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INTERNATIONAL LAW IN THE NEW GREEK CONSTITUTION

A. A. Fatouros *

The new Greek Constitution which entered into force on June 11, 1975,¹ offers to international lawyers an illustration of the increasing importance given to international legal issues by politicians and constitutional experts as they attempt to fashion constitutional structures more in keeping with contemporary international realities. The provisions of the new Constitution concerning international law and relations which are discussed here are largely consistent with current constitutional trends in Western Europe. They, and the debate around them, may also yield useful insights into the role and importance of the international legal context for a small country actively involved in and influenced by world affairs. They are thus of interest not only to those who follow political events in Greece but to a wider public concerned with democracy and internationalism.

The parliamentary process that led to the adoption of the 1975 Constitution was peculiar, reflecting the formal and substantive difficulties of the country's passage, in the latter half of 1974, from a brutal and disastrous dictatorship to democratic government. The interim government that came to power after the fall of the dictatorship issued a "Constitutional Act" (*i.e.*, a law with enhanced formal validity) which provided for a referendum to determine whether the country would be headed by a hereditary king or an elected president and for a constitution-making procedure in Parliament, to be completed in three months.² The Parliament elected on November 17, 1974 was thus charged with revision of the entire Constitution, subject only to the outcome of the referendum; the latter was held on December 8, 1974, and gave overwhelming approval to an "uncrowned republic." The government formed after the elections proceeded speedily to prepare a draft for the new Constitution.³ Counterproposals,

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¹ Greek Government Gazette, Fasc. A, No. 111, June 9, 1975. An "official translation" was printed in 1 NEW GREECE No. 7 (July 1975) 18-20, and No. 8 (Aug.-Sept. 1975) 18-29. The translation used here is based on it, but with extensive modifications. Citation of parliamentary debates and documents has been kept to a minimum, in part because only provisional texts were available at the time of writing.

² Constitutional Act of October 3/4, 1974, text (in Greek) in 1 TO SYNTAGMA 86 (1975). While the time limits were later extended, the entire constitution-making process, from submission of the government draft to entry in force of the Constitution, lasted less than six months. As a result, a certain lack of deliberate study and detailed preparation is reflected in both the debates surrounding the Constitution and the final text. *See, e.g., infra* note 21.

³ The draft was first published on December 21, 1974; it was formally submitted to Parliament, after slight modification, on January 7, 1975.

in the form of draft amendments, were eventually submitted by the opposition parties. Among numerous unofficial discussions and proposals, a set of proposed amendments prepared by a small group of "constitutional experts" was particularly influential.⁴

In Parliament, a Committee on the Constitution was formed and divided into two subcommittees. Debate on the Constitution was thus conducted in three phases—in subcommittee, in full committee, and in regular meetings of the entire Parliament. Toward the end of the last phase of the debate, the opposition parties decided to abstain from the remaining constitution-making sessions, in order to express their radical rejection of certain provisions concerning presidential powers and to protest the domination of the entire proceedings by the ruling party, which has an overwhelming majority in parliamentary seats. The last debate on several of the Constitution's provisions (including Article 36 concerning treaty-making) and the final vote on the entire text were thus held in the absence of opposition members of Parliament.

The provisions of the new Constitution that pertain to international law deal with four main topics: treaty-making, participation in international organizations, protection of national independence, and relations between international and municipal law.⁵ They are contained in little more than three articles. Of these, two (Articles 27 and 36) repeat, with modifications, provisions already present in earlier Greek Constitutions. The others (Articles 2(2) and 28) are new. The text of the relevant articles follows:

Article 2

2. Greece, adhering to the generally recognized rules of international law, seeks the strengthening of peace and justice, and the development of friendly relations among peoples and States.

⁴ The proposals were published in the Greek press. See, e.g., *To VIMA*, Jan. 19, 21, 22, and 23, 1975. Proposed amendments based on several of these were later introduced in Parliament. The experts' group consisted of half a dozen legal scholars, well-known for their resistance against the dictatorship and located, politically, at various points within the opposition. The same group had prepared earlier a booklet, with more general PROPOSALS FOR A DEMOCRATIC CONSTITUTION (Athens, 1975, in Greek). The author should here disclose personal bias in that he briefly collaborated with the group in the drafting of proposals for the international law clauses of the Constitution.

⁵ The new Constitution touches on international affairs in certain other provisions, as well. Article 4, paragraph 3, allows deprivation of Greek nationality only in the cases of voluntary acquisition of another nationality and of service "contrary to the national interests" in a foreign country. Article 5, paragraph 2, provides:

All persons living in the Greek territory shall enjoy full protection of their life, honor and freedom, regardless of nationality, race or language and of religious or political beliefs. Exceptions are permitted only in the cases provided for by international law.

The extradition of aliens prosecuted for their activities in defense of freedom is prohibited.

Article 107 continues the practice initiated under the 1952 Constitution of offering foreign investors special protection under a statute of enhanced formal validity. See also Article 100(1)(vi), *infra* note 41.

Article 27

1. No change in the boundaries of the State can be made without a law passed by the absolute majority of the total number of members of Parliament.

2. Foreign military forces shall not be accepted in the Greek State, and may not remain in it or pass through it, without a law voted by the absolute majority of the total number of members of Parliament.

Article 28

1. The generally accepted rules of international law, as well as international conventions from the time they are sanctioned⁶ by law and enter into force according to each one's own terms, shall be an integral part of internal Greek law, and they shall prevail over any contrary provision of law. The application of the rules of international law and of international conventions to aliens is always subject to the condition of reciprocity.

2. To serve an important national interest and to promote cooperation with other States, competences under the Constitution may be granted by treaty or agreement to organs of international organizations. A majority of three-fifths of the total number of members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement.

3. Greece may freely proceed, by law voted by the absolute majority of the total number of members of Parliament, to limit the exercise of national sovereignty, if this is dictated by an important national interest, does not infringe upon human rights and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.

Article 36

1. The President of the Republic, complying in any case with the provisions of article 35 paragraph 1,⁷ shall represent the State internationally, declare war, conclude treaties of peace, alliance, economic cooperation and participation in international organizations or unions, and announce them to Parliament with the necessary clarifications when the interest and the security of the State permit it.

2. Treaties on commerce, as well as those on taxation, economic cooperation, and participation in international organizations or unions, and any others that contain concessions as to which under other provisions of the Constitution no provision can be made without a law, or that impose a burden upon the Greeks individually, shall have no force without sanctioning by a law voted by Parliament.

3. Secret articles of a treaty may never reverse the public ones.

4. The sanctioning of international treaties may not be the object of legislative delegation as provided by article 43, paragraphs 2 and 4.⁸

⁶ On the precise meaning of that term, see *infra*, note 22, and accompanying text.

⁷ Article 35(1) requires that all acts of the President must be cosigned by the competent Minister, subject to certain exceptions listed in the second paragraph of the article.

⁸ Article 43(2) and (4) provide for possible delegation of legislative powers to the President in certain cases, by means of an Act of Parliament.

TREATY-MAKING

The initial draft submitted by the government repeated, with slight modification, the relevant article of the 1952 Constitution.⁹ Originally taken from the Belgian Constitution of 1831¹⁰ and inserted in the first Greek Constitution of 1844, this provision found its way into all later Greek Constitutions. Objections to the draft's limited conception of the role of Parliament were expressed in newspaper articles¹¹ and in the constitutional experts' proposed amendments.¹² The latter's proposals on this point were substantially adopted and submitted to Parliament by the opposition parties.

These counterproposals sought to enhance the role of Parliament in the treaty-making process and in international affairs in general.¹³ Permission by Parliament (or a parliamentary committee) was to be required for a declaration of war.¹⁴ Parliamentary approval was to be required for all international agreements, expressly in the case of specified categories (treaties of peace, alliance, establishment, taxation, participation in international organizations, etc.) and tacitly (*i.e.*, through one month's inaction by Parliament after notice by the government) in the case of all others.¹⁵

⁹ Article 32.

The King shall be the supreme Head of State; he shall command the armed forces, declare war, conclude treaties of peace, alliance and commerce, and announce them to Parliament with the necessary clarifications when the interest and the security of the State permit it. However, treaties of commerce, as well as any others that contain concessions as to which under other provisions of the present Constitution no provision can be made without a law, or that impose a burden upon the Greeks individually, shall have no force without the consent of Parliament.

Translation (with modifications) from 3 A. PEASLEE, *CONSTITUTIONS OF NATIONS* 403, 409 (3d ed. by D. Peaslee Xydis, 1968).

The main changes proposed in the government draft were the substitution of the President for the King, the removal to other articles of the first two clauses, and the requirement that parliamentary consent be given by act of Parliament.

¹⁰ Article 68, 3 PEASLEE *supra* note 9, at 77, 84.

¹¹ See A. A. Fatouros, *International Relations and the Constitution*, To VMMA, Jan. 3, 1975; G. Tenekides, *Our External Orientations and the Constitution—II*, *id.* Jan. 14, 1975; S. Calogeropoulos-Stratis, *International Rules and the New Constitution*, *id.* March 13, 1975 (all articles in Greek).

¹² See, in particular, To VMMA, Jan. 19, 1975.

¹³ It is interesting to note that one of the earliest Greek Constitutions, promulgated in 1827, before the end of the War of Independence and the definite formation of the Greek State, also insisted on a significant role of Parliament in treaty-making. It provided (sec. 95):

The Government cannot, without the Parliament's consent, declare war or conclude treaties of peace, alliance, friendship, commerce, and neutrality. Armistice agreements of a few days' duration are excepted, but even then the Government must notify Parliament immediately.

¹⁴ A provision to similar effect had been included in the only other republican Greek Constitution (of 1927) in its Article 83.

¹⁵ Compare on this point the Constitution of The Netherlands, as amended in 1953, Articles 58–67. See H. F. van Panhuys, *The Netherlands Constitution and International Law*, 47 AJIL 537 (1953); van Panhuys, *The Netherlands Constitution and International Law: A Decade of Experience*, 58 *id.* 88 (1964). For further historical dis-

It was further provided that all governmental actions which bind the nation toward foreign states and individuals or toward international organizations should be communicated to Parliament, confidentially if necessary. This provision was intended to cover commitments made unilaterally or by formal or informal agreement, especially concerning economic and financial matters (e.g., loan guarantees, "letters of intent" addressed to the International Monetary Fund, etc.). The opposition proposals also rejected the possibility of secret agreements or provisions and suggested deletion of the relevant paragraph.¹⁶

These positions appear to have had some slight impact on the final text (e.g., inclusion of additional treaty categories requiring parliamentary approval, the explicit exclusion of approval through legislative delegation, etc.). In their basic thrust, however, they were rejected by the government majority, on the ground that parliamentary participation in foreign affairs decision-making would involve delays and difficulties and would excessively limit the government's freedom of action.¹⁷ The final text remains very close to earlier versions. Executive primacy in international affairs is clearly recognized. The President may freely conclude treaties on many subjects without informing Parliament, before or even after their conclusion. Secret treaties and secret clauses in treaties are allowed. The Parliament's cooperation is necessary only for limited (although admittedly significant) categories of treaties, primarily those involving matters of exceptional importance¹⁸ or concerning economic matters. Rejection of opposition proposals for the creation of a permanent parliamentary committee on external affairs further confirms the Executive's predominance.¹⁹

The language of earlier versions, not noted for clarity, has been retained. The reference to treaties which "impose a burden upon the Greeks individually" has by now acquired a fairly definite meaning (covering essentially treaties requiring appropriations of public funds, thus "burdening" taxpayers) by virtue of long practice and application. Yet, a clearer formulation could easily have been found. More important, the negative

cussion and analysis (bringing out, among other things, that earlier Netherlands Constitutions had provisions on treaty-making which closely resembled the Belgian and Greek versions referred to earlier), see L. ERADES and W. L. GOULD, *THE RELATIONS BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW IN THE NETHERLANDS AND IN THE UNITED STATES*, esp. at 178-206 (1961). For some recent efforts in a similar direction in the United States, see, C. Ohly, *Advice and Consent: International Executive Claims Settlement Agreements*, 5 CALIFORNIA WESTERN INTERNATIONAL L. REV. 271 (1975); and cf. 69 AJIL 864-71 (1975).

¹⁶ Present Article 36(3). Its language (again taken from the Belgian Constitution of 1831) is found in all earlier Greek Constitutions.

¹⁷ See, in particular, the debate on declaration of war in the March 18, 1975 meeting of the full Constitutional Committee of Parliament.

¹⁸ See the discussion of Articles 27, 28(2) and (3), *infra*.

¹⁹ The initial governmental draft included an express prohibition on the creation of parliamentary commissions of inquiry concerning foreign affairs (and national defense). This provision was eventually replaced by that of the present Article 68(2)(b) which requires a special majority for the creation of parliamentary commissions of inquiry in these two areas.

formulation of the need for legislative action (treaties "have no force" unless sanctioned by law) gives no clear indication of the kind of invalidity aimed at, that is to say, whether in international law or only internally. The matter was long in dispute both in Belgium, whose Constitution first used the formula, and in Greece; the prevailing view in both countries has limited invalidity to internal law only.²⁰ It is highly likely that the revised language of Article 36(2) of the new Greek Constitution will be construed in the same manner.²¹

Earlier practice and case-law, although by no means fully consistent, permit certain clarifications concerning the role of the sanctioning act. Greek constitutional law and doctrine distinguish between "sanctioning" (*kyrosis*) and "ratification" (*epikyrosis*), the former term referring to the domestic legal measure putting the treaty into effect in domestic law and the latter corresponding to the international law meaning of that term.²³ According to recent practice, a treaty could be sanctioned not only by act of Parliament²⁴ but also by executive (royal, presidential) decree, despite the patent absence of any constitutional authorization for the latter method.²⁵ Whatever margin of discretion might have been found in the language of earlier constitutions to justify this practice, it seems clearly excluded by the 1975 Constitution. The newly added paragraph 4 of Article 36, which forbids legislative delegation as to sanctioning, must

²⁰ See, as to Belgium, P.-F. SMETS, *L'ASSENTIMENT DES CHAMBRES LÉGISLATIVES AUX TRAITÉS INTERNATIONAUX* 62-69 (1964). And cf. more generally, H. BLIX, *TREATY-MAKING POWER* 237-238 (1960) and *passim*; R. D. Kearney, *Internal Limitations on External Commitments—Article 46 of the Treaties Convention*, 4 *INTERNATIONAL LAWYER* 1 (1969); P. REUTER, *INTRODUCTION AU DROIT DES TRAITÉS* 28-30, 56 (1972).

²¹ The language of the Constitution unfortunately reflects the haste in drafting. In the provisions here considered, for example, three words (here translated as "treaty," "convention," and "agreement") are used to refer to international agreements, with no indication of what difference, if any, is intended in their meaning. There is no indication of a difference in meaning, either, between the "generally recognized" rules of international law of Article 2(2) and the "generally accepted" rules of Article 28(1).

²² WEBSTER'S DICTIONARY (3d ed.) gives as the first meaning of the verb "to sanction," "to make valid or binding: ratify, confirm or put into effect typically by decree, fiat or other formal procedure." Despite semantic accuracy, use of this term does not make for elegance of style in English. It is however important to retain the distinction. Greek usage, as well, even in formal legal language, is by no means free of confusion between the two terms.

²³ For a clear exposition of the distinction between the "international" and the "constitutional sense" of "ratification," see, G. G. Fitzmaurice, *Do Treaties Need Ratification?* 15 *BRIT. YEARBOOK OF INTERNATIONAL LAW* 113, at 113-116 (1934). And cf. Paul Reuter's wise comments on "problems of vocabulary and problems of substance" in the relationship between international and internal law, *supra* note 20, at 68-70.

²⁴ There is further linguistic confusion here, since it would seem that, strictly speaking, it is the head of state (now the President) who "sanctions" the treaty in all cases, after Parliament has approved the related bill (as he does for all laws). Cf. Article 42(1) of the 1975 Constitution: "The President of the Republic sanctions, promulgates and publishes the laws voted by Parliament within one month of the vote."

²⁵ See the succinct but valuable discussion in, D. J. Evrigenis, *Les conflits de la loi nationale avec les traités internationaux en droit hellénique*, 18 *REV. HELLÉNIQUE DE DROIT INTERNATIONAL* 353, 354, note 2 (1965).

be understood to preclude *a fortiori* sanctioning by decree (except perhaps where this is done in compliance with an existing, already sanctioned, treaty, for instance, in the case of some decisions of international organizations or summary amendments to some multilateral constitutive conventions). The constitutional language, in Article 28(1) as well as Article 36, can be read most consistently to mean that there is only one way in which a treaty becomes part of municipal law, namely, by act of Parliament sanctioning it.

Such an act of Parliament has two functions (which, in other legal systems, are carried out by separate legal measures): on the one hand, it authorizes (without obliging) the President to proceed to ratify the treaty, and on the other, it "transforms" the treaty into internal law.²⁶ There is thus a possibility that a treaty may enter into effect internally in Greece before it comes into effect internationally, or, indeed, it may never come into force internationally, for whatever reason, while still being in force in Greek domestic law.²⁷ The new Constitution does not depart in this respect from earlier law.

PARTICIPATION IN INTERNATIONAL INSTITUTIONS

Active involvement in international affairs in today's world may lead to commitments which go beyond traditional reciprocal treaty undertakings. Following the lead of several postwar Western European Constitutions, the new Greek Constitution deals expressly with the possibility of such extraordinary commitments. The relevant provisions allow such undertakings, require parliamentary approval, impose special majority requirements for the related votes, and establish certain substantive conditions.

A first class of special undertakings consists of those which impose limitations on the exercise of national sovereignty (Article 28(3)). A related proposal was included in the government's original draft and may indeed be found in certain earlier proposals submitted by the current Premier, Constantine Karamanlis, in 1963 (as well as in the two pseudo-constitutions prepared by the military junta in 1968 and 1973). The final formulation, after extensive debate, much improved the original proposal by eliminating some broad declaratory language (which eventually became the short statement in Article 2(2)) and by specifying certain restrictive conditions. Such undertakings must serve an "important national interest"; this requirement cannot presumably be satisfied by mere invocation of the country's "national interests" and imposes a burden of further specification and detail. Two negative conditions (no infringement of human rights and of democratic principles) serve to safeguard the domestic constitutional

²⁶ On this point, see the perceptive detailed study by N. Valticos, *Monisme ou dualisme? Les rapports des traités et de la loi en Grèce (spécialement à propos des conventions internationales du travail)*, 11 REV. HELLÉNIQUE DE DROIT INTERNATIONAL 203, 208 ff. (1958).

²⁷ The sanctioning act may, of course, provide that the date of the treaty's internal entry into force depends on that of its international force. See, Valticos, *supra* note 26, at 221.

order, while two affirmative ones (equality and reciprocity) attempt to exclude unilateral or unequal commitments toward foreign powers. Such "requirements" sound rather vague; in any concrete instance, their application is likely to give rise to differences in interpretation. But it is an error to judge them as if their function were to serve as rigid constraints or as specific directives for action. It is rather to provide the terms of reference for future debate, to structure and channel argument, and organize around them future discussions, in Parliament or elsewhere, concerning undertakings of the type considered. The strictest actual constraint is no doubt the procedural requirement, the need for an absolute majority of the total number of members of Parliament.

It is not quite clear to what sort of commitments this clause is addressed. During the debate in Parliament, the distinction was made between "restrictions on the exercise of sovereign rights" and such restrictions coupled with the "granting of sovereign competence" to international institutions. The former issue is now covered in Article 28(3), the latter in Article 28(2). Obviously the two are closely related; the main reason for dealing with them in separate paragraphs is that it was eventually decided to require different special majorities in each case.

Restrictions on sovereignty not involving concessions of competence (*i.e.*, those under Article 28(3)) appear to cover such cases as the adoption of human rights conventions or the establishment by treaty of free port zones. The paragraph is couched in language broad enough to cover restrictions undertaken not only by treaty but also by unilateral state act (presumably in response to or in contemplation of parallel unilateral acts by other states). One wonders how far the meaning of Article 28(3) can be extended. All treaties may be understood (and have on occasion been described) as imposing limitations on the unhampered exercise of national sovereignty. If such a conception is seen as underlying Article 28(3), many if not all international agreements, as well as all other state commitments toward foreign states, even if not by treaty, would require the special majority imposed by Article 28(3). Article 36 would then be deprived of most of its effectiveness. Even if such a broad extension of the scope of Article 28(3) were to be rejected, serious difficulties remain in determining the exact limits of its application.²⁸

The second category of extraordinary international commitments consists of those which involve the grant by treaty of (supranational) authority to international organs (Article 28(2)). This provision was proposed and adopted mainly with Greece's full entry into the European Economic Community in mind; it corresponds in this respect to recent provisions in other European Constitutions.²⁹ Concern with the farreach-

²⁸ Some guidance may be found in the study of similar provisions of two other Western European Constitutions. See Federal Republic of Germany, Basic Law, Article 23(2) and (3), 3 PEASLEE *supra* note 9, at 361, 366; Italy, Constitution (1947), Article 11, *id.* 500, 501.

²⁹ Cf., *e.g.*, Federal Republic of Germany, Basic Law, Article 24(1). 3 PEASLEE *supra* note 9, at 361, 366; The Netherlands, Constitution, Article 67, *id.*, 652, 660-61.

ing effects of such action in terms of effective restriction of national sovereignty led to the imposition of a high special majority requirement. Two affirmative requirements are also imposed: "important national interest" and cooperation with other states. Some opposition proposals insisted on the need to exclude expressly the application of this provision to "military agreements" (*i.e.*, NATO), on the ground that the provision as it stands is far too broad. No such amendments passed.

It is curious that no other substantive restrictions are mentioned in this paragraph. In particular, there is no express reference to the other affirmative and negative conditions found in the companion provision of Article 28(3). It seems appropriate, however, to read those conditions into paragraph (2), as well. As already noted, the two provisions largely overlap in their subject matter, with paragraph (3) being more inclusive. It is indeed impossible to imagine a concrete situation which would involve a grant of sovereign competence to international institutions (*per* paragraph (2)) and would not at the same time constitute a restriction on sovereignty (*per* paragraph (3)). If there is need to safeguard human rights and democratic principles and to insist on international equality and reciprocity in the case of commitments which do not include a grant of sovereign competence, there is *a fortiori* need for the same conditions for more far-reaching commitments, which include such a grant. The rather confused legislative history of these two provisions appears to support such an interpretation.³⁰

The net effect of paragraphs (2) and (3) of Article 28 is to give Parliament, with respect to the specified categories of international commitments, a significant role, going considerably beyond that provided for by Article 36(2). It is certainly arguable that in Article 28(2) and (3) (as well as in Article 27), the new Greek Constitution makes parliamentary action in the manner specified a condition for the international validity of any related international agreements and not only for their internal legal effect. The manifest importance attached to the subject matter and the imposition of numerous substantive conditions indicate that such agreements concern Greek internal law rules "of fundamental importance," while the prominence given in the Constitution to the special majorities required makes any violation of these provisions "objectively evident to any state conducting itself . . . in accordance with normal practice and good faith."³¹

PROTECTION OF NATIONAL INDEPENDENCE

Both paragraphs of Article 27 repeat provisions found in the 1952 Constitution (indeed, Article 27(1) is found in essentially similar form in all

³⁰ It may further be noted that reciprocity is also emphasized in paragraph (1) of Article 28. It was indeed forcefully defended by the government spokesman in the related debate. In this respect too an *a fortiori* argument seems appropriate.

³¹ The quoted language is taken from Article 46 of the Vienna Convention on the Law of Treaties, which may be taken to express on this point a fairly general consensus. For relevant comments, see the authors cited *supra* note 20 (in particular Professor Reuter's remarks).

Greek Constitutions since 1844). The single important change in 1975 was the addition of the requirement of a special majority. These provisions, too, may be understood, on grounds similar to those advanced in the preceding paragraph, as making parliamentary action an express condition of international, rather than solely internal, validity of the international agreements involved.

During debate in Parliament, these provisions became the focus of certain anxieties acutely felt in current Greek politics. Along with the provisions of Article 28(2) and (3), Article 27 was seen as symbolic of an entire range of issues relating to the protection of national independence, mainly as against powerful friends rather than enemies. Declarations in various forms were proposed asserting the inalienable character of national independence.³² Both factions of the Communist Party present in Parliament sought to incorporate in the Constitution declarations of adherence to the principles of peaceful coexistence. Other proposals sought a specific provision requiring revision, within a definite period, of existing multilateral and bilateral military pacts (*i.e.*, those concerning NATO and U.S. bases).³³

The objectives of most of these suggestions were fairly clear: in broader context, protection of the nation's independence from "entangling alliances" with powerful countries. This position reflects a long-delayed reaction against the traditional acceptance in Greek foreign policy of a Great Power (Great Britain for a long time, and since 1947, the United States) as the nation's exclusive "patron."³⁴

RELATIONSHIP BETWEEN INTERNATIONAL AND MUNICIPAL LAW

The provisions of Article 28(1) are probably the most interesting from a strictly legal point of view. Under the previous Constitutions, and in the absence of express constitutional language, the place of international law rules in internal Greek law has been fairly well settled in legal theory and case-law, although much less so in administrative and legislative practice. The principle that the "generally accepted rules of international law" (*i.e.*, customary international law) form an integral part of Greek law, with no need for express incorporation by law, has been settled for a long time.³⁵ As to international agreements, it has been generally accepted that for them to have any internal force, they must be sanctioned by act of Parliament.³⁶ Once this was done, their legal force was the same as that of regular acts of Parliament. Greek legal doctrine described the con-

³² For a reasoned defense of such language, see G. Tenekides, *Our External Orientations and the Constitution—I*, To VIMA, Jan. 12, 1975 (in Greek).

³³ The agreements in question are currently being renegotiated. It was said in debate that a "transitional" provision on the subject would be included in the Constitution. No such clause appears in the final text.

³⁴ The best study in English of the impact of foreign "protection" on the country's early constitutional development is, N. KALTCHAS, *INTRODUCTION TO THE CONSTITUTIONAL HISTORY OF MODERN GREECE* (1940).

³⁵ Cf. Areopagus [Greek Court of Cassation] Judgment No. 14/1896.

³⁶ See the discussion *supra*, text accompanying notes 22-27.

sequences in familiar terms: treaties cannot contravene the Constitution; they supersede earlier acts of Parliament; they are superseded by later acts of Parliament. Actual practice, however, cannot be summarized so easily. On the one hand, the courts frequently insisted that a statute cannot supersede a treaty by mere implication; the legislative intent to do so must be expressly stated.³⁷ On the other hand, provisions of prior statutes clearly contravening later treaties were treated in several instances as being still in effect.³⁸

The initial government draft of the 1975 Constitution did not attempt to deal with any of these issues. It contained only a vague reference to Greece's adherence to international law, basically in the same terms as the declaration ultimately placed in Article 2(2). The constitutional experts' proposals directly addressed the issue; going beyond settled doctrine, they provided not only that customary international law was part of Greek law but also that international treaties prevailed over both prior and subsequent Greek laws.³⁹ Proposals in this sense were introduced in Parliament by both government and opposition deputies. Although the topic was discussed at some length, opinions were not divided along party lines. The government spokesmen accepted with relative ease the substance of the proposals, although they refused to commit themselves to any specific formulation during the early stages of the debate in subcommittee and full committee. The definite text was thus formulated and adopted during the very last debate, in full Parliament, which took place before the opposition's departure and abstention.⁴⁰

No serious problems arose with respect to customary international law. Some doubts concerning the uncertain content of the term were laid to rest by the adoption of a provision charging a Special Supreme Court established by the new Constitution with the task of settling disputes over the "generally accepted" character of international law rules.⁴¹ There was more controversy concerning the legal effect of treaties. Several members of Parliament insisted on the necessity of retaining the distinction between prior statutes and subsequent ones, and of providing that treaties override only the former. Parliament would thus retain the power to enact a statute superseding an earlier treaty. Others adopted an opposite view, arguing that once a treaty was concluded and put into effect internally (by means of a statute), it could be deprived of legal force only through its abrogation in accordance with international law rules.

The issue was resolved in the same manner as to both customary and conventional international law. They were given enhanced formal validity,

³⁷ See, Evrigenis, *supra* note 25, at 355-56.

³⁸ See the detailed discussion in, Valticos, *supra* note 26, at 224 ff.

³⁹ See TO VIMA, Jan. 19, 1975. See also Tenekides, *supra* note 32; Calogeropoulos-Stratis, *supra* note 11.

⁴⁰ Debate of April 2, 1975, on the minutes of which the discussion in the next two paragraphs is based.

⁴¹ 1975 Constitution, Article 100(1)(vi). This Special Supreme Court is not a permanent body; it is composed of the Presidents and some members of the country's highest courts.

so that they supersede both prior and subsequent acts of Parliament. The constitutional language of Article 28(1) is not quite clear on this point. One might even draw a conclusion to the opposite effect from the fact that an earlier proposed formulation, "shall prevail over any contrary provision of law, whether prior or subsequent," was replaced by the present, "shall prevail over any contrary provision of law." However, debate went mainly in the other direction. An eloquent defense of the superiority of customary international law over domestic legislation by an opposition deputy met with nearly unanimous assent. More important, in closing the debate, the Minister of Justice, spokesman for the government, expressly stated: "We accept that the generally accepted rules of international law must have increased validity. We also accept this with respect to treaties, indeed *par excellence*."⁴² That last authoritative statement suggests that "any contrary provision of law" was understood to include both prior and subsequent statutes.

The application of this principle in judicial and administrative practice is bound to raise a number of problems. It will be interesting to follow the evolution of Greek case-law in the years to come. The new constitutional principle is likely to enhance the importance of the distinction between self-executing and non-self-executing treaties and treaty provisions. The distinction is already receiving increasing attention in Western Europe, because of its role in the implementation of multilateral agreements such as the GATT and the Treaty of Rome. The subject was not raised in the recent debates over the new Greek Constitution. Past Greek practice clearly recognizes that some treaties are self-executing,⁴³ although there are as usual considerable ambiguities and inconsistencies.⁴⁴ It might have been worthwhile for Parliament to address this issue, when considering Article 28(1), even though it is by no means certain that useful rules on the subject can be devised and formulated at the constitutional level.

CONCLUDING COMMENTS

The process of constitution-making in Greece during the first half of 1975 took place in too brief a time to allow detailed study and careful preparation on all issues. Public attention was in the main focussed on the provisions relating to civil rights and the respective powers of the President and Parliament, not on those concerning international affairs. The provisions of the new Constitution in the latter area serve to bring Greek law more or less in line with most other Western European Constitutions. There are obscurities and gaps that better preparation could no doubt have removed. More important, the text ultimately adopted has no original features corresponding to the country's particular conditions or offering solutions to

⁴² The Minister noted in this connection that any possible rigidities of such a rule would be tempered by application of the principles of reciprocity and *rebus sic stantibus*.

⁴³ Indeed, Professor Evrigenis has concluded that Greek courts are rather liberal in considering treaties as self-executing, *supra* note 25, at 357.

⁴⁴ See, Valticos, *supra* note 26, at 212 ff.

difficulties that have arisen in other countries. To the extent that an attempt is made to reconcile democratic principle with executive flexibility, the outcome is skewed in favor of the latter.

Yet it cannot be denied that the new provisions on international affairs constitute an advance over previous texts. At least in the cases where special majorities are required, the role of Parliament (and of the opposition parties in it) is bound to be enhanced—at least in future Parliaments, with a more evenly balanced distribution of seats. The substantive conditions imposed on certain classes of state commitments are likely to shape future parliamentary debates. The new Constitution also makes possible (or, in some cases, easier than it was) the invocation and application of international law principles and rules before or by Greek courts and other authorities at the behest of individuals or political groups. To determine the actual extent and effectiveness of these developments, one must await the growth of case-law and parliamentary practice. But some impact seems inevitable.

While far too short and, like all such discussions, plagued with much confusion, the debate in the Greek Parliament showed considerable awareness of and concern over the role of international affairs and their interaction with domestic political issues. The country's recent experience under a military dictatorship which combined arbitrariness and brutality with a barracks-room type of legalism and an acute sensitivity to foreign pressures has made Greeks conscious of a fundamental ambivalence in the impact of international law on their domestic affairs.

The country's involvement in a complex network of international legal relations gave democratic forces in Greece several new and effective channels for attacks upon and restrictions over the dictatorship. The proceedings before the Council of Europe and the European Commission of Human Rights constitute the clearest and perhaps the most important case. But there were other activities by dissenting Greeks or by democratically-minded foreign representatives within other international organizations and in other international contexts. Their immediate effectiveness may have been limited but, taken together, they played an important role in keeping the Greek dictatorship exposed to international condemnation, in not allowing either the Greek Government or its allies within the governments of other countries to return to "business as usual,"⁴⁵ and in generally limiting the effective capabilities of the military regime. Invocation of international legal principles, standards, and commitments before domestic courts in Greece was also seen as helpful (albeit to a limited extent) in the struggle by democratic forces against the regime. The country's long

⁴⁵ For a discussion of some of the methods by which the U.S. Government tried to manipulate legal considerations relative to its continuing recognition of the military regime, see A. A. Fatouros, *How to Resolve Problems by Refusing to Acknowledge They Exist: Some Legal Parameters of Recent U.S. Policy Toward Greece and Cyprus*, in T. A. COULOUMBIS and S. M. HICKS, eds., *CONFERENCE PROCEEDINGS. U.S. FOREIGN POLICY TOWARD GREECE AND CYPRUS: THE CLASH OF PRINCIPLE AND PRAGMATISM* (The Center for Mediterranean Studies, Washington, D.C., 1975) 20, at 21-26.

history of dependence upon foreign patrons, the regime's continuing need for material and political support from foreign states, and to some extent the regime's own peculiar legalism may have helped to enhance this role of international legal factors.

On the other hand, the experience of the recent dictatorship has created a new sensitivity to claims for national independence in substantive (economic and political) as well as formal (legal) terms. The dominant position of the United States in Greece rendered its support (or, in the official version, its tolerance) of the military regime a significant element of strength for that regime. Continuing participation in international organizations gave the regime not only some claim to the legitimacy it lacked but also sorely needed material resources. As a result, there is today in Greece widespread distrust of international commitments to foreign states or international organizations which are or may become oppressive for the weaker party. They are seen as establishing and strengthening unequal relationships and facilitating extensive penetration of the country's political, economic, and legal processes.

These problems, desires, and considerations pull in opposite directions, the former toward broader commitment to international legal principles and institutions, the latter toward raising barriers to external commitments so as to limit outside interference. Such dilemmas are in varying degrees operative in all nations, but they are particularly acute in small, weak, and dependent nations, like Greece. To cope with them, a country must act with care and deliberation and must devote considerable resources to foreign affairs decision-making. Increased national autonomy takes more than a declaration of independence.⁴⁶ The "independence" sought must be defined more subtly than traditional legal categories allow. In the last analysis, a country's political and economic dependence represents as much the will to power of the patron state as the perception of national interest (and of their own factional interests) of successive governments of the client state. The pursuit of national autonomy requires many and diverse concrete decisions and actions, continuing efforts over a long time, and a reasonably clear consensus on the acceptable sacrifices and risks from incidental events as well as from structural changes.

At the same time, a state must establish constitutional structures which allow the democratic principles operative in its domestic decision-making to obtain in foreign affairs, as well. This is, of course, a discrete issue. It is a problem which all states face, including the dominant ones. But in countries like Greece, with fragile democratic institutions and a long habit of dependence on foreign patrons, the two issues become indissolubly intertwined.

Greece's current efforts to assume full membership in the European Communities raise in microcosm the entire range of contradictory neces-

⁴⁶ The definitional and other problems of the concepts of autonomy, dependence, and the like, and their relevance to international law cannot be discussed here; they must be left for future elaboration elsewhere.

sities and desires: the need to "open up" the country's legal system to international (here supranational) legal regulation, the fear of domination by powerful friends, the difficulty of assuring democratic decision-making processes and principles on vital issues.

These perceptions and concerns cannot find expression in the rather simplistic traditional contrast between nationalist and internationalist positions. Relevant inquiries must focus on the differential impact of various types of external commitments on a specific state's domestic political and social forces and structures—who benefits and to what extent, from which measures, under what (and how probable) conditions. From the viewpoint of those committed to the values of democracy and national autonomy, difficult judgments are needed concerning the manner and the extent to which involvement in international legal activity can be made to enhance both values.

The new Greek Constitution certainly does not resolve or transcend these dilemmas. Yet, the beginnings of awareness of them among political leaders which the constitution-making process made evident raise a hope of future concern and continuing effort.