of the Turkish Republic of Northern Cyprus*,” in *Cyprus. The Need for New Perspectives*, Ed. Clement H. Dodd (The Eothen Press: Huntingdon, Cambridgeshire, 1999), 279.

[97] TRNC began selling electricity to the Republic of Cyprus in 2011, making a legal contract upon the insistence of the Greek officials through its electricity department office so as not to be interpreted as recognition. Nevertheless the issue itself can be summarized as the non-sovereign state selling electricity to the sovereign one.

[98] Ishtiaq Ahmad, *The Divided Island, A Pakistani Perspective on Cyprus* (Pan Graphics, 1999, Nicosia, Cyprus), 35.

[99] Michael Fowler and Julie Marie Bunck, *Law Power and the Sovereign State, The Evolution and Application of Sovereign State* (University Park, PA: Pennsylvania State University Press, 1996), 33.

[100] *Ibid.*, 50, 51.

[101] *Ibid.*, 52.

[102] Frank Hoffmeister, *Legal Aspects of the Cyprus Problem: Annan Plan and EU Accession* (Leiden: Koninklijke Brill NV, 2006) Chapter III, “*The Turkish Intervention*”, 50.

Montevideo Convention and states that TRNC fulfils all the conditions set forth in that convention except the existence of a government, indicating the presence of the Turkish army and the size of the financial aid from Turkey^[103] as obstacles. Hoffmeister on the one hand accepts the Turkish population as around 100,000 and compares it with the 35,000–40,000 of the Turkish army presence, emphasizing its pressure on the local police force, and on the other hand expresses the view that the amount of financial aid and its direction can be used by Turkey to influence TRNC politics. Hoffmeister's unreferenced population estimates do not reflect the truth. According to the TRNC's official and accountable 2006 Population and Housing Unit Census, the population of TRNC is 265,100^[104]. The presence of the Turkish Army takes its legitimacy^[105] from the need to protect Turkish Cypriots and its legality from Article 181 of the 1960 Cyprus Constitution (which is still recognized as the only valid Constitution by the international community) as well as the Article 4 of the Treaty of Alliance^[106]. Turkey maintains its presence to protect the Turkish Cypriot population and estimates the number of military elements to be sufficient although that number may sometimes not being enough to stop Greek attempts making border violations. However, the UK does not deny having around 3,000 military personnel in its "sovereign bases" in Cyprus, without any reasoning, but still the sovereignty of the military bases is not disputed. The number of its soldiers has never been a determinant of a government's sovereignty, nor has the amount of financial aid. Nevertheless, Turkey is known to have attempted to interfere in the last presidential elections in TRNC by supporting^[107] Mehmet Ali Talat against Dervis Eroğlu, but the Turkish Cypriots elected Eroğlu as their president. Turkey's failure thus shows the Cypriot Turkish community is hardly influenced by financial aid from another state.

All the authors mentioned above have based their arguments on one theory or another, whereas in the Loizidou case, the ECHR simply relied on the concept of non-recognition and international response but failed to form a connection between its opinion and a settled international law theory, causing its decision to appear groundless and creating suspicions about its legality.

When NATO missiles killed sixteen innocent civilians during the Kosovo conflict on April 23, 1999, an application was made against NATO member

[103] *Ibid.*, 51.

[104] <http://nufussayimi.devplan.org/Census%202006.pdf>

A new population estimate has been carried out in TRNC whilst this article was being written, and it is in the press that the population of TRNC has reached around 300,000 but it is not yet officially confirmed.

[105] Bartmann, "The Quest for Legitimacy," 273.

[106] Signed by Greece, Turkey and the UK.

[107] Amanda Paul, "Cyprus – The Beginning of a New Era," European Policy Center, April 21, 2010, www.epc.eu.

states to the ECHR by six Yugoslav nationals resident in Belgrade. The Grand Chamber of the ECHR unanimously found the case (*Bankovic et al. v. 17 NATO and ECHR Member States*) inadmissible^[108] on the ground that the action did not fall within the scope of the jurisdiction of the defendant states on December 12, 2001. The Court's refusal to recognize the exercise of extra-territorial jurisdiction by the respondent states, due to their lack of effective control over the targeted territory and its inhabitants, is not fully convincing^[109]. To be more precise and plain, this is hypocrisy. It is still argued that the *Loizidou* case opened up the possibility of arguing that NATO occupied and/or operation areas were subject to the jurisdiction of the ECHR^[110]. The approach chosen by the Court to distinguish the *Bankovic* case from its established case law, which recognized extra-territorial acts as constituting an exercise of jurisdiction, raises the suspicion that the ECHR rejected any further legal involvement in this issue of high politics and human rights. It was expected that the Court would fully explain why it did not stick to the principles expressed in the *Loizidou* case, but then again there is not a known legal theory to explain the double standards used in both cases.

The Court is also mistaken in not discussing the legality of the intervention^[111]. Article: 1 of Protocol 1 annexed to the Convention with the title "*Protection of Property*" states:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The second paragraph of Article 1 authorizes the state to control the use of property in accordance with the general interest, and what other interest can be more important than saving the lives of Turkish Cypriot civilians? If the Court

[108] The Grand Chamber's Decision as to the Admissibility of Application no. 52207/99 of ECHR.

[109] Frank Schorkopf, "*Grand Chamber of the European Court of Human Rights Finds Yugoslavian Bombing Victims' Application against NATO Member States Inadmissible*," 3 *German Law Journal* (2002), <http://www.germanlawjournal.com/index.php?pageID=11&artID=133>

[110] Eric Engle, "*Private Law Remedies for Extraterritorial Human Rights Violations*," Inaugural Dissertation for Doctorate of Law of the Bremen University, evaluated by Prof.Dr. Gert Brüggemeier and Prof.Dr. Josef Falke, January 30, 2006, 21.

[111] The same criticism is made of the ECHR by the dissenting Judge Pettiti: "... *the Court did not examine the question whether that intervention was lawful (see paragraph 56 of the judgment). The decision to station international forces on the line separating the two communities made the free movement of persons between the two zones impossible, and responsibility for that does not lie with the Turkish Government alone ...*"

examined the issue of legality and gave the defendant government the possibility of defending itself with regard to the legality then it would not be possible to hold Turkey responsible since the deprivation of property was a compulsory consequence of the act of defending civilian lives, legitimated both by the Treaty of Guarantee and the second paragraph of Article 1 of the Protocol 1.

The Court ignores the legality issue and states that it does not make a on the responsibility of the defendant to carry out its duties stated in the Convention. This reasoning, together with the disregarding of the legality of the TRNC, is still widely and strongly criticized by legal scholars with the allegations that the judgment would have been different otherwise, since the TRNC is a stabilized de facto regime having an effectual and autonomous nature of the legal order and administration in the northern part of Cyprus, and the Turkish Cypriots have been governing themselves in an orderly manner in accordance with democratic standards, in particular, as laid down in Article 3 of the First Protocol to the Convention^[112]. On the other hand, when determining liability for wrongdoing, “*fault*” is an important issue that must be discussed within the context of the legality. The Court did not pay any attention^[113] to the fact that it was the Greek Cypriot side led by their leader President Makarios, who started the armed conflict in the beginning, in 1963, by arming Greek youths secretly and training them to realize a “*13-point plan*” for amending the Constitution^[114].

It is the primary responsibility of a court to seek for and discuss the legality of an issue in hand and another duty is to deal with it on legal grounds, but judges all over the world (and/or courts) sometimes make the mistake of relying on the actions or views of political actors during their decision making process. US courts have often been criticized for looking for executive signals on how to treat foreign governments involved in legal action before a court^[115]. There are cases before US courts in which the judges have avoided accepting the legal existence of Soviet Russia just by relying on the political statements of the US’s official memorandum of non-recognition. The same mistake was committed by the ECHR basing its reasoning on the concept of non-recognition in the UN Resolutions, which are political declarations.

[112] Cansu Akgun, “*The Case of TRNC in the Context of Recognition of States under International Law*,” Ankara Bar Review [2010], 1. This was part of the author’s Master’s thesis submitted at Amsterdam University Faculty of Law under the supervision of Ass. Prof. Dr. Enrico Milano.

[113] A similar objection was raised by the dissenting judges (Bernhardt, and Lopes Rocha) of the ECHR in slightly a different form: “... *Who is responsible for this failure? Only one side? Is it possible to give a clear answer to this and several other questions and to draw a clear legal conclusion?...*”

[114] Rauf R. Denktaş, “*The Failed Test of Legality*,” Ankara Bar Review [2010], 27.

[115] Thomas D. Grant, *The Recognition of States. Law and Practice in Debate and Evolution* (Westport, CT: Praeger XXXX), 53, 54.

7. CONCLUSION

It is beyond doubt that TRNC, whether recognized or not, is a fully sovereign state with a democratic structure and fully functioning state organs, and the ECHR's failure to realize this issue does not change the reality. What is more important than this is the fact that it was the Greek Cypriots' actions that ignited the series of events in the first place which led to the current situation. The Loizidou case is important not only for causing another 1,400 similar applications to be filed against Turkey claiming compensation but it also had some impact on international law for creating a reference in the interpretation of the concept of "*jurisdiction*." The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia relied on Loizidou in support of its "*overall control*" test of attribution in the Tadic case, which it used to determine whether the conflict in Bosnia was international or non-international in character^[116].

Turkey on the other hand refused to recognize the judgment in Loizidou until 2003 but later paid the amount ordered, which was around 1.1 million Euros. It made another maneuver to emphasize the sovereignty of TRNC and somehow convinced the Court to make an order^[117] obliging all the Greek Cypriot applicants to apply to the TRNC Immovable Property Commission in the first instance^[118].

It is understandable that the ECHR should seek a means of compensation for the applicant but it is also important that the search should be confined to and harmonized with the settled rules of international law and not affected by political choices. Cyprus is a complicated legal issue full of pain for innocent civilians but its multidimensional character makes it inevitable to reconsider the roles of every actor, whether legal or political. It is not warranted to place all of the burden on to Turkey since apart from the political figures the UK, Greece and the Republic of Cyprus too must share the responsibility for what has happened up to now and for the future. No one is totally innocent.

[116] Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (Oxford University Press, 2011), 42.

[117] Case of Xenides-Arestis v. Turkey (Application No. 46347/99). Full text available at the official web site of the Court: http://www.echr.coe.int/ECHR/Homepage_EN

[118] The ECHR, with its decision on March 1, 2010 as to the admissibility of Demopoulos and others v. Turkey found that Law no. 67/2005 provides an effective remedy and rejected the complaints of the applicants for non-exhaustion of domestic remedies. To date there have been 459 applications lodged before the Commission, 95 have been concluded through out-of-court settlement and four cases through formal hearings.

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