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Evaluation of The 1974 Cyprus Peace Operation in The Light of Jus Cogens Rules

1974 Kıbrıs Barış Hareketi'nin Jus Cogens Kuralları Işığında Değerlendirmesi

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Abstract

Shortly after the establishment of the Republic of Cyprus, the events initiated by Makarios' attempts to amend the constitution, which escalated into internal conflicts and external interventions, culminated in Turkey's military intervention. The effects of this intervention continue to persist today. Due to this characteristic, it has been the subject of many studies; however, it has not been evaluated in terms of the jus cogens rules, which express the universally accepted principles of international law, and the stages of the just war theory. To address this need, the 1974 Cyprus Peace Operation, a long-standing international issue, has been examined within the framework of the jus cogens rules of international law, considering the three phases of just war theory: jus ad bellum, jus in bello, and jus post bellum. This examination aims to determine the level of compliance with jus cogens international law norms in the historical and political context of the Cyprus issue, as well as the developments before, during, and after the 1974 Peace Operation. In conclusion, it has been determined that the 1974 Peace Operation adhered to the jus cogens rules of international law to the maximum extent. In the source review, a balanced selection of sources was made to objectively evaluate the assessments of both the Turkish and Greek Cypriot sides on the issue. This study is qualitative in nature, employing both inductive and deductive methods.

Keywords: 1974 Cyprus Peace Operation, Jus Cogens, Jus ad Bellum, Jus in Bello, Jus Post Bellum

Özet

Kıbrıs Cumhuriyeti'nin kurulmasından kısa bir süre sonra Makarios'un anayasa değişikliği girişimleri ile başlayıp iç çatışma ve dış müdahalelere dönüşen olaylar Türkiye'nin askeri müdahalesi ile sonuçlandı. Bu müdahalenin etkileri bugün halen devam etmektedir. Bu özelliği sebebiyle birçok çalışmaya konu edinilmiş; ancak uluslararası hukukun genel geçer ilkelerini ifade eden jus cogens kuralları ve adil savaş düşüncesinin aşamaları açısından değerlendirilmemiştir. Bu ihtiyacın giderilmesi için uluslararası alanda uzun süredir devam eden bir mesele olan 1974 Kıbrıs Barış Harekâtı, uluslararası hukukun jus cogens nitelikli kuralları çerçevesinde, adil savaş düşüncesinin üç evresi olan jus ad bellum, jus in bello ve jus post bellum evreleri dikkate alarak incelenmiştir. Bu inceleme neticesinde Kıbrıs meselesinin tarihi ve siyasi bağlamının yanı sıra, 1974 Barış Harekâtı öncesi, fiili savaş durumu ve sonrasındaki gelişmelerin jus cogens nitelikli uluslararası hukuk normlarına uyum düzeyinin belirlenmesi amaçlanmıştır. Sonuç itibari ile de 1974 Barış Harekatı'nın uluslararası hukukun jus cogens nitelikli kurallarına azami ölçüde uyulduğu tespiti yapılmıştır. Kaynak incelemelerinde ise hem Türk hem de Kıbrıs Rum tarafının konuya ilişkin değerlendirmelerini daha objektif bir şekilde değerlendirebilmek için dengeli bir kaynak seçimi yapılmıştır. Bu çalışma nitel bir çalışmadır ve araştırmada hem tüme varım hem de tümden gelim metotları birlikte kullanılmıştır.

Anahtar Kelimeler: 1974 Kıbrıs Barış Harekâtı, Jus Cogens, Jus ad Bellum, Jus in Bello, Jus Post Bellum

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Introduction

The 1974 Cyprus Peace Operation was analyzed considering jus ad bellum, jus in bello, and jus post bellum, the three stages of just war, in light of jus cogens norms that set the limits on the lawful use of force in international law. Traditionally, just war has been explained in religious and moral terms. However, due to developments in international law (Neff, 2005: 54; Stahn, 2006: 931) it has later been explained in terms of jus cogens norms. The early 1990s provide an opportune moment to evaluate the status of the just war ethic. As an applied ethical framework, the just war doctrine has consistently evolved in response to changes in the realms of politics, strategy, and technology (Hehir, 1992: 237).

Jus cogens norms are considered fundamental principles of international law. Unfortunately, the UN Charter does not explicitly mention jus cogens (Hossain, 2005: 72). Probably when the UN Charter was drafted in 1945, the concept of jus cogens was not as developed or widely recognized in international law as it is today. The focus was more on establishing a framework for international peace and security rather than codifying specific legal principles like jus cogens.

The question at hand is whether an obligation under the UN Charter can take precedence over an obligation that embodies a jus cogens norm. However, one could argue that the Charter embodies norms of fundamental importance corresponding to jus cogens rules. Many view the Charter as the constitution of international law, thereby recognizing the binding nature of these norms. (Hossain, 2005: 85-87). Jus cogens norms derive their authority from the international community of states, which, according to the Vienna Convention on the Law of Treaties, acknowledges and accepts them as peremptory (Charlesworth and Chinkin, 1993: 63-64). The international community of states determines these norms in a way that reflects its highest interests because represents human dignity (Weatherall, 2015: 19; Linderfalk, 2011: 261) and aims to protect human rights. Until recently, the international system has often been perceived as an 'anarchical society' lacking inherent consistency (Tomuschat, 2015: 9-10). Sadly, there are few restraints on the endings of wars. Indeed, in just war theory—which frames moral principles to regulate wartime actions—there is a robust set of rules for resorting to war (jus ad bellum) and for conduct during war (jus in bello) but not for the termination phase of war (Orend, 2002: 43).

The idea of jus cogens norms in international law are principles that aim to protect the common good of the international community, rather than the individual interests of the states. These principles look like constitutional rights in domestic legal systems, which limit the power of the national majorities for the sake of long-term benefit (Charlesworth and Chinkin, 1993: 64). Despite being positioned higher in the hierarchy of standards, applying Jus cogens has priority over ordinary international law (Hossain, 2005: 73; Linderfalk, 2011: 360). Jus cogens theory has recently been linked to human rights and tries to regulate issues such as the sovereign equality of states, the use of force, and agreements that violate the principle of equality, such as colonialism (Öztürk, 2017: 41). Because of these reasons, and in practice, the UN reacts differently to breaches of jus cogens norms (Şafak, 2021: 317; Weisburd, 1995: 1). Indeed, the International Court of Justice in 2022 condemned the State of Uganda to compensate the Democratic Republic of Congo for damages caused by an unjust war (Jöbstl and Rosenberg, 2023: 1).

The jus cogens norms, which are related to Jus ad Bellum, have been incorporated into international law and is a component of the mission of the United Nations (Tladi, 2021: 21; Whiteman, 1977: 609). Article 53 of the Vienna Convention on the Law of Treaties

established that jus cogens occupies a middle ground between international treaties and customary international law. However, disputes regarding the scope of Article 53 create ambiguity in the application of jus cogens rules (Gülgeç, 2017: 74).

However, the existence of such norms is a separate matter of discussion. In essence, all common norms related to jus ad bellum, jus in bello, and jus post bellum are considered jus cogens. According to Article 53 of the Vienna Convention, the following should have been the criteria for identifying jus cogens norms within the framework of the article:

a) The entire international community of states must embrace and recognize it.

b) No rule that contradicts it may be enforced.

c) It should only be interchangeable with subsequent rules of a similar nature (International Law Commission, 2022: 29; Özersay, 2002: 164).

However, this concept is controversial because it challenges the traditional view of international law as a consensual order based on states' agreements. Jus cogens norms have three theoretical foundations: positivist, natural law, and public order theories. Positivist theory asserts that state approval is necessary for a norm to be binding. Natural law theory considers peremptory norms as moral imperatives. Public order theory defines jus cogens as norms essential for international legal unity, prioritizing them over customary norms to serve the global community's interests (Handayani, 2019: 237, 250).

In the context of international law, the behavior of states is essential concern. Key theoretical issues such as the foundation of obligation and the nature of sovereignty prompt questions about international relations. Traditional philosophies, Positivism (akin to realism) natural law, liberalism and Marxism provide answers. However, international relations theory challenges international law, often portraying it as a mere instrument of state interests (Hoffmann, 1988: 8).

Jus cogens norms differ from jus dispositivum norms. While jus dispositivum norms can be set aside by unilateral state actions, jus cogens norms are non-derogable and hold the highest position in international law, without any exceptions. While jus cogens and customary international law are interconnected, they diverge in a crucial aspect. Customary international law, akin to international law established through treaties and other international agreements, relies on the consent of states. However, a state that consistently objects to a customary international law norm accepted by other states is not legally bound by that norm (Siderman de Blake v. Republic of Argentina, 1992: 715). Generally, international actors have debated the norms of jus cogens in terms of their overall acceptance. It has been claimed that a norm cannot be jus cogens rule if states object to it and the objections are strong and persistent and customary norms would be on the same normative level. This would not exclude a hierarchy along the lines of jus cogens (Kammerhofer, 2004: 539; Linderfalk, 2020: 893–894). International law is largely based on international treaties. However, international treaties cannot be contrary to jus cogens rules (Linderfalk, 2007: 854), this is because the norm originates from the highest source and natural law (Handayani, 2019: 236; Treaty Section of the Office of Legal Affairs, 2013: 19). Therefore, jus cogens norms express the superior and determinative principles of international law (Veedross, 1966: 55) and include principles such as the prohibition of genocide, slavery, torture and crimes against humanity. For example, if the majority states make a treaty legitimizing occupation and genocide to expand their territory, will this treaty be valid in terms of international law? We will look at the consensus of the majority and say whether it is valid, or will we look at the effects of this treaty on pure reason and conscience

and say that it is invalid? From the perspective of positivists, we must say "yes" and from the perspective of naturalists we must say "no". For that reason, the doctrine of international jus cogens was developed with a strong influence from natural law concepts. These concepts assert that states cannot have absolute freedom in establishing their treaties (Hossain, 2005: 73). In the 18th century, legal systems experienced a process of secularization. Some writers, at the very least, recognized the necessity of imposing specific limits on what States could agree upon. Primarily, they referred to natural law (Tomuschat, 2015: 11). When a treaty is void due to such conflict, parties have two obligations:

1. They must minimize the consequences of any actions taken based on conflicting treaty provisions.

2. They must align their mutual relations with the peremptory norm. Additionally, if a treaty is terminated due to the emergence of a new peremptory norm, existing rights, obligations, or legal situations remain valid as long as they do not conflict with the new norm (Commission et al., 2019: 144).

The concepts and arguments of just war are explained using international norms qualified by jus cogens too. According to legal philosophy, only the principle of justice can justify the legitimacy or illegitimacy of the use of force. However, it is debatable whether international law should prioritize the justice or legitimacy of war. Given that justice is one of the fundamental concepts of law, there must be a relationship between legality and justice. In the seventeenth and eighteenth centuries, when the concept of state sovereignty began to gain traction, it was accompanied by the concept of justice. It is proposed that the state system be evaluated in conjunction with these two guiding principles (Polat, 1999: 95, 96). Because it has the potential to explain the impasse of the other two major schools of thought, realism and pacifism (Dorman, 2016: 137). Pacifism is impractical due to human's naiveté and propensity for evil, whereas realism disregards the link between law and morality (Özdemïr, 2022: 387). Therefore, jus cogens rules establish a balance between these two philosophical ideas and set the limits of the legitimate use of force in international relations. Beside this jus cogens rules, which prioritize value-based relationships over power-based policies in international relations, have the potential to establish sustainable peace and stability globally. To contribute to this understanding, the 1974 Cyprus Peace Operation has been evaluated in light of these rules. Although many studies have been conducted on this topic, no research has been done on the 1974 Cyprus Peace Operation within the context of just war and jus cogens rules, which are widely accepted in international law. This study aims to fill this gap by determining the level of compliance of the 1974 Peace Operation with jus cogens rules.

1. 1974 Cyprus Peace Operation within the framework of Jus ad Bellum

Jus ad Bellum is an international legal term that means "the right to use force" (Erdoğan, 2020: 5; Neff, 2005: 107). However, this is also a controversial concept, as it raises questions about whether this is a right or a permission and whether a just war is possible under the current circumstances. This concept refers to the principles that must be followed (Fiala, 2008: 29) in order for the use of force to be lawful and just (Dorman, 2016: 138, 139). As it is well-known, one of the main concerns of international law is the legitimacy of the use of force and its limits.

The debate on the nature of war has a long history (Neff, 2005: 39). Along with the emergence and development of the idea of just war, the concept of jus ad bellum arose as an extension of this idea. Theologians such as Saint Augustine and Thomas Aquinas made

significant contributions to the advancement of this understanding. Augustine focused on jus ad bellum, while Aquinas contributed mostly to the field of jus in bello (Ereker, 2004: 8, 12). Moreover, many other thinkers have played an important role in the evolution of this understanding. Although the notion of just war in the medieval and modern periods is generally similar, it is argued that Francisco de Vitoria was the bridge between the Middle Ages and the modern era (Ereker, 2004: 13-14).

Although the principles of a just war are subject to debate (Anghie and Koloş, 2013: 277), there is a consensus on five fundamental principles. The first one is the principle of sovereignty, which excludes military operations against activities such as internal conflicts or piracy. The second one is the involvement of actual combatants in the conflict, which excludes children, women, the elderly, and clergy from the scope of this principle. The third criterion is the legitimate defensive objective, which distinguishes between general wars and just wars. The fourth principle is that of justification, which establishes a legal connection between the legitimate cause and the purpose. Thomas Aquinas shaped this broad conception of the just war. The final criterion is animus: 'right intention'. This principle requires that war be based on love, for the purpose of correcting evil and bringing the enemy to the path of righteousness, not hatred. Therefore, the aim of a just war must be the elimination of evil, the conversion of the enemy, and the improvement of the situation (Neff, 2005: 50–52). Much later, efforts to establish legal boundaries and principles for the use of force in war continued. With the Geneva Convention's regulations in the field of the law of war, the foundations of modern war law have been laid (Alsan, 1950: 37).

This convention has also made significant contributions to the development of jus ad bellum and jus in bello norms by subjecting war to certain rules. The Kellogg-Briand Pact of 1928 or Pact of Paris – officially the General Treaty for Renunciation of War as an Instrument of National Policy – established the jus ad bellum principle in international law. The United Nations Charter of 1945 adopted this principle as an important rule of the law of states, prohibiting the use of force in the relations between states. Jus ad bellum and jus in bello are a set of rules that regulate the use of force by states and other actors, and therefore, a use of force can be lawful only if it complies with both jus ad bellum and jus in bello (Okimoto, 2012: 46, 51).

Jus ad bellum is not a complete prohibition of the use of force, when properly understood. Rather, it is a principle that permits defense against aggression, actions authorized by the United Nations, actions conducted with the consent of the sovereign state, and other regional and humanitarian actions (Moore, 2012: 904). However, the application of these principles is challenging, due to the extremely diverse manifestations of the use of force and some ambiguities in international law (Redaelli, 2022: 36).

Article 51 of the Charter of the United Nations states that the use of force is only permitted for defensive purposes in the event of an armed attack. Article 53 provides safeguards against the threat of attack from hostile states. In this case, it is also necessary to determine whether Cyprus, Greece, and the Republic of Cyprus have engaged in hostile actions against Turkey. Article 107's use of "enemy states" seems to be limited to the states that participated in the Second World War. However, it is also necessary to determine if Greece's hostile actions will make it an enemy state. Turkey did not declare war on Greece but conducted direct military operations in Cyprus after the Greek Coup. Makarios fled the island and warned that even the Turks were in grave danger. In response, Turkey decided to exercise its guarantee right under Article 4 of the Treaty of Guarantee (Bora, 2013: 39). This was not because the Peace Operation of 1974 was a declaration of war, but rather

because the deteriorating conditions required military intervention. In this regard, the Peace Operation of 1974 should not be evaluated within the framework of the laws of war, but rather, as the name implies, within the framework of the use of military force to restore a disrupted order. The use of military force was not directed against the Republic of Cyprus, but against the regime of the military junta, which sought to abolish the Republic of Cyprus. Therefore, the Republic of Cyprus was not considered an enemy state during the 1974 Cyprus Peace Operation.

The core of the jus ad bellum principle is a logic that rejects wars for offensive purposes. Therefore, the first requirement of jus ad bellum is the existence of a justification for the use of force. The only justification provided is the right to self-defense, which is recognized as a natural right (Bowett, 2009: 4). This principle is theoretically reasonable and acceptable, but it is very difficult to determine which actions are justified and which are unjust, due to the complexity of some situations. In traditional just war theory, proportionality was assessed by weighing the anticipated benefits of waging war against its potential harms (Kretzmer, 2013: 237). In practice, there may sometimes be a defensive attack (Ereker, 2004: 2). Moreover, the right to defense has been widely interpreted to protect the rights of allies and friends (Bowett, 2009: 5). The peace operation of 1974 does not constitute a border defense against a direct attack. Because Turkey's military action took place within the borders of the Republic of Cyprus, an independent state, without a direct attack against its own borders. A defensive attack is defined as a reaction to a previous wrongdoing (Ereker, 2004: 2-3). This attack may be directed directly or indirectly against the nation. Like forms of individual and collective defense against ongoing attacks, such as the resistance against Iraq's occupation of Kuwait, are regarded as legitimate acts of self-defense (Peilouw, et al., 2015: 590).

In this case, it is necessary to discuss whether Turkey has the right to an offensive defense under the jus ad bellum principles. To determine this, it is necessary to examine whether the Constitution of the Republic of Cyprus and the Guarantee and Alliance treaties grant this right to Turkey, and if so, whether it is subject to conditions, and if so, whether they are met.

After the Treaties of Zurich and London, the Republic of Cyprus was formally established in 1960 with the Nicosia Treaty. The first political and legal dispute between the two constituent communities began with the constitutional amendment proposed by President Makarios (Aksar, 2001: 146; Türkmen, 2005: 72). Article 182 of the Republic of Cyprus Constitution regulates the procedures and conditions for amending the Constitution. According to this article, such an amendment requires the approval of two-thirds of the council members from both communities. Clearly, this objection from the Turkish side is a legal objection and turning it into a political issue is a violation of the relevant provisions of the Constitution and international law (Özersay, 2002: 217). It is stated that the primary goal of these constitutional amendments was to achieve Unification with Greece (Druşotis, 2006: 41).

Makarios defended his strategy by claiming that the Zurich and London treaties were ratified under duress (Sarıca et al., 1975: 41). If Makarios can make such a claim unilaterally on behalf of the Greek Cypriots, the Turkish side has the right to claim that the Sèvres and Lausanne agreements, which legalized the annexation of Cyprus by the United Kingdom, were also signed under duress. Therefore, this claim does not seem to have any legal consequences. Although Makarios argues that the constitutional amendment is an internal matter that does not concern the guarantors, it can be argued that the guarantors have the

right to intervene in the unconstitutional amendment of the constitutional order, because they are obliged to protect the constitutional order collectively or individually. Makarios also used the pretext of amending the constitution to instigate the events and establish a military force that would neutralize the Turks if they tried to leave the Republic of Cyprus (Druşotis, 2006. 43-44). This military force represented the continuation of EOKA (Sadrazam, 2013: 285). This request for reform, which included a tax increase, was rejected by two of the guarantors, namely the British and Turkish governments. However, it is obvious that such a situation alone is not enough to justify a military operation. Soon after Makarios' unsuccessful attempts to amend the constitution, armed attacks began and the events of 1963 occurred, resulting in the deaths of hundreds of people and the subsequent deployment of the United Nations Peacekeeping Force to the island in 1964 (Mira Lulic, 2009: 73). As it is pointed out the physical separation of the two communities did not occur as a result of the Turkish intervention but rather was the outcome of the UNFICYP's action to separate these two communities in 1964 (Aksar, 2001: 149). Greek Cypriots often claimed that Turkish Cypriots voluntarily withdrew from their state positions. However, this is inaccurate. Turkish Cypriots were excluded due to threats to their safety. The Common Select Committee found that in July 1965, when Turkish Cypriot members of the House of Representatives sought to resume their seats, they were told they could do so only if they accepted legislative changes to the constitution enacted in their absence (Stephen, 2001: 18).

The main reasons for Türkiye's military intervention are the security deterioration caused by the internal conflict and the attempt by EOKA, which split into two factions, to change the constitutional order by force of arms through a military coup. The use of force to alter the constitutional order required military intervention. We believe that Türkiye had the duty to protect the rights of the Cypriot people, especially the Turkish Cypriots who were in a minority position and faced threats to their security. The Treaty of Guarantee is an internationally recognized and valid agreement, and the Constitution of the Republic of Cyprus accepts this agreement as having the same status and legal force as its own Constitution. Therefore, violating the Treaty of Guarantee breaches both international law and the constitutional order (Arsava, 1996: 45).

The Greek Cypriot side claimed that the Guarantee Agreement violated the right to self-determination, which is a peremptory norm of international law. They brought this issue to the UN's attention in 1963, and the UN spent a considerable amount of time on it and finally decided that the agreement could be terminated by mutual consent and that the guarantor agreement remained valid (Arsava, 1996: 45).

The main issue regarding the guarantor treaty is whether it should be considered as an international treaty. International treaties are signed by states and not by their constituent populations. However, according to the Ghali and the Annan Plans, the UN will register the Founding Treaty in line with Article 102 of the UN Charter (Tamçelik, 2009: 227). It may be argued that there are special exceptions to this rule in some cases.

The Greek Cypriot asserted that the Cyprus issue stemmed from the Turkish troop landing in 1974 and that their withdrawal would resolve the problem. However, this is a misconception (Stephen, 2001: 1). If Türkiye did not make this intervention, it would have failed in its responsibilities stipulated in the guarantee agreement, legally for the protection of the Constitutional order of the Republic of Cyprus as well the important moral responsibility Türkiye had, stemming from the very strong historical, cultural and political links to the Turkish Cypriot people. It would therefore be unreasonable to have expected Türkiye to be indifferent to the disproportionate use of force against the Turkish Cypriots

by Greek Cypriots. The fact that 103 Turkish villages were evacuated as a result of armed attacks and pressures (Stephen, 2001: 17), and the fact that the island's Turkish Cypriot population was physically crammed into a three percent section of the island (Saruhan, 2020: 46), which made humanitarian intervention unavoidable. Besides the very serious humanitarian crisis, the legal government of the Republic of Cyprus was overthrown by a military coup, Makarios was exiled from the country, a putschist president was appointed by Greece (Mira Lulic, 2009: 66), and the coup plotters changed the name of the country to the Hellenic Republic of Cyprus (Aytaç, 2022: 674). Around 500 people died in clashes between Makarios supporters and the alliance that overthrew him, installing nationalist Nikos Sampson as leader (Kıralp, 2023: 377). As Archbishop Makarios pointed out in his statement to the Security Council, the losses were significant, and both Greeks and Turks were suffering (Denktaş, 1982: 66; Klēridēs, 1989: 349). Considering these circumstances, we can say that this intervention is mandated by the Guarantee and Alliance agreements.

When examining the current Russian intervention in Ukraine, a similar situation seems to exist. When comparing the conditions of Türkiye's military intervention in Cyprus to those of Russia's military intervention, it can be seen that Türkiye intervened under legally solid grounds and much more reasonable conditions in an environment where human rights violations were far more severe that necessitated for UN peace keeping forces to be deployed on the island for a long period. With all these protective precautions in place and despite the presence of the UN peacekeeping forces a military coup occurred in 1974, and Türkiye based on the guarantee and alliance treaties' obligations had no choice but to intervene. Although it was stated that the jus cogens rule pertaining to the safeguarding of the independence and sovereignty of states (Karvatska, 2021: 307) had been violated in Cyprus (Chrysostomides, 2021: 125), but the criteria for this rule were not very clear; therefore, Turkey's intervention in Cyprus was compared to the United States' intervention in Korea and deemed to be justified (Casse, 1998: 6).

The question of whether the Jus cogens rule was violated as a result of the 1974 Peace Operation must be clarified, as must the question of whether the Republic of Cyprus' rule of recognition of states recognized in international law and included in the UN Charter as equal sovereign (Öztürk, 2017: 43-44) has been violated, and whether the Treaty of Alliance is in conflict with the jus cogens principles of the UN Charter. On behalf of the state, the rule of sovereignty does not justify arbitrariness outside the law. The Republic of Cyprus lost its functionality following the events of 1963, and its legal existence was threatened by the Greek military coup of 1974. The fact that Makarios openly stated that the Greek military coup was a violation of the independence and sovereignty of the Republic of Cyprus (Klēridēs, 1989: 351; Gibbons, 2003: 353; Ertekün, 1984: 243) which, by default precludes the 1974 Peace Operation from being considered an act against the independence and sovereignty of the Republic of Cyprus, and is openly confirmed by Makarios' clear words and admission. In fact, President Makarios III requested international intervention after surviving the coup organized by the Greek military junta, he fled to London and sought assistance (Yiangou, 2009: 948). In light of the circumstances surrounding the 1974 Peace Operation, it is clear that the use of force was within the scope of the authority granted by the Guarantee and Alliance treaties. On the basis of these facts, it is impossible to argue that the jus cogens rule prohibiting the use of force has been violated. In the light of all these factors, it can be said that the conditions for justifying the use of force, which is one of the jus ad bellum requirements for the Peace Operation of 1974, have been met.

2. 1974 Cyprus Peace Operation in the Frame of Jus in Bello

Jus in Bello or Ius in Bello refers to the standards of international law that regulate the conduct of war. It is also known as "international humanitarian law" (Gökçer and G. Ercan, 2020: 188, 191; Imseis, 2023: 35). Originally, jus ad bellum determined the justification of war, but over time, jus in bello was considered to have replaced it (Österdahl, 2009: 553–563; Özdemïr, 2022: 387-388).

It should be mentioned that humanitarian law is not a legal word restricted to the realm of jus in bello, as they are not the same thing. It is a law with intimate ties to all notions associated with the use of force. Consequently, it is also stated in relation to the concept of just war (Türkmen, 2005: 63). Due to the human rights breaches caused by the conflicts of the 1990s, in Bosnia (Former Yugoslavia) and Rwanda, this issue began to be discussed in relation to the responsibility to protect (R2P), and the 1974 Peace Operation indeed took place in the same spirit and mission as the recent perspective given above. In 2005, this notion started to appear in international papers and became a worldwide moral standard (Aytaç, 2022: 670). The usage of the concept of a peace operation by Türkiye during its humanitarian intervention on the island illustrates this view.

Jus in Bello questions include whether appropriate force was employed and whether civilians were injured during the operation. When examining the armaments used by Türkiye in the 1974 peace operation, it is clear from the lack of claims from any of the parties in Cyprus or the international community to the contrary that unlawful weapons or excessive force was deployed. Upon the establishment of the Republic in 1960, the number of soldiers was established to be 40% Turkish and 60% Greek, and it is evident that these ratios favored the Greeks Cypriots. The intervention of Türkiye is a reasonable basis to eliminate this power imbalance for the protection of Turkish Cypriots. As noted by Clerides, Turkey would not tolerate the Sampson government and would not permit any alteration to the established balance of power in Cyprus. Turkey perceived Sampson as a threat to the security of the Turkish Cypriots (Klēridēs, 1989: 346). The fact that a relatively big population was uprooted as a result of the operation raised the issue of property rights. However, due to the security issue, most of these movements occurred after the exchange of populations between the two sides (Kırmızıgül, 2021: 528). Similarly, this treaty had a significant impact on the desertion of the Closed Marash. Due to the chaotic nature of war, it seems inevitable that rights abuses will occur. Determining the relationship between negligence or responsibility and these violations is crucial, as the essence of war often entails the infringement of many fundamental rights and liberties. The preservation of superior rights is the primary justification for war. Considering the Turkish army's strength and potential, it is evident that it could seize the entire island. The fact that it did not, however, reveals that the operation's objective was to preserve the rights of the Turkish Cypriot population and to engage in self-defense. This indicates that the jus in belle rule is obeyed, and good faith is demonstrated.

In this context, it is also necessary to handle the question of casualties and detainees. Both parties have made some accusations in this regard (Cassia, 2005: 94). The abuse of detainees clearly violates the jus in bello requirement. Although there are differing accounts of the losses (Cassia, 2005: 28, 48, 49), the numbers given are quite different (Sadrazam, 2013: 1884–1906). It was admitted by the Greek Cypriot side that some mass killings were carried out against Turkish Cypriot civilians (Tarakçı, 1998: 147) and it was stated that this paved the way for Turkish military intervention (Druşotis, 2006: 470). In addition, it was said that both sides committed rapes and killings. During the 1974 Peace Operation, the Greeks

committed mass murders against inhabitants in the villages of Atlılar, Muratağa, Sandallar and Taşkent (Sadrazam, 2013: 1918, 1931). It has been stated without any evidence that the Turks killed some people who did not evacuate their villages (Druşotis, 2006: 528); however, we have not come across any independently documented evidence or information that Türkiye has carried out mass murder type actions against Greek Cypriot civilians. However, it was stated that there were some killings of Greek Cypriot prisoners since the bodies of five missing Greek Cypriot persons were found as a result of later investigations (Sadrazam, 2013: 1935). It is claimed that some 1600 Greek Cypriots went 'missing', presumed killed by the Turks (Cassia, 1999: 26). But on April 17, 1991, Ambassador Nelson Ledsky testified before the United States Senate Foreign Relations Committee that most of the missing persons disappeared in the early days of July 1974, prior to the Turkish intervention. He noted that many of the casualties on the Greek side were inflicted by Greek Cypriots themselves and resulted from conflicts between supporters of Makarios and Sampson (Stephen, 2001: 49). According to the Committee on Missing Persons in Cyprus, the total number of Greek Cypriot missing persons is 1,510, of which 756 have been identified, leaving 754 still missing. For Turkish Cypriots, the total number of missing persons is 492, with 295 identified and 197 still missing (Statistics, 2024.). The Committee on Missing Persons in Cyprus (CMP) was established in April 1981 by both communities, under the UN's auspices, to address this issue and supported by Turkey and Greece (Support to the Committee on Missing Persons – Phase 14). On September 18, 2009, the Grand Chamber of the European Court of Human Rights (ECHR) ruled on Varnava and Others v. Turkey. The case, filed in 1990, concerned 18 Greek Cypriots, nine of whom disappeared during the 1974 Turkish military actions in Cyprus. The applicants claimed eight were captured by Turkish forces, while the ninth, a civilian, was taken for questioning and never returned. His body was found in 2007 by the Committee on Missing Persons (CMP). Turkey argued the men died during the operations (European Court of Human Rights, 2024). Clearly, this conduct violates the Turkish Armed Forces Internal Service and Military Penal Code (Özdemïr, 2022: 573–577) as well as the jus in bello rule. Consequently, with the exception of missing persons, it can be argued that the jus in bello rule was followed. Nonetheless, due to the nature of war, it is known that both communities have suffered numerous deaths, losses, and abuses of rights and transfer of property on both sides. In the context of what has been discussed so far, the principles and provisions of jus post bellum will be examined and considered from the perspective of post-1974 Peace Operation developments.

3. 1974 Cyprus Peace Operation in the Frame of Jus Post Bellum

There has never been an international treaty to regulate war's final phase, and there are sharp disagreements regarding the nature of a just peace treaty (Orend, 2002: 43). The post-jus in bello phase is referred to as Jus Post Bellum, an overlooked term in international law. It is claimed that the first authoritative practice recognizing the separation between jus ad bellum and jus in bello was the Hostage case of the US Military Tribunal at Nürnberg. However, the first authoritative practice recognizing the distinction between jus ad bellum and jus in bello did not emerge after the adoption of the United Nations Charter, but after the establishment of the League of Nations in 1919. The Hostage Case of the US Military Tribunal at Nuremberg was an example reflecting this distinction, but not the first one. Concepts such as transformational occupation and peacebuilding, which were effective after the Cold War, prepared the foundation for the emergence of jus post bellum (Özdemïr, 2022: 388). This term refers to the peaceful phase of a just war and is predicated on the idea that the end of a just war, with all its outcomes, must also be defendable to be right, both morally and legally. A just war should rectify injustices and establish a more just, respectful,

ordered, and safer environment than existed prior to the conflict (Stahn, 2006: 936). The justifiable use of force, as a prerequisite of humanitarian law, shall not lead to avoidable wars by contributing to the protection and advancement of human values.

When evaluating the consequences of the Peace Operation of 1974, we find that it reversed the inevitable consequences of the military coup, halted internal conflicts and massacres, restored a balance that had worsened against the Turkish Cypriot people, and saved both Greek and Turkish Cypriots from further persecution and repression. In this regard, it can be shown that this intervention produced a safer environment for people and their property. However, it can be argued that the justice that jus post bellum intends to offer cannot be attained because the collapsed system has not been entirely repaired and private property rights have not been safeguarded. It is not feasible to definitively rule that the aims of jus post bellum have been broken because it is possible to argue that this cannot be attained and that it is an inevitable sad result of the events that have occurred.

To achieve the whole purpose of the Peace Operation of 1974, however, a political settlement that safeguards the rights of both sides is necessary. Obviously, an obsolete and dysfunctional legal and political system in the shape of the existing Republic of Cyprus which collapsed in the early 1960s and in the light of past tragic events and experiences on both sides it is clearly unsustainable and cannot be maintained as a way forward.

The deployment of the Green Line as a security precaution in Nicosia was put in place in 1963 by the United Kingdom (UK), which is one of the guarantor countries, despite the fact that the Island's partition violates the Guarantee and Alliance treaties, effectively partitioning Nicosia into two zones, paving the way to the ideas of having separation and a two-zoned solution (Druşotis, 2006: 49). In previous sessions between Denktaş and Makarios, a Federative framework was established, and the course of these negotiations was good until Makarios' death (Aytaç, 2022: 676).

Due to subsequent developments jeopardizing the safety and security of all Cypriots, the late Rauf Denktaş having lived through many years of futile meetings and negotiations, released a document containing and building on the principles of confederal solution. In his statement, he stated that this political structure would not only ensure security on the island but also protect the "identity and happiness" of both sides, and that the Republic of Türkiye openly supported this (Doğan, 2002: 86).

When examining the resolutions adopted by the United Nations Security Council, it is evident that there are variations based on the changing circumstances. The Council condemned the 1964 air campaign organized by Türkiye at the outbreak of hostilities, accepted the 1974 Peace Operation as a unilateral intervention and called for a cessation of hostilities, and, following the operation, expressed regret over the declaration of the Federated State and urged the Republic of Cyprus to refrain from separatist actions. However, by proposing the Annan Plan as a solution to the parties, the Council acknowledged that the Republic of Cyprus as a single entity state was not functional. In addition, the fact that this plan is based on two constituent states demonstrates that the Turkish theses are valid and that all prior decisions have lost all significance. Despite the consultative nature of UN Council resolutions, they have a significant impact on international affairs. The fact that the Turkish Republic of Northern Cyprus has been unrecognized by any nation other than the Turkish Republic for years demonstrates this point (Doğan, 2002: 89, 90).

The issue of ownership is another topic that might be explored within the realm of jus post bellum. Because following the conflict, many individuals were forced to abandon their homes and property. The Loizidou case raises the corresponding legal question. Although the European Court of Human Rights rejected several of the plaintiff's claims in its 1996 judgement with eleven votes against, Türkiye accepted the verdict in accordance with Protocol No. 1 Article 1 of the Convention. The ECHR determined that Türkiye had broken the provision (Bora, 2013: 41). Later, it was determined in the Xenides-Arestis judgement that the property right had been breached. Although Türkiye had said that it acknowledged the property right in principle, it argued that the actual situation was not favorable to the establishment of a full property right. In fact, the Republic of Türkiye has proposed the global clearing and compensation method as an expression of respect for the right to private property and has made certain arrangements in accordance with the ECHR's decisions by supporting the establishment and work of the Property Compensation Commission (Özersay, 2002: 324–325). Therefore, it cannot be stated that the Turkish government has abandoned its goodwill mission in this regard. The infringement of the right to property is a condition that affects both Cypriot communities, and it does not appear that each can fix this problem on its own. The Turkish side's proposal for a global swap and compensation appears to be the most appropriate response to the jus post bellum theory under the current circumstances. Although it can be argued that the rule of preserving goodwill, which is one of the rules of jus post bellum, is not followed because it is impossible to restore the broken order caused by Türkiye's intervention in the island. However, it cannot be said that this rule is not followed because it is impossible to restore a political system that has lost its function and been subjected to uncontrollable internal conflicts due to the illegal interventions to the Constitution of the Republic of Cyprus by Makarios in 1963. In actuality, the 1974 Peace Operation avoided a military coup d'état aimed at the independence and sovereignty of the Republic of Cyprus and established a more secure and peaceful environment on the island for both communities (Coyle, 1983: 192).

The preservation of the peaceful environment established by the 1974 Peace Operation requires the recognition and respect of the common aspirations of the two communities, and the avoidance of any impositions on the parties. The experiences of the 1960 Republic also revealed that institutions founded on political coercion that are enforced and not widely endorsed by the public conscience are unsustainable. The use of force must always be aligned with the goodwill mission, which is one of the jus cogens norms, in order to have positive impacts on the social and human conscience. Otherwise, every conflict will become a pretext for further escalations. In view of this, it is evident that the jus post bellum principle plays a vital role in international law. To achieve a just solution to the Cyprus issue, it is essential that the principle of goodwill is integrated and observed in any new initiatives.

Conclusion

This study concludes that jus cogens norms play a significant role in determining the legal limits of the use of force in resolving international issues within the field of international relations. Compliance with these norms is essential for maintaining and continuing national and international peace and security. Until recently, the international system has often been perceived as an 'anarchical society' lacking inherent consistency. War, rather than being a right, is a license permitted by international law under necessary circumstances, and jus cogens norms can be defended within the natural law school of thought.

The research examines the 1974 Turkish military operation in Cyprus through the lens of just war theory's three stages: jus ad bellum (the right to war), jus in bello (the conduct of war), and jus post bellum (the aftermath of war), all in the context of jus cogens rules.

Jus ad Bellum is an international legal term that means "the right to use force. The 1974 Cyprus Peace Operation by Turkey was a defensive action consistent with the jus cogens rules of jus ad bellum, aimed at restoring order after the Greek coup in Cyprus. This intervention was justified under international law, particularly the right to self-defense and the Treaty of Guarantee, despite ongoing debates and complexities in interpreting these principles.

Jus in bello, or international humanitarian law, regulates the conduct of war, focusing on the appropriate use of force and the protection of civilians. It is distinct from jus ad bellum, which justifies the reasons for going to war. Despite some allegations of rights abuses, the operation largely adhered to jus cogens standards, with the primary goal of self-defense and protecting the Turkish Cypriot population. The research acknowledges that some violations of jus in bello rules occurred during the operation, such as the killing of some prisoners due to the chaotic nature of war and property rights infringements.

The concept of jus post bellum refers to the phase following a just war, focusing on establishing a just and peaceful environment. Historically, the distinction between jus ad bellum (the right to go to war) and jus in bello (the right conduct in war) was recognized before the United Nations Charter, notably after the establishment of the League of Nations in 1919. Jus post bellum emerged more prominently after the Cold War, emphasizing that the outcomes of a just war must be morally and legally defensible. The 1974 Peace Operation in Cyprus is examined as an example, showing that it halted internal conflicts and persecution, creating a safer environment. However, the operation did not fully achieve the justice intended by jus post bellum due to unresolved issues like private property rights and the collapsed political system.

The research underscores the necessity of a political settlement that equally safeguards the rights of both sides for lasting peace. It highlights the Green Line in Nicosia, established by the UK in 1963, and the subsequent negotiations between Denktaş and Makarios following the 1974 Peace Operation, which aimed at a federative framework. However, the federal solution, rejected by the Greek side in the Annan Plan, failed, leading to Turkey's proposal of a confederal alternative, as proposed by Rauf Denktaş, to ensure security and happiness for both communities.

After conflicts, many people are forced to abandon their homes and properties, raising legal questions as seen in the Loizidou and Xenides-Arestis cases. The European Court of Human Rights (ECHR) found that Türkiye had violated property rights, leading Türkiye to propose a global clearing and compensation method to respect private property rights. This proposal is seen as a practical response to the jus post bellum theory, given the complexities of restoring property rights.

The infringement of property rights affects both Cypriot communities, and a mutual solution is necessary. The 1974 Peace Operation in Cyprus, while preventing a military coup and establishing a more secure environment, did not fully restore the political system or property rights. The preservation of peace requires recognizing the aspirations of both communities and avoiding coercive political institutions.

The text also mentions the efforts by the Turkish side to compensate and remedy these violations, such as accepting the Annan Plan, supporting The Property Compensation Commission, officially known as the Immovable Property Commission (IPC) and the Committee on Missing Persons in Cyprus (CMP).

The issue of missing persons is another significant post-war concern for both sides. However, allegations that some of the individuals for whom the Turkish side is being held responsible were actually killed or went missing during internal conflicts among the Greek Cypriots necessitate further investigation of this matter within this context.

To achieve a just and lasting solution to the Cyprus issue, it is essential to integrate and observe the jus cogen principle of goodwill in any new initiatives. Sustainable peace can only be achieved through political settlements that are widely endorsed by the public and aligned with the principles of jus post bellum.

The preservation of peace established by the 1974 Peace Operation requires mutual recognition and respect for the aspirations of both communities in Cyprus. The experiences of the 1960 Republic show that political institutions imposed without broad public support are unsustainable. A political settlement that addresses the rights and concerns of both sides is essential for lasting peace and justice in Cyprus.

In conclusion, the research finds that the Turkish side largely adhered to the jus cogens rules of just war theory across its three stages: jus ad bellum, jus in bello, and jus post bellum, with some isolated exceptions that did not reflect state policy. The study also underscores the critical importance of adhering to jus cogens rules in resolving conflicts involving the use of force.

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