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Cyprus and the U.N.: A Case for Non-Military Collective Measures

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Cyprus and the U.N.: A Case for Non-Military Collective Measures

The first purpose set forth in the United Nations Charter is:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace.¹

The actions in pursuit of this goal are the most visible of the U.N. activities and, if successful, are the most essential for the continued existence of the United Nations. All U.N. members subscribe to this goal and obligate themselves to follow the decisions made by the General Assembly and the Security Council. For implementing this goal of conflict resolution, the U.N. Charter has set forth an array of measures "of adjustment," progressing in degree of coercion from voluntary actions of the parties to a dispute to the use of military force.²

¹U.N. Charter art. 1(1); the other purposes listed in article 1(2), (3) and (4) are:
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

²The General Assembly derives its authority for making recommendations from articles 10 and 11. The charter does not list specific types of recommendations as it does for the Security Council. In practice, the General Assembly has often assumed a peace-keeping role which has included the establishment of the U.N. Emergency Force (UNEF), the peace-keeping force in Palestine from 1956-1957 and the creation of the United Nations Temporary Executive Authority (UNTEA), which, with the help of U.N. forces, assumed temporary administration during the transfer of West Irian (or West New Guinea) from The Netherlands to Indonesia. Other peace-keeping measures taken by the General Assembly have been the creation of the office of U.N. Mediator in the Middle East in 1948 and recommendations for an immediate cease-fire, the cessation of military movements and the prompt withdrawal of forces behind the armistice lines by parties to the armistice agreements in the Palestine crisis of 1958.

The General Assembly is limited to its powers of recommendation. It cannot enforce any of its recommendations as can the Security Council under chapter VII.

Article 24 of the Charter accords the Security Council primary responsibility for the maintenance and restoration of peace and security. The Council is to act in accordance with the purposes and principles of the U.N. and its specific powers with respect to maintaining peace and security are laid down in chapters VI and VII of the Charter.

Chapter VI, entitled "Pacific Settlement of Disputes" reads in part:

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger
The case of Cyprus, which illustrates the use of a wide variety of these methods, calls into question the effectiveness of the United Nations as a vehicle for dispute resolution.

In the summer of 1974, Turkish land, sea, and air force invaded the Republic of Cyprus. The result was the occupation of about 40% of the island, the displacement of nearly one-third of the population, and the upheaval of the government, economy, and personal lives. Despite a series of United Nations and Council of Europe resolutions, six rounds of talks and a United States arms embargo against Turkey, Turkish forces have not withdrawn from the North and Greek-Cypriots continue to be expelled while Turkish settlers replace them.

Clearly the passage of time and the exhortations of other nations have not been enough to persuade Turkey to honor its international legal obligations and, as a U.N. member, to seek a settlement based on Charter

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the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

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Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

Chapter VII, entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Agression," provides for provisional measures under article 40, enforcement measures not involving the use of force under article 41 and those which do involve the use of force under article 42.

Article 42 of the Charter cannot be implemented until the permanent members of the Security Council agree under article 43 on the principles governing the special agreements concerning "the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided." No such agreement has been possible since the creation of the organization.


Cyprus is an island in the East Mediterranean with a 1975 population of 638,900, of whom 77% are Greek, 18.3% Turkish, and 4.7% other ethnic origins. Of the island's 3,572 square miles, 80.6% was owned by Greeks, 16.6% by Turks, and 2.8% by others (excluding government land, roads, forests, etc.) as of 1957. C. Tornaritis, CYPRUS AND ITS CONSTITUTIONAL AND OTHER LEGAL PROBLEMS 6-7 (1977).


SUBCOMM. TO INVESTIGATE PROBLEMS CONNECTED WITH REFUGEES AND ESCAPEES, SENATE COMM. ON THE JUDICIARY, 94TH CONG., 2D SESS., CRISIS ON CYPRUS 1976: CRUCIAL YEAR FOR PEACE 14 (Comm. Print 1976) [hereinafter cited as 1976 REPORT].
The purpose of this note is to examine closely the Cyprus conflict and the U.N. involvement there to date. Further, the potential use of non-military coercive measures as a dispute resolution mechanism for the type of situation Cyprus represents will be suggested and explored.

MODERN POLITICAL HISTORY OF CYPRUS

The Road to Independence

The history of Cyprus has been particularly tortuous. Yet knowledge of much of it is required for a reasonable understanding of the current problems and impasse to progress.

Cyprus is the third-largest island in the Mediterranean. Its location, 40 miles south of Turkey, 60 miles west of Syria, and 500 miles east of mainland Greece, has made it desirable to anyone "who would become and remain a great power in the East ...."

By the end of the thirteenth century B.C., Greeks-as Achaean-
Mycenaeans—are known to have established their culture on the island. Following them came the Phoenicians, Egyptians, Assyrians, Persians, Macedonians, Romans, Byzantines, Lusignans and Venetians. In 1571, Turkish forces added the island to the Ottoman Empire and governed there until 1878. It was during this period that the Turkish community was established. Still, Greek-Cypriots remained in the majority and by the end of that era were calling for enosis (union) with Greece.

The British gained the right to occupy and administer Cyprus in 1878 in exchange for tribute and a British agreement to help defend Turkey against Russia. However, when the Turks allied with Germany at the outset of World War I, Great Britain immediately annexed the island. This was formally recognized by the Turks in 1923 with the Lausanne Treaty and in 1925 the island became a Crown colony.

During the period between the two world wars, Greek-Cypriots grew increasingly discontented with their limited role in the government of Cyprus. They wanted amendments to their constitution which would change the composition and power of the Legislative Council, thus shifting much of the administrative control from the Crown to the subjects. However, their agitation ended in civil disturbances and the abolition of the Council in 1931. The resulting government was comprised of only the British Governor of the island and the advisory council, municipal government having also been discontinued.

Following the Second World War, when expectations for greater self-rule were again disappointed, the cause of enosis became the rallying point of Greek-Cypriots. In a plebiscite among Greek-Cypriots held in January 1950, ninety-six percent of those voting favored union with Greece; the question was how to achieve it.

Assuming the diplomatic leadership for the enosis movement, the late Ethnarch and Archbishop Makarios III ardently opposed the new British talk of self-government. As Professor Xydis recounts, "For him,

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C. Tornaritis, supra note 3, at 7-8.
Tornaritis, supra note 3, at 25.
"Id.
T. Ehrlich, supra note 8, at 1-2; 1974 Report, supra note 4, at 9. For a discussion of Britain's legal position during the period of 1878 to 1914, see C. Tornaritis, supra note 3, at 18-27.
T. Ehrlich, supra note 8 at 2; C. Tornaritis, supra note 3, at 28-9.
C. Tornaritis, supra note 3.
Id. at 28-9.
But the Archbishop of Cyprus was even more than the elected religious leader of his Eastern Orthodox flock and head of the Church. He was also their Ethnarch—the leader of the ethnus, the nation of the Greek Cypriots. Thus he had imperium as well as sacerdotium. The ethnarchic role, of a secular rather than of a religious character, went back not to early Christian or Byzantine times but to the Ottoman period, when the Ottoman administration, applying the millet system to the various non-Muslim peoples in the Ottoman Empire, vested their religious leaders with certain civilian or political powers over their flocks and with certain responsibilities vis-a-vis the government.
"Id. at 130.
self-government without self-determination within a reasonable and fixed time limit was ‘the grave of self-determination,’ and he who declared himself in favor of self-government was ‘a traitor to enosis.’”

Within the Greek-Cypriot community there was another and more radical leadership taken. Coming secretly from Greece, General George Grivas, under the nom de guerre of “Dighenis,” formed the guerilla group EOKA which, with the initial cooperation of Archbishop Makarios, aimed at drawing international attention to the Cypriot struggle for union with Greece “until international diplomacy—the United Nations—and the British” would finally face and resolve the problem.

In 1954, the government of Greece requested the U.N. General Assembly to consider the Cypriot desire for self-determination. This request marked the beginning of U.N. involvement with Cyprus. However, neither this nor a second Greek request moved the General Assembly to debate the Cyprus question. Then, in 1956, when talks between Governor Sir John Harding and Archbishop Makarios had reached a stalemate and while EOKA continued its guerilla warfare, Makarios was exiled to the Seychelles Islands. This prompted a third recourse to the U.N., followed by a fourth and fifth.

By now, the Turkish-Cypriot minority, led by their armed Turkish Defence Organization, TMT, was taking violent action aimed at gaining partition or separate self-determination for the Turkish-Cypriots. While the Turkish government spoke of armed intervention if there were not an immediate solution other than enosis, the British government in 1958 came up with the Macmillan Plan for a partnership between the two communities and among the governments of Great Britain, Greece and Turkey. To Makarios, this was an abhorrent prelude to partition and confirmed to him that independence and not enosis was the most they could hope for. Great Britain was not willing to consider the possibility of self-determination leading to enosis; her position was that if Greek-Cypriots would be allowed the right of self-determination, so would Turkish-Cypriots and that would mean partition. Apparently, “the threats of war” and of “a wider conflict” helped persuade not only Britain, but other U.N. members as well that any resolution or plan hinting at support for either side would be too dangerous.

Thus, the Greek government was never able to secure a resolution call-

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19Ibid. at 132.
20Ethnike Organosis Kyprion Agoniston (National Organization of Cypriot Fighters).
21S. XYDIS, supra note 17, at 24.
23See S. XYDIS, supra note 17, at 24-5.
24Turk Mukavemet Teskilati.
27XYDIS, supra note 17, 514.
28Ibid. at 519.
ing for self-determination nor one condemning partition. The General Assembly merely expressed the desire that "a peaceful, democratic and just solution will be found in accord with the purposes and principles of the Charter of the United Nations, and the hope that negotiations will be resumed and continued to this end."29

A series of talks followed, first between the Greek and Turkish foreign ministers in Paris, then between the Greek and Turkish Premiers Karamanlis and Menderes in Zurich, and finally among Greek, Turkish and British officials in London. At this tripartite conference, an agreement was reached for the basic structure of the new Republic of Cyprus as well as for a Treaty of Alliance29 among Greece, Turkey, and Cyprus and a Treaty of Guarantee31 among Britain, Greece and Turkey. These instruments did not allay the fears or fulfill the desires of the now returned Makarios, but, "faced," as he said, "with the dilemma either of signing the Agreement as it stood or of rejecting it with all the grave consequences which would have ensued," he signed.

The Republic of Cyprus: Constitutional Problems and Resulting Conflicts

Cyprus became a republic on August 16, 1960. However, it has been argued that both the means by which the constitution was granted and its contents are in contravention of the right of self-determination adopted in the Charter of the U.N.32 In fact, the constitutional provisions have been the center of contention since less than three years after their implementation.

At the tripartite conference, the parties attempted to prevent possible minority dissatisfaction by drafting a constitution under which the Greek-Cypriot majority and the Turkish-Cypriot minority were given separate and equal governmental power.34 This method of institu-

32 P. Polyvou, supra note 4, at 12.
33 C. Tornaritis, supra note 3, at 54-59. See generally T. Ehrlich, supra note 8, at 46-48; P. Polyvou, Cyprus: In Search of a Constitution 13-50 (1976); but cf. C. Tornaritis, supra note 3, at 56:
[It may be argued that by Article 195 of the Constitution the authority of the President and the Vice-President of the Republic to conclude these Treaties was ex-post-facto recognized and the Treaties were considered as validly concluded and as operative and binding on the Republic as from the date on which they have been signed.
34 Perhaps the most salient feature of the constitution is that its basic provisions cannot be amended, whether by way of variation, addition or repeal, while revision of the other provisions requires two-thirds approval from representatives of each community. The
tionalizing cooperation was unworkable from the start. The government
dualism, so rigidly provided for in the constitution, merely served to rein-
force ethnic separatism between the Greek- and Turkish-Cypriots. As a
result, Greek-Cypriots began to place their hopes in a unitary system of
government, while Turkish-Cypriots, fearful of discrimination, blocked
government business. Among the issues most contested were the com-
position of the civil service and the army, and the veto powers of both the
Greek-Cypriot president and the Turkish-Cypriot vice-president.

Aggravated by ethnic separation, frustration within the two com-
munities erupted into violence. Community conflicts of 1963-64 and 1967
were marked by fighting among Cypriots, threats by Turkey of military
intervention, and the creation of Turkish-Cypriot enclaves scattered
throughout the island.

The first major clash followed President Makarios' proposal of thirteen
revisions of the constitution. It was clear to him that, due to the
separatist tendency which pervaded the constitution, there would never
be an effective government or cooperative spirit among Cypriots. Thus in
November 1963, President Makarios sent a thirteen-point memorandum
to Dr. Fazil Kutchuk, the vice-president of the Republic, as well as to the
three guaranteeing powers. Among the proposed revisions were: the
abandonment of the president's and vice-president's veto powers; the
election by the whole House of Representatives of the Greek president
and Turkish vice-president of the House, rather than election by their
respective communities; and the participation of Greek- and Turkish-
Cypriots in the civil service and in the army made proportional to their
population.

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The rest of the thirteen points were:

1. The vice-president of the House of Representatives should act as the presi-
dent of the House in case of his temporary absence or incapacity to per-
form his duties;
2. Unified municipalities should be established;
3. The division of the Security Forces into Police and Gendarmerie should be
abolished;
4. The numerical strength of the Security Forces and of the Defence Forces
should be determined by a Law;
5. The number of members of the Public Service Commission should be
reduced from ten to five;
6. All decisions of the Public Service Commission should be taken by simple
majority;
7. The Greek Communal Chambers should be abolished;
8. The administration of justice should be unified;
9. The constitutional provisions regarding separate majorities for enactment
of certain laws by the House of Representative should be abolished;
10. The Vice-President of the Republic should act as the President of the Rep-
Dr. Kutchuk promised to consider the proposals, but before he had done so the Turkish government rejected them all. President Makarios would not accept this rejection and circumvention of Turkish-Cypriot authority. Five days later, intercommunal fighting broke out and each side accused the other of having planned war beforehand.\textsuperscript{37} After the first conflict, Turkish-Cypriots initiated a strict policy of self-isolation which, as U Thant reported, had "led the community in the opposite direction from normality."\textsuperscript{38} In January 1964, a conference was held in London between the Republic of Cyprus, Greece, Turkey, the United Kingdom and the two communities of Cyprus. However, the parties failed to reach a new settlement.

The Republic of Cyprus then presented the situation to the U.N. In a Security Council resolution adopted March 4, 1964, a peackeeping force was created and a mediator appointed to promote a peaceful solution "in accordance with the Charter of the United Nations having in mind the well-being of the people of Cyprus as a whole."\textsuperscript{39}

Nonetheless, fighting continued and in August 1964, Turkish fighter bombers struck Greek-Cypriot positions.\textsuperscript{40} Then in March of 1965, the ap-
pointed U.N. mediator, Dr. Galo Plaža, submitted a report which, though intended to be the basis of a new solution, was rejected summarily by Turkey. The report concluded that Cyprus should remain an independent state and renounce its right to unite with Greece; that the island should be demilitarized; that talks should take place between the Greek and Turkish-Cypriots; that a U.N. commissioner on Cyprus should supervise the protection of Turkish-Cypriot rights; and that there should not be a partition or geographical separation of the Greek and Turkish communities.

With regard to the last recommendation, Dr. Plaza wrote:

[The arguments for the geographical separation of the two communities under a federal system of government have not convinced me that it would not inevitably lead to partition. Again, if the purpose of a settlement of the Cyprus question is to the preservation rather than the destruction of the State and if it is to foster rather than to militate against the development of a peacefully united people, I cannot help wondering whether the physical division of the minority from the majority should not be considered a desperate step in the wrong direction. I am reluctant to believe, as the Turkish Cypriot leadership claims, in the 'impossibility' of Greek Cypriots and Turkish Cypriots learning to live together again in peace. In those parts of the country where movement controls have been

they are refugees.

JUS CYPRI. supra note 38, at 49, app. VI.

The following order of the Turkish-Cypriot leadership was also brought to the attention of UNFICYP and the U.N. Security Council on December 12, 1974:

"Turkish Cypriots not in possession of a permit are prohibited to enter the Greek sector. 1. Those who disobey the order with a view to trading with Greek Cypriots should pay a fine of L25 or be punished by imprisonment. 2. A fine will be imposed on:

a) those who converse or enter into negotiation with Greek Cypriots or accompany any stranger into our sector;

b) those who come into contact with Greek Cypriots for official work;

d) Those who visit the Greek Cypriot hospital for examination or in order to obtain pharmaceuticals."
relaxed and tensions reduced they are already proving otherwise.\textsuperscript{43}

The federal form of government proposed by the Turkish-Cypriots envisaged a dividing line separating the northern forty percent of Cyprus from the rest, including the division of the important cities of Famagusta and Nicosia.\textsuperscript{44}

For three years after the August 1964 bombing by Turkey, tension continued over the existence of Turkish-Cypriot enclaves with the Cyprus government trying to terminate them in favor of desegregation and the Turkish government repeatedly threatening to land troops\textsuperscript{45} in order to maintain them as they were.

Then, on April 21, 1967, a military junta took over the government of Greece by a coup d'état. Relations between the Cypriot and Greek governments became tense as the military government seemed willing to accept a settlement whereby enosis would be accomplished at the price of territorial concessions made to Turkey. The Cypriot government was also very concerned about the possibility of General Grivas leading a coup with the help of Greek officers of the Cypriot National Guard in order to

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Para. 153. In the first place, the separation of the communities is utterly unacceptable to the majority community of Cyprus and on present indications could not be imposed except by force. It would seem to require a compulsory movement of the people concerned—many thousands on both sides—contrary to all the enlightened principles of the present time, including those set forth in the Universal Declaration of Human Rights. Moreover, this would be a compulsory movement of a kind that seems likely to impose severe hardships on the families involved as it would be impossible for all of them, or perhaps even the majority of them, to obtain an exchange of land or occupation suited to their needs or experience; it would entail also an economic and social disruption which could be such as to render neither part of the Country viable. Such a state of affairs would constitute a lasting, if not permanent, cause of discontent and unrest.

Para. 154. Moreover, the proposed federated states would be separated by an artificial line cutting through interdependent parts of homogeneous areas including, according to the Turkish Cypriot proposals, the cities of Nicosia and Famagusta. Would not such a line of division inevitably create many administrative difficulties and constitute a constant cause of friction between two mutually suspicious populations? In fact, the arguments for the geographical separation of the two communities under a federal system of government have not convinced me that it would not inevitably lead to partition.

Para. 155. I am reluctant to believe, as the Turkish Cypriot leadership claims, in the ‘impossibility’ of Greek Cypriots and Turkish Cypriots learning to live together again in peace. In those parts of the country where movement controls have been relaxed and tensions reduced, they are already proving otherwise.

\textsuperscript{43}Public Information Office (Cyprus, The Cyprus Problem 10 (Rev. ed. 1977) [hereinafter cited as THE CYPRUS PROBLEM].

\textsuperscript{44}See note 42, supra; C. Tornaritis, supra note 3, at 71-2.

\textsuperscript{45}T. Ehrlich, supra note 8, at 91.
depose Makarios and declare enosis.\textsuperscript{46}

That same year, the Cypriot government made a number of efforts to ameliorate conditions on the island. Among them was the release of Rauf Denktash, the president of the Turkish Communal Chamber who had recently been arrested after returning from a self-imposed exile during the 1963 conflicts. In addition, the government decided to relinquish the fortifications near important Turkish-Cypriot enclaves and to cease the Greek-Cypriot police patrolling of the highway between Nicosia and Limassol.\textsuperscript{47}

Hopes for peace were dashed once more in November 1967. The police had decided in September that patrolling was again necessary. The commander of the U.N. Peace-Keeping Force on Cyprus had proposed that the patrols slowly begin again in November and that if negotiations failed, the United Nations Force in Cyprus (UNFICYP) would escort the patrols. By November 14, General Grivas, leading the National Guard, had grown impatient; he decided that patrolling should begin under the protection of the National Guard, and it did. But when the fourth patrol was fired upon from a Turkish-Cypriot roadblock, the National Guard responded with heavy machine guns, mortars and artillery. Heavy fighting then occurred in a nearby village only to end on November 16 after strong U.N. protests.\textsuperscript{48} Then, after negotiations among the governments of Greece, Turkey, Cyprus and the United States, the Greek government decided to withdraw all Greek forces except for the 950-man contingent allowed by the Zurich-London agreements.

Negotiations continued as both sides accepted the U.N. Secretary-General's offer of aid in the intercommunal talks (beginning June 24, 1968), with participation of his personal representative in Cyprus and the counsel of two constitutional experts from Greece and Turkey.\textsuperscript{49} Although progress was made on a compromise, the fruits of the negotiations were never realized, as the talks were terminated by the 1974 invasion.\textsuperscript{50}

\textit{The Turkish Invasion}

The government of Cyprus was overthrown on July 15, 1974 by Greek officers commanding the Greek-Cypriot National Guard. Untouched by assassins' bullets, President and Archbishop Makarios escaped to

\textsuperscript{46}Id. at 93, 95-96.
\textsuperscript{47}Id. at 97, 102.
\textsuperscript{49}C. Tornaritis, supra note 3, at 73.
\textsuperscript{50}P. Polviou, supra note 33, at 206. The Turkish-Cypriots agreed to give up such special rights as the veto and the 70:30 ratio for the Public Service. The new ratio would correspond more closely with the island's demography. In return, the Greek-Cyriots were willing to recognize and establish more Turkish-Cypriot power in local administration. It was the scope of local government which was still in contention. The Turkish-Cyriots preferred a strict regional division between the two groups with regional autonomy. The Greek-Cyriots were opposed to this proposal because it was believed that this would further polarize the communities and lead to economic instability for the Island.

P. Polviou, supra note 4, at 44. See generally P. Polviou, supra note 33, at 179-206.
London and was replaced by Nikos Sampson as acting president. Five days later Turkish forces landed on Cyprus. The first day, Greek-Cypriots were able to retain all but a narrow corridor from Kyrenia to Nicosia. It was, however, a very important corridor, for it would provide Turkey with an important access to the sea in Cyprus. The U.N. Security Council called for a cease-fire and an immediate withdrawal of foreign troops. The first cease-fire was effected July 22. Nonetheless, Turkish forces continued to advance.

In Athens, certain generals met to discuss the role that Greece should now play. They were opposed to Brigadier Ioannides, who, after ousting George Papadopoulos in November 1973, had "wielded shadowy authority over Greece in his official capacity as head of the military police (ESA)." Ioannides, it seemed, would have responded to the Turkish aggression against Cyprus with a Greek attack against Turkey. The generals decided to call back a more moderate civilian leader, one who would act by negotiations rather than by war. They chose former President Constantine Karamanlis, and on the evening of July 23 he returned from Paris. The Greek people were ecstatic: military rule was ending after seven long years. For Cyprus, the end of military rule in Greece meant the end of the week-long Sampson regime and a return to constitutional government. Nonetheless, Turkish troops were not withdrawn; their goal was not reached by a return to the status quo.

In accordance with Security Council Resolution 353, Great Britain, Greece and Turkey met in Geneva on July 26 to negotiate the terms for peace; on July 30 they agreed to implement the U.N. sponsored cease-fire on Cyprus. The Turkish forces, however, often violated the cease-fire.

On August 13, the Turks issued an ultimatum in the form of a proposal for a federal system by which the Turkish-Cypriots would be governed by a separate administration in a zone amounting to thirty-eight percent of

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521974 REPORT, supra note 4, at 15; 1975 REPORT, supra note 37, at 10.
53STERN, Bitter Lessons: How we have Failed in Cyprus, 19 FOREIGN POL'Y 34, 41 (1975).
541974 Report, supra note 4, at 15.
55S.C. Res. 353, supra note 51.
56As one author points out:
By the time the Turks got to Geneva they were confident of two things: they were the masters of the ground in Cyprus and there was no likelihood of an interventionist power play by the United States such as occurred in 1964 and 1967. During the exploratory cease-fire violations, there were no strong remonstrations from Washington. In fact, the State Department was saying publicly the day before the collapse of Geneva II that "we recognize the position of the Turkish community on Cyprus requires considerable improvement and protection." In Ankara that could well have been interpreted as a green light.
From the outset of the Geneva meeting the Turks appeared determined to impose a permanent solution of the Cyprus question within the framework of the "new realities" on the island. British Foreign Minister Callaghan charged openly that the Turks came to Geneva not to negotiate but to issue an ultimatum to the Greeks. L. STERN, supra note 53, at 72.
Cyprus. The Turkish foreign minister wanted an immediate answer, and when Greek Foreign Minister George Mavros asked for a thirty-six hour recess, the Turkish response once again was aggression.\footnote{The second Turkish invasion in which the initial occupation force of 20,000 troops doubled, was described in the 1974 Senate Study Mission Report as follows: Thus, one day later, on August 14, before dawn, the Turkish Army, heavily reinforced with armor and wielding the advantage of complete air superiority, slashed across Cyprus towards both east and west. In three days, this overwhelming military thrust sliced off at least 40\% of Cyprus which was slightly more than what the Turks had been demanding in the Geneva talks. The rapid and effortless Turkish advance on Cyprus had both a profound repercussion at the International level and a devastating effect on the population of the island. 1974 Report, supra note 4, at 16.}

Thus, one day later, on August 14, before dawn, the Turkish Army, heavily reinforced with armor and wielding the advantage of complete air superiority, slashed across Cyprus towards both east and west. In three days, this overwhelming military thrust sliced off at least 40\% of Cyprus which was slightly more than what the Turks had been demanding in the Geneva talks. The rapid and effortless Turkish advance on Cyprus had both a profound repercussion at the International level and a devastating effect on the population of the island.

The Turkish government justified its actions by many of the same arguments it used during the 1960's when threats of Turkish force were frequent. For an account of the former arguments see, T. EHRlich, supra note 8 at 65-89. Preeminent among these is the thesis that Turkey was acting under its powers as a Guarantor State. Article IV of the Treaty of Guarantee states that:

In the event of any breach of the provisions of the present Treaty, Greece, the United Kingdom, and Turkey undertake to consult together, with a view to making representations, or taking the necessary steps to ensure observance of those provisions.

In so far as common or concerted action may prove impossible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs established by the present Treaty.

The Turkish government has contended that the anti-Markarios coup was a “breach of the provisions” of the Treaty and that the Turkish troops were on a peace mission aimed at protecting the Turkish-Cypriot minority.

Many have countered this thesis with the following argument: 1) There was no breach of the Treaty, as the coup leaders had no intention of altering the constitution of Cyprus or the island’s status as an independent, non-aligned state; 2) even if the coup did constitute a breach of the Treaty, Turkey did not have “the right to take action” under article IV of the Treaty because Turkey did not have “the sole aim of reestablishing the state of affairs established by the present Treaty”; it did not first consult with Greece and the United Kingdom; and it did not have the authority to use force as “the right to take action.”

Evidence suggests that far from reestablishing the status quo, the Turkish aim of armed intervention was to create a divided island and to impose separate administrations on the two geographical regions. This “new political reality” would be reinforced by mass population transfers or forced Greek-Cypriot evacuation, Turkish-Cypriot migration north and Turkish immigration from the mainland. Furthermore, reestablishment of the status quo could no longer be claimed as the Turkish aim after the former constitutional order was reestablished.

Further, it is argued that Turkey did not have “the right to take action,” because it did not fulfill the prerequisite to unilateral action required under article IV of the Treaty. Turkey did not first consult with the other two Guarantor nations. The only meeting held was one between Turkish Prime Minister Ecevit and representatives of the British government after the first Turkish invasion. The consultation was after the fact, did not include Greece and cannot be said to have proven that concerted action was impossible.

The thesis concludes that even if Turkish actions could be construed to have met the requirements of article IV, the legitimate use of force was precluded by articles 2 (4) and 103 of the U.N. Charter. Article 103 provides that in the case of a conflict of obligations under the Charter and an international agreement, such as the Treaty of Guarantee, the Charter prevails. Article 2 (4) of the U.N. Charter prohibits the use of force by a member nation; Article 53 of the Charter qualifies this by providing that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.” The Treaty of Guarantee has not been considered a regional agreement, and, even if so, Turkey did not first obtain authorization of the Security Council for the invasion. Thus, the conclusion is reached that the invasions cannot be justified on the basis of Turkey’s powers under the Treaty of Guarantee. A. Fatouros, How to Resolve
For the Cypriots, this new attack by 40,000 Turkish troops meant the creation by a fait accompli of two separate and distinct regions—one Turkish and Turkish-Cypriot, the other Greek-Cypriot:

The Turks finally decamped on a line extending across the entire northern tier of the island. With a public-relations maladroitness of epic proportions they decided to call the new demarcation boundary the Attila Line. Though Attila was a national hero in Turkey, this name is synonymous with barbarism to the rest of the world. Within the borders of the Attila Line were encompassed the major portion of the Cypriot economy and a Greek population of some 200,000 which turned into a refugee tide flowing southward. After two days of military expansion during which Turkish troops virtually ran all the way to the Attila Line, the Turks stopped and agreed, yet again, to a cease-fire. At that point, Ankara had secured all the territory it wanted.58

U.N. Response to the Invasion and Its Aftermath

The United Nations has a variety of methods for the restoration and maintenance of peace and security, many of which have been tried in connection with Cyprus. Immediately following the Turkish invasion on July 20, 1974, the Security Council issued Resolution 353 calling for: respect for the sovereignty, independence and territorial integrity of Cyprus; a cease-fire and restraint from any aggravating action; withdrawal of all foreign military intervention; negotiations between Greece, Turkey, and Great Britain aimed at the restoration of peace and constitutional government in Cyprus; and cooperation with UNFICYP. Later resolutions urged restraint from action which might prejudice the sovereignty, independence, territorial integrity and nonalignment of Cyprus; restraint from any attempt to partition or change the demography of the island; and the safe return of refugees to their homes.

The Failure of Provisional Measures

All of the recommendations with the exception of the one urging the

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Problems By Refusing To Acknowledge They Exist: Some Legal Parameters of Recent U.S. Policy Toward Greece and Cyprus, CONFERENCE PROCEEDING U.S. FOREIGN POLICY TOWARD GREECE AND CYPRUS 28 (Center For Mediterranean Studies and The American Hellenic Institute ed. 1976); P. POLYVIOU, supra note 4, at 68-75; C. TORNARITIS, supra note 3, at 79-82. See generally, T. EHRlich, supra note 8 at 65-89.

L. STERN, supra note 53 at 73.

S.C. Res. 353, supra note 51.

start of negotiations, can be categorized as provisional measures under article 40, chapter VII of the U.N. Charter. As with all parts of chapter VII, recommendations for such measures by the Security Council must be predicated on its determination under article 39 that the situation represents a "threat to the peace, breach of the peace or act of aggression."61 In the case of Cyprus, this determination was made immediately.62

Turkey paid no attention to the Security Council demands. Despite the calls for a cease-fire in the resolution of July 20 and the Geneva Declaration of July 30, which were agreed to by Greece, Turkey and Great Britain, Turkish troops continued advancing. By July 30, Turkish-occupied territory had doubled. On August 14, the second Turkish military offensive was launched and when it was over, forty percent of the island had been captured; Turkey has complied with the resolution's mandate that all foreign military intervention be withdrawn.

Later resolutions included additional provisional measures attempting

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61This chapter is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." In addition to the provisional measures of article 40, chapter VII also contains the provisions for the military and non-military collective enforcement measures of articles 42 and 41 respectively. Art. 40 states:

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

It should be noted that:

Although there have been many proposals that the Security Council exercise its authority under Article 40, it has only twice cited that article in any of its resolutions. Nonetheless, the basic concept has been repeatedly applied. Whenever the Council has been faced with a situation where hostilities seemed imminent, or had actually broken out, it has given priority to attempts to avert or end the use of force, by calling upon the parties to take measures of a provisional nature.

GOODRICH, HAMBRO AND SIMONS, supra note 2 at 303.

The General Assembly may also make recommendations for provisional measures, as it has with the case of Cyprus and other situations in the past, supra note 2. Authority for such recommendations is granted under arts. 10 and 11(1). Art. 10 states:

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Art. 11(1) states:

The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

See generally, GOODRICH, HAMBRO AND SIMONS, supra note 2, at 111-29.

62The Security Council stated on July 20, 1974 that it was "gravely concerned about the situation which led to a serious threat to international peace and security and which created a most explosive situation in the whole Eastern Mediterranean area." S.C. Res. 353, supra note 51.
to meet the challenge of continuing Turkish aggression. On March 12, 1975, following the February 13 declaration of the establishment of "the Turkish Federated State of Cyprus," the Security Council adopted Resolution 367 which in part urgently requested the parties concerned, "...to refrain from any action which might prejudice that sovereignty, independence, territorial integrity and non-alignment, as well as from any attempt at partition of the island or its unification with any other country."

The resolution further states that the Security Council regrets the unilateral decision of 13 February 1975, declaring that a part of the Republic of Cyprus would become "a federated Turkish state" as *inter alia*, tending to compromise the continuation of negotiations between the representatives of the two communities on an equal footing, the objective of which must continue to be to reach freely a solution providing for a political settlement and the establishment of a mutually acceptable constitutional arrangement....

The desired conciliation on the part of Turkey did not follow. Moreover, Turkey's continuing disregard of the Security Council resolutions was not limited to military actions. On June 8, after eighty percent of the Greek-Cypriot population had been expelled from the North, Turkey and the Turkish-Cypriot leadership organized a referendum approving the constitution of the so-called "Turkish Federated State." The preamble of this constitution states that "the Turkish-Cypriot community constitutes an inseparable part of the Great Turkish nation." In its repeated reference to Turkish-Cypriots as Turkish citizens and to Greek-Cypriots in occupied territory as aliens, the constitution flouts the U.N. request to respect the territorial sovereignty of Cyprus. Furthermore, as aliens, Greek-Cypriots can not benefit from the fundamental human and political rights enjoyed by the Turkish-Cypriots. This designation as aliens serves to legalize the ongoing expropriation of property belonging to displaced Greek-Cypriots.

Consonant with the announcement of a Turkish federated state, the terms of its declared constitution, and the continued expulsion of Greek-Cyriots, is the mass immigration of Turkish citizens from the mainland. On November 20, 1975, the U.N. General Assembly responded to this development by adopting Resolution 3395, which called for the effective implementation of earlier resolutions, and urging "all parties to refrain from unilateral actions in contravention of its Resolution 3212 including changes in the demographic structure of Cyprus." Nonetheless, as with the other resolutions calling for provisional measures, compliance has not been forthcoming.

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34 THE CYPRUS PROBLEM, supra note 43 at 14.
An earlier effort to place the parties on an equal footing in order to facilitate negotiations had been the call for "the parties concerned to undertake urgent measures" for the return of refugees to their homes in safety. This resolution,\(^\text{69}\) unanimously adopted by the General Assembly and endorsed by the Security Council,\(^\text{67}\) has been ignored.

In sum, neither the provisional measures called for in the Security Council recommendations under article 40, nor those recommended by the General Assembly under article 10 and article 11, para. 1 have had any significant effect on Turkish policy. And while the Security Council has often "taken account of failure to comply with such provisional measures," as stated in article 40,\(^\text{68}\) its mere observation and reproof have taken on the appearance of acquiescence.

**The Failure of Attempts to Achieve a Peaceful Settlement.**

Like provisional measures, the other avenue used by the U.N. for the restoration of peace and security on Cyprus is dependent on the willingness of Turkey and Cyprus to cooperate and adhere to the Charter principles of peaceful resolution of international disputes, equal rights and self-determination of peoples. Under chapter VI, art. 33 of the U.N. Charter, the Security Council may call upon parties to a dispute "first of all, [to] seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice" if the dispute is likely to endanger the maintenance of international peace and security.\(^\text{69}\) The General Assembly may also recommend that such action be taken, deriving its authority from articles 10 and 11.\(^\text{70}\)

From the first day of Turkish aggression, the Security Council called upon Greece, Turkey, and Great Britain to negotiate immediately to restore peace and constitutional government to Cyprus.\(^\text{71}\) Soon thereafter the General Assembly, in its first resolution on the matter, expressed its satisfaction that contact and negotiation were taking place.\(^\text{72}\) But only one year later, it was already calling for "the immediate resumption in a meaningful and constructive manner of the negotiations."\(^\text{73}\)

Intercommunal talks were held under the auspices of U.N. Secretary-General Dr. Kurt Waldheim as specified in Security Council Resolution

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\(^{66}\)G.A. Res. 3212, supra note 60.

\(^{67}\)U.N. CHARTER, art. 33.

\(^{68}\)U.N. CHARTER art. 33.

\(^{69}\)U.N. CHARTER, art. 40, supra note 61.

\(^{70}\)U.N. CHARTER arts. 10-11, supra note 61.

\(^{71}\)S.C. Res. 353, supra note 51.

\(^{72}\)G.A. Res. 3212, supra note 60.

\(^{73}\)G.A. Res. 3395, supra note 65.
Little was accomplished at the first two rounds; at the third, it was agreed that those Turkish-Cypriots residing outside of the Turkish-occupied area in the north who wished to move to occupied territory could do so. With the aid of UNFICYP, this was soon undertaken.

Similarly, the Turkish-Cypriot side agreed to allow 955 Greek-Cypriots who had been expelled from the north in June of 1975 to return. It also agreed that the remaining Greek-Cypriots in occupied territory would be free to stay and would, for the first time since the invasion, be given "facilities for education and the practice of their religion, as well as medical care by their own doctors and freedom of movement in the Turkish-occupied areas." However, of the 955 applicants, only 275 were allowed to return; freedom of movement has not been granted; no doctors, nurses, priests or teachers have been allowed access; and schools have not been allowed to operated nor can textbooks enter the area.

After the fourth round of talks was adjourned for lack of concrete proposals the General Assembly called for immediate resumption of meaningful and constructive negotiations. At the fifth round, held in February 1976, both sides agreed to exchange written proposals on the constitutional and territorial issues. The Greek-Cypriot side proposed the establishment of a federal state which would preserve the sovereignty, independence, and territorial integrity of Cyprus. Regarding territory, the Greek-Cypriot side has always contended that, due to its small size, the economic interdependence of the various regions, and the lack of geological boundaries, Cyprus is ill suited for a partition, physical or functional. Rather, it has preferred a bicomunal, multiregional federal state. The Turkish proposal, assuming the existence of a "Turkish-Cypriot Federated Republic," encouraged consideration of how that state's powers and functions should be shared with the proposed Greek-Cypriot state.

In February of 1977, a summit meeting was held between President Makarios and Rauf Denktash under the mediation of U.N. Secretary-General Kurt Waldheim. At that meeting, guidelines for further negotiations were agreed to as a basis for the sixth round of talks. At that round, held between March 31 and April 7, 1977, the Greek-Cypriot side proposed the creation of a bi-regional federal state in which the area under Turkish-Cypriot administration would comprise twenty percent of the territory of the Republic. The Turkish-Cypriot side failed to present...
concrete proposals on the territorial issue. Thus, negotiations reached impasse.\textsuperscript{83}

In April of 1978, the Turkish side presented proposals meant to form the basis of a resumption of negotiations.\textsuperscript{84} These proposals speak of a

\textsuperscript{83}Id. at 3, 9.

\textsuperscript{84}Explanatory Note of the Turkish Cypriot Proposals for the Solution of the Cyprus Problem (April 13, 1978).

The constitutional proposals describe what the Turkish side calls a “federation by evolution” which is the withholding of federal power to the State and the granting of equal sovereignty to the two ethnic states for seven years, at which time, it may be possible to amend the constitution and grant some federal power to the central government. Id. at I, 20. For now, however, the Federal State would not be sovereign. Under these proposals, the Federal Legislative Assembly has no independent legislative powers. It is the separate legislative assemblies not the Federal Legislature which would pass laws regarding “life on the Island” as well as “common specific functions essential for a federal system of government.” Even the federal budget, the issuance of passports, foreign affairs and external defense, so inexorably federal issues are, under these proposals, to be legislated by state assemblies. In the likely case of conflict in matter of federal legislation by the two assemblies, the matter if referred to the federal assembly where majority approval is required for a bill to pass. Although the native Cypriot population is composed of about 80% Greek-Cypriots and 18% of Turkish-Cypriots, the Federal Assembly would be composed of ten members from each community. Since deadlocks would assuredly be the result in most instances, the federal legislature would have little real power. In the case of such a deadlock, the President of the Federal Assembly (who is chosen on a rotating basis by one of the two communities) has a casting vote. That decision is then submitted to a separate referendum in each state. Id. at I, 22-23.

Under the constitutional proposals the Federal Executive Power is vested in two presidents elected solely by their own states. Each one is to serve a rotation as President of the Federal Republic to represent Cyprus in “certain ceremonial and formal functions.” Id. at II, 9.

The protection of Human Rights and Fundamental Freedoms is another subject normally within the province of the federal government. Yet under the Turkish proposals, it is the two states which limit or protect those rights. Id. Thus Cypriot citizens of one state would probably be subject to disparate treatment while in the other state. Furthermore, there is no acknowledgment of the property rights of those people whose homes, lands, and business were confiscated by the Turks after the 1974 invasion. Only debts or compensation might be allowed these victims, and that, only by agreement between the parties concerned. Id. at II, 7.

With regard to the territorial aspects of the Cyprus problem, the proposals indicate that only 1% of the Turkish occupied area would be negotiable. Id. at I, 27. The once exclusively Greek inhabited lower city of Famagusta, now a ghost town under Turkish control, was singled out in these proposals as an area to which some Greek-Cypriots might be allowed to return. However, only a limited southern portion is involved, only Greek-Cypriot property owners were mentioned and it is the Turkish-Cypriot law which would govern there. Id. at I, 28. The probable explanation for these provisions is that it would be economically beneficial to the Turkish Federated State for the property owners in this the largest Cypriot port to run their businesses and still be subject to limited human rights and fundamental freedoms. PUBLIC INFORMATION OFFICE (Cyprus), OBSERVATIONS ON THE DOCUMENTS ENTITLED “MAIN ASPECTS OF THE TURKISH CYPRiot PROPOSALS” AND “EXPLANATORY NOTE OF THE TURKISH CYPRiot PROPOSALS FOR THE SOLUTION OF THE CYPRUS PROBLEM” (1978).

Additionally, by enacting the provisional measures and returning to the status quo, Turkey would have been acting under the Treaty of Guarantee by which it obligated itself to “recognize and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and also the provisions of the basic articles of the Constitution.” However, since July of 1974, Turkey has both invoked and disregarded the Treaty of Guarantee, depending on expediency. See note 57, supra.
federal solution. However, the details of these proposals delineate the de
facto partitioning of Cyprus into two sovereign states, rather than the
restoration of the Republic of Cyprus under a new federal government.

The Effect of Disregard of Provisional Measures on the Negotiations.

The obvious question is whether failure to gain compliance with provi-
sional measures hampered negotiations for a peaceful settlement. The
answer is "more than likely." The institution of U.N. provisional
measures was grounded on tactical considerations. By calling for an end
to fighting, the withdrawal of troops, the cessation of unilateral actions,
and the return of refugees and missing persons, the Security Council and
General Assembly were attempting to free the negotiations of an ag-
gressor's unequal pressure. By avoiding these provisional measures,
Turkey has been able to insist on a settlement which completely con-
travenes the Cyprus Accords of 1960, the many resolutions adopted by
the U.N., and the Charter principles of respect for a country's sovereign-
ity, independence, and territorial integrity as well as restraint from force
or the threat of force.

Since Turkey refused to comply with the provisional measures, it is im-
possible to say whether meaningful and constructive negotiations would
have taken place had the measures been implemented. One is left with the
impression, however, that if Turkey had had more to lose than its public
image, it might have been less stubborn in resisting U.N. resolutions and,
consequently, might have bargained rather than demanded.

NONVIOLENT SANCTIONS UNDER ARTICLE 41

Fortunately, however, the present partition need not continue. There is
yet a third channel through which the U.N. can deal with an intransigent
nation in order to fulfill its duty to restore peace and security in the
eastern Mediterranean. This is the application of nonmilitary collective
measures of coercion under article 41.85

The next step which can and should be taken by the Security Council
under article 41 is to "decide what measures not involving the use of arm-
ed force are to be employed to give effect to its decisions," and to "call
upon the members of the United Nations to apply such measures."87 The
specific measure here suggested is the imposition of sanctions on com-
communications and on economic and diplomatic relations with Turkey and
the "Turkish Federated State." This would not only encourage Turkey to
give effect to Security Council decisions, but would give meaning and
credibility to the final phrase of article 40, which states that the Council
"shall duly take account of failure to comply" with provisional

85 See generally U.N. Charter art. 2, supra note 6.
86 U.N. Charter art. 41, supra note 7.
87 Id. See also U.N. Charter art. 39, infra note 88.
measures.\textsuperscript{88} The U.N. has had little experience in implementing article 41. Only in the case of the African nation Rhodesia have mandatory economic sanctions under article 41 been ordered.\textsuperscript{89} The experience with the embargo against Rhodesia illustrates how the mechanism may be set in motion and what the possible impediments are.

\textit{Rhodesia: Implementation of Article 41.}

The threshold problem with the use of an embargo against Rhodesia was that before economic sanctions under chapter VII could be applied the Security Council had to decide that at the very least, the situation was a threat to the peace.\textsuperscript{90}

When the Unilateral Declaration of Independence (UDI) by the Rhodesian white minority appeared imminent, British Prime Minister Harold Wilson began "the task of endeavoring to internationalize a probable UDI while simultaneously maintaining the maximum amount of individual flexibility and control.\textsuperscript{91} Thus, in October 1965, one month prior to the UDI, Britain succeeded in obtaining a General Assembly resolution condemning the Rhodesian rebellion but calling upon Britain to take every step possible to prevent a UDI and, in the event of such a declaration, to use every means to stop the rebellion.\textsuperscript{92}

The General Assembly soon adopted another resolution.\textsuperscript{93} This one, reflecting the African perspective, called on Great Britain as administering state to end various racist practices in the Rhodesian government and to call a representative constitutional conference immediately. The Afro-Asian states believed that since Great Britain wanted sole responsibility for Rhodesia, it should use force to end the racist regime there. These were the only member states of the U.N. who consistently viewed the situation in Rhodesia, even before the UDI as a threat to interna-

\textsuperscript{88}As with all measures taken under chapter VII ("Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"), interruption of economic, communication and diplomatic relations under article 41 must be predicated on article 39, which states:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.


\textsuperscript{90}U.N. \textit{CHARTER} art. 39, supra note 88.

\textsuperscript{91}C. LLOYD BROWN-JOHN, supra note 89, at 280.


tional peace and security. 94

A week later, Rhodesian Prime Minister Ian Smith issued the Rhodesian UDI from Great Britain. At the initiation of Great Britain, the Security Council responded with a resolution condemning the UDI and calling on all nations not to recognize the Smith regime and to refrain from rendering it any assistance. 95 The resolution made no mention of a threat to the peace, nor did it invoke any of the Security Council’s powers under chapter VII.

Security Council Resolution 217, 96 adopted the following week, did indicate that the council had made an article 39 “threat to the peace” determination. The resolution, drafted by Bolivia and Uruguay as a compromise between the British and Afro-Asian positions, stated that the Rhodesian situation was extremely grave, that Great Britain should put an end to it, and that “its continuance in time constitutes a threat to international peace and security.” The resolution continued by calling on all states to impose voluntarily a ban on all exports of oil, petroleum, and military equipment to Rhodesia, as well as to sever all economic relations with that country. This call for economic sanctions was not an order for mandatory compliance under article 41, but a recommendation under chapter VI (“Pacific Settlements of Disputes”). 97

It was not until December 1966, a year later, when it asked the United Nations to apply selective mandatory sanctions against Rhodesia, that Great Britain decided that the situation was a threat to international peace and security. For even after the UDI, when Britain brought the Rhodesian case to the U.N., the government wanted it to be “clearly and unmistakably” understood that it was “a British responsibility to re-establish the rule of law in Southern Rhodesia” and not a responsibility of the United Nations. 98

In accord with this position was Great Britain’s assertion that the internal rebellion in Rhodesia bore none of the marks of a threat to international peace and security. 99 The view of the Western, Oceania and Socialist member nations, as well as that of Portugal and South Africa, was in line with the British position. 100 It was only in 1966, when the voluntary embargo had failed to crush the Smith regime, that Great Britain and those nations which had previously failed to support it decided to invoke article 39, thus opening the way for a resolution under chapter VII of the U.N. Charter.

The purposes of the British in bringing Rhodesia to the attention of the United Nations in 1966 were: to alert the organization to a matter if believed was of world concern, to elicit support for the economic sanc-

94L. Kapungu, supra note 89, at 32.
96Id. at 8-9.
97C. Lloyd Brown-John, supra note 89, at 287.
98L. Kapungu, supra note 89, at 25.
99Id. at 26-27.
100Id. at 27-30.
tions imposed on Rhodesia by Britain, and to eliminate the possibility of independent action by a third country using General Assembly resolution for support.\textsuperscript{101}

**Voluntary Sanctions.**

The first step in applying international pressure was a voluntary embargo suggested by Great Britain. In December 1965, Parliament decided to institute Britain's own oil embargo against Rhodesia as well as an oil airlift for Zambia.\textsuperscript{102} However, Prime Minister Wilson was mistaken in relying on the application of voluntary sanctions to bring down the Smith regime, or even to force it to retract its illegal declaration, for many nations failed to enforce the embargo.

Thus Britain requested a Security Council meeting, and in early 1966 the council adopted Resolution 221\textsuperscript{103} calling upon the Portuguese government to prohibit the pumping of oil through a pipeline from Beira, then a Portuguese-controlled port in Mozambique, to Rhodesia and to refrain from receiving at Beira oil en route to Rhodesia. The resolution further called upon all states to divert any of their vessels destined for Rhodesia and for Great Britain "to prevent by the use of force if necessary the arrival at Beira of vessels reasonably believed to be carrying oil destined for Rhodesia."

This resolution also failed to bring about the desired results. In December 1966, British Secretary of State for Foreign Affairs George Brown stated in the Security Council that voluntary economic sanctions against Rhodesia had been an experiment in international cooperation and had had a much smaller economic and political impact than expected.\textsuperscript{104}

**Mandatory Trade Embargo.**

So on December 16, 1966 the first U.N. resolution involving mandatory economic sanctions was adopted. Resolution 232\textsuperscript{105} called for states to impose a mandatory but selective embargo on key imports from and exports to Rhodesia.\textsuperscript{106} Less than two years later, it was evident that

\textsuperscript{101}Id. at 25.

\textsuperscript{102}C. LLOYD BROWN-JOHN, supra note 89, at 296. This decision "was based upon the dual assessment that an airlift could supply Zambian needs in the short run and that if other states volunteered support, Smith's regime would collapse by Easter 1966." Id. at 297.


\textsuperscript{104}L. KAPUNGU, supra note 89, at 130.


\textsuperscript{106}The imports to be banned were the key commodities of Rhodesian export trade: asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products, hides, skins and leather. The prohibited exports of member nations were the export of petroleum, arms, ammunition, military equipment, vehicles and aircraft.
stronger measures were necessary. Thus in May 1968, the Security Council adopted Resolution 253\textsuperscript{107} which expanded the previous embargo to include: prohibition of all trade with Rhodesia, except medical, educational and, in some humanitarian circumstances, food supplies; financing restrictions; denial of entrance into the territory of member nations of persons with Rhodesian passports or of those residents of Rhodesia who have been or are engaged in actions which encourage the UDI; and prohibition of commercial airline access to Rhodesia. The Council also established a committee to examine reports on the implementation of the resolution. Coming on the heels of incidents of South African and Portuguese trading with Rhodesia, the unanimous decision seemed to indicate a willingness on the part of the major powers to abide by the sanction. However, the assumption was disproved and the optimism disappointed with the flagrant violations by the United States with respect to the importation of chrome, legalized by the Byrd Amendment.\textsuperscript{108}

Yet later developments indicate greater support for the embargo. In March 1970, the Security Council passed Resolution 277,\textsuperscript{109} requiring a total interruption of economic and diplomatic relations, including the closing of consular offices in Rhodesia and the interruption of all means of transportation to and from Rhodesia. In April 1976, the Council, with the United States as a co-sponsor, unanimously approved specific economic sanctions involving the prohibition against all grants of trademark and franchise rights to any commercial, industrial or public utility in Rhodesia.\textsuperscript{110} Furthermore, the Byrd Amendment was repealed on March 18, 1977.\textsuperscript{111}

The Rhodesian Lesson.

The inability of members to agree on the function of sanctions against Rhodesia, which delayed Security Council application of mandatory comprehensive sanctions, is largely responsible for those sanctions' ineffectiveness. Eleven years had elapsed between the time of Wilson's first threat of economic measures and the full exercise of economic and diplomatic sanctions and the partial use of communication sanctions under article 41. This lapse of time allowed Rhodesia to develop strategies to counter the embargo, such as the substitution of other commodities and the development of new, albeit surreptitious, markets for the prohibited exports.\textsuperscript{112}


\textsuperscript{112}M. DOXEY, supra note 89, at 75-86; Galtung, supra note 89, at 393-414; L. KAPUNGU, supra note 89, at 130.
The hesitation of members of the Security Council fully to invoke article 41 was largely due to their reluctance to call the Rhodesian situation "a threat to international peace and security." Never before had a situation not involving the use of force between nations been determined to be such a threat. Apparently, members of the Security Council first decided to adopt the resolution ordering the mandatory embargo for reasons other than a belief that the situation in Southern Rhodesia constituted a threat to the international peace and security in the traditional, strict use of the phrase. Western, Oceania and Latin American states (with the exceptions of Portugal, Uruguay, and Argentina) used a determination under article 39 and the subsequent resort to article 41 to express support for Great Britain and, when stronger measures were needed, they used article 39 to express disapproval of the gross human rights violations under the Smith Regime. When France and the socialist states for the first time voted in May 1968 to impose sanctions on Rhodesia, it was for the symbolic function of expressing to the Afro-Asian states their humanitarian concern. It was the Afro-Asian countries which solely and consistently maintained, even before the UDI, that the situation was in fact a threat to international peace and security.

Only with respect to the situation in Rhodesia have mandatory economic sanctions under article 41 been ordered by the Security Council. Imposed without well formulated goals or strategies, economic sanctions against Rhodesia were not as immediately effective as Great Britain had hoped. One reason for this was that the imposition of economic sanctions was originally viewed by most supporting members of the Security Council as intended to play a symbolic rather than coercive role. Effectiveness was not a primary consideration. As one scholar has written,

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\text{There was, therefore, no consensus of opinion at the United Nations as to exactly what the objectives of economic sanctions against Rhodesia were. This lack of agreement over the goals of the sanction program led to the vague formulation and designation of the sanction measures. The Security Council could only formulate and designate the sanction program against Rhodesia through compromises. Very often the compromises were arrived at at the expense of precision in the definition of the objectives of the program.}^{116}\]

A voluntary embargo such as this did succeed in expressing moral support or disapproval. Perhaps the Security Council had not wanted to make this situation the precedent for the full use of article 41 since a threat to the international peace and security could not be readily ascertained by the international usurpation of power by a white minority.

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113GOODRICH, HAMBRO AND SIMONS, supra note 2, at 295-7; Halderman, supra note 89, at 705.
115Id. at 28-30.
116Id. at 37.
Perhaps also it had hoped to indicate the direction of world opinion, and thus help Great Britain bring down the Smith regime without the U.N. sponsoring more severe measures.

Nonetheless, time proved that more was needed. Two and a half years later when the UDI showed few signs of cracking, the Security Council decided midstream to reevaluate the goal of an embargo against Rhodesia. The practical result was that the optional, selective embargo was transformed into a mandatory, comprehensive one. The lesson to be learned from this is that as the goals change from expressive to coercive, so must the nature of the embargo. It would be preferable, however, for the Security Council to make an early determination of its goals. If the consensus is that the Council must intervene in order to coerce enforcement of the organizational principle or recommendations, then the embargo should be mandatory from the start and should be as inclusive as necessary to bring about the desired results. Only then will the measures achieve maximum effect with minimum harm in the form of economic deprivation, waste, or hardened relationships.

In sum, Rhodesia presented the Security Council with a novel situation for exercising its powers under chapter VII of the Charter. It was a nonmember of the U.N. whose status as a non-self-governing territory was questionable.\footnote{U.N. Charter art. 2, para. 7:}

\begin{itemize}
\item Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.
\end{itemize}

U.N. Charter art. 73:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

\begin{itemize}
\item a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
\item b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
\item c. to further international peace and security;
\item d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
\item e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories to which they are respectively responsible other than those to which Chapters XII and XIII apply.
\end{itemize}
neither used nor threatened to use force on an international level. For these reasons the determination that the Rhodesian situation was a threat to the peace was timorously made. Great Britain led the way as it initially sought moral support for its own embargo and diplomatic efforts of peacefully terminating the UDI. Many of the Security Council members who voted in favor of Resolution 232, which termed the situation “a threat to the international peace and security” and which requested compliance with a selective, voluntary embargo, had as their goal the expression of support for Great Britain or the Afro-Asian countries and not the coercion of Rhodesia. As a result, when a comprehensive, mandatory sanctioning scheme under article 41 was employed, the Rhodesian government had already developed defensive strategies to counter the U.N. sanctions.

CYPRUS AND THE SANCTIONING RECURSE

Cyprus clearly presents a more compelling basis for the application of article 41 than did Rhodesia. As indicated earlier, the situation in Cyprus unquestionably constitutes a threat to international peace and security. In fact, the Security Council’s characterization of the Turkish invasion as a “threat to the peace” is a conservative one. The situation might easily have been termed a “breach of the peace,” if not an “act of aggression.”

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18 In 1974, the United Nations General Assembly adopted a definition of aggression. Following are a few relevant paragraphs:

**Article 1**

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition:

**...**

**Article 2**

The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances including the fact that the acts concerned or their consequences are not of sufficient gravity.

**Article 3**

Any of the following acts, regardless of a declaration of war shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
Also, unlike the Rhodesian situation, there has never been any question as to the international nature of the offenses in Cyprus. There, the breach of or threat to international peace and security involves two massive invasions and the continuing occupation of an independent republic by a foreign nation.

The situation in Cyprus also involves the issue of human rights. In an important Council of Europe report, the European Commission of Human Rights revealed its finding that, during and after the invasions of 1974, Turkey violated seven articles of the European Convention on Human Rights. This finding was based on the extensive evidence of murders, rapes, lootings, and tortures committed by the Turkish army in Cyprus.¹¹⁹ At the present, other violations of human rights continue on Cyprus. Not only are the Greek majority, like the Rhodesian Blacks, deprived of the right of self-determination, they are also deprived of their homes and possessions, and of the rights to worship and attend school.¹²⁰

Since there is no doubt that the Cyprus situation constitutes a threat to the peace, coercive measures such as those authorized in article 41 are needed. Several additional reasons support this conclusion.

First, provisional measures and recommendations for the pacific settlement of the crisis have repeatedly been offered and rebuffed. The consensus in the United Nations has always been that the situation created by the Turkish invasions and occupation is to be deplored and should be cor-

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¹²⁰See generally THE CYPRUS PROBLEM, supra note 43, at 18.
rected. Yet Turkey has steadfastly refused to withdraw its troops or to allow Greek Cypriots to return to their homes, to repossess their property, or to enjoy such other human rights and fundamental freedoms as the rights to worship and to attend school in the occupied region.

Second, Turkey is a member of the United Nations. It has agreed to comply with and uphold the principles and decisions of that organization. It has also agreed to give the Security Council authority to order the interruption of economic relations of all members with any derelict nation in order to give effect to Security Council decisions. Since article 41 could be employed against a nonmember such as Rhodesia, it is imperative that it now be applied against a member.

Third, it is not only the violent methods used by Turkey to assert its influence in Cyprus which violate United Nations principles and decisions; the proposed Turkish political solution to the problems on Cyprus is also clearly in contravention of U.N. principles. With the invasion, the expulsion of Greek-Cypriots from the North, the introduction of large numbers of mainland Turks to the North, the prohibited access between the two parts of the island, and the declaration of a Turkish federated state, the Turks have imposed on Cyprus a type of partition whereby the northern section, comprising forty percent of the island is controlled by Turkey and the rest by Greek-Cypriots. Turkish-Cypriots, it should be remembered, were only 18.3% of the Cypriot population before the recent immigrations.

The U.N. Charter is opposed to such a solution which by threat or use of force would destroy "the territorial integrity and political independence" of Cyprus. Article 2 states that "the Organization is based on the principle of the sovereign equality of all its Members" which includes both Cyprus and Turkey. Furthermore, the present situation and any permanent form of partition cannot be reconciled with the U.N. purpose of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." If the present situation is allowed to continue, the U.N. will, in effect, be tacitly reinforcing Turkey's expropriation without compensation of the most valuable property of the island, leaving the owners without their possessions, farmlands or jobs.

Fourth, if the de facto partition is permitted to continue, relations among three U.N. members--Cyprus, Greece, and Turkey--can only be further injured. Again, it is one of the purposes of the U.N., "to develop friendly relations among nations based on respect for the principle of

111See notes 57-58 infra.
112Turkish-Cypriots comprised only 18% of the Cypriot population before the recent Turkish immigrations. THE CYPRUS PROBLEM, supra note 43, at 2.
113U.N. CHARTER art. 2(4).
114Id. art. 2(1).
115Id. art. 1(3).
equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.\footnote{P. Polyvrou, supra note 4, at 45.}

Finally, it is significant that the Turkish invasions of 1974 came at a time when progress was being made in the intercommunal talks between Greek- and Turkish-Cypriots. These negotiations were initiated by and conducted under the offices of the U.N. Secretary-General and were authorized by the Security Council on December 22, 1967. Therefore, to allow the results of these negotiations to be completely ignored by Turkey simply because there has been a change of circumstances as a result of an illegal military operation would not only sanction the use of force; even more important, it would throw doubt upon, and make a real mockery of, the very concept of negotiations freely entered into for the purpose of resolving a complex international and constitutional problem.\footnote{E.g., poor planning and a slow start due to the difficulty of finding a threat to international peace and security.}

The U.N. Charter describes a flexible system of measures encompassing the non-coercive voluntary effort of peaceful settlement by the disputing parties themselves, resolutions and recommendations made by the two U.N. organs, and the highly coercive actions under articles 41 and 42 taken by member nations against a state refusing to enforce U.N. decisions with respect to a threat to the peace, breach of the peace, or act of aggression.\footnote{U.N. Charter s. 41, supra note 7.} Past U.N. measures with respect to Cyprus have allowed full opportunity to arrive at a voluntary peaceful settlement there. They have also provided ample opportunity for member states to utilize the symbolic function of U.N. resolutions and thereby voice disapproval of the invasions and subsequent Charter violation by Turkey. In addition, both the Security Council and the General Assembly have recommended that the parties comply with various provisional measures, but that, too, has failed to motivate the government of Turkey to conform its conduct to Charter principles.

Coercive measures are the next in the series of measures of adjustment and should be tried in this case. In contrast to a U.N. plan for sanctions against Rhodesia, a similar plan with respect to Turkey can avoid the impediment of counter-strategies\footnote{Id. art. 1(2).} if it is founded on a strict adherence to the enforcement purpose of article 41.\footnote{Id. art. 6.} From the beginning, the sanc-
tions must have a coercive rather than merely symbolic function, and the goal of such coercion is compliance with Security Council decisions. In the case of Cyprus, these decisions called for: respect for the sovereignty, independence and territorial integrity of Cyprus; a cease-fire and restraint from any aggravating action; withdrawal of all foreign military intervention; negotiations between Greece, Turkey, and Great Britain aimed at the restoration of peace and constitutional government in Cyprus; cooperation with UNFICYP; restraint from action which might prejudice the sovereignty, independence, territorial integrity and nonalignment of Cyprus, and from any attempt of partition or of change in the demography of the island; and finally, the return of refugees to their homes in safety.

Compliance with all of these Security Council resolutions is an unrealistic immediate goal, and thus too difficult a requirement for lifting the proposed sanctions. For instance, Turkish action prejudicing the sovereignty, independence, territorial integrity and nonalignment of Cyprus, in the form of the “Turkish Federated State,” is not likely to be reversed before further negotiations and should not be made an immediate goal of the sanctions. However, withdrawing the Turkish forces on the island, permitting the return of refugees to their homes in safety, and cooperating with UNFICYP in the occupied region are steps which would indicate Turkey’s willingness to respect the sovereignty, independence and territorial integrity of Cyprus, and to restore peace and security to the area. Therefore, these would be appropriate immediate sanctioning goals for the Security Council to establish. It remains then to choose among the sanctions permitted under the U.N. Charter.

See notes 57-58 infra.

The restoration of peace and security in Cyprus will, in the end, mean a settlement based on the principles of the U.N. Charter which include the protection of human rights. The right to enjoy one’s property is a basic human right which is presently being denied Greek-Cypriots, but which can be restored with the safe return of refugees to their homes. In deciding on sanctioning goals, the issue arises as to whether Turkey should be compelled to restore human rights which are being violated before sanctions will be removed, when these rights are so interwoven with the political controversy, that their restoration is tantamount to a political solution. Cf. L. Louciades, Int'l Seminar on Torture and Human Rights - Working Group II Paper (October 3-5, 1977) where the issue is whether the restoration of human rights should be a precondition to negotiations for a settlement, rather than a precondition to the lifting of proposed sanctions. In both circumstances, the analysis is the same. Hence, the conclusion reached by Deputy Attorney-General Loucaides with regard to the former is applicable here:

[Restoration of human rights should not await the settlement of related political issues but on the contrary it should be used as a means to bring about such settlement. This is not only dictated by humanitarian and juridical considerations but also by the practical necessity, in the interest of world peace and welfare, not to allow states for any reason to have unfettered freedom to deny the basic human rights and freedoms to people under their authority. This is the raison d’etre of any human rights system.

To accept the contrary would inevitably lead us backward to the times when oppression in any form was an acceptable instrument for creating law.

Id. at 13-14. Mr. Louciades finds support for the proposition that the initial restoration of human rights is dictated by juridical consideration from: U.N. resolutions which call for the immediate remedying of human rights violations and resumption of negotiations; arti-
Article 41 provides for different kinds of coercive measures. These are "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." In considering the imposition of sanctions against Turkey, the issue should be resolved as to which of these measures would be most likely to succeed quickly and with the least cost to humanitarian concerns.

Economic embargoes under article 41 have included boycotts of military equipment, boycotter restrictions on financing and foreign aid. Sanctions such as these are designed to weaken the economy of the target nation, thereby to coerce the decisionmakers into conforming the country's policies and conduct to the prevailing legal order or value system. To be effective, these sanctions must be studiously calculated and applied, taking into consideration various defensive tactics which might reduce their impact.

In a leading article on international economic sanctions, Johan Galtung distinguished the "naive" from the "revised" theory of the effects of economic sanctions. The naive theory assumes the existence of an upper limit on the amount of value deprivation which a system can stand. Once this limit is reached, there follows either a split in leadership or a split between leadership and people, resulting in political disintegration and acquiescence. The revised theory takes into account the possibility that value deprivation may lead to political integration and that only later, if ever, will it lead to political disintegration. Under this theory, political integration may lead to the adoption of various counter-strategies which shield the nation from the coercive effects of economic sanctions.

1. U.N. Charter art. 41, supra note 7.
2. S.C. Res. 232, supra note 106 and text accompanying.
3. Id.
7. Galtung, supra note 89, at 388; M. Doxey, supra note 89, at 130-31.
8. These counter-strategies which Galtung describes as used by Rhodesia are:
   1. sacrifice.
   2. restructuring of the national economy (e.g. domestic production or substitution of banned imports, and alternative employment for those made jobless).
Political integration, according to Galtung, can be achieved if value deprivation creates all three of the following conditions:

1. The attack from the outside is seen as an attack on the group as a whole, not on only a fraction of it;
2. There is a very weak identification with the attacker, preferably even negative identification; and
3. There is belief in the value of one's own goals in the sense that no alternative is seen as better.\(^1\)

In the case of Turkey, the first condition will probably be satisfied immediately, since it is the nature of collective economic sanctions to hit all elements of the society, the innocent as well as the guilty.\(^1\) The second and, partially, the third conditions might be fulfilled if, through the use of propaganda,\(^1\) Turkish leaders attempt to underplay the identity of the international organization responsible for the sanctions by highlighting the role of Greece and Hellenist sympathizers in achieving U.N. support for the measures.\(^1\) Since animosity toward Greece is already a prevailing sentiment in Turkey, the nation's leaders might in this way achieve negative identification with the "attacker." Emphasizing Greece's part in the sanctions might also strengthen Turkish belief in the value of the Turkish cause by representing the conflict as a Greek-Turkish dispute.

Even if most of these conditions are satisfied, more will be needed before the sanctions become totally ineffective. Galtung's third condition will only be satisfied if the Turkish government's goal of forming two autonomous states in Cyprus is the highest goal of the Turkish people. It is not certain that this is the case, for political dissension and the ensuing violence are major concerns of the people.

Moreover, its ailing economy is causing great discontent in Turkey;\(^1\) and the "Turkish Federated State," which is dependent on Turkey for its financing and administration, is feeling the weight of Turkey's economic and resulting political instability.\(^1\) It is therefore highly likely that the Turkish population might be more interested in the country's economic

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3. change of trades with third parties via third parties or via smuggling.

and political stability than in its involvement in Cyprus.

An arms embargo has long been regarded as an appropriate measure to take against a threatening or bellicose nation because it can increase value deprivation (specifically, of those in power), decrease the target nation’s future war capabilities, and act as a sanction for previous use of arms. As each of these considerations is applicable in the present case, an arms embargo should be applied against Turkey. Moreover, an embargo of this nature would serve as a sanction for the continuing presence of Turkish troops on the island.

The next type of economic sanction urged is a mandatory trade embargo, prohibiting the inflow and outflow of the commodities most important to Turkey and the “Turkish Federated State.” The success of these sanctions will depend largely on the degree of concentration of import and export in the economies of Turkey and of the “Turkish Federated State”.

The Turkish economy, heavily dependent on three imports, is especially vulnerable. Also affecting vulnerability is concentration of trade on one trade partner. West Germany is a major Turkish trade partner, with twenty-two percent of Turkey’s trade.

Turkey’s exports are not as heavily concentrated in a few commodities as are its imports. The two largest exports account for twenty-nine percent of the total. The next three leading exports amount to several percent more. In order for economic sanctions to be effective, the Security Council should order an embargo on these five leading imports and exports.

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147 For a discussion of the cold war and Western strategic embargoes on trade with communist countries in Europe and the Far East, see generally M. Doxey, supra note 89 at 22-27.
148 See generally Id. at 14-22.
149 The U.S. arms embargo against Turkey was initiated under this last theory. It was a legal sanctioning response called for under the subsection 2314(d) of the 1962 Foreign Assistance Act. This law in Conjunction with §2302 provides that any country which receives defense articles or services by the U.S., and uses them for any purpose other than legitimate self-defense or participation in collective measures requested by the U.N., shall be immediately ineligible for further assistance. See generally A. Fatouros, supra note 57 for a study of the U.S. military aid issue in relation to Turkey. The U.S. arms embargo has recently been lifted. See International Security Assistance Act, 1978, Pub. L. No. 93-384.
150 In discussing this concept of vulnerability, Galtung explains that “the more a country’s economy depends on one product, and the more its exports consist of one product, the more its exports and imports are concentrated on one trade-partner, the more vulnerable is the country.” Galtung, supra note 89 at 385.
151 The leading import — boilers and machinery — accounts for about twenty-five percent of all imports. The second and third largest imports — petroleum oil lubricants and minerals — account for almost seventeen percent each. The fourth and fifth largest imports are transportation equipment and chemical products. Organization for Economic Co-Operation and Development, Turkey, at 14 (1978) [hereinafter cited as OECD]. These are 1975 figures.
152 Central Intelligence Agency, The National Basic Intelligence Factbook, at 207 (July 1978) [hereinafter cited as CIA Factbook]. The other major trade partners are: 9% United States, 9% Iraq, 7% Italy. These are 1976 figures.
153 Cotton and tobacco are the two largest exports. OECD, supra note 151, at 54.
154 Those exports are: hazelnuts; textiles and clothing; and food and beverages. Id.
The economic embargo should extend to the "Turkish Federated State." As with the suggested embargo against Turkey, an economic embargo against the occupied area should include a ban on the leading imports and exports. Nearly fifty percent of all import trade by the "Turkish Federated State" is conducted with Turkey and twenty-two percent with Great Britain. Great Britain leads the list of export trade partners, engaging in thirty-three percent of the trade. Eighteen percent of the Turkish sector export trade is conducted with Turkey.

There is, therefore, a high concentration of trade partners in the occupied area, greatly facilitating the imposition of economic trade sanctions. Nonetheless, if Turkey, the primary import trade partner and the second most significant export trade partner, evades the sanction by importing goods from the occupied territory and then exports them as Turkish goods, the sanctions' effectiveness would be undermined. The Security Council should then consider the institution of a naval blockade to prevent trade between Turkey and the "Turkish Federated State."

Financial restrictions complement trade sanctions and must also be considered by the Security Council if it is to devise an effectual economic sanctioning scheme. Financial sanctions control the means of paying for exports and imports for a nation and impede economic programs by restricting the foreign exchange and financial grants and credits with which a target nation conducts business. Turkey is particularly vulnerable to financial sanctions. The country's inability to offset oil costs with exports and other hard currency-earners has resulted in its increasing debt and in continued oil shortages for consumers and industries. Turkey's large balance-of-payments deficits have, in the past year, been financed by depleting Turkey's international reserves, by substantially increasing its short-term debt, and by extensive compensatory and standby financing by the International Monetary Fund.

If financial sanctions are imposed, they should operate to disallow the extension of credit by foreign exporters and banks to Turkey and the "Turkish Federated State," to the corporations and individuals within the two target areas, and to anyone identified as dealing in foreign goods on behalf of Turkey or the "Turkish Federated State." The restriction of

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15Although existing data on the economy of this administration are incomplete, it has been reported that the five leading imports are manufactured goods, machinery and transportation equipment, petroleum products, and foods. The three leading exports are citrus fruits, potatoes, and manufactured goods. CIA FACTBOOK supra note 152, at 49.
16Id. The other major imports trade partners are: 7% West Germany; 5% France; 3% Netherlands; 3% Italy.
17L. KAPUNGU, supra note 89, at 54.
18MEED (British), July 14, 1978 republished in Public Information Office (Cyprus), Summary of Foreign Press 4-9 (1978). It was reported that in the second half of 1977, industry was producing at only 46-60% capacity and that in some areas, automobile traffic was reduced by 16% in a week. Id.
foreign bank credit should also be extended to cover production of commodities to be exported from either Turkey or the "Turkish Federated State." Along with reinforcing the trade sanctions, these financial measures would impede efforts to diversify and reorganize the economy.161 The latter goal can only be achieved if foreign governments, international monetary organizations, private banks and individuals cooperate in refusing to give loans to the governments and citizens of Turkey and Turkish-occupied Cyprus, except for humanitarian purposes.

Although arms, trade, and financial embargoes dominate this proposed sanctioning scheme, it is strongly suggested that certain diplomatic sanctions must also be imposed at the start of this program. Article 41 of the U.N. Charter does not describe diplomatic sanctions beyond stating that the Security Council may consider ordering the severance of diplomatic relations. In Rhodesia, diplomatic sanctions were imposed in three ways: by nonrecognition of the UDI;162 by forbidding entry into member states’ territories ("save on exceptional humanitarian grounds") of those with Rhodesian passports and those who were likely to further the UDI or who were likely to evade the U.N. sanctions;163 and by closing of consular offices in Rhodesia.164

The situation which Turkey has created in northern Cyprus, involving de facto partition and the unilateral declaration of a "Turkish Federated State," makes this Turkish-occupied area particularly vulnerable to diplomatic sanctions. Like the UDI, the administration of northern Cyprus is an illegal regime;165 this makes nonrecognition both de jure and de facto, as was the U.N. nonrecognition of the Smith regime.166 Diplomatic nonrecognition of this sort is probably more persuasive than de facto nonrecognition only, as it is both a sanctioning and a legal response.167

161Id.
162See S.C. Res. 232, supra note 105, which refers to the Smith government as "the illegal racist regime."
163S.C. Res. 263, supra note 107.
164S.C. Res. 277, supra note 109.
165The "Turkish Federated State" was not established under the Cypriot constitution or under any of the related treaties.
166For an extended study of the legal consequences of the distinction between de jure and de facto recognition, see generally L. Oppenheim, International Law 129-32, 145 (7th ed. H. Lauterpacht 1948).
167But see Hesperides Hotels Ltd. v. Aegean Turkish Holidays Ltd, [1978] 1 All E.R. 277. In this English conflict of laws case, two Greek-Cypriot family companies brought an action for conspiracy to effect a trespass by procuring, encouraging or facilitating the unauthorized use of the plaintiffs' hotels in northern Cyprus which had been confiscated by the Turkish occupiers in 1974. One of the defendants in the case was a representative of the "Turkish Federated State" and the other was a London travel agency which issued brochures and made reservations for these hotels.

In the lower court, the plaintiffs were granted a writ for damages and an injunction. The travel agency submitted to a perpetual injunction restraining the defendants from conspiring to procure, encourage or facilitate a trespass to the hotels. The plaintiffs then applied for an interlocutory injunction against the representative of the "Turkish Federated State." The judge granted the injunction after receiving a certificate from the Foreign and Commonwealth Office stating that the United Kingdom government did not recognize the
However, this policy of nonrecognition should be directed only against the "Turkish Federated State." It is not the authority of the government in Ankara which would be challenged by diplomatic sanctions; it is the government's interventionist policies and actions with respect to Cyprus and, in particular, the establishment of the "Turkish Federated State" which are at issue. In addition, nonrecognition of the Turkish government and the closing of consular offices for the purpose of evidencing moral disapproval of its actions and policies would probably do little more than arouse a victim sentiment in Turkey and elsewhere. Furthermore, the closing of consular offices would cause extreme inconvenience not only to Turkey, but also to the sanctioning nations, and would so interfere with the normal channels of diplomatic communications as to impede progress towards a negotiated settlement.

There is also a third viable method of diplomatic coercion which was tried in Rhodesia. This entails barring entry into member states' territories, with humanitarian exceptions, of those who have passports issued by the "Turkish Federated State," those who are likely to further or have furthered the "Turkish Federated State" and the Turkish position on Cyprus, and those who are likely to evade or have evaded the article 41 measures. In accordance with the proposed de facto and de jure nonrecognition of the "Turkish Federated State," the Security Council should order the nonrecognition of all acts of sovereignty by the "Turkish Federated State." Since the issuance of passports is an exercise

administration of the "Turkish Federated State" as either a de jure or de facto government and that the only lawful government was the Republic of Cyprus set up in 1960. The defendant appealed. At the appeal hearing, the plaintiffs amended the writ to claim on additional relief of damages for conspiracy to effect trespass to the contents of the hotels. The Court of Appeal reversed the decision of the lower court, holding that the writ should be set aside and the injunction discharged for lack of jurisdiction and cause of action. Roskill, L. J. and Scarman, L. J. reasoned that, under British South Africa Co. v. Companhia de Mocambique [1893] AC 602, [1891-4] All E.R. Rep. 640, the court has no jurisdiction to entertain an action to recover damages for a trespass to land situated abroad, and that in order to sustain an action for conspiracy to effect a trespass to land or to chattel, the plaintiffs must first show that they have a better title to possession than the title held by the "Turkish Federated State." They also held that since in the amended writ, the claim of conspiracy to effect trespass to the contents of the hotels was framed in terms of ownership rather than possession, the writ disclosed no cause of action in trespass. Roskill and Scarman declined to rule on the question of judicial recognition of the act of exercise of sovereignty by the "Turkish Federated State" in confiscating and leasing the Greek-Cypriots' hotels.

However, Lord Denning, M. R. did chose to rule on this issue. He reasoned that English courts could recognize laws or acts of the "Turkish Federated State" which governed the day-to-day lives of the people, since it was in effective control of northern Cyprus, despite the fact that the occupier's administration was not recognized by the British government either de jure or de facto. Then, by his critical assumption that the laws of confiscation and leasing were simply laws of day-to-day administration, Lord Denning recognized them as the prevailing laws in northern Cyprus under which the plaintiffs are no longer the rightful possessions of the hotels, and under which trespasses to the hotels or their contents would not be actionable. He concluded that since the suit was not actionable under the administration of northern Cyprus, then neither was it actionable in England.

169 Id. at 14.
of sovereignty, member states should be prohibited from recognizing those passports as validly issued for the purpose of entering the territory of member states. A similar diplomatic restriction should be applied to forbid entrance into member states' territories of those with Turkish passports, those who are likely to further the illegal regime in northern Cyprus and the Turkish position on Cyprus, and those who are likely to evade the article 41 measures. This prohibition would serve as a sanction, a deterrent, and an enforcement measure.

If the measures outlined above sufficiently impede economic and military development and the establishment of the "Turkish Federated State," then government attempts to induce the counter-strategies of sacrifice, restructuring of the national economy and smuggling will be unsuccessful. Political disintegration and a change in posture can be expected from Turkey if the United Nations applies a comprehensive sanctioning scheme involving the partial interruption of diplomatic relations as well as the more far-reaching restrictions on economic relations.

If, within a period of time predetermined by the Security Council, these measures fail to coerce Turkey to comply with the sanctioning goals, then the Security Council may wish to resort to communication sanctions. Article 41 provides for the complete or partial interruption of rail, sea, air, postal, telegraphic, radio, and other means of communication. Of these possibilities, a complete ban on communications by rail, sea or air, preventing all transportation to and from Turkey, would be the most appropriate communications sanction and is, in fact, the one chosen by the Security Council with regard to Rhodesia. In that situation, the Security Council first banned flights to and from Rhodesia by airline companies incorporated in or registered in the member states; it also banned connections between those airline companies and any which were incorporated in or registered in Rhodesia. The next Security Council resolution concerning Rhodesia expanded the communication sanction to include "any existing means of transportation to and from Rhodesia." A ban of this nature would have a coercive effect on the populations of Turkey and of the Cypriot-occupied area at large, by barring international transportation for pleasure and for work. Additionally, some segments would feel the inevitable drop in tourism. As in other areas, implementation of these measures must stop short of those rare instances in which the prohibition of international transportation would cause humanitarian harm because, for example, of medical or familial needs.

Use of coercive measures such as these will not be easy for those members whose normal relations with Turkey are those of ally, trade partner, or both. For this reason, members of the Security Council may be more hesitant to resort to article 41 than they were in 1965, following Great Britain's embargo initiative against Rhodesia. Nonetheless, even if

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170S.C. Res. 253, supra note 107.
171S.C. Res. 277, supra note 103.
172See generally L. KAPUNGU, supra note 89, at 58.
a mandatory sanctioning scheme is not approved by the Security Council, the attempt to apply such measures would serve as a valuable political indicator, being the strongest disapprobation to date.

If article 41 sanctions are approved, United Nations members will be required to implement them, for article 2(5) of the Charter clearly requires compliance from all member states. If United Nations members are unwilling to comply with this obligation, then the Charter provision for coercive action will have only a minimal deterrent effect in future crises and, in the case of Cyprus, will permit, and perhaps encourage, evasion of U.N. resolutions.

More than four years have passed since the Turkish invasions of 1974. The ineffectiveness of traditional noncoercive efforts of the U.N. has resulted in immeasurable damage to the people and land of Cyprus. Certainly the time has come for the Security Council to turn to chapter VII, article 41 and order mandatory economic and diplomatic sanctions to give effect to its decisions and weight to all future resolutions concerning international peace and security.

Christina K. Navarro

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173 U.N. CHARTER art. 2(5):
All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

174 After completion of this note, a resolution on Cyprus was adopted by the members of the Non-Aligned Foreign Ministers Conference on July 30, 1978 in Belgrade. The resolution demanded the immediate implementation of all U.N. resolutions concerning Cyprus, and particularly recommended that the Security Council “take all appropriate measures, including, if necessary, measures under Chapter VII of the Charter, in order to ensure the speedy and effective implementation of its resolutions with regard to Cyprus.” PUBLIC INFORMATION OFFICE, PRESS RELEASE: NON-ALIGNED FOREIGN MINISTERS CONFERENCE PASSES RESOLUTION ON CYPRUS, July 30, 1978, at 1-3.

In addition, on November 9, 1978, the United Nations General Assembly passed a draft resolution presented by the non-aligned countries. In that resolution, the General Assembly expressed its consternation over the situation in Cyprus, reiterated its previous demands, and, most importantly, included the following paragraph:

[The General Assembly:] 8) Recommends that the Security Council should examine the question of the implementation, within a time-frame, of its relevant resolutions and consider and adopt thereafter, if necessary, all appropriate and practical measures under the Charter of the United Nations for ensuring the implementation of the resolutions of the United Nations on Cyprus.