

# Impediments to Peacekeeping: The Case of Cyprus

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## 1. Introduction

The Republic of Cyprus, with a population of about 850,000, comprising some eighty-two per cent Greek Cypriots and eighteen per cent Turkish Cypriots, became an independent State on 16 August 1960, and a Member of the United Nations one month later.<sup>1</sup> The Constitution of the new State was intended to balance the interests of both the Greek Cypriots and the Turkish Cypriots and provided for power-sharing between the two politically equal communities. In 1960 Cyprus entered into a treaty with Greece, Turkey and the United Kingdom by which the latter recognized and guaranteed “the independence, territorial integrity and security of the Republic of Cyprus, and also the state of affairs established by the basic Articles of its Constitution.” The application of the provisions of the Constitution encountered difficulties from the very beginning and led to a succession of constitutional crises. The accumulated tension between the two communities, living side by side, but differing in language, culture, religion and national traditions, resulted in the outbreak of fighting on the island on 21 December 1963 and the break-up of the partnership government. In the first few days at least 500 people were killed and thousands wounded; hostages were taken and atrocities committed by both sides. Some 25,000 Turkish Cypriots, about a fifth of their total numbers, fled their homes and took refuge in defended enclaves. Turkey threatened an invasion, British troops moved out of their Sovereign Base Areas on the island and established a cease-fire line in Nicosia, known as the Green Line, which has divided the city ever since. On 15 February 1964, after all attempts to restore peace on the island had failed, the United

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1 The literature on the Cyprus conflict is legion: for a Greek Cypriot view, see K. Chrysostomides, *The Republic of Cyprus. A Study in International Law* (The Hague, 2000), for a Turkish Cypriot perspective, see Z.N. Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd rev. edn., Oxford, 1998).

Kingdom and the Republic of Cyprus requested urgent action by the Security Council. On 4 March 1964, the Security Council unanimously adopted resolution 186 (1964), by which it recommended the establishment of the United Nations Peacekeeping Force in Cyprus (UNFICYP).<sup>2</sup> The Force became fully operational on 27 March and was complemented on 14 April by a civilian police unit (UNCIVPOL). According to its original mandate, the Force was “to prevent a recurrence of the fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions.” By the late spring of 1964, distinct territorial lines of ethnic separation were in place for the first time. The Turkish Cypriots set up a self-proclaimed autonomous civil administration to oversee the enclaves they controlled – totalling about three per cent of the island – and left the Government of the Republic of Cyprus (which since December 1963 was made up solely of Greek Cypriots) in control of 96 per cent of the country. Tensions persisted on the Island but no further fighting took place. The mandate of UNFICYP has been renewed at three-month and later at six-month intervals ever since.

On 15 July 1974 a *coup d'état* was staged in Cyprus by Greek and Greek Cypriot elements favouring union with Greece (*Enosis*). Turkey intervened militarily, justifying its action by the right of intervention under the 1960 Treaty of Guarantee. Large-scale hostilities between the Greek Cypriot National Guard and Turkish troops took place. Nearly 180,000 Greek Cypriots became refugees when they fled the advancing Turkish forces and moved to the Greek Cypriot held south (while during and after the military operations some 40,000 Turkish Cypriots moved to the north). At the cessation of hostilities on 16 August 1974, there were two *de facto* cease-fire lines, extending approximately 180 kilometres across the island, which are separated by a buffer zone which ranges in width from just 20 metres at points in central Nicosia

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2 On UNFICYP, see P. Achilléas, *Chypre. L'UNFICYP* (Paris, 2000); F. Mirbagheri, *Cyprus and International Peacemaking* (London, 1998); United Nations (Ed.), *The Blue Helmets. A Review of United Nations Peace-keeping* (3rd edn., New York, 1996), pp. 147-170; K. Birgisson, “United Nations Peacekeeping Forces in Cyprus”, in W.J. Durch (Ed.), *The Evolution of UN Peacekeeping: Case Studies and Comparative Analysis* (New York, 1993), pp. 218-236; E. Ehrenberg, “Die UNFICYP: Praxisbeispiele für Leistungen und Probleme der Friedenssicherung vor Ort”, (1991) 39 *Vereinte Nationen* 1-3; A. Skriver, “Zyprische ‘Jubiläen’: Zwanzig Jahre UNFICYP, zehn Jahre Teilung” (1984) 32/2 *Vereinte Nationen* 41-46; J. Theodorides, “The United Nations Peace Keeping Force in Cyprus (UNFICYP)” (1982) 31 *ICLQ* 765-783; R. Higgins, *United Nations Peacekeeping, Documents and Commentary*, Vol. IV: *Europe 1946-1979* (Oxford, 1981), pp. 81-413; A.J. Rodriguez Carrion, “The United Nations Force in Cyprus: An Uncertain Case of Peace-Keeping”, in A. Cassese (Ed.), *United Nations Peace-Keeping* (Alphen aan den Rijn, 1978), pp. 155-181; J. Ballaloud, “L’opération des Nations Unies à Chypre” (1976) 80 *RGDIP* 130-162; V. Coufoudakis, “United Nations Peacekeeping and Peacemaking and the Cyprus Question” (1976) 29 *The Western Political Quarterly* 457-473; V. Coussirat-Coustère, “La crise chypriote de l’été 1974 et les Nations Unies” (1974) 20 *AFDI* 437-455; J.A. Stegenga, *The United Nations Force in Cyprus* (Columbus, 1968); J.M. Boyd, “Cyprus: Episode in Peacekeeping” (1966) 20 *International Organization* 1-17; M. Flory, “Force internationale des Nations Unies et pacification intérieure de Chypre” (1964) 10 *AFDI* 458-478.

up to seven kilometres in open countryside and comprises three per cent of the territory of the island. The events of July and August 1974 have dramatically affected the functioning of UNFICYP and have required the Force to perform certain additional functions relating, in particular, to the maintenance of the cease-fire and to various humanitarian matters.

The Turkish intervention led to the *de facto* partition of the island and the establishment of Turkish Cypriot control over the 37 per cent of the island occupied by Turkish armed forces. On 13 February 1975, the Turkish Cypriot community proclaimed the “Turkish Federated State of Cyprus” (TFSC). A Constituent Assembly was set up which drafted the Constitution of this new Federated State. On 23 June 1976 elections were held for the 40-member Assembly and also for the office of President of the TFSC. Although *de facto* independent, the TFSC was not intended by the Turkish Cypriots to be a sovereign independent State (besides the Republic of Cyprus) but a first step towards a solution of the Cyprus question within the framework of a Federal Republic of Cyprus. The UN Security Council on 12 March 1975 called on all States to respect, inter alia, the territorial integrity of the Republic of Cyprus and urgently requested them, as well as the parties concerned, to refrain from any attempt at partition of the island or its unification with any other country. It expressed its regret about “the unilateral decision of 13 February 1975 declaring that a part of the Republic of Cyprus would become “a Federated Turkish State”” and affirmed that the decision “does not prejudice the final political settlement of the problem of Cyprus and takes note of the declaration that this was not its intention.”<sup>3</sup> In the years from 1975 to 1983, negotiations took place between the two communities on a new constitution for Cyprus modelled on a federal State approach – without success. On 15 November 1983, the Assembly of the TFSC declared “the establishment of the “Turkish Republic of Northern Cyprus” (TRNC) as an independent State”.<sup>4</sup> On 18 November 1983 the UN Security Council deplored the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus, declared it legally invalid and called for its withdrawal. The Council also called upon “all States *not to recognize any Cypriot State other than the Republic of Cyprus*.”<sup>5</sup> In response to the exchange of ambassadors between Turkey and the TRNC and “further secessionist acts in the occupied part of the Republic of Cyprus”, the Security Council on 11 May 1984 reiterated its “call upon all State *not to recognize the purported State of the “Turkish Republic of Northern Cyprus”* set up by secessionist acts and calls upon them not to facilitate or in any

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3 S/RES/367 (1975) of 12 March 1975, paras 1, 2.

4 For the text of the Turkish Cypriot declaration of independence, see UN Doc. A/38/586-S/16146, 16 November 1983, 11-31.

5 S/RES/541 (1983) of 18 November 1983, para. 7.

way assist the aforesaid secessionist entity.”<sup>6</sup> So far, no recognized State other than Turkey has recognized the TRNC.<sup>7</sup>

After the establishment of the Turkish Federated State of Cyprus and, in particular, after the declaration of an independent Turkish Republic of Northern Cyprus relations between the UN peacekeeping force in Cyprus and the Turkish Cypriots inevitably became more complex as political, legal and peacekeeping aspects of the Cyprus problem became intertwined. UNFICYP had originally started out as an *intra-State* peacekeeping force, a so-called law and order force. With the partition of the island in July 1974 its role in fact changed to an *inter-State* force acting as an interposition force between the Greek Cypriot and the Turkish Cypriot State. This new role, however, has been complicated by the fact that the UN Security Council has called upon States (and, of course, the organization itself) to respect the territorial integrity of the Republic of Cyprus and not to recognize a second Cypriot State. In the following, it is to be examined what effects the non-recognition as a State of a local *de facto* government in whose territory a UN peacekeeping force is stationed and whose co-operation is required for the fulfilment of its mandate has on the peacekeeping operation. This question is not limited to UNFICYP and the Turkish Republic of Northern Cyprus. Similar situations existed in the cases of the United Nations Operation in the Congo (ONUC) and Katanga,<sup>8</sup> the United Nations Protection Force (UNPROFOR) and the three secessionist entities in Croatia and Bosnia and Herzegovina, the Republic of Serb Krajina,<sup>9</sup> the Bosnian Serb Republic (“Republika Srpska”)<sup>10</sup> and the Croatian Republic of Herceg-Bosna<sup>11</sup> as well as in the case of the United Nations Observer Mission in Georgia (UMOMIG) and the Republic of Abkhazia.<sup>12</sup> In none of these cases the operation of the peacekeeping force lasted for such a long time as in the case of UNFICYP, it is thus the prime example.

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6 S/RES/550 (1984) of 11 May 1984, para. 3.

7 On the non-recognition of the TRNC as a collective sanction by the international community, see S. Talmon, *Kollektive Nichtanerkennung illegaler Staaten* (Tübingen, 2003).

8 Katanga on 11 July 1960 unilaterally declared its independence of Congo.

9 The Republic of Serb Krajina seceded from Croatia on 19 December 1991.

10 On 9 January 1992 the Republic of the Serb people of Bosnia and Herzegovina was proclaimed which on 7 April 1992 change its name to Republic of Srpska.

11 The Croatian Republic of Herceg-Bosna was proclaimed on 4 July 1992.

12 On 26 November 1994 the Supreme Soviet of Abkhazia declared Abkhazia a sovereign democratic State. Already on 25 August 1990 the sovereignty of the Abkhaz Soviet Socialist Republic, i.e. its independence of the Georgian SSR, had been proclaimed by its Supreme Soviet.

## 2. Effects of Non-Recognition on the UN Peacekeeping Operation in Cyprus

### 2.1. Consent to the Presence of the UN Peacekeeping Force

#### 2.1.1. Legal and Factual Consent Distinguished

Traditional peacekeeping forces such as UNFICYP have been described as “consent forces”,<sup>13</sup> i.e. the consent of the parties to the deployment of the force and to the renewal of its mandate is considered essential for their operation. Two types of consent may be distinguished: consent required by law and consent required for all practical purposes.

Consent required by law, which may also be termed *legal consent*, is closely linked with the legal basis for the peacekeeping force. All measures taken on the territory of a member State by the United Nations such as the stationing of a peacekeeping force or the establishment of an office for the protection and promotion of human rights constitute a violation of the State’s sovereignty unless it has been authorized by the Security Council acting under Chapter VII of the Charter of the United Nations (UN Charter)<sup>14</sup> or it is taken with the consent of the State concerned. The absence of a clear finding of a threat to the peace, breach of the peace, or act of aggression in the establishing resolution indicates that UNFICYP was not mounted within the framework of Chapter VII<sup>15</sup> and that the Force could not be seen as a “provisional measure” in the terms of Article 40 of the UN Charter.<sup>16</sup> The legal basis for UNFICYP may rather be found in Chapter VI of the UN Charter.<sup>17</sup> According to Article 36, paragraph 1, the Security Council may in a situation, the continuance of which is likely to endanger the maintenance of international peace and security, recommend appropriate procedures or methods of adjustment. By noting in its resolution 186 (1964) that the present situation with respect to Cyprus is “likely to threaten international peace and security” and by *recommending* the creation of

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13 R. Siekmann, *National Contingents in United Nations Peace-keeping Forces* (Dordrecht, 1991), p. 6. See also M. Bothe, “Peace-keeping”, in B. Simma (Ed.), *The Charter of the United Nations. A Commentary* (2nd edn., Oxford, 2002), Vol. 1, pp. 648-700 at p. 682, MN 76.

14 Cf. Art. 2 (7) of the Charter of the United Nations of 26 June 1945 (DUNCIO XV, 335).

15 See F. Seyersted, *UN Forces in the Law of Peace and War* (Leyden, 1966), pp. 141-142; A.N. Papadopoulos, *Aspects juridiques et politiques de l’action des Nations Unies à Chypre* (Nicosia, 1970), p. 10.

16 But, see R. Higgins, *supra* note 2, 144.

17 D. Bowett, *United Nations Forces: A Legal Study of United Nations Practice* (London, 1964), p. 553; M. Flory, *supra* note 2, 465; J. Ballaloud, *supra* note 2, 138; Z.N. Necatigil, *supra* note 1, 49; A.L. Karaosmano-lu, “UNFICYP and the Problem of Consent”, in Foreign Policy Institute (Ed.), *Cyprus* (Ankara, 2002), pp. 57-77 at p. 65; Z.M. Necatigil, “United Nations Resolutions on Cyprus”, in Foreign Policy Institute (Ed.), *Cyprus* (Ankara, 2002), pp. 39-56 at p. 40. Some writers hold that UNFICYP is based on “Chapter VI and a half”: P. Achilleas, *supra* note 2, 44-45.

a United Nations Peace-Keeping Force in Cyprus the Security Council indicated that it was acting under Article 36, paragraph 1. In view of Article 2, paragraph 7, of the UN Charter the consent of the host State, i.e. its government, was thus an indispensable legal requirement for the creation of UNFICYP; it determined the nature and limits of the United Nations' action.<sup>18</sup> This finds expression in paragraph 4 of resolution 186 (1964), where the Security Council recommended the creation of the Force "with the *consent* of the Government of Cyprus". The composition and size of the Force was to be established "in consultation with the Government of Cyprus".

From the legal consent of the government of the host State the *factual consent* of the other parties to the conflict must be distinguished. While the former is required by international law the latter is required by practical necessity only.<sup>19</sup> The distinction between factual and legal consent is also reflected in Article 9 of the Draft Guidelines for UN Peacekeeping Operations which stipulates that UN peacekeeping forces "must operate with the full co-operation of the parties concerned, particularly of the Government of the host country, due account being taken of its sovereignty."<sup>20</sup> Without the factual consent, i.e. the acceptance of and co-operation with a peacekeeping force, by all the parties concerned the force cannot function effectively or may not be able to function at all; especially, if the parties exercise *de facto* control over territory in which the force is to operate. This may be illustrated by the following example: according to an Anglo-American peace plan for Southern Rhodesia presented in August 1977 a peacekeeping force was to be stationed in the British colony which had declared its independence unilaterally under a white minority regime in 1965.<sup>21</sup> UN Secretary-General Kurt Waldheim took the view that legally the stationing of the force did not require the consent of the illegal Smith regime in Salisbury (but only that of the British Government in London which continued to be recognized as the lawful Government of the territory). The United Nations, however, would have to face the existing realities and obtain its concurrence in the stationing of the force too.<sup>22</sup> It is in this sense that the term consent is usually used in connection with peacekeeping. Thus, the Panel on United Nations Peace Operations

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18 Cf. M. von Grüningen, "Neutrality and Peace-Keeping", in Antonio Cassese (Ed.), *United Nations Peacekeeping: Legal Essays* (Alphen aan den Rijn, 1978), p. 136; C. Tomuschat, "Die Rechtslage für Peacekeeping-Einsätze nach der UNO-Charta", in E. Koch (Ed.), *Die Blauhelme. Im Einsatz für den Frieden* (Frankfurt/Main, 1991), pp. 45-51 at p. 50; P. Achilleas, *supra* note 2, 45.

19 While not required by law it may nevertheless have legal effects; see below ch. 2.1.3.

20 Draft Formulae for Articles of Agreed Guidelines for United Nations Peace-Keeping Operations: UN Doc. A/32/394, 2 December 1977, Annex II, Appendix 1. See also E. Suy, "United Nations Peace-keeping System", in R. Bernhardt (Ed.), *Encyclopedia of Public International Law*, Vol. 4 (Amsterdam, 2000), pp. 1143-1149 at p. 1145 who considers the "consent of the parties, or at least of the States concerned" a prerequisite for the sending of a peacekeeping force.

21 See, generally, S. Talmon, *supra* note 7, ch. 2.II.

22 See *Archiv der Gegenwart* 47 (1977), p. 21274; *Archiv des Völkerrechts* 18 (1979), p. 210.

stated in its Report of 17 August 2000 (“Brahimi Report”) that it “concur[s] that consent of *the local parties* [...] should remain the bedrock principles of peacekeeping.”<sup>23</sup>

The distinction between legal and factual consent has not always been appreciated. Especially Turkey and the Turkish Cypriot leadership have muddled the water. In support of their argument that the United Nations was *legally* required to request the consent of the Turkish Cypriot side for the creation of UNFICYP and for the renewal of its mandate reference is usually made to a telegram which the Foreign Office in London on 2 March 1964 sent to the head of the British mission to the United Nations giving him the following instructions:

Regarding the constitutional procedures, you should draw attention to the fact that our own Peacekeeping force was properly established with the agreement of both the President and the Vice-President of Cyprus. In our view, this would inevitably be the condition of an international force *being acceptable and welcome to both communities* and this would in turn be essential to the success of the international force. Her Majesty’s Government is of the opinion that any course of action upon which the UN embarks should be generally acceptable to all the parties including the two communities.<sup>24</sup>

The italicized part has sometimes been omitted thereby wrongly giving the impression that the consent of both the President and the Vice-President of Cyprus was a *legal* precondition for the stationing of UNFICYP.<sup>25</sup> As shown by other official documents, the British Government, however, clearly distinguished between the acceptance of the Force by the two communities and its invitation by “the local Government”, which it considered a precondition for UNFICYP “not to constitute an illegal invasion of the island”.<sup>26</sup>

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23 UN Doc. A/55/305-S/2000/809, 21 August 2000, para. 48 (emphasis supplied). See also An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping, Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992: UN Doc. A/47/277-S/24111, 17 June 1992, para. 20 (“*Peace-keeping* is the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned [...]). With regard to UNFICYP, see the statement of the Secretary-General before the Security Council: SCOR, 29th year, 1793rd meeting, 15 August 1974, 3, para. 18.

24 Quoted in A.C. Gazio-lu, “Security Council Resolution 186 and United Nations Force in Cyprus (UNFICYP)” (2001) 6/1, *Perceptions* 39-60 at 41 (emphasis supplied).

25 Cf. A.L. Karaosmano-lu, *supra* note 17, 66.

26 In a Minute to the British Prime Minister the Cabinet Secretary, Sir Burke Trend, wrote on 5 February 1964 with respect to the establishment of UNFICYP: “If the international force is not to constitute an illegal invasion of the island, it must not merely be invited by the local Government (which is, rightly, our first objective) but must also be given by that Government authority to do whatever is necessary to fulfil its purposes.” (PREM 11/4704, quoted in Letter dated 13 February 2001 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General: UN Doc. A/55/782-S/2001/133, 13 February 2001, 2).

### 2.1.2. Legal Consent by the Government of Cyprus

In its resolution 186 (1964) the Security Council recommended “the creation, *with the consent of the Government of Cyprus*, of a United Nations Peace-Keeping Force in Cyprus.”<sup>27</sup> The “Government of Cyprus” was also to be consulted (along with the Governments of Greece, Turkey, and the United Kingdom) on the size and composition as well as other matters relating to UNFICYP. For the United Nations the government of the host State of the Force was the (Greek Cypriot) Government of the Republic of Cyprus. By letter of 4 March 1964, the Minister for Foreign Affairs of Cyprus, Spyros A. Kyprianou, informed the UN Secretary-General of the consent of the Government of the Republic of Cyprus to the creation of the Force. He wrote:

I have the honour to refer to the resolution [186]. In paragraph 4 thereof, the council *inter alia* recommended “the creation, with the consent of the government of Cyprus, of a United Nations peace-keeping force in Cyprus”. I have the pleasure to inform you, on behalf of the Government of Cyprus, that the Government hereby consents to the creation of the Force in accordance with the terms of the aforementioned resolution [...].<sup>28</sup>

On 6 March 1964 Secretary-General U Thant, referring to this letter, reported to the Security Council that, “having received the consent of the Government of Cyprus to the creation of the Force”, he had appointed Lieutenant-General P.S. Gyani as Commander of UNFICYP.<sup>29</sup> The fact that since December 1963 the Turkish Cypriot community had not been represented on the partnership government of Cyprus as envisaged by the 1960 Constitution<sup>30</sup> was, of course, known to the United Nations but was treated as an internal matter. In fact, there was no alternative: if the United Nations had not treated the Greek Cypriot rump government as “the Government of Cyprus”, there would have been no competent functioning organ of the host State to express the consent required for the creation of UNFICYP under Chapter VI of the UN Charter. The same attitude was taken with regard to the renewal of the mandate of the Force. In all resolutions but one<sup>31</sup> adopted since 1964 the consent of the “Government of Cyprus” has been expressly registered. The Security Council has either noted that “the Government of Cyprus has indicated its desire that the

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27 S/RES/186 (1964) of 4 March 1964, para. 4.

28 UN Doc. S/5578, 5 March 1964.

29 Report of the Secretary-General on the organization and operation of the United Nations Peace-keeping Force in Cyprus: UN Doc. S/5579, 6 March 1964.

30 See Arts. 36 to 60 of the Constitution of the Republic of Cyprus of 6 April 1960 (Cyprus, Cmnd. 1093 (1960), p. 91).

31 See S/RES/192 (1964) of 20 June 1964.

stationing of the United Nations Force in Cyprus should be continued”<sup>32</sup> or that “the Government of Cyprus has agreed that in view of the prevailing conditions in the island it is necessary to continue”<sup>33</sup> or “keep the Force in Cyprus”.<sup>34</sup> “Government of Cyprus” has thereby always been understood to mean the Greek Cypriot Government of the Republic of Cyprus.<sup>35</sup> This may be illustrated by the fact that prior to the adoption of resolution 194 (1964) the representative of the Republic of Cyprus had expressly stated: “My Government has already indicated to the Secretary-General that we are prepared to accept the extension of the United Nations Force in Cyprus (UNFICYP) mandate for an additional three months” period on the basis of the terms of the resolution [186] [...].”<sup>36</sup>

The Turkish Cypriot community did not object to the creation of UNFICYP and the renewal of its mandate as such (which, of course, was in its interest)<sup>37</sup> but, from the outset, protested against a Government made up solely of Greek Cypriots being treated by the United Nations as the “Government of Cyprus”. On 7 March 1964

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32 S/RES/194 (1964) of 25 September 1964, 198 (1964) of 18 December 1964, 201 (1965) of 19 March 1965, 206 (1965) of 15 June 1965.

33 S/RES/219 (1965) of 17 December 1965, 220 (1966) of 16 March 1966, 222 (1966) of 16 June 1966, 231 (1966) of 15 December 1966, 238 (1967) of 19 June 1967, 244 (1967) of 22 December 1967, 247 (1968) of 18 March 1968, 261 (1968) of 10 December 1968, 266 (1969) of 10 June 1969, 274 (1969) of 11 December 1969, 281 (1970) of 9 June 1970, 291 (1970) of 10 December 1970, 293 (1971) of 26 May 1971, 305 (1971) of 13 December 1971, 315 (1972) of 15 June 1972, 324 (1972) of 12 December 1972, 334 (1973) of 15 June 1973, 343 (1973) of 14 December 1973, 349 (1974) of 29 May 1974.

34 S/RES/364 (1974) of 13 December 1974, 370 (1975) of 13 June 1975, 383 (1975) of 13 December 1975, 391 (1976) of 15 June 1976, 401 (1976) of 14 December 1976, 410 (1977) of 15 June 1977, 422 (1977) of 15 December 1977, 430 (1978) of 16 December 1978, 443 (1978) of 14 December 1978, 451 (1979) of 15 June 1979, 458 (1979) of 14 December 1979, 472 (1980) of 13 June 1980, 482 (1980) of 11 December 1980, 486 (1981) of 4 June 1981, 495 (1981) of 14 December 1981, 510 (1982) of 15 June 1982, 526 (1982) of 14 December 1982, 534 (1983) of 15 June 1983, 544 (1983) of 15 December 1983, 553 (1984) of 15 June 1984, 559 (1984) of 14 December 1984, 565 (1985) of 14 June 1985, 578 (1985) of 12 December 1985, 585 (1986) of 13 June 1986, 593 (1986) of 11 December 1986, 597 (1987) of 12 June 1987, 604 (1987) of 14 December 1987, 614 (1988) of 15 June 1988, 625 (1988) of 15 December 1988, 634 (1989) of 9 June 1989, 646 (1989) of 14 December 1989, 657 (1990) of 15 June 1990, 680 (1990) of 14 December 1990, 697 (1991) of 14 June 1991, 723 (1991) of 12 December 1991, 759 (1992) of 12 June 1992, 796 (1992) of 14 December 1992, 839 (1993) of 11 June 1993, 889 (1993) of 15 December 1993, 927 (1994) of 15 June 1994, 969 (1994) of 21 December 1994, 1000 (1995) of 23 June 1995, 1032 (1995) of 19 December 1995, 1062 (1996) of 28 June 1996, 1092 (1996) of 23 December 1996, 1117 (1997) of 27 June 1997, 1146 (1997) of 23 December 1997, 1178 (1998) of 29 June 1998, 1217 (1998) of 22 December 1998, 1251 (1999) of 29 June 1999, 1283 (1999) of 15 December 1999, 1303 (2000) of 13 June 2000, 1331 (2000) of 13 December 2000, 1354 (2001) of 15 June 2001, 1384 (2001) of 14 December 2001, 1416 (2002) of 13 June 2002, 1442 (2002) of 25 November 2002.

35 Cf. also the Report of the Secretary-General to the Security Council on the United Nations operation in Cyprus, which stated that UNFICYP “respects at all times the sovereignty and independence of Cyprus and the authority of the Government” (UN Doc. S/5950, 10 September 1964, para. 220).

36 SCOR, 19th year, 1151st meeting, 16 September 1964, p. 3, para. 14.

37 A.L. Karaosmano-lu, *supra* note 17, 66 and 67.

the Turkish Cypriot Vice-President of Cyprus, Dr Fazil Küçük, sent a telegram to the President of the Security Council which reads in part:

Reference [...] paragraphs 4 and 7 of Security Council resolution [186], I would point out that under Cyprus Constitution Turkish community through its Vice-President has equal rights with the Greek community, particularly in matters relating to foreign affairs, defence and security [...].<sup>38</sup> In view of this, it is imperative that in implementing paragraphs 4 and 7 of resolution both President and Vice-President are consulted and/or their consent obtained: [...] any consultation solely with and obtaining consent only of Greek elements would not in substance and under Cyprus constitution be consultation with or obtaining consent of Cyprus Government as envisaged under resolution.<sup>39</sup>

However, the Turkish Cypriot position was supported only by Turkey.<sup>40</sup> The Security Council neither requested the consent of the Turkish Cypriots nor did it register any (legal) consent given by them of their own accord.<sup>41</sup>

The fact that a State's consent may have been expressed in violation of a provision of its internal law does not automatically invalidate its consent.<sup>42</sup> Any defect in its consent as in other unilateral acts must rather be *invoked* by the State concerned.<sup>43</sup> So long as this has not been done the State's consent must be treated as valid. It is not for the addressee of a declaration of consent to call into question its validity as he is not the guardian of the constitution of the declaring State. In its advisory opinion of 4 February 1932 concerning the *Treatment of Polish Nationals in Danzig* the Permanent Court of International Justice (PCIJ) stated that "according to generally accepted principles, a State cannot rely, as against another State, on the provisions of the latter's Constitution, but only on international law and international

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38 Dr Küçük was referring to Arts. 48 (d) and 49 (d) according to which both the President and the Vice-President had "the right of final veto on decisions of the Council of Ministers concerning foreign affairs, defence or security [...]."

39 Letter dated 9 March 1964 from the representative of Turkey to the President of the Security Council transmitting telegram dated 7 March 1964 from the Vice-President of Cyprus to the President of the Security Council: UN Doc. S/5583, 9 March 1964. See further the telegram, dated 18 June 1964, from Vice-President Küçük to the Secretary-General: UN Doc. S/5790, 1 July 1964, Annex. And UN Doc. S/6228, 11 March 1965, Annex I, section B, para. 6. See also, generally, A.C. Gazio-lu, *supra* note 24, 42-43.

40 See, e.g., the statements of the Turkish representative in the Security Council: UN Docs. S/PV.2378, 15 June 1982, 41-45; S/PV.2565, 14 December 1984, 46-47. See also Letter dated 28 December 2000 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General: UN Doc. A/55/717-S/2000/1241, 28 December 2000, 1, 4.

41 Letter dated 14 February 2001 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General: "Moreover, it has never been United Nations practice to register the consent of either Turkey or her subordinate local administration to the extension of the UNFICYP mandate." (UN Doc. A/55/784-S/2001/136, 14 February 2001, 1).

42 Cf. Art. 46 of the Vienna Convention on the Law of Treaties (VCLT) of 23 May 1969 (1155 UNTS 331).

43 Cf. Art. 65 (1) VCLT.

obligations duly accepted”.<sup>44</sup> The same applies to international organizations such as the United Nations. If the consent to the creation of a peacekeeping force has been given by a Foreign Minister, as in the case of Cyprus, it is highly questionable, in any case, whether the State can invoke a violation of its internal law. In the context of the Anglo-Prussian dispute on the law of naval warfare the British envoy to Berlin in 1748 declared with regard to a statement made by the British Foreign Secretary to the Prussian Minister in London: “I am afraid if we were to plead at any foreign Court the Insufficiency (according to the Laws of England) of a Declaration made by the Secretary of State, the Answer would be, that it is a Matter of domestick Consideration for Ourselves [...]”.<sup>45</sup> This view was confirmed some 180 years later, when the PCIJ held that a declaration by a Foreign Minister on behalf of his Government, in regard to a question falling within his province, was binding upon the country to which the Minister belonged and that the question whether constitutional law authorized the Minister of Foreign Affairs – the direct agent of the chief of State – to make the declaration did not have to concern foreign governments.<sup>46</sup> Spyros Kyprianou who consented to the creation of UNFICYP on behalf of Cyprus had held the position of Minister for Foreign Affairs of the country since 7 September 1960, i.e. long before the break-up of the partnership government.<sup>47</sup> He acted as direct agent of Archbishop Makarios who continued to be recognized by the international community as head of State of Cyprus. It was thus not for the United Nations to call into question his position as Foreign Minister of Cyprus just because the Turkish Cypriots were no longer represented on the Government.

### 2.1.3. Factual Consent by the Turkish Cypriot Authorities

Originally, the United Nations did not register even the factual consent of the Turkish Cypriots. This situation changed after the Turkish intervention and the *de facto* partition of the island in July 1974. The Turkish Cypriot authorities, together with the Turkish military commander, now exercised effective control over the whole of northern Cyprus. The Secretary-General at the end of July 1974 expressed his hope that UNFICYP would be able to continue to perform its role in all parts of the island with the agreement of all parties concerned.<sup>48</sup> When the extension of

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44 *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*, PCIJ, Series A/B, No. 44, 24. See also *Nottebohm Case (Second Phase)*, ICJ Rep. 1955, 4 at 28 (diss. op. Kleastad) and at 36-37 (diss. op. Read).

45 E. Satow, *The Silesian Loan and Frederick the Great* (Oxford, 1915), pp. 233-234; see also *ibid.*, pp. 29, 30, 211.

46 *Legal Status of Eastern Greenland*, Judgment of 5 April 1933: PCIJ, Series A/B, No. 53, 22 at 70-71 and 91-92 (diss. op. Anzilotti). See also Art. 7 (2) (b) VCLT.

47 Spyros Kyprianou held the post of Foreign Minister from 7 September 1960 to 5 May 1972.

48 SCOR, 29th year, 1788th meeting, 31 July 1974, para. 9.

the mandate of UNFICYP came up for regular renewal in December 1974, the new situation on the ground was reflected in the practice of the United Nations. The UN Secretary-General, when recommending to the Security Council the extension of the stationing of the Force in his report on the United Nations operation in Cyprus, for the first time pointed out that “the parties concerned have signified their concurrence in this recommendation.”<sup>49</sup> This was taken up by the Security Council which in its resolution 364 (1974) noted “the statement by the Secretary-General contained in [...] his report that the parties concerned had signified their concurrence in his recommendation that the Security Council extend the stationing of the United Nations Peace-keeping Force in Cyprus for a further period of six months.”<sup>50</sup> The same procedure was followed in June 1975.<sup>51</sup> Six months later the practice (to be followed until June 1983) slightly changed. In his report, the Secretary-General recommended to the Security Council that it extend the mandate of UNFICYP for a further period of six months and informed the Council that he had undertaken consultations on this matter with the parties concerned and would report to the Council on these consultations as soon as they had been completed.<sup>52</sup> Several days later, in an addendum to his report the Secretary-General stated:

In my report [...], I recommended that the Security Council extend the stationing of the United Nations Peace-keeping Force in Cyprus for a further period of six months, and I indicated that I would report to the council on my consultations with the parties concerned on this subject as soon as possible. I am now in a position to inform the Council that the parties concerned have signified their concurrence in the proposed extension.<sup>53</sup>

The Security Council, in its resolution extending the stationing of UNFICYP, then noted “the concurrence of the parties concerned in the recommendation by the Secretary-General that the Security Council extend the stationing of the Force in Cyprus for a further period of six months [...]”<sup>54</sup> That the Turkish Cypriots were one of the “parties concerned” becomes clear from the report of the Secretary-General

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49 Report of the Secretary-General on the United Nations operation in Cyprus (for the period 23 May to 5 December 1974): UN Doc. S/11568, 6 December 1974, para. 81.

50 S/RES/364 (1974) of 13 December 1974, preambular para. 3.

51 Report of the Secretary-General on the United Nations operation in Cyprus (for the period 7 December 1974 to 9 June 1975): UN Doc. S/11717 of 9 June 1975, para. 69 and S/RES/370 (1975) of 13 June 1975, preambular para. 4.

52 Report of the Secretary-General on the United Nations operation in Cyprus (for the period 10 June to 8 December 1975): UN Doc. S/11900 of 8 December 1975, para. 55.

53 UN Doc. S/11900/Add.1 of 13 December 1975.

54 S/RES/383 (1975) of 13 December 1975, preambular para. 4. The Council, in preambular para. 1, expressly referred to the report of the Secretary-General and its addendum.

of 5 June 1976 which speaks of an “exchange of views on this question [i.e. the extension of the UNFICYP mandate] with the Turkish Cypriot community”.<sup>55</sup>

Although during the process of consultation undertaken by the Secretary-General regarding the renewal of the UNFICYP mandate the Turkish Cypriots have regularly declared their “consent” to the extension of stationing of the Force<sup>56</sup> no such consent was ever registered. What was registered, albeit indirectly, was their “concurrence”. *Concurrence in the recommendation by the Secretary-General that the Security Council extend the stationing of UNFICYP* is not the same as *consent to the stationing of UNFICYP*. The Security Council in its resolutions extending the mandate of UNFICYP clearly distinguished between the “concurrence of the parties concerned in the recommendation by the Secretary-General” and the fact that “the Government of Cyprus has agreed that [...] it is necessary to keep the Force in Cyprus”. That concurrence is not the same as legal consent is also shown by the fact that it was not just the concurrence of the Government of Cyprus and of the Turkish Cypriot authorities that was recorded but also that of the Governments of Turkey, Greece and the United Kingdom whose legal consent to the stationing of UNFICYP undoubtedly was not required.<sup>57</sup>

While concurrence may not be equated with legal consent it is not without legal effects. As a local *de facto* government<sup>58</sup> the Turkish Cypriot authorities – the Autonomous Turkish Cypriot Administration and, later, the Government of the Turkish Federated State of Cyprus – possessed limited international personality.<sup>59</sup> By their unilateral declarations vis-à-vis the Secretary-General or the Security Council the Turkish Cypriots legally bound themselves to accept the presence of UNFICYP in the territory under their control and to cooperate with the Force in the discharge of its mandate. The Turkish Cypriot authorities were estopped from challenging its

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55 Report of the Secretary-General on the United Nations operation in Cyprus (for the period 9 December 1975 to 5 June 1976): UN Doc. S/12093, 5 June 1976, para. 8. See also SCOR, 30th year, 1863rd meeting, 13 December 1975, para. 217 and UN Doc. S/16596/Add.2, 15 June 1984 where the Secretary-General recorded that “the Turkish Cypriot community [...] is not in a position to accept the text of the draft resolution” on the extension of the mandate of UNFICYP. See further *Philippe Achilleas*, *supra* note 2, 47.

56 Cf., e.g., the statements of the Turkish Cypriot representatives, Mr. Çelik: “In view of the fact that we have been consulted by the Secretary-General on the extension of the mandate [...] I should like to put on record that the Turkish Cypriot side has given its consent to the extension of the mandate of the Force” (SCOR, 30th year, 1863rd meeting, 13 December 1975, para. 167) and Mr. Atalay: “[T]he Government of the Turkish Federated State of Kibris concurs with the decision to extend the mandate of UNFICYP, and it has instructed me to convey its consent” (SCOR, 36th year, 2279th meeting, 4 June 1981, para. 49). See also S/PV.2378, 15 June 1982, 24-25.

57 K. Chrysostomides, *supra* note 1, 218.

58 The UN Secretary-General spoke of “areas under the control of the [Turkish Cypriot] community” (Report of the Secretary-General on the United Nations operation in Cyprus [for the period 28 May to 30 November 1981]: UN Doc. S/14778, 1 December 1981, para. 16).

59 Cf. I. Brownlie, *Principles of Public International Law* (5th edn., Oxford, 1998), p. 63.

presence in northern Cyprus for the period of the extension of the stationing of the Force in which they had concurred. Certain rights of cooperation could also be derived from these unilateral acts.<sup>60</sup> The scope, the modalities and procedures of cooperation were determined by the relevant Security Council resolutions and the established practice of cooperation at the time of concurrence. As the latter was largely based on the Agreement between the United Nations and the Government of the Republic of Cyprus concerning the Status of the United Nations Peace-Keeping Force in Cyprus it may be argued that the Turkish Cypriots (at least so far as they had not established any practice to the contrary) by their unilateral declarations implicitly assumed the obligations laid down in that Agreement.

#### 2.1.4. Attempts by the TRNC at Having Their Legal Consent Recorded

Following the Turkish Cypriot proclamation on 15 November 1983 of the Turkish Republic of Northern Cyprus (TRNC), Turkey and the Turkish Cypriot authorities, in an unusual departure from an almost routine renewal of the mandate of UNFICYP, declined to concur in the extension of the stationing of the Force.<sup>61</sup> In the addendum to his report on the United Nations operation in Cyprus the Secretary-General thus had to note on 15 December 1983:

In my report of 1 December 1983, I recommended that the Security Council extend the stationing of the United Nations Peace-keeping Force in Cyprus for a further period of six months, and I indicated that I would report to the council on my consultations with the parties concerned on this subject as soon as possible. I wish to inform the Council that, *as of now*, the Government of Cyprus as well as the Governments of Greece and the United Kingdom of Great Britain and Northern Ireland have indicated their concurrence in the proposed extension.<sup>62</sup>

The changed position of Turkey and the Turkish Cypriots also found expression in resolution 544 (1983) in which the Security Council extended the mandate of UNFICYP. No reference was made any more to the “concurrence of the parties

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60 Cf. M. Bothe and Th. Dörschel, “The UN Peacekeeping Experience”, in D. Fleck (Ed.), *The Handbook of The Law of Visiting Forces* (Oxford, 2001), pp. 487-506 at p. 492 who take the consent of a local *de facto* regime as constituting a “treaty relationship” between itself and the United Nations overlooking that legal obligations may also result from unilateral declarations; see *Nuclear Tests (Australia v. France)*, ICJ Rep. 1974, 253 at 267-270; *Nuclear Tests (New Zealand v. France)*, ICJ Rep. 1974, 457 at 472-475; *Military and Paramilitary Activities in and against Nicaragua (Merits)*, ICJ Rep. 1986, 14 at 132, para. 261; *Frontier Dispute*, ICJ Rep. 1986, 554 at 573-574, paras 39-40. For a contractual relationship the necessary reciprocal undertaking on the part of the United Nations towards the Turkish Cypriots is missing.

61 See SCOR, 38th year, 2503rd meeting, 15 December 1983, para. 114-115 and 123.

62 UN Doc. S/16192/Add.1, 15 December 1983 (italics supplied).

concerned”. Instead, the Council simply noted “the recommendation by the Secretary-General that the Security Council extend the stationing” of UNFICYP.<sup>63</sup> On 15 December 1983, the Turkish Cypriot representative, Nail Ataly, explained to the members of the Security Council that, because the resolution referred again to the Greek Cypriot administration as “the Government of Cyprus” and because the paragraphs relating to the inter-communal talks in previous resolutions had been deleted, the Government of the Turkish Republic of Northern Cyprus rejected the resolution in toto. He continued:

[F]rom today onwards the principle, the scope, the modalities and the procedure of the co-operation between the authorities of the Turkish Republic of Northern Cyprus and UNFICYP shall be based only on the decisions which shall be taken solely by the Government of the Turkish Republic of Northern Cyprus.<sup>64</sup>

He hastened to add, however, that the Turkish Cypriots had never been against the operations and mandate of UNFICYP in Cyprus.<sup>65</sup> While not calling into question the presence of the Force in northern Cyprus as such the Turkish Cypriots no longer considered themselves legally bound to cooperate with the Force in the manner defined by the relevant Security Council resolutions and the established practice. From now on, the mode of cooperation with UNFICYP was to be decided by the Turkish Cypriot authorities unilaterally and on an *ad hoc* basis. In response to the new Turkish Cypriot position the Security Council declared that it considered “any attempts to interfere with the status or the deployment of the United Nations Peacekeeping Force in Cyprus as contrary to the resolutions of the United Nations”.<sup>66</sup> The Turkish representative in the Security Council could not understand the reason for this statement “in view of the positive, welcoming and cooperative position of the Government of the Republic of Cyprus towards UNFICYP.”<sup>67</sup> While it was true that the Turkish Cypriots, in practice, continued to cooperate with the Force as before, they had changed the legal basis of that cooperation.

The real reason for the rejection of the resolution was not the reference to the Greek Cypriot administration as “the Government of Cyprus” (which could be found

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63 S/RES/544 (1983) of 15 December 1983, preambular para. 2. Cf. also the observations of the representative of Pakistan on resolution 544 (1983): “[T]he second preambular paragraph was modified to indicate that the draft resolution lacked the concurrence of the parties concerned. For the first time, therefore, the council has adopted a draft resolution on UNFICYP which does not enjoy the agreement of all the parties concerned.” (SCOR, 38th year, 2503rd meeting, 15 December 1983, para. 9).

64 SCOR, 38th year, 2503rd meeting, 15 December 1983, para. 114. See also SCOR, 39th year, 2547th meeting, 15 June 1984, para. 62; SCOR, 40th year, 2591st meeting, 14 June 1985, paras 87-88; SCOR, 44th year, 2898th meeting, 14 December 1989, paras 102-103.

65 SCOR, 38th year, 2503rd meeting, 15 December 1983, para. 115.

66 S/RES/550 (1984) of 11 May 1984, para. 6.

67 SCOR, 39th year, 2539th meeting, 11 May 1984, para. 87.

in all relevant resolutions since 1964 and which never before had hindered the Turkish Cypriots to concur in the renewal of the mandate) or the deletion of the paragraphs relating to the inter-communal talks but the fact that the Security Council failed to acknowledge the existence of the newly established Turkish Republic of Northern Cyprus and, hence, the necessity for its legal consent to the stationing of a UN peacekeeping force on its territory.<sup>68</sup> So long as there was only one State in the island the argument was only about who could consent to the stationing of UNFICYP on behalf of Cyprus. With the creation of a second State in Cyprus its legal consent to the stationing of the Force became the crucial question. The necessity to consent to the stationing of a peacekeeping force established under Chapter VI of the UN Charter follows from the State's sovereignty. The Security Council thus could not register the legal consent of the Turkish Republic of Northern Cyprus without violating its own appeal in resolution 541 (1983) "not to recognize any Cypriot State other than the Republic of Cyprus".<sup>69</sup> For the Turkish Cypriots, on the other hand, to have their legal consent formally recorded by the United Nations seemed a way to gain recognition of their statehood.

In order to achieve that aim the Turkish Cypriots, supported by Turkey, since December 1983 have declined to concur in the extension of the stationing of the Force. In the addenda to his reports on the United Nations operation in Cyprus the Secretary-General thus has had to inform the Security Council that, "the Government of Cyprus as well as the Governments of Greece and the United Kingdom of Great Britain and Northern Ireland have indicated their concurrence in the proposed extension. The Government of Turkey has indicated, as has *the Turkish Cypriot community*, that it is not in a position to accept the text of the draft resolution [on the extension of the stationing of UNFICYP], but that its stand will be expounded at the meeting of the Security Council."<sup>70</sup> In June 1989 the wording of the addenda was changed to: "The Government of Turkey has indicated that it concurs with and supports *the position of the Turkish Cypriot side which is that the text of the draft resolution [...] is unacceptable as a basis for extending the stationing of UNFICYP*, but that its stand will be expounded at the meeting of the Security Council."<sup>71</sup> Since December 1992 the Secretary-General confined himself to stating that "the Govern-

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68 Cf. United States of America, Congress, Senate, Committee on Foreign Relations, Subcommittee on European Affairs, *Cyprus: International Law and the Prospects for Settlement, Hearing, 102nd Congress, 1st Session, 17 April 1991* (Washington, D.C., 1991), p. 41.

69 S/RES/541 (1983) of 18 November 1983, para. 7.

70 UN Doc. S/16596/Add.1, 15 June 1984 (italics supplied). See also UN Docs. S/16858/Add.1, 14 December 1984, S/17227/Add.2, 14 June 1985, S/17657/Add.2, 11 December 1985, S/18102/Add.2, 12 June 1986, S/18491/Add.1, 10 December 1986, S/18880/Add.1, 12 June 1987, S/19304/Add.1, 12 December 1987, S/19927/Add.1, 14 June 1988, S/20310/Add. 1, 12 December 1988.

71 UN Doc. S/20663/Add.1, 8 June 1989 (italics supplied). See also UN Docs. S/21010/Add.1, 13 December 1989, S/21340/Add.1, 15 June 1990, S/22665/Add.2, 14 June 1991, S/23263/Add.1, 12 December 1991, S/24050/Add.1, 12 June 1992.

ment of Turkey has indicated that it concurs with and supports the position of the Turkish Cypriot side, as expressed in previous meetings of the Security Council on the extension of the mandate of UNFICYP.”<sup>72</sup> The Turkish Cypriot representatives who were invited to participate in the meetings of the Security Council under Rule 39 of its Provisional Rules of Procedure<sup>73</sup> took the position that the consent and agreement of the Government of the TRNC was required for the extension of the mandate of UNFICYP, that they were unable to give that consent but that they were nevertheless prepared to accommodate the Force on the territory of the TRNC under the same rules and in the same way as they had done since December 1983.<sup>74</sup>

As a gesture of goodwill towards the Turkish Cypriots in order to facilitate the proximity talks between the leaders of the two communities the UN Secretary-General, on the initiative of the United States, in December 1999 engaged in a diplomatic exercise of creative ambiguity. In the usual addendum to his report to the Security Council on the United Nations operation in Cyprus, he wrote:

I recommended that the Security Council extend the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP) for a further period of six month and I indicated that I would report to the Council on my consultations with the parties concerned on the matter. [...] *The Government of Turkey has indicated that it concurs with and supports the position of the Turkish Cypriot party, namely that UNFICYP can operate on both sides of the island only on the basis of the consent of both parties and that the Turkish Cypriot authorities will accordingly request UNFICYP to work with them to develop modalities of UNFICYP's operations in northern Cyprus.*<sup>75</sup>

The Turkish Foreign Ministry on 16 December 1999 immediately welcomed the wording of this carefully finessed addendum as a “development of real significance.” It declared:

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72 See UN Docs. S/24917/Add.1, 9 December 1992, S/25912/Add.1, 12 June 1993, S/1994/680/Add.1, 13 June 1994, S/1994/1407/Add.1, 19 December 1994, S/1995/488/Add.1, 22 June 1995, S/1995/1020/Add.1, 19 December 1995, S/1996/411/Add.1, 26 June 1996, S/1996/1016/Add.1, 23 December 1996, S/1997/437/Add.1, 25 June 1997, S/1997/962/Add.1, 23 December 1997, S/1998/488/Add.1, 29 June 1998, S/1998/1149/Add.1, 22 December 1998, S/1999/657/Add.1, 29 June 1999.

73 Provisional Rules of Procedure of the Security Council, as amended 21 December 1982, reprinted in S. Bailey and S.Daws, *The Procedure of the UN Security Council* (3rd edn., Oxford, 1998), pp. 441-454.

74 See SCOR, 39th year, 2547th meeting, 15 June 1984, para. 75 and 2565th meeting, 14 December 1984, para. 57. See also Letter dated 28 December 2000 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General: UN Doc. A/55/717-S/2000/1241, 28 December 2000, 1, 4.

75 UN Doc. S/1999/1203/Add.1, 15 December 1999 (italics supplied). Rauf Denktaş, the Turkish Cypriot leader, who initially was against the resumption of the Cyprus proximity talks, agreed to participate in the second round of talks to start on 27 January 2000 after UN Secretary-General Kofi Annan had informed him about the text of the Addendum.

With this official document of the UN Security Council, the facts that there are two equal parties in the Island, that these parties have equal authority, hence that the modalities of UNFICYP's operations will be defined by the authorities of the two parties separately, have been accepted and recorded. The maintenance of the current line of the UN Security Council which is in accordance with the realities of the Island and the full reflection of this line to the resolutions and work of the UN Security Council would facilitate the quest for a settlement in Cyprus.<sup>76</sup>

The Turkish Cypriots went even one step further and claimed that the addendum was "equivalent to UN endorsement of the TRNC's sovereignty over its territory, and was a turning-point in UN-TRNC relations." It was announced that the commander of UNFICYP or his deputy would be invited by the TRNC Foreign Ministry to discuss and sign a framework agreement setting out the terms under which the Force could carry out its duties on TRNC soil.<sup>77</sup> The Government of the Republic of Cyprus saw the addendum as an attempt by Turkey to gain recognition of the TRNC, albeit in a roundabout way, and immediately raised the matter with the UN Under-Secretary for Peace-keeping, Bernard Miyet, and asked for clarifications.<sup>78</sup> On 17 December 1999 the spokesman for the UN Secretary-General, Fred Eckhard, clarified that "the addendum had been intended to inform the Security Council of the position of the relevant parties on the extension of the mandate. "The Secretary-General reported the positions, as he always does, without comment," he said. He added that "there was no change of UN policy."<sup>79</sup> The United States were also asked to comment on "this technical issue". During the State Department Noon Briefing on 20 December 1999 the US Department of State spokesman, James Foley, explained that the Addendum only stated the belief of Turkey that the United Nations should develop peacekeeping modalities with both parties and there had been no "change in US policy of recognizing only the government of the Republic of Cyprus."<sup>80</sup> While it is true that neither the consent of the Turkish Cypriot side was recorded nor was the TRNC recognized in the Addendum, the United Nations, by reporting the Turkish position (a perennial position taken at least since 1983), nevertheless gave credibility to the claim that the consent of the Turkish Cypriots, i.e. the Government of the TRNC, was required for the presence of UNFICYP in northern Cyprus.

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76 Press Release on the UN Resolution Regarding the Extension of the Mandate of the UNFICYP – No:243-16 December 1999 (<http://www.mfa.gov.tr/grupb/ba/baa99/December/default.htm#bm12>).

77 (1999) 7/2 *Kibris* 2: "Annan documents reality of Cyprus".

78 Cf. the letters from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General dated 14 February 2001 and 29 May 2001: UN Docs. A/55/784-S/2001/136, 14 February 2001, 3 and A/55/970-S/2001/541, 31 May 2001, 1, respectively.

79 Cyprus News No. 124 (December 1999), 2 and Cyprus Press and Information Office: News Update in English, 99-12-20, No. 2 (<http://www.hri.org/news/cyprus/cypio/1999/99-12-20.cypio.html>).

80 Transcript: State Department Noon Briefing, 20 December 1999: <http://usinfo.state.gov/topical/pol/terror/99122101.htm>.

When the mandate of UNFICYP came up for renewal next time in June 2000, the Secretary-General reported to the Security Council, as usual, that he was consulting the parties concerned on the matter of the extension of the stationing of the Force in Cyprus and that he would inform the Council as soon as the consultations had been completed.<sup>81</sup> However, for the first time in 25 years, the Secretary-General issued no addendum to his report informing the Council about the result of his consultations with the parties concerned. As both Turkey and the Turkish Cypriots maintained their interpretation of the Secretary-General's addendum of 15 December 1999 despite the UN denial of any change of policy, the Government of the Republic of Cyprus, for fear of indirect recognition of the TRNC, warned the Secretary-General that it would withdraw its legal consent to the presence of the Force in Cyprus, if another addendum stating the Turkish position was issued.<sup>82</sup> As a result no more addenda have been issued.<sup>83</sup> The Secretary-General instead simply recommended "that the Security Council extend the mandate of the Force for a further period of six months [...]."<sup>84</sup>

In response to the renewal of the mandate of UNFICYP without issuing an Addendum the Council of Ministers of the Turkish Republic of Northern Cyprus on 30 June 2000 instituted the following measures concerning the operation of the Force in the TRNC:

UNFICYP's entry into and exit from the TRNC will be allowed only through the Ledra Palace border gate. This arrangement also applies to visits for social purposes.

UNFICYP will be required to have all UN vehicles used in TRNC territory insured by an insurance agency operating in the TRNC.

UNFICYP will be required to pay, to the relevant state departments, for the water and electricity used by its camps located in the TRNC, as well as for other services rendered

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81 Report of the Secretary-General on the United Nations Operation in Cyprus (for the period 30 November 1999 to 31 May 2000): UN Doc. S/2000/496, 26 May 2000, para. 21.

82 See (2000) 11/7 *Zyperm Nachrichten* 1. The spokesman of the Government of the Republic of Cyprus, Mr. Papapetrou, stated: "We will put up the most forceful resistance to any attempt to gain direct or indirect recognition of this illegal regime." (*ibid.*, 2 [translation supplied]). See also *ibid.*, Vol. 11, No. 8 (August 2002), p. 1; *Cyprus News*, No. 130 (June 2000), p. 2; *Frankfurter Allgemeine Zeitung*, 1 July 2000, p. 6 and 18 August 2000, p. 7. For the discussion on the text of the Addendum in the Security Council, see S/PV.4155, 12 June 2000.

83 Although, in the hope of an agreement with the parties concerned, in the Secretary-General's report of 1 December 2000 an addendum was announced yet again; see UN Doc. S/2000/1138, 1 December 2000, para. 22.

84 UN Docs. S/2001/534, 30 May 2001, para. 22; S/2001/1122, 30 November 2001, para. 19; S/2002/590, 30 May 2002, para. 22; S/2002/1243, 15 November 2002, para. 21.

(cleaning, etc.). [...] UNFICYP will be required to comply with the payment due dates and, in the event of non-compliance, the services will be discontinued.<sup>85</sup>

The closure of all crossings of the Turkish forces ceasefire line, except for the one at the former Ledra Palace Hotel in Nicosia, would have completely isolated United Nations troops in the three camps in northern Cyprus and at the small hamlet of Strovilia. Although three additional crossing points were subsequently reopened to allow access to the camps from the south, the impact of these restrictions has been significant. Access routes have become longer and journey time has increased. The UN Special Representative, Zbigniew Wlosowicz, explained that UN personnel now has to drive some five to six hours instead of 15 minutes because ten out of the former fourteen crossing points have been closed. As a result, the operational effectiveness of UNFICYP has suffered; response times have increased and command, logistic and administrative movements have lengthened tremendously.<sup>86</sup> The Turkish Cypriots justified their measures with the non-recognition by the United Nations of the TRNC. Rauf Denktaş, the President of the TRNC, declared: “If they do not recognize us, we will not recognize them either.”<sup>87</sup> Although the Security Council has repeatedly urged “the Turkish Cypriot side and Turkish forces to rescind the restrictions imposed on 30 June 2000”<sup>88</sup> they have remained in force ever since.<sup>89</sup>

## 2.2. *Agreements Concerning the Status of the UN Peacekeeping Force*

### 2.2.1. Status-of-Forces Agreement with the Republic of Cyprus

By an exchange of letters dated 31 March 1964, UN Secretary-General U Thant and the Minister for Foreign Affairs of Cyprus, Spyros A. Kyprianou, concluded a 45

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85 See “Measures against UN resolution”: (2000) 8/6 *Kibris* 1. The measures are also reported in Europäische Kommission, *Regelmäßiger Bericht 2000 der Kommission über die Fortschritte Zyperns auf dem Weg zum Beitritt*, 8 November 2000, p. 21. On 16 December 2000 the Legislative Assembly of the TRNC adopted a resolution declaring “that UNFICYP can only operate on TRNC territory within the framework of the rules set by the Turkish Republic of Northern Cyprus.” ((2000) 8/2 *Kibris* 1).

86 See Report of the Secretary-General on the United Nations operation in Cyprus (for the period 1 June to 27 November 2000): UN Doc. S/2000/1138, 1 December 2000, paras 4-5.

87 (2000) 11/7 *Zypern Nachrichten* 2 (translation supplied). See also *Frankfurter Allgemeine Zeitung*, 1 July 2000, p. 6.

88 S/RES/1331 (2000) of 13 December 2000, para. 4; S/RES/1354 (2001) of 15 June 2001, para. 4; S/RES/1384 (2001) of 14 December 2001, para. 4; S/RES/1416 (2002) of 13 June 2002, para. 4; S/RES/1442 (2002) of 25 November 2002, para. 4.

89 Since December 2000 the Secretary-General has written in his Reports on the UN operation in Cyprus that “the conditions under which UNFICYP operated remained difficult, owing to the restrictions imposed on it by the Turkish Cypriot authorities and Turkish forces”, see UN Docs. S/2001/534, 30 May 2001, para. 21; S/2001/1122, 30 November 2001, paras 2, 18; S/2002/590, 30 May 2002, paras 4, 21; S/2002/1243, 15 November 2002, paras 4, 20.

paragraph long Agreement between the United Nations and the Government of the Republic of Cyprus Concerning the Status of the United Nations Peace-keeping Force in Cyprus.<sup>90</sup> This Status-of-Forces Agreement (SOFA) which constitutes the legal framework of relations between UNFICYP and the host State,<sup>91</sup> defines the rights, privileges and immunities of the Force and its members (right to display the UN flag, to wear national uniforms, and to carry arms, right of unrestricted communication and to operate postal services, duty-free importation of provisions, supplies and other goods, exemption from taxation, exemption from criminal and functional immunity from civil jurisdiction, inviolability of the military installations and other premises of the Force). It lays down the powers of the UN military police (power of arrest over members of the Force, authority to take into custody any Cypriot citizen committing an offence or causing a disturbance on the premises of the Force) and governs assistance in criminal and disciplinary matters. According to the Agreement UNFICYP and its members enjoy freedom of movement throughout Cyprus, the right to use roads, waterways, port facilities, and airfields and the right to use vehicles, vessels and aircraft without prior registration or licensing. The Agreement also covers matters such as the use of water, electricity and other public utilities, the use of local currency, and the settlement of disputes arising out of the purchase by the Force of provisions, supplies and services or the employment of locally recruited personnel.

#### 2.2.2. No Agreements between the UN and the Turkish Cypriot Authorities

Ever since the *de facto* partition of the island in July 1974, the Turkish Cypriot authorities have attempted to conclude a separate Status-of-Forces Agreement with the United Nations. During the 1863rd meeting of the Security Council on 13 December 1975, the Deputy Prime Minister, Minister of Foreign Affairs and Defence of the Turkish Federated State of Cyprus, Vedat A. Çelik, set out the Turkish Cypriot position as follows:

A separate agreement was essential politically as well as legally. It was essential politically in order to establish the equal status of the Turkish Cypriot community vis-à-vis the Greek Cypriot community. We do not recognize the Makarios administration and therefore the agreement which was signed by the Greek Cypriot administration regarding the status of the Force in Cyprus cannot be considered as valid in the north. For legal reasons also, a

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90 Agreement Between the United Nations and the Government of the Republic of Cyprus Concerning the Status of the United Nations Peace-Keeping Force in Cyprus, dated 31 March 1964 (UN-Cyprus SOFA 1964): UN Doc. S/5634 of 31 March 1964, Annex 1; 492 UNTS 58; also reproduced in R. Higgins, *supra* note 2, 212-220.

91 But, see also the Regulations for the United Nations Force in Cyprus (UNFICYP Regulations), issued on 25 April 1964: ST/SGB/UNFICYP/1 of 25 April 1964; 555 UNTS 132.

paper agreement with the Turkish Cypriot authorities is essential in order to give the Force a legal basis and status in the north of Cyprus.<sup>92</sup>

At the same meeting, the Secretary-General informed the Council that earlier that day a procès-verbal had been signed by “His Excellency Mr. Rauf Denktaş” “Lieutenant-General Prem Chand, Acting Special Representative of the Secretary-General” which reads:

During the process of consultation undertaken by the Secretary-General regarding the extension of the UNFICYP mandate and following an exchange of views on this question with the Turkish Cypriot community, the Secretary-General has indicated that his Special Representative will discuss with the representative of the Turkish Cypriot community questions pertaining to the stationing, deployment and functioning of UNFICYP in the area under Turkish control, with a view to arriving at mutually acceptable *arrangements*, which will be recorded through an exchange of letters.<sup>93</sup>

The Turkish representative in the Council expressed the hope “that the discussions which will take place in this connexion will result in concrete agreements in the near future.”<sup>94</sup> The Greek representative, on the other hand, warned – it is deemed correctly – that “any agreement signed by the United Nations giving legal status to a community in Cyprus (on the occasion of the renewal of the mandate) would constitute a violation of Article 2, paragraph 7, of the [UN] Charter.”<sup>95</sup> In pursuance of the procès-verbal, the Secretary-General’s Special Representative and Mr. Denktaş initiated discussion on the stationing, deployment and functioning of UNFICYP in the area under Turkish Cypriot control. Ten meetings were held at various levels until June 1976 during which a number of proposals were discussed with a view to arriving at mutually acceptable arrangements.<sup>96</sup> No arrangements, however, were ever formally recorded through an exchange of letters. The reason was that the Turkish Cypriots wanted to sign an “agreement” in the name of the “Turkish Feder-

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92 SCOR, 30th year, 1863rd meeting, 13 December 1975, para. 168.

93 SCOR, 30th year, 1863rd meeting, 13 December 1975, para. 217 (emphasis added). The signing of the procès-verbal had been prompted by the warning that UNFICYP would have to withdraw from northern Cyprus, if no agreement dealing with the functioning of the Force in the territory of the Turkish Federated State of Cyprus was concluded (cf. *The Guardian*, 29 May 1975, p. 10; *The Times*, 15 December 1975, p. 4).

94 SCOR, 30th year, 1863rd meeting, 13 December 1975, para. 159.

95 Cf. SCOR, 30th year, 1863rd meeting, 13 December 1975, para. 215 (Mr. Papoulias [Greece]).

96 Report of the Secretary-General on the United Nations operation in Cyprus (for the period 9 December 1975 to 5 June 1976): UN Doc. S/12093, 5 June 1976, para. 8. See also S/RES/391 (1976) of 15 June 1976, preambular para. 3 (“noting that the freedom of movement of UNFICYP [...] is still restricted in the north of the island and that progress is being made in discussions regarding the stationing, deployment and functioning of the Force”), repeated in S/RES/401 (1976) of 14 December 1976, preambular para. 3.

ated State of Cyprus” while the United Nations was only prepared to enter into practical “arrangements” with the Turkish Cypriot side.<sup>97</sup> In the following years limited “working arrangements”<sup>98</sup>, “practical military local arrangements”<sup>99</sup> or “operational arrangements”<sup>100</sup> for the functioning of UNFICYP in northern Cyprus have been worked out with the “Turkish Cypriot security forces” or the “Turkish Cypriot authorities”. These arrangements were not formalized by exchanges of documents. Instead, understanding reached in discussion with Turkish Cypriot officials was recorded by the United Nations in letters to the Turkish Cypriot leadership.<sup>101</sup>

In the second half of the 1990s the Turkish Cypriots made a fresh attempt at concluding a status-of-forces agreement with the United Nations. On 19 July 1998 the TRNC Government conveyed a draft Memorandum of Understanding (MOU) and an annex stating “Privileges and Facilities for UNFICYP” to UN Secretary-General Kofi Annan. The Memorandum laid down specific provisions regulating freedom of movement, access and liability of UNFICYP while in TRNC territory and stated that UNFICYP personnel should be accorded the same treatment as diplomatic personnel.<sup>102</sup> The Addendum issued by the Secretary-General in December 1999<sup>103</sup> was interpreted prematurely by the Turkish Cypriots as a step forward in meeting their demand for a separate status-of-forces agreement. Although discussions took place between the Turkish Cypriot authorities and the United Nations on the modalities of UNFICYP’s operations in north Cyprus, an agreement was never signed.<sup>104</sup>

This was due to the fact that the Turkish Cypriots insisted on the agreement being signed on their side by the “Government of the Turkish Republic of Northern Cyprus”. This, however, would have been incompatible with the call by the Security Council in its resolution 550 (1984) “not to recognize the purported State of the

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97 On 11 October 1976 Turkish Cypriot radio reported that “Talks on two draft agreements regarding the legal status of UNFICYP in the TFSC continued at the Ministry of Defence and Foreign Affairs [...] After the final adjustments are completed the final draft will be reviewed by the Turkish Federated State of Cyprus and the UN Secretariat. The agreement will then be signed [...]” (Radio Bayrak, 11 October 1976: BBC, SWB, 2nd series, ME/5336/C/1, 13 October 1976). See also O. Ertuğ, “The United Nations Approach to the Cyprus Issue and UNFICYP” (2001) 6/3 *Perceptions* 135-146 at 143.

98 Cf. Report of the Secretary-General on the United Nations operation in Cyprus (for the period 1 June to 4 December 1989): UN Doc. S/21010 of 7 December 1989, para. 11(b).

99 Cf. Letter dated 14 February 2001 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General: UN Doc. A/55/784-S/2001/136, 14 February 2001, 2.

100 Cf. Report of the Secretary-General on the United Nations operation in Cyprus (for the period 1 December 1980 to 27 May 1981): UN Doc. S/14490 of 27 May 1981, para. 5.

101 Cf. Report of the Secretary-General on the United Nations operation in Cyprus (for the period 6 June to 6 December 1976): UN Doc. S/12253, 9 December 1976, para. 22.

102 A.C. Gazio-lu, *supra* note 24, 55-56.

103 See above, ch. 2.1.4.

104 O. Ertuğ, *supra* note 97, 143.

“Turkish Republic of Northern Cyprus”<sup>105</sup> because the conclusion of a status-of-forces agreement as the conclusion of any other agreement with the TRNC necessarily implies its recognition.<sup>106</sup> It was for the same reason that on 16 May 1989 the Agreement on Unmanning of Positions in Sensitive Areas in Nicosia<sup>107</sup> was concluded not between the two Governments in Cyprus but between the military authorities on both sides.<sup>108</sup> An extension of the unmanning agreement to cover all areas of the buffer zone where the two sides are in close proximity to each other could not be brought about by UNFICYP because Turkey and the Turkish Cypriots declared the entire subject to be “political in nature” and insisted on the extension agreement being concluded by the “Government of the Turkish Republic of Northern Cyprus”.<sup>109</sup>

Furthermore, the Agreement between the United Nations and the Government of the Republic of Cyprus of 31 March 1964 defines the area of its application as the “territory of the Republic of Cyprus (which territory is hereinafter referred as “Cyprus”)”.<sup>110</sup> The conclusion of an extra status-of-forces agreement for northern Cyprus with the TRNC implies that the territory no longer belongs to the “host State” of the Force, the Republic of Cyprus,<sup>111</sup> as there cannot be two competing Governments competent to conclude status-of-forces agreements for the same area. A separate status-of-forces agreement for northern Cyprus would also have been incompatible with the Security Council’s call “not to recognize any Cypriot State other than the Republic of Cyprus”. Status-of-forces agreements are, as a rule, concluded with the host State of the peacekeeping force, i.e. the State on whose territory a peacekeeping operation is deployed.<sup>112</sup> Thus, the UN Model Status-of-Forces Agreement is to

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105 S/RES/550 (1984) of 11 May 1984, para. 3.

106 Cf. the Letters from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General dated 14 February and 29 May 2001: UN Docs. A/55/784-S/2001/136, 14 February 2001, 2 and A/55/970-S/2001/541, 31 May 2001, 1, respectively.

107 The material parts of the text of the Agreement are reproduced in the Report of the European Commission of Human Rights on Applications No. 15299/89 and 15300/89: *Chrysostomos and Papachrysostomou v. Turkey (Report)* (1993), 86-A DR 4 at 23-24.

108 See B.K. Perrin/S.R. Norton, “A Deconfrontation Agreement Reached in Cyprus: How U.S. Army Foreign Area Officer Expertise Complemented a Diplomatic Initiative” (<http://www.faoa.org/journal/cyprus1.html>). See also the Report of the Secretary-General on the United Nations operation in Cyprus (for the period 1 December 1985 to 31 May 1986): UN Doc. S/18102, 31 May 1986, para. 15.

109 See the Report of the Secretary-General on the United Nations operation in Cyprus (for the period 23 November 1993 to 31 May 1994): UN Doc. S/1994/680, 7 June 1994, para. 19. In S/RES/1000 (1995) of 23 June 1995, preambular para. 6, the Security Council noted that “no progress has been made on extending the 1989 unmanning agreement.”

110 UN-Cyprus SOFA 1964, para. 4.

111 Cf. para. 5(f) UNFICYP Regulations: “The ‘Host State’ is the Republic of Cyprus. The ‘Host Government’ is the Government of the Host State.”

112 See the overview of such agreements given by M. Bothe, *supra* note 13, 692, MN 114.

serve as the basis for an “agreement between the United Nations and *host countries*”.<sup>113</sup> Although there may be exceptions to this practice,<sup>114</sup> the United Nations has scrupulously avoided to sign status-of-forces agreements with secessionist entities whose claim to statehood has not been recognized by the international community. In the case of the United Nations Operation in the Congo (ONUC) the United Nations concluded a status-of-forces agreement with the Republic of the Congo<sup>115</sup> but not with Katanga, which on 11 July 1960 had unilaterally declared its independence from Congo. In a telegram to “the President of the Provincial Government of Katanga” dated 10 August 1960 the UN Secretary-General proposed “to discuss personally with [him] the modalities of the deployment of the United Nations troops in Katanga” but made it clear that there could “be no question [...] of an agreement”.<sup>116</sup> Similarly, in the case of the United Nations Observer Mission in Georgia (UNOMIG) the United Nations concluded a status-of-mission agreement with the Government of Georgia<sup>117</sup> but not with the Republic of Abkhazia which since October 1993 enjoyed *de facto* independence from Georgia. The Security Council made a clear distinction between “a status-of-mission [or status-of-forces] agreement with the Government of Georgia” and “necessary arrangements with the Abkhaz authorities [which were] to be concluded without delay.”<sup>118</sup> In his Report Concerning the Situation in Abkhazia, Georgia, the UN Secretary-General wrote on 12 July 1994:

It is essential that military observers of UNOMIG have full freedom of movement and access to communications and inspection and enjoy other rights necessary for the performance of their tasks. In this regard, both parties have given assurances that UNOMIG would be accorded the freedom of movement required in the discharge of its mandate. UNOMIG and its personnel would also have to be granted all relevant privileges and immunities

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113 See the Report of the Secretary-General on the comprehensive review of the whole question of peacekeeping operations in all their aspects: UN Doc. A/45/594, 9 October 1990, para. 1 (italics supplied).

114 For examples, see M. Bothe and Th. Dörschel, *supra* note 60, 493. The UN Model SOFA itself defines the term Government as meaning “the Government of the host country or Administration having *de facto* authority over the territory and/or area of operations in question” (UN Doc. A/45/594, 9 October 1990, Annex, para. 2, n. 3). Furthermore, the Model SOFA assumes that “there may be United Nations operations involving relations with entities other than States” (*ibid.*, para. 3, n. 4).

115 Agreement between the United Nations and the Republic of the Congo Relating to the Legal Status of the United Nations in the Congo of 27 November 1961 (UN Doc. S/5004, 27 November 1961, Annex; 414 UNTS 229). A basic agreement which provided for the freedom of movement of the Force in the interior of the country and for the requisite privileges and immunities to all personnel associated with its activities had already been concluded on 27 July 1960 (UN Doc. S/4389/Add.5, 29 July 1960).

116 UN Doc. S/4417/Add.4, 10 August 1960.

117 On 6 January 1994 the Secretary-General reported to the Security Council that “the exchange of letters with the Government of Georgia on the status of UNOMIG has been completed” (UN Doc. S/1995/10, 6 January 1995, para. 21). See also UN Doc. S/1994/1160, 14 October 1994, para. 13.

118 S/RES/937 (1994) of 21 July 1994, para. 8. In previous resolutions the Security Council had only called on the Government of Georgia to conclude expeditiously with the UN a status-of-forces agreement, see S/RES/849 (1993) of 9 July 1993, para. 6; S/RES/58 (1993) of 24 August 1993, para. 8.

provided by the Convention on the Privileges and Immunities of the United Nations. A status-of-mission agreement with Georgia, and necessary arrangements with the Abkhaz authorities, would therefore be finalized to enable UNOMIG to function effectively.<sup>119</sup>

In subsequent resolutions, the Security Council called upon the Abkhaz authorities “to honour *their commitments* with regard to the security and freedom of movement of all United Nations [...] personnel.”<sup>120</sup> The conclusion of a status-of-forces agreement is thus not necessary to establish a sound legal basis for the functioning of UNFICYP as claimed by the Turkish Cypriots.<sup>121</sup> It is, however, one way to gain recognition. By not entering into the relevant arrangements for the operation of UNFICYP in northern Cyprus and, hence, leaving it in a legal vacuum the TRNC has tried to get the United Nations to conclude a status-of-forces agreement with it and thus, by implication, recognize it as a State.

### 2.2.3. Consequences of the Absence of a Status-of-Forces Agreement with the TRNC for the UN Peacekeeping operation in northern Cyprus

Although the Status-of-Forces Agreement of 31 March 1964 between the United Nations and the Government of the Republic of Cyprus, according to its paragraph 4, applies throughout the island of Cyprus it does not bind the Turkish Cypriot authorities. This is evidenced by the fact that the United Nations has on several occasions protested to the Government of the Republic of Cyprus about the denial to UNFICYP of freedom of movement in “contravention of the Status Agreement”,<sup>122</sup> while no such protests have been lodged with the Turkish Cypriot authorities. In the case of restrictions on the freedom of movement in the north the United Nations has merely stated that these restrictions are “at variance with the spirit that should govern the relationship with a United Nations peace-keeping operation.”<sup>123</sup> Without a status-of-forces agreement (or similar arrangements) between the United Nations and the Government of the TRNC UNFICYP operates solely within the framework of the laws, rules and regulations of the Turkish Republic of Northern

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119 UN Doc. S/1994/818, 12 July 1994, para. 13.

120 S/RES/993 (1995) of 12 May 1995, para. 8 (italics added).

121 Letter dated 28 December 2000 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General: UN Doc. A/55/717-S/2000/1241, 28 December 2000, 4. See also (2000) 8/12 *Kibris* 2 and (2001) 9/1 *Kibris* 3.

122 UN Doc. S/5843, 29 July 1964 (Communication dated 22 July 1964 from the Secretary-General to the Government of Cyprus). See also the Reports of the Secretary-General on the UN operation in Cyprus: UN Docs. S/5950, 10 September 1964, paras 15, 18; S/6228, 11 March 1965, paras 20, 22, 23; S/6426, 10 June 1965, para. 19; S/7611, 8 December 1966, para. 21; S/7969, 13 June 1967, para. 20; S/8286, 8 December 1967, para. 20; S/13369, 31 May 1979, para. 16.

123 Report of the Secretary-General on the United Nations operation in Cyprus (for the period 11 December 1995 to 10 June 1996): UN Doc. S/1996/411, 10 June 1996, para. 27.

Cyprus which may be altered by the TRNC authorities unilaterally and without prior notice. In the following, it is to be examined – using the restrictions imposed on the operations of UNFICYP by the Turkish Cypriots in June 2000 as examples – what consequences the absence of an agreement similar to that with the Republic of Cyprus (UN-Cyprus SOFA 1964) has for the UN peacekeeping operation in northern Cyprus.

#### *2.2.3.1. Freedom of Movement*

The main restriction introduced by the Turkish Cypriots in June 2002 concerned the freedom of movement of the peacekeeping force in Cyprus across the Turkish cease-fire line. Freedom of movement is an essential condition for the functioning of UNFICYP which has base camps, observation posts and other premises in both parts of the island as well as in the buffer zone: its peacekeeping function is mainly discharged by the effect of its physical presence, by monitoring, by patrolling and by occasional interposition. Accordingly, the Force must be able to move freely and to react promptly to any shooting incident, movement forward, encroachment or provocative improvement of fortifications by the parties along the cease-fire lines which, if not checked, leads to counter-measures by the opposing side and thus to escalation. Its humanitarian function includes the monitoring of the living conditions of Greek Cypriots and Maronites living in northern Cyprus, the delivery of mail and Red Cross messages as well as relief supplies, pension and welfare payments paid by the Government of the Republic of Cyprus. The Force also provides emergency medical services, including medical evacuations, and generally assists in all humanitarian matters. This requires free and unimpeded access to all Greek Cypriot and Maronite villages and habitations in the north. As part of its normalization function UNFICYP provides security for civilians engaged in peaceful activities in the area between the cease-fire lines. Unrestricted entry into and exit from the buffer zone (from and to both parts of the island) are thus essential.

The UN-Cyprus SOFA 1964 provides for the freedom of movement of UNFICYP, subject to a minor qualification relating to large troop movements, and gives the Force the right to use all roads, bridges, airfields, etc.<sup>124</sup> UNFICYP's freedom of movement in northern Cyprus, on the other hand, has been restricted since 1975: certain (patrol) roads have been closed to UNFICYP, the number of vehicles allowed to use a certain road during any given day has been limited, the times during which certain roads can be used have been restricted, UNFICYP vehicles have been stopped and searched, journey times and dates sometimes have to be submitted in advance for approval, the hours during which checkpoints can be used have been reduced, and access to the north has been restricted by closing certain or all crossings of the

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124 UN-Cyprus SOFA 1964, paras 32, 33.

cease-fire line. These measures have led the UN Secretary-General to conclude that “UNFICYP is subjected to limitations more severe than those imposed on tourists.”<sup>125</sup> The restrictions imposed on UNFICYP’s freedom of movement have affected its operational effectiveness and increased the costs and manpower requirements of the Force considerably.<sup>126</sup> UNFICYP’s movement in the north is regulated by “guidelines” which have been regularly altered by the Turkish Cypriot authorities in the light of political developments.<sup>127</sup> On several occasions, the Turkish Cypriots have tried to use the question of freedom of movement as leverage in order to force the United Nations to register their legal consent to the extension of the stationing of UNFICYP or to sign a status-of-forces agreement with them.

#### 2.2.3.2. Operation of Service Vehicles

As a second measure in response to the renewal of the mandate of UNFICYP without issuing an Addendum to the UN Secretary-General’s Report of the UN operation in Cyprus stating the Turkish Cypriot position, the TRNC authorities on 29 June 2000 announced that, as of 06.00 hours the next day, UNFICYP must insure all its vehicles used in northern Cyprus with insurance companies active in the TRNC.<sup>128</sup> According to paragraph 21 of the UN-Cyprus SOFA 1964 “service vehicles [...] shall not be subject to registration and licensing under the laws and regulations of Cyprus.” As a rule, third-party liability insurance is not required as service vehicles are the property of the participating, i.e. troop contributing States, which are self-insurers, as are the United Nations.<sup>129</sup> The imposition of additional mandatory insurance and especially insurance with companies of the host State would thus have been incompatible with a status-of-forces agreement. In the absence of such an agreement or a relevant rule of customary international law,<sup>130</sup> the TRNC authorities, however, were not prevented from imposing this restriction on the UNFICYP’s operation in northern Cyprus.

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125 Report of the Secretary-General on the United Nations operation in Cyprus (for the period 8 December 1997 to 8 June 1998): UN Doc. S/1998/488, 10 June 1998, para. 11. See also UN Doc. S/1998/488, 10 June 1998, para. 11. For the individual restrictions, see UN Docs. S/12253, 9 December 1976, para. 42; S/14275, 1 December 1980, Annex, para. 35; S/15502, 1 December 1982, para. 13; S/18491, 2 December 1986, para. 14; S/1997/962, 8 December 1997, para. 14; S/2000/1138, 1 December 2000, para. 4.

126 Cf. the Report of the Secretariat Survey Team for the United Nations Peace-Keeping Force in Cyprus, July 1980: UN Doc. S/14275, 1 December 1980, Annex, paras 32, 34.

127 Cf. the Reports of the Secretary-General on the United Nations operation in Cyprus: UN Docs. S/14275, 1 December 1980, para. 13; S/15812, 1 June 1983, para. 14; S/18491, 2 December 1986, para. 12.

128 See *supra* note 85.

129 But, see UN Model SOFA, para. 13 (“vehicles shall carry the third party insurance required by relevant legislation”).

130 M. Bothe and Th. Dörschel, *supra* note 60, 494.

### 2.2.3.3. Use of Public Services

The third measure introduced by the Turkish Cypriots in June 2000 was that UNFICYP has to pay, to the relevant State departments of the TRNC, for the water and electricity used in its base camps located in northern Cyprus as well as for other services rendered. The UN-Cyprus SOFA 1964, in paragraph 34, provides only that “the force shall have the right to the use of water, electricity and other public utilities at rates not less favourable to the Force than those to comparable consumers.” No provision is made that water, electricity and other services are supplied free of charge.<sup>131</sup> In fact, UNFICYP was charged by both sides for water, electricity and garbage and sewage disposal until the early 1980s. The amounts involved were of the order of US\$ 500,000 per six-month period.<sup>132</sup> The waiver of payments was based on comity rather than on any status-of-forces agreement and, thus, could be revoked by the TRNC authorities. Like all other restrictions imposed, however, it constituted an unfriendly act towards UNFICYP and the United Nations.

### 2.3. Contacts of the UN Peacekeeping Force with the Turkish Cypriot Authorities

Unlike in the case of consent and the conclusion of a status-of-forces agreement non-recognition of the TRNC has not affected day-to-day operational contacts of the UN peacekeeping force with the Turkish Cypriot side. All of UNFICYP’s functions have of necessity to be carried out in consultation with the Turkish Cypriot authorities. The Secretary-General regularly reports that “UNFICYP continued to maintain close liaison and cooperation with the military and civilian authorities on both sides.”<sup>133</sup> UNFICYP has protested cease-fire violations and shootings at its members “at the highest level”. It has requested, inter alia, the release of persons entering north Cyprus without authorization and raised the Greek Cypriot concern about the changing of names and localities as well as the desecration and state of repair of the cultural heritage of Cyprus in the northern part of the island. UNFICYP civilian police (UNCIVPOL) also works in close co-operation with the Turkish Cypriot police. None of these contacts can imply recognition of the TRNC as a separate State as no exercise of sovereign power (but only of *de facto* authority) is involved on the part of the Turkish Cypriots. Both, UNFICYP and the UN Secretariat, however, carefully avoid any reference to the “Turkish Republic of Northern Cyprus” or its authorities. They are referred to in official documents as the “Turkish Cypriot authorities” or

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131 But, see nowadays the UN Model SOFA, para. 17.

132 See the Report of the Secretariat Survey Team for the United Nations Peace-Keeping Force in Cyprus, July 1980: UN Doc. S/14275, Annex, paras 40, 52.

133 See, e.g., United Nations, Commission on Human Rights, Question of Human Rights in Cyprus. Report of the Secretary General, UN Doc. E/CN.4/1997/48, 7 February 1997, para. 24, Report of the Secretary-General on the United Nations operation in Cyprus (for the period 1 December 1988 to 31 May 1989): UN Doc. S/20663, 31 May 1989, para. 5.

the “authorities of the Turkish Cypriot community”. This may explain the following practice. In 1995, UNFICYP undertook a review of the living conditions of Turkish Cypriots located in the southern part of the island and of the conditions of Greek Cypriots and Maronites living in the northern part of the island. The United Nations shared the outcome of the review with the authorities on both sides and invited their comments which were annexed to the Report of the Secretary-General on the UN operation in Cyprus of 10 December 1995. While the responses of the Republic of Cyprus were listed under the heading: “Letter [...] from the Minister for [...] of Cyprus to the Deputy Special Representative of the Secretary-General”<sup>134</sup> the response of the TRNC was reproduced under the following explanatory heading:

Measures being implemented by the Turkish Cypriot authorities in respect of Greek Cypriots and Maronites located in the northern part of Cyprus. The present annex contains a record of the points conveyed orally by the Turkish Cypriot authorities to UNFICYP. The text was subsequently shown to the Turkish Cypriot authorities, which confirmed its accuracy.<sup>135</sup>

This procedure was not the result of the unwillingness of the TRNC authorities to send a letter to the UN Secretary-General or its representative. It was rather the United Nations that wanted to avoid having to circulate as an official UN document a letter from the “Minister for [...] of the Turkish Republic of Northern Cyprus”.

### 3. Conclusion

Non-recognition, thought by the UN Security Council as a collective sanction against the TRNC, has been turned against the United Nations and its peacekeeping force in Cyprus. The United Nations faces a double predicament: if it does not register the legal consent of the TRNC, the Turkish Cypriots (and Turkey) will withhold or limit their factual consent to the stationing of UNFICYP. Without the factual consent of the Turkish Cypriots the Force operates in an international legal vacuum in northern Cyprus.<sup>136</sup> Registration of the legal consent of the TRNC would imply its recognition as a State as only host States of a peacekeeping force are legally required to consent to the presence of the force on their territory. Similarly, if the United Nations does not conclude a status-of-forces agreement (or an unmanning agreement) with the TRNC, the Turkish Cypriots will not enter into the necessary arrangements for the operation of the Force in northern Cyprus. Without such arrange-

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134 UN Doc. S/1995/1020, 10 December 1995, Annex I, II.

135 UN Doc. S/1995/1020, 10 December 1995, Annex IV.

136 Cf. the statement of the Turkish Embassy, Berlin, of 14 December 2000: <http://www.tcbonnbe.de/de/aktuell/ak1412002.htm>.

ments between the United Nations and the Turkish Cypriot authorities UNFICYP operates solely within the framework of the laws, rules and regulations of the Turkish Republic of Northern Cyprus which may be altered by the TRNC unilaterally and without prior notice. Conclusion of a status-of-forces agreement with the TRNC would imply its recognition as a State as such agreements are, as a rule, signed with the host States of a peacekeeping force. Recognition of the TRNC, however, is excluded by Security Council resolutions 541 (1983) and 550 (1984). Non-recognition may thus create legal and not just political impediments to peacekeeping.<sup>137</sup> Although, it is admitted, the impediments do not result from the non-recognition of the State in whose territory the peacekeeping force operates but from the fact that the unrecognized State attempts to (mis)use the peacekeeping operation to gain recognition by the United Nations.

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<sup>137</sup> Contra M. Bothe and Th. Dörschel, *supra* note 60, 493 who consider recognition “an obstacle which is rather of a political, and not of a legal, character.”

