Cyprus 1958-1968: An interdisciplinary assessment of inter-communal violence, with a particular emphasis on Common Article 3 of the 1949 Geneva Conventions I-IV

by

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A thesis submitted in partial fulfilment for the requirements for the degree of Doctor of Philosophy at the University of Central Lancashire

March 2022

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Abstract

The present thesis examines whether armed violence in Cyprus from 1958 to 1968, between its ethnic 'Greek' and 'Turkish' communities, reached the legal threshold that would constitute a non-international armed conflict under International Humanitarian Law. These events are the prologue to the Island's division since 1974. Thus, despite the extensive literature on the Cyprus Question, the chosen chronology has attracted less attention in academic and public discourse, and legal literature in particular is overall scarcer. In that regard, the thesis seeks to address gaps both in the historical narrative and in the legal literature. For this reason, the thesis has assumed an interdisciplinary approach, combining legal and historical approaches, with previous research in the social sciences. From an international legal perspective, the inquiry is underpinned by critical international legal scholarship and the 'Third World Approaches to International Law '(TWAIL) movement.

The thesis consists of four core chapters. Chapter 2 intertwines the history of public international law with historical developments on the Island of Cyprus starting from the Island's transfer from Ottoman to British administration in 1878, until the first wave of intercommunal violence in 1958. Chapter 3 presents the constitutional framework of the Republic of Cyprus as established in 1960 and the problems that derived thereof, with reference also to the domestic criminal legal order. Chapter 4 focuses on the most violent period from December 1963 assessing the level of violence through the legal criteria of 'organisation' of the armed groups involved, and 'intensity' of violence, under common article 3 of the 1949 Geneva Conventions. It then proceeds with a brief examination over the invocation of the Doctrine of Necessity by the Supreme Court in November 1964, by way of introduction to the less violent period from 1965 to March 1968, examined in Chapter 5, which saw a series of socio-legal and political changes that have been contributing to the standstill in inter-communal relations to this day.

The thesis illustrates how the lack of clarity surrounding the events from 1958 to 1968 derived from the diplomatic and political discourse at the time. From today's perspective, it problematises the interplay between law and politics in protracted unresolved disputes, and the socio-legal complexities that perpetuate them.

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Acknowledgements

The earliest ideas on a research project concerning Cyprus' violent history occurred sometime in 2013. I would, therefore, like to thank the many friends, relatives and colleagues, who have engaged with me in lengthy discussions on Cyprus' history, politics, and traditions. Sharing their knowledge, their views, and – some in particular – their own personal and family memories, they have been a valuable source of information, and a constant motivation for the completion of this thesis.

At the University of Central Lancashire, in Cyprus and the UK, first of all I would like to thank my Director of Studies, Klearchos A. Kyriakides, for his long-term support and feedback throughout this project. In particular, his resourcefulness in suggesting innovative historical and legal sources, and offering feedback from both his legal and historical expertise have made this process particularly enriching, in terms of both skills and substance. I would also like to thank my second supervisor Ian Turner in UCLan, UK for all his support, and especially for the help in navigating through the many administrative and organisational demands a PhD degree has. I could certainly not leave behind Stéphanie Laulhé Shaelou, Head of the School of Law at UCLan Cyprus, for showing a great interest in the topic from the beginning, and for supporting me in all aspects of my academic and professional development during the last four years. Last but not least, I thank the rest of the UCLan Cyprus School of Law team for the various ways they have been part of this experience, and in particular Katerina Kalaitzaki and Andrea Manoli, with whom I shared a significant part of this journey, before and after they completed their own PhDs.

The thesis would not have been so rich in information without the valuable experience of participating at the 2019 Global Humanitarianism Research Academy, organised by the Leibniz Institute of European History, the University of Exeter and the International Committee of the Red Cross. For this incredible opportunity, I am most thankful to Johannes Paulmann, Fabian Klose, Stacey Hynd, Mark Palen, Julia Irwin and Andrew Thompson, and all other participants for the enlightening discussions. I would also like to thank Daniel Palmieri, Fabrizio Bensi, Damian Gonzalez Dominguez, and Guy Thomas at the ICRC for their insights, advice, and assistance during the study visit to the ICRC Archive. I am equally thankful for the opportunity to participate at the 2nd Doctoral Forum on International Law of the European University Institute on 'Practicing Reflexivity in International Law'. In the middle of a pandemic and the second lockdown in Cyprus, the eight online sessions

were one of the very few opportunities to join lively discussions on international legal theory and practice.

Special thanks are due to Jason Beckett, Zoe Kyriakides and Shirin Jetha Dagseven. To Jason for supervising me as an undergraduate student at the University of Leicester, and for introducing me to critical international legal scholarship all those years ago. Aspects of his advice have now found their way into this thesis, and the exploration continues. To Zoe for her guidance, trust and constant encouragement to push my limits a bit further while shadowing her as a trainee Advocate at the Law Office of the Republic of Cyprus, and for being one of the first people to completely support my initial thoughts about embarking on a PhD. To Shirin for being the supportive friend she has always been, and for giving me the opportunity to work together at the Association for Historical Dialogue and Research in Nicosia, to be part of exciting projects and meet so many people whose diverse backgrounds and life experience have been a constant source of inspiration.

Last but not least, I am thankful for the incredible support I have received from my close friends, siblings and family. Thank you for offering a space where I could always share my excitement or surprise for the latest discovery, for asking hard questions, and for sharing your thoughts. Above all, I am thankful to my parents, Slaviana and Michalakis, for instilling in me a constant curiosity for what is yet to be learnt.

List of Tables and Figures

List of Abbreviations

AP I	Protocol I Additional to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts
AP II	Protocol II Additional to the Geneva Conventions, relating to the Protection of Victims of Non-International Armed Conflicts
BRC	British Red Cross
CA3	Article 3, common to Geneva Conventions I-IV 1949
CYBRC	British Red Cross - Cyprus Branch
CIHL	Customary International Humanitarian Law
CLR	Cyprus Law Reports
CoE	Council of Europe
CYP	Cyprus Pound
DLR	Dominion Law Reports (Canada)
DoN	Doctrine of Necessity
EA	East African Law Reports (Here with reference to Uganda)
ECmHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
EOK	Cyprus National Organisation (Εθνική Οργάνωση Κύπρου)
EOKA	National Organisation of Cypriot Fighters (Εθνική Οργάνωση Κυπρίων Αγωνιστών)
FRA	Fundamental Rights Agency of the European Union
FJCA	Court of Appeal of Fiji Decisions
GBP	Pound Sterling
GC I	Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949
GC II	Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949
GC III	Geneva Convention III relative to the Treatment of Prisoners of War 1949
GC IV	Geneva Convention IV relative to the Protection of Civil Persons in Time of War 1949
GC I-IV	1949 Geneva Conventions relating to the Protection of Victims of Armed Conflict
ROCPM	Republic of Cyprus Parliament Minutes (Plenary Sessions)

IAC	International Armed Conflict
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
IDP(s)	Internally Displaced Person(s)
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILA	International Law Association
ILC	International Law Commission
IMT	International Military Tribunal
IRRC	International Review of the Red Cross
MPEPIL	Max Planck Encyclopedia of Public International Law
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
NIAC	Non-International Armed Conflict
PCTA	Provisional Cyprus Turkish Administration
PIL	Public International Law
PIO	Public Information Office (succeeded by the Press and Information Office / Γραφείο Τύπου και Πληροφοριών)
PoW(s)	Prisoner(s) of War
RoC / the Republic	Republic of Cyprus
SBA(s)	Sovereign Base Area(s)
SCC	Supreme Constitutional Court (of the Republic of Cyprus)
TMT	Turkish Resistance Organisation (Türk Mukavemet Teşkilatı)
ToE	Treaty of Establishment
ToG	Treaty of Guarantee
ToA	Treaty of Alliance
TRC	Turkish Red Crescent
TRNC	Turkish Republic of Northern Cyprus
TWAIL	Third World Approaches to International Law
UDHR	Universal Declaration of Human Rights 1948
UK	United Kingdom of Great Britain and Northern Ireland

UKSC	United Kingdom Supreme Court
UN	United Nations
UNA	United Nations Archive
UNCIVPOL	UNFICYP Civilian Police
UNFICYP	United Nations Force in Cyprus
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
USA / US	United States of America
USSR	Union of the Soviet Socialist Republics
VCLT	Vienna Convention on the Law of Treaties 1969
WWI	First World War
WWII	Second World War

1 INTRODUCTION

For decades, the so-called Cyprus Question has been at a standstill, and though many are aware that the island is divided in a 'northern' and a 'southern' part, few are familiar with the background story to this state of affairs, and even fewer with the fact that the issue has been holding a semi-permanent position at the United Nations Security Council's (UNSC) agenda since 1964. Against this background, the present thesis examines through a historico-legal perspective the ethnic armed violence between the Greek-Cypriot and the Turkish-Cypriot communities[1] of the Island of Cyprus,[2] from 1958 to 1968. These events form the basis to the multiple states of exception in the RoC to this day.[3]

1.1 Research Question and Objectives

Focusing on common article 3 (CA3)[4] of the 1949 Geneva Conventions (GCs) I-IV Relating to the Protection of Victims of Armed Conflicts,[5] the main question of the present thesis is whether armed violence between the Greek-Cypriot and the Turkish-Cypriot communities of Cyprus, reached the level of non-international armed conflict (NIAC) in the period 1958 to 1968, under International Humanitarian Law (IHL); the branch of Public International Law (PIL) regulating the conduct of hostilities in armed conflict.[6] The chronology in the present thesis starts from the first major wave of violence between the two main ethnic groups of Cyprus in January 1958, two years prior to the establishment of the RoC in August 1960. It concludes in March 1968 when measures were adopted by the first President of the Republic towards the restoration of order, after the Republic's constitutional deadlock and renewed cycle of violence which broke out in December 1963. Therefore, the research addresses the

[1] See the terminological clarifications at the end of this chapter.

[2] See the terminological clarifications at the end of this chapter.

[3] Costas M Constantinou, 'On the Cypriot States of Exception' (2008) 2 *International Political Sociology* 145; Nicos Trimikliniotis, 'The Proliferation of Cypriot States of Exception: The Erosion of Fundamental Rights as Collateral Damage of the Cyprus Problem' (2018) 30(2) *The Cyprus Review* 43.

[4] For the full text of CA3 see Annex I of this thesis.

[5] Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in armed Forces in the Field (adopted on 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (GCI); Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (GCII); Geneva Convention III relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (GCIII); Geneva Convention IV relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GCIV).

[6] Malcolm Shaw, *International Law* (8th ed, CUP 2017) 891.

most definitive years of the rising tension in inter-communal relations on the Island, before and after independence, constituting the prologue to the coup d'état and the Turkish invasion of summer 1974,[7] which led to the division of the Island as it currently stands today.

There is no simple way to elaborate on the inter-communal aspects of this history, without referring to the complex matrix of various internal and international actors, and the accompanying contradicting or antagonistic social, political, historical or ideological positions that form the Cyprus Question. British-Cypriot anthropologist, former professor at the London School of Economics and one of the most influential academics on Cyprus' experience of displacement, Peter Loizos,[8] had used the legal analogy of a car accident in bad weather to illustrate how the many different variants prevent a straightforward recognition of who is to be held responsible for the accident.[9] Similarly in the Cyprus case, the different levels of engagement within a complex period of rapid global developments prevent the unambiguous restructuring of the events that took place. For clarity, therefore, he systematised the different actors involved in the Cyprus Question as follows:

> (a) the mass of 'ordinary Turkish and Greek Cypriots', most of whom lived together with people from the other community,[10] developing social and economic relations despite their 'consciousness of difference', 'antagonism' and 'mistrust';[11]
>
> (b) the formal and informal relations between the political leaders of the two communities;
>
> (c) the foreign policy-makers of the UK, Greece and Turkey, who would act depending on their interests; and
>
> (d) the priorities of UN, NATO, and the Warsaw Pact, along the long-term competition of the superpowers, in the Eastern Mediterranean.[12]

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[7] See the terminological clarifications at the end of this chapter.
[8] Peter Loizos, *The Heart Grown Bitter: A Chronicle of Cypriot War Refugees* (CUP 1981); Charles Stuart, 'Peter Loizos obituary' (*The Guardian*, 20 March 2012) <https://www.theguardian.com/education/2012/mar/20/peter-loizos> accessed 20 December 2021.
[9] Peter Loizos, *Unofficial Views: Cyprus: Society and Politics (Intercollege Press 2001)* 77
[10] See the terminological clarifications at the end of this chapter.
[11] Loizos, *Unofficial Views* (n 9) 77.
[12] ibid 77-79.

Over the last decade there has been an increase in calls for deeper engagement with the 'Cypriot civil war',[13] and the need to make away with the 'myths' that have dominated Cypriot history and politics for decades.[14] Undoubtedly, the suppression of one of the darkest periods of Cypriot history has had a tremendous impact on the Cypriot society (or perhaps, societies). The construction of a 'strategic narrative'[15] on both sides has not only distorted the historical record, but the lack of constructive engagement with the period and the events examined has had a direct political impact domestically and internationally, through the sustenance of resentment, fear and mistrust between members of each community. Nevertheless, while the author agrees with the position that more substantial engagement with this period of Cypriot history is long-overdue, from an international legal perspective one is compelled to examine first whether the legal criteria of 'civil war' are in fact satisfied, before pursuing this discussion further.

Starting from this basic yet fundamental premise from PIL perspective, the present thesis seeks to contribute to existing literature on Cypriot inter-communal violence, bringing into the discussion CA3 of the 1949 GCs. This was the first and only PIL provision dealing with 'armed conflict not of an international character' until 1977,[16] and therefore, during the period from 1958 to 1968, which is the focus of the present research. As such, particular attention is drawn to the first category of actors involved, as categorised by Peter Loizos; the experience of the ordinary population of the Island. In addition, since the 1960s constitute a very particular period in the development of international law in the shadow of the Second World War (WWII), the period of de-colonisation, the Cold War and the rise of the Civil Rights movement, the research also takes the opportunity to situate the events in Cyprus within a broader international factual and legal framework.

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[13] Andrekos Varnava, 'Remembering the Cypriot Civil War 50 Years On' (2013) 5(2) *The Cyprus Review* 113; Elias Hazou, '1963 is still a historical minefield' (*Cyprus Mail,* 22 December 2013) <https://cyprus-mail.com/2013/12/22/1963-is-still-a-historical-minefield/> accessed 3 December 2021; Christos Panayiotides, 'Sowing the seeds of evil: Cyprus 1959-1964' (*Cyprus Mail*, 18 July 2021) <https://cyprus-mail.com/2021/07/18/sowing-the-seeds-of-evil-cyprus-1959-1964/> accessed 3 December 2021.

[14] Jan Asmussen, 'Conspiracy Theories and Cypriot History: The Comfort of Commonly Perceived Enemies' (2011) 23(2) *The Cyprus Review* 127.

[15] Brian Drohan, *Brutality in an Age of Human Rights: Activism and Counterinsurgency at the End of the British Empire* (Cornell University Press 2018) 193.

[16] Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (APII).

Though Kypros Chrysostomides, former Minister of Foreign Affairs (MFA) of the Republic of Cyprus (RoC) and an international lawyer, has admitted in his book on Cyprus and international law that inter-communal violence after the establishment of the RoC 'could perhaps be described generally as a "civil conflict"' or 'even "civil war"',[17] the topic has been majorly left unaddressed. This is also true beyond Cyprus, where databases mapping conflicts from around the globe, almost never refer to the armed violence pre-1974.[18] Moreover, the decades-long physical division of the Turkish-Cypriot and Greek-Cypriot communities,[19] which started in 1958, was reinforced as of the last days of 1963, and was solidified in the summer of 1974, has led to the development of two separate historical narratives by each community. Anthropologist Rebecca Bryant has noted a 'tacit complicity' on behalf of academia in this process, not only in Cyprus but in conflict situations in general, as some topics scholars simply 'do not dare to touch'.[20] In that regard, the thesis draws from and seeks to address gaps that exist today primarily in the disciplines of law, history, and political science, with additional input from the Social Sciences, as appropriate.

Four points of clarification are necessary here. Firstly, when looking at inter-communal violence in particular, this author agrees with others who have stated that one cannot comprehend fully the issues that led to renewed inter-communal violence within three years from the establishment of the RoC, unless the broader historical context, and in particular the pre-independence inter-communal violence of 1958, are also taken into account.[21] Thus, the present thesis does not start with the establishment of the RoC in 1960, but with a historical introduction leading up to the first violent incidents of inter-communal hostility in 1958.

Secondly, the present research rejects the usual view, that post-independence armed violence existed on the Island in 1963-1964, and then again in 1974.[22] Though

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[17] Kypros Chrysostomides, *The Republic of Cyprus: A study in International Law* (Martinus Nijhoff 2000) 93.

[18] eg Geneva Academy of International Humanitarian Law and Human Rights, Rule of Law in Armed Conflicts (RULAC) Project, Country 'Cyprus' <https://www.rulac.org/browse/countries/cyprus#collapse1accord> accessed 1 September 2019

[19] See the terminological clarifications at the end of this chapter.

[20] Rebecca Bryant, 'The State of Cypriot Silences' (2010) 22(2) *The Cyprus Review* 113

[21] Evanthis Hatzivassiliou, *The Cyprus Question, 1878-1960: The Constitutional Aspect* (University of Minnesota 2002) 72

[22] Alan James, *Keeping the peace in the Cyprus Crisis of 1963-64* (Palgrave 2002); James Ker-Lindsay, *Britain and the Cyprus Crisis 1963-1964* (Bibliopolis 2009); Nasia Hadjigeorgiou, *Protecting Human Rights and Building Peace in Post-Violence Societies* (Hart 2020) 12-13.

this position is not wrong in terms of the *intensity* of violence, for reasons clarified in the following chapters, the thesis proposes that events which took place from December 1963 to (at least) March 1968, have to be considered together. A similar view has been expressed by Gregoris Ioannou, according to whom inter-communal violence 'climaxed' in 1964, but the violent environment was 'maintained' until 1967.[23] Even then, it is hereby argued, one cannot tell with certainty whether the relative lack of inter-communal violence observed from 1968 to 1974 was a time of inter-communal 'peace', as opposed to the first years of an increasingly 'frozen' situation, since the internal and international mechanisms employed to deal with the exceptional circumstances on the Island remained in place. Some of them are still in place today. Hence, the need for serious, systematic, critical and reflective perspective, from a historical and social scientific perspective,[24] becomes even more imminent.

Thirdly, as a Greek-speaking Cypriot,[25] the present author inevitably had broader access to materials written in Greek, when compared to Turkish, and has been better equipped to evaluate views and materials provided by Greek-Cypriot commentators, as opposed to Turkish-Cypriots. Subsequently, the present thesis engages in more depth with views and positions held within the Greek-Cypriot community. Nonetheless, acknowledging law's traditional claim to 'objectivity and neutrality',[26] every effort has been made to present an as broad range of views and contextual information as reasonably possible. Admittedly, however, as social anthropologist Olga Demetriou has demonstrated, in research cross-fertilising 'politics' and 'science', the 'threshold of objectivity', is often a 'conscious negotiation' between one's understanding of 'their subjective positioning and that of the objective analysis they are expected to present'.[27]

That leads to the fourth point of clarification. The present research adopts a critical international legal position, according to which the primary concern is not whether one has behaved lawfully or unlawfully, but whether certain behaviour is *legally justifiable*.[28] Hence, the aim of the present thesis is not to 'adjudicate' the

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[23] Gregoris Ioannou, *The Normalisation of Cyprus' Partition Among Greek Cypriots: Political Economy and Political Culture in a Divided Society* (Palgrave 2020) 20-21

[24] ibid.

[25] See the terminological clarifications at the end of this chapter.

[26] Andrea Bianchi, *International Law Theories: An inquiry into different ways of thinking* (OUP 2016) 32.

[27] Olga Demetriou, 'Reading the paratexts of the Cyprus Conflict: Policy, Science, and the Pursuit of 'Objectivity' (2008) 20(1) *The Cyprus Review* 93, 95.

[28] Jan Klabbers, *International Law* (2nd ed, CUP 2017) 22.

violence that took place in Cyprus from 1958 to 1968 and allocate responsibility for the atrocities committed. Instead, considering the global historical context to the present research, the thesis aims to examine whether the threshold of a NIAC was reached at any point in the given chronology, so as to problematise how the international legal culture and the political discourse that developed thereafter, have contributed to the maintenance of the 'state of Cypriot silences'.[29]

The starting point for this inquiry lies with the dominant Greek-Cypriot narrative's reference to the events of the 1960s as 'the troubles' *(οι φασαρίες)*, or the 'Turkish insurrection' *(τουρκική ανταρσία, τουρκοανταρσία)*. The term 'Troubles', which has been employed most notably with reference to the events in Northern Ireland from the 1960s to 1998,[30] carries no legal connotations. Sociologists, however, distinguish between 'troubles'— personal problems or matters that have to do with one's self — from 'issues', whose use extends to problems 'beyond the individual and local environment', such as 'crises' in an institutional context.[31] This sociological differentiation is potentially applicable in an international context, if one looks at the 'international community' of States as 'a society', where every State is a separate 'individual'. Then, 'troubles' could suggest that an ongoing problem falls within the internal (private) affairs of the State, meriting no involvement from outside actors, while an 'issue' would call for the raise of concern and involvement from other actors external to the State (the international community). Whether an analogous thought process led to the use of the term 'troubles' is unknown, but the effect of underestimating the significance of the events of the 1960s in public (Greek-Cypriot) consciousness, especially when compared to the better-known, more dramatic, regional impact of the Turkish invasion of the following decade,[32] has been obvious.

In English, the Greek word *ανταρσία (an-dar-see-ah)* has multiple overlapping meanings in its plain and ordinary meaning, including 'uprising', 'sedition', 'mutiny', 'insurgency', insurrection', 'rebellion' and 'revolt'.[33] Thus, the term *Τουρκοανταρσία*,

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[29] Bryant, 'Cypriot Silences' (n 20) 113

[30] In Northern Ireland, initially the dominant term was 'disturbances'. See: Government of Northern Ireland, Violence and Civil Disturbances in Northern Ireland in 1969: Report of Tribunal of Inquiry (Cmd 566) (April 1972).

[31] Jeffrey Alexander and others, *A contemporary introduction to Sociology: Culture and Society in Transition (*3rd ed, Routledge 2018) 13.

[32] On issues deriving today from the ongoing situation see: Ayla Gürel, Fiona Mullen, and Harry Tzimitras, *The Cyprus Hydrocarbons Issue: Context, Positions and Future Scenarios*, Report 1/2013 (PRIO Cyprus Centre 2013).

[33] Demetrios Georgakas, *Modern Greek-English Dictionary Vol. I* (Aristide D. Caratzas 2005) <https://www.greek-

carries more direct political connotations, since it implies that the events in question were nothing more than a 'Turkish insurrection'.[34] The adjective 'Turkish' already disclosing 'who started it' in the view of the speaker, and subsequently, who carries bigger responsibility for what followed.

Legal literature, refers to *ανταρσία* as 'insurgency', which is a legally charged term,[35] but its colloquial use in Greek downplays the seriousness of the events, from which no exact legal meaning can be deduced. As perceived in the mainstream Greek-Cypriot narrative, *ανταρσία* suggests a spontaneous 'taking of arms' against the government, but which was not severe enough to suggest this was a 'civil war', or an internal 'armed conflict'.[36] To an external observer this careful engagement and scrutiny of specific terminology may seem superfluous. In the Cypriot context, however, the choice of specific terms over others plays a paramount role in every aspect of all discussions concerning the Cyprus Question, and to a certain extent has helped build a 'myth' that forms the basis for the mainstream narrative of each community for decades.[37]

As recognised by Anghie, the histories of international law express also the history of broader ideas.[38] Thus, given the law's ability to affect the conduct of various actors,[39] a study of the history of PIL also addresses questions pertaining to the way

language.gr/greekLang/modern_greek/tools/lexica/georgakas/search.html?lq=%CE%B1%CE%BD%CF%84%CE%B1%CF%81%CF%83%CE%AF%CE%B1&dq=> accessed 4 December 2021.

[34] PIO, *The Problem in Perspective* (PIO 1968) 7.

[35] Chrysostomides (n 17) 92.

[36] ICRC, 'The International Committee of the Red Cross's (ICRC's) role in situations of violence below the threshold of armed conflict: Policy document, February 2014 (2014) 96(893) *IRRC* 275.

[37] Gregoris Ioannou, *The Normalisation of Cyprus' Partition Among Greek Cypriots: Political Economy and Political Culture in a Divided Society* (Palgrave 2020) 49-53, 123-142; On the use of 'Turkish insurrection' see: Niyazi Kızılyürek, *Μια ιστορία βίας και μνησικακίας: Η γένεση και η εξέλιξη της εθνοτικής διένεξης στην Κύπρο Vol 2* (A story of violence and resentment: The genesis and evolution of the ethnic conflict in Cyprus) (Michalis Theodorou trs, Heterotopia 2019) 499; See also: Andreas Panayiotou, 'Hegemony, Permissible Public Discourse and Lower Class Political Culture' in Rebecca Bryant and Yiannis Papadakis (eds), *Cyprus and the Politics of Memory* (2012 IB Tauris) 71; Lukas Perikleous, Meltem Onurkan-Samani, and Gülen Onurkan-Aliusta, 'Those who control the narrative control the future: The teaching of History in Greek Cypriot and Turkish Cypriot schools' (2021) 8(2) *Historical Encounters* 124.

[38] Antony Anghie, 'Basic principles of international law: A historical perspective' in Başak Çalı, *International Law for International Relations* (OUP 2010) 46, 48.

[39] Başak Çalı, 'International law for international relations: foundation for interdisciplinary study' in Başak Çalı, *International Law for International Relations* (OUP 2010) 3, 18.

a particular history is written.[40] Thus, as elaborated in detail in the next chapter, our understanding of the events that unfolded in Cyprus in the 1960s shifts once it becomes clearer that until the mid-twentieth century each of the terms 'rebellion' and 'insurgency' had a very specific meaning under IHL, as the milder phases of what historians today refer to as 'civil war'.[41] Considering, therefore, the legal weight carried by some of the various terms *ανταρσία* can be translated into, and the calls for a deeper engagement with the 'Cypriot civil war', the present research problematizes the use of the law during this period, through the least studied angle of the events in question. Namely, the experience of inter-communal armed violence through CA3 of the 1949 GCs, as opposed to the diplomatic and political developments of the same period.

A survey of the available sources on this period, primary and secondary, is telling of a general awareness of the applicable international and domestic legal rules and principles. Additionally, there appears to have been an awareness in political circles of the legal significance of the violence between Greek-Cypriots and Turkish-Cypriots, as indicated by Member of Parliament (MP) Titos Fanos before the RoC House of Representatives on 16 July 1964, when he referred to a 'double-front struggle',[42] having in mind the internal and the external dimension of the problems faced by the Republic, countering internally the leadership of the Turkish-Cypriot community, and externally the Turkish Republic. In the literature, the period from 1963 onwards is referred to in various ways, such as 'the uneasy years', 'civil strife', 'internal conflict' and 'internal crisis', among others, whereas references to a 'civil war' are extremely rare.

1.2 Theoretical Background and Methodology

Both PIL and International Relations (IR) have studied internal conflicts from various perspectives since WWII. As discussed in the following chapter, there was an 'interlude'[43] regarding CA3 from 1949 to 1968, during which colonial powers and new States were reluctant to accept the application of IHL in internal conflicts.[44] Quite astonishingly, even in the *Nicaragua* case, one of the definitive international cases on

[40] Anghie, 'Basic principles' (n 38).
[41] Anne Orford, Civil Wars: A History in Ideas. By David Armitage (2021) *AJIL* 781.
[42] ROCPM, Session 1963-1964, 9 July 1964, p 255
[43] Giovanni Mantilla, 'The Origins and Evolution of the 1949 Geneva Conventions and the 1977 Additional Protocols' in Matthew Evangelista and Nina Tannenwald, *Do the Geneva Conventions Matter?* (OUP 2017) 35, 49.
[44] See section 2.3.3.

the subject matter relevant to the present thesis, Nicaragua refrained from invoking the 1949 GCs, and it was upon the International Court of Justice (ICJ) initiative that a deliberation on the Conventions, and CA3 in particular, ensued.[45] However, the plethora of internal conflicts during that period, most recognisable among them the Vietnam War, led to renewed efforts to strengthen protection during NIACs, resulting in the two 1977 Additional Protocols to the 1949 GCs.[46]

Interest in the topic resurged in the 1990s, during the 'great renaissance'[47] of International Criminal Law (ICL), when focus shifted on individual criminal responsibility in the context of the establishment of the first international criminal tribunals after the International Military Tribunal in Nuremberg;[48] the International Criminal Tribunals for former Yugoslavia (ICTY)[49] and Rwanda (ICTR),[50] and the debates over the establishment of a permanent International Criminal Court.[51] Thus, in 1999 the American Journal of International Law (AJIL) organised a symposium on 'Method in International Law', on a topic directly relevant to CA3 and this thesis: 'individual accountability for violations of human dignity committed in internal conflict, with respect to both the substantive law and the mechanisms for accountability'.[52] This strengthens the argument that the present thesis is broadly relevant to questions PIL is still struggling to find answers to, more than two decades after this symposium took place.[53]

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[45] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America),* Judgement [1986] ICJ Rep 14 [217] – [220].
[46] Mantilla (n 43) 35.
[47] William A Schabas and Nadia Bernaz, 'Introduction' in William A Schabas and Nadia Bernaz (eds) *Routledge Handbook of International Criminal Law* (Routledge 2013) 1.
[48] Charter of the International Military Tribunal (adopted 8 August 1945) 82 UNTS 284 (Nuremberg Charter)
[49] Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (adopted 25 May 1993, UNSC Res 827, as amended) (ICTY).
[50] Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (adopted 8 November 1994, UNSC Res 955) (ICTR).
[51] Rome Statute of the International Criminal Tribunal (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute).
[52] Anne-Marie Slaughter and Steven Ratner, 'Appraising the Methods of International Law: A Prospectus for Readers' (1999) 93 *AJIL* 291, 295.
[53] e.g. Rogier Bartels, 'The Classification of Armed Conflicts by International Criminal Courts and Tribunals (2020) 20 *International Criminal Law Review* 595.

Traditionally legal scholarship does not engage with 'methodology' in the same profound way the Social Sciences generally do. As a matter of fact, the boundaries between legal philosophy, theory and method are rather obscure. Legal positivism, the dominant paradigm since the nineteenth century, has detached legal analysis from engaging with 'extra-judicial considerations', such as economic, social, moral and political factors, preferring instead a 'doctrinal' or 'black-letter' approach.[54] Albeit 'modern positivism' is less 'extreme'[55] and recognises that the law is not independent from context in a given situation, lawyers remain generally confined to 'clarify[ing] the legal side of things', and not to facilitate a decision-maker's 'dilemma' between law, politics, and morals.[56] Hence, the lawyer is either called to take the lead in a formal judicial or quasi-judicial setting, for example a tribunal or a fact-finding commission, or they take the backstage and let the final decision (and the assumption of responsibility) to a corresponding decision-maker.

In the Cypriot context, the extremely politicised and volatile environment before and after independence left virtually no room for a constructive engagement with legal issues. As recognised by Claire Palley, 'a Greek Cypriot writer, who presents facts and general community views on their significance, risks being accused of bias, with any strong opinions being singled out as evidencing prejudice'.[57] There were early precedents of persecution and impunity before and after the establishment of the Republic,[58] for those who deviated from the dominant policy line, yet the domestic criminal justice system proved ineffective in bringing alleged perpetrators to justice.[59]

Moreover, no international tribunals that could have complemented the domestic Cypriot courts at the time or thereafter. Whereas there have been calls for the introduction of State-led transitional justice mechanisms, like 'fact-finding' or 'truth' commissions, such initiatives were never properly introduced. Thus, with the exception of the limited scope of the relevant case-law of the European Court of Human Rights (ECtHR), the formalist habitat within which lawyers traditionally can have an input beyond the politically-charged environment of the Executive power,

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[54] Bianchi (n 26) 21.
[55] Bruno Simma and Andreas Paulus, 'The Responsibility of Individuals for Human Rights abuses in Internal Conflicts: A positivist view' (1999) 93 *AJIL* 302, 306.
[56] ibid 307.
[57] Foreword by Claire Palley in Stella Soulioti, *Fettered Independence: Cyprus, 1878-1964 Vol 1 The Narrative* (University of Minnesota Press 2006) xvi.
[58] See section 3.3.3.
[59] See section 5.3.2.

never materialised.[60] From a historical perspective, this gap has also precluded the preservation of historical memory. Though such initiatives elsewhere have not always been convincing in reconciling the opposing parties to a conflict, their informative potential of such initiatives is undeniable.[61]

While jurisprudence had started questioning legal formalism and experimenting with law's history already in the nineteenth century,[62] stronger deviation from the positivist approach in international law occurred in the 1940s in the United States (USA), following international law's failure to preclude the atrocities of WWII.[63] The same development, however, was not immediately observed across the Atlantic. Thus, this further reduced the intellectual space that would allow for a non-positivist theoretical engagement with international law (and law in general) in Cyprus, where leading Greek and Turkish legal academics joined or even guided the Cypriot lawyers through their tasks, despite the fact that a considerable number of the latter were educated and qualified under the English common law. Lastly, the first Law department on the territory controlled by the RoC was established as recently as 2006.[64] The above comes in striking antithesis to the rich contribution of international lawyers from other former colonies, who introduced Third World Approaches to International Law (TWAIL) to the field of PIL from the 1960s onwards,[65] and played a

[60] Nikolas Kyriakou, 'Enforced Disappearances in Cyprus: Problems and Prospects of the Case Law of the European Court of Human Rights *Cellule de Recherche Interdisciplinaire en Droits de l' Homme*, Working Paper 2011/01; See also: Nasia Hadjigeorgiou, 'A one-sided coin: A critical analysis of the legal accounts of the Cypriot conflicts' in Berber Bevernage and Nico Wouters (eds), *The Palgrave Handbook of State-Sponsored History After 1945* (Palgrave 2018) 583.

[61] Ruti G Teitel, *Transitional Justice* (OUP 2000) 69-117.

[62] Andreas Hadjigeorgiou, 'Beyond Formalism: Reviving the Legacy of Sir Henry Maine for CIL', TRICI-Law Research Paper Series, Paper 12/2019 (University of Groningen 2019).

[63] Siegfried Wiessner and Andrew Willard, 'Policy-Oriented Jurisprudence and Human Rights Abuses in Internal Conflict: Toward a World Public Order of Human Dignity' (1999) 93 *AJIL* 316; Mary Ellen O' Connell, 'New International Legal Process' (1999) 93 *AJIL* 334; Bianchi (n 26) 91-109.

[64] The first university on the territory controlled by the RoC, the University of Cyprus (UCY), was established in 1989 and admitted its first students in 1992. The first Law Department was established at the same institution in 2006; See also: Gregoris Ioannou and Sertac Sonan, *Inter-Communal Contact and Exchange in Cyprus' Higher Education Institutions: Their Potential to Build Trust and Cooperation – Report 8/2019* (PRIO Cyprus 2019).

[65] James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography 3 *Trade Law and Development* 26.

paramount role in writing and contextualising the persisting colonial biases of PIL, which were maintained in the new post-colonial States.[66]

From a legal theoretical perspective, the Cyprus Question is an obvious 'hard case'; a case in which the result cannot be 'clearly dictated by statute or precedent'[67] or, in PIL, by conventional or customary law. According to Koskenniemi, in such cases a decision can be reached either through broad outlines of justification which accept that sometimes there are gaps in the law ('weak justification'),[68] or through a 'strong justification' rooted in the ability of legal principles to be flexed in a way which eventually determine and justify a final outcome.[69] These two contradictory approaches result in 'any international dispute becom[ing] a hard case by the simple fact that disputing States are *always* able to make a *prima facie* justification of their action by referring to their sovereign liberty'.[70]

On this basis, Koskenniemi contends, the dualism of the international legal argument is inherently indeterminate and political, beyond the semantic ambiguity of specific terms.[71] International law according to critical international legal scholarship is indeterminate at its core, due to its contradictory premises.[72] One of the examples given, lies at the epicentre of the Cyprus Question, and it is no other than the tension between the opposing principles of 'self-determination' and 'territorial integrity', which are 'ultimately the same', since 'When a group of people call for territorial integrity, they call for respect for their identity as a self-determining entity and *vice-versa.*'[73] In this way, Koskenniemi's work has offered new impetus and an innovative framework through which to examine how the two Cypriot communities eventually 'neutralised' each other.[74]

The present thesis does not claim to be saying 'the whole story'. The events that follow the chronology of the present research are equally important to obtain a

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[66] Georges Abi-Saab, 'The Newly Independent States and the Rules of International Law: An Outline' (1962) 8(2) *Howard Law Journal* 95; Ram Prakash Anand, 'Role of the '"New" Asian-African Countries in the Present International Legal Order' (1962) 56(2) *AJIL* 383.
[67] Ronald Dworkin, 'Hard Cases' (1975) 88(6) *Harvard Law Review* 1057.
[68] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Reissue with New Epilogue, CUP 2005) 41-44.
[69] ibid 45-47.
[70] ibid 43.
[71] ibid 590-591.
[72] ibid 590.
[73] ibid 510
[74] Kızılyürek, *Resentment* (n 37) 580

comprehensive understanding of the legal and the socio-political elements entangled in the Cyprus Question. Here, however, the priority has been to enrich the abundant literature on the Cyprus Question with overlooked legal observations. By deliberately focusing on CA3, the objective is to draw attention to the domestic, inter-communal aspects of the Republic's early history, moving away from the predominantly IR-dominated literature of the last decades. It is within this context that the need for interdisciplinarity emerged, as a means to integrate the input from different relevant disciplines within a history-oriented legal research project. As political geographer Richard Patrick, author of the first and potentially most complete account of the events of the present research to date, had stated that 'we all accept that conflict and peace research, by its very nature, is an interdisciplinary hybrid'.[75]

Neither the present thesis claims to constitute a sound theoretical piece of work evaluating different international legal 'theoretical views', 'methods' or intellectual 'movements'. However, with a distance of half a century from the events addressed here, the thesis inevitably raises the question of *why* the substantially relevant area of IHL has been missing from the general discussion, despite the fact that the use of armed violence during the most tense days of inter-communal 'strife' is undisputed. It is in order to shed light on this question that the present research turns to both the work of the Critical Legal Studies (CLS) and the TWAIL movements, given the impact the two have had on the 'historical turn' in international law over the last two decades. From that perspective, one can look at Cyprus as a case study. A case study illustrating over an extended period of time how when international law's *'tekhne'*, its skill,[76] fails to give an answer to a 'hard case', legal formalism's inability or reluctance to integrate a broader, extra-legal perspective into the debate leads to 'silence'.[77] A 'silence' which derives from the marginalisation of a (seemingly) irrelevant international legal practice.[78]

Lastly, as illustrated by Chimni, in the twenty-first century international law is increasingly blending with internal law. Therefore, there is a need to situate international law's abstractions in the 'empirical world of ordinary life', so as to improve

[75] Richard Patrick, 'Paper to the Canadian Peace Research and Education Association, May 1974
in *Political Geography and the Cyprus Conflict, 1963-1971* (University of Waterloo 1989) 400.
[76] Outi Korhonen, 'New International Law: Silence, Defence or Deliverance?' (1996) 7 *EJIL* 1, 12.
[77] ibid 14-18.
[78] Koskenniemi, *From Apology to Utopia* (n 68) 561

international law and institutions.[79] This is particular true in a study on 'internal' violence, where internal developments play an equally important, if not more important, role than the various international actors. Thus, despite the PIL orientation of the present research, the thesis contains extensive information on how inter-communal violence affected the socio-legal landscape in Cyprus, including *intra-disciplinary* references to the RoC's domestic constitutional and criminal legal frameworks.

Admittedly, assuming a critical approach in a research project focusing on IHL may come across as slightly paradoxical. Critical scholarship has often employed a cynical stand vis-à-vis the employment of a 'humanitarian language', used by military, political and humanitarian professionals alike, despite their contradicting priorities.[80] It is here conceded that problems are many, and as seen in the next chapter, some of them can be traced to the very foundations of the idea of 'humanitarianism'.[81] As Gray has observed, however, in situations of use of force (and by extension in IHL too) 'it tends to be non-lawyers rather than lawyers whose expectations are unreasonably elevated and who attack international law as having no significant role when there is anything less than perfect compliance'.[82] Nevertheless, unless the lawyers keep the debate alive, those who IHL claims to protect are usually kept in the dark about law's challenges and shortcomings, oftentimes misled by absolute claims to 'truth' and promises of exaggerated notions of an often unattainable ideal of 'justice'.

The other tension between this research and the above theoretical approach is that scholars usually associated with the CLS movement reject the idea of interdisciplinarity, and yet the thesis claims to be an 'interdisciplinary assessment'. Such criticisms have been expressed for instance against early efforts in the 1990s to develop a 'dual agenda'[83] that would bring together PIL and IR research under a

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[79] Bhupinder S Chimni, 'The Past, Present and Future of International Law: A Critical Third World Approach' [2007] *Melbourne Journal of International Law* 27 <http://www5.austlii.edu.au/au/journals/MelbJIL/2007/27.html> last accessed 10 December 2021

[80] David Kennedy, *The Dark Side of Virtue: Reassessing international humanitarianism* (Princeton University Press 2005) 266-267; David Kennedy, *Of War and Law* (Princeton University Press 2006) 141; David Kennedy, 'International Human Rights Movement: Part of the Problem?' 15 *Harvard Human Rights Journal* 101.

[81] See section 2.2.1.

[82] Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 25

[83] For an overview see: Jeffrey Dunnoff and Mark Pollack, 'International Law and International Relations: Introducing an Interdisciplinary Dialogue' in Jeffrey Dunnoff and Mark

single methodology,[84] as a warning against developing 'increasingly complicated technical vocabularies',[85] leading to 'overblown expectations'.[86] This is not the kind of interdisciplinarity the present thesis promotes. The purpose of interdisciplinarity here is rather to show how other disciplines have found it easier to engage with some of the most controversial aspects of Cyprus' history, and use PIL and legal history as a means to address persisting arguments with contributions from a legal perspective.

The debates between the realist and a critical approach,[87] are pertinent for the present research, since a considerable number of US-based legal commentators who had written about the Cyprus Question in the 1960s and the 1970s, were linked to the policy-oriented 'New Haven' or 'International Legal Process' (ILP) schools of PIL.[88] Apart from the early TWAILers,[89] these were the only other group of scholars who systematically engaged with the problematic non-application of the limited (but formally enforceable) CA3. A subtle reminder, perhaps, of the fact that the CLS movement itself, like the 'New Haven' and the ILP, derived from pre-WWII American legal realism.[90]

Instead of a method, TWAIL is seen as a 'distinctive way of thinking about international law'.[91] Even though the term was coined in 1997,[92] its origins lie in the work of the first generation of post-colonial international lawyers, who wanted to show

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Pollack (eds) *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2013) 3. For other interdisciplinary perspectives see: Gregory Schaffer and Tom Ginsburg, 'The Empirical Turn in International Legal Scholarship' (2012) 106(1) *AJIL* 1; Moshe Hirsch, 'Uses of History and Collective Memories by International Courts and Tribunals' (2018) *MPEPIL* <https://opil.ouplaw.com/view/10.1093/law-mpeipro/e3277.013.3277/law-mpeipro-e3277> accessed 3 December 2021.

[84] Martti Koskenniemi, 'Miserable Comforters: International Relations as New Natural Law' (2009) 15(3) *European Journal of International Relations* 395; Jan Klabbers, 'The Bridge Crack'd: A Critical Look at Interdisciplinary Relations' (2009) 23(1) *International Relations* 119

[85] Martti Koskenniemi, *The politics of International Law* (Hart 2011) 72; Martti Koskenniemi, 'The Politics of International Law. Twenty Years Later' (2009) 20 *EJIL* 7

[86] Jan Klabbers, 'Whatever Happened to Gramsci? Some Reflections on New Legal Realism' (2015) 28(3) 28 *Leiden Journal of International Law* 469, 478

[87] ibid; Gregory Shaffer, 'The New Legal Realist Approach to International Law' (2015) 28 *Leiden Journal of International Law* 189.

[88] Linda Miller, *Cyprus: The Law and Politics of Civil Strife* (Center for International Affairs, Harvard University 1968); Thomas Ehrlich, *Cyprus 1958-1967* (OUP 1974); Richard A. Falk (ed), *The International Law of Civil War* (John Hopkins Press 1971); Wiessner and Willard (n 63); O' Connel (n 63).

[89] eg Abi-Saab (n 66); Anand (n 66).

[90] Bianchi (n 26) 138.

[91] Gathii (n 65).

[92] ibid 28.

how international law 'legitimiz[ed] the subjugation and oppression of Third World peoples'.[93] Its scope of interest has expanded since then, but at its core the approach retains a distinctive historical re-examination of international law, including a critique of nation-State formation processes in the Third World and the resulting resort to violence in many cases.[94] Even before the RoC joined the EU in 2004, its perception as a post-colonial State was interrupted by its proximity to Europe. However, as seen in the next chapters, Cypriot history shares many of the post-colonial tensions experienced in many Afro-Asian States, along with Malta and Ireland; the other two examples of post-colonial 'peripheral' Europe.[95] This is a validation of Luis Eslava's ascertainment that 'history matters' and 'the South moves';[96] meaning the constant change of our perception of the world under generic geographical or other terms, like current references to a 'Global South' and a 'Global North'.

There are a number of recognised 'law and' approaches, including 'law and history'.[97] These are interdisciplinary by default, and require engagement with both law and the other discipline.[98] This is achieved here at least to a certain degree, through the extensive engagement with and assessment of archival materials. In that regard, one of the leading proponents in the study of the history of the common law is Brian Simpson,[99] who also wrote a detailed account on history of human rights law in the 1950s, based on the Cypriot of experience with human rights litigation during the EOKA emergency in 1955-1959.[100] Nonetheless, international lawyers are yet to come to overriding conclusions on the exact methodology that should be followed,[101]

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[93] Antony Anghie and Bhupinder S Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflict' (2004) 36 *Studies in Transnational Legal Policy* 185
186-187.
[94] ibid 190.
[95] John Reynolds, 'Peripheral Parallels? Europe's Edges and the World of Bandung' in Louis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Future* (CUP 2017) 247.
[96] Luis Eslava, 'TWAIL Coordinates' (*Critical Legal Thinking*, 2 April 2019) <https://criticallegalthinking.com/2019/04/02/twail-coordinates/> accessed 12 October 2021.
[97] Robert Cryer and others, *Research Methodologies in EU and International Law* (Hart 2011) 88-89.
[98] ibid 76-77.
[99] A W Brian Simpson, *Leading Cases in the Common Law* (Clarendon Press 1996).
[100] A W Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (OUP 2004); See section 2.4.2.
[101] Valentina Vadi, 'International Law and its Histories: Methodological Risks and Opportunities' (2017) 58(2) *Harvard International Law Journal* 311; Ignacio de la Rasilla, *International Law and History: Modern Interfaces* (CUP 2021) 12-14.

if a more concrete methodological definition is desirable at all.[102] Hence, history's relationship to international law, and vice versa, is currently in flux, and debates among international lawyers, but also between international lawyers and historians,[103] are ongoing.

Figure 1.1: Island of Cyprus showing all main towns, the UN-administered Buffer Zone and the two British Sovereign Base Areas of Akrotiri and Dhekelia. Source: CIA, The World Factbook, https://www.cia.gov/the-world-factbook/countries/cyprus/map accessed 23 December 2021.

Despite the numerous linkages one can establish between Cyprus and other regions of the world due to similar historical or other experience, one must not overlook that Cyprus as an Island experiences an 'apparent paradox, between isolation and linkage'.[104] Recent cross-disciplinary legal research has maintained that 'island-ness' allows for a 'cross-cutting reflection' between law and the humanities, given their isolation as geographical entities, but also the simultaneous need to

[102] Michele Tedeschini, 'From historiography to historiographical theory, or looking for politics where there can be none' (*Critical Legal Thinking*, 12 February 2020) <https://criticallegalthinking.com/2020/02/12/from-historiography-to-historiographical-theory/> accessed 25 May 2021.

[103] e.g Anne Orford, 'On International Legal Method' (2013) 1 *London Review of International Law* 166; Lauren Benton, 'Beyond Anachronism: Histories of International Law and Global Legal Politics' (2019) 21 *Journal of the History of International Law* 7.

[104] Matteo Nicolini and Thomas Perrin, 'Geographical Connections: Law, Islands, and Remoteness' (2021) 42(1) *Liverpool Law Review* 1, 8.

connect to the mainland for survival purposes.[105] Historians appear to have also developed similar observations, with insularity constituting island-territories as:

> a bridge or a stepping stone; a frontier outpost or an imperial backwater province; a realm marked by parochialism or a meeting point of civilizations; a place of exile or a laboratory.[106]

Indeed, with Cyprus being the third largest Island of the Mediterranean Sea, located at the Mediterranean basin's north-eastern corner at the 'crossroads of three continents' (Europe, Africa and Asia), the Island's situatedness allows for an empirical 'micro-history'[107] of the phenomenon of protracted,[108] complex conflicts.[109] The lack of continental borders, which often serve as continuous points of tension between the opposing parties in a conflict, and more importantly without a serious violent incident having taken place since the late 1990s, there is a maintenance of 'laboratory conditions', which are rarely available in situations where upheavals are common. Having said that, it is important to clarify that the present thesis is only the tip of the iceberg of the law-related issues that derive from the Cyprus Question.

1.3 Archival Sources and Literature Review

The plethora of question marks that still exist in the general understanding of 'what exactly happened' in Cyprus in the 1960s, is directly opposite to the vast amount of general literature, concerning the second half of the twentieth century. Overall, existing literature varies in terms of the origin of the authors, the language, the scope, focus, and disciplinary angles chosen. Hence, given the gaps in the historical narratives regarding the period examined in the present thesis, the consultation of archival material was of paramount importance in order to connect the dots between those incidents broadly discussed in the literature, and those issues that have not attracted the same level of attention.

For decades research conducted on Cyprus had relied heavily on materials stored at The National Archives in Kew, London, due to an overall lack of culture, on behalf of the State, to meticulously preserve and make publicly available archival

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[105] Matteo Nicolini and Thomas Perrin, 'Islands and Insularity: Between Law, Geography, and Fictions' (2020) 14(2) *Pólemos: Journal of Law, Literature and Culture* 209, 210

[106] Antonis Hadjikyriacou, 'Envisioning Insularity in the Ottoman World' in Antonis Hadjikyriacou (ed) *Islands of the Ottoman Empire* (Markus Wiener 2018) viii-ix

[107] Vadi (n 101) 330-331

[108] Ellen Policinski and Jovana Kuzmanovic, 'Editorial – Protracted Conflicts: The Enduring Legacy of Endless War' (2019) 101 (912) *ICRC* 965

[109] Kubo Mačák, *Internationalized Armed Conflicts in International Law* (OUP 2018)

information. During the period under consideration here, the situation was described by former RoC Minister of Justice, Stella Soulioti, as follows:

> There was then no Public Record Office and no official historian. As a member of the first Council of Ministers, I therefore felt a compulsion to collect, copy and classify all documents and to record all meetings, conversations and events which I thought were significant. […] On the other side of the scales, however, was the President of the Republic, Archbishop Makarios, who could not bear to keep a document. Anything other than a strictly official document of state he consigned to the fire. He was particularly ruthless with his own manuscripts. […] It was not until 1964 that Archbishop Makarios realised the value of archives. […] Even after I stopped being a Minister in 1970, he would give me copies of documents and relate to me conversations and events which he thought should be record.[110]

Hence, significant amount of historical memory has been preserved and published by private individuals, including some former State officials like Soulioti.[111] Moreover, during from 1960 to 1974 there was no centralized, high-level international strategy in the RoC, given the peculiar circumstances on the Island,[112] which serves as an additional hurdle towards the evaluation of policies and decisions taken by the State during the same period.

The RoC Constitution does enclose a Right to Petition, which enables individuals or groups to address requests or complaints to any public authority, including the legislature, the judiciary, local authorities and semi-governmental organisations,[113] which need to be replied to within 30 days.[114] However, the practical application of the provision was problematic, and the general framework was only strengthened much later. Firstly, with a 1991 legislation on the establishment of a

[110] Soulioti, *Narrative* (n 57) xix
[111] Stella Soulioti, *Fettered Independence Cyprus, 1878-1964 Vol 2 Documents* (University of Minnesota Press 2006); Murat Metin Hakki, *The Cyprus Issue: A Documentary History, 1878-2007* (I.B. Tauris 2007).
[112] Elias I. Kouskouvelis, Στρατηγική μικρών κρατών στο διεθνές σύστημα: η περίπτωση της Κύπρου' (Small state strategy in the international order: The Case of Cyprus) in Petros Papapolyviou, Aggelos Syrigos, Evanthis Hatzivassiliou (eds), *Το Κυπριακό και το Διεθνές Σύστημα, 1945-1974: Αναζητώντας θέση στον κόσμο* (The Cyprus Problem and the International System, 1945-1974: In search of a position in the world) (Patakis 2013) 395.
[113] Achilleas Demetriades, 'Freedom of information: holding the state accountable' (*Cyprus Mail*, 8 December 2020) <https://cyprus-mail.com/2020/12/09/freedom-of-information-holding-the-state-accountable/> accessed 13 December 2021.
[114] RoC Constitution, art 29(1).

State Archive,[115] and more recently, through the Law on the Right of Access to Public Sector Information 2017 (Law 184(I)/2017),[116] which has been implemented since 22 December 2020.[117] The Law of 2017 closely reflects the provisions under the UK equivalent Freedom of Information Act 2000.

As a result of such recent developments, it was not clear at the beginning of the present research in January 2018, what information would be readily available to the author. For this reason, at the planning stages of the research, this project too relied heavily on the possibility to consult The National Archives. In that regard, a short introductory study visit to London took place in June 2018. In July 2019, the author was selected for participation at the *Global Humanitarianism Research Academy 2019*, organised by the Leibniz Institute of European History, in Mainz, Germany, the University of Exeter, UK, and the International Committee of the Red Cross (ICRC), in Geneva, Switzerland, through which she had the opportunity to obtain full access and study the ICRC archive on the ICRC's mission to Cyprus from January 1964 to December 1965. Material from this archive has not been previously published, and the information contained therein has been a valuable contribution to the present thesis.

The main visit to the National Archives, had been planned for April 2020, scheduling also a consultation of the Archives of the British Red Cross (BRC), and a study visit to the Institute of Advanced Legal Studies, so as to consult secondary materials which are not readily available in Cyprus or online. Even though all preparations were made, the April 2020 study visit to London had to be cancelled, following the COVID19-related travel restrictions. Inevitably, this had a direct impact also on the communication between the author and her Director of Studies, with meetings between the two taking place exclusively online since March 2020. In Cyprus, the pandemic led to two lengthy lockdowns, first from March to June 2020, and then again from January to March 2021.

For the above reasons, emphasis has been put on collecting archival material which has been accessible online. Online archival materials include the collection of electronically available documents through the UN, including correspondence, UN General Assembly (UNGA) debates, and the periodical reports of the UN Secretary-

[115] Ο περί Κρατικού Αρχείου Νόμος του 1991, s 3 (Law 208/1991) (State Archive Law).
[116] Ο περί του Δικαιώματος Πρόσβασης σε Πληροφορίες του Δημόσιου Τομέα Νόμος του 2017 (184(I)/2017) (Law on Accessibility to Data available by the Civil Service).
[117] Demetriades (n 113).

General to the UNSC on the activities of the United Nations Force in Cyprus (UNFICYP), during the period 1964 to 1968.[118] The UN Secretary-General reports on peace operations have been recognised as 'critical contributions'[119] to the work of the UNSC, and despite being descriptive and diplomatic in nature, they have been instrumental in rebuilding a coherent timeline of events, as presented in Chapters 4 and 5. Limited use has also been made of the UN Online Archive, which contains an astonishing amount of 765 boxes on UNFICYP alone up to 1974,[120] the vast majority of which are still classified as 'Strictly Confidential'.

Selected declassified reports from the USA Central Intelligence Agency (CIA)[121] have also been used on some occasions, as well as the USA State Department's Office of the Historian.[122] Other valuable sources have been the online Press Releases' Archive of the RoC Press and Information Office (PIO) containing press releases from 1962 onwards,[123] as well as the electronically available archive of the complete Official Record of the Plenary Sessions Minutes of the House of Representatives (HoR-PM) since the establishment of the RoC.[124] In that regard, one should not omit to mention online access to the Hansard of the Westminster Parliament.[125]

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[118] UN Official Document System <https://documents.un.org/prod/ods.nsf/home.xsp> accessed 30 December 2021.
[119] Ian Johnstone, 'The Role of the UN Secretary-General: The Power of Persuasion Based on Law' (2003) 9(4) *Global Governance* 441, 447.
[120] UN Archives <https://archives.un.org/> accessed 30 December 2021.
[121] CIA, Electronic reading Room <https://www.cia.gov/readingroom/home> accessed 30 December 2021.
[122] US State Department, Office of the Historian <https://history.state.gov/> accessed 30 December 2021.
[123] PIO Press releases < https://www.piopressreleases.com.cy/> accessed 30 December 2021.
[124] RoC House of Representatives, Plenary Minutes <http://www.parliament.cy/el/%CE%B1%CF%81%CF%87%CE%B5%CE%AF%CE%BF/%CE%B2%CE%BF%CF%85%CE%BB%CE%AE-%CF%84%CF%89%CE%BD-%CE%B1%CE%BD%CF%84%CE%B9%CF%80%CF%81%CE%BF%CF%83%CF%8E%CF%80%CF%89%CE%BD-%CF%84%CE%B7%CF%82-%CE%BA%CF%85%CF%80%CF%81%CE%B9%CE%B1%CE%BA%CE%AE%CF%82-%CE%B4%CE%B7%CE%BC%CE%BF%CE%BA%CF%81%CE%B1%CF%84%CE%AF%CE%B1%CF%82.-%CE%B5%CF%85%CF%81%CE%B5%CF%84%CE%AE%CF%81%CE%B9%CE%B1-%CF%80%CF%81%CE%B1%CE%BA%CF%84%CE%B9%CE%BA%CF%8E%CE%BD> accessed 30 December 2021 (After 1965 in Greek only).
[125] Hansard < https://hansard.parliament.uk/> accessed 30 December 2021.

Given the movement restrictions for a considerable period from 2020 onwards, a consultation of the RoC State Archive was not possible, whereas no attempt was made to gain access to the archives of the National Guard,[126] the Cyprus Police, and the RoC Attorney-General's Office at this point. Other relevant archives that have not been considered for the present research are the Turkish-Cypriot public archive located in Kyrenia,[127] as well as any archives in Greece and Turkey.

Due to the vast number of books, journal articles, policy reports and personal accounts[128] of the events that have been published across different disciplines, languages and countries,[129] the aim of the present literature review is to illustrate the disbalance in the comparatively limited amount of materials produced in (international) law, as opposed to the plethora of materials from other relevant disciplines. Due to varying chronologies that have been used, it is difficult to isolate only those books and articles referring exclusively to the chronology followed in the present research, but general guidance on differing periodisation is given.

Contrary to the plethora of materials engaging with the international elements of the Cyprus Question published for decades, such as the 'Cyprus triangle'[130] of Greek, Turkish, and British relations, most of the internal aspects, including the inter-communal armed violence, in the decade preceding 1974 have been overlooked. This is evident in one of the core monographs on the RoC and PIL, where Kypros Chrysostomides, former RoC Minister of Foreign Affairs (MFA) and international lawyer, dedicated only a single chapter to the events examined in the present

[126] For the most in-depth research on the National Guard based on the National Guard and RoC State Archives, and interviews with various individuals see: Aggelos Chrysostomou, *Από τον Κυπριακό Στρατό μέχρι και τη δημιουργία της Εθνικής Φρουράς (1959-1964)* (From the Cyprus Army until the establishment of the National Guard (1959-1964) (2015); See also: Pavlos Ierodiakonou, *Εθνική Φρουρά: Από τα Πέτρινα Χρόνια στο Σήμερα* (National Guard: From the stone years to today) (Cultural Academy 'Kypropedia' 2016).

[127] Information obtained informally from UNFICYP, and confirmed by others.

[128] Harold Macmillan, *Riding the Storm 1956-1959* (Macmillan 1971); Frank Kitson, *Bunch of Five* (Faber and Faber 1977); Glafcos Clerides, *Cyprus: My Deposition Vols 1-4* (Alithia Publishing 1989); Hart P T, *Two NATO allies at the threshold of war. Cyprus: A Firsthand Account of Crisis Management, 1965-1968* (Duke University Press 1990); Alan James, *Keeping the peace in the Cyprus Crisis of 1963-64* (Palgrave 2002); Stella Soulioti, *Fettered Independence: Cyprus, 1878-1964 Vol 1 The Narrative* (University of Minnesota Press 2006); Martin Packard, *Getting it Wrong: Fragments from a Cyprus Diary 1964* (Author House 2008).

[129] Gerd von Laffert, *Die völkerrechtliche Lage des geteilten Zypern und Fragen seiner staatlichen Reorganisation* (Peter Lang 1995); Jean-François Drevet, Chypre en Europe (Cyprus in Europe) (Harmattan 2000).

[130] Rauf Denktash, *The Cyprus Triangle* (Rusterm & Brother 1988).

thesis,[131] with almost no reference at all to the period from 1964 to 1974. It is noteworthy, nevertheless, that Chrysostomides has undertook rich academic doctrinal analysis from a variety of perspectives. A more detailed factual account from the 1950s onwards has been produced by Turkish-Cypriot lawyer, and former 'Attorney-General' of the unrecognised 'Turkish Republic of Northern Cyprus (TRNC)' Zaim Necatigil, presented a descriptive account of the Turkish-Cypriot positions as opposed to in-depth academic analysis of the events.[132] The books by Chrysostomides and Necatigil are considered the core books used for the present research, along with a long list of publications by Criton Tornaritis QC, first and longest-serving Attorney-General of the RoC (1960-1984).[133] Tornaritis' publications have been of legal but also historical relevance to the present research.

Other relevant legal books include the publications by well-known Greek-Cypriot lawyer Polys Polyviou, including a book covering the full scope of the present chronology, which, however, only aims at giving a constitutional 'exposition of the Cyprus conflict'[134] and it thus, focuses on political and diplomatic developments, as opposed to the theme of inter-communal violence on the ground. Other legal books dealing with international, constitutional and other domestic and international legal aspects of the Cyprus Question include monographs[135] and contributions to edited

[131] Chrysostomides (n 17) 91-114.
[132] Zaim M Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, OUP 1993).
[133] Criton G Tornaritis, *The Treaty of Alliance: An analysis of the treaty and the reasons that led to its termination in the light of International Law* (PIO, year unknown); Criton G Tornaritis, *Constitutional and Legal Problems in the Republic of Cyprus* (PIO 1972); Criton G Tornaritis, *The Individual as a Subject in International Law* (PIO 1972); See also: Constantinos Kombos and Aristoteles Constantinides (eds), *Criton Tornaritis: Selected Opinions on Constitutional Law* (Nomiki Vivliothiki 2019).
[134] Polyvios Polyviou, *Cyprus, conflict and negotiation, 1960-1980* (Duckworth 1980) 3; See also: Polyvios Polyviou, *Cyprus on the edge: A study in constitutional survival* (2013).
[135] Diana Markides, *Cyprus 1957-1963: From Colonial Conflict to Constitutional Crisis – The key role of the Municipal Issue* (University of Minnesota 2001); Evanthis Hatzivassiliou, *The Cyprus Question, 1878-1960: The Constitutional Aspect* (University of Minnesota 2002); Achilles C Emilianides, *Κοινοβουλευτική Συνύπαρξη Ελληνοκυπρίων και Τουρκοκυπρίων (1960-1963)* (Epiphaniou 2003); Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (OUP 2004); Achilles C Emilianides, *Πορεία προς την καταστροφή: Κοινοβουλευτική Ιστορία 1964-1976* (Aegaeon 2007); Despina Kyprianou, *The role of the Cyprus Attorney General's Office in Prosecutions: Rhetoric, Ideology and Practice* (Springer 2010); Ozay Mehmet, *Sustainability of Microstates: The Case of North Cyprus* (University of Utah Press 2010); Constantinos Kombos, *The Doctrine of Necessity in Constitutional Law* (Sakkoulas 2015); George M Pikis, *An analysis of the English Common Law, Principles of Equity and their application in a former British Colony, Cyprus* (Brill Nijhoff 2017); Nasia Hadjigeorgiou, *Protecting Human Rights and Building Peace in Post-Violence Societies* (Hart 2020)

volumes.[136] In the early 2000s one observes a resurgence of interest in the constitutional legal order of the RoC and its broader historical context, in anticipation of the Republic's entry to the EU. Only one book with direct reference to IHL in the title has been identified, but the book focuses on the events of 1974.[137]

Among the non-legal publications, of particular significance here is the PhD research of political geographer Richard Patrick completed in 1972 and published in 1989,[138] Niazi Kizilyurek's comprehensive two-volume book from a History and Political Sciences perspective,[139] and the personal detailed account of former president of the RoC Glafcos Clerides.[140] Clerides' books contain a number of legal details since he was a qualified Barrister and an Advocate under RoC law. However,

[136] Hubert Faustmann, 'The UN and the Internationalization of the Cyprus Conflict, 1949-1958' in Oliver P Richmond and James Ker-Lindsay (eds), *The Work of the UN in Cyprus: Promoting Peace and Development* (Palgrave Macmillan 2001); Claude Nicolet, 'Turkish Cypriot Failure in 1964' in John Charalambous, Alicia Chrysostomou, Denis Judd and others (eds), *Cyprus: 40 years on from Independence: Proceedings of a Conference in the University of North London on 16-17 November 2000* (Bibliopolis 2002) 60; Klearchos A Kyriakides, 'The Sovereign Base Areas and British Defence Policy since 1960' in Humber Faustmann and Nicos Peristianis (eds), *Britain in Cyprus: Colonialism and Post-Colonialism 1878-2006* (Bibliopolis 2006) 511; Andreas Neocleous, 'Political and Legal History' in Neocleous LLC (ed), *Neocleous's Introduction to Cyprus Law* (3rd edn, Neocleous LLC 2010); Andrew Jacovides, 'Treaties Conflicting with Peremptory Norms of International Law and the Zurich-London 'Agreements' in Andrew Jacovides, *International Law and Diplomacy* (Martinus Nijhoff 2011) 17; Aristoteles Constantinides, 'Η Θέση του Διεθνούς Δικαίου στην Κυπριακή Έννομη Τάξη' in Foundation for International Legal Studies of Professor Elias Krispis and Dr. Anastasia Samara-Krispi LLD (ed), *Essays of Law and International Relations in Memory of Professor Elias Krispis* (Sakkoulas, 2015) 229; Aristoteles Constantinides, 'Hans Kelsen's Opinion on the Eligibility of the future Republic of Cyprus as a Member of the United Nations' in Clemens Jabloner, Thomas Olechowki, Klaus Zeleny (eds) *Das internationale Wirken Hans Kelsens* (MANZ 2016) 169; John Reynolds, 'Peripheral Parallels? Europe's Edges and the World of Bandung' in Eslava L, Fakhri M and Nesiah V (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Future* (CUP 2017) 247; Nasia Hadjigeorgiou, 'A one-sided coin: A critical analysis of the legal accounts of the Cypriot conflicts' in Berber Bevernage and Nico Wouters (eds), *The Palgrave Handbook of State-Sponsored History After 1945* (Palgrave 2018) 583

[137] Thalis Mylonas, *The Cyprus Question: The Invasion of Turkey in Cyprus and the Violation of International and Humanitarian Law* (2004); See also: Criton G Tornaritis, *The Turkish invasion of Cyprus and legal problems arising therefrom* (1975).

[138] Richard Patrick, *Political Geography and the Cyprus Conflict, 1963-1971* (Department of Geography, Faculty of Environmental Studies, University of Waterloo, 1989).

[139] Niyazi Kızılyürek, *Μια ιστορία βίας και μνησικακίας: Η γένεση και η εξέλιξη της εθνοτικής διένεξης στην Κύπρο Vols 1 and 2* (A story of violence and resentment: The genesis and evolution of the ethnic conflict in Cyprus) (Michalis Theodorou trs, Heterotopia 2019) See also: Niyazi Kızılyürek, *Μια εποχή της βίας: Το σκοτεινό 1958* (An Age of Violence: The Dark 1958) (Michalis Theodorou tr, 2nd edn, Heterotopia 2016).

[140] Clerides (n 128).

his monographs were written in his capacity as one of the protagonists of the history of the Island from the late 1950s until the early 2000s.

One should not overlook the contribution of a number of younger scholars, who recently submitted or published their PhD theses on topics directly relevant to the Cyprus Question, and have contributed to this thesis. These include the theses of Ioanna Pastella,[141] and Margot Tudor[142] in History, and Lambros Kaoullas in Criminology,[143] as well as the PhD-based monographs published by Marilena Varnava[144] and Brian Drohan,[145] both in History. In addition to the secondary materials already mentioned above, an overwhelming number of publications have been published on the Cyprus Question by experts and practitioners in other disciplines. An indicative list of works by Journalists,[146] Anthropologists,[147] Sociologists,[148] and Political Scientists, including IR specialists,[149] is listed here as well, but this is by no means exhaustive.

The present literature review has focused on the thematic area of the events under assessment here. From a legal perspective, the thesis has benefited from the main generalist textbooks on PIL,[150] and the broad variety of specialised books on issues

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[141] Pastella G Ioanna, 'Ποινικός έλεγχος και θεσμικές παρεμβάσεις στην πολιτική ζωή και την ελευθερία έκφρασης στην αποικιακή Κύπρο, 1931-1939' (PhD Thesis, University of Cyprus 2016).

[142] Margot Tudor, 'Blue Helmet Bureaucrats: UN Peacekeeping Missions and the Formation of the Post-Colonial International Order, 1956-1971' (PhD Thesis, Faculty of Humanities, University of Manchester, 2020).

[143] Lambros Kaoullas, L 'Cyprus, 1963-64: a new conceptual framework for chaotic security structures and momentous phases in polity-building' (PhD thesis, School of Law, University of Edinburgh 2017)

[144] Marilena Varnava, *Cyprus Before 1974: The Prelude to Crisis* (IB Tauris 2019); Dr. Klearchos A Kyriakides acted as an external examiner for Varnava's PhD Thesis, on which her book is based.

[145] Brian Drohan, *Brutality in an Age of Human Rights: Activism and Counterinsurgency at the End of the British Empire* (Cornell University Press 2018).

[146] Sevgül Uludağ, *Oysters with the missing pearls* (IKME, BILBAN 2006); Makarios Droushiotis, *The First Partition: Cyprus 1963-1964* (Alfadi 2009).

[147] Loizos (n 8); Paul Sant Cassia, *Bodies of Evidence: Burial, Memory and the Recovery of Missing Persons in Cyprus* (Bergham Books, 2007); Rebecca Bryant and Yiannis Papadakis (eds), *Cyprus and the Politics of Memory* (IB Tauris 2012); Olga Demetriou, ''Struck by the Turks': reflections on Armenian refugeehood in Cyprus' (2014) 48(2) *Patterns of Prejudice* 167.

[148] Nicos Trimikliniotis and Umut Bozkurt, *Beyond a Divided Cyprus* (Palgrave 2012).

[149] Constantinos Adamides and Costas M Constantinou, 'Comfortable Conflict and (Il)liberal Peace in Cyprus' in Oliver P Richmond and Audra Mitchell, *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism* (Palgrave 2012).

[150] Malcolm N Shaw, *International Law* (8th edn, CUP 2017); Jan Klabbers, *International Law* (2nd ed, CUP 2017).

of IHL, IHRL and ICL,[151] including a broad range of publications from the ICRC[152] as well as relevant research conducted by historians.[153] An extensive overview of theory and methodology-oriented works in PIL has already been given above.

1.4 Hypothesis, Originality, and Contribution to Knowledge

The present thesis is based on the initial hypothesis that the level of inter-communal violence observed in Cyprus, involving fighting among formal and informal armed groups, the taking of hostages, displacement, missing persons, and allegations of 'violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture',[154] as well as 'outrages upon personal dignity, in particular humiliating and degrading treatment',[155] may had reached the threshold necessary for the applicability of CA3 of the 1949 GCs, dealing with 'armed conflict not of an international character'. Such phenomena, to varying extend were observed both before and after the establishment of the RoC in the present chronology.

The originality of the research lies primarily in the fact that the research question has never before been examined in detail, from an IHL perspective. For decades the mainstream political and historical narratives supressed the violence perpetrated by each community, emphasising instead the political, diplomatic and constitutional aspects of the conflict. Another point of originality is the fact that despite this being a legal research, it has made extensive use of the plethora of contributions made by other disciplines on the subject, experimenting with various methodological approaches. While the research inevitably touches on other areas of law, such as

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[151] Robert Cryer and others, *An Introduction to International Criminal Law and Procedure* (CUP 2007); Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008); William A Schabas, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals* (OUP 2012) William A Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edn, OUP 2012).

[152] eg Jean Pictet, *Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC 1952); ICRC, *Handbook of the International Red Cross and Red Crescent Movement* (14th edn, ICRC 2008); ICRC, 'The International Committee of the Red Cross's (ICRC's) role in situations of violence below the threshold of armed conflict - Policy document' (2014) 96 (893) *IRRC* 275.

[153] Michael Barnett, *Empire of Humanity: A history of humanitarianism* (Cornell University Press 2011); Fabian Klose, 'The Colonial Testing Ground: The International Committee of the Red Cross and the Violent End of Empire', (2011) 2(1) *Humanity* 107; Boyd Van Dijk, 'Human rights in war: On the entangled foundations of the 1949 Geneva Conventions' (2018) 112(4) *AJIL* 553.

[154] GCs I-IV, common art 3(1)(a).

[155] GCs I-IV, common art 3(1)(c).

International Human Rights Law (IHRL) and ICL, as well as Cyprus Constitutional Law, its aim is not to draw final conclusions on issues of human rights violations and accountability. It rather envisages to offer a legal interpretation of this controversial period in Cypriot history, critically reflecting also on international legal history.

Through the above, the present research envisages to contribute in both legal and historical debates on issues of war, peace, inter-communal disputes, among others, that have their root in the post-colonial period and/or the Cold War, while at the same time it aims to situate the Cyprus Problem on a broader global map of historical developments, during the same periods.

1.5 Thesis Overview

The present Introduction (Chapter 1) has given a detailed overview of the theoretical and methodological legal background underpinning the present thesis, and an as detailed overview as possible of the extensive availability of secondary sources from a plethora of disciplines, as well as the various archives, many of which are yet to be fully studied.

In the next Chapter (Chapter 2), the thesis proceeds with a historical introduction of PIL areas relevant to the present thesis, intertwined with the elements of Cypriot history from 1878 onwards. In its last section that chapter looks at the legal aspects of conflict qualification during the EOKA emergency from 1955 to 1959, and the earliest incidents of inter-communal violence. Chapter 3 introduces the constitutional structure of the RoC, with an emphasis on issues pertaining to the three multilateral constitutive treaties of the RoC, the hierarchy of norms in the Cypriot legal order, and the level of human rights protection under the Constitution. It then concludes with an overview of the constitutional problems faced by the Republics within three years of its establishment from August 1960 to December 1963. This chapter offers the opportunity to introduce information on the RoC Criminal Justice System, and refer to early criminal activity that aimed at the deterioration of inter-communal relations in the Republic.

Chapters 4 deals with the core months of extensive inter-communal violence in the RoC, firstly from December 1963 to the end of 1964, introducing the arrival of the ICRC and UNFICYP on the Island in the first quarter of 1964, and putting under the micro-scope the military organisation and the intensity of violence, as per the

ICRC criteria on the qualification of NIACs.[156] The chapter concludes with the invocation of DoN in order to safeguard the 'survival' of the Republic, and the broader relevance of the Doctrine in conflict situations.

Lastly, Chapter 5 turns to the less violent period from 1965 to March 1968, during which the Cyprus Question makes a decisive 'diplomatic turn', which at the same time solidifies the stalemate in inter-communal relations. The Chapter starts with a socio-legal study of living conditions on the Island in the aftermath of the violent 1964, with extensive reference to the legal reforms undertaken by the RoC government, and the living conditions of the Turkish-Cypriot community inside and outside the enclaves administered by the Turkish-Cypriot leadership. It seeks to illustrate that the level of violence up to the November 1967 Kophinou Operation was not at all negligible, despite this appearing to be the case based on the existing literature. Lastly, it concludes with the establishment of the de facto 'Provisional Cyprus Turkish Administration' in December 1967, up to the complete restoration of freedom of movement for the Turkish-Cypriot community in March 1968, drawing connections to the period that followed until the summer of 1974.

Upon a closer examination of the facts within the broader history of PIL, and the law relevant to 'civil war' and NIACs in particular, has shown that there is no black and white answer on the question raised. Internal and international developments, the different legal culture observed at the time, and the fact that IHL was still at the earliest stages of its development indicate a nuanced picture. There is, however, evidence of extensive criminality and impunity, armed violence between military and paramilitary forces leading to the geographical segregation of the two communities, as well as a decisive 'shift' from law to diplomacy in the second half of the 1960s.

1.6 A Note on Names, Language and Terminology

Talking and writing about the Cyprus Question calls for a number of clarifications on linguistic and terminological clarifications and disclaimers. The below points are guidance for the reader.

Cyprus/ Republic of Cyprus/ Island of Cyprus

According to article 1 of the Treaty of Establishment, the RoC comprises of "the Island of Cyprus, together with the islands lying off its coast' with the exception of the two Sovereign British Areas, defined in Annex A of the same Treaty. (Akrotiri and Dhekelia

[156] See section 2.3.3 and Table 2.2.

Sovereign Base Areas).[157] The same distinction between RoC (the Republic) and Island of Cyprus (the Island) has been retained throughout the present thesis.

Community / Greek-Cypriot/ Turkish-Cypriot

According to Art 2 paras (1) and (2) of The Constitution of the RoC, divides the total population of the Island into 'Greeks' and 'Turks', each defined by ethnic origin, language and religion.[158] There are, however, three additional constitutionally-recognised minority 'religious groups', the Maronites, the Armenians and the Latins, which following independence opted for membership to the 'Greek community'.[159]

The terms 'Greek-Cypriot' and 'Turkish-Cypriot' are not mentioned in the Constitution and were developed during the colonial period. They are usually employed to distinguish the Cypriot population from the citizens of Greece and Turkey, respectively. For simplicity, the terms 'Greek-Cypriot' and 'Turkish-Cypriot' are used throughout the thesis, except for direct quotations.

Reference to 'Cypriots' includes members of both communities, whereas 'religious groups' is also used, mainly to distinguish the 'Greek Orthodox' population of the Island, from other Christian denominations.

Areas under / not under the control of the Republic

In the present thesis, 'areas not under the control of the Republic' concern the Turkish-Cypriot enclaves, established after 21 December 1963. Today, this refers to the internationally unrecognised 'TRNC', which was unilaterally declared but the Turkish-Cypriot leadership on 13 November 1983.[160] Under PIL, the northern territory of the Island of Cyprus has been occupied by the Republic of Turkey since 1974.[161]

Turkish Invasion

The term 'invasion' is contested by the Republic of Turkey and the leadership of the Turkish-Cypriot community, who use primarily the term 'Peace Operation'. One may

[157] Treaty Concerning the Establishment of the Republic of Cyprus (signed 16 August 1960) 382 UNTS 5476, art 1; Cyprus Act 1960, ss 2 and 7.
[158] RoC Constitution, art 2(1) and (2); Section 3.2.1 and Figure 1.1.
[159] RoC Constitution, art 2(3).
[160] UNSC Res 541 (18 November 1983); UNSC Res 550 (11 May 1984).
[161] *Loizidou v Turkey* (Application No 15318/89) Judgment, 18 December 1996

also come across the term ‘intervention’. However, there is a plethora of judgements from English courts and the ECtHR that recognise this event as an ‘invasion’.[162]

Languages and Translations

All translations from texts in Greek, French, and German have been made by the author, unless stated otherwise. The author has only a very basic knowledge of Turkish, and for this reason alternative sources in English or Greek have been sought for texts (including names and specific terms) that are originally in the Turkish language.

Names of Persons, Towns, and Villages

Due to displacement and resettlement, many towns and villages in Cyprus are known with various names. Thus, the archives are inconsistent in terms of the topographical names utilised. These names have been reproduced directly here, without prejudice to RoC legislation forbidding the use and publishing of names other than those officially assigned by RoC authorities.[163]

Greek names have been transliterated into the Latin alphabet. Regarding Turkish names special characters of the Turkish alphabet have been omitted in the main text but retained in bibliographical information. All names have been adjusted to pronunciation, where necessary.

Terminology

Many of the terms used in the present research are being employed across neighbouring disciplines in Law, the Social Sciences, and the Humanities. Where no distinction is explicitly mentioned in the text, then it shall be assumed that the term is being used in its legal sense.

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[162] e.g. *Apostolides v Orams* [2011] Q.B. 519; In the case of *Catlin v Cyprus Finance Corporation (London) Ltd* [1983] Q.B. 759 Mr Justice Bingham referred to two ‘Turkish invasions’ (in plural), as opposed to the usual approach referring to a single invasion with two separate phases, on 20 July and 16 August 1974, respectively. Some commentators may adopt this terminology.

[163] Ο περί της Διαδικασίας Τυποποίησης των Γεωγραφικών Τοπωνυμίων της Κυπριακής Δημοκρατίας Νόμος (66(I)/1998) (Law on the Procedure of Standardisation of Geographical Toponyms in the Republic of Cyprus); For a comparison of geographical names as affected by displacement see: PRIO Cyprus, *Internal Displacement in Cyprus: Mapping the Consequences of Civil and Military Strife* <http://www.prio-cyprus-displacement.net/default.asp?id=245> accessed 13 December 2021.

2 COLONIALISM, ARMED VIOLENCE, AND INTERNATIONAL LAW IN CYPRUS AND THE WORLD DURING BRITISH RULE (1878-1958)

2.1 Introduction

The long history and the multitude of occasionally competing cultures that make up the social fabric of the 'land where races have always met, yet rarely mingled',[1] is evident at all turns of public life and institutional structures in Cyprus throughout the centuries. From the Phoenician and Greek city-states of the antiquity, to its period as a Roman and later Byzantine province, before becoming the Kingdom of Cyprus for three centuries under the rule of the Frankish Lusignan Dynasty. The Island's history is a century-long study of what we would today call 'international law', in light of the conflicts for power and control in the eastern Mediterranean region.[2]

At the time when the Venetian Republic competed over domination in the Mediterranean with the Ottoman Empire, the Island of Cyprus came under the rule of the Serenissima for 82 years, before entering a new three-century-long phase as an Ottoman province in 1571. The conquest of Cyprus was a primary goal of Sultan Selim II, who had expressed an interest in conquering the Island even before acceding to the throne, following the death of Sultan Suleiman the Magnificent in 1566.[3] By early 1570 the Ottomans had initiated a series of diplomatic negotiations with Venice explicitly requesting the Island.[4] When their demands were not met, the first Ottoman forces disembarked on Cyprus, on 3 July 1570. This was followed by a year-long war between existing and aspiring rulers, whose most infamous phases were the violent fall of the capital Nicosia and the 11-month siege of Famagusta, from 17 September

[1] Harry CJ Luke, *Cyprus: A Portrait and an Appreciation* (George G Harrap 1957) 17.
[2] George F Hill, *A History of Cyprus Vol 1: To the Conquest by Richard Lion Heart* (First published 1940, CUP 2010) George F Hill, *A History of Cyprus Vol 2: The Frankish Period 1192-1432* (First published 1948, CUP 2010); For a legal perspective see: Andreas Neocleous, 'Political and Legal History' in Neocleous LLC (ed), *Neocleous's Introduction to Cyprus Law* (3rd edn, Neocleous 2010) 1, 12-16.
[3] George F Hill, *A History of Cyprus Vol 3: The Frankish Period 1432-1571* (First published 1948, CUP 1948) 879; See also: Svatopluk Soucek, 'Navals Aspects of the Ottoman Conquests of Rhodes, Cyprus and Crete' (2004) 98/99 *Studia Islamica* 219.
[4] On Ottoman diplomatic practices see: Zülâl Muslu, 'Language and Power: The Dragoman as a Link in the Chain Between the Law of Nations and the Ottoman Empire' (2020) 22 *Journal of the History of International Law* 50.

1570 to 8 August 1571.[5] As Hill observed, 'the history of Cyprus is rich in episodes of horror, and this was an age inferior to no other in *barbarity*'.[6]

Despite the violent transit from Venetian to Ottoman rule, the Ottomans were not completely unwelcome by the locals, since they assured the predominantly Greek-Orthodox population of their freedom to enjoy their religion, restoring the primacy of the Autocephalous Greek-Orthodox Church of Cyprus, which had been abolished by Papal Bull in 1260.[7] At the same time they abolished centuries-long feudal serfdom, which had existed since the Byzantine period, replacing it with a community-based 'Asiatic mode of production'.[8] This in turn allowed the locals a certain degree of autonomy, provided they complied with their financial duties to the Porte.[9]

This chapter intertwines international legal history, the history of humanitarianism, and Cypriot history, by way of introduction to the overall diplomatic and legal environment prevalent at the time of the events examined in the present thesis. It first turns to international law, humanitarianism, and Cyprus at the turn of the twentieth century, before proceeding with an introduction of the separate but interlinked branches of ICL, IHL, and IHRL, covering a trajectory from the late nineteenth century to the early 1960s. The concept of 'Civil War' is introduced separately, with the aim to identify grey areas in international legal doctrine addressing such conflicts. In the last section, the chapter focuses on questions of sovereignty and self-determination in the context of decolonisation, before closing with a brief examination of the Cypriot anti-colonial movement, and the earliest wave of inter-communal violence in 1958. Separate elements from this chapter aim at offering insights and setting the scene with regard to the social and political dynamics domestically and at the international level in the period 1958 to 1968.

2.2 1878-1945: Humanitarianism and Cyprus in a World of Empires

The development of classical international law can be seen primarily as an intellectual project of liberal and cosmopolitan jurists of nineteenth century Germany, France,

[5] Hill, *History of Cyprus Vol 3* (n 3) 879-1040.
[6] ibid 1033 (emphasis added).
[7] ibid 1059-1104.
[8] Spyros Sakellaropoulos, *Ο Κυπριακός Κοινωνικός Σχηματισμός (1191-2004) Από τη συγκρότηση στη διχοτόμηση* (Topos 2017) 42-43, 54-56 (The Cypriot Social Formation (1191-2004): From the Establishment to the Partition)*;* Oxford Reference, 'Asiatic mode of production' in *A Dictionary of Sociology* (3 rev edn, OUP 2009) <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095428735> accessed 25 September 2021.
[9] Sakellaropoulos (n 8).

Britain, Belgium and Switzerland. They envisaged a 'European international law', that would 'articulate' and 'represent', the 'legal conscience of the civilized world'.[10] Though an inter-state *jus gentium* had been in existence since antiquity, and a 'Law of Nations' had preoccupied a number of thinkers since the Middle Ages,[11] it was only in the nineteenth century that international law started obtaining the form of a professionalised 'amateur science',[12] coinciding with two interlinked phenomena which dominated the international agenda in the second half of that century. The European Powers' expanding 'civilising mission' in the faraway territories they colonised,[13] and secondly, the rise of humanitarianism.[14]

2.2.1 International Law, the 'Civilising Mission' and 'Imperial Humanitarianism'

Whereas the establishment of the UN is usually seen as a threshold moment in the development of international law, this view is today challenged by some international lawyers and historians.[15] For instance, the combined compassion, charity and desire to combat the causes of human suffering based on Christian ideals of solidarity,[16] gave rise to the foundations of what we call today IHL.[17] This was an 'imperial humanitarianism', which had at its basis colonialism, commerce, and the 'civilising mission' of the European Powers. [18] For the Cyprus Question, which derived out of events and political choices relevant to the dissolution of the Ottoman Empire in the late nineteenth century and the fall of colonialism following WWII, such debates are particularly enlightening in reassessing Cypriot history through an innovative lens and a more contextual scope of analysis. Hence, the purpose here is to illustrate how

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[10] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (CUP 2001) 47.
[11] Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300-1870* (CUP 2021).
[12] Koskenniemi, *Gentle Civilizer* (n 10) 28.
[13] ibid 105.
[14] Michael Barnett, *Empire of Humanity: A history of humanitarianism* (Cornell University Press 2011); Abigail Green, 'Humanitarianism in the nineteenth-century context: religious, gendered, national' (2014) 57(4) *The Historical Journal* 1157.
[15] Davide Rodogno, 'European Legal Doctrines on Intervention and the Status of the Ottoman Empire within the 'Family of Nations' throughout the Nineteenth Century' (2016) 18(1) *Journal of the History of International Law* 5; Ntina Tzouvala, '"These Ancient Arenas of Racial Struggles": International Law and the Balkans,1878-1949' (2019) 29(4) *EJIL* 1149.
[16] Barnett, *Empire of Humanity* (n 14) 49-52.
[17] ibid 76.
[18] ibid 9.

subtle elements of the 'civilisational' debates and prejudices of the nineteenth century had an impact on developments in Cyprus in the first half of the twentieth century.

The 'civilising mission' was based on a 'standard of civilisation' categorising peoples into 'civilised', 'barbarian' and 'savage'.[19] The 'civilised Europeans' based their perceived 'superiority' on the classical Greek and Roman civilisations of the antiquity combined with the ideals of Enlightenment, looking at their 'civilising mission' as justification for a colonisation which claimed to foster progress for the whole of humanity. This civilisational bias was then internalised by international law, influencing the discipline's development thereafter.[20]

Among these developments, the year 1863 saw the codification of some basic norms to govern the conduct of military forces during warfare. In February, a five-member Committee of the Geneva Public Welfare Society met for the first time, upon the initiative of local businessman Henry Dunant, with the aim to make suggestions for an international treaty which would oblige States to take care of wounded soldiers on the battlefield.[21] In April, amidst the American Civil War, German-American jurist Francis Lieber published the 'Lieber Code', which is considered the first codification on the rules of warfare in modern times.[22] It took only a year for the Geneva-based Committee, the future ICRC, to convince a number of governments to support the scheme, and the first Geneva Convention on the Amelioration of the Condition of the Wounded in Armies in the Field was adopted by a handful of States.[23] In the same spirit, a few years later the St. Petersburg Declaration of 1868[24] became the first legal document prohibiting the use of specific weapons, followed by the first and second Hague Conferences of 1899 and 1907, which led to the respective Hague

[19] Koskenniemi, *Gentle Civilizer* (n 10) 127-132.
[20] Ntina Tzouvala, 'Civilization' in Jean d'Aspremont and Sahib Singh (eds), *Concepts of International Law: Contributions to Disciplinary Thought* (Edward Elgar 2019) 83.
[21] Barnett, *Empire of Humanity* (n 14) 76-80; ICRC, 'The ICRC and the Geneva Convention (1863-1864)' (*ICRC*, 29 December 2004) <https://www.icrc.org/en/doc/resources/documents/misc/57jnvt.htm> accessed 8 November 2021.
[22] Library of Congress, 'General Orders No. 100: Instructions for the Government of the Armies of the United States in the Field (Lieber Code)', 24 April 1863 <https://blogs.loc.gov/law/2018/04/the-lieber-code-the-first-modern-codification-of-the-laws-of-war/ > accessed 30 January 2019; Emily Crawford and Alison Pert, *International Humanitarian Law* (CUP 2015) 7-8.
[23] Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Geneva, 22 August 1864 <https://ihl-databases.icrc.org/ihl/INTRO/120> accessed 8 November 2021.
[24] Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grams Weight (St Petersburg Declaration) 11 December 1868 LXIV UKPP (1869) 659.

Conventions and Regulations, regulating the conduct of hostilities on land, at sea and in the air.[25]

Even though the 1648 Treaty of Westphalia, the founding document of the principle of sovereignty, included rules on the peaceful settlement of disputes,[26] in the nineteenth century war was still considered an acceptable means for dispute settlement, despite the fact that its *raison d'être* directly contradicted humanitarianism's liberal aspirations.[27] As a result, the new rules on the conduct of war, *jus in bello*, were separate from the rules dictating when use of force was permissible, the *jus ad bellum*,[28] and whether or not a State would resort to force remained a sovereign prerogative. Moreover, with the 'Hague rules' focusing on the methods of active warfare, and the 'Geneva rules' on the protection of those not participating in the fighting, the *hors de combat*, *jus in bello* was further subdivided into those two directions. Thus, it ought to be clarified that the present thesis, with its focus on CA3 of the 1949 GCs, engages primarily with the latter.

Recent research has been cautious not to give extensive credit to the humanitarian sensitivities of nineteenth century European Powers. As af Jochnick and Normand have argued, despite their humanitarian rhetoric, these laws achieved the legitimation of use of force and ultimately promote it.[29] For instance, during the American Civil War it was the Lieber Code that justified the starvation and the bombardment of civilians under the justification of military necessity, while the explosive bullets prohibited under the St. Petersburg Declaration were already an obsolete weapon by that time.[30] Moreover, as Daniel Palmieri, the ICRC's in-house historian par excellence, observed that at the time States were reluctant to use new technologies of warfare, not due to 'humanity' or a willingness to legally constrain the military methods available to them, but driven by a reluctance to appear 'uncivilised' among their counterparts.[31] Even the ICRC might have been 'carried away by the

[25] Yoram Dinstein, *The conduct of hostilities under the Law of International Armed Conflict* (2nd edn, CUP 2010) 15.
[26] Leo Gross, 'The Peace of Westphalia, 1648-1948' (1948) 42(1) *AJIL* 20, 25.
[27] Koskenniemi, *Gentle Civilizer* (n 10) 83-88.
[28] François Bugnion, '*Jus ad bellum*, *jus in bello* and non-international armed conflicts' (2003) 6 *Yearbook of International Humanitarian Law* 167, 171.
[29] Chris af Jochnik and Roger Normand, 'The Legitimation of Violence: A critical history of the Laws of War', 35 (1994) *Harvard International Law Journal* 49, 56.
[30] ibid 65-66.
[31] Daniel Palmieri, 'How warfare has evolved – a humanitarian organization's perception: The case of the ICRC, 1863-1960' 97 *IRRC* (2015) 985, 988.

pacifist message' out of ambition, rather than conviction towards a pacifist cause,[32] since for years the organisation addressed humanitarian matters only from a theoretical perspective, as opposed to engaging in direct action.[33]

When the Ottoman Sultan informed the ICRC that the Empire was ready to accede to the 1864 Geneva Convention in 1865, but it would replace the emblem of the Red Cross against a white background with that of a Red Crescent, the ICRC responded with disbelief,[34] unconvinced that a Muslim State would abide to the 'uniquely Christian values' of the organisation.[35] Similar concerns arose also when Japan expressed an interest to join.[36] While the 'barbarian' 'Orientals' had obviously developed social structures and cultures of their own, surely they could not be quite as 'civilised' in the eyes of those abiding to the civilisation standards of the nineteenth century, and the Empires east of Europe had already been struggling for decades to become equal members of the 'international club' of the West. [37] Along these lines, the majority Christian population of the eastern European territories of the Ottoman Empire, raised new challenges for the rulers of Europe,[38] as they 'occupied an intermediate cultural zone between Europe and Asia'.[39]

The First World War (WWI) was the first major test for the newly-codified humanitarian principles. It was the first time the ICRC had to initiate field operations that would put into practice the humanitarian values the organisation promoted, some 50 years after its establishment.[40] On the other hand, from the Balkan Wars (1912-1913) up to the signing of the Peace Treaty of Lausanne[41] (1923) the decade was definitive for Greco-Turkish relations and the competing nationalisms in the broader region. Though the violent events of this decade had no direct impact on daily life on the Island, Cypriot volunteers of both Greek and Turkish ethnicity did travel to the continent to join the respective armed forces.[42] At the same time, the violent

[32] ibid 997.
[33] ibid 986.
[34] Barnett, *Empire of Humanity* (n 14) 81-82.
[35] ibid 82.
[36] ibid 81-82.
[37] Koskenniemi, *Gentle Civilizer* (n 10) 132-136.
[38] Tzouvala, 'Ancient Arenas' (n 15) 1149, 1152-1157.
[39] Mark Mazower, *The Balkans* (Phoenix Press 2001) 9.
[40] Daniel Palmieri, 'An institution standing the test of time? A review of 150 years of the history of the International Committee of the Red Cross' (2012) 94 *IRRC* 1273, 1278.
[41] Treaty of Peace between the British Empire, France, Italy, Japan, Greece, others and Turkey (signed 24 July 1923) XXVIII LNTS 701 (Lausanne Peace Treaty).
[42] Petros Papapolyviou, *Η Κύπρος και οι Βαλκανικοί Πόλεμοι: Συμβολή στην ιστορία του κυπριακού εθελοντισμού* (Cyprus and the Balkan Wars. Contribution to the History of Cypriot

persecution of the Armenian and Greek populations led many survivors to seek protection on British-ruled Cyprus, and the memory of those events became part of the collective consciousness of a significant proportion of the population. Subsequently, the events on the Balkans contributed to the formation of the socio-political balances which dominated in the first half of the twentieth century,[43] already leading to sporadic incidents of violence between Cyprus' two dominant ethno-religious groups.[44]

It is unknown to what extent the Cypriots during this time were aware of the difficulty they posed to 'white gentlemen', who did not wish to shake hands with the 'betwixt' – not quite white, not quite black – native gentlemen of the Island.[45] In parallel, historical accounts from the first half of the twentieth century often compared the 'wonderful epoch'[46] of the Franks and the non-barbarity of the Greek language,[47] to how the Island 's[u]nk into a long sleep' with the arrival of the Ottomans.[48] On 12 March 1964, the ICRC delegate in Cyprus wrote to the organisation's *Conseil de Presidence* in Geneva:

> Remember, first of all, that the Turkish invasion, in 1571, is still present in the memory of this unfortunate island, as well as the remembrance of the severe Ottoman occupation.[49]

Whatever benefits there may have been during the Island's transition from Venetian to Ottoman rule, by the mid-twentieth century these were long-forgotten. Between the competitive nationalisms of their two 'motherlands', further inflamed by a 'civilisational bias' that cut through the Island's diverse culture, religions, languages and ethnic

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Volunteers) (Center of Scientific Research Sources and Studies of Cypriot History XXVI 1997).

[43] Nadia Kornioti, 'The Island of Cyprus, Sovereignty and International Law in the Early Decades of British Rule' (2020) 32(2) *The Cyprus Review* 105.

[44] Jan Asmussen, 'Early Conflicts between the Greek and Turkish Cypriot Communities in Cyprus' 16(1) (2004) *The Cyprus Review* 87; Peter Loizos, 'Correcting the record: Memory, Minority Insecurity and Admissible Evidence' in Rebecca Bryant and Yiannis Papadakis (eds), *Cyprus and the Politics of Memory* (IB Tauris 2012) 195.

[45] Roger Heacock, 'The Framing of Empire: Cyprus and Cypriots through British Eyes, 1878-1960' (2011) 23(2) *The Cyprus Review* 21.

[46] Luke, *Cyprus* (n 1) 74.

[47] ibid 8.

[48] ibid 73.

[49] ICRC Archive, B AG251 049-004, Résumé du Rapport Présente par M. A. De Cocatrix, Chef de la délégation du CICR à Chypre, au Conseil de Presidence, 12 Mars 1964 (Summary of Report Presented by Mr. A. De Cocatrix, Head of the ICRC delegation in Cyprus, to the Council of the Presidency, 12 March 1964).

identities, there was limited chance for the Island's population not to be embroiled in the competition.

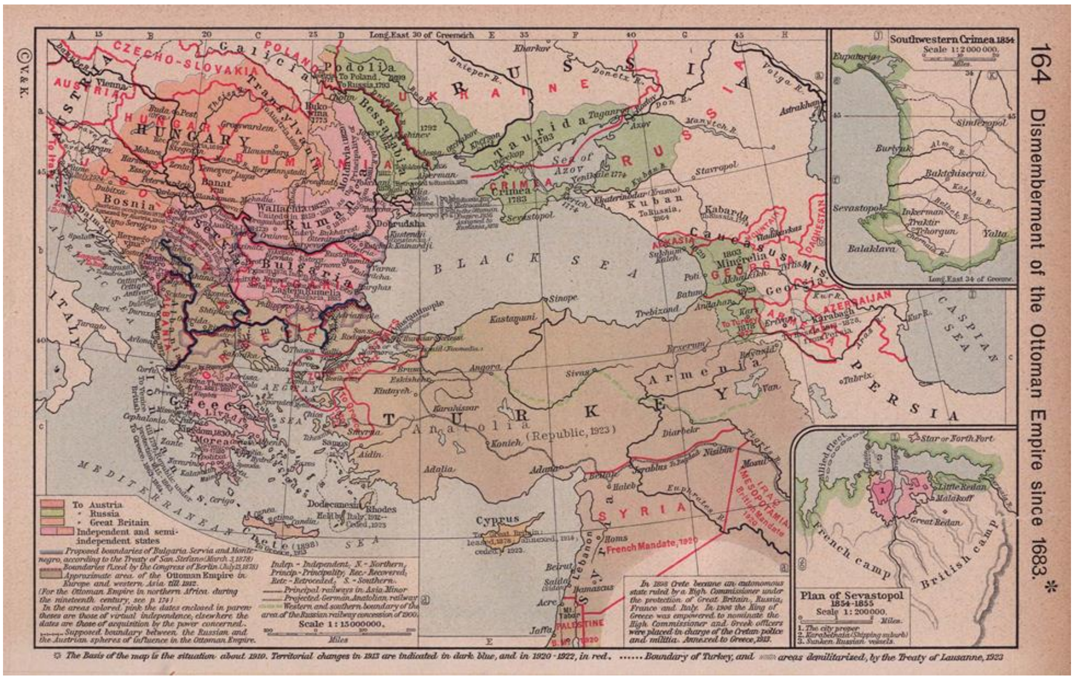

Figure 2.1: Dismemberment of the Ottoman Empire [1983-1923], 'Historical atlas' by William R. Shepherd, 1923; Source: University of Texas Libraries <https://maps.lib.utexas.edu/maps/historical/history_balkans.html> accessed 23 December 2021

2.2.2 Cypriot Society and Politics from 1878 to the end of the Second World War

Cyprus' transit from Ottoman to British rule is directly relevant to a definitive moment of PIL's impact on the Balkans, when the two Empires signed a secret treaty of alliance following negotiations that took place in parallel to the formal proceedings of the 1878 Congress of Berlin. The agreement aimed at the Ottomans securing British support at the Congress and protection from Russia's expansionist policies in the Black Sea and the Caucasus, in exchange for British occupation and administration of Cyprus.

Whereas the Porte retained sovereignty over the Island, the British occupied and administered it,[50] in exchange of an annual 'Tribute'; compensation for lost tax

[50] George F Hill, *A History of Cyprus Vol 4: The Ottoman Province. The British Colony, 1571-1948* (First Published 1952 and edited by Harry Luke, CUP 2010) 285 citing Lassa Oppenheim, *International Law: A Treatise Vol 2* (Longmans, Green and Company 1928) 363; See also: Dwight E Lee, *Great Britain and the Cyprus Convention Policy of 1878* (Harvard University Press 1934).

revenue, collected from the local population.[51] This peculiar arrangement remained in place until November 1914, when Turkey entered WWI on the side of the Central powers and the UK annexed the Island.[52] The annexation was recognised by Turkey in articles 20 and 21 of the 1923 Peace Treaty of Lausanne,[53] and it was only then that became possible to give Cyprus the status of a Crown colony, on 10 March 1925.[54]

The Ottoman period undoubtedly had a major impact on the socio-economic landscape of the Island. The 'luckless peasantry'[55] of Cyprus (Christian and Muslim), who on a number of occasions had revolted against exploitation in the hands of corrupted Ottoman officials and the elite Greek leadership including the Cyprus Church, remained greatly impoverished and highly illiterate.[56] Until 1914, the British, being aware of the Sultan's continuing sovereignty over the Island, generally refrained from undertaking major reforms, with more intensive reforms taking place only after 1925.[57] Hence, the British adjusted the existing administrative structures, by retaining elements of the Ottoman socio-cultural *millet* system within the Island's public institutions. Examples include the retention of separate educational systems for each religious group,[58] and the establishment of separate community councils in mixed villages, headed by separate *mukhtars* (local community leaders).[59] The judicial system initially retained the jurisdiction of Sharia (Sheri) and Ecclesiastical courts for family law matters,[60] while Ottoman law continued applying in most land-related

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[51] Diana Markides, *The Cyprus Tribute and Geopolitics in the Levant, 1875-1960* (Palgrave Macmillan 2019) 25-51.

[52] *Cyprus (Annexation) Order in Council*, 5 November 1914 in J. Howarth & C. Gerahty, *Statute*
Laws of Cyprus vol. II, 184 (1923).

[53] Lausanne Treaty (n 41); Achilles C Emilianides, *Constitutional Law in Cyprus* (Wolters Kluwer 2014) 15.

[54] Letters Patent passed under the Great Seal of the United Kingdom constituting the Office of the Governor and Commander-in-Chief of the Colony of Cyprus and providing for the Government thereof, 10 March 1925, No 1691 *The Cyprus Gazette* (1925).

[55] Luke, *Cyprus* (n 1) 78.

[56] Hill, *History of Cyprus Vol 4* (n 50) 263.

[57] Georgios S Georghallides, *Cyprus and the Governorship of Sir Ronald Storrs: The causes of the 1931 crisis* (The Cyprus Research Centre 1985) 5, 14-28.

[58] Sakellaropoulos (n 8) 122-124.

[59] ibid 125.

[60] George A Serghides, *Internal and External Conflict of Laws in Regard to Family Relations in Cyprus* (George Serghides 1988) 43-53; See also: Ersi Demetriadou, 'Legal Discourse and Social History in Cyprus: An Inductive Inguiry (sic) 1878-1982' (Oct – Dec 1989) *Cyprus Law Tribune* 127.

cases.[61] Such elements survived the harmonisation of the Cypriot legal order with the English Common Law in 1935,[62] and were eventually inherited in the 1960 Constitution of the Republic of Cyprus (RoC).[63]

Following the signing of the Lausanne Treaty in 1923, foreign commentators soon recognised that the protection of minorities on Cyprus remained an outstanding issue.[64] Greek-Cypriot hopes for union with Greece – *enosis* – already surfaced during the Greek War of Independence (1821-1830), and reiterated immediately upon the arrival of the first British High Commissioner in 1878. This caused obvious concerns to the Turkish-Cypriots, as well as the other smaller Christian denominations, notably the Armenian and the Latins (Roman Catholics) who, according to Georghallides, not only opposed *enosis*, but also opposed the autonomy of the Island fearing the oppression of their respective groups.[65] Ever since, the issue lies at the core of any discussion over the 'Cyprus Problem', along with the diametrically opposing objective of partition – *taksim* – that gained force among the Turkish-Cypriots in the following decades.

In the first decades of British rule, despite early competition among the Greek-Cypriot and the Turkish-Cypriot elites regarding the governance of the Island,[66] the financial burden from the contributions to the 'Tribute' combined with the global economic depression of the late 1920s, led Christian Orthodox and Muslim leaders to set aside their conflicting aspirations for a brief moment in time to focus on the fiscal burdens of the Island.[67]

Even though the Tribute was abolished as of 1 January 1928,[68] the lack of progress in terms of the financial situation of the colony reinforced the decisiveness in the pursuit of national aspirations. Peak tension was reached in the last quarter of

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[61] Neocleous (n 2) 14-15.
[62] A Law to Make Better Provision for the Administration of Justice and to Reconstitute the Courts of the Colony (Law No 38/1935), s 49*;* George M Pikis, *An analysis of the English Common Law, Principles of Equity and their application in a former British Colony, Cyprus* (Brill Nijhoff 2017).
[63] See section 3.3.1.
[64] Arnold Toynbee, 'The East after Lausanne' (1923) 2(1) *Foreign Affairs* 84.
[65] Georghallides (n 57) 87-88.
[66] Christos K Kyriakides, *Το κυπριακό Νομοθετικό Συμβούλιο (1878-1931)-Ίδρυση, Λειτουργία και Κοινοβουλευτικές Ελευθερίες υπό περιορισμός και αμφισβήτηση* (RoC House of Representatives 2016) (The Cypriot Legislative Council (1878-1931) - Establishment, Function and Parliamentary Rivalries: Constitutional Freedoms under constraint and doubt).
[67] Markides, *Tribute* (n 51) 125.
[68] ibid 126-137.

1931, when in the afternoon of 21 October an initial gathering of 300 persons turned into 3,000 Greek-Cypriot demonstrators marching to the Governor's House in demand for *enosis*. The crowd clashed with the Police and military reinforcements arrived to Nicosia the next day, by which time anti-Government protests had broken out in all major towns of the island.[69] The riots were suppressed by 24 October, when ten Greek-Cypriot leaders who were believed to have incited the violence were arrested and eventually expelled from Cyprus.[70] Among them were four pro-unionist politicians, two members of the Communist Party of Cyprus (*Κομμουνιστικό Κόμμα Κύπρου* - KKK), established in 1926, and two Christian Orthodox Bishops.[71] The message that similar conduct would not be tolerated had to be clear across the political spectrum. The 'October Riots', the *Oktovriana,* were recorded as the 'only situation in the history of British Cyprus at all comparable with the era of terrorism that began in the spring of 1955'.[72]

Casualties included six killed and 30 wounded among the protesters as well as 39 injured police officers, whereas the Governor's House was completely burnt down.[73] The biggest price paid by the British, however, was the damage to their image as a colonial power. The Cypriots on the other hand, were subjected to punitive measures, including a fine of 34,315 GBP imposed only on the Greek Orthodox population, and the criminal conviction of 2,606 individuals.[74] A series of measures which impacted the political rights and civil liberties of the whole population were also put in place, including the abolition of the Legislative Council and the suspension of the internal Constitution of the colony.[75] Amendments to the Criminal Code and the laws on local administration abolished the election of local authorities, and a strict curfew was put in place. These aimed directly at preventing pro-nationalist propaganda, including changes in the educational system, the prohibition of the tolling

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[69] Cyprus Government, *Κυβέρνηση Κύπρου, Ταραχαί εν Κύπρω κατ' Οκτώβριον, 1931- Λευκή Βίβλος κατατεθείσα υπό του επί των Αποικιών Υπουργού εις το Κοινοβούλιον κατά Διαταγήν της Αυτού Μεγαλειότητος κατά Μάρτιον 1932* (Disturbances in Cyprus in October,1931 - White Book submitted to the Secretary of the Colonies before the Parliament, upon an Order by His Majesty in March 1932) (Government Press 1932) paras 8-9, 20-39.

[70] ibid 40-42.

[71] Ioanna G Pastella, 'Ποινικός έλεγχος και θεσμικές παρεμβάσεις στην πολιτική ζωή και την ελευθερία έκφρασης στην αποικιακή Κύπρο, 1931-1939' (PhD Thesis, University of Cyprus 2016) 291-297 (Criminal checks and institutional interventions in the political life and the freedom of expression in colonial Cyprus, 1931-1939).

[72] Luke (n 1) 175; See section 2.4.2.

[73] HC Deb 12 November 1931 cols 254-56.

[74] Georghallides (n 57) 707-708.

[75] ibid 702-708.

of church bells and the flying of national flags, as well as a strict censorship of press, telegrams, correspondence and cinema.[76]

The Turkish-Cypriots were not exempted from any of the measures, apart from the fine, despite the fact that they neither participated in the *Oktovriana*, nor assumed an official position. Their community was facing a dilemma, since they were also unhappy with many aspects of British policy in Cyprus, yet they were aware that the British prevented the domination of the majority Greek population.[77] At the same time, Turkish nationalism was also on the rise. They adopted a series of Kemalist reforms which severed their ties with the Ottoman past,[78] and established a 'Cyprus Turkish National Council', in May 1931.[79] However, according to Turkish-Cypriot economist Ozay Mehmet, the 'emotional', identity-related development of nationalism' among the Turkish-Cypriots was only one aspect of a broader picture, the other being the rational, economic anxieties of a numerically smaller community.[80]

Some commentators occasionally express the view that the starting point for the Island's twentieth century violent history, inter- and intra-communally, should be the *Oktovriana* riots of 1931, since the event solidified the nationalist movements which dominated Cypriot politics in the following decades.[81] Indeed, the socio-political correlations are many, seen in conjunction with the intensified anti-colonial sentiment which was reinforced from this moment onwards and over the following 'dictatorial decade'[82] of 'Palmerocracy' *(Παλμεροκρατία)*.[83]

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[76] For a full study on the prohibitions following the 'Oktovriana' see: Pastella (n 71).
[77] Gregoris Ioannou, *Ο Ντενκτας στο Νότο: Η κανονικοποίηση της διχοτόμησης στην ελληνοκυπριακή πλευρά* (Denktash in the South: The normalization of partition on the Greek-Cypriot side) (Psifides 2019) 36-39.
[78] Evanthis Hatzivassiliou, *The Cyprus Question, 1878-1960: The Constitutional Aspect* (University of Minnesota 2002) 17.
[79] Sakellaropoulos (n 8) 176.
[80] Ozay Mehmet, *Sustainability of Microstates: The Case of North Cyprus* (University of Utah Press 2010) 22-23.
[81] No detailed written analysis dedicated to this point has been identified for this thesis, albeit connections between the *Oktovriana* and later events are drawn *passim* throughout the literature. This view is often expressed by a number of commentators in public events on Cypriot history.
[82] Hubert Faustmann, 'Divide and Quit? The History of British Colonial Rule in Cyprus 1878-1960, including a special survey of the Transitional Period, February 1959 - August 1960' (PhD Thesis, University of Mannheim 1999) 54.
[83] From the name of Cyprus Governor Sir Richmond Palmer (1933-1938), even though in practice, Palmer had merely implemented the policies imposed by his predecessor, Governor Stubbs. Hatzivassiliou translates *Παλμεροκρατία* as 'Palmer's rule' which although

From a legal perspective, whereas violence during the EOKA struggle and the inter-communal violence of 1958 are relevant to the violence from 1963 onwards, the same cannot be said for the *Oktovriana,* which contrary to the planned and strategic action of the military and paramilitary groups involved in later events, was a spontaneous riot which was repressed by the British authorities within days, and was legally dealt with through the ordinary criminal law of the colony. One exception to this, is the assassination of politician Antonios Triantafyllides in January 1934.[84]

Triantafyllides was a high-profile qualified Advocate,[85] former member of the Legislative Council, and a supporter of cooperation with the British authorities as a means towards pursuing the interests of the local people, until a political solution was found.[86] Suspicions that this was a politically-motivated assassination were reinforced by his father-in-law's claims that Triantafyllides received threats against his life, unless he stopped serving on the Advisory Council.[87] A governing body established in November 1933, whose members were directly appointed by the colonial Government, and whose four Greek-Cypriot members were under attack for cooperating with the authorities.[88] One suspect was prosecuted for the crime and eventually acquitted, but it has been argued that the case set a precedent for similar assassinations in the following decades.[89]

During the Second World War, the colonial government took measures for the safety and welfare of the local population in anticipation of potential attacks given the Island's proximity to the Middle East. The territory of Cyprus was once again not directly affected by the hostilities, except for a failed Italian attack on British naval targets off the coast of the Island, on 22 September 1940.[90] By mid-October 1940, the first group of Cypriot volunteers to the Royal Army Service departed to join British forces in Egypt, and by early 1941 a total of 6,000 troops, comprising of Cypriots from

accurate, fails to reflect the oppressive sense entailed in the Greek term. See: Hatzivassiliou (n 78) 39.

[84] Andrekos Varnava, *Assassination in Colonial Cyprus in 1934 and the Origins of EOKA: Reading the Archives against the Grain* (Anthem Press 2021).

[85] Triantafyllides was defence counsel in the criminal prosecution of Bishop Leontios Savva of Paphos in November 1932; Pastella (n 71) 425-427.

[86] Pastella (n 71) 82.

[87] Hill, *History of Cyprus Vol IV* (n 50) 432-433; Pastella (n 71) 76-83.

[88] Hatzivassiliou (n 78) 40.

[89] A Varnava, *Assassination* (n 89) 53-60.

[90] Faustmann (n 82) 68.

various religious groups, had volunteered.[91] At the end of WWII, the position of the British vis-à-vis their Cyprus policy was difficult. *Enosis* was ruled out by the Colonial Office, thus, attention turned towards the establishment of a new internal constitution, despite the fact that the British were highly disappointed with the Legislative Councils of 1878-1931.[92]

Among the Greek-Cypriots and Greeks, public expectations for *enosis* were high considering that Greece and the UK had fought WWII on the same side, and many colonies and mandates were moving towards independence. This was not an absurd aspiration, considering that Britain had offered Cyprus to Greece in the early stages of WWI to ensure the latter's support.[93] That offer was initially rejected, and all other diplomatic efforts towards unification thereafter failed.[94] In 1947, Italy ceded to Greece the Dodecanese Islands in the Aegean,[95] most prominent among them being the Island of Rhodes, which shared more than few cultural and historical elements with Cyprus, including the fact that Rhodes was capital of the *villaet* (Ottoman territorial department) to which Cyprus had belonged to in 1878.[96] Archival evidence suggests that in 1947 thoughts about *enosis* were entertained by officials in the British Foreign Office, but these contravened the priorities set by the Colonial Office.[97]

The socio-political developments during the 82 years of British rule set the stage for the events which occurred in the aftermath of Cypriot independence. As Loizos has explained, the Cyprus Question is in fact 'several problems, differently

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[91] Anastasia Yiangou, 'Βρετανική Διπλωματία και Κυπριακό Ζήτημα, 1945-1950' (British Diplomacy and the Cyprus Issue) in Petros Papapolyviou, Aggelos Syrigos, Evanthis Hatzivassiliou (eds), *Το Κυπριακό και το Διεθνές Σύστημα, 1945-1974: Αναζητώντας θέση στον κόσμο* (The Cyprus Problem and the International System, 1945-1974: In search of a position in the world) (Patakis 2013) 23, 26; See also: Anastasia Yiangou, *Cyprus in World War II: Politics and Conflict in the Eastern Mediterranean* (IB Tauris 2010).

[92] Hatzivassiliou (n 78) 43.

[93] UNGA 'Application Under the Auspices of the United Nations, of the Principle of Equal Rights and Self-Determination of Peoples in the Case of the Population of the Island of Cyprus' (16 August 1954) UN Doc A/2703.

[94] Constantinos Loizou and Antonios Loizides, 'Ο Ελευθέριος Βενιζέλος και το Κυπριακό Πρόβλημα' (Eleftherios Venizelos and the Cyprus Problem) 69 *Χρονικό* (23 June 2019) 7-10.

[95] Treaty of Peace between the Allied and Associated Powers and Italy (signed 10 February 1947) 49 UNTS 747, Art 14.

[96] Filios Zannetos, *Ιστορία της νήσου Κύπρου: Από της αγγλικής κατοχής μέχρι το 1911 Vol 2* (First published in 1911, Epiphaniou 1997) (History of the Island of Cyprus: From the British occupation until 1911) 52; See also: Svatopluk (n 3).

[97] Yiangou, 'Βρετανική διπλωματία' (n 91) 27.

defined by different persons'.[98] At the same time, international law has its own separate history that interacts, is affected from, and contributes to the way internationally-relevant events unfold. Thus, leaving aside developments in Cyprus, we shall now turn to the ways WWII impacted the development of those branches of PIL which are most relevant to questions of war and peace.

2.3 1945-1949: War, Civil War, and Peace under the United Nations

Despite the minimum codification of the 'laws of war', the extent of the atrocities of WWII was unparalleled, and in between the end of WWII in Europe and the deployment of the atomic bombs in Japan, on 26 June 1945 the UN Charter was signed in San Francisco, with a renewed rhetoric for global peace and prosperity.

As a British colony, Cyprus participated in the UN infrastructure as a non-self-governing territory under article 73(e) of the UN Charter,[99] which gave minimum supervisory powers to the UN to collect technical and statistical information on economic, social, and educational issues.[100] In terms of law, the relationship between the domestic law of the colonies and the international legal order, was described as 'peripheral' to the domestic law of the colonising State, in this case the UK, supplemented with 'politics, with constitutional conventions and with international law'.[101] Thus, even though the exact relationship between a Crown colony and the UK was a matter of domestic law, those territories were constituent of the commonwealth network, which under international law took the form of a 'unitary State' held together by the Crown.[102]

2.3.1 The UN Collective Security System and Jus ad Bellum

The purposes and the principles of the UN are set in articles 1 and 2 of the UN charter, respectively. Even though their drafting history suggests that they were meant to be

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[98] Peter Loizos, *Unofficial Views: Cyprus: Society and Politics* (Intercollege Press 2001) 77; Peter Loizos, *Cyprus: Part Two: An Alternative Analysis* (Minority Rights Group, Report No. 30 1976).

[99] UNGA 'Transmission of Information under article 73E of the Charter' (14 December 1946) UN Doc A/RES/66(I).

[100] Ulrich Fastenrath, 'Chapter XI Declaration Regarding Non-self-governing Territories' in Bruno Simma and others (eds), *The Oxford Commentary on the Charter of the United Nations Vol 2* (3rd edn, OUP 2012) 1829, 1830.

[101] James E S Fawcett, 'Treaty Relations of British Overseas Territories' (1949) 26 *BYIL* 86, 89 citing Richard T E Latham, 'The Law and the Commonwealth' in William K Hancock (ed), *Survey of British Commonwealth Affairs Vol I: Problems of Nationality, 1918-1936* (OUP 1937).

[102] Fawcett (n 101) 91.

legally binding, this is contradicted by the highly political language of the text.[103] Rarely, however, in a political context, the one raising the argument is ready to accept what international lawyers have known all along: that these are provisions whose capacity to resolve conflicts among States as standalone rules of PIL, is extremely limited. Their primary objective is no other than to guide the conduct of the UN organs when deliberating solutions for problems of international concern.[104] As a result, whenever a legal argument is based on the purposes and the principles of the UN Charter, controversy arises.[105]

The maintenance of 'international peace and security' is considered the 'essential purpose' of the organisation,[106] and can be pursued through various policies and measures. Primary among them the implementation of collective security measures, and the 'adjustment or settlement' of international disputes.[107] The distinction between 'adjustment' and 'settlement' appears not to have attracted particular attention, yet it is of significant importance in the Cypriot case, where the UNSC has been 'adjusting' the ongoing dispute in relation to the Island since 1964, as discussed in detail in Chapter 4.[108] Thus, the purpose at this point, is to clarify the exact role of the UNSC under the UN framework of collective security, so as to distinguish this from the pool of other branches of PIL relevant to contexts of 'war and peace', addressed in the next sub-section.

A distinction between *jus ad bellum* and *jus in bello* has existed for centuries in a natural law, non-positivist context,[109] and when the first codified modern laws regulating warfare were introduced in the late nineteenth century, war was an acceptable means of resolving differences between adversaries.[110] War was only

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[103] Rüdiger Wolfrum, 'Article 1' in Bruno Simma and others (eds), *The Oxford Commentary on the Charter of the United Nations Vol 1* (3rd edn, OUP 2012) 107, 108.
[104] Ibid.
[105] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119 (UN Charter), arts 1 and 2.
[106] Wolfrum (n 103) 109.
[107] UN Charter, art 1(1); Wolfrum (n 103) 109-113; James N Hyde, 'The United Nations and the Peaceful Adjustment of Disputes' (1953) 25(2) *Proceedings of the Academy of Political Science* 80.
[108] See sections 4.2.3 and 5.3.1.
[109] Hugo Grotius, *The Rights of War and Peace* (First published in 1625, Richard Tuck ed, Liberty Fund 2005) (De Jure Belli ac Pacis) Books II and III; Carsten Stahn, '"Jus ad bellum", "jus in bello" "jus post bellum"? – Rethinking the Conception of the Law of Armed Force' (2007) 17(5) *EJIL* 921.
[110] See Sections 2.2.1.

formally 'outlawed' with the 1928 Kellogg-Briand Pact,[111] but as the Pact proved unsuccessful at the start of WWII a second attempt was introduced through the UN Charter. Thus, Article 2(4) of the UN Charter prohibits the 'threat or use of force against the territorial integrity or political independence of any State'. A provision broader in scope than the 1928 Kellogg-Briand Pact which explicitly outlawed 'war', and not 'use of force'.[112] Its significance is central to the long-term RoC position before the UNSC since it was given independence, as the Republic had been constantly reiterating the 'threat and use of force' by Turkey.[113]

Though a recognised customary norm of PIL and potentially also a *jus cogens* norm of PIL,[114] its exact interpretation has been long-debated, and its application in practice has been problematic. This is clearly illustrated by Hakimi and Cogan, who have suggested that the provision can be seen as enclosing (or justifying) two separate and opposing 'codes' of action.[115] The first, the 'institutional' one, is applied by formal international bodies and organisations aiming to completely restrict the unilateral recourse to force.[116] The second, the 'State code', describes how States in some cases may tolerate unilateral uses of force by other States.[117] Nuances like these are often observed, acknowledged and discussed among lawyers, but they are rarely admitted outside of academia.

The prohibition under article 2(4), is closely related to the customary principle of non-intervention in the internal affairs of the State. Some have equated the provision under article 2(7) as representative of the principle of non-intervention, but that particular provision only restraints *the UN as an organisation* from intervening in issues within the 'domestic jurisdiction of any State'.[118] Hence, article 2(7) is most clearly understood to apply in terms of the actions of the organs of the UN, including peacekeeping operations, such as the UNFICYP.[119] As far as *inter-state relations* are

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[111] General Treaty for the Renunciation of War (adopted 27 August 1928) (Kellogg-Briand Pact) <https://avalon.law.yale.edu/20th_century/kbpact.asp> accessed 8 November 2021.
[112] Albrecht Randelzhofer and Oliver Dörr, 'Article 2(4)' in Bruno Simma and others, *UN Charter Commentary Vol 1* (n 103) 200, 206-207.
[113] See section 3.2.1.
[114] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Judgement* [1986] ICJ Rep 14 [190]; Randelzhofer and Dörr (n 112) 203.
[115] Monica Hakimi and Jacob Katz Cogan, 'The Two Codes on the Use of Force' (2016) 27(2) *EJIL* 257.
[116] ibid 261.
[117] ibid 262.
[118] Georg Nolte, 'Article 2(7)' in Bruno Simma and others (eds), *UN Charter Commentary Vol 1* (n 103) 280, 284.
[119] ibid 304-305; See section 4.2.3.

concerned, the non-intervention principle is not mentioned as such in the UN Charter.[120] It rather derives directly from the classical principle of State sovereignty,[121] enshrined in article 2(1) of the Charter,[122] and it is also implied through the principle on the peaceful settlement of disputes in article 2(3).[123]

Non-surprisingly, the principle of non-intervention is not an absolute one. In the context of the UN, as the primary international organisation concerned with the maintenance of international peace and security,[124] the UNSC has been given powers to exercise collective action either through pacific settlement, like negotiation, mediation and good offices,[125] or through collective action to prevent 'threats to the peace', 'breaches of the peace' or 'acts of aggression',[126] under Chapter VII. Such action *may* entail the collective use of force coordinated by the UNSC, if other measures like economic sanctions, or the severance of diplomatic relations prove ineffective.[127]

Misgivings about the collective security system under Chapter VII had been expressed from the beginning. As the Cold War intensified, the UNSC tended to respond to civil conflicts based on political ideology and superpower motives, as opposed to abiding to a specific policy or legal norms.[128] This of course is in line with the fact that both the UNSC, and the UNGA are political organs, whereas the sole judicial, and therefore, exclusively law-oriented organ of the UN is the International Court of Justice (ICJ).[129]

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[120] Philip Kunig, 'Intervention, Prohibition of' in *MPEPIL* (April 2008) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1434?rskey=QpSev6&result=2&prd=OPIL> accessed 28 March 2021 para 9.

[121] *S.S 'Wimbledon' (UK, France, Italy, Japan v Germany)* [1923] PCIJ Series A, No 1; *S.S 'Lotus' (France v Turkey)* [1927] PCIJ Series A, No 10; Samantha Besson, 'Sovereignty' in *MPEPIL* (December 2009) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1472> accessed 28 March 2021.

[122] UN Charter, art 2(1); Gross (n 26).

[123] Kunig, 'Intervention, Prohibition of' (n 120) para 10.

[124] UN Charter, art 1(1).

[125] UN Charter, art 33.

[126] UN Charter, Art 39.

[127] UN Charter arts 31-43.

[128] Kirsti Samuels, *Political Violence and the International Community: Developments in International Law and Policy* (Martinus Nijhoff 2007) 2.

[129] Bhupinder S Chimni, 'The International Court and the maintenance of Peace and Security: The Nicaragua decision and the United States response' (1986) 35(4) *ICLQ* 960, 962.

Peacekeeping, however, is not a mechanism introduced by the UN Charter. Peacekeeping forces are rather a tool developed by the UN to enable limited collective action by the organisation in light of the political difficulties that existed during the Cold War to launch collective action in the way envisaged in Chapter VII. Following an experimental approach for most of the 1950s, it was the establishment of the UN Emergency Force (UNEF) during the 1956 Suez Crisis that led Dag Hammarskjold, UN Secretary-General at the time, to draft with the assistance of Brian Urquhart,[130] a document which enclosed 'certain basic principles and rules which would provide an adaptable framework for later operations'.[131] The very first principle sharply distinguished peacekeeping forces from action under Chapter VII, and explicitly required the consent of the host State in order to be deployed on its territory, in line with the principle of sovereignty.[132] To date, there is no exact legal definition for 'peacekeeping', but form and structure has changed over the decades, with forces after 1990 considered generally more 'multidimensional' and 'complex'.[133]

When UNFICYP was established,[134] in a statement which played down the limited but fundamental role military components play in peacekeeping, U Thant, UN Secretary-General from 1961 to 1971, had explicitly mentioned that the establishment of UNFICYP did not constitute collective action against aggression[135] under Chapter VII, but instead it was:

> an attempt on the international level to prepare the ground for the permanent, freely agreed solution of a desperate and dangerous situation by restoring peace and normality. The nature of this operation is far nearer to a preventive and protective police action; it is not repressive military action.[136]

[130] Brian Urquhart, *A Life in Peace and War* (Weidenfeld and Nicolson 1987) 137-138.
[131] UNGA Summary study of the experiences derived from the establishment and operation of the Force: Report of the Secretary General (9 October 1958) UN Doc A/3943 paras 154, 154-193.
[132] ibid para 155.
[133] Michael Bothe, 'Peacekeeping' in Bruno Simma and others, *UN Charter Commentary Vol 1* (n 103) 1171, 1178-1182.
[134] The Cyprus Question, UNSC Res 186 (4 March 1964) para 4.
[135] It was only in 1974 that the UNGA agreed on a definition of 'Aggression' for a first time. See: Definition of Aggression, UNGA Res 3314 (XXIX) (29 November 1974).
[136] Linda Miller, *Cyprus: The Law and Politics of Civil Strife* (Center for International Affairs, Harvard University 1968) 34 citing UN Press Release SG/SM/76, 26 May 1964.

UNFICYP is considered a subsidiary organ of the UN[137] and, in today's terms, a 'first generation' peacekeeping force. The type of simple peacekeeping forces introduced during the Cold War, primarily tasked with observing developments and maintaining ceasefire lines.[138] UNFICYP is just the eighth such force to have been established by the UNSC, and the third longest-serving to date.[139] Hence, many of the limitations it faced in the 1960s were relevant to broader problems the UN had to overcome then.[140]

More details on UNFICYP's establishment and action are examined in chapters 4 and 5. However, it is worth noting here that following the adverse experience in Vietnam and the civil war in Nigeria, by the end of the 1960s the situation in Cyprus had been generally assessed as a fairly successful case of UN intervention in confining violence.[141] As seen by the end of the present thesis, however, the confining of violence on its own is not to be interpreted as successfully resolving an ongoing dispute. The problem with many of the internal conflicts that were ongoing at the time, among which Falk also included Cyprus, was the limited ability international law had to drive 'effective legal regulation', since States did not use international law for the forming of policies, but as a means to establish a 'verbal position in relation to critics'.[142] Though this observation still holds at least some true today, as seen below, this practice was particularly prevalent during the decolonisation period.

2.3.2 International Criminal Law, International Human Rights Law and Jus in Bello

The Interwar and the immediate aftermath of WWII saw rapid developments in three distinct but interlinked areas of PIL, relevant to but separate from the use of force.

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[137] UNA, S-0869-0001-07-00001, *Items-in-Peace-keeping operations – Cyprus - United Nations Force Regulations*, *07 April 1964*, UN Doc No. ST/SGB/UNFICYP/1, 25 April 1964 (Released 6 June 2006) <https://search.archives.un.org/united-nations-force-regulations-2> accessed 28 September 2021; The regulations were effective as of 10 May 1964, intending to continue 'the policies and practices which have been followed in respect of the Force since it came into existence'.

[138] Ralph Wilde, 'Taxonomies of International Peacekeeping: An Alternative Narrative' (2003) *ILSA Journal of International and Comparative Law* 391, 392.

[139] UN, List of Peacekeeping Operations 1948-2020 <https://peacekeeping.un.org/sites/default/files/un_peacekeeping_operation_list_3_2.pdf> accessed 6 June 2021.

[140] See section 4.2.3.

[141] Richard A Falk, *The International Law of Civil War* (Johns Hopkins Press 1971) 8.

[142] ibid 4-6.

Due to their subject matter these areas of PIL are sometimes indistinguishable in non-legal discourse, despite the fact that each has separate objectives, targets different people, and may vary regarding enforcement and accountability measures. In the chronological order of development after WWII, these are the fields of ICL, IHRL, and IHL. The present sub-section aims at briefly introducing and distinguishing between the three, since rarely the meaning of the subtle differences that exist have been addressed consistently in the Cypriot context.

To mitigate the ever-present risk of anachronism in the present research, it is important to make two clarifications at the outset. Firstly, that up to 1945 individuals were *not* considered subjects of PIL, and therefore, they had no obligations and held no rights under international law.[143] This is in direct contrast to the way humanitarian and human rights issues are addressed today, where there is an emphasis on a rhetoric of individual rights and liberties. Moreover, the 1958-1968 chronology falls in a peculiar period of PIL where there was a lack of clarity on many aspects of these areas of law. Secondly, when dealing with legal matters within a historical context, one needs to be constantly aware of the complex relationship law has with time, both philosophically and practically. For whereas history is more comfortable with looking to the past, the law is primarily expected to pre-empt the 'myriad cases that are always still to come'.[144] This is evident by the general principle of legality which forbids the retroactive application of the law, and the criminal law principle *nullum crimen sine lege*.[145]

Under general PIL, the non-retroactive application of the law is a conventional rule under the 1969 Vienna Convention on the Law of Treaties (VCLT),[146] and a customary rule under the doctrine of intertemporal law. [147] Temporality always plays central role in legal cases of historical relevance, such as issues pertaining to past

[143] Criton G Tornaritis, *The Individual as a Subject in International Law* (PIO 1972) 16-18; Malcolm N Shaw, *International Law* (8th edn, CUP 2017) 204-205.
[144] Costas Douzinas, 'Theses on Law, History and Time' (2006) 7(1) *Melbourne Journal of International Law* 13.
[145] International Bill of Human Rights: Universal Declaration of Human Rights, UNGA Res 217 A(III) (adopted 10 December 1948) (UDHR), art 11(2); William A Schabas, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals* (OUP 2012) 47-50.
[146] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), art 4; Frédéric Dopagne 'Article 4' in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) 79.
[147] *Island of Palmas Case (USA v Netherlands)* II RIAA 829; Taslim Olawale Elias, 'The Doctrine of Intertemporal Law' (1980) 74(2) *AJIL* 285, 286.

atrocities[148] or post-colonial questions on sovereignty.[149] Though a relatively simple concept, rules on temporality are subject to technical complexity in their practical application, which requires careful consideration of various details attaching to the facts of a case. Hence, even though issues of retroactivity have been considered in this thesis where relevant, the level of detailed examination that would be necessary shall the questions arising here were before a tribunal has not been undertaken.

Turning to the three interrelated branches of PIL, ICL is referred to as an 'amalgam' of international and criminal law,[150] aiming to allocate direct criminal responsibility to *individuals* for past violence.[151] Early efforts to try individuals for criminal acts relevant to war were discussed in regard to German Kaiser Wilhelm II, at the 1919 Paris Peace Conference.[152] In terms of Greco-Turkish relations, it is worth mentioning that the 1920 Treaty of Sèvres, which never came into force, envisaged the prosecution of 'persons accused of having committed acts in violation of the laws and customs of war' in Turkey, in the aftermath of WWI.[153] A fact that could have had considerable impact on later developments in Cyprus and the broader region. As these post-WWI efforts never took shape in practice, the next opportunity to implement individual prosecution for war atrocities arose with the end of WWII, at the International Military Tribunals (IMTs) in Nuremberg and Tokyo in 1946.[154]

ICL is directly linked to IHL since under the 1949 Geneva Conventions, specific acts constituting 'grave breaches',[155] were codified as 'war crimes' in 1998

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[148] William A Schabas, 'Retroactive Application of the Genocide Convention' (2010) 4(2) *University of St. Thomas Journal of Law and Public Policy* 36; Andreas von Arnauld, 'How to Illegalize Past Injustice: Reinterpreting the Rules of Intertemporality' (2021) 32(2) *EJIL* 401.
[149] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion* [2019] ICJ Rep 95; Steven Wheatley, 'Revisiting the Doctrine of Intertemporal Law' (2021) 41(2) *Oxford Journal of Legal Studies* 484.
[150] Robert Cryer, 'International Criminal Law' in Malcolm D Evans (ed), *International Law* (3rd edn, OUP 2010) 752, 754.
[151] ibid 752.
[152] William A Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd ed, OUP 2012) 1-2.
[153] ibid 3; Treaty of Sèvres (1920) UKTS 11, arts 226-227.
[154] Charter of the International Military Tribunal (adopted 8 August 1945) 82 UNTS 284 (Nuremberg Charter); Charter of the International Military Tribunal for the Far East (adopted 19 January 1946) (Tokyo Charter) < https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf> accessed 1 December 2021.
[155] Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in armed Forces in the Field (adopted on 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (GCI), art 50; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August

under the Rome Statute on the establishment of a permanent International Criminal Court.[156] Other international crimes under the same instrument include also 'Genocide',[157] 'Crimes against humanity',[158] and 'Aggression'.[159] This codification is not of course applicable to events in 1958-1968. At the time, the 1949 Conventions provided that the onus remained with each 'High Contracting Party' to 'enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention'.[160] These provisions, however, are only applicable under an *international armed conflict* (IAC), meaning a 'declared war or any other armed conflict' between two or more States.[161]

It is exactly at this point where the distinction between a NIAC and an IAC is of high importance, since under GCs 1949, no 'international crimes' were recognised under NIAC.[162] The sole provision on NIACs under the 1949 GCs, common article 3 (CA3),[163] in paragraph (1)(d) prohibits the passing of sentences and executions, 'without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples'.[164]

1949, entered into force 21 October 1950) 75 UNTS 85 (GCII), art 51; Geneva Convention III relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (GCIII), art 130; Geneva Convention IV relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GCIV), art 147.

[156] Rome Statute of the International Criminal Tribunal (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute), art 8(2)(a); Anthony Cullen, 'War crimes' in William A Schabas and Nadia Bernaz (eds), *Routledge Handbook of International Criminal Law* (Routledge 2013) 139.

[157] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Genocide Convention); Rome Statute, art 6; Paola Gaeta, 'Genocide' in Schabas and Bernaz (n 156) 109.

[158] Margaret M deGuzman, 'Crimes against humanity' in Schabas and Bernaz (n 156) 121.

[159] UNGA Res 3314 (XXIX); Rome Statute, art 8bis; Claus Kreß and Leonie von Holtzendorff, 'The Kampala Compromise on the Crime of Aggression' (2010) 8 *Journal of International Criminal Justice* 1179; Nicolaos Strapatsas, 'Aggression' Schabas and Bernaz (n 156) 121; Dapo Akande and Antonios Tzanakopoulos 'Treaty Law and ICC Jurisdiction over the Crime of Aggression' (2018) 29(3) *EJIL* 939.

[160] GCs I-IV, arts 49/50/129/146.

[161] GCs I-V, common art 2.

[162] William A Schabas, 'Non-State Actors and International Law' in Andrea Bianchi (ed), *Non-State Actors and International Law* (Ashgate 2009) 465, 474-475.

[163] For the full text of CA3 see Annex I to the present thesis.

[164] GCs I-IV 1949, CA3(1)(d); Jean Pictet, *Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC 1952) 54; ICRC, *Commentary on the First Geneva Convention for the Amelioration of*

A guarantee that needs to be provided for by the criminal justice system of the State on whose territory the NIAC takes place. Therefore, in terms of prosecutions for crimes committed in the RoC during the period addressed in the present research, jurisdiction remained at all times with the RoC criminal justice system.[165]

For historical clarity, it is worth mentioning that the sole exception at the time was the 1948 Genocide Convention. which made genocide an international crime punishable during peacetime and IACs,[166] and provided that suspects could be tried 'by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction'.[167] The reference to 'peacetime' in this instance is understood to also entail NIACs, since NIACs do not include inter-state armed conflict.[168] The very term 'genocide' was coined during WWII by ICL scholar Raphael Lemkin,[169] in the context of the persecution of minorities in the first half of the twentieth century, which reached a climax during WWII.[170]

Though allegations for 'genocide' appear sporadically in the historical record regarding the events examined in the present thesis,[171] it must be mentioned that the RoC only acceded to the Convention on 29 March 1982, and it has not yet ratified it.[172] Therefore, the Convention is not applicable on the territory of the RoC in the period 1958-1968 under conventional law, albeit a more extensive examination under customary international law may suggest that other relevant customary laws are.

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the Condition of the Wounded and Sick in Armed Forces in the Field (CUP 2016) para 683-688.

[165] See sections 3.3.3 and 5.3.2.

[166] Genocide Convention, art I.

[167] ibid art VI.

[168] Schabas, 'Non-State Actors' (n 162) 477.

[169] William A Schabas, *Genocide in International Law: The Crime of Crimes* (2nd edn, CUP 2009) 2 citing Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for World Peace 1944).

[170] Schabas, *Genocide in International Law* (n 169) 26-35.

[171] Zaim M Necatigil, *The Cyprus Question and the Turkish position in International Law* (2nd edn, OUP 1993) 44; See section 4.2.2.

[172] State Parties to the 1948 Genocide Convention <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en> accessed 20 December 2021; On a discussion on 'accession' and 'ratification' in the Cyprus context see sections: 3.2.2 and 5.2.4.

Lastly, the State responsibility doctrine, which has been on the agenda of the International Law Commission (ILC) on several occasions since 1956,[173] is directly relevant to complex questions surrounding the identification of fundamental norms of PIL, and how they interact with each other; namely, *jus cogens* norms,[174] *erga omnes* obligations,[175] and their interaction with obligations under ICL.[176] Acts giving rise to 'grave breaches' under the 1949 GCs and in breach of the minimum guarantees under CA3, give rise to debates relevant to the above three categories of fundamental norms.[177] Though this is acknowledged here, the present thesis does not engage with the doctrine of State responsibility in more detail, as its application under IHL and ICL has traditionally been quite controversial, whereas, in addition, many later developments are not relevant to the present chronology.

Regarding IHRL, Mazower has traced the development of human rights to the League of Nations' failure to protect minorities in Europe in the years leading up to WWII.[178] This is indicative of the continuity in the humanitarian trend of the late 19th century. After WWII, on 10 December 1948, the UNGA adopted Resolution 270(III), the 1948 Universal Declaration of Human Rights (UDHR). A comprehensive 'International Bill of Human Rights',[179] which UN member States did not wish to be legally binding,[180] but debates on its status under CIL has persist since its adoption.[181] The UDHR aimed to recognise the 'inherent dignity' and 'equal and inalienable rights of all members of the human family' as foundational for 'freedom, justice and peace

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[173] James Crawford, 'State Responsibility' *MPEPIL* (September 2006) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1093?prd=OPIL> accessed 22 August 2021 para 6.

[174] VCLT, arts 53 and 64; *Nicaragua* (n 114) [190].

[175] *Barcelona Traction, Light and Power Co Ltd (Belgium v Spain)* [1970] ICJ Rep 3; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* [2004] ICJ Rep 136.

[176] Stefan Kadelbach, '*Jus Cogens,* Obligations *Erga Omnes* and other Rules – The Identification of Fundamental Norms' in Christian Tomuschat and Jean-Mark Thouvenin (eds), *The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes* (Martinus Nijhoff 2006) 21.

[177] ibid 37-40.

[178] Mark Mazower, 'The strange triumph of human rights, 1933-1050' (2004) 47(2) *The Historical Journal* 379.

[179] UDHR, Title.

[180] Philip Alston and Frédéric Mégret, 'Introduction: Appraising the United Nations Human Rights Regime' in Frédéric Mégret and Philip Alston (eds), *The United Nations and Human Rights: A Critical Appraisal* (2nd edn, OUP 2020) 1, 8.

[181] William A Schabas, *The Customary International Law of Human Rights* (OUP 2021) 15-18.

in the world'.[182] Two years later, the European Convention on Human Rights (ECHR)[183] was passed in Europe, and it obtained particular significance for Cyprus' anti-colonial struggle.[184]

IHRL instruments do not in principle contain provisions of ICL and individual criminal responsibility, but the issue is indirectly regulated by holding States accountable for failures to protect human rights.[185] Exceptions to the rule do exist,[186] however, among them the Genocide Convention of 1948 mentioned above, and the 1966 Convention on the Elimination of All Forms of Racial Discrimination,[187] the 1973 Apartheid Convention,[188] and the 1984 Convention Against Torture,[189] which were adopted after the chronology examined here. Overall, the literature recognises three distinct, but cumulative, phases of human-rights-related activity at the UN. The 'setting-standard' period (1947-1954), the human rights 'promotion' period (1955-1966), and the 'protection period (post-1967).[190] Like other areas of PIL, during the Cold War IHRL was 'paralysed', with the exception of few twentieth century core international problems, such as the apartheid regime in South Africa, and the occupation of Palestine.[191] The present research, therefore, falls primarily within the 1955-1966 period, and as seen in the following chapters, the fact that human rights at the time were not afforded the same level of protection one would expect today, was definitive in how the later narrative on Cyprus developed.

Among ICL, IHRL and IHL, the latter is in fact the oldest regime in contemporary PIL.[192] With WWII interrupting the process of codifying additional laws

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[182] UNDHR, Preamble.
[183] Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS No. 5 (ECHR).
[184] Brian Drohan, *Brutality in an Age of Human Rights: Activism and Counterinsurgency at the End of the British Empire* (Cornell University Press 2018) 10-11.
[185] Schabas, 'Non-State Actors' (n 162) 466.
[186] ibid 466-467.
[187] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195.
[188] International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243.
[189] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.
[190] Alston and Mégret (n 180) 8.
[191] ibid.
[192] Geneva Convention on the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (27 July 1929) <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=09DFB7A98E19533AC12563CD002D6997> accessed 1 December 2021; Geneva Convention

on the conduct of hostilities and the protection of those *hors de combat*, work on the matter resumed in July 1946, but it took three more years until the 1949 Geneva Conventions relating to the Protection of Victims of Armed Conflict (GCs I-IV) were adopted.[193] In the meantime, WWII had brought the ICRC at the brink of bankruptcy, while new conflicts, such as the Greek Civil War (1946-1949) and the Korean War (1950-1953), further drained the organisation's limited resources.[194] Hence, for most of the 1950s and the 1960s, while the organisation never ceased its field operations, the ICRC was nearly bankrupt, under-stuffed and demoralised. It is under these circumstances that ICRC one-man delegations were present in Cyprus from January 1964 to December 1965. Things for the ICRC only started improving during the 1967 Six-Day War in Israel/Palestine and the Nigerian Civil Biafran War,[195] at a point where a general shift on humanitarian matters and PIL started being observed.

This change was initiated with the organisation of the UN International Conference on Human Rights in Tehran, in 1968,[196] which by the end of that year led the UNGA to adopt Resolution (XXIII) on the 'Respect for human rights in armed conflicts', directly linking IHRL to the Geneva and Hague rules of IHL.[197] In an article published on the occasion of the 20th anniversary from the signing of the 1949 GCs, Jean Pictet, one of the main drafters of the 1949 Conventions, held the view that IHL 'describe[d] the large body of public international law derived from humanitarian sentiments and centred upon the protection of the individual', whereas 'human rights' was a second branch of humanitarian law, additional to the 'law of war'.[198] It appears that historians and international lawyers today agree that in the first half of the twentieth century, what we refer today to as IHRL and IHL were far more closely

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Relative to the Treatment of Prisoners of War 1929 (27 July 1929) <https://ihl-databases.icrc.org/ihl/INTRO/305> accessed 1 December 2021; See section 2.2.1.

[193] For a detailed timeline and primary sources on the drafting history of the 1949 GCs see: ICRC, *'Tableau synoptique chronologique des différentes réunions'* (*Cross-files*, 12 August 2017) <https://blogs.icrc.org/cross-files/drafting-history-1949-geneva-conventions/> accessed 13 November 2021.

[194] Palmieri, 'Standing the Test of Time' (n 40) 1286-1290.

[195] ibid 1288; Georg Nolte, 'The Different Functions of the Security Council with Respect to Humanitarian Law' in Vaughan Lowe and others, *The United Nations Security Council and War: The evolution of thought and practice since 1945* (OUP 2010) 519, 520.

[196] 'Final Act of the UN International Conference on Human Rights' (Teheran, 22 April to 13 May 1968) UN Doc UN, A/CONF.32/41.

[197] Respect for human rights in armed conflicts, UNGA, Res 2444(XXIII) (19 December 1968) para 5.

[198] Jean Pictet, 'The need to restore the laws and customs relating to armed conflicts', 102 *IRRC* (1969) 459.

integrated, than what following practical application suggests.[199] The drifting apart between the two was enhanced by the proliferation of regional instruments on human rights such as the ECHR, and the establishment of a parallel IHRL regime, through the adoption of the 1966 Covenants.[200]

Debates on IHL being a *lex specialis* that assumes precedence over *lex generalis* IHRL in times of armed conflict,[201] have not taken place in Cyprus, where IHRL has been the preferred course of legal action. It is estimated here that this comes as a result of various factors, notwithstanding a piecemeal approach to PIL, which for decades has prioritised IHRL,[202] but also the limited options for recourse to other formal bodies in the period during which the totality of the events relevant to the Cyprus conflict(s) unfolded, up to 1974.

This in turn has been further enabled through the historical lack of clarity presented above, the fragmentation of PIL, and the long-term approach of the European Court of Human Rights (ECtHR) to not address issues of IHL.[203] Incidentally, the latter point is linked to the first inter-state case under the ECHR, which also happens to concern Cyprus.[204] Lastly, in terms of politics, IHL is not concerned with *jus ad bellum* and who is to be held responsible for initiating the conflict, but it focuses on who is responsible for acts endangering those protected under IHL,

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[199] Katharine Fortin, 'Complementarity between the ICRC and the United Nations and International Humanitarian Law and International Human Rights Law, 1948-1968' (2012) 94 (888) *IRRC* 1433; Amanda Alexander, 'A Short History of International Humanitarian Law', (2015) 26 (1) *EJIL* 109; Boyd Van Dijk, 'Human rights in war: On the entangled foundations of the 1949 Geneva Conventions' (2018) 112(4) *AJIL* 553; See section 2.4.2.

[200] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

[201] *Legality of the Threat of Use of Nuclear Weapons, Advisory Opinion* [1996] ICJ Rep 226; *Wall Advisory Opinion* (n 175); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* Judgement [2005] ICJ Rep 1968.

[202] eg *Cyprus v Turkey* (Application Nos 6780/74, 6950/75) Report of the European Commission of Human Rights, 10 July 1976; *Cyprus v Turkey* (Application No 8007/77), Report of the European Commission of Human Rights, 4 October 1983; *Loizidou v Turkey* (Application No 15318/89), Judgment (Grand Chamber), 18 December 1996; *Cyprus v Turkey* (Application No 25781/94) Judgment (Grand Chamber), 10 May 2021; *Cyprus v Turkey* (Application No 25781/94) Judgment (Just Satisfaction), 12 May 2014.

[203] Bill Bowring, 'Fragmentation, "*Lex Specialis*" and the Tensions in the Jurisprudence of the European Court of Human Rights' (2009) 14(3) *Journal of Conflict and Security Law* 485; René Provost, *International Human Rights and Humanitarian Law* (CUP 2002).

[204] *Greece v UK* (Application No 176/56) Report by the European Commission of Human Rights, 26 September 1958; See section 2.4.2.

regardless of whether the use of force as such can be legally justified.[205] Subsequently, a government cannot invoke IHL violations by the opponent State or fighting group, without anticipating their opponent to turn a mirror back on them.

This sub-section started with a reference to the criminal responsibility held by individuals. Then, IHL and IHRL, too, focus primarily on acts that either are perpetrated by or target individuals. This, however, does not absolve *States*, the primary subjects of PIL, from responsibility. A State can be held liable under the doctrine of State responsibility, and if an international crime is committed by 'an agent of a State', meaning a high-ranking official of that State, then the same act may be attributable to the State, as well.[206] However, since a State's responsibility under PIL depends on its obligations under conventional and CIL in each particular case, at a particular point in time, there is no 'uniform code […] reflecting the obligations of all States'.[207]

The above unclarity in the relationship between IHL, ICL and IHRL had a direct impact on the Cypriot narrative regarding the period studied here, which stops at March 1968, a month before the Tehran Conference took place. The later 'quest for justice' in the Cyprus context included scuttered elements of all three of the above interrelated branches of PIL, without any efforts to systematise the various legal arguments. There are dangers in a narrative that 'mixes everything' and blurs the line separating 'ordinary human rights violations' and violations that threat or breach international peace and security.[208] This approach allows 'dubious interventionist agendas', becoming virtually inoperative and blurring the separate responsibilities. Hence, it is this 'blurring' that the present thesis seeks to detangle, using CA3 as a starting point.

2.3.3 Civil War and Non-international Armed Conflicts

Historically, even though sovereigns had developed a common code of customary rules regulating wars among themselves, such respectful conduct was not afforded to their own subjects when the latter rebelled against the sovereign's authority.[209]

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[205] William A Schabas, '*Lex Specialis*? Belt and suspenders? The parallel operation of human rights law and the law of armed conflict, and the conundrum of *jus ad bellum*' (2007) 40(2) *Israeli Law Review* 592, 593-594.

[206] Robert Cryer and others, *An Introduction to International Criminal Law and Procedure* (CUP 2007)11-12.

[207] Crawford, 'State Responsibility' (n 173) para 2.

[208] Frédéric Mégret, 'The Security Council' in Mégret and Alston (n 180) 39, 97-98

[209] Bugnion (n 28) 176.

Even today, States are reluctant to accept that the threshold of a civil war has been reached, in the belief that this would constitute an acknowledgement towards legitimating opposition forces; a fundamental obstacle to the effective implementation of IHL in NIACs.[210] One often-met example in the literature, for instance, is the UK's denial of the existence of a NIAC in the context of Northern Ireland.[211]

The above two sub-sections aimed at presenting the breadth of legal norms and doctrines that are relevant in cases of armed conflict, international or internal. As the present research focuses on CA3 of the 1949 GCs, we shall now turn exclusively on the concept of 'civil war', or according to the 1949 Conventions 'NIAC'. This is an overview of the article's historical background, and the main elements of this complicated IHL 'Convention in miniature'.[212]

In classical international law the laws and customs of war recognised three distinct categories of civil war. In order of intensity, these were a 'rebellion',[213] which involved violence of limited duration and could be easily suppressed by a State's law enforcement agencies, without the involvement of the military.[214] A rebellion would become an 'insurgency',[215] if violence expanded in terms of duration, geographical scope, and numbers, and the government became increasingly unable to control it.[216] Thus, whereas the actions of the 'rebels' were subject to ordinary criminal law, an insurgency was characterised by a 'fluidity' between the insurgents and the State, with no objective criteria defining a situation as an insurgency.[217] During a rebellion, other States were prohibited from assisting the rebels as that would amount to interfering in the domestic affairs of the State dealing with a rebellion, whereas during an insurgency, insurgents could form 'a factual relation' with outside States, 'for reasons of convenience, of humanity, or of economic interest'.[218]

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[210] Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 82; Crawford and Pert (n 22) 16.
[211] Marko Milanovic, 'The Applicability of the Conventions to 'Transnational' and 'Mixed Conflicts' in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) 27, 48.
[212] Pictet, *Commentary GCI 1952* (n 164) 48.
[213] Terms for 'rebellion' in Greek: επανάσταση, εξέγερση, ανταρσία; See: Harry Caratzas and Helene Zombola, *Greek-English Dictionary of Law Terms* (Nomiki Vivliothiki 2003) 196.
[214] Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (OUP 2012) 9-10
[215] Caratzas and Zombola provide no translation for 'insurgency', but 'insurgent' is translated as επαναστάτης, στασιαστής. See: Caratzas and Zombola (n 213) 141.
[216] Sivakumaran (n 214) 9-10.
[217] ibid.
[218] ibid 10 citing Hersch Lauterpacht, *Recognition in International Law* (CUP 1947) 277

At the last stage of 'belligerency', violence would reach such levels that the relationship between the government and the belligerent party would be regulated by the law of war.[219] The same doctrine applied to 'revolutions'.[220] Belligerency was subject to recognition of the situation as such based on four criteria: (i) an ongoing civil war, accompanied by general hostilities, (ii) occupation and 'orderly administration of a substantial part of national territory' by the insurgents, (iii) observance of the rules of warfare on the part of the insurgents, and (iv) the need for third States to expressly define their position vis-à-vis the civil war.[221] According to Lauterpacht, the last criterion was necessary to ensure protection from abuse of 'a gratuitous manifestation of sympathy with the cause of the insurgents',[222] but it was also a means to enable third States to protect their own interests if they were affected by the civil war;[223] especially if they were a neighbouring State, or when maritime aspects were involved, since the recognition of belligerency would give neutral States protection from potential harm, while conducting commercial activities at sea.[224] By the early 1970s, however, these criteria were considered by some 'misleading', since there were no procedures for third-party actors to estimate the situation, and governments would define their relationship with insurgent factions depending on 'political preferences' as opposed to any other set of criteria.[225]

The above formula was applied during the 19th century, and yet, there are few recognised instances of belligerency. One of them was the Greek War of Independence, and various others concerned conflicts in Latin America during the same period.[226] Formal recognitions of insurgency and belligerency have not been recorded in the early twentieth century. Examples include the Spanish Civil War (1936-1939), but also the Nigerian Civil War (Biafra War) in 1967, even though in the latter case the Nigerian Federal Government had issued a formal Declaration of War.[227] Both of these latter conflicts played a significant part in the development of IHL. The ICRC's experience in Spain, reinforced the organisation's efforts to ensure

[219] Sivakumaran (n 214) 10.
[220] Kathryn Greenman, 'Common Article 3 at 70: Reappraising Revolution and Civil War in International Law' (2020) 21(1) *Melbourne Journal of International Law* 88 (unpaginated version)
[221] Lassa Oppenheim, *International Law: A Treatise Vol II: Disputes, War and Neutrality* (Hersch Lauterpacht ed, 7 edn, Longmans 1952) 249.
[222] ibid 249-250.
[223] Greenman (n 220).
[224] ibid.
[225] Falk (n 141) 12.
[226] Sivakumaran (n 214) 17
[227] ibid.

the protection of civilians in internal conflicts, with WWII interrupting such efforts,[228] while the Nigerian Civil War was a definitive moment that led to innovation in ICRC practices and the broader humanitarian sector.[229] The Nigerian conflict catalysed the reform of IHL in the 1970s, which led to the adoption of Additional Protocols I and II to the 1949 GCs in 1977.[230]

The ICRC first attempted to draw attention to the humanitarian needs arising during civil war as early as the 1912 International Red Cross Conference, but the delegates refused to give the matter any consideration.[231] Hence, CA3 is the first legal codification of rules addressing conduct during NIACs under PIL.[232] To some CA3 was 'revolutionary', and to others a 'legal heresy'.[233] To Jean Pictet it was an 'almost unhoped for extension' to common article 2,[234] which provides that the 1949 GCs 'shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties'. Like common article 2, CA3 is identical in all four 1949 GCs, safe for the addition of the word 'shipwrecked' in the second 1949 Convention.[235] Despite efforts to set specific criteria for what would constitute a NIAC during the drafting process of the 1949 Conventions, the text

[228] Draft International Convention on the Condition and Protection of Civilians of Enemy Nationality Who are on Territory Belonging to or Occupied by the Belligerent (Tokyo Draft) 1934 <https://ihl-databases.icrc.org/ihl/INTRO/320?OpenDocument> accessed 1 December 2021; Draft Convention for the Protection of Civilian Populations against new Engines of War (Amsterdam Draft) 1938 < https://ihl-databases.icrc.org/ihl/INTRO/345%3FOpenDocument> accessed 1 December 2021; van Dijk, 'Human Rights in War' (n 199) 553, 565-566.

[229] Marie-Luce Desgrandchamps, '"Organising the unpredictable": the Nigeria-Biafra War and its Impact on the ICRC' (2012) 94 *IRRC* 1409.

[230] Geneva Protocol I Addition to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (API); Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (APII).

[231] David A Elder, 'The Historical Background of Common Article 3 of the Geneva Convention of 1949' (1979) 11(1) *Case Western Reserve Journal of International Law* 37, 41.

[232] Lindsay Moir, 'The Concept of Non-International Armed Conflict' in Andrew Clapham and others (n 211) 391.

[233] Greenman (n 220).

[234] Pictet, *Commentary GCI 1952* (n 164) 38.

[235] Jean Pictet, *Commentary on the Second Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (ICRC 1960) 36

contains little information, other than these being 'armed conflict not of an international character'.[236]

In Pictet's 1952 Commentary, some indicative, non-binding, criteria were given to help assess whether the 'threshold' for a NIAC under CA3 was crossed by the level of violence observed. The first criterion required the existence of an armed group revolting against the de jure government. Such a group should possess an organised military force, acted under specific authority and within a determinate territory, with 'the means of respecting and ensuring respect for the Convention'.[237] A second criterion addressed the government, stating that given the level of violence the government would be 'obliged' to have recourse to the 'regular military forces'.[238] Other indicators for an ongoing NIAC would be the recognition of the revolting group as belligerents, the fact that the dispute was on the agenda of the UNSC or the UNGA as a 'threat to international peace, a breach of peace or an act of aggression', or the insurgents had obtained the characteristics of a State, such as the exercise of '*de facto* authority over persons within a determinate territory'.[239]

The obligation not to act in a way that is prohibited under the article is absolute and there is no reciprocity clause. In theory therefore, whereas government forces had no option but to comply with CA3, the insurgent party would still have a choice.[240] In practice, if the insurgents did apply CA3 it would benefit the civilians and those *hors de combat*, and if not, then that would be used against them, as it would have an obvious impact on the image of the insurgent party, who unless they are serious about their international obligations, they would fail to convince other actors, like UNSC members for instance, of being in control of the situation.[241]

The four commentaries, published from 1952 to 1960, are almost identical in terms of CA3. However, the one on GCIII published in 1960, States in more certain terms that 'Applications by […] the [ICRC] for permission to engage in relief work have more than once been treated as unfriendly attempts to interfere in the domestic affairs

[236] Moir, 'Concept of NIAC' (n 232) 392.
[237] Pictet, *Commentary GCI 1952* (n 164) 49.
[238] ibid.
[239] ibid 49-50.
[240] ibid 51.
[241] Pictet, *Commentary GCI 1952* (n 164) 51-52.

of the country concerned'.[242] Indeed, by the early 1960s concerns over the 'inadequacy' of CA3 increased:

> For, whilst Article 3 is too brief, the Geneva Conventions taken as a whole appear too detailed and too complex to be applied in internal conflicts in which the opposing forces very often refuse to recognize each other.[243]

In early recognition of the problems posed by the ambiguity of CA3, the ICRC convened three Expert Commissions to give opinions on specific questions relevant to CA3, in 1953, 1955 and 1962, which dealt with (i) political detainees, (ii) the application of humanitarian principles in 'internal disturbances', and (iii) the availability of aid to victims of said disturbances, respectively.[244] Hence, when the third Expert Commission was asked 'In which cases is article 3 legally applicable?', the 1962 Commission, offered some additional clarity, reflecting what Pictet had written a decade earlier:

> a minimum amount of organisation, […] the length of the conflict, the number and framework of the rebel groups, their installation or action on a part of the territory, the degree of insecurity, the existence of victims, the methods employed by the legal government to re-establish order, etc.[245]

Among the members of all three Expert Commissions was Professor Nihat Erim,[246] who presided over the 1962 Commission, and three years earlier was member of the Turkish/ Turkish-Cypriot drafting team for the RoC Constitution. In the 1962 Commission, he was joined by Greek Law Professor George Tenekides, who also

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[242] Jean Pictet, *Commentary on the Third Geneva Convention relative to the Treatment of Prisoners of War* (ICRC 1960) 29.

[243] Boško Jakovljević and Jovića Patrnogic, 'The urgent need to apply the rules of humanitarian law to so-called internal armed conflicts' (1961) 5 *IRRC* 250, 256.

[244] ICRC, 'Commission d'Experts chargée d'examiner la question de l'assistance aux détenus politiques' (Commission of Experts tasked with examining the question of assistance to political detainees) (1953) 414 *IRRC* 440; ICRC, Commission d'Experts chargée d'examiner la question de l'application des principes humanitaires en cas de troubles intérieurs' (Commission of Experts tasked with examining the question of the application of humanitarian principles in cases of internal troubles) (1955) 443 *IRRC* 722; ICRC, 'Humanitarian Aid to the Victims of Internal Conflicts: Meeting of a Commission of Experts in Geneva' (1963) 3(23) *IRRC* 79; Sivakumaran (n 214) 43.

[245] ICRC, Commission of Experts (1963) (n 244) 82-83.

[246] Nihat Erim, *Bildiğim ve gördüğüm ölçüler içinde Kıbrıs* (Ajans-Turk Press 1975) (Cypriot dimensions that I know and see); Nihat Erim was also Prime Minister of Turkey in 1971-1972.

had a long-term involvement in the Cyprus Question,[247] indicating that both Cypriot communities had direct access to in-depth IHL expertise during the period discussed here.

Pictet's criteria never crystallised into customary international law.[248] Nonetheless, when the ICRC reissued the GC I commentary in 2016, it developed an extended list of criteria based on Pictet's commentary, the report of the 1962 Expert Commission, and the additional experience gathered over more than 60 years, grouping them under the general criteria of 'organisation' and 'intensity'.[249] The criteria serve to protect a State's sovereign interests,[250] and according to the ICRC, these are to be considered 'cumulatively',[251] suggesting that the more of these indicators are present in a violent context, the higher the possibility of establishing that a NIAC is taking place. No analogous criteria exist for the qualification of an IAC., as its purpose was to simply replace the concept of inter-state war.[252]

These criteria have also guided the present research. It must be clarified, however, that they are used as factual indicators aiming to restore an, as accurate as possible, illustration of the narrative of violence in Cyprus from 1958 to 1968, since only bodies vested with the authority to draw legally-binding decisions can claim to do so authoritatively. Whereas the present research focuses on CA3, a formal judicial or quasi-judicial procedure that would aim at allocating legal responsibility for the events that took place would need to entail all of the other relevant areas of law as described above, including case-law where/if relevant, and would need to determine issues on time and the principle of legality.

[247] Georges Tenekides, *Chypre: histoire recente et perspectives d'avenir* (Nagel 1964) (Cyprus: Recent history and perspectives for the future).
[248] Moir, 'Concept of NIAC' (n 232) 393.
[249] ICRC, *Commentary GCI 2016* (n 164) paras 423-425.
[250] Milanovic, 'Mixed Conflicts' (n 211) 29.
[251] ICRC, *Commentary GCI 2016* (n 164) paras 434-435.
[252] Milanovic, 'Mixed Conflicts' (n 211) 29.

Level of *Organisation* of Armed Forces/ Groups[253]	Level of *Intensity* of Violence[254]
i. Command structure and capacity to sustain military operations ii. Disciplinary rules/mechanisms iii. Headquarters iv. Control over certain territory v. Access to weapons/ equipment vi. Recruits and military training vii. Planning, coordination and carrying out of operations viii. Use of military tactics ix. Negotiation and conclusion of agreements (e.g. ceasefire)	i. Seriousness of attacks ii. Increase in armed clashes iii. Spread over territory, over a given period of time (duration) iv. Distribution of weapons among both parties v. Attention and resolutions from the UNSC vi. Number of civilians forced to flee vii. Type of weapons and equipment (e.g. tanks) viii. Blocking, besieging, and shelling of towns ix. Number of casualties x. Quantification of troops/units deployed xi. Deployment of government forces xii. Ceasefire orders and agreements xiii. Attempts of representatives from international organisations to broker and enforce ceasefire agreements

Table 2.2: Indicators suggesting the levels of 'Organisation' and 'Intensity' in cases of internal armed violence may have reached the threshold of a NIAC

One of the most significant obstacles to the application of CA3 in the two decades after 1949 came from the colonial powers, which already during the drafting process had reservations over a new international law which would allow international intervention with regard to the increasing violence in the colonies.[255] France had a dubious approach, eventually accepting a compromise affected by the experience of its own resistance fighters during WWII.[256] The UK, Belgium, the Netherlands and

[253] ICRC, *Commentary GCI 2016* (n 164) paras 429-430.
[254] ibid paras 431-432.
[255] Fabian Klose, 'The Colonial Testing Ground: The International Committee of the Red Cross and the Violent End of Empire', (2011) 2(1) *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 107, 109.
[256] ibid.

Portugal, however, resisted throughout, with the UK and Portugal becoming the last from the group to ratify the 1949 Conventions, in 1957[257] and 1961, respectively.[258]

A major 'testing ground' for the ICRC and CA3 proved the Mau Mau insurgency in Kenya (1952-1960) and the Algerian War of Independence (1954-1962), when the UK and France, respectively, consistently refused to apply IHL in the anti-colonial context.[259] Instead, they resorted to a rhetoric of 'fight against terrorism',[260] 'emergency', 'civil disturbance', *'actions de maintien de l'ordre'*, and *'entreprises de pacification'*.[261] The Mau Mau insurgents, on the other hand, showed a willingness to make use of IHL principles, when in January 1954 they adopted rules of conduct, which prohibited acts like the killing of children, raping women, and attacking hospitals or schools.[262] A few years later, Algerian international lawyer, diplomat, and early 'TWAILer', Mohammed Bedjaoui, wrote his famous book on colonialism and self-determination, advocating for IHL applicability in the Algerian war.[263] These developments were not indifferent to the Cypriots, with both Greek-Cypriot and Turkish-Cypriot Members of Parliament (MPs) expressing their solidarity with Algeria at the House of Representatives in 1961.[264]

Of relevance is also the fact that during the 1950s the British used to refer to the military actions in the colonies as 'counterinsurgencies' without acknowledging the existence of 'civil war' or NIAC. This was in spite of the obvious connection between the non-legally defined term 'counterinsurgency', understood as the 'broad set of strategies and practices intended to halt insurgency', and insurgency in turn, defined by non-lawyers as a set of strategies and practices, such as guerrilla warfare,

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[257] See Section 2.4.3.
[258] Andrew Thompson, 'Humanitarian Principles put to the Test: Challenges to Humanitarian Action during Decolonization', (2016) 97 *IRRC* 45, 47.
[259] Klose (n 255) 112-117.
[260] ibid 107.
[261] ibid 110-111.
[262] Drohan (n 184) 12.
[263] Richard A Falk, Mohammed Bedjaoui, Law and the Algerian Revolution (International Association of Democratic Lawyers 1961) (1961) 57(1) *AJIL* 176; Françoise Perret and François Bugnion, 'Between insurgents and government: the International Committee of the Red Cross's action in the Algerian War (1954-1962) (2011) 93 *IRRC* 707; Umut Özsu, 'Determining New Selves: Mohammed Bedjaoui on Algeria, Western Sahara, and Post-Classical International Law' in Jochen von Bernstorff and Philipp Dann (eds), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (OUP 2019) 341.
[264] Anastasia Chamatsou, 'Αντικατοπρισμοί: Η πρόσληψη και η αντιμετώπιση του Αλγερινού από τη νεοσύστατη Κυπριακή Δημοκρατία' (Reflections: Perceptions and Reactions to the Algerian [Problem] from the newly-established Republic of Cyprus) in Papapolyviou and others (n 91) 171.

terrorism, nonviolent resistance, with the intention to 'destroy or replace the existing structure of authority'.[265] Brian Drohan, a historian who has undertaken extensive research on the Cyprus 'counterinsurgency' from 1955-1959,[266] has observed that only now the 'myth of British counterinsurgency' is being increasingly disputed.[267]

This predisposition of the colonial powers was not unique to IHL. As Schabas has indicated, in preparation of the Nuremberg Charter the British and American negotiators showed an uneasiness with the potential precedent the Nuremberg trial would lead to, had the Nazi officials been prosecuted in regard to the persecution of minority groups on German territory.[268] Moreover, Anghie and Chimni concur with him, that the distinction between atrocities committed in international and internal conflicts, derived from concerns over the Allies' treatment of minorities within their own territory, or atrocities in their colonies.[269] In the same regard, the UN did not interfere on issues concerning non-self-governing territories until 1961, following the adoption of the 'Declaration on the Granting of Independence to Colonial Countries and Peoples'.[270] This atmosphere, as seen in the next section, directly impacted developments in Cyprus, as well.

It was only in 1977 and the adoption of APs I and II that 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination',[271] what we refer to as 'wars of national liberation', that PIL defined and regulated anti-colonial conflicts as IACs.[272] At the same time, APII gave more elaborate and detailed rules

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[265] Ivan *Arreguín-Toft, 'Counterinsurgency' (Oxford Bibliographies, 28 September 2020)* <www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0064.xml> *accessed 20 December 2021.*

[266] See section 2.4.2.

[267] Drohan (n 184) 6-9; For the personal and professional perspective of a British military officer who was in Cyprus in the early 1960s, and had experience in a number of other colonies see: Frank Kitson, *Bunch of Five* (Faber and Faber 1977) 281-303.

[268] Schabas, *Unimaginable Atrocities* (n 145) 50.

[269] Antony Anghie and Bhupinder S Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflict' (2004) 36 *Studies in Transnational Legal Policy* 185, 195-196 citing William A Schabas, *An Introduction to the International Criminal Court* (CUP 2001) 35.

[270] UN Charter, art 2(7); Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514(XV) (14 December 1960); Nolte, 'Article 2(7)' (n 118) 284.

[271] API, art 1(4)

[272] Allan Rosas, 'Wars of National Liberation – International or Non-International Armed Conflicts? (1974) 4(1) *Instant Research on Peace and Violence* 31; Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995) 393; Andrew Clapham, 'The Concept of International Armed Conflict' in Andrew Clapham and others (n 211) 3, 19-21.

on the conduct of NIACs that 'take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups'.[273] This is a narrower scope of applicability than CA3, since it explicitly states that one side to the NIAC should be the government forces of the High Contracting Party. APII 'supplements' CA3, and thus, whereas CA3 is no longer the sole provision regulating conduct during a NIAC, it is the only provision that was in force during the timeframe of the present research. Applicability of APII in the Cypriot context could be argued if one established that a NIAC had started in the 1960s, and that the NIAC is still ongoing, due to the lack of a settlement. It goes without saying that such an evaluation would need to take into account developments from 1968 onwards, and in particular the events of summer 1974.

The long-term involvement of Turkey, Greece and the UK in Cyprus, as guarantors of Cypriot independence since 1960,[274] makes the task of qualifying the violence in Cyprus since 1963 quite challenging. This difficulty is rooted in the 'binary' categorisation of conflict as IAC or NIAC. Milanovic has argued that the very term 'armed conflict' is not a 'generic term' out of which conflicts are defined as IACs or NIACs, but rather a shorthand for either of the two categories,[275] which may be especially convenient in cases where 'one wants to *avoid* qualifying the conflict, either because the qualification would be politically or legally difficult'.[276] The issue of external intervention cannot be avoided in the Cypriot context. Therefore, while the present research focuses on CA3 and inter-communal violence, the issue of external intervention in the 1960s is addressed in the following chapters.[277]

Despite the widely recognised customary status of the 1949 GCs under PIL today, and the ICJ's recognition of CA3 as reflective of 'elementary considerations of humanity',[278] and customary international law, the present thesis looks at CA3 as a conventional rule of PIL during the period examined here, since even in the aftermath of *Nicaragua* there were doubts as to whether the Conventions had in fact crystallised into customary international law.[279] Further, a series of international cases from the

[273] APII, art 1(1); Since 1998 a third definition of NIACs exists under Rome Statute, art 8(2)(f).
[274] See section 3.2.1.
[275] Marko Milanovic, 'Mixed Conflicts' (n 211) 28-31.
[276] ibid 30 (emphasis in the original).
[277] See section 4.3.4 and 5.3.2.
[278] *Corfu Channel (UK v Albania),* Judgement [1949] ICJ Rep 4 p 22; *Nicaragua* (n 114) [218].
[279] Theodor Meron, 'The Geneva Conventions as Customary Law' (1987) 81(2) *AJIL* 348.

ICJ's *Nicaragua* judgment in 1986,[280] to *Tadic* in the 1990s and the ICJ's *Genocide Case (Bosnia and Herzegovina v Serbia and Montenegro)* in 2007,[281] brought about a series of additional developments and debates,[282] which, however, also do not fall within the direct scope of the present research.

The above analysis aimed at showcasing the multiple levels of complexity in determining whether 'civil wars' exist from the first place, and how this has been made even more challenging through a politicised (non-)application of the law, in the 1960s. According to Moir, it appears that in 1949 the intention was for CA3 to cover situations traditionally termed 'civil war'.[283] Gradually, however, CA3 acquired a lower threshold of application than initially anticipated.[284] This could explain why the Cypriot *historical* narrative from 1963 onwards developed in terms of 'rebellion' and 'insurgency', foregoing the understanding of it being a 'civil war' in legal terms. Cases of persisting doubt on whether CA3 was applicable or not were envisioned even in 1962, when the ICRC Expert Commission stated, that in such situations the ICRC retained a right of initiative to deal with humanitarian matters.[285] Hence, the presence of the ICRC in itself, does not automatically mean that the NIAC threshold has been crossed.

The last section in this chapter, turns to anti-colonial and early inter-communal violence in the late 1950s, bringing into the broader picture insights obtained through recent research in PIL and delimiting more starkly the different legal considerations relevant in the assessment of armed violence in Cyprus during this period, concerning EOKA's action and the inter-communal violence of 1958, compared to the violence experienced after the establishment of the RoC in 1960, which is addressed in the following chapters.

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[280] *Nicaragua* (n 114).

[281] *Prosecutor v Tadić*, IT-94-1-A, Judgment (Appeal), 15 July 1999; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgement [2007[ICJ Rep 43.

[282] Christopher Greenwood, 'International Humanitarian Law and the *Tadic* Case' (1996) 7 *EJIL* 265; Antonio Cassese, 'The *Nicaragua* and *Tadić* Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia' (2007) 18(4) *EJIL* 649.

[283] Moir, 'Concept of NIAC' (n 232) 409.

[284] ibid.

[285] GCs I-IV, arts 9/9/9/10; ICRC, Commission of Experts (1963) (n 244) 87.

2.4 1950-1958: Global Anti-colonial Sentiment and Ethno-political Divisions in the Final Years of the Crown Colony of Cyprus

By the end of WWII, the colonial Empires trembled, while the Cold War gained force. Indeed, in the period after WWII, all actors in international affairs had to adapt to the 'greatest geopolitical change'[286] of the twentieth century: the process of de-colonisation. A process which impacted—and still impacts—millions around the globe, established a plethora of new international law primary subjects (i.e. States) and consequently, altered significantly the institutional structure of PIL. All in a relatively short period of time, during which Cyprus obtained renewed geopolitical significance in the broader Eastern Mediterranean region. This was accurately captured in a quote reproduced by Hill in the last lines of his four volumes on the History of Cyprus, where a Sunday Times commentator wrote in the context of the evacuation of British troops from Palestine:

> It is, I think, a good guess that, when the evacuation starts, not all of our troops will be brought home from Palestine. Of India, Egypt and Cyprus only Cyprus is left, and common sense indicates that it will become a Middle East base.[287]

Hence, the British were adamant to not lose control over the island, in light of regional developments in the Middle East and the gradual dismantling of the British Empire. Most notably with the independence of India in 1947, closely followed by the Mau Mau insurgency in Kenya (1952-1960), and the Zimbabwe (Rhodesia) war of independence and civil war (1966-1979).[288] As seen in the previous section, other colonising powers faced analogous problems. For instance, the Angolan (1961-1991) and Mozambican (1962-1992) wars of independence with Portugal, fought along internal conflicts, and France's infamous war of Algerian Independence (1954-1962). At the same time, the Cold War gave rise to multiple civil wars elsewhere, most well-known among them the wars in Korea (1950-1953) and Vietnam (1957-1975).

Each of these conflicts, international or internal, carry their individual socio-political complexities, many of which remain of relevance today, like in the case of Cyprus. Literature from the Third World Approaches to International Law (TWAIL) movement however, has been instrumental in contextualising global developments during the peak of decolonisation, from 1955 to 1965, reviving often overlooked

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[286] Thompson (n 258) 48.
[287] Hill, *History of Cyprus Vol 4* (n 50) 618 citing 'Atticus' (*Sunday Times*, 7 December 1947).
[288] All chronologies according to: Stathis Kalyvas, *The Logic of Violence in Civil War* (CUP 2006) 423-425.

aspects of that time.[289] Here, this literature helps to further enrich the contextual framework against which to analyse and explain the way events unfolded in Cyprus in the 1950s and the 1960s. For this reason, before turning to the Cyprus-specific events surrounding the EOKA emergency and the first extensive incidents of inter-communal violence in the second half of the 1950s, we shall turn to a brief examination of the role the decolonisation movement played for and in Cyprus.

2.4.1 Sovereignty, Self-Determination and the Global Decolonisation Movement

The 1950s were off to an eventful start in the Crown colony of Cyprus. In January 1950 the Greek-Orthodox Church organised a plebiscite for the Greek-Cypriots on the question of whether *enosis* was desirable, in which 95.7 percent of the Greek-Cypriots voted in favour, in what was seen as an exercise of their right to self-determination.[290] In September 1950, the young Bishop Makarios of Kition was elected Archbishop Makarios III of Cyprus, assuming the roles of Head of the Church of Cyprus and leader of the Greek-Cypriots, and soon became the most widely-recognised and central political figure of the Island, for almost three decades, thereafter.[291] It is in this atmosphere that after consistent efforts the Greek-Cypriots convinced the Greek government to raise the issue of Cyprus before the UNGA for the very first time in August 1954.[292] An initiative which, in the aftermath of the Greek Civil War (1946-1949), gave Greece the opportunity to come out of the marginalisation it had been experiencing internationally.[293] The Greek motion drew directly from the UN Charter, and the UN purpose of developing 'friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'.[294]

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[289] Louis Eslava, Michael Fakhri and Vasuki Nesiah, 'The Spirit of Bandung' in 3, 7.

[290] Referendums are a known tool for 'gauging the opinions of the population concerning independence'. See: Markku Suksi, 'The referendum as an instrument for decision-making in autonomy-related situations' in Peter Hilpold (ed), *Autonomy and self-determination: Between Legal Assertions and Utopian Aspirations* (Edward Elgar 2018) 97.

[291] Archbishop Makarios III was elected first President of the RoC in 1959. He held both his religious and secular offices until his death in 1977.

[292] A/2703 (n 93); 'Adoption of the Agenda of the Ninth Regular Session and Allocation of Items to Committees, and Organization of the Session' (23 September 1954) UN Doc A/2733 para 62.

[293] Eirini Cheila, 'Η αυτοδιάθεση των λαών, ο ΟΗΕ και η προσφυγή της Ελλάδας το 1954. Μια θεώρηση από τη σκοπιά των διεθνών σχέσεων' (The self-determination of peoples, the UN and Greece's recourse in 1954. A theoretical examination from international relations perspective) in Papapolyviou and others (n 91) 65, 73.

[294] UN Charter, art 1(2).

The British were anxious to prevent a successful outcome for Greece and the Greek-Cypriots, as the topic touched on issues of 'an existential nature' for the British Empire, including its role in the eastern Mediterranean, and the Middle East more broadly.[295] They also did not wish to address the issue of self-determination *per se*, knowing that the majority of the Island's inhabitants were not supportive of British rule.[296] This led them to bring to the table—for the first time in an international forum—Turkey's interests in Cyprus. Until then Turkey had not taken a position on the matter since she had recognised British annexation of the Island in the Treaty of Lausanne.[297] The emphasis on applying the principle of self-determination regarding Cyprus was reiterated in the draft resolution Greece submitted,[298] but any opportunity to consider the topic at the UNGA was lost when New Zealand introduced on behalf of the UK,[299] a second draft resolution before the UNGA's First Committee on Disarmament and International Security. [300] New Zealand's draft resolution eventually took precedence, determining that the time was not yet appropriate for the UNGA to consider the topic.[301]

In parallel to these events, when one by one the former colonies of the Afro-Asian region started gaining independence, a general concern rose among them that they had been 'left out' of the 1945 San Francisco Conference establishing the UN, excluded from international affairs and the development of a new global order.[302] Indeed, in San Francisco, only 12 out of 50 States came from these two regions,[303] and in an initiative led by Sir John Kotelawala, Prime Minister of Ceylon, President Sukarno of Indonesia, and Indian Prime Minister Jawaharlal Nehru, the first ever Afro-Asian inter-state Conference was organized in Bandung, Indonesia from 18-24 April 1955.

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[295] Hatzivassiliou (n 78) 20.
[296] Hubert Faustmann, 'The UN and the Internationalization of the Cyprus Conflict, 1949-1958' in Oliver P Richmond and James Ker-Lindsay (eds), *The Work of the UN in Cyprus: Promoting Peace and Development* (Palgrave Macmillan 2001) 3, 13-15.
[297] Faustmann, 'Divide and Quit?' (n 82) 106-107.
[298] Report of the First Committee (16 December 1954) UN Doc A/2881 para 4
[299] Faustmann, 'Internationalization' (n 296) 11-13.
[300] A/2881 (n 298) para 5.
[301] UNGA Records, 17 December 1954 UN Doc A/PV.514 paras 256-291; UNGA A/RES/814(IX) (17 December 1954).
[302] Antony Anghie, 'Bandung and the Origins of Third World Sovereignty' in Luis Eslava and others (n 289) 535, 535-536.
[303] ibid 536.

Though majorly marginalised in the mainstream Eurocentric historiography of the 20th century, the conference—which gathered, among others, 29 newly-independent Asian and African governments—[304] is considered by many the moment that 'founded the Third World as a political entity'.[305] The Conference produced a 'Final Communiqué' which set down common standards among the signatory States, on issues of economic and cultural co-operation, human rights and self-determination, the 'problems of dependent peoples', meaning those who still lived under colonialism, and the promotion of world peace and co-operation.[306] It also set in motion the process towards the foundation of the Non-Aligned Movement (NAM),[307] one of whose founding members in 1961 was the RoC.[308]

Among the participating States and signatories of the Communiqué was Turkey,[309] and among the delegates, representing the Greek-Orthodox population of the Cyprus colony, was Archbishop Makarios III. Even though EOKA had just started its action against the British on 1 April 1955, Makarios was not precluded from attending, irritating contemporary commentators:

> …Orthodox [Christians] make a great deal of Holy Week, but in 1955 that fact did not deter Makarios from abandoning his ecclesiastical responsibilities and from flying on Good Friday of all days to Bandoeng, where his presence had no *raison d'être*.[310]

His aim at the conference was to gain support for the anticolonial movement in Cyprus, demonstrating solidarity with the Afro-Asian States, and enhancing the efforts to internationalise the Cyprus Question.[311] Makarios was eventually disappointed,

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[304] Itty Abraham, 'Bandung and State Formation in Post-colonial Asia' in Seng Tan and Amitav Achary (eds), *Bandung Revisited: The Legacy of the 1955 Asian-African Conference for International Order* (National University of Singapore Press 2008) 48.
[305] Roland Burke, '"The Compelling Dialogue of Freedom": Human Rights at the Bandung Conference' (2006) 28(4) *Human Rights Quarterly* 947, 948.
[306] Final Communiqué of the Asian-African Conference of Bandung (Indonesia, 24 April 1955) as reproduced by the *Centre Virtuel de la Connaissance sur l'Europe* (CVCE, University of Luxembourg) <https://www.cvce.eu/obj/final_communique_of_the_asian_african_conference_of_bandung_24_april_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html > accessed 20 October 2021.
[307] Eslava and others, 'Spirit of Bandung' (n 299) 6.
[308] The RoC withdrew from the Non-Aligned Movement upon joining the European Union in 2004.
[309] Bandung Final Communiqué (n 306).
[310] Luke (n 1) 177.
[311] John Reynolds, 'Peripheral Parallels? Europe's Edges and the World of Bandung' in Eslava and others (n 289) 247, 252.

when the Final Communiqué made no explicit reference to the British colonies, even though it explicitly referred to the right to self-determination of the peoples of French-administered Algeria, Morocco and Tunisia.[312] Despite the fact that the conference failed to lead to formal, and immediate developments, its symbolism as an emboldening emotional and psychological experience across the postcolonial and the non-white world was immediately recognised.[313] As it transpires in this and the following chapters, its legacy had an impact on future developments in Cyprus. Issues of sovereignty and non-intervention, as well as colonialism and self-determination (including the self-determination of minority groups) are of particular importance here.

In the mid-twentieth century, amidst the establishment of new States across the world map, the principle of sovereignty lay at the epicentre of the de-colonisation process, and even though the sates in Bandung upheld the western model of nation-state sovereignty, theirs was guided by *Panchsheel*, the 'Five Principles of Peaceful Coexistence', proclaimed by Nehru in 1954.[314] The *Panscheel*, which were foundational for the NAM, contained the principles of:

i. mutual respect for sovereignty and territorial integrity,

ii. nonaggression,

iii. noninterference in internal affairs,

iv. equality and mutual benefit, and

v. peaceful coexistence.[315]

The principles correspond to some of the most fundamental doctrines of classic PIL, included also in the UN Charter.[316] Retaining the western 'nation-state' conceptualisation of sovereignty, however, implied that the new States were relatively homogenous, and in spite of the obligation to protect minorities within one's sovereign territory in the classic definition of the term, this was not reflected in the Five Principles.[317] The fear of the threat from minorities developing their own nationalist

[312] ibid 253; Bandung Final Communiqué (n 306) para D.2.
[313] Eslava and others, 'The Spirit of Bandung' (n 289) 7.
[314] Anghie, 'Bandung' (n 302) 538-540; See also: Sung Won Kim, David P. Fidler and Sumit Ganguli, 'Eastphalia rising? Asian influence and the Fate of Human Security (2009) 26(2) *World Policy Journal* 53.
[315] Anghie, 'Bandung' (n 302) 538.
[316] UN Charter, arts 1 and 2(1), 2(4), 2(7).
[317] Anghie, 'Bandung' (n 302) 543.

aspirations through claims to self-determination was present then, and still dominates in many developing countries; 'the precolonial past endured, with ancient battles being replaced through new political entities'.[318] This is comparable to the way Ottoman-Byzantine, and other rivalries were revived on the Balkan peninsula in the 19th and the 20th centuries, with a distinctive colonial 'twist' in the case of Cyprus.

Thus, among the adversary legacies of Bandung were a series of unresolved tensions that many postcolonial States inherited and remain unresolved to date, including issues involving the presence of various minority groups in virtually all States with a colonial past.[319] It must be clarified that 'minorities' in this context do not refer merely to 'numerically smaller demographic or communal entities', but rather they 'signify the domestic presence of ethnic and religious communities *seen as having non-local origins*'.[320] In some cases, like Burma and Malaya, the combined number of residents of Indian and Chinese origin, for instance, amounted for as much as 50 and 60 per cent of the total population, respectively.[321] This resonates with the occasional argument dismissing the Turkish-Cypriot community as non-Cypriot, even though said 'migration' took place centuries earlier. The same hostility is not observed vis-à-vis other religious groups in Cyprus, however, such as the Armenian-Cypriots and the Maronite-Cypriots, whose settlement on the Island from the 5th and 7th centuries onwards, respectively, does not generally cast them 'non-local'.[322]

Under PIL, minorities—ethnic, religious or both—is linked to self-determination; 'the right of peoples under colonial, foreign, or alien domination to self-government, whether through formation of a new State, association in a federal State, or autonomy or assimilation in a unitary (non-federal) State'.[323] Like sovereignty, self-

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[318] ibid 550.

[319] ibid 551.

[320] Abraham, 'Bandung and State Formation' (n 304) 48 (emphasis in original).

[321] ibid 54-58; On 'Understanding the 'minority' as an ethnic phenomenon' in international law see: Mohammad Shahabuddin, *Ethnicity and International Law: Histories, Politics and Practices* (CUP 2016) 140-148.

[322] Alexander-Michael Hadjilyras, *The Armenians of Cyprus* (PIO 2016); Marianna Frangeskou, *The Maronites of Cyprus* (PIO 2012); See also: Caesar Mavratsas, 'The Armenians and the Maronites of Cyprus: comparative considerations concerning ethnic assimilation' (2003) 37 *Méditerranée: Ruptures et Continuités* 205; Andrekos Varnava, Nicholas Coureas and Marina Elia (eds), *The Minorities of Cyprus: Development Patterns and the Identity of the Internal-Exclusion* (Cambridge Scholars 2009); Hadjilyras identifies a minimum of 20 small religious, ethnic or geographical groups that permanently or temporarily found refuge on the Island in 1878-1960, in Alexander-Micahel Hadjilyras, *Η Κυπριακή Δημοκρατία και οι Θρησκευτικές Ομάδες* (The Republic of Cyprus and the Religious Groups) (2012) 30-32.

[323] James Crawford, *Brownlie's Principles of International Law* (9th edn, OUP 2019) 621.

determination enjoys a long history, with its roots as a political principle traced to at least the 17th century, as documented in the American Declaration of Independence and during the French Revolution.[324] Also like sovereignty, it shifts constantly between its meaning as a legal 'right' and a political 'principle', each time qualified based on the contextual environment of the claim raised.[325] Hence, self-determination has developed a plurality of concrete meanings.[326] In its political sense, self-determination is broader, putting an emphasis on criteria such as common history, race, ethnicity and language, often associated with 'nation' and subsequently, nationalism.[327] As a result, the majority of cases raising claims of self-determination, are not recognised as such under PIL.[328]

In the 20th century, it resumed prominence first through US President Woodrow Wilson's famous 'Fourteen Points' speech before Congress, where, he invited Russia to the 'independent determination of her own political development […] under institutions of her own choosing'[329] just after the Bolshevik Revolution and Lenin's claim to 'national self-determination'.[330] From there, self-determination found its way into the Peace Treaties of WWI, which included complex schemes of minority protection within the new borders drawn following the destruction of the Empires that had been dominating Europe until then.[331] In this context minorities engaged in a 'tripartite interaction' with their 'host-state' and their 'kin-state',[332] turning self-determination from a 'revolutionary concept' into a principle of 'international diplomacy and international legal discourse'.[333]

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[324] Stefan Oeter, 'Self-determination' in Bruno Simma and others (n 103) 313, 317.
[325] Karen Knop, *Diversity and self-determination in international law* (CUP 2002) 29-49; Crawford, *Brownlie's Principles* (n 323) 621.
[326] Hilpold identifies six such distinctions; 'external', 'internal', 'democratic', 'national', 'socialist' and 'colonial' in Hilpold, *Autonomy and self-determination* (n 290) 7, 10-16.
[327] Helen Quane, 'The United Nations and the Evolving Right to Self-Determination' (1998) *International and Comparative Law Quarterly* 537, 538.
[328] ibid.
[329] Point VI, President Woodrow Wilson's Fourteen Points, 8 January 1918 as reproduced by *The Avalon Project, Yale Law School* <https://avalon.law.yale.edu/20th_century/wilson14.asp> accessed 22 October 2021.
[330] Oeter, 'Self-determination' (n 324) 318.
[331] *The Question Concerning the Acquisition of Polish Nationality Case* [1923] PCIJ Series B, No 7; *Questions Relating to Settlers of German Origin in Poland Case* [1925] PCIJ Series B, No 6; *Minority Schools in Albania Case* [1935] PCIJ Series A/B, No 64; See also: Shahabuddin, *Ethnicity* (n 321) 98-135.
[332] Shahabuddin, *Ethnicity* (n 321) 122.
[333] Oeter, 'Self-determination' (n 324) 313, 318; See also: Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice' (1994) *ICLQ* 241, 255-256.

This process was completed with the explicit inclusion of self-determination in the UN Charter.[334] In 1945, however, self-determination was not synonymous with independence as it is often assumed at present.[335] Generally, no rights were recognised for those in the colonial territories, other than the limited duties towards them by the colonial powers.[336] Certainly there was no duty to grant independence either.[337] Even so, following WWII it was the decolonisation process that turned self-determination into a '*cri de guerre* [a war cry] of third world nations' in the following decades,[338] and at the same time decolonisation's moral and legal force.[339]

In 1954, Josef Kunz had interpreted the rise of human rights as a substitute to self-determination in cases where the application of the self-determination principle was 'not possible or not wanted'.[340] Twelve years later, this was taken a step further when in 1966 self-determination was codified as a human right.[341] A first step into that direction had been the UNGA's Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960,[342] affirmed a decade later in the 1970 Friendly Relations Declaration,[343] at a time when the principle preoccupied the ICJ for most of that decade.[344] Even though self-determination today is a recognised peremptory norm of PIL,[345] its exact content and application is less than clear. Doctrinal legal literature today recognises that self-determination has multiple components, including an 'external self-determination', as it applied to the colonies,[346]

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[334] UN Charter, art 1(2).
[335] Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (OUP 1994) 111.
[336] UN Charter, Chapters XI and XII.
[337] Higgins, *Problems and Process* (n 335) 113-114.
[338] Christian Tomuschat, 'Self-determination in a post-colonial world' in Christian Tomuschat (ed), *Modern Law of Self-Determination* (Martinus Nijhoff 1993) 1.
[339] Shahabuddin, *Ethnicity* (n 321) 136.
[340] Josef Kunz, 'The Present Status of the International Law for the Protection of Minorities' (1954) 48(2) *AJIL* 282.
[341] ICCPR, art 1(3); ICESCR, art 1(3).
[342] UNGA Res 1514 (n 270).
[343] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Res 2625(XXV) (24 October 1970).
[344] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, Advisory Opinion [1971] ICJ Report 16; *Western Sahara*, Advisory Opinion [1975] ICJ Rep 12.
[345] ILC, Fourth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special rapporteur (31 January 2019) UN Doc A/CN.4/727 paras 108-115; See also: Schabas, *Customary* (n 181) 336-337.
[346] Cassese, *Self-determination of peoples* (n 272) 71-88; Knop, *Diversity and self-determination* (n 325) 50-90.

an ‘internal’ dimension, applicable to ‘racial groups denied equal access to government’,[347] as well as the potential of unification with a third State and a right to secession.[348] It remains unclear, however, who is entitled to said right in each situation.[349]

Social conflicts can indeed be described as ‘rights claims’,[350] and as the following pages show, self-determination’s multiple dimensions stood at the exact intersection of the Island’s law, politics, and history around the diametrically antithetical objectives of *enosis* and *taksim*. As a human right self-determination is illustrative of the ‘complexities of the law-creating process’,[351] but also known for generating high levels of ‘psychic and social energy’,[352] within societies, which is then often ‘used by rulers to rule the minds of the ruled’.[353] Thus, when debates on self-determination reach the level of political leaders ‘throwing [their] peoples against each other’, a formal legal setting like a trial, is unlikely to lead to closure, because self-determination has already led people to think in a particular framework, which supports their own interpretation of what self-determination means.[354] It is for this reason that hard cases, like the one examined here, require a broader evaluation of the role played by all relevant factors, including law’s role in the pursuit of political gains.

Makarios’s presence at Bandung repositions Cypriot politicians of the time within the ongoing global framework of this period, with a willingness to become part of those exchanges, and a strong awareness of Cyprus’ peculiar position at the intersection of the European and Asian peripheries. According to some, the British saw in Makarios a supporter of Arab nationalism.[355] As illustrated above, however, his approach went beyond mere sympathy or solidarity for Cyprus’ Mediterranean neighbours, who throughout the first half of the twentieth century dealt with their own

[347] Cassese, *Self-determination of peoples* (n 272) 108-125; UNGA Resolution 2625(XXV) (n 343).
[348] Stefan Oeter, ‘Self-determination’ (n 324) 329.
[349] ibid.
[350] Martti Koskenniemi, *The Politics of International Law* (Hart 2011) 159.
[351] Higgins, *Problems and Processes* (n 335) 111.
[352] Phillip Allott, ‘Self-Determination – Absolute right or social poetry?’ in Tomuschat (338) 177.
[353] ibid 209.
[354] Koskenniemi, *Politics* (n 350) 194; Martti Koskenniemi, ‘Between Impunity and Show Trials’ (2002) 6 *Max Planck Yearbook for United Nations Law* 1.
[355] Hatzivassiliou (n 78) 66.

nationalist anxieties, amongst competing ethnic and religious group-dynamics.[356] In uncovering international law's colonial origin, anti-colonial struggles, and post-colonial history, we reiterate forgotten perspectives in understanding the context within which politics in Cyprus evolved.

2.4.2 The EOKA Emergency

Seeing the futility of all diplomatic efforts to promote the Cyprus Question as an international issue of self-determination, the Greek-Cypriots launched an offensive against the British administration of the Island on 1 April 1955. According to Hatzivassiliou, the Greek-Cypriot *enosis* movement followed two patterns; the 'Ionian' non-violent one until 1931, and the 'Cretan' one, which characterized the efforts for *enosis* after WWII, with an emphasis on a violent claim for liberation akin to the long-term violence leading up to the unification of the Island of Crete with Greece, in 1913.[357] This shift, unwisely 'locked' the Greek-Cypriots in 'rigid, even dogmatic, positions',[358] and with *enosis*, not independence, being the ultimate goal, the Greek-Cypriot struggle was an 'anomaly in the colonial empire'.[359]

Even though preparations had already been underway since 1953,[360] and the British authorities had caught a small fishing boat smuggling arms to Cyprus as early as January 1955,[361] the bombings across the Island on 1 April caught them off guard.[362] While a spontaneous uprising like the one in 1931 was anticipated, 'cool, premeditated, terrorism', was not.[363] The complexity of the political situation on the Island in spring 1955 is evident in the first long debate held in the House of Commons on the subject, which touched upon all aspects of the problems that existed; the long-term restrictions on daily life since 1931, issues on identity and self-determination, and the potential effect of these events on British interests in NATO, Malta, Palestine,

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[356] Aviel Roshwald, 'Nationalism in the Middle East, 1876-1945' in John Breuilly (ed), *Oxford Handbook of the History of Nationalism* (OUP 2013) 220.
[357] Hatzivassiliou (n 78) 13-15; See also: John A R Marriott, *The Eastern Question: An Historical Study in European Diplomacy* (4th edn, Claredon Press, 1940) 378-385.
[358] Hatzivassiliou (n 78) 14.
[359] A W Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (OUP 2004) 893.
[360] Andreas Varnava, *Ιστορία του Απελευθερωτικού Αγώνα της ΕΟΚΑ (1955-1959)* (The History of the EOKA Liberation Struggle (1955-1959) (Foundation of the EOKA Liberation Struggle,1955-1959 2002) 31-34.
[361] Simpson, *End of Empire* (n 359) 887.
[362] Nancy Crawshaw, *The Cyprus Revolt: An account of the struggle for union with Greece* (George Allen & Unwin 1978) 114-115.
[363] Robert Holland, *Britain and the Revolt in Cyprus 1954-1959* (Clarendon Press 1998) 55.

and Egypt, in light of earlier plans, that never materialised, to move Britain's Middle East headquarters from Suez to Cyprus.[364]

At the epicentre of events lay the National Organisation of Cypriot Fighters (*Εθνική Οργάνωση Κυπρίων Αγωνιστών* - EOKA). A guerrilla armed group, consisting of only Greek Christian-Orthodox Cypriots, led and organised underground by Georgios Grivas, future Commander of the RoC armed forces a decade later.[365] In preparation, Grivas had drawn a 'Preliminary General Plan of Insurrectionary Action', which contained tactics like sabotage, surprise attacks, and popular passive resistance,[366] a plan of action in anticipation of counter-attacks 'by the Turks',[367] and instructions on the manufacturing of explosive devices.[368] The strategic objective was not total defeat, but a 'moral victory through a process of attrition, by harassing, confusing and finally exasperating the enemy forces.'[369] An approach Grivas seems to have taken also in the 1960s, as Commander of the RoC National Guard.[370]

EOKA operated under a centralised chain of command that led directly to its leader. Members were divided in autonomous regional cells, each comprising of 'sabotage', 'execution', 'ambush' and 'anti-Turkish' sub-groups, as well as Youth and Political divisions.[371] Non-armed mass mobilisation was an important aspect of the organisation's action, often recruiting school children to spread leaflets, and organise riots in urban areas. Evangelos Averoff, Greek Foreign Minister at the time, admitted in his memoir that it was all coordinated by Grivas himself, and gives detailed information on how he himself was involved in the smuggling of arms from Greece.[372] According to some commentators, comparatively speaking, EOKA was less violent than the Mau Mau insurrection, and the Algerian National Liberation Front.[373]

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[364] HC Deb 05 May 1955 vol 540 cols 1910-97.

[365] Georgios Grivas was a Cyprus-born officer of the Greek Army. He had received formal military training in Greece before establishing and leading EOKA in Cyprus. He was pro-*enosis* throughout his life, and during the period examined here he periodically resided in Greece and Cyprus. He died in January 1974.

[366] Alexandros A Pallis (tr) *General Grivas on Guerrilla Warfare* (Greek original by G Grivas published in Athens in 1962, Frederick A. Praeger 1965) 91-94.

[367] ibid 96-99.

[368] ibid 101-106.

[369] ibid 5.

[370] See section 5.3.3.

[371] Pallis (n 366) 26-36.

[372] Evangellos Averoff-Tossizza, *Lost Opportunities: The Cyprus Question, 1950-1963* (Timothy Cullen, Susan Kyriakidis trs, Aristide Caratzas 1986) 149-163.

[373] Andreas Karyos, 'Η επίδραση του διεθνούς παράγοντα στις στρατηγικές επιλογές του ένοπλου ενωτικού κινήματος (EOKA), 1955-1959' (The influence of international actors in

Initially the violence involved only the bombing of public buildings and installations, but by August 1955 it increased in intensity with a number of assassinations of Police officers, as well as attacks directed at civilians who EOKA believed had collaborated in some way with the authorities.[374] According to Averoff, by the end the fight was fought at four levels: the British, the traitors, the Communists, and the Turkish-Cypriots.[375] Grivas himself expressed the view that those who had collaborated with the authorities were Communists, whom EOKA could not 'allow' to exploit the circumstances for the promotion of Soviet-backed communism, as the case was in China, North Vietnam, Kenya and Latin America, among others.[376] Two and a half decades since the 'Oktovriana' of 1931, society was as divided as ever.

Early efforts to deal with security matters, turned towards the strengthening of the Police Force, despite the fact that earlier experience in Kenya and Malaya had shown that local civilian authorities were likely to prove ineffective.[377] In that regard, an auxiliary Special Police Unit was introduced, consisting primarily of Turkish-Cypriot officers.[378] Moreover, a temporary Detention of Persons Law was passed on 16 July 1955, under which individuals could be detained without a public hearing, a right to counsel or a right to examine witnesses, and without a duty to have disclosed to them the evidence upon which the detention order was made.[379] Governor Robert Armitage however, proved unable to respond effectively to the situation, and for this reason, on 3 October 1955 he was replaced by a career military man, Field-Marshal Sir John Harding.[380]

Harding increased efforts to strengthen the police, but also asked for military reinforcements, eventually bringing the total of troops stationed on the Island to over 12,000.[381] More importantly from a legal perspective, within a week from Harding's

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the strategic options of the armed unitary movement (EOKA), 1955-1959) in Papapolyviou and others (n 91) 97, 105 citing Brian Crozier, *The Rebels. A Study of Post-War Insurrections* (Chatto & Windus 1960) 179.

[374] Simpson, *End of Empire* (n 359)892-893; Drohan (n 184) 18.

[375] Averoff (n 372) 163.

[376] Pallis (n 366) 1-3.

[377] Holland (n 363) 56.

[378] ibid 100.

[379] Simpson, *End of Empire* (n 359) 900-901; A complete list of the main legislative instruments passed during this period is available in: *Greece* v *United Kingdom* (n 204) Vol 1, para 102.

[380] Simpson, *End of Empire* (n 359) 901, 905.

[381] Holland (n363) 100.

arrival, on 7 October 1955, the UK communicated a *Note Verbale* to the Council of Europe (CoE) Secretary-General, stating that:

> A public emergency within the meaning of Article 15(1) of the [ECHR] exists in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.
>
> Cyprus – Certain emergency powers were brought into operation in the Colony of Cyprus on the 16th July 1955, owing to the commission of acts of violence including murder and sabotage and in order to prevent attempts at the supervision of the lawfully constituted Government.[382]

Article 15(1) ECHR allows for derogations from all derogable human rights and freedoms protected under the Convention,[383] in 'time of war or other public emergency threatening the life of the nation […] to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law'.[384] The British willingness to notify of such derogations, led to certain awkwardness as neither the ECHR provided instructions as to what needed to be done in such cases, nor any other notice had been made before, notwithstanding the fact that the situation concerned two more CoE member States; Greece and Turkey.[385]

A Declaration of Emergency under *domestic* colonial law was made by Harding on 26 November 1955,[386] when he enacted the Emergency Powers (Public Safety and Order) Regulations,[387] and the Emergency Powers (Collective Punishment) Regulations.[388] The latter contained a total of 76 clauses referring, among others, to arrest without warrant, stop and search powers, and restrictions on movement. These were expanded in 1956 to prevent dissent, enhance the protection of interrogators and intelligence officers, and induce the provision of information from prisoners.[389] In the same year, the death penalty was extended, to offences beyond treason and murder, like the discharging of an arm at a person, or the deposition of

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[382] As reproduced in: *Greece* v *United Kingdom* (n 204) Vol I, para 102.
[383] ECHR, arts 2, 3, 4(1) and 7 are non-derogable under art 15(2).
[384] ECHR, art 15(1).
[385] Simpson, *End of Empire* (n 359) 901.
[386] He was acting under emergency powers conferred to him by Emergency Powers Order in Council, 1939; The Emergency Powers (Amendment) Order in Council, 1952.
[387] Emergency Powers (Public Safety and Order) Regulations No 731, 26 November 1955.
[388] Emergency Powers (Collective Punishment) Regulations No 732, 26 November 1955.
[389] Drohan (n 184) 34.

bombs with the intention to cause death, injury or damage to property.[390] The UK was aware that such measures contravened CA3, and the common use of 'collective punishment' by the colonial authorities had posed particular difficulties for the British during the drafting of the 1949 GCs almost a decade earlier.[391]

Drohan's comparative historical research on 'human rights activism' in different British counterinsurgency campaigns, speaks of 'cooperative manipulation' on behalf of the authorities, in an effort to 'shield' the practices employed from public view.[392] During this time, the concerted efforts of the Cyprus Bar Association to defend EOKA fighters in the domestic Courts have been of paramount significance.[393] Among those involved were future core protagonists of Cypriot history, like Glafcos Clerides on the defence side,[394] and Rauf Denktash as prosecutor.[395] Local remedies proved insufficient, and following the detention and deportation of Makarios to Seychelles on 9 March 1956, and the first executions of Michael Karaolis and Andreas Demetriou, Greece lodged an application against the UK to the European Commission of Human Rights (ECmHR) on account of the Greek-Cypriots,[396] following failed attempts to bring up the matter before the UN.[397]

The case of *Greece* v *UK* is of historical significance for various reasons. It is the first inter-state case under the ECHR to be lodged in Strasbourg. It serves as a preview to many problems which arose under the Convention at a later stage, regarding the deference and prioritisation of State sovereignty and national security interests over individual rights in derogations under article 15 ECHR.[398] Thirdly, it is the case that led the way towards the establishment of the 'Doctrine of Appreciation'.[399]

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[390] Simpson, *End of Empire* (n 359) 919-920.
[391] ibid 955; Klose (n 255) 109.
[392] Drohan (n 184) 4.
[393] ibid 25-34; A move which encouraged the establishment of Amnesty International in 1961. See: Drohan (n 184) 101.
[394] Drohan (n 184) 25.
[395] Crawshaw (n 362) 141.
[396] *Greece v UK* (n 204); Mikael Rask Madsen, 'The Protracted Institutionalization of the Strasbourg Court: From Legal Diplomacy to Integrationist Jurisprudence' in Jonas Christoffersen and Mikael Rask Madsen (eds), *The European Court of Human Rights between Law and Politics* (OUP 2011) 43; John Reynolds, *Empire, Emergency and International Law* (CUP 2017) 171-178.
[397] Simpson, *End of Empire* (n 359) 929.
[398] Reynolds, *Emergency* 171, 178-184; *Lawless* v Ireland (App. No 332/1957) Report of the European Commission of Human Rights,19 December 1959.
[399] *Greece v UK* (n 204) [136]; Simpson (n 359) 1000; Reynolds, *Emergency* (n 396) 175.

The case addressed practices like whipping, collective punishment, illegal arrest, detention and deportations, the violation of privacy, and the freedoms of expression and assembly,[400] and a small delegation of ICRC representatives visited Cyprus at the time to investigate methods of detention and punishment. In their submissions to ECmHR, among other things, the Greek government argued that since article 15 ECHR allowed for derogations from the Convention only where the measures employed were not 'inconsistent with other obligations under international law',[401] then the derogations announced by the UK were in breach of the Convention, since they contradicted other international law treaties.[402] Specifically, the Greek government drew attention to article 50 of the 1907 Hague Convention, relevant to general penalties 'inflicted upon the population on account of the acts of individuals',[403] article 87 GCIII on the protection of prisoners of war (PoWs), similarly prohibiting 'collective punishment for individual acts', and articles 2, 32 and 33 of GC IV 1949 on the protection of Civilians. Article 32 and 33 prohibiting measures involving corporate and collective punishment, respectively.

Article 2 GC IV, which like article 3 is common to all four 1949 GCs, is a general protection of civilians in IACs 'even if the state of war is not recognized' by one of the parties to the conflict or, in case of occupation, where such occupation is not met with armed resistance.[404] In addition to the above provisions, the Greek government also invoked the argument that the measures were not in line with the UK's obligation under CA3, under GCIII and GCIV,[405] essentially arguing that the ongoing armed violence in Cyprus did constitute a NIAC, and that 'cruel treatment', 'violence to life and person', 'humiliating and degrading treatment' constituted 'outrages upon personal dignity'.[406]

The UK counter-argued that 'obligations under international law' in article 15(1) ECHR referred to the scope of a State's right to derogate under international law, and not to PIL treaties and rules, in general.[407] A position that was rejected by

[400] ECHR, arts 3, 5, 6, 8, 9, 10 and 11.
[401] ECHR, art 15(1).
[402] *Greece v UK* (n 204) [147].
[403] Regulations Respecting the Laws and Customs of War and Land, Annex to Hague Convention IV 1907 (adopted 18 October 1907, entered into force 26 January 1910) (1910) UKTS 9, art 50.
[404] GCs I-IV, article 2.
[405] *Greece v UK* (n 204) [147] and [221].
[406] ibid [180].
[407] ibid [148].

the Commission.[408] Regarding CA3, the UK stated that the provision was not applicable in the case of Cyprus, since the article was intended for conflicts such as the one 'experienced in Spain', where a party to the conflict was also a High Contracting Party 'with a capital "P"' (i.e. a State) and not to 'individual acts of violence or to the activities of [a] terrorist organisation',[409] directly linked to the colonial policy of not recognising the application of CA3 in the colonies.

Due to space restrictions, a full examination of the arguments on each side on all of the abovementioned IHL provisions, as discussed in more detail in the report under 'punishment by whipping' and 'collective punishment', is not possible. It needs to be noted though, that the ECmHR eventually decided by majority vote (four members dissenting, and two expressing opposition without voting) not to give conclusions on the compatibility of those measures with the ECHR, since in the meantime the UK had abolished both practices.[410] It, therefore, avoided engaging in-depth with the question of the overlapping principles between IHL and IHRL. A topic which remains until today an issue of great controversy, and an unresolved theoretical puzzle, which the ECtHR has consistently failed to address in a satisfactory manner.[411] As a non-judicial body, the ECmHR used to give opinions instead of legally binding judgements.[412] Its approach does raise the question, however, to what extent this early avoidance of questions of IHL contributed to the future institutional approach followed under the ECHR.

Despite the certainty that exists today that during decolonisation the British security forces had engaged in torture and other brutal and criminal acts,[413] it does

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[408] ibid [149].
[409] ibid [184].
[410] ibid [204] – [205], [235] – [236].
[411] *Georgia* v *Russia* (II) (App No 38263/08) (Grand Chamber) Judgement (Merits), 21 January 2021*;* Marko Milanovic, 'A Norm Conflict Perspective on the Relationship between International Humanitarian Law and Human Rights Law' (2009) 14(3) *Journal of Conflict & Security Law* 459; Marko Milanovic 'The Lost Origins of *Lex Specialis*: Rethinking the Relationship between Human Rights and International Humanitarian Law' in Jens David Ohlin (ed), *Theoretical Boundaries of Armed Conflict and Human Rights* (CUP 2016) 78; Kanstantsin Dzehtsiarou, '*Georgia* v *Russia* (II) (App No 38263/08) European Court of Human Rights (Grand Chamber) (Judgement, Merits, 21 January 2021) (note)' (2021) 115(2) *AJIL* 288.
[412] ECHR (1950 original version), arts arts 19(1)- 37; For the original 1950 text of the ECHR (n 183) see <https://www.echr.coe.int/Documents/Archives_1950_Convention_ENG.pdf> accessed 30 October 2021; Simpson (n 359) 997
[413] *Ndiku Mutua and others v Foreign and Commonwealth Office [2011] EWHC 1913 (QB); Athanasios Sophocleous and others v 1) Secretary of State for the Foreign and Commonwealth Office, 2) Secretary of State for Defence* [2018] EWHC 19 (QB); Helena

make an impression that torture allegations were not made in the first application to the ECmHR.[414] However, constant allegations for the use of torture during interrogation quickly drew additional attention and thus, a second application was lodged on 17 July 1957,[415] addressing 49 individual cases of ill-treatment. On 12 May 1959 Greece and the UK informed of their intention to terminate the proceedings. following the conclusion of the London-Zurich Agreements on 19 February 1959.[416] Thus, the ECmHR never completed this case, and the brief report it produced was only made publicly available decades later.[417]

The application had led to increased concerns among the British authorities, however, the government considering the withdrawal of the ECHR from all colonial jurisdictions, to prevent applications from other countries on behalf of the colonies. Different 'emergency modalities'[418] or regimes were used throughout decolonisation, for colonial authorities to reconcile earlier forms of 'martial law' with concerns on maintaining the rule of law.[419] Considering the peculiar, from today's perspective, position of colonial laws in the 'periphery of [British] municipal law',[420] emergency regulations were a direct product of that colonial legal order. Nonetheless, from a legal perspective, the question of whether the Geneva Conventions justified any applicability within the colonies is still worth examining to maximise clarity.

Even though the UK signed the Geneva Conventions as early as 1949, it only deposited an instrument of ratification on 23 September 1957,[421] declaring upon ratification that the Conventions would only extend to Bahrain, Kuwait, Qatar and the Trucial State.[422] The 1949 Conventions were only incorporated into British domestic

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Smith, 'UK to pay £1m to Greek Cypriots over claims of human rights abuses' (*The Guardian*, 23 January 2019). <https://www.theguardian.com/world/2019/jan/23/britain-to-pay-group-of-greek-cypriots-1m-after-claims-of-human-rights-abuse> accessed 30 October 2021; Simpson (n 359) 1026.

[414] Simpson, *End of Empire* (n 359) 1024-1025.

[415] *Greece v UK* (Application 299/57) Report of the European Commission of Human Rights, 8 July 1959, 1.

[416] ibid18-20; See section 3.2.1.

[417] Simpson, *End of Empire* (n 359) 1047-1049.

[418] Reynolds, *Emergency* (n 496) 20.

[419] ibid 71-93.

[420] Fawcett (n 101) 89.

[421] ICRC, *IHL Databases*, United Kingdom <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesHistoricalByCountrySelected.xsp?xp_countrySelected=GB> accessed 30 October 2021.

[422] ICRC, *IHL Databases*, Declaration made by United Kingdom upon Ratification <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=67439308D7A3B68BC1256402003F9917> accessed 30 October 2021.

law on 31 July 1957,[423] yet it took two more years to pass an Order in Council extending the Geneva Conventions to the colonies, including Cyprus.[424] By then, Cyprus was already governed by a transitional government which was negotiating the Constitution of the RoC to be.[425]

In his memoirs, UK Prime Minister Macmillan admits that the EOKA emergency 'was, in effect, a military campaign'.[426] Nevertheless, from a formal legal perspective, GCs 1949 were not applicable in the colony of Cyprus during EOKA's action, and as seen through the UK counter-arguments before the ECmHR, neither the pre-1949 IHL provisions successfully drew any attention to the strong military element of these conflicts. Thus, the only way to challenge the emergency regulations introduced under 'peripheral' domestic British law, was indeed the ECHR, which extended to all colonial territories by virtue of article 63, its 'colonial clause'.[427] It is due to this fundamental, yet rather technical, detail that an examination of armed violence during the EOKA period, differs from the assessment of the armed violence of the 1960s.

2.4.3 Inter-communal Violence in 1958

The violence between EOKA and the British constitutes only one part, the better-known part, of armed violence during the period 1955-1959. As already seen above, a reaction of some kind by the Turkish-Cypriots was already anticipated during the preparatory stage of EOKA. The organisation had warned the Turkish-Cypriots not to become involved with the matter. Soon after violence erupted, however, the internal affairs of the Island—which were never fully 'internal'—had a spill-over effect over politics in Greece and Turkey, and the relations between the two. This process of 'diffusion'[428] has persisted at various levels of intensity since.

Among the events that took place out of Cyprus during this period stand out the September Riots in Istanbul and Izmir on 6 and 7 September 1955, when the Turkish State radio announced a bomb attack at the birth house of Kemal Ataturk in

[423] Geneva Conventions Act 1957.
[424] Geneva Conventions Act 1957, s 8; Sch I, The Geneva Conventions Act (Colonial Territories) Order in Council 1959, SI 1959/1301
[425] See section 3.3.1.
[426] Harold Macmillan, *Riding the Storm 1956-1959* (Macmillan 1971) 684.
[427] The corresponding provision today is article 56, but the phrase 'shall extend to all or any of the territories for whose international relations [the State] is responsible' has been removed; Reynold, *Emergency* (n 396) 128-129.
[428] Ted R Gurr, *Minorities at risk: A Global View of Ethnopolitical Conflicts* (United States Institute of Peace Press, 1993) 133.

Thessaloniki, Greece.[429] This led to riots and extended destruction of property of non-Muslims in the two cities,[430] and evidence presented by both Turkish and Greek researchers has proven that the riots were planned by the Turkish State with the contribution of the British government. This evidence has linked the event to developments in Cyprus.[431]

Within a year from the start of EOKA's campaign, the chasm between the two communities grew further. Already by May 1956, the New York Times reported on battles between Greek and Turkish-Cypriots,[432] whereas another article from the same source describes the separation of the Greek and Turkish quarters of Nicosia with barbed wire, to end riots between members from each group.[433] In the second half of 1957,[434] the paramilitary 'Turkish Resistance Organisation' (*Türk Mukavemet Teşkilatı* - TMT), came to replace a number of pre-existing organisations. Its objectives were to defend the security of life and property of the Turkish-Cypriots, to deter attacks targeting Turkish-Cypriots, to confront EOKA and stop the spreading of communism, while strengthening the bond between the Turkish-Cypriots and Turkey.[435] Similar to EOKA, TMT was divided in six regional sectors, each commanded by an officer of the Turkish Army, each of whom was also responsible for the smuggling of arms and the training of the organisation's members.[436] In the eyes of the British, both TMT and EOKA were 'terrorist organisations'.[437]

Diplomatic negotiations ran in parallel to the armed violence on the Island, and while they initially addressed only Greece and Turkey, Governor Harding initiated a dialogue with Archbishop Makarios immediately upon his arrival in October 1955,

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[429] Dilek Güven, 'Riots against the Non-Muslims of Turkey: 6/7 September 1955 in the context of demographic engineering (2011) 12 *European Journal of Turkish Studies* 1.
[430] ibid 3-4.
[431] Evanthis Hatzivassiliou, 'The Riots in Turkey, in September 1955: A British Document (1990) 31(1) *Balkan Studies)* 165; 'The Tripartite Conference on the Eastern Mediterranean and Cyprus, August 29 – September 7, 1955' in Stella Soulioti, *Fettered Independence: Cyprus, 1878-1964 Vol. 2 Documents* (University of Minnesota Press 2006) 31-83.
[432] Anon, '2 Cypriotes die in village fights; Greek and Turkish Factions Each Lose a Man Slain Before British Arrive' (*The New York Times*, 27 May 1956).
[433] Joseph O Haff, 'Barrier to Divide Cyprus' Capital; Barbed Wire Will Separate Greek and Turkish Areas of Nicosia to End Riots' (*The New York Times*, 29 May 1956).
[434] Exact time of establishment is disputed.
[435] Aggelos Chrysostomou, Από τον Κυπριακό Στρατό μέχρι και τη δημιουργία της Εθνικής Φρουράς (1959-1964) (From the Cyprus Army until the establishment of the National Guard (1959-1964)
(2015) 218-219.
[436] ibid 219.
[437] *HC Deb 24 July 1958 vol 592 col 676.*

without success.[438] Thus, the British turned their efforts towards achieving an international agreement involving the two 'motherlands', and in 1956 Lord Radcliffe was appointed as Constitutional Commissioner, to draft a new internal constitution for the Crown colony of Cyprus.[439] Upon presenting the Radcliffe Proposal to the House of Commons, Secretary of State for the Colonies Lennox-Boyd, informed the House that should self-government work effectively, then the UK was ready to recognise partition as one of the options towards the exercise of self-determination.[440]

Once rejected,[441] the Radcliffe Proposal, was replaced by a new plan, drafted by Prime Minister Macmillan, over a long consultation period which was held out of public sight for almost an year,[442] before it was presented to the House of Commons on 19 June 1958.[443] This new plan retained some of the elements of the Radcliffe proposal in terms of internal affairs, where each community retained autonomy on communal affairs through two separate Houses of Representatives.[444] Issues of external policy, defence and internal security would be reserved for the Governor, who would act in consultation with the Greek and Turkish governments.[445] The whole scheme would be tested for an interim period of seven years, yet this plan too was eventually rejected.

According to Kizilyurek,[446] the fact that the British government withdrew its promise for separate self-determination and was ready to go ahead with the

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[438] Andrew R Novo, 'An insoluble problem: The Harding-Makarios Negotiations, Turkey, and the Cause of Cypriot *Enosis*' (2015) 24(1) *Journal of Mediterranean Studies* 89.
[439] HC Deb 19 December 1956 vol 562 cols 1267-79; 'Constitutional proposals for Cyprus: Reports Submitted to the Secretary of State for the Colonies by the Right Hon. Lord Radcliffe, GBE, December 1956' in Soulioti, *Fettered Independence Vol. 2* (n 431) 85-136; 'The Radcliffe Proposals: A Summary' in Murat Metin Hakki, *The Cyprus Issue: A Documentary History, 1878-2007* (I.B. Tauris 2007) 12-28.
[440] HC Deb 19 December 1956 vol 562 col 1267; 'The Macmillan Plan of 1958' in Hakki, *Documentary History* (n 439) 28-29.
[441] Hatzivassiliou (n 78) 59-65.
[442] Macmillan (n 426) 660-670.
[443] HC Deb 19 June 1958 vol 589 cols 1315-20; 'Cyprus: Statement of Policy, 1958 (Cmnd. 455) in Soulioti, *Fettered Independence Vol 2* (n 431) 205-207.
[444] HC Deb 19 June 1958 vol 589 cols 1316-17.
[445] HC Deb 19 June 1958 vol 589 col 1317.
[446] Professor Niyazi Kizilyurek is a Turkish-Cypriot scholar in Political Science, and one of the few whose work is published in both Turkish and Greek. He has previously held the position of Dean of the School of Humanities at the University of Cyprus, and since 2019 has been serving as a Member of the European Parliament for Cyprus. His work is one the politics of and within the Turkish-Cypriot community constitutes one of the few accessible sources to non-Turkish speakers.

Macmillan Plan unilaterally, if rejected—something admitted to by Macmillan[447]—was the reason that led to a climax in inter-communal violence in 1958.[448] From 26 to 28 January 1958, Turkish-Cypriots rioters clashed with the police and seven members of their community died.[449] Following this event, Turkish-Cypriot nationalism started to openly turn against the British, leading Harding's successor and last Cyprus Governor, Sir Hugh Foot, to simultaneously be on guard for threats coming from each ethnic community, separately.

The increase of inter-communal violence in 1958 had direct impact on the institutional structure of local authorities. An issue which was a source of extensive tension in the first three years of the RoC. Already in the early 1940s, the Turkish-Cypriots were dissatisfied with the fact that the existing legislation on local authorities prevented the Turkish-Cypriots from holding any positions as mayors or deputy mayors.[450] In light of many Greek-Cypriot mayors' quest for *enosis* over the years, the issue was a source of additional friction. Even though municipal activities were largely unaffected at the start of the emergency in 1955,[451] the initiation of a campaign for *taksim* by the Turkish-Cypriot leadership in May 1957, led within a year to a Turkish-Cypriot demand for separate municipalities. [452]

The ongoing EOKA and TMT violence, combined with political intra-communal tension was a particularly difficult situation for the British government, who were reluctant to confront the Turkish-Cypriots with violence, especially in light of Turkish-Cypriot threats to withdraw from the security forces.[453] As a result, on 3 July 1958 Governor Foot reported that 'unofficial pilot corporations' were set up in all main towns of the Island, initiating a process of unofficial geographical division in all main urban centres.[454] During the same period, a campaign for economic 'self-resilience' and modernisation, with the slogan 'From Turk to Turk', was also initiated.[455] These constituted the starting point for future socio-economic detachment and isolation of

[447] Macmillan (n 426) 685.
[448] Niyazi Kızılyürek, *Μια εποχή της βίας: Το σκοτεινό 1958* (An Age of Violence: The Dark 1958) (Michalis Theodorou tr, 2nd edn, Heterotopia 2016) 14-18.
[449] ibid 21-23, 34.
[450] ibid 170-173.
[451] Diana Markides, *Cyprus 1957-1963: From Colonial Conflict to Constitutional Crisis – The key role of the Municipal Issue* (University of Minnesota 2001) 13-14.
[452] ibid 16-20.
[453] ibid 23-25.
[454] ibid.
[455] Mehmet (n 80) 33-35.

the Turkish-Cypriot community. A sample of what was to follow to a larger scale some five years later.

With armed violence continuously growing, within each and between the communities, June 1958 was the most violent month during this period. On 7 June 1958, a bombing attack on the Turkish Information Office triggered violence across the Island, leading to damage against private property, a series of murders and the first wave of displacement.[456] Among the casualties during this period alone, according to British archival information cited by Kizilyurek, there were 13 to 15 Greek-Cypriots and 2 Turkish-Cypriots, while some 600 to 700 families had to leave their homes, including Armenian-Cypriot families residing in the Turkish quarter of Nicosia.[457]

One of the most violent incidents throughout the 1950s occurred in the same month, when on 12 June 1958 eight Greek-Cypriots from the village of Kondemenos died and five others were severely wounded,[458] after being ambushed by a group of 50-100 Turkish-Cypriot men from the nearby Turkish-Cypriot village of Goneli;[459] a few miles north-west of Nicosia. The victims were part of a 35-strong group of Greek-Cypriots, among them also minors,[460] who earlier that day had set off to the mixed village of Skylloura to attack its Turkish-Cypriots residents. Upon being arrested by the British security forces, the group of 35 were left a few miles away from their village to return there on foot, under a regular practice of the British military known as 'bussing'.[461] The fact that these men were left unarmed and unescorted to walk through the fields in such proximity to a Turkish-Cypriot village was a major miscalculation, which triggered a formal inquiry on whether the security forces had intentionally left the group of the detainees there.[462]

The Commissioner, Paget Bourke, Chief Justice for Cyprus,[463] found that the British military had acted with 'utmost good faith',[464] and that the actions of the

[456] Kızılyürek, *Dark 1958* (n 448) 78-83.
[457] ibid 82-83.
[458] 'Findings of the Commission of Inquiry into the Incidents at Geunyeli, Cyprus on 12 June 1958, 2 July 1958' in Soulioti, *Fettered Independence Vol. 2* (n 431) 183, 199 para 44.
[459] ibid 198 para 43; Drohan (n 184) 66-71.
[460] Soulioti, 'Findings of the Commission of Inquiry' (n 458) 198-199 para 43.
[461] ibid 194-196 paras 32-37.
[462] HC Deb 10 December 1958 vol 597 col 345.
[463] Commissions of Inquiry Law (Capital 64); Order no. 4144, *Cyprus Gazette* (Extraordinary), 16 June 1958.
[464] Soulioti, 'Findings of the Commission of Inquiry' (n 458) 196 para 37.

Turkish-Cypriots were intentional.[465] Despite the fact that arrests were made,[466] no known trials have been found in the sources consulted for the present research. It appears, however, that the Goneli incident set a precedent for future inquiries that took place in the early years of the RoC as a substitute for a judicial process, potentially contributing to the poor judicial record observed regarding the most obscene crimes of the following 15 years.[467]

The above description of the period 1955-1959 is not detailed enough in terms of the violence experienced by the local population in the second half of the 1950s. Nevertheless, it attempts to illustrate how this short period of four years set the foundation of the institutional problems and the violence inherited by the RoC. In terms of armed violence in particular, the late 1950s were a period when paramilitarism 'flourished' on the Island. 'Paramilitary groups' being understood as armed organisations that 'exist outside the law', and are characterised by acting in opposition or in support of a particular regime.[468]

If we follow Moir's suggestion that in 1949 CA3 was intended to cover situations traditionally termed as 'civil war',[469] and that violence between EOKA and the British forces was in fact an insurgency which was not addressed as such due to colonial policy, once is left wondering whether the violence between EOKA and TMT could also be analysed in light of CA3. With the extremely limited information that has been available for this research, it is not possible to answer this question. Considering, however, that CA3 can be applicable in situations between two armed groups, none of which is the armed forces of the State, then there is no reason to reject that assumption, subject to further analysis under 'organisation' and 'intensity'. The State here would of course be the UK, as opposed to later violence, which took place within the territory of the RoC, and due to this, the broader legal framework would be substantially different, and in *legal* terms, the violence of 1958 and 1963 onwards, are two completely different cases.

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[465] Soulioti, 'Findings of the Commission of Inquiry' (n 458) 199-200, paras 45-46.
[466] ibid 198 para 42.
[467] See section 5.3.2.
[468] Benjamin R Beede, 'Semi-Military and Paramilitary Organizations' (*Oxford Bibliographies*, 28 March 2018) <https://www.oxfordbibliographies.com/view/document/obo-9780199791279/obo-9780199791279-0100.xml> accessed 3 November 2021.
[469] Moir, 'Concept of NIAC' (n 232) 409.

2.5 Conclusion

The nineteenth century history of PIL, inseparable from the colonial 'civilising mission' and the 'humanitarianism' that developed in parallel, has given as a new perspective of the history of Cyprus. Located at the intersection of the Asian and European peripheries, the Island's history has been developed from a diversity of factors, which are not always obvious, depending on the analytical angle one employs. As a former Ottoman province, at the turn of the twentieth century, the Island's population was directly affected by developments on the Balkans, and in particular the tense Greco-Turkish relations before and after WWI. However, once Cyprus became a British colony in 1925, developments within the British Empire and the broader colonial world started having a more direct, especially in the aftermath of WWII and the establishment of the UN. Cyprus' relation to the post-colonial world reached a peak moment with Makarios participation at the Bandung Conference, which led to the RoC becoming one of the founding members of NAM in 1961.

The sources consulted have shown a strong awareness among the Cypriot leadership of the tensions caused because of the Cold War, which by the 1950s had already led to intra-communal hostility, across different political groups, whereas the rise of anti-colonial sentiment in the 1950s can be directly linked to the various anti-colonial struggles around the world, such as Algeria, Kenya, and Ireland.[470] Like elsewhere, also in Cyprus the British refrained from applying IHL in the context of the EOKA 'emergency', yet we have seen how Greek-Cypriot lawyers and Greece turned to human rights as an alternative legal framework.

There is limited doubt that during this period the two main Cypriot religious groups imitated the long history of 'banditry, politics, and paramilitarism' of their respective 'motherlands', from the nineteenth and early twentieth centuries.[471] According to Loizos, violence was justified under a 'folk-legal doctrine', hostile to individual responsibility and contextual specificity, which in its simplest form was expressed through the idea that 'Some of them have harmed some of us, so some of us may take vengeance on any of them'.[472] He did not omit to mention that in fact most modern European nation-states had been born in violence;[473] hinting that neither

[470] Reynolds, *Emergency* (n 396) 33; Drohan (n 184) 191-192.
[471] Uğur Ümit Üngör, *Paramilitarism: Mass Violence in the Shadow of the State* (OUP 2020) 26-29.
[472] Loizos, *Unofficial Views* (n 98) 163; Peter Loizos, 'Intercommunal killing in Cyprus' (1988) 23(4) *Man: The Journal of the Royal Anthropological Institute* 639.
[473] Loizos, *Unofficial Views* (n 98) 155.

‘barbarity’, nor ‘savagery’ are historically exclusive to the ‘non-European’; however one chooses to define ‘non-European’ racially, culturally, or geographically.

In the next chapter we proceed with an overview of the RoC constitutional order, as well as a presentation of the challenges the new Republic inherited, against the background of the violence in the second half of the 1950s, as a prologue to the eruption of the most violent period of 1963-1964.

3 FRAGILE INDEPENDENCE, RIGID CONSTITUTIONALISM, AND THE RETURN OF ARMED VIOLENCE (1959-1963)

3.1 Introduction

The series of dead-end negotiations between Greece, Turkey and Britain in 1955-1959, took an unexpected turn in the last month of 1958, when the foreign ministers of Greece and Turkey held a brief two-day meeting in Paris, on 16-18 December 1958, to discuss their respective views on Cyprus.[1] This was followed by another meeting between the Greek and Turkish representatives in Zurich, from 5 to 11 February 1959. There Greece and Turkey agreed, in the absence of Cypriot and British representatives, the 'Basic Structure' of the RoC Constitution. The agreement was so unexpected, that Macmillan described the days that followed 'like a film than real life'.[2]

The Island would become an independent Republic, governed through a rigid collaboration between the 'Greeks' and the 'Turks' of the Island. Independence would be subject to three multilateral treaties, including a Treaty of Guarantee which bound the UK, Turkey and Greece to 'recognise and guarantee the independence, territorial integrity and security' of the Republic as well as the 'state of affairs' under the Constitution's Basic Structure, explicitly prohibiting the direct or indirect promotion of *enosis* or *taksim*.[3] In addition to the Zurich Agreement, Prime Ministers Karamanlis and Menderes, signed a non-binding 'Gentlemen's Agreement', according to which they would support Cyprus' entry to NATO, of which both States were members.[4] The UK, which was still the sovereign power in Cyprus, held an additional conference in London, from 17 to 19 February, where all parties attended, including Archbishop Makarios III on behalf of the Greek-Cypriots, and Dr. Fazil Kutchuk on the side of the Turkish-Cypriots.[5] The resulting London Agreement, added additional points to the

[1] Evanthis Hatzivassiliou, *The Cyprus Question, 1878-1960: The Constitutional Aspect* (University of Minnesota 2002) 73-77.
[2] Harold Macmillan, *Riding the Storm 1956-1959* (Macmillan 1971) 693.
[3] Treaty of Guarantee (signed 16 August 1960, Nicosia) (ToG) 382 UNTS 5475, arts I and II.
[4] Hatzivassiliou (n 1) 78.
[5] For the full collection of documents agreed upon at the meetings held in Zurich and London in February 1959 see: Foreign and Commonwealth Office, *Conference on Cyprus: Documents singed and initialled at Lancaster House on 19 February 1959* (Cmnd 679, 1959).

issues agreed upon in Zurich. Most significant among them, the retention of two military Sovereign Base Areas (SBAs) by the UK.[6]

Shortly thereafter, a transitional government was set up, and three committees took over the preparations for the establishment of the new Republic. These were the London Joint Committee, tasked with the drafting the three constituent Treaties of the RoC and deciding over the delimitation of the SBAs, a Transitional Committee based in Cyprus, which would be a type of quasi-government for the duration of the transitional period, and the Constitutional Committee, which was tasked with the drafting of the final text of the Constitution.[7] The calm, however, was only on the surface, and on 18 October 1959 a British naval patrol found ammunition on a Turkish heading to Cyprus.[8] February 1960, US officials estimated that there was 'at least a possibility that the settlement might collapse'.[9]

On 29 July 1960, the House of Commons voted the Cyprus Act,[10] through which the UK handed over its sovereignty over the Island, excluding the two SBAs, to the soon-to-be-established Republic. This happened at midnight on the evening of 15 to 16 August 1960, when the three international treaties which set the international framework for the establishment of the RoC and the new Constitution were signed in Nicosia by the last Governor of the Crown Colony of Cyprus, Sir Hugh Foot, the first President of the Republic Archbishop Makarios III, the first (and only holder of the seat) RoC Vice-President Dr. Fazil Kutchuk, and the General Consuls of Greece and Turkey.[11]

On the same day President Makarios sent a telegram to the UN Headquarters in New York, requesting from the UN Secretary-General Dag Hammarskjöld to

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[6] Treaty (with annexes, schedules and detailed plans) concerning the Establishment of the Republic of Cyprus (signed 16 August 1960) 382 UNTS 5476 (ToE), art 2(2).
[7] Hubert Faustmann, 'Independence Postponed: Cyprus 1959-1960' (2002) 2 *The Cyprus Review* 99; See also: Hubert Faustmann, 'Divide and Quit? The History of British Colonial Rule in Cyprus 1878-1960, including a special survey of the Transitional Period, February 1959 - August 1960' (PhD Thesis, University of Mannheim 1999).
[8] Faustmann, 'Independence Postponed' (n 7) 103.
[9] US State Department, *Foreign Relations of the United States, Vol X, Part 1*, *Eastern Europe Region; Soviet Union; Cyprus (1958–1960)*, 347. National Security Report, Statement of US Policy Toward Cyprus, 9 February 1960 <https://history.state.gov/historicaldocuments/frus1958-60v10p1/d347> accessed 23 September 2021.
[10] Cyprus Act 1960; Republic of Cyprus Order in Council, 1960, SI 1960/1368.
[11] Stella Soulioti, *Fettered Independence: Cyprus, 1878-1964 Vol 1 The Narrative* (University of Minnesota Press 2006) 109-111.

communicate to the UNSC the Republic's application for admission to the organisation.[12] A draft resolution, co-sponsored by the UK and Ceylon, recommending the Republic's admission for membership to the UN General Assembly (UNGA) was approved unanimously,[13] and the process was completed with the approval of the UNGA on 20 September 1960.[14] On that day the RoC joined the UN along with 13 newly-proclaimed African States, among them Cameroon, Congo (Leopoldville), Congo (Brazzaville), the Central African Republic, and Somalia,[15] taking a seat in the Asia-Pacific regional group.[16] Within a year from joining the UN, the Republic also joined the Commonwealth, the CoE and the NAM.[17]

The aim of the present chapter is, from a historical perspective, to connect the dots between the early inter-communal violence of 1958 to the inter-communal violence which broke out in December 1963. From a legal perspective, the chapter serves as an opportunity to offer an overview of the legal framework within which the RoC was envisaged to function originally. This is achieved by looking first at how the mechanics of PIL formed the core instruments setting up the 'Basic Structure' of the RoC Constitution, and its association with the three multilateral Treaties signed on 16 August 1960. From there, the chapter assumes a historical turn, so as to introduce the reader to the socio-political factual framework that eventually led to renewed violence three years after the establishment of the Republic. It concludes with an overview of a number of key criminal incidents which took place during this period and were handled as a matter of domestic law, in order to juxtapose those events to the events analysed in the following chapters.

[12] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119, art 4; Cable Dated 60/08/16 from the President of the Republic of Cyprus Addressed to the Secretary-General of the United Nations UN Doc S/4435.
[13] UNSC Records, 24 August 1960, UN Doc S/PV.892; UNSC Res 155 (24 August 1960).
[14] UNGA Res 1489(XV) (20 September 1960); Cyprus: Declaration of Acceptance of the Obligations Contained in the Charter of the United Nations (signed 29 May 1961, Nicosia) 397 UNTS 5711.
[15] UNGA Records, 20 September 1960, UN Doc A/PV.864.
[16] UN Regional Groups, <www.un.org/dgacm/en/content/regional-groups> accessed 20 March 2021.
[17] RoC MFA, Timeline of the Ministry of Foreign Affairs through the Most Important Moments of the History of the Republic of Cyprus (1960-2017) <https://mfa.gov.cy/assets/mfa_timeline/index.html> accessed 22 March 2021.

3.2 The Embedding of International Law in the Constitution of the Republic of Cyprus

The violence of the preceding years, combined with the decades-long competition between the two main ethnic groups of the Island, left the local population and the respective leadership in a state of mistrust, and eager to pursue their separate agendas. Like elsewhere, the RoC was the result of 'scattered proposals aimed at avoiding the logic of national self-determination and popular sovereignty',[18] which raised from the very beginning serious questions on the compatibility of the Republic's constitutional order with the principle of sovereignty.[19]

The exact meaning of the term 'sovereignty' is rather elusive, with 'internal sovereignty' connecting to ideas regarding 'self-determination', and 'external sovereignty' relating to 'independence'.[20] In many international disputes, the extent of a State's sovereignty often lies at the core of the dispute,[21] and the Cyprus Question is no different. From the beginning it was extensively argued that in the RoC the level of detail regulated through the Republic's constitutive treaties restricted and subjected the exercise of State power, on the domestic (internal) and the international (external) plane, directly to the will of the guarantor Powers, weakening the Republic's own capacity to regulate its own affairs.[22] In that regard, Cyprus was not unique. The limitations and disadvantages which usually attached to 'Third World sovereignty', made the sovereignty allocated to new States during decolonisation 'quite distinctive', weaker, once compared to western sovereignty.[23]

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[18] Partha Chatterjee, 'The Legacy of Bandung' in Louis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Future* (CUP 2017) 657, 670-671.

[19] UN Charter, art 2(7); James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 124, 431; See also: Costas M Constantinou, 'Cypriot In-dependence and the Problem of Sovereignty' (2010) 22(2) *The Cyprus Review* 17.

[20] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Reissue with New Epilogue, CUP 2005) 240-241; Samantha Besson, 'Sovereignty' in *MPEPIL* (April 2011) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1472> accessed 28 March 2021 paras 69-73.

[21] Koskenniemi, *From Apology to Utopia* (n 20) 238.

[22] C G Tornaritis, *Cyprus and its Constitutional and other Legal Problems* (2nd edn, 1980) 57-58.

[23] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) 2.

Crawford acknowledged the particular nature of Cypriot sovereignty, categorising the Island as an example of post-1945 territorial internationalization.[24] 'Internationalized territories', he explained, are special cases in the application of the classical criteria for statehood,[25] defined as a 'form of organization of territories disputed between States on strategic, ethnic or other grounds' through the 'establishment of autonomous entities under a form of international protection, supervision or guarantee'.[26] Examples are numerous deriving primarily from the nineteenth and the first half of the twentieth centuries, most recent example being the case of Kosovo (1999-).[27] Importantly, Crawford did not deny the political nature of this type of entities. On the contrary, he stated specifically that 'there appears to be no legal, as distinct to political, concept of "internationalized territory",[28] adding further that 'Politically none of [the] earlier experiments in internationalization were very successful'.[29]

3.2.1 The three Constituent Treaties of the Republic of Cyprus

Before the establishment of the UN, treaties of guarantee aiming toward the maintenance of a specific 'state of affairs' addressed by each treaty, were not uncommon.[30] Thus, historian's Diana Markides argument that the London-Zurich Agreements framework achieved bringing Cyprus within NATO's scope of influence, with a 'troika of NATO countries' guaranteeing the RoC independence,[31] gives an at least partial indication of the overriding priorities that had been in place. Indeed, the use of nineteenth-century colonial practices in the management of twentieth-century

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[24] James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007) 241-244.
[25] Art I, Convention on Rights and Duties of States adopted by the Seventh International Conference of American States (adopted 26 December 1933, entered into force 26 December 1934) CLXV LNTS 3802; The criteria are: '(a) Permanent Population, (b) Defined Territory, (c) Government, and (d) Capacity to enter into relations with the other states Capacity to enter into relations with the other States'.
[26] Crawford, *Creation of Sates* (n 24) 233.
[27] ibid 234-241; Constantinou, 'Cypriot In-dependence' (n 19) 20.
[28] Crawford, *Creation of Sates* (n 24) 233.
[29] ibid 236.
[30] David Wippman, 'Pro-democratic intervention' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 797, 809.
[31] Diana Markides, 'A State of Deceptive Ambiguity: The Turkish-Greek Framework, the Commonwealth, the Non-Aligned Movement and Cyprus, 1960-64 in Petros Papapolyviou, Aggelos Syrigos, Evanthis Hatzivassiliou (eds), *Το Κυπριακό και το Διεθνές Σύστημα, 1945-1974: Αναζητώντας θέση στον κόσμο* (Patakis 2013) (The Cyprus Problem and the International System, 1945-1974: In search of a position in the world)183, 188; See also: Klearchos A. Kyriakides, 'NATO and Cyprus: The reaction of the British government to the 1959 Greco-Turkish proposal to admit an independent Cyprus to NATO' (2007) 6(1) *Cambridge Review of International Affairs* 52.

conflicts, has not been adequately recognised,[32] and the Treaty of Guarantee (ToG), in particular, is one good example of such practice.

The ToG was signed by the RoC on the one side, and by all three guarantor Powers, Greece, Turkey and the UK on the other. Each party, as mentioned above, was obliged to 'ensure the maintenance of its independence, territorial integrity and security' of the Republic.[33] Article III imposed an obligation on the RoC, Greece and Turkey to 'respect the integrity' of the SBAs,[34] whereas article IV stated:

> In the event of a breach of the provision of the present Treaty, Greece, Turkey and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions.
>
> In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-stablishing the state of affairs created by the present Treaty.

The principle of 'territorial integrity' and the notion of 'security' are integrally related to 'independence' and 'sovereignty', and mentioned in article 2 of the UN Charter, concerning the guiding principles of the organisation.[35] Territorial integrity is understood as the inviolability of the territory of a State,[36] whereas the exact meaning

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[32] Mohammad Shahabuddin, *Ethnicity and International Law: Histories, Politics and Practices* (CUP 2016) 4; See also: George B Zotiades, *Intervention by treaty right: Its legality in present day international law* (Jus Gentium Series of Publications on International Law 1965) 21-24; Davide Rodogno, 'European Legal Doctrines on Intervention and the Status of the Ottoman Empire within the 'Family of Nations' Throughout the Nineteenth Century' (2016) 18(1) *Journal of the History of International Law* 5.

[33] ToG, arts 1 and 2

[33] ibid; Hatzivassiliou (n 1) 78; RoC Constitution, art 185; For an almost complete official English text of the Constitution, translated from Greek and Turkish see: Foreign Office, Colonial Office and Ministry of Defence, *Cyprus* (Cmnd 1093, 1960), Appendix D; For a more accessible complete unofficial translation see: International Constitutional Law Project, *Cyprus Constitution* <https://www.servat.unibe.ch/icl/cy00000_.html> accessed 20 December 2021 (This version is missing arts 187-199 and Annexes I-III RoC Constitution)

[34] ToG, art III.

[35] Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514(XV) (14 December 1960); Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, UNGA Res 2131 (XX) (21 December 1965); Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Res 2625(XXV) (24 October 1970).

[36] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America),* Judgement [1986] ICJ Rep 14 [174], [196]; Samuel K N Blay, 'Territorial Integrity and Political Independence' *MPEPIL* (March 2010)

of ‘Security’, depends on the context within which ‘security’ is referred to, and therefore, lacks a legal definition.[37] All of the above are of direct relevance to issues associated with the use of force, and the accompanying principle of non-intervention under PIL.[38] To date article IV in particular has been subject to great controversy due to Turkey’s interpretation that the provision gives unilateral rights for intervention, including a right to military intervention, if there is no consensus between the three Guarantors. Three legal opinions on ToG were provided between 1959 to 1964, by Hans Kelsen,[39] Frank Soskice[40] and Elihu Lauterpacht.[41] Though each opinion assumed a different approach and focused on different aspects of the legal questions and sub-questions raised, they did share some common points.

Starting from article 103 UN Charter, on the prevalence of Charter provisions over other conflicting obligations of UN member States under other international agreements,[42] all three opinions recognised that the ToG was likely to give rise to conflicting interpretations, in regard to articles 2(4), 52 and 53 of the Charter. Article 2(4) is the general prohibition of the use of force under PIL post-WWII. Thus, *a priori* an interpretation of article IV which would allow the use of force by any of the contracting parties to the treaty, could not be sustained.[43] The latter two articles

<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1116?prd=OPIL> accessed 28 March 2021 paras 1, 7.

[37] Avril McDonald and Hanna Brollowski, ‘Security’ in *MPEPIL* (May 2011) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e399> accessed 28 March 2021 paras 1-2.

[38] *Corfu Channel (UK v Albania),* Judgement [1949] ICJ Rep 4, p. 22; *Nicaragua* (n 36) [202]; Philip Kunig, ‘Intervention, Prohibition of’ in *MPEPIL* (April 2008) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1434?rskey=QpSev6&result=2&prd=OPIL> accessed 28 March 2021.

[39] Hans Kelsen, ‘Opinion Commissioned by the United Nations in Relation to the Eligibility of the Future Republic of Cyprus as Member of the United Nations’, 12 May 1959, extract available in Stella Soulioti, *Fettered Independence: Cyprus, 1878-1964 Vol 2: The Documents* (University of Minnesota, 2006) 253; Aristoteles Constantinides, ‘Hans Kelsen’s Opinion on the Eligibility of the future Republic of Cyprus as a Member of the United Nations’ in Clemens Jabloner, Thomas Olechowki, Klaus Zeleny (eds) *Das internationale Wirken Hans Kelsens* (MANZ 2016) 169.

[40] Frank Soskice, ‘Opinion Requested by Glafkos Clerides, President of the Cyprus House of Representatives, in Relation to the Implementation of Certain Articles of the Cyprus Constitution, 1 November 1963, available in Soulioti, *Documents* (n 39) 261; See also: Frederick Madden (ed), *The end of Empire: Dependencies Since 1948 – Part I: the West Indies, British Honduras, Hong Kong, Fiji, Cyprus, Gibraltar and the Falklands* (Greenwood Press 2000) 474.

[41] Elihu Lauterpacht, ‘Opinion requested by the Government of Cyprus on the Treaty of Guarantee’, 30 January 1964, available in Soulioti, *Documents* (n 39) 267.

[42] Soulioti, *Documents* (n 39) 254-255, 262, 269.

[43] ibid 256-257, 269-270.

provide that States may undertake 'regional arrangements' for the 'pacific settlement of local disputes' without referring them to the UNSC,[44] but under such regional agreements States are explicitly precluded from using force without the authorisation of the UNSC.[45] Therefore, even if the ToG was understood to constitute a 'regional agreement' for the purposes of the UN Charter, a unilateral right to use force could not have been exercised without the consent of the UNSC.

Writing in 1963 and 1964, Soskice and Elihu Lauterpacht appeared more certain than Kelsen that ToG, arguably along with the accompanying ToE and ToA,[46] could constitute a 'regional settlement'.[47] They did, however, had the benefit that they wrote a few years after the agreements were implemented in practice. Kelsen, on the other hand, had no facts against which to base his arguments. Already a renowned legal theorist by that time, he worked his way through a number of hypotheses instead, estimating the parties' legal obligations in 'a situation which might arise if the constitution of Cyprus were overthrown by internal revolution aimed at either limiting minority rights or union with another State, or partition'.[48] Under this scenario, he argued, an armed attack against any Guarantor troops, self-defence could 'in certain circumstances, be justifiable'.[49] However, if the (hypothetical) disturbances did *not* lead to an armed attack against the Guarantors, then the legal situation would be more complex, giving rise to an examination under articles 41 (UNSC measures not involving the use of force), 53 (UNSC enforcement actions under regional arrangements), 2(3) (on the peaceful settlement of disputes) and 2(4) (prohibition of the use of force) of the Charter.[50]

In 1964, at the time of the drafting of VCLT 1969, the RoC raised the argument before the UN that ToG was null and void as it conflicted with *jus cogens* norms of PIL, based on draft articles 37 and 45 of the draft treaty (now articles 53, 64 VCLT).[51] In particular, according to Ambassador Jacovides, who served as ILC member from

[44] UN Charter, art 52.
[45] UN Charter, art 53.
[46] Soulioti, *Documents* (n 39) 264.
[47] ibid 264, 270.
[48] ibid 256.
[49] ibid.
[50] ibid 256-259.
[51] ILC, Report of the International Law Commission, Supplement No 9 (6 May-12 July 1963) UN Doc A/5509, pp 11-12, 23; ILC, First report on *jus cogens* by Dire Tladi, Special Rapporteur (8 March 2016) UN Doc A/CN.4/693, para 39.

1982-1996,[52] the ToG conflicted with the principles of sovereignty, non-intervention, peaceful settlement of disputes and the prohibition of the use of force.[53] The merit of the argument was overall accepted by commentators then and later.[54] but as seen in the next chapters, in its application in theory. Considering that the ongoing negotiations on Cyprus even today are structured on the basis of the ToG, with the participation of each Cypriot community and the three guarantors of the RoC, and with no prejudice to the international recognition of the Greek-Cypriot leadership as the sole government of the RoC since 1964, it appears that the ToG as well as the Treaty of Alliance (ToA), discussed further below, have been suspended,[55] to this day. If that is the case, then whether they are to be terminated or revised ('a matter for politics and diplomacy',[56] not law) will depend on the solution reached.

The next treaty, the ToE is the one least discussed in the context of the Cyprus Question. Signed by the UK, Turkey, and Greece on the one hand, and the RoC on the other, the treaty contains six lengthy annexes, and is supplemented by 14 additional exchanges of notes between the UK and the RoC, only.[57] It can be considered as the act constituting the RoC's succession as a State, over the majority territory of the Island of Cyprus.[58] The Treaty defines the exact territory of the RoC, as 'the Island of Cyprus, together with the islands laying off its coast with the exception of the two areas defined in Annex A', meaning the 'Akrotiri' and the 'Dhekelia' SBAs.[59] Article 2 binds the RoC to accord to the UK various rights including complete control within the SBAs, and on issues relevant to their guarding, defending and policing, the movement of aircraft, vessels and vehicles, the erection and construction of

[52] ILC Outlines Prepared by Members of the Commission on Selected Topics of International Law (9 November 1993) UN Doc A/CN.4/454, p 16-26.
[53] Andrew Jacovides, 'Treaties Conflicting with Peremptory Norms of International Law and the Zurich-London 'Agreements' in Andrew Jacovides, *International Law and Diplomacy* (Martinus Nijhoff 2011) 17, 43-54; See also: Zotiades (n 32) 25-35.
[54] Kypros Chrysostomides, *The Republic of Cyprus: A study in International Law* (Martinus Nijhoff 2000) 72-73; Crawford, *Creation of States* (n 24) 167-168.
[55] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), arts 42(2), 57-60, 62(3), 72; See section 4.3.4.
[56] Arnold D McNair, *The Law of Treaties* (Reprinted 2003, OUP 1961) 534-535.
[57] ToE (n 6) 382 UNTS 5476.
[58] Chrysostomides (n 54) 62-64.
[59] ToE, art 1; On the Administration of the SBAs see: The Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (16 August 1960) SI 1369/1960; s 2(1)(a) Cyprus Act 1960; See also: Klearchos A Kyriakides, 'Syria, Sarin and Cyprus: An Open Letter to the Prime Minister of the United Kingdom' (2020) 22(3) *Journal of Balkan and Near Eastern Studies* 372; Nasia Hadjigeorgiou, 'Sovereign Base Areas (SBA)' *MPEPIL* (June 2021) <https://opil.ouplaw.com/view/10.1093/law-epil/9780199231690/law-9780199231690-e2261> accessed 30 November 2021.

installations, and the use of roads.[60] Article 3 imposed a duty among all four parties to 'consult and cooperate in the common defence of Cyprus'. An important distinction between this treaty and the other two is that the ToE has no constitutional force under RoC domestic law.[61]

Albeit it often appears to be the least controversial of the three, the ToE has been of immense importance to the UK's defence policy.[62] Especially in the 1960s its significance was emphasised due to the existence of the Bagdad Pact (CENTO), between the UK, Turkey, Pakistan, Iraq and Iran.[63] In recent years, its significance became more broadly relevant to the ongoing debates on legal aspects of the process of decolonisation and disputed claims to territorial title.[64] According to a recent judgement of the United Kingdom Supreme Court (UKSC) it was decided that the 1960 Cyprus Act had not changed the status of the territory within the SBAs, but simply excluded those two territories 'from the transfer of territory to the new Republic of Cyprus', thusly implying that the SBAs are today legally a continuation of the former Crown colony of Cyprus.[65]

In that case, the UKSC also made reference to the *Bancoult*[66] case concerning the status of the British Indian Ocean Territory (BIOT),[67] which is evidence of the relevance of the ICJ Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*[68] to Cyprus. The factual overview

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[60] ToE, Annex B, pt II, ss 1-9

[61] *Ex parte Samuel N. Samuel* 3 RSCC 76; *Panayi v Fraser* (1963) 2 CLR 356; See also: Criton G Tornaritis, 'The Nicosia Airport and the Treaty of Establishment' (1964) in Criton G Tornaritis (ed), *Constitutional and Legal Problems in the Republic of Cyprus* (2nd edn, 1972) 57, 61.

[62] *R (on the application of Tag Eldin Ramadan Bashir and others) v Secretary of State for Home Department* [2018] UKSC 45; Klearchos A Kyriakides, 'The Sovereign Base Areas and British Defence Policy since 1960' in Hubert Faustmann and Nicos Peristianis (eds) *Britain in Cyprus: Colonialism and Post-Colonialism 1878-2006* (Bibliopolis, 2006) 511.

[63] Pact of Mutual Co-operation between Iraq and Turkey 233 UNTS 199 (signed 15 April 1955) (Bagdad Pact); Dionysis Chourchoulis, 'Δυτική στρατηγική, βρετανικές βάσεις και Κύπρος, 1960-69' (Western strategy, British bases and Cyprus, 1960-69) in Papapolyviou and others (n 31) 215.

[64] *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* (No 2) [2009] AC 453; *R (on the application of Tag Eldin Ramadan Bashir and others) v Secretary of State for Home Department* [2018] UKSC 45.

[65] *Bashir and others* (n 64) [69], [70].

[66] *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* (No 2) [2009] AC 453.

[67] *Bashir and others* (n 64) [66] – [68].

[68] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion* [2019] ICJ Rep 95.

provided by the ICJ there is indicative of the independence - territorial integrity - self-determination - defence nexus that is also characteristic of the Cyprus case,[69] while at the same time it illustrates that the historical legacy and practical effect of politico-legal decisions and agreements made in the 1960s, is only just now starting to be investigated; academically and institutionally. These developments have no direct impact on the present research, but they certainly strengthen the argument in favour of a historico-legal analysis with regard to outstanding, post-colonial, geopolitical and accompanying legal issues across the globe.

The last constitutive treaty of the RoC, the ToA, reflects Vattel's idea of alliances among smaller States, with the objective to prevent one State from dominating and subjugating the other parties of the alliance.[70] Indeed, this appears to have been the rationale behind the signing of a Treaty of Alliance between Greece, Turkey and the RoC,[71] an expression of the signatories' 'common desire to uphold peace and to preserve the security of each of them'.[72] Assessed in conjunction with the ToG, the general context of Greco-Turkish relations throughout the nineteenth and twentieth centuries, and in retrospect, against the historical developments studied in the present research, this treaty is of significant practical importance. Signatories to this treaty were Greece and Turkey on the one side, and the RoC on the other, with the treaty constituting

The parties to the treaty undertook to cooperate for their common defence,[73] and in particular to 'resist any attack or aggression, direct or indirect, directed against the independence or the territorial integrity' of the Republic.[74] The alliance's structure was formed around the establishment of a Tripartite Headquarters on the territory of the RoC,[75] the Command of which was to rotate on an annual basis among a Greek, Turkish and Cypriot General Officer appointed by each corresponding government.[76]

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[69] ibid [107] – [110].

[70] Koskenniemi, *From Apology to Utopia* (n 20) 120

[71] Treaty of Alliances (with Additional Protocols) (16 August 1960) 397 UNTS 5712 (ToA); Criton G Tornaritis, *The Treaty of Alliance: An analysis of the treaty and the reasons that led to its termination in the light of International Law* (PIO year unknown).

[72] ToA, Preamble.

[73] ToA, art I; Agreement between the Kingdom of Greece, the Republic of Turkey and the Republic of Cyprus for the Application of the Treaty of Alliance (signed 16 August 1960), art II; For the full text see: Soulioti, *Documents* (n 39) 309-370 (Supplementary Agreement ToA).

[74] ToA, art II.

[75] ToA, art III.

[76] ToA, art V.

The ToA and its two Additional Protocols,[77] which enjoy constitutional force under the RoC Constitution,[78] were also supplemented by a separate Agreement for the Application of the Treaty of Alliance (the 'Agreement'),[79] setting the complete legal framework on Greek, Turkish and Cypriot military presence and collaboration on the Island.

According to article 129(1) of the RoC Constitution, the Republic would have its own Army, with a force of 2,000 men, on a ratio of 60:40 allocation of positions between the Greek-Cypriot and Turkish-Cypriot troops, respectively. Paragraph 2 of article 129 provided that there would be no compulsory conscription, unless otherwise agreed in common by the RoC President and Vice-President. In addition to the Cyprus Army, the Treaty provided for the presence of a Greek and a Turkish contingent, numbering 950 and 650 'non-commissioned officers and men', respectively.[80] These were tasked explicitly with the provision of training to the Cyprus Army.[81] The 'supreme political body' of the alliance would be a committee consisting of the MFAs of the three parties,[82] each of whom would preside over it based on an annual rotation.[83] Ordinary sessions would be held once a year, with the possibility of convening emergency sessions, if needed.[84]

Contrary to the ToA and its Additional Protocols, the Agreement is a significantly longer document, providing detailed practical and logistical information, including the measures that shall be taken in preparedness for an attack against the RoC,[85] the structure, tasks and responsibilities of the Tripartite Headquarters and the Commander.[86] Moreover, it provided for the organisation, the equipment, the rotation, and the chain of command of the Greek and the Turkish contingents,[87] as well as the procedure to be followed in case each of the two States was requested jointly by the

[77] ToN (n 71).
[78] RoC Constitution, art 181, Annex II.
[79] The Agreement itself is supplemented by 4 Annexes; C G Tornaritis, *Constitutional and Legal Problems in the Republic of Cyprus* (PIO 1972) 33-34.
[80] ToA API, art I.
[81] ToA, art IV; ToA Supplementary Agreement, art XVI, Annex D.
[82] ToA APII, art I.
[83] ToA APII, art III.
[84] ToA APII, art II.
[85] ToA Supplementary Agreement, arts III-V.
[86] ToA Supplementary Agreement, arts IV-XII, Annex A.
[87] ToA Supplementary Agreement, Art XIII, Annex B.

Republic's President and Vice-President to make available troops in addition to the numbers prescribed in the treaty.[88]

Compared to the many controversial and contested points raised by the ToE and the ToG, the highly technical provisions of the ToA appear clear and straightforward. However, different aspects of the ToA and the subsequent lawful presence of foreign troops in Cyprus during the 1960s is directly relevant to legal questions and factual points examined in depth in the next two Chapters. By virtue of all three treaties which constituted, guaranteed and protected the newly-established Republic, it is inevitable that more than one armies were eligible to be stationed on the territory of the Island, and the territory of the Republic more concretely, during the period under examination.

The position on the unfairness and outright illegality of the three multilateral treaties, expressed in the 1960s by Jacovides and Zotiades became the central position of the RoC. Combined with the inflexibility in amending the most substantial parts of the Constitution,[89] as mentioned by Tornaritis 'impaired and almost destroyed'[90] the independence of the Republic, depriving it of 'one of the prerequisite qualities of a State as an international person'.[91] He took the argument even further arguing that a State that did not yet exist could not possibly join treaties.[92] This position, however, was rejected, rightly so in the view of this author, by Chrysostomides who argued, that the existence of the ToG and ToA, set no restriction on the sovereignty of the RoC, since the treaty itself recognised the 'independence and territorial integrity'[93] of the Republic. In illustrating his argument, Chrysostomides referred to the *Austro-German Customs Union Case*, and judge's Anzilotti opinion that in such cases a State is subjected to the authority of PIL, a not to the authority of another State.[94] Also empirically, had there been any doubts or objections on the matter, these would have certainly been raised in the debates concerning the admission of the RoC to the UN.[95]

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[88] ToA Supplementary Agreement, art XIV.
[89] RoC Constitution, art 182; See section 3.3.1 below.
[90] Tornaritis, *Constitutional and Legal* (n 79) 12.
[91] ibid 12-13.
[92] Tornaritis, *Treaty of Alliance* (n 71) 4-5.
[93] ToG, arts I and II;
[94] *Austro-German Customs Union Case* [1931] Series A/B, No 41, Advisory Opinion 5 November 1931, Individual Opinion by M. Anzilotti p 24; Chrysostomides (n 54) 74
[95] Chrysostomides (n 54) 72

3.2.2 International Law and the Geneva Conventions I-IV 1949 under the Constitution of the Republic of Cyprus

In contrast to the strong English common law influence in the Republic's legal system as a whole, the rigid written Constitution given to the Republic in 1960 prioritised the maintenance of a thin socio-political balance. This resulted in a mixed legal system sharing the characteristics of both the common law and the continental legal tradition.[96] As recognised by Shaw, however, written constitutions in common law jurisdictions lead to serious questions of constitutional law in terms of the relationship between the domestic and the international legal orders, which often require an examination within the relevant political context.[97] Here, the issue is directly relevant to the question of whether the 1949 GCs were enforceable in the domestic legal order of the Republic after independence, since their exact legal status until 1966,[98] at first glance is rather obscure.

The provision relevant to the incorporation of conventional PIL in the domestic legal order of the RoC is article 169 of the Constitution. The article distinguishes between two types of international agreements. Firstly, those concerning commercial matters, economic co-operation and temporary agreements (*modus vivendi*) which fall exclusively under the responsibility of the Council of Ministers, and require no further action by any organ of the State.[99] Secondly, any other agreement which is to be domestically enforceable only after they are '*approved* by a law made by the House of Representatives', following its negotiation and decision to sign it by the Council of Ministers.[100]

In both situations, article 169(3) requires the publication of the international agreement in the official Gazette of the Republic,[101] at which point the international

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[96] Symeon C Symeonides, 'The Mixed Legal System of the Republic of Cyprus' (2003) 78 *Tulane Law Review* 441; Nikitas E. Hatzimichail, 'Cyprus as a Mixed Legal System' (2013) 6(1) *Journal of Civil Law Studies* 37; Dimitrios Koukiadis, 'Legal Transplantation's Contribution to the Formation of Mixed Legal Systems, and the Paradigm of Cyprus' Legal System as a 'Polyjural' System (2018) 30 *The Cyprus Review* 85.

[97] The other examples he refers to are the Indian and the Irish Constitutions; Malcolm N Shaw, *International Law* (8th edn, CUP 2017) 130.

[98] Ο περί των Συνθηκών της Γενεύης Κυρωτικός Νόμος του 1966 (40/1966) (Law on the ratification of the Geneva Conventions); RoC Official Gazette (18 July 1966); More on this in section 5.2.4.

[99] RoC Constitution, art 169(1).

[100] RoC Constitution, art 169(2) (emphasis added).

[101] RoC Constitution, art 169(3).

legal instrument in question 'shall have […] superior force to any municipal law',[102] but is not superior to the Constitution itself, which at the time was the 'supreme law' of the Republic.[103] Moreover, the same article imposes the additional requirement that any other party to the international agreement in question should apply reciprocally all terms of the agreement, too.[104] However, in 1987 the RoC Supreme Court held that the reciprocity principle applied primarily to bilateral conventions, and that some treaties by their very nature exclude the condition of reciprocity.[105] Such treaties, according to international legal scholarship, include treaties of a humanitarian nature,[106] whereas the 1949 GCs in particular, contain no reciprocity clause.[107]

Article 169 makes no reference to 'ratification', as such.[108] Nevertheless, regarding article 169(2), under which the 1949 GCs clearly fall, Tornaritis distinguished 'approval' from 'ratification',[109] yet argued that ratification was more than a mere formality and it was still necessary in order to make an international agreement 'operative and binding on the Republic'.[110] A requirement which closely resembles the doctrine of incorporation as applied in the English common law,[111] but contradicts McNair's view that it 'cannot be too strongly emphasized' that 'approval' by the Westminster Parliament, could not be interpreted as 'ratification', because that power rests with the Crown.[112] There have been long discussions on whether the RoC follows the monist or the dualist approach in terms of conventional PIL.[113] However,

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[102] Criton G Tornaritis, *The Treaty Making Power especially under the Law of the Republic of Cyprus* (1973) 16-17; Eileen Denza, 'The Relationship between International and National Law' in Malcolm D Evans (ed), *International Law* (5th edn, OUP 2018) 383.

[103] RoC Constitution, art 179; Since 2006, by virtue of article 1A the Constitution is subordinate to the EU legal order; See: Ο περί της Πέμπτης Τροποποίησης του Συντάγματος Νόμος (127(I)/2006), s 2 (Law concerning the fifth amendment of the Constitution).

[104] RoC Constitution, art 169(3).

[105] *Malachtou v Armefti and another* (1987) 1 CLR 207 [4]

[106] Bruno Simma, 'Reciprocity' *MPEPIL* (April 2008) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1461> accessed 3 December 2021 para 6.

[107] See section 2.3.3.

[108] Tornaritis, *Treaty Making Power* (n 102) 15.

[109] ibid.

[110] RoC Constitution, art 169(2); Tornaritis, *Treaty Making Power* (n 102) 16.

[111] Crawford, *Brownlie's Principles* (n 19) 60.

[112] McNair (n 56) 136.

[113] Criton G Tornaritis, 'Note by the Attorney General of the Republic, 9 February 1961' in Constantinos Kombos and Aristoteles Constantinides (eds), *Criton Tornaritis: Selected Opinions on Constitutional Law* (Nomiki Vivliothiki 2019) 159, 162; Tornaritis, 'Nicosia Airport' (n 61) 57-62; Tornaritis, *Treaty Making Power* (n 102) 16; Aristoteles Constantinides 'Η Θέση του Διεθνούς Δικαίου στην Κυπριακή Έννομη Τάξη' (The Position of International

the difference between paragraphs 1 and 2 of article 169, as well as the lack of clarity in earlier publications by Attorney-General Tornaritis, and the scarcity of case-law clarifying the matter, it does appear that the system draws from both theories,[114] depending on the context of each treaty.

In terms of customary international law, the RoC Constitution is silent on its applicability in the Cypriot legal order.[115] The general position under common law is that customary law is already 'incorporated' in the domestic legal system.[116] Likewise, Tornaritis argued that CIL had always been part of the common law of England,[117] and thus, was inherited by the RoC Constitution through article 188, which provides that:

> subject to the provisions of this Constitution and to the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution shall, until amended […] continue [to be] in force on or after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution.[118]

If that is the case, then during the period under examination here, customary rules such as the 'Hague branch' of IHL which had been declared customary by the Nuremberg IMT in 1946,[119] would already be binding on the Republic.[120] During this

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Law in the Cypriot Legal Order) in Foundation for International Legal Studies of Professor Elias Krispis and Dr. Anastasia Samara-Krispi LL.D (ed), *Essays of Law and International Relations in Memory of Professor Elias Krispis* (Sakkoulas, 2015) 229, 238; Achilles C Emilianides, 'Cyprus' in André Alen and David Haljan (eds), *International Encyclopedia of Laws: Constitutional Law* (Walters Kluwer 2019) 37.

[114] Stephanie Laulhé Shaelou and Katerina Kalaitzaki 'Towards an Internalisation of EU Law in Cyprus: The effectiveness and Application of EU Law by National Courts' in Christian N K Franklin (ed), *The Effectiveness and Application of EU and EEA Law in National Courts: Principles of Consistent Interpretation* (Intersentia, 2019) 495, 497.

[115] Constantinides, 'Κυπριακή Έννομη Τάξη' (n 113) 236.

[116] *Trendtex Trading Corp v Central Bank of Nigeria* [1977] QB 529; *R v Jones (Margaret)* [2007] 1 AC 136; James Leslie Brierley, 'International Law in England, 1885-1935 (1935) 51 *Law Quarterly Review* 24; Crawford, *Brownlie's Principles* (n 19) 63-64.

[117] Tornaritis, 'Note by the Attorney General' (n 113) 160; *Panayi v Fraser* 2 CLR 356.

[118] RoC Constitution, art 188(1).

[119] *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg Vol 1* (14 November 1945 – 1 October 1946) (International Military Tribunal Nuremberg 1947) p 171; Theodor Meron, 'The Geneva Conventions as Customary Law' (1987) 81(2) *AJIL* 348, 359.

[120] Hague Convention I (1907) was ratified by the House of Representatives in 1993. An interesting development in itself, since as customary law the Convention was already binding

period, however, the 1949 GCs were yet to crystallise into customary international law, and the fact that they were not formally ratified by the House of Representatives until 1966, blurs their exact status under Cypriot law until then.

According to the IHL database of the ICRC the RoC signed and acceded to the 1949 GCs on 23 May 1962,[121] contradicting a 1965 study by the ILA on the effect of State succession on Treaties, according to which there was a presumption in favour of the continuity of legislation, regardless of whether a treaty was succeeded to, in cases concerning private rights.[122] The 1957 Geneva Conventions Act, which applied to the Crown colony of Cyprus since 1959, is one of the examples explicitly mentioned in the study.[123]

The RoC MFA had already communicated an 'Instrument of Accession' to the Swiss Federal Council on 3 May 1962, since the Swiss government is the depository of the 1949 Geneva Conventions,[124] and the instrument was forwarded further to the ICRC on 15 November 1962.[125] This sufficed for the ICRC to 'give immediate effect' to the notified accession, when in late December 1963 it made an offer of service to the RoC, without referring to a specific legal basis.[126]

As clarified by McNair, there is no legal duty on a State to ratify a Convention noting, nonetheless, that 'It is not the practice of an enlightened Government to sign a treaty unless, subject to new circumstances intervening, it means to ratify it in due course', nonetheless.[127] The events of 1963-1964 may indeed be considered as events justifying a delay in ratification.[128] The fact that the Republic had acceded to the Conventions, however, sufficed to bind it at the international level to good faith

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the Republic without the need for ratification; See: ROCPM, Session 1992-1993, 24 June 1993, p 2325

[121] ICRC Archive, B AG 041-088, Letter from the Swiss Political Federal Department to the ICRC concerning the participation of Ireland, Cyprus, Malaysia and Mauritania to the 1949 Conventions (15 November 1962); ICRC, *IHL Databases*, Cyprus <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=CY> accessed 20 August 2019.

[122] ILA Committee on State Succession to Treaties and other Governmental Obligations, *Effect of Independence on Treaties: A Handbook* (Stevens and Sons 1965) 121.

[123] Ibid; See section 2.4.3.

[124] GCs I-IV, arts 61/60/140/156.

[125] ICRC Archives, Letter (n 121).

[126] ICRC Archive, B AG 251 049-009, Telegram to RoC MFA, Offer of Service (27 December 1963).

[127] McNair (n 56) 135.

[128] Further on this: Section 5.2.4.

and in a way which would not contradict the provisions of the Convention.[129] Hence, the RoC's submission of an Instrument of Accession on 3 May 1962, suggests that the RoC became bound not to act contrary to the 1949 GCs six months later,[130] which is 3 November 1962.

3.2.3 Human Rights and Fundamental Liberties in the Cypriot Legal Order

Given the relevance of human rights matters in situation of 'internal disturbances' or NIACs, a brief reference to the human rights framework applicable in the RoC is inevitable. Firstly, for reasons of clarity and secondly, due to the type of alleged and evident violations that took place during the period under investigation. As seen in the previous chapter, Cypriot lawyers had already been involved with human rights litigation during the EOKA emergency.[131]

The Zurich Agreement, between Greece and Turkey, did not provide for human rights protections. It was, however, a prerequisite of the London Agreement and article 5 ToE, that the RoC had to 'secure to everyone within its jurisdiction human rights and fundamental freedoms comparable to those set out in Section I' of the ECHR.[132] Hence, the RoC signed the ECHR and Protocol I of the Convention, on 16 December 1961,[133] six months after she had joined the CoE as the organisation's 16th member, on 24 May 1961.[134] According to the CoE database, both instruments were ratified and entered into force on 6 October 1962, without any reservations,[135] despite the fact that the ratification law was published in the Official Gazette five months earlier that year.[136]

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[129] McNair (n 56) 204.
[130] GCs I-IV, arts 61/60/140/156.
[131] See section 2.4.2.
[132] Tornaritis, *Constitutional Problems* (n 22) 53.
[133] CoE, Chart of signatures and ratifications of Treaty 005, Convention for the Protection Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005/signatures?p_auth=EvYHAcz4> accessed 9 April 2021; CoE, Chart of signatures and ratifications of Treaty 009, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/009/signatures?p_auth=EvYHAcz4> accessed 9 April 2021.
[134] CoE, Member States – Cyprus <https://www.coe.int/en/web/portal/cyprus> accessed 9 April 2021; Criton G Tornaritis, *The Operation of the European Convention for the Protection of Human Rights in the Republic of Cyprus* (1983).
[135] CoE, Chart Treaty 005 (n 133).
[136] Ο περί της Ευρωπαϊκής Συμβάσεως διά την προάσπισιν των Ανθρωπίνων Δικαιωμάτων (Κυρωτικός) Νόμος του 1962 (157/1962) (Law on the European Convention for the

Underlining again the principle of bi-communality, the first article in Part II of the Constitution, article 6, prohibits discrimination against 'any of the two Communities or any person as a person or by virtue of being a member of a Community', by any State organ or authority, including the House of Representatives and the Communal Chambers.[137] At the same time, article 34 set an internal guarantee, analogous to that in the three multilateral treaties of Establishment, Guarantee and Alliance, which prohibited the interpretation of Part II of the Constitution in a way which would imply 'for any Community, group or person' a right to engage with activities that aim at undermining or destructing the 'constitutional order established by this Constitution'. A separate overarching protection from discrimination on the grounds of 'community, race, colour, religion, language, sex, political or other convictions, national or social descent, birth, wealth, social class or other', is also enclosed in article 28, according to which everyone is to equal protection and treatment before 'the law, administration and justice',[138] unless otherwise provided for elsewhere within the Constitution.[139]

More than half of the 30 articles constituting Part II of the Constitution correspond in full or in part to the protections enshrined in the ECHR its Protocol I. These include the Right to Life,[140] Protection from Torture,[141] Protection from Slavery,[142] and the Right to Liberty and Security of Person.[143] Though these are almost identical to the text of the ECHR, other articles, like article 22 of the Constitution, on the Right to Marry,[144] is significantly longer than the one included in the Convention, with additional provisions on marriage between persons of different religious backgrounds, among others,[145] while article 23 on the Right to Property,[146] makes special reference to the property rights of religious authorities.[147] Lastly, drawing inspiration from the Constitutions of Italy Japan, Ireland and the Federal German *Grundgesetz*,[148] Part II of the Cyprus Constitution contained also a number

protection of Human Rights (Ratification Law) of 1962); RoC Official Gazette 157 (24 May 1962); Criton G Tornaritis, *The Human Rights as Recognized and Protected by Law with Special Reference to the Law of Cyprus* (1966).

[137] RoC Constitution, art 6.

[138] RoC Constitution, art 28(1).

[139] RoC Constitution, art 28(2).

[140] RoC Constitution, art 7; ECHR, art 2.

[141] RoC Constitution, art 8; ECHR, art 3.

[142] RoC Constitution, art 10; ECHR, art 4.

[143] RoC Constitution, art 11; EHCR, art 5.

[144] ECHR, art 12.

[145] RoC Constitution, art 22(2) and (3).

[146] Protocol I ECHR 1952, art 1.

[147] RoC Constitution, art 23 (9), 10.

[148] Tornaritis, *Human Rights* (n 136) 55.

of important socio-economic rights, like the right to strike,[149] and on the fair contribution to taxation,[150] among others.

Derogations from human rights protections in case of emergency were allowed under article 183 of the Constitution, which (still) empowers the Council of Ministers to declare an emergency in the case of war or other public danger threatening the Republic or any section of its territory.[151] The President and the Vice-President of the Republic retained a veto right, jointly or separately, within 48 hours from the day the decision was communicated to their respective Offices.[152] They should then promulgate the proclamation of emergency by publishing it in the Official Gazette,[153] before forwarding said proclamation to the House of Representatives.[154] Upon approval and publication in the Gazette of the decision of the House of Representatives,[155] the Proclamation of Emergency would be valid for a two-month period,[156] with possibility of extension by the House of Representatives, upon the request of the Council of Ministers.[157] In case the House of Representatives rejected the declaration, then the declaration would have no legal force.[158] Any declaration of emergency has to refer specifically to the articles of the Constitution being suspended.[159] The Council of Ministers may not choose freely which articles are to be suspended. Instead, the Constitution states clearly which articles of the Constitution are derogable.[160] To date there is no known incident of this procedure having been used in practice.

[149] RoC Constitution, art 27.
[150] RoC Constitution, art 24.
[151] RoC Constitution, art 183(1).
[152] ibid; RoC Constitution, art 50(1)(c)(iii).
[153] RoC Constitution, art 183(3).
[154] RoC Constitution, art 183(4).
[155] RoC Constitution, art 183(5).
[156] RoC Constitution, art 183(6).
[157] ibid.
[158] RoC Constitution, art 183(5).
[159] RoC Constitution, art 183(2).
[160] According to Art 183(2) RoC Constitution, derogable rights are the following articles of the Constitution: in Art 7 (Right to Life, only as far as death caused by a permissible act of war is concerned), Art 10 paras (2) and (3) (Protection from Forced Compulsory Labour), Arts 11 (Right to liberty and security of person), 13 (Right to free movement), 16 (Inviolability of dwelling house), 17 (Secrecy of correspondence), 19 (Freedom of Speech), 21 (Freedom of Assembly), Art 23(8)(d) (Requisition of property on payment of prompt compensation in cash) and Arts 25 (Right to carry on business) and 27 (Right to Strike).

In 1964, as seen in more detail in the next chapter,[161] the (reformed) Supreme Court of the Republic was called to answer whether there was a state of emergency in Cyprus following the violence which erupted in December 1963 in the landmark case of *Ibrahim and others*.[162] Given the limited derogations allowed under the Constitution, the Court remarked that whereas there was no emergency according to the Constitution, it would be unreasonable to declare that a state of emergency did not exist altogether.[163] Besides, military threats and a state of war constitute the 'core' of the very concept of a state of emergency.[164] It must be noted that the general position of the RoC was not without criticisms. Professor Buergenthal, a holocaust survivor, human rights expert, and an ICJ Judge from 2000 to 2010, had written in 1966:

> In view of the existing civil war in Cyprus and the *de facto* suspension of its Constitution it is unfortunately abundantly clear that in that country the Convention has so far remained a document devoid of any legal significance.[165]

These allegations are directly relevant to the subject matter of the next two chapters. They were dismissed by Attorney-General Tornaritis, who held the position that not only the Courts continued to grant effective remedies in violation of human rights, but also that the constitutional protection of human rights had proven 'extremely satisfactory'.[166]

The status of *de facto* emergencies was recognised two decades later by the International Committee on the Enforcement of Human Rights of the International Law Association (ILA), at the 1988 ILA Conference in Warsaw. The situation in Cyprus post-1974,[167] was one of the cases studied by the Committee. In its Interim Report, the Committee defined a '*de facto* emergency' as one 'when conditions are grave enough to justify the imposition of emergency measures but, for whatever reason, the

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[161] See section 4.4.
[162] *The Attorney-General of the Republic v. Mustafa Ibrahim and others* (1964) CLR 195.
[163] ibid 201.
[164] Alan Greene, *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis* (Hart 2018) 22; See also: René Provost, *International Human Rights and Humanitarian Law* (CUP 2002) 269-276.
[165] Tornaritis, *Human Rights* (n 136) 70 citing Thomas Buergenthal, 'The Domestic Status of the European Convention on Human Rights: A second look' (1966) 2(1) *Journal of the International Commission of Jurists* 55, 66.
[166] Tornaritis, *Human Rights* (n 136) 70-73.
[167] ILA Committee on the Enforcement of Human Rights Law, 'Second Interim Report of the Committee' (1988) 63 *International Law Association Conference Report* 129, 193, fn 103.

government has declined or failed to invoke emergency powers'.[168] It further acknowledged, using Cyprus and Iraq as likely cases, that governments often claim to maintain the ordinary legal regime formally and in practice.[169] As a result such situations are neither classified as states of emergency, nor trigger any extraordinary international scrutiny of human rights conditions, constituting difficult the task of determining whether such governmental claims are 'truly credible'.[170]

These findings show how the declaration of emergencies is a highly political matter which the law only comes to regulate, when and if desirable by the respective government. Secondly, they show how the general confusion and lack of implementation observed with IHL during the 1960s was also characteristic to IHRL, at a time when individuals played extremely limited role as subjects to PIL. As shown in the next two chapters, this was part of a broader culture, with direct impact on everyday life in violent societies, and this research is a case in point on the observations made by the Committee twenty years after the completion of the present thesis' chronology.

The extensive 'Charter of Fundamental Rights'[171] integrated in the RoC Constitution, with the enhanced protection from discrimination at an individual and collective levels as well as the reinforced protection of socio-economic rights, set the legal conditions for a potentially prosperous and progressive Republic. As seen below, however, the law 'in the books' does not necessarily lead to the envisaged results, unless the material conditions, including political will, exist within the corresponding society.

3.3 Towards the Constitutional Deadlock

We have so far examined in detail the international legal framework within which the RoC was established. The purpose was to introduce the reader to aspects of the law which are of direct relevance to the factual background examined in the following pages of the present thesis. At the same time, the reader has been acquainted with the legal points, which explain to some degree how the peculiar sovereignty of the RoC contributed to the violence that followed three years later. In this subsection, we

[168] ibid 148-149.
[169] ibid.
[170] ibid; See section 4.4.1.
[171] Emilianides, 'Cyprus' (n 113) 59.

turn to matters relevant to the domestic legal order and the socio-political relations in the first years of the Republic's existence.

The first post-independence census was conducted in December 1960. According to that data,[172] the Island had a total of 577,615 inhabitants (49.4% Male, 50.6% Female), of whom 3,602 resided in areas 'retained' by the UK. The population was divided into seven 'races', as per the term in the official document, as follows:

Group	**Individuals**
Greeks	442,521
Turks	104,350
British	20,955
Armenians	3,628
Maronites	2,708
'Gypsies'[173]	502
Other[174]	2,921
TOTAL	**577,615[175]**

Table 3.1: RoC Population per ethnic group (RoC Census 1960)

From the above one can see how reducing the population to two broad groups constitutionally, failed to reflect the ethno-religious nuances that existed within the Republic's population. Notably among them the 'Gipsies',[176] who with less than 1,000 individuals failed to reach the constitutional threshold to identify as a separate 'group',

[172] RoC Statistical Service, Ministry of Finance RoC, *Census of Population and Agriculture 1960 Vol. I: Population by Location, Race and Sex* (RoC Printing Office, 1960) Table IV <https://library.cystat.gov.cy/Documents/KeyFigure/POP_CEN_1960-POP(RELIG_GROUP)_DIS_MUN_COM-EN-250216.pdf> accessed 20 December 2021.

[173] 'Gypsies' is the term used in the document. According to one commentator, 'Cyprus Gypsies' have not adopted the ethnonym 'Roma'. See: Emel Akçali, 'The 'Other' Cypriots and their Cyprus Questions' (2007) 19(2) *The Cyprus Review* 57, 77.

[174] The available documents do not define 'Others'. Here, it is presumed to include Latins and non-British foreigners.

[175] This is the total mentioned on the document. It does not coincide with the total deriving from the numbers mentioned for each individual group. The missing 330 individuals most likely belong to the last column on the document, which was not visible. Judging from other documents, it is hereby assumed that the missing column refers to 'Unknown/ Not Stated'.

[176] Nicos Trimikliniotis and Corina Demetriou 'The Cypriot Roma and the Failure of Education: Anti-discrimination and Multiculturalism as a post-accession challenge' in Andrekos Varnava, Nicholas Coureas and Marina Elia (eds), *The Minorities of Cyprus: Development patterns and the identity of the internal-exclusion* (Cambridge Scholars Publishing 2009) 241.

but also did not qualify as a separate 'religious group' strictly speaking.[177] Instead, they were included in the Turkish Cypriot community since the majority among them spoke Turkish and were of the Muslim faith, without any recognised minority protections regarding their distinctive culture and traditions.[178]

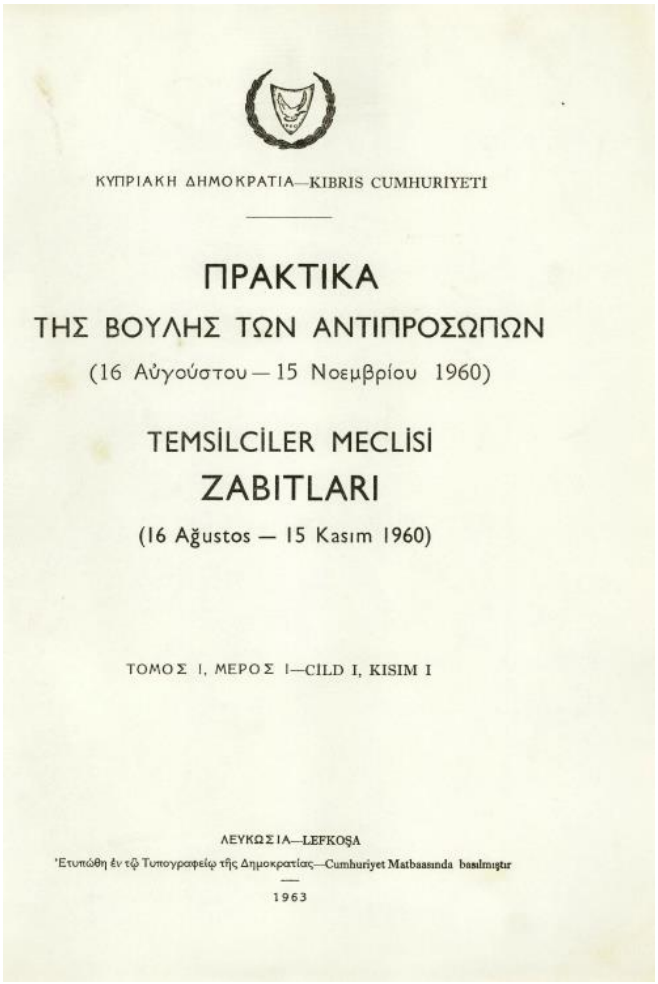
The vast majority of the population could read and write, with the highest illiteracy levels observed among women from both communities in rural areas. The highest number of economically active individuals was in the areas of agriculture, manufacturing and construction, with 'other' overpassing construction by some 1,500 individuals.[179] These numbers however, do not correspond to the productivity levels in each industry. Even though the Island enjoyed the second highest income per capita in the Mediterranean region, failing to introduce modern technologies in areas like agriculture and farming, led to a productivity of merely 16 per cent of the Gross Domestic Product (GDP), despite the fact that these industries employed roughly 44 per cent of the population.[180]

[177] RoC Constitution, art 2(3).

[178] Trimikliniotis and Demetriou (n 176) 242; Their status as a separate minority group in the RoC is today recognised under EU law: FRA, 'Country thematic studies on the situation of Roma – Cyprus' (21 June 2013) <https://fra.europa.eu/en/country-data/2013/country-thematic-studies-situation-roma> accessed 12 April 2021.

[179] RoC Census (n 172).

[180] Marilena Varnava, *Cyprus Before 1974: The Prelude to Crisis* (IB Tauris 2019) 77.



ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ—KIBRIS CUMHURİYETİ

ΠΡΑΚΤΙΚΑ

ΤΗΣ ΒΟΥΛΗΣ ΤΩΝ ΑΝΤΙΠΡΟΣΩΠΩΝ

(16 Αὐγούστου — 15 Νοεμβρίου 1960)

TEMSİLCİLER MECLİSİ

ZABITLARI

(16 Ağustos — 15 Kasım 1960)

ΤΟΜΟΣ Ι, ΜΕΡΟΣ Ι—CİLD I, KISIM I

ΛΕΥΚΩΣΙΑ—LEFKOŞA

Ἐτυπώθη ἐν τῷ Τυπογραφείῳ τῆς Δημοκρατίας—Cumhuriyet Matbaasında basılmıştır

1963

Figure 3.2: Cover page of the first Volume of the Parliamentary Minutes for the period 16 August – 15 November 1960, in Greek and Turkish.

3.3.1 The Principle of Bi-communality and the Executive

The complex internal and external power-dynamics which were at play in the decade preceding the independence of Cyprus, eventually led to the establishment of a Republic with a unique constitutional structure of complex, detailed and rigid check and balances.[181] Interestingly, in the earliest period of its application, the Cypriot constitution had been considered a potential template for the protection of the French minority in Algeria.[182]

[181] Achilles C Emilianides, *Η υπέρβαση του Κυπριακού Συντάγματος* (Beyond the Cyprus Constitution) (Sakkoulas 2006) 35 citing Stanley A de Smith, *The New Commonwealth and its Constitutions* (Stevens & Sons, 1964) 282; Chrysostomides (n 54) 30-32.

[182] Sophia Papastamkou, 'Παράδειγμα προς μίμηση ή προς αποφυγή; Η πολιτειακή οργάνωση της Κυπριακής Δημοκρατίας ως πρότυπο για την επίλυση του Αλγερινού, 1960-

The Constitution of the RoC consists of one of the longest constitutional texts in the world, encompassing 199 Articles and three additional Annexes. According to Article 1:

> The State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided.[183]

Hence, from the very first Article, the Constitution makes clear that the RoC is 'independent and sovereign', ruled by a presidential regime, where significant executive power is vested in the two highest officials of the State, the President and the Vice-President, who could *only* be 'Greek' and 'Turk', respectively.

As reflected in the first article, at no point within the Constitution there is a reference to 'Greek-Cypriots' and 'Turkish-Cypriots, or to a 'Cypriot people'. Instead, Article 2(1) of the Constitution defines the 'Greek Community' and Article 2(2) the 'Turkish Community', on the basis of 'mother tongue', 'cultural traditions' and religion. These criteria are closely aligned to the criteria of 'race, religion, language and traditions', identified by the PCIJ when it was called to define what 'community' meant in the context of the transfer populations on the Greco-Bulgarian borders a few decades earlier.[184] For the Maronite, Armenian and Latin religious groups, the constitution provided for intra-group referenda, that took place on 13 November 1960, where the three other Christian groups opted for membership to the Greek-Cypriot Community.[185] Naturalised citizens of the Republic were also given three months, from the date they became Cypriot citizens, to choose one of two communities.[186] In short, no Cypriot citizen was allowed to not be defined as a 'Greek' or a 'Turk'. Today, the distinction is retained for Turkish-Cypriots, but the procedure appears to have fallen in disuse for naturalised persons. Distinctions along such lines were frequent in the colonial context, where in the process of state-formation the distinction of different

62' (An example to be followed or avoided? The State structure of the Republic of Cyprus as a prototype for the resolution of the Algerian [Problem], 1960-62) in Papapolyviou and others (n 31) 151.

[183] On English version of the Constitution see (n 33) above.

[184] *Greco-Bulgarian 'Communities'*, Advisory Opinion [1930] PCIJ Series B, No 17, p. 4.

[185] RoC Constitution, art 2(3); Alexander-Micahel Hadjilyras, *Η Κυπριακή Δημοκρατία και οι Θρησκευτικές Ομάδες* (The Republic of Cyprus and the Religious Groups) (2012) 87, For the official results of the Referenda see: Hadjilyras (n 185) 114.

[186] RoC Constitution, art 2(4).

groups along racial lines had been normalised, to the extent distinctions were formalised into the dominant political institutions and practices.[187]

Furthermore, under Part I of the Constitution, article 3 sets Greek and Turkish as official languages of the RoC, excluding English. Article 4 regulates the use of the Cypriot and the respective Greek and Turkish national flags, and article 5 provides for the right of each community to celebrate the national holidays of each 'motherland', respectively. Considering the numerous wars between Greece and Turkey from 1821 to 1923, it is difficult to explain the logic behind the latter two provisions, and in particular the one under article 5, in any other way than the fact that the people of the Republic that was established on 16 August 1960 had a closer allegiance to two other States, rather than their own.

With the Constitution dividing the population in 'Greeks' and 'Turks' throughout, the core principle of bi-communality dominated all aspects of the constitutional architecture of the RoC. Political scientists have developed various theories to describe the tensions in divided societies, such as the theory of 'consociationalism', which refers to democracies where the principle of majority rule does not apply.[188] In another example, the South Asian experience has led to a theory of 'communalism', where religious identity and culture lead to political rivalries.[189] Sociologists have also been following up on these inquiries.[190] State-centric PIL on the other hand, still struggles with the position of individuals within the international system.[191] Nevertheless, international legal scholarship does recognise a dichotomy,

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[187] Itty Abraham, 'Bandung and State Formation in Post-colonial Asia' in Seng Tan and Amitav Achary (eds), *Bandung Revisited: The Legacy of the 1955 Asian-African Conference for International Order* (National University of Singapore Press 2008) 64.

[188] Arend Lijphart, 'Consociational Democracy' (1969) 21(2) *World Politics* 207, 214; Neophytos Loizides, 'Arend Lijphart and Consociationalism in Cyprus' in Michaelina Jakala, Durukan Kuzu, and Matt Qvortrup (eds), *Consociationalism and Power-Sharing in Europe: Arend Lijphart's Theory of Political Accommodation* (Palgrave Macmillan 2018) 155.

[189] Rakhahari Chatterji, 'Religion, Politics and Communalism in South Asia: Historical and Comparative Perspectives' in Rakhahari Chatterji (ed), *Religion, Politics and Communalism: The South Asian Experience* (South Asian Publishers 1994) 1; Mahendra Prasad Singh, 'Secularism and Communalism in India: Dialects and Dilemmas' (1994) 55(2) *The Indian Journal of Political Science* 91.

[190] Michael Mann, *The Dark Side of Democracy* (CUP 2005) 13.

[191] e.g Samantha Besson, 'Sovereignty, International Law and Democracy' (2011) 22(2) *EJIL* 373.

and therefore tension, between sovereignty and community-based goals.[192] In our case, a tension of internal nature formally speaking, which fell out of the scope of PIL.

The principle of bi-communality infiltrated the structure of all State organs, services, and official offices of the Republic. With one exception, all services had a quota of 70:30 ratio of allocation of positions between the two communities, whereas in the case of individual official positions, the Head and Deputy Head could not come from the same community.[193] This, however, did not apply for the position of the Head of State. Even though, Head and Deputy Head of the Republic were the Greek-Cypriot President and the Turkish-Cypriot Vice-President, in case of absence of the President, his position was to be taken over by the Greek-Cypriot President of the House of Representatives, and not by the Deputy Head of the State, whose position in case of absence would be taken by the Turkish-Cypriot Vice-President of the House of Representatives.[194]

The offices of the President and Vice-President of the Republic Each position carried separate privileges[195] and identical immunities.[196] Elections for each would take place on the same day,[197] every five years.[198] In terms of the exercise of power, the Constitution allocated joint[199] and separate[200] responsibilities. A point of contention was the veto power they held, jointly or separately, in part or in whole, regarding any law or other decision taken by the House of Representatives or the Council of Ministers, in regard to an exhaustive list of situations relevant to 'foreign affairs', 'defence' and 'security'.[201]

Examples of 'veto' under 'foreign affairs included the recognition of States, the establishment of diplomatic and consular relations, the conclusion of international treaties, conventions and agreements, war declarations, and the conclusion of peace.[202] With regard to 'defence', examples included changes in the size of the

[192] Outi Korhonen, 'New International Law: Silence, Defence or Deliverance?' (1996) 7 *EJIL* 1, 3.
[193] RoC Constitution, arts 112, 115, 118, 123 and 130.
[194] RoC Constitution, art 36.
[195] RoC Constitution, arts 37 and 38.
[196] RoC Constitution, art 45.
[197] RoC Constitution, art 39.
[198] RoC Constitution, art 43.
[199] RoC Constitution, art 47.
[200] RoC Constitution, arts 48 and 49.
[201] RoC Constitution, art 50(1) (A), (B) and (C).
[202] RoC Constitution, art 50(1)(A)(i) - (iii).

armed forces, and the import of war materials and explosives of all kinds,[203] whereas 'security' involved, among others, the declaration of emergency measures and martial law, and the amendment of police-related laws.[204] The above are directly relevant to the multilateral treaties of Establishment, Guarantee and Alliance, showing how they were directly applicable in the internal affairs of the State. Further, they illustrate the length at which the constitutional framework aimed at ensuring that the established status quo would not be disturbed.

The two leading officials of the Republic were also tasked with safeguarding the Executive power, by jointly appointing a Council of Ministers,[205] the main executive organ of the Republic.[206] In a clear reflection of the bi-communality principle, in its original form the Constitution provided for seven Greek-Cypriot and three Turkish-Cypriot ministers, among whom at least one of the so-called 'core ministries' (MFA, Defence, and Finance) had to be allocated to a Turkish-Cypriot minister.[207] Apart from these three ministries the Constitution is silent on the thematic portfolios of the other Ministers. The bi-communal balances observed in the Executive were maintained also in in the mono-cameral House of Representatives,[208] the Legislature, of 50 Members of Parliament (MPs, 35 Greek-Cypriots, 15 Turkish-Cypriots).[209]

In terms of the Judiciary, detailed provisions were made for the representation of each community on the bench throughout the court hierarchy. The Supreme Constitutional Court (SCC), which had extensive jurisdiction over Constitutional matters[210] and Administrative Law cases,[211] was presided by a neutral non-Cypriot judge, sitting with two Cypriot judges; one from each community.[212] The High Court, which would act as the Supreme Council of Judicature for matters not under the exclusive responsibility of the SCC,[213] principal Appeal Court[214] and a first instance court for specific cases,[215] followed in hierarchy and was composed of a non-Cypriot

[203] RoC Constitution, art 50(1)(B)(i), (iii).
[204] RoC Constitution, Art 50(1)(C)(iii), (iv).
[205] RoC Constitution, arts 46 and 54.
[206] RoC Constitution, art 54; Tornaritis, *Constitutional Problems* (n 22) 45.
[207] RoC Constitution, art 46.
[208] RoC Constitution, art 61.
[209] RoC Constitution, art 62.
[210] RoC Constitution, arts 137-151.
[211] Art 146 RoC Constitution, art 146.
[212] Art 133(1)(1) RoC Constitution, art 133(1).
[213] Art 157 RoC Constitution, art 157.
[214] Art 155(1) RoC Constitution, art 155(1).
[215] Art 155-157 RoC Constitution, arts 155-157.

neutral President and three Cypriot judges; two Greek-Cypriots, one Turkish-Cypriot.[216] The composition of the bench in all subordinate civil and criminal District Courts was determined by the community of the parties to the case or the accused.[217] Where the parties belonged to both communities, a decision on the composition would be taken by the High Court.[218] Even during a coroner's inquest, the procedure had to be conducted by a Coroner belonging to the same community as the deceased.[219] According to Polyviou, this was contrary to any 'considerations of utility', since traditionally in Cyrus the legal profession enjoyed a 'cohesion', which protected the administration of justice from 'the influence of communal factors'.[220] Indeed, as seen in the following chapters, despite the difficulties and the reforms undertaken, the judiciary was the last branch of power that gave in to the growing political and military pressure.[221]

Following the principle of bi-communality, the Constitution introduced two Communal Chambers,[222] whose members were elected by each community.[223] The basis for the Chambers' formation lay in the Macmillan Plan of 1958, in pursuit of 'communal autonomy'.[224] One cannot but notice the modernised, yet evident, resemblance with the Ottoman *millet* system, under which Family Law matters, including dowry and inheritance issues, fell within the jurisdiction of each religious group separately.[225]

Their competences consisted of a combination of Executive and Legislative powers, on issues closely aligned to one's 'personal status', in terms of religion, education, and social affairs.[226] They could go as far as developing policy and imposing community-specific taxes,[227] and exercise control over producers' and

[216] Art 153(1) RoC Constitution, arts 153(1).
[217] Art 159 (1), (2) RoC Constitution, art 159 (1) and (2); Περί Δικαστηρίων Νόμος (14/1960) (Courts of Justice Law); RoC Official Gazette 24 (17 December 1960).
[218] Art 159(3), (4) RoC Constitution, art 159(3), (4).
[219] Art 159(5) RoC Constitution, art 159(5).
[220] Polyvios Polyviou, *Cyprus on the edge: A study in constitutional survival* (2013) 33
[221] See section 4.4.1.
[222] Part V RoC Constitution, pt V.
[223] Art 86 RoC Constitution, art 86.
[224] HC Deb 26 June 1958 vol 590 col 616.
[225] Ersi Demetriadou, 'Legal Discourse and Social History in Cyprus: An Inductive Inguiry (sic) 1878-1982' (Oct – Dec 1989) *Cyprus Law Tribune* 128, 128-130; *Happaz* v *Parapano* (1892) 2 CLR 33 (Privy Council).
[226] RoC Constitution, arts 87-90; C G Tornaritis, 'The Legal Position of the Armenian Religious Group' (1961) in Tornaritis (n 61) 83; *Arpine Keondjian then Arpine Hagopian* v. *Ardashes Keondjian* (Matrimonial Petition No 2/64) (1964) CLR 93.
[227] Arts 88 RoC Constitution, art 88.

consumers' cooperatives, among others.[228] Thus, the principle of bi-communality was not only rigid in theory, but also required a skilful practical implementation in the daily works of the Republic, if one were to follow closely the letter of the Constitution. The autonomous function of the Communal Chambers was instrumental in facilitating the segregation between the Greek and the Turkish-Cypriots, since they handled a broad range of policy areas relevant to everyday life, and their role in this became starker after 1963.

The rigidness and the continuous technical balances required by the Constitution is also reflected in the provisions concerning its amendment per article 182. In its first paragraph article 182 sets an absolute prohibition in amending 'by way of variation, addition, or repeal' any of the 'basic Articles' of the Constitution, meaning those incorporated into the text from the Zurich Agreement of 11th of February 1959.[229] For maximum clarity, these provisions – many of which are as concrete as referring to specific paragraphs within an article – are explicitly listed in Annex III of the Constitution,[230] which contains a total of 48 out of 199 articles. All remaining provisions could be amended or removed completely from the Constitution,[231] provided that such an amendment was approved by an overall majority and separate two-thirds majorities by each community's MPs.[232]

The articles under the 'Basic Structure' of the Constitution, proved to be the most challenging to implement. Moreover, as observed by Emilianides, paradoxically article 179 on the supremacy of the Constitution was not listed as a basic article, despite the fact that it was 'by its nature the most fundamental article of the Cypriot Constitution'.[233] This could have been justified on the basis that the provision in question was not included in the London-Zurich Agreements, but the omission (on purpose or otherwise) remains puzzling, since articles that in Emilianides' view were less important were included in Annex III.[234] The example he refers to is article 173 on the prerequisite for the establishment of separate municipalities, which was one of the core issues that led to the Constitutional deadlock of 1963, as seen below.

[228] Art 87(1)(e) RoC Constitution, art 87(1)(e).
[229] Art 182(1) RoC Constitution, art 182(1).
[230] ibid.
[231] RoC Constitution, art 182(2).
[232] RoC Constitution, art 182(2), (3).
[233] Emilianides, *Υπέρβαση* (n 181) 53.
[234] ibid.

3.3.2 Early Constitutional Problems

The Constitutional deadlock of November 1963 developed out of four basic problems which the Republic faced. These related to difficulties in maintaining the 70:30 proportional representation within the Public Service, disagreements over the structure of the Cypriot Army, as well as problems pertaining to tax collection and the establishment of separate municipalities in the five main urban centres of the Island; Nicosia, Limassol, Famagusta, Paphos and Larnaca, as provided for in the Constitution.[235] Without expanding in detail into all four issues here, each of them contributed towards an environment that eventually led to the disintegration of the original constitutional structure, especially upon the eruption of violence in December 1963.

The issue of the establishment of the Cyprus Army had already caused some commotion before the RoC was established, given its centrality to ToA provisions.[236] The Constitution provided for a 2,000-men force, complying to a 60:40 ratio.[237] An additional number of 2,000 men would be employed in the Security Forces of the Republic, the Police and the Gendarmerie,[238] each of which would be organised on the basis of the usual 70:30 ratio.[239] Initially however, that could be adjusted up to 60:40,[240] since the Cyprus Army was an opportunity to reduce unemployment among men in general, and a means to absorb more than half of the Turkish-Cypriot men released from the Police Force and the Auxiliary Police which was established during the EOKA emergency.[241] Depending on the community the Heads of the army, police, and gendarmerie belonged to, the Deputy Head had to belong to the other community.[242] As such, the first Commander of the Cyprus Army was a Greek-Cypriot and his Deputy was a Turkish-Cypriot; both of them retired officers who had served for years in the Greek and Turkish armies, respectively.[243]

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[235] RoC Constitution, art 173; This article cannot be amended under Annex III of the RoC Constitution; Diana Markides, *Cyprus 1957-1963: From Colonial Conflict to Constitutional Crisis – The key role of the Municipal Issue* (University of Minnesota 2001).
[236] Aggelos Chrysostomou, *Από τον Κυπριακό Στρατό μέχρι και τη δημιουργία της Εθνικής Φρουράς (1959-1964)* (From the Cyprus Army until the establishment of the National Guard (1959-1964)
(2015) 54-65.
[237] RoC Constitution, art 129.
[238] RoC Constitution, art 130(1).
[239] RoC Constitution, art 130(2).
[240] ibid.
[241] Chrysostomou (n 236) 55-56.
[242] RoC Constitution, 131(2).
[243] Chrysostomou (n 236) 84-93.

A Law on the Army of the Republic (Constitution and Enlistment) was passed in January 1961,[244] but its exact composition remained a pending issue. The Commander favoured a mixed composition across ranks and units, whereas the Deputy Commander preferred the establishment of ethnically homogenous units.[245] The issue was to be resolved by the Council of Ministers. There, the Turkish-Cypriot Minister of Defence, Osman Orek, argued that a mixed composition would lead to practical problems, arising from issues such as language, whereas the Greek-Cypriot MFA Spyros Kyprianou, insisted that article XVI(8) of the supplementary agreement to the ToA between Greece, Turkey and Cyprus, implied a mixed composition, by stating that 'the principle of mixed organizational structure' should be 'adhered to also in training'.[246]

Despite the lack of consensus, it was decided by vote on 10 August 1961, (the seven Greek-Cypriot ministers outnumbering the three Turkish-Cypriots) that the army would have a mixed composition at all levels. This led the Vice-President to return the decision for reconsideration to the Council of Ministers, under the power given to him by the Constitution,[247] arguing against the mixed structure of the army on the basis of a number of logistical issues, such as language, religion, and consequent differences in eating habits and traditions, potential disciplinary problems, as well as the subsequent increase in costs this arrangement would inevitably lead to.[248] In addition, he argued that a mixed structure would be contrary to article 132 of the RoC Constitution, according to which in areas where residents belonged almost 100 per cent to one of two communities, the 'forces' stationed in the vicinity should belong to that community.

The competing legal arguments by Kyprianou and Kutchuk could potentially have been resolved, had the question been referred jointly by the President and the Vice-President to the SCC of the Republic.[249] Following the logic of the hierarchy of norms in the Cypriot legal order, since the Constitution is the supreme law of the

[244] Περί του Στρατού της Δημοκρατίας (Σύνθεση και Κατάταξη) Νόμος (8/1961) (Law on the Army of the Republic (Composition and Enlistment); RoC Official Gazette 37 (30 January 1961).
[245] Chrysostomou (n 236) 128-130.
[246] ToA Supplementary Agreement, art XVI(8); Chrysostomou (n 236) 129; Chrysostomou attributes this to the ToA, but no such details are regulated by the treaty.
[247] RoC Constitution, arts 49(e) and 58.
[248] Chrysostomou (n 236) 130.
[249] RoC Constitution, arts 47(j) and 140.

Republic,[250] there is a high likelihood that the constitutional provision under article 132 would prevail over the international agreement of the RoC with Greece and Turkey. From the summary of the minutes offered by Chrysostomou, however, it appears that the legal counter-argument raised by Kutchuk did not draw enough attention. Instead, the debate focused on the logistical issues mentioned,[251] implying a political choice to avoid engaging with a judicial procedure, which could not satisfy both positions anyway. By October 1961, the issue of the composition of the Cyprus Army was yet to be resolved, despite counter-proposals by the Vice-President and the Minister of Defence to abstain from a mixed composition at least at the lowest ranks, in line with a similar suggestion made by the Greek-Cypriot Commander.[252] On 13 October 1961, the majority Greek-Cypriot Council of Ministers insisted and voted again on its earliest position of mixed composition across the army's structure, which led the Vice-President to exercise the first veto under the RoC Constitution, on 20 October 1961.[253]

Despite the disagreements, enlistment to the Cyprus Army had already started on 3 March 1961,[254] whereas training by Greek and Turkish officers under the ToA commenced on 11 September 1961.[255] According to the implementation plan, the army should have been fully functional within 23.5 months.[256] The veto by the Vice-President, however, stopped all further planning,[257] and by 14 November 1963, the Cyprus Army's 381 recruits corresponded to only one fifth of those provided for in the Constitution.[258] The events of 21 December 1963 led to its de facto dissolution.[259]

Had the issue of the structure of the army been submitted to the SCC for interpretation, experience suggests that the issue may still not have been resolved, since the SCC was called upon to decide on the issue of the separate municipalities. Similar to other regions formerly under Ottoman rule, however, all mixed residential

[250] RoC Constitution, art 179.
[251] Chrysostomou (n 236) 132-134.
[252] ibid.
[253] RoC Constitution, arts 49(e), 50(B)(a) and 57(3)
[254] Chrysostomou (n 236) 161.
[255] ibid 201.
[256] ibid 214.
[257] ibid 214-215.
[258] ibid 141.
[259] See section 4.2.1.

areas of the Island were separated into different quarters along religious grounds.[260] This was the case with the five main towns, and 120 out of 619 villages.[261]

Diana Markides, who has written the most authoritative historical account on the matter, locates the origin of the problem of separate municipalities to the early 1940s. Then, in the absence of an elected legislature local authorities obtained extraordinary political significance for the Cypriot society,[262] and by the 1950s, the issue became closely associated to the increasing demands of separate self-determination by the Turkish-Cypriot community.[263] Thus, even though article 173 of the Constitution provided for the establishment of separate municipalities in all major urban centres, with each community electing a separate municipal council.[264] The Greek-Cypriots were not particularly in favour, despite the fact that this was the only bi-communal arrangement for which the Constitution allowed reconsideration within four years from the Constitution entering into force.[265]

In parallel, a separate but equally controversial issue was the issue of the taxation laws. Article 188(1) of the Constitution provided that all laws which were in force upon the establishment of the Republic would continue to be valid until repealed or amended. Laws concerning taxation, duties and the municipalities, however, were exempted from this provision. The municipal laws would expiry six months after independence, whereas the tax laws would expire on the last day of 1960, to allow the new House of Representatives to enact the Republic's new laws.[266] However, both the new municipal and tax laws had to be approved through separate majorities by each community's MPs.[267] Hence, this allowed each community to take advantage of the uncertainty caused, as a means to exercise pressure to the other.

The situation intensified rapidly from various angles. For example, the Turkish-Cypriots took the position that they were discriminated against by the Greek-Cypriots,

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[260] Jon Calame and Esther Charlesworth, *Divided Cities: Belfast, Beirut, Jerusalem, Mostar, and Nicosia* (University of Pennsylvania Press 2009).
[261] UNSC Report of the United Nations Mediator on Cyprus to the Secretary-General (26 March 1965) UN Doc S/6253 (Galo Plaza Report), para 18; See section 5.3.1.
[262] Markides (n 235) 11-13.
[263] Section 2.4.3.
[264] RoC Constitution, art 173(2).
[265] RoC Constitution, art 173(1).
[266] RoC Constitution, art 188(2).
[267] ibid.

by deliberately failing to achieve the 70:30 ratio in the Public Service.[268] Conversely, the Greek-Cypriots accused the Turkish-Cypriots that they took decisions that undermined the proper constitutional functioning of the Republic. Within this environment, the issue of the municipalities and taxation laws remained a central point of contestation, affecting all levels of government and involving the guarantor Powers.[269] The Council of Ministers and each of the Communal Chambers tried to overcome the gaps caused through the lack of taxation and municipal laws, through the passing of community-specific taxation laws and attempting the introduction of interim measures based on former colonial legislation.[270] Such measures, however, were eventually challenged at the SCC, and failed the constitutionality test.[271]

The judgements on all cases concerning the issue of the separate municipalities were given on 25 April 1963, and were meant to be the last cases decided by the SCC of the RoC.[272] The political pressure on the functioning of the Court was such that the neutral President of the SCC, well-known German Constitutional jurist Professor Ernst Forsthoff, member of the drafting team of the RoC Constitution,[273] resigned on 21 May 1963.[274] He had already caused frustration upon appointment over his Nazi-associated past, during which he was an assistant to Carl

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[268] Soulioti, *Narrative* (n 11) 162-164; Achilles C Emilianides, *Κοινοβουλευτική Συνύπαρξη Ελληνοκυπρίων και Τουρκοκυπρίων (1960-1963)* (Parliamentary Co-Existence of Greek Cypriots and Turkish Cypriots (1960-1963) (Epiphaniou 2003) 45-62, 113-129.

[269] Soulioti, *Narrative* (n 11) 184-186.

[270] ibid 153-156, 181-184.

[271] *In the matter of the Tax Collection Law No. 31/1962* (1963) 5 RSCC 22; *In the matter of article 139 of the Constitution, The Turkish Communal Chamber, and/through its social and municipal affairs office v The Council of Ministers* (1963) 5 RSCC 59; *In the matter of article 139 of the Constitution, Members of the Turkish Community and as inhabitants of the town of Nicosia and as the mayor and Members of the Turkish Municipal Council of Nicosia Town v The Council of Minister, The Minister of the Interior, the Improvement Board of Nicosia* (1963) 5 RSCC 102; *In the matter of article 139 of the Constitution. The House of Representatives v The Turkish Communal Chamber and/or Executive Committee of the Turkish Communal Chamber (1963) 5 RSCC 123; In the matter of article 139 of the Constitution. The Turkish Members of the House of Representatives v The Council of Ministers* (1963) 5 RSCC 130.

[272] ibid (Cases *In the matter of article 139 of the Constitution*).

[273] Demetrios H Hadjihambis, *The Supreme Court of Cyprus and its Judges* (Supreme Court of Cyprus 2010) 113.

[274] 'Letter from Archbishop Makarios to Ernst Forsthoff, 27 May 1963' in Soulioti, *Documents* (n 39) 569; 'Zypern: Forsthoff-Rücktritt: Unter Druck'(Cyprus: Forsthoff Resignation: Under Pressure) (*Der Spiegel*, 23/1963) 64; Christos Stroppos,'Ernst Forsthoff: Πρόεδρος του Συνταγματικού Δικαστηρίου της Κύπρου με το ναζιστικό παρελθόν;' (Ernst Forsthoff: President of the Cyprus Constitutional Court with a Nazi past?) (*Dikaiosyni,* 2 June 2020) <https://dikaiosyni.com/katigories/arthra/ernst-forsthoff-o-proedros-tou-syntagmatikou-dikastiriou-tis-kyprou-me-to-nasizistiko-parelthon/> accessed 3 June 2020.

Schmitt.[275] According to him, the reason for his resignation was the mistreatment of his assistant, who alleged general obstacles in the conduct of his work, including being shadowed by detectives, and accusations of bribery.[276] In her book Soulioti alleged that there were internal problems with the functioning of the Court and that many of said problems were the result of Forsthoff's lack of judicial experience.[277] Eventually, a new Constitutional Court President was found, a judge from a commonwealth country, who was going to take his position in January 1964. This appointment never materialised, and instead, the President of the High Court, John Wilson, a Canadian,[278] performed Forsthoff's duties, until he also left the Island in May 1964.[279]

Amidst the growing political and public tension caused by the lack of consensus on contested aspects of the Constitution, in addition to a number of criminal provocations briefly considered in the next section, on 29 November 1963 Makarios sent to Vice-President Kutchuk, and the three guarantor Powers letters containing the Greek-Cypriots' 13 proposed constitutional amendments, prepared by a committee Makarios had set up.[280] It was during this time that Glafcos Clerides, President of the House of Representatives at the time, requested the legal opinion of Sir Frank Soskice on the interpretation of the treaties establishing the RoC.[281]

The 13 points indeed referred to some of the most challenging aspects of the Constitution.[282] They proposed, among others, the abolition of the right of veto by the President and the Vice-President, the abolition of separate majorities in the House of Representatives and the provisions for separate municipalities. They also included the abolition of the requirement for communal representation within the justice system, the adjustment of the 70:30 ratio to better reflect the actual proportions within

[275] 'Zypern: Forsthoff: Gefahr für alle' (*Der Spiegel*, 41/1960) (Cyprus: Frosthoff: Danger for all) 74-76; Stroppos (n 274).
[276] Soulioti, *Narrative* (n 11) 215-216 citing from original Letter of Resignation to President Makarios, 21 May 1963.
[277] Soulioti, *Narrative* (n 11) 218.
[278] Hadjihambis (n 273) 121; Wilson was the second High Court President. The first was Barra O' Briain, Irish, who retired in 1961.
[279] Soulioti, *Narrative* (n 11) 219.
[280] Glafcos Clerides, *Cyprus: My Deposition Vol 1* (Alithia Publishing 1989) 167.
[281] See section 3.2.1.
[282] Clerides, *Deposition Vol. 1* (n 280) 175-193; Soulioti, *Documents* (n 39) 647-668; Soulioti provides five separate documents expanding on concrete amendments on the basis of the text of the Constitution.

the general population, and the abolition of the Greek Communal Chamber.[283] All points contravened the principle of bi-communality.

On 16-18 December 1963 Cyprus, Greece and Turkey held in Paris the annual MFA meeting under the ToA. The talks ended a day earlier instead, among rumours for increased military preparations within both communities.[284] The police and the gendarmerie had their leave cancelled, Greek-Cypriots police officers started searches on all Turkish-Cypriots going in and out of the Turkish quarter of Nicosia, and the British forces in the SBAs were also rumoured to be alerted.[285] At this stage, the escalation of violence could potentially still have been avoided, but with great difficulty.

3.3.3 Crime and Provocations before December 1963

As stated in the previous chapter, PIL has a very simple categorisation of violence: criminal activity, NIACs (previously, civil wars) and IACs.[286] Sociological research, however, has given a nuanced illustration of violence among ethnic groups, showing how violence can escalate from discrimination up to genocide, if the appropriate socio-political circumstances for its incubation exist.[287] With this in mind, the present sub-section aims to illustrate the earliest instances of intercommunal provocations in the first years of the Republic, as a corollary to the unfavourable political environment discussed above.

This also gives us the opportunity to briefly introduce relevant aspects of the criminal justice system, whose importance is integral to the application of IHL, and CA3 more specifically. CA3 prohibits 'the passing of sentences and the carrying out of executions' without a judicial procedure abiding to all appropriate 'judicial guarantees'.[288] Though no international criminal institution like the International Criminal Court existed at the time, even today this court's jurisdiction is only complementary to the domestic criminal justice system.[289]

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[283] Clerides, *Deposition Vol. 1* (n 280) 175-193.
[284] Markides (n 235) 147-153.
[285] ibid.
[286] See section 2.3.2 and 2.3.3.
[287] Mann (n 190) 12-17.
[288] GCs I-IV, common art 3(1)(d); See section 2.3.2.
[289] Markus Benzing, 'The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity' (2003) 7 *Max Planck Yearbook of United Nations Law* 591; William A Schabas, *An*

In the Cypriot legal system, the role of Prosecution is held by the Law Office of the Republic, headed by the RoC Attorney-General and their Deputy.[290] Unlike England and Wales, both officers are independent, non-political, officials of the State,[291] who in the original form of the Constitution had to be appointed jointly by the President and the Vice-President, each from a different community.[292] Common law principles prevail in the criminal justice system to this day,[293] with all relevant pieces of legislation originating in colonial law.[294]

A series of provocative criminal attacks took place within the same week in March and April 1962. The Bairaktar and Omeriye Mosques were bombed on 25 March 1962, Independence Day of Greece, and the Ayios Kassianos School was set on fire on 29 March 1962; a date falling in-between Greek Independence Day and the annual EOKA anniversary of 1 April. All three buildings are located within a range of no more than a kilometre on the south-eastern side of the walled medieval town of Nicosia. There were no casualties, yet considering the strong political undertones of the crimes in question a Commission of Inquiry was established under the colonial Commission of Inquiry Law (Capital 44).[295] The Commission acted on instruction by the Council of Ministers, which as the principal Executive organ took over the role previously held by the Governor.[296] It was chaired by judge Wilson, President of the High Court, whereas judges Zekia, of the High Court, and Triantafillides, of the SCC, took the positions of Commissioners.[297] The public was kept informed through public sessions and newspaper announcements, inviting them to share relevant information with the Registrars of the High Court and the SCC.[298] The Commission visited all three sites, and the inquiry lasted from 3 to 25 May 1962.[299] A total of 54 witnesses were

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Introduction to the International Criminal Court (5th ed, CUP 2018) 170-182; Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law* (4th ed, OUP 2020) 116-119.

[290] RoC Constitution, art 113(2).

[291] Despina Kyprianou, *The role of the Cyprus Attorney General's Office in Prosecutions: Rhetoric, Ideology and Practice* (Springer 2010) 64.

[292] Arts 112, 113 RoC Constitution; For a full account of the responsibilities of the Attorney-General and the Deputy Attorney-General see: Kyprianou (n 291) 63-64.

[293] Kyprianou (n 291) 60.

[294] RoC Constitution, art 188(1); Criminal Code (Capital 154), Criminal Procedure Law (Capital 155), Evidence Law (Capital 9).

[295] 'Report of the Commission of Inquiry into the Explosions at the Bairaktar and Omeriye Mosques on 25 March and Fire at Ay. Kassianos School in Nicosia on 29 March 1962 Submitted to the Council of Ministers, October 1962' in Soulioti, *Documents* (n 39) 571.

[296] Commissions of Inquiry Law (Cap. 44), s 2.

[297] Soulioti, 'Report of the Commission' (n 295) 571.

[298] ibid 571-573.

[299] ibid.

brought before the Commission and a report was submitted to the Council of Ministers in October 1962.[300]

From the Report, as reproduced by Soulioti, it is deduced that the Commission of Inquiry was tasked with making a 'full investigation into the circumstances' of the events in question, 'including all facts connected' with them.[301] Capital 44 set no limitations to the type of inquiry such Commissions undertook, but it was upon the discretion of the Attorney-General whether to proceed with a prosecution or not, without interference by another person or authority.[302] Thus, criminal investigations are a completely separate issue to the fact-finding inquiry of the Commission.

Commissioners Zekia and Triantafyllides delivered separate comments. The former explained how the evidence suggested that the crimes could be perpetrated by members from either community, and suggested the establishment of a 'top-level committee' to periodically find solutions to problems of inter-communal relations.[303] The latter elaborated on the findings of the expert evidence provided by an SBA officer who offered his services upon the request of the Republic.[304] Despite the detailed description of the damages and the methods employed in investigating each of the bombings and the arson, the inquiry failed to give a definitive answer to the most pressing question. Namely, who the suspected perpetrators were. The inquiry had raised tensions among the public, and not proceeding with prosecutions could be interpreted as an effort to prevent the further stirring of public sentiment.

Two Turkish-Cypriot lawyers and newspaper editors, Muzaffer Gurkan and Ayhan Hikmet, were assassinated on 23-24 April 1962,[305] just before the Commission of Inquiry initiated its work. The assassinations were condemned by Makarios,[306] but evidence implicating Gurkan and high-ranking politicians was presented to the Commission of Inquiry in the following month, without further clarifications.[307] The

[300] ibid 571.
[301] ibid.
[302] Kyprianou (n 291) 66.
[303] Soulioti, 'Report of the Commission' (n 295) Explanatory note and observations made by Judge M. Zekia 578-581.
[304] Soulioti, 'Report of the Commission' (n 295) Letter to Council of Ministers by Judge M. A. Triantafyllides 583-586.
[305] PIO Press Release, Διπλούς Φόνος εν Λευκωσία (Double murder in Nicosia) (24 April 1962).
[306] PIO Press Release, Statement by the President of the Republic (24 April 1962).
[307] Niyazi Kızılyürek, *Μια ιστορία βίας και μνησικακίας: Η γένεση και η εξέλιξη της εθνοτικής διένεξης στην Κύπρο Vol 2* (A story of violence and resentment: The genesis and evolution of

assassination of the two is part of a long series of known political assassinations in the following decades which remain under-investigated and under-researched. They have either been forgotten or have almost assumed the status of urban myths, since the perpetrators were never captured, and no trials or publicly-known other official inquiries ever took place. Such politically-motivated crimes, relevant to inter- and intra-communal violence took place within both communities and extend beyond the chronological scope of the present research, yet they are telling of the weakness or the reluctance of the criminal justice system to investigate them.

A survey of the reported criminal appeal cases over the period 1958-1968 shows that only some types of criminal cases relevant to the events in the present research reached the courts. Most of them included prosecutions dealing with the illegal possession of arms under the Firearms Law (Capital 57) and the Explosive Substances Law (Capital 54),[308] even before December 1963.[309] One of the earliest authoritative cases, that of *Stelios Michael Simadhiakos*,[310] is characteristic of the overall situation on the Island during this period. Decided on appeal in 1961, the appellant police officer was accused of inciting a soldier to 'steal arms for business',[311] with judge Vassiliades referring also to an unreported case in which the appellant, a mason, was sentenced to one year imprisonment for attempting to import pistol ammunition in the heels of his shoes.[312]

Among the cases reported later during the 1960s, one finds cases concerning offences under the Military Criminal Code,[313] such as the pretending of incapacity,[314] insulting a superior,[315] or desertion.[316] By the late 1960s, judgements are telling of the alarming situation on the Island, like in the case of *Ahmed Osman*,[317] where the

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the ethnic conflict in Cyprus) (Michalis Theodorou trs, Heterotopia 2019) 654-666; Soulioti, *Narrative* (n 11) 223.

[308] *The Attorney-General of the Republic v Yousouf Yousouf Mehmet* (1966) 2 CLR 12.

[309] *Panayiotis Charalambous Mixis v The Republic* (1962) CLR 111; *Vassos Lambrou* v *The Republic* (1962) CLR 295; *Odysseas Christofi Shiakas v The Republic* (1965) 2 CLR 108; *Kemal Djemal v The Republic* (1966) 2 CLR 21.

[310] *Stelios Michael Simadhiakos v The Police* (1961) CLR 64.

[311] Criminal Code (Cap. 154), s 370(a); *Simadhiakos* (n 308) 89.

[312] *Salih Djemali* v *The Republic* (Cr. Appeal 2305) (1961, unreported).

[313] Περί Στρατιωτικού Ποινικού Κώδικα και Δικονομίας (40/1964) (Law on the Military Criminal Code and Procedure Law); RoC Official Gazette 338 (31 July 1964).

[314] Military Criminal Code, s 40; *Andreas Panayiotou Aourou* v *The Republic* (1965) 2 CLR 59.

[315] Military Criminal Code, s 52; *Ioannis Kyrmizis* v *The Republic* (1965) 2 CLR 55.

[316] *Andreas Foka Costa* v *The Republic* (1966) 2 CLR 87.

[317] *Ahmed Osman* v *The Police* (1967) 2 CLR 10.

court explicitly expressed the opinion in *obiter* that given the ongoing situation the possession of explosive substances was 'a very serious' issue.[318] Nonetheless, these decisions hardly addressed the most vital aspects of the increasing violence or prevented the exacerbation of the situation on the ground. It is worth noting here that the 1955 ICRC Expert Commission on CA3 had expressed the view that in order for the ICRC to retain its neutrality, its delegates should not become involved in either the political or the judicial domain.[319] Thus, information on such matters in the ICRC and the UN archives, as seen in the following chapters is extremely limited.

3.4 Conclusion

The present chapter aimed at presenting the factual background to the inter-communal violence of the 1960s. It therefore, introduced the reader to the three international multilateral treaties which bound together the RoC, the UK, Greece and Turkey in an interdependent diplomatic and military relationship, which aimed to establish, guarantee and secure the independence, territorial integrity and constitutional order of the Republic. Furthermore, it introduced the most significant aspects of the RoC Constitution as well as the constitutional problems which precluded the smooth implementation of some of the most challenging aspects of the Constitution. It concluded with an overview the domestic criminal legal order, against the background of the arson and bombing attacks of spring 1962.

The bi-communal structure of the RoC was implemented for slightly more than three years, and it was already adversely impacted by disagreements among the leaders of both communities by mid-1963. Trust was already scarce. However, as Crawford noted, whether another formal arrangement could have been implemented with more success is doubtful.[320] This is especially true considering that the leadership of each community, had prepared plans that foresaw the use of violence in order to achieve *taksim* and *enosis* respectively, as a way out of their reluctant partnership.[321]

Beyond Cyprus, the Cuban Missile Crisis in October 1962, the armed violence in the Congo, which would later have an impact on UN peacekeeping efforts in

[318] ibid 11; *Georghios Nicolaou Yiasoumis* v *The Republic* (1967) 2 CLR 28, 30.
[319] ICRC, Commission d'Experts chargée d'examiner la question de l'application des principes humanitaires en cas de troubles intérieurs' (1955) 443 *IRRC* 722, 727 (Commission of Experts tasked with examining the question of the application of humanitarian principles in cases of internal troubles).
[320] Crawford, *Creation of States* 244.
[321] Clerides, *Deposition Vol. 1* (n 280) 203-209; Soulioti, *Narrative* (n 11) 271-281, Kızılyürek (n 307) 472-480.

Cyprus, the assassination of John F. Kennedy in November 1963, and the first elections held in Kenya in December 1963, had driven global attention away from the rivalries on Cyprus.[322] Those present in Cyprus though, seemed to make more accurate estimations of the overall situation raising the alarm. In the words of Sir Arthur Clark, British High Commissioner in Cyprus at the time:

> Politically the republic cannot go on as it is rent by constant tensions and crises […] increasingly separatist. That way lies disaster because some stupid move by one side or the other could with these emotional people spark off riot and commotion if not civil war.[323]

The 'move' occurred only 15 days later, triggering a series of violent cycles. Whether these constituted a 'riot', 'commotion' or 'civil war' is examined in the next chapters.

[322] Markides (n 235) 144.
[323] FO 371/168975 C1015/238, Sir Arthur Clark (HC) to Duncan Sandys, 6 December 1963 as reproduced in Madden (n 40) 480.

4 BETWEEN 'CIVIL WAR' AND 'INTERNAL DISTURBANCES': THE REPUBLIC UNDER THREAT (1963 - 1964)

4.1 Introduction

There is considerable evidence in the literature to suggest that upon independence there were key political figures from both communities who saw independence as a means to put an end to colonial rule, and 'a stop on the way'[1] to each community's aspirations for *enosis* and *taksim*, respectively. By late 1963 the Cypriots witnessed the mobilisation of a number of paramilitary groups within the Greek-Cypriot and the Turkish-Cypriot communities. Another bombing attack targeting the statue of former EOKA fighter Markos Drakos in Nicosia, on 3 December 1963, was among the events that was widely publicised.

Throughout 1964 an ICRC delegation was monitoring the situation, and a UN Peacekeeping Force was deployed within three months. By summer, significant numbers of the local population was displaced, missing persons were registered and a humanitarian relief programme was set in place, while the RoC, under the complete control of the Greek-Cypriots established a National Guard to fight the Turkish-Cypriot irregulars. The boiling violence reached a climax in August 1964, with a series of aerial bombings launched by the Turkish Airforce, allegedly in defence of the Turkish-Cypriot population. Before the year was through, the Supreme Court of the Republic, in its famous judgment of *The Attorney-General of the Republic v. Mustafa Ibrahim and others*,[2] invoked the Doctrine of Necessity (DoN), to ensure the continuation of the Republic. A temporary measure which is still in place almost 60 years later.

This period is by all accounts the most violent during the chronology followed in the present research, but also of Cypriot history post-independence, surpassed only by the events of 1974. Except for some limited exceptions, such as Patrick's doctoral thesis in the field of political geography,[3] research focusing exclusively on inter-communal violence in Cyprus has been limited. Thus, the present chapter relies heavily on archival material, including previously unpublished information from the ICRC archives. The aim is to give an overview of the violent events of 1963-1964,

[1] Glafcos Clerides, *Cyprus: My Deposition Vol 1* (Alithia Publishing 1989) 197.
[2] *The Attorney-General of the Republic* v. *Mustafa Ibrahim and others* (1964) CLR 195.
[3] Richard Patrick, *Political Geography and the Cyprus Conflict, 1963-1971* (University of Waterloo 1989).

driven by the criteria of 'organisation' and 'intensity' towards the qualification of interna violence as a NIAC, upon which the applicability of CA3 depends.[4] The first section describes the earliest violence in the last days of 1963, the arrival of the ICRC delegation, and the diplomatic events leading to the establishment of UNFICYP. The second section looks more directly into the application of those criteria up to September 1964, and the last section focuses on the invocation of the DoN, with a brief comparative reference to other examples of it being invoked during internal violence in other post-colonial contexts.

4.2 Early Violence, Humanitarian Assistance, and the Quest for Law and Order

The incident that triggered the spread of violence island-wide on 21 December 1963, was an exchange of fire between Turkish-Cypriot civilians and Greek-Cypriot police officers in Nicosia, at the intersection between the Turkish-Cypriot and the Greek-Cypriot quarters in Nicosia's walled medieval town. According to the formal press release by the Cyprus Police, the incident took place at 2:10 am, when police patrol stopped a car, whose passengers included a Turkish-Cypriot man and woman, whom the police officers asked to produce identification documents. The two passengers refused to comply and the tense discussion drew a crowd of Turkish-Cypriot residents from the adjacent neighbourhood.[5] Shots were eventually exchanged. The man died on the scene, and the woman a bit later at the Nicosia General Hospital. From there on violence escalated fast.

4.2.1 Bloody Christmas

By sunrise on 21 December, the police reported two more shooting incidents, at 3:20 am and 5:30 am, while at 9:50 am a patrolling police car escorting the Minister of Transport and Works, a Greek-Cypriot, was attacked by high school students from the Turkish Lyceum, who threw 'sticks, stones and bottles' in that direction.[6] The police shot towards the students, causing 'light wound[s]' to two of them.[7] There is additional evidence of dispersed shooting incidents on the same day, such as the shooting of three Turkish-Cypriot men at 4:45 pm, passing by the coffee shop in Nicosia's suburb of Mia Milia,[8] as well as attacks against the security forces, when for

[4] See section 2.3.3.
[5] PIO Press Release, Αστυνομική Ανακοίνωσης (Police Announcement) (21 December 1963).
[6] ibid.
[7] ibid.
[8] PIO Press Release, Statement by Gendarmerie (21 December 1963).

instance, a gendarmerie vehicle was fired at in the Turkish-Cypriot village of Ayios Sozomenos, at 10:25 pm.[9] Despite a joint appeal by the President and the Vice-President of the Republic urging the members of both communities 'to go peacefully about their normal business',[10] it was soon clear that this was not the intention of many. By the evening of 22 December, violence spread among members of the mixed constitutional Cyprus Army at the army's Tripartite Headquarters.[11]

In the following week, official government announcements consistently referred to provocations by 'Turkish fanatics',[12] commending the security forces, the police and the gendarmerie, for taking control of the situation.[13] According to information from the National Archives in London, as presented by Chrysostomou, however, by 23 December the Greek-Cypriot Head of Police had informed the British High Commission that the situation was 'out of control'.[14] The situation was deteriorating progressively on 23-25 December, spreading across other regions of the Island, as well.[15] Most of the fighting took place primarily in Turkish-Cypriot areas near Nicosia. Casualties were estimated at a few hundred from both sides, but with heavier impact on the Turkish-Cypriots.[16]

Given the lack of any international organisations on the ground during these early days, sources describing in detail these early clashes have been scarce, and rarely derive from formal documentation. In the admittedly partial account of journalist Harry Gibbons, Middle East correspondent for the London Daily Express who happened to be in Cyprus on the occasion of Christmas and New Year celebrations, Gibbons claims that the Public Information Office (PIO) was playing down the events,

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[9] PIO Press Release, Statement by Gendarmerie (22 December 1963).
[10] PIO Press Release, Joint appeal by the President and the Vice-President of the Cypriot People (21 December 1963).
[11] Aggelos Chrysostomou, *Από τον Κυπριακό Στρατό μέχρι και τη δημιουργία της Εθνικής Φρουράς (1959-1964)* (From the Cyprus Army until the establishment of the National Guard (1959-1964)
(2015) 235.
[12] PIO Press Release, Turkish Cypriot continue their unprovoked attacks (24 December 1963).
[13] PIO Press Release, Statement by the Minister of Interior Mr. Polykarpos Yorkatzis (27 December 1963).
[14] Chrysostomou (n 11) 236.
[15] CIA, Doc No CIA-RDP79T00429A001400020022-6, Memorandum: Cyprus, 26 December 1963 (Released 4 February 2004) < https://www.cia.gov/readingroom/document/cia-rdp79t00429a001400020022-6> 12 May 2021.
[16] ibid.

giving wrongful impressions to foreign correspondents on the Island.[17] This view is supported in a comprehensive two-page CIA memorandum, issued on 26 December 1963, which states that in those days the Greek-Cypriots had a 'virtual monopoly' on most information leaving Cyprus.[18] The lack of adequate information is also inferred from the ICRC archives, where it was reported that one Red Cross District Nurse from Limassol, had arrived in Nicosia on 4 January 1964 'knowing nothing of trouble'.[19] The press releases issued by the PIO, though referring to specific incidents, they maintain a rather descriptive stand, without engaging with the level of animosity described in non-governmental sources and oral testimonies.

The ICRC archives, though without elaborate details on these early violent incidents, clearly describe the immediate aftermath, informing on hostages held by each side, the wounded, the missing and displaced persons from both communities.[20] Secondary sources contain information based on oral testimonies, or other publications. During these days, attacks and clashes have been described from a number of mixed or Turkish-Cypriot-dominated neighbourhoods and villages,[21] as well as an attack in the Nicosia General Hospital located in the Greek-Cypriot quarter, which resulted in the death of a number of Turkish-Cypriot patients.[22] Following the attack the hospital's Turkish-Cypriot medical staff were transferred to the Turkish-Cypriot quarter of Nicosia, upon the initiative of President Makarios. According to the PIO, they asked to be transferred, after they voluntarily withdrew from service.[23]

Another major incident is the clashes at the suburb of Omorphita, located just outside of the medieval town of Nicosia to the northeast. In 1963 it had about 7,000 inhabitants, among them some 5,000 Turkish-Cypriots who occupied 1,000 houses,

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[17] Harry S Gibbons, *The Genocide Files* (Charles Bravos Publishers 1997) 13, 38; Gibbons later claimed he was a double-agent for Britain and Russia. His account is useful in appreciating the full range of arguments raised at each side, from the more neutral to the most radical.

[18] CIA, Memorandum Cyprus (n 15).

[19] ICRC Archive, B AG 200 049-004, Cyprus 11/1/64: Notes on verbal report made by Miss Jean Gilmour MBE on return from 10 days in Cyprus (Formerly confidential report of the BRC).

[20] ICRC Archive, B AG 200 049-005, Press clippings and images collected by the ICRC; See section 4.2.2.

[21] Niyazi Kızılyürek, *Μια ιστορία βίας και μνησικακίας: Η γένεση και η εξέλιξη της εθνοτικής διένεξης στην Κύπρο Vol 2* (A story of violence and resentment: The genesis and evolution of the ethnic conflict in Cyprus) (Michalis Theodorou trs, Heterotopia 2019) 654-666.

[22] ibid 510-512.

[23] PIO Press Release, Ο Αρχιεπίσκοπος συνόδευσε το Τουρκικόν Νοσοκομειακόν Προσωπικόν εις την Βρεττανικήν Αρμοστεία (The Archbishop has escorted the Turkish Hospital Staff to the British High Commission) (26 December 1963).

compared to a mere 400 houses occupied by 2,000 Greek-Cypriots, of various Christian denominations.[24] The fighting that took place there in December 1963 is considered one of the most severe attacks on civilians, with responsibility usually ascribed to a group of irregular fighters led by Nikos Sampson; well-known former EOKA fighter, at the time an elected MP, and ten years later the unlawfully appointed 'President' of the Republic following the 15 July 1974 coup. It is less-known, however, that on 24 and 25 December, a platoon of the Cypriot Army, consisting of 21 Greek-Cypriot men, was also active in the area.[25] This was the 'first and last' operation of the Cyprus Army,[26] which was effectively dissolved once its Turkish-Cypriot members withdrew in the Turkish quarter of Nicosia and started fighting against government forces. Thus, in these early days, with the exception of the little activity recorded by the Cyprus Army, fighting was conducted by irregular fighters in each community.

The attacks against the civilians, and in particular the attack against the hospital, give indications for an intensity severe enough that could constitute CA3 applicable, albeit it is questionable whether four days would satisfy the criterion of duration, whereas there is limited evidence to satisfy the criterion of 'organisation'.[27] Kaoullas has developed a theoretical framework of 'chaotic security structures',[28] to describe the 'structural flux' in situations of internal violence or transitions following the end of an armed conflict.[29] This structural fluidity derives from the inability of the State to centrally control its own security forces, leading it to forgo the Weberian 'monopoly of violence' it usually holds,[30] creating a 'security deficit' which includes, among others, the collapse of the justice system.[31]

These conclusions can be insightful for further legal research as suggested by a recent case before the ECtHR, where the court was prevented from applying the 'effective control' test over territorial control, due to the 'context of chaos' that

[24] UNSC Report by the Secretary-General to the Security Council on the United Nations Operation in Cyprus, for the Period 26 April to 8 June 1964 (15 June 1964) UN Doc S/5764, para 94.
[25] Chrysostomou (n 11) 238-241.
[26] ibid 239.
[27] See Table 2.2 and section 2.3.3.
[28] Lambros Kaoullas, 'Cyprus, 1963-64: a new conceptual framework for chaotic security structures and momentous phases in polity-building' (PhD thesis, School of Law, University of Edinburgh 2017) (embargoed).
[29] Lambros Kaoullas, 'Το έλλειμμα ασφαλείας και η κοινωνικοποίηση του μονοπωλίου της βίας' (The security deficit and the communalization of the monopoly of violence) (2015) 35 *Εθνική Φρουρά και Ιστορία* 31, 34.
[30] ibid 34.
[31] ibid 36-37.

predominated during active hostilities.[32] This does not draw simply on the reference to 'chaos', but rather, as mentioned previously, from the long-term inability of judicial mechanisms, like the ECtHR,[33] to deal effectively with active hostilities. In early 1964 in Cyprus the 'security structures' were indeed 'chaotic', and unlawful, since it was not until February 1964 that steps were taken by the government towards regaining some control over the existing armed groups. A process which took months, and arguably was never successfully completed.[34]

Developments in the last two weeks of 1963 led to immediate reactions by the three guarantor Powers, which up to that point unanimously urged the Cypriot politicians not to resort to violence. This changed on 25 December – Christmas Day – when Turkish airplanes undertook a 'warning flight'[35] over Nicosia, entrenching tension on the ground. According to Necatigil,[36] the aim was to warn against the continuation of the fighting between the Greek-Cypriots and the Turkish-Cypriots and secondly, as a tactical move to allow for the relocation of the Turkish military contingent from its original barracks, located in a Greek-Cypriot-dominated area and in proximity to the Greek contingent's camp, north of the Turkish quarter of Nicosia, along the road connecting Nicosia with the northernmost town of Kyrenia.[37] The move of the Turkish contingent blocked the road connecting the two towns, and the government has not regained control since. It was not until 26 October 1964, ten months later, that UNFICYP made arrangements for traffic to resume.[38] Another such flight was undertaken on 28 December.[39] Throughout this period, the Greek contingent remained in their barracks following instructions by the Greek government,

[32] *Georgia v Russia (II)* (Application No 38263/08) (Grand Chamber) Judgment (Merits), 21 January 2021 [126]; Kanstantsin Dzehtsiarou, '*Georgia* v *Russia* (II) (App No 38263/08) European Court of Human Rights (Grand Chamber) (Judgement, Merits, 21 January 2021) (note)' (2021) 115(2) *AJIL* 288.
[33] See section 2.4.2.
[34] See section 4.3.2.and 5.3.2.
[35] Zaim M Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, OUP 1993) 34.
[36] Turkish-Cypriot lawyer, former 'Attorney-General' of the 'TRNC' and member of the Turkish-Cypriot negotiating team since 1975. Member of the Turkish team in *Cyprus v Turkey* (Application No 25781/94) Judgment (Grand Chamber), 10 May 2021.
[37] Necatigil (n 35) 34.
[38] UNSC, Report by the Secretary-General on the United Nations Operation in Cyprus (For the period 10 September to 12 December 1964) (12 December 1964) UN Doc S/6102, paras 7-21, 148 and Annex I 'Aide-memoire on the implementation of the agreement concerning the re-opening of the Kyrenia road'.
[39] Chrysostomou (n 11) 244.

despite multiple requests towards them from the Greek-Cypriots, to intervene.[40] This call for action was directly rejected by Greece, who in the words of its MFA stated they 'shall not engage Greece in war'.[41]

On 26 December 1963, Zenon Rossides UN Permanent Representative for Cyprus in New York, called for an emergency meeting of the UNSC, bringing a complaint against Turkey 'for the acts of (a) aggression, and (b) intervention in the internal affairs of Cyprus by the threat and use of force against its territorial integrity and political independence'.[42] Through a separate communication, submitted by the UN Permanent Representative for Turkey, the Cypriot Vice-President complained that Mr. Rossides was 'misrepresenting the situation' and that Turkey's action was a 'warranted conciliatory action' aiming 'to save the Turkish community from a most merciless massacre'.[43] From then on, the Cyprus Question became a permanent feature on the agenda of the UNSC and occasionally of the UNGA.[44]

The first cycle of violence closed on 30 December, when a ceasefire was agreed in Nicosia, and the infamous 'Green Line' was drawn crossing through Nicosia's walled town, delimitating the city's historical Greek and Turkish quarters to date.[45] Barrels, sandbags, and barricades were put in place, with RoC police-controlled designated checkpoints, controlling entry and exit from the Turkish sector.[46] The term ceasefire has no official legal definition,[47] but the concept is significant for both the 'Geneva' and the 'Hague' rules of IHL, as it has a direct impact on the conduct of hostilities and those protected by the 1949 GCs.

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[40] ibid 241-242.

[41] ibid 242; Stella Soulioti, *Fettered Independence: Cyprus, 1878-1964 Vol 1 The Narrative* (University of Minnesota Press 2006) 348.

[42] UNSC, Letter from RoC Permanent Representative to UN to UNSC (26 December 1963) UN Doc S/5488.

[43] UNSC, Letter from Turkey's Permanent Representative to UN Secretary-General (27 December 1963) UN Doc S/5491.

[44] See section 2.3.1.

[45] Clerides, *Deposition Vol 1* (n 1) 230-231.

[46] Today, checkpoints exist along the UN Buffer Zone which has expanded from East to West across the whole Island. These are operated by the RoC police on the southern side (Republic-controlled territory) and the 'TRNC' on the northern side. Crossing was completely forbidden, with a few exceptions, from July 1974 to April 2003. See also: Council Regulation (EC) 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession [2004] OJ L 206/128 (Green Line Regulation)

[47] Christine Bell, 'Ceasefire' (December 2009) *MPEPIL* (December 2009) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e263?prd=EPIL> accessed 15 December 2021 para 1.

‘Ceasefire’ is used today almost interchangeably with other similar expressions, like ‘suspension of arms’, ‘cessation of hostilities’, ‘truce’, and ‘armistice.[48] There are, however, minor differences and whereas an armistice is seen as the ‘suspension of military operations’[49] in general, ‘ceasefire’ can be used to either describe the situation deriving out of an ‘armistice agreement’, or to mean the temporary ‘freeze’ of miliary operations to prevent the conflict from escalating, and allow political negotiations to start.[50] Oppenheim’s International Law does not refer to ‘ceasefires’, but the same situation seems to be described under ‘suspension of arms’.[51] Without access to the original document it is not possible to draw further conclusions, but it is worth noting that ‘special agreements’ under CA3(2) is today understood to include ceasefire agreements among the parties, and it is one of the qualifying criteria for NIACs under both ‘organisation’ and ‘intensity’.[52] A number of ceasefire agreements were agreed upon on various occasions during the 1960s, as seen below.

Among the general public, military and conflict-related vocabulary and practices quickly flooded the communication and the relationship between the two communities. The legal implications are often beyond the point in daily life under such circumstances. The period from 21 December 1963 to the end of that year is known in the Turkish-Cypriot narrative as the ‘Bloody Christmas’ (*Kanlı Noel/ Ματωμένα Χριστούγεννα*). The term never became part of the mainstream glossary of the Greek-Cypriot narrative.

[48] UK Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict (JSP 383)* (2004) 262-263.
[49] ibid 263.
[50] ibid.
[51] Lassa Oppenheim, *International Law: A Treatise Vol II: Disputes, War and Neutrality* (Hersch Lauterpacht ed, 7 edn, Longmans 1952) 547-548.
[52] ICRC, *Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (CUP 2016) para 850; Lindsay Moir, ‘The Concept of Non-International Armed Conflict’ in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) 391, 406.

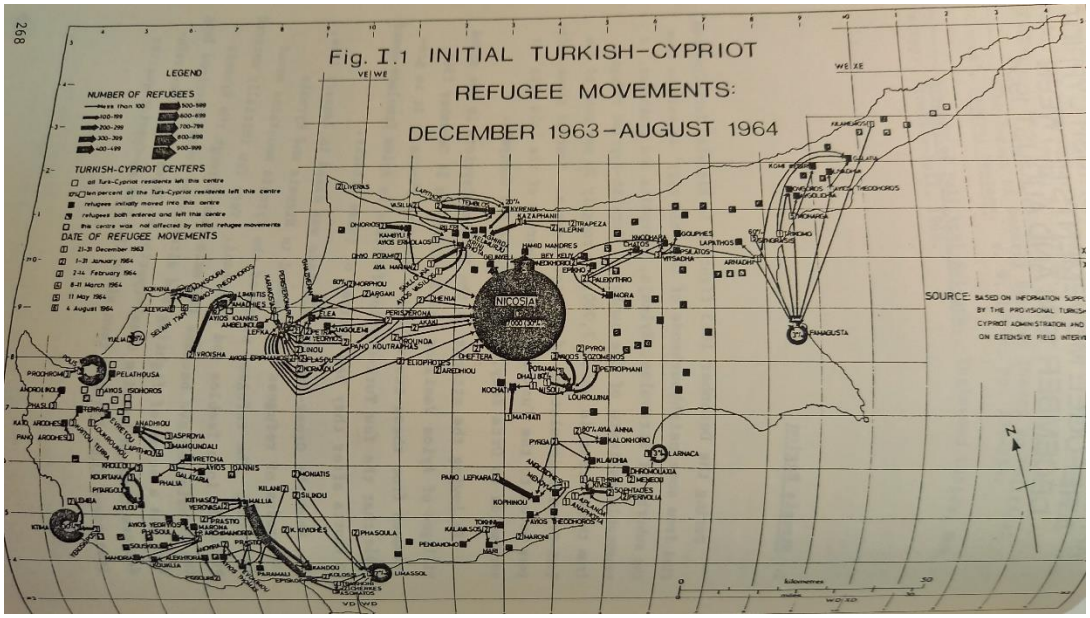

Figure 4.1: Map – Initial Turkish-Cypriot Refugee Movements (December 1963 – August 1964). Circles depict the level of intensity, based on media coverage. Bigger circles were covered internationally, smaller circles were covered only locally or received no coverage at all. Source: Richard Patrick, *Political Geography and the Cyprus Conflict, 1963-1971* (University of Waterloo 1989), p 268 (reproduced with permission from Department of Geography and Environmental Management, University of Waterloo).

4.2.2 The ICRC Delegation

The ICRC is a principal coordinating actor in situations of armed conflict and other situations on violence.[53] Hence, the presence of an ICRC mission on a specific territory is indicative of the severity of the violence experienced there, which is a matter of fact, but not of whether a given situation amounts to a NIAC or an IAC, as a matter of law. It is for this reason that the 1962 ICRC Expert Commission had stated that the ICRC retains its 'right of initiative',[54] even in cases were the applicability of CA3 was in doubt.[55] Similarly, the Commission held the view that it should not proceed with strictly defining the term 'internal disturbances'.[56] 'Humanitarian assistance', on the other hand, is not a legally defined term, but it is understood as the provision of emergency relief to people affected by natural or man-made disasters,[57] like armed

[53] Statutes of the International Committee of the Red Cross (adopted 21 December 2017, entered into force 1 January 2018), Art 4 <https://www.icrc.org/en/document/statutes-international-committee-red-cross-0> accessed 15 December 2021; ICRC, *Handbook of the International Red Cross and Red Crescent Movement* (14th edn, ICRC 2008) 551.

[54] Nishat Nishat, 'The Right of Initiative of the ICRC and Other Impartial Humanitarian Bodies' in Andrew Clapham and others (n 52) 495.

[55] ICRC, 'Humanitarian Aid to the Victims of Internal Conflicts: Meeting of a Commission of Experts in Geneva' (1963) 3(23) *IRRC* 79, 87-88; See section 2.3.3.

[56] ibid.

[57] Flavia Lattanzi, 'Humanitarian Assistance' in Andrew Andrew Clapham and others 231, 232.

conflict. Reference to the ICRC mission to Cyprus during this period in the secondary sources is almost non-existent. Even where such reference is made, this is in passing without any details on the organisation's quite important role at the time.[58]

The ICRC Archives in Geneva hold detailed information on developments in Cyprus during most of the period examined in this chapter and the next, as it contains the majority of the reports written for the ICRC headquarters in Geneva over a period of nearly two years, expanding from 1 January 1964 to 25 November 1965.[59] According to information held therein, it is understood that some notes to the ICRC headquarters were destroyed instead of being shipped to Geneva, due to sensitive information they contained.[60] Even so, the archive serves as a valuable primary historical source, giving a clear picture on how violence had affected daily life and the socio-political atmosphere on the island. It is also the only source that makes comparatively consistent reference to IHL on various occasions. Still, one can argue that it does not live up to initial expectations, bearing witness to the general international legal culture of the 1960s, and the marginalisation of IHL until about 1968.[61]

In his well-known study on the missing persons in Cyprus, anthropologist Paul Sant Cassia claimed that it was the British High Commissioner in Nicosia who 'foresaw the need to bring the ICRC', without referring to an official source.[62] Though consultations with the British High Commission are very likely, the first contact with the ICRC according to the Geneva archive is by Turkish-Cypriot associations in London. On 27 December 1963 at 18:15 the ICRC sent a telegram to RoC MFA Spyros Kyprianou,[63] informing they had been following developments in Cyprus and had 'learned with satisfaction that Red Cross on Cyprus is assisting [the] victims [of the] troubles'.[64] They subsequently offered ICRC's services and the offer was accepted by the Minister the next day.[65] It is noteworthy that whereas in this instance the ICRC made no reference to a legal basis, in what seems to be a draft letter of

[58] eg Marilena Varnava, *Cyprus Before 1974: The Prelude to Crisis* (IB Tauris 2019) 109.
[59] ICRC Archive, B AG 251 049-005 02 'Note 290 – Final Report' (25 November 1965).
[60] ICRC Archive, B AG 251 049-005 02, 'Note 286 – Liquidation de la délégation' (11 November 1965).
[61] See section 2.3.3.
[62] Paul Sant Cassia, *Bodies of Evidence: Burial, Memory and the Recovery of Missing Persons in Cyprus* (Bergham Books, 2007) 29.
[63] Spyros Kyprianou (1932-2002) was the second President of the RoC, following the death of Makarios, from 1977 to 1988.
[64] ICRC Archive, B AG 201 049-009, Telegram to Spyros Kyprianou (27 December 1963).
[65] ICRC Archive, B AG 251 049-009, Telegram from RoC Government (28 December 1963).

Offering of Service to the RoC on 19 July 1974, the legal basis referred to is in fact CA3.[66]

The BRC had already established a Cyprus Branch (CYBRC) in 1950, which held the status of a charity under the pre-independence Charities Law.[67] Following independence, the BRC continued being active in Cyprus, both under Capital 41 and the status of an 'authorised service organisation', according to Annex B ToE.[68] Under its auspices The Order of the Knights of St. John and the St. Andrew's Ambulance Association were also active on the Island, as mentioned occasionally in the ICRC reports. Other humanitarian organisations explicitly mentioned in primary sources include OXFAM, CARE and USAID.[69]

Communication was quickly established between the BRC Office of International Relations in London and the ICRC Secretariat in Geneva.[70] Sheegla Patterson, BRC Chief Field Officer, was tasked with coordinating the work of CYBRC,[71] whereas Jacques Ruff, a Swiss citizen with previous ICRC experience in Palestine, Japan and Laos was appointed first ICRC delegate to Cyprus.[72] He arrived at Nicosia International Airport at 7am New Year's Day 1964,[73] where he was received by a small delegation of Greek-Cypriot officials and humanitarian workers, including Stella Soulioti, RoC Minister of Justice and simultaneously CYBRC President, and CYBRC's Sheegla Patterson.[74]

In his first report to Geneva Ruff referred to three 'sectors' in Nicosia; a Greek and a Turkish one, each 'held respectively under the control of the police and the contingents of the Greek and Turkish armies', and a 'no man's land'[75] protecting the British contingent.[76] Each sector had 'a life of its own',[77] and moving from one sector to another was not permitted, except for BRC ambulances which carried clear Red

[66] ICRC Archive, B AG 251 049-001, Letter of 19 July 1974 (potentially a draft).
[67] Charities law (Capital 41)
[68] ToE, Annex B, Pt I, s 1(b) and Schedule.
[69] ICRC Archive, B AG 251 049-005 02, Note 125 (15 September 1964).
[70] ICRC Archive, B AG 200 049-004, ICRC Telephone Conversations with BRC (29-31 December 1963).
[71] ibid.
[72] ibid.
[73] ICRC Archive, B AG 251 049-009, ICRC Telegram to BRC (31 December 1963).
[74] ICRC Archive, B AG 200 049-004, First Activity Report (7 January 1964)
[75] English term in the original. Most probably referring to the area surrounding the Ledra Palace Hotel.
[76] ICRC Archive (n 74).
[77] ICRC Archive (n 74) p.2.

Cross emblems.[78] On the day of his arrival, he joined the British forces on an inspection tour, heading a convoy accompanying medical staff towards Omorphita, where intense fighting had occurred in the last days of December.[79] In describing the situation he refers explicitly to attacks against civilians by Greek-Cypriot armed groups and multiple casualties, empty bullet shells, smashed furniture, abandoned houses, blood stains, and abandoned domestic and farm animals, which gave him 'a clear idea of the violence with which these Greeks and these Turks had confronted each other'.[80]

The collection of materials from the first days of ICRC presence on Cyprus gives a detailed overview of the infrastructure of the humanitarian relief network which was set up.[81] At any time for the duration of the ICRC mission on Cyprus, there was one ICRC delegate whose work was logistically and administratively supported by CYBRC. Coordination across both communities took place through a Combined Services Committee, whereas a Political Liaison Committee was also established holding meetings in the presence of Red Cross representatives.[82] Participants in the latter were the British High Commissioner in Cyprus, the Ambassadors of Greece and Turkey, and representatives of each community.[83] Their task was to guide the Commander of a Joint Truce Force consisting of British forces stationed on Cyprus under the ToE and the Turkish and Greek contingents,[84] which temporarily took the role of a 'peacekeeping force', until further arrangements were made.[85] Importantly, this arrangement did not invoke the ToG in any way.[86]

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[78] ICRC, 'The emblems' (29 October 2010) <https://www.icrc.org/en/doc/war-and-law/emblem/overview-emblem.htm> 15 December 2021.
[79] ICRC Archive (n 74) p.2; See section 4.2.1.
[80] ibid.
[81] ICRC Archive, B AG 200 049-004, Second Activity Report (16 January 1964); This report to the ICRC Secretariat, concerning delegate\ Ruff's activities from 3 January to 11 January 1964, contains 21 Annexes of meeting minutes, lists of materials distributed, and names of hostages on each side, as well as other documents, giving Annexes include documents in French and English, with the latter containing information prepared by CYBRC.
[82] S/6102 (n 38) paras 47-55; ICRC Archive, B AG 251 049-005 02, 'Note 268 -Activity Report' (26 July 1965) and 'Note 281 – TRC Boat (21 October 1965).
[83] HC Deb 14 January 1964 vol 687 col 35 para 5; The ICRC refers to this as the 'Combined Forces'.
[84] HC Deb 14 January 1964 vol 687 col 35 para 4; UNSC, Letter by UK Permanent Representative to UNSC (9 January 1964) UN Doc S/5508.
[85] Martin Packard, *Getting it Wrong: Fragments from a Cyprus Diary 1964* (Author House 2008).
[86] James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007) 243.

During this period, the issues that required the immediate attention of the CYBRC and the ICRC were identified as 'traditional tasks' *(domaine des tâches traditionnelles)*. These included the visiting of prisoners, the release of hostages, the organisation of a Tracing Bureau for Missing Persons, the regrouping of families, and the organisation of relief operations for Turkish-Cypriots isolated in enclaves and the overall displaced population.[87] An in-depth description of the humanitarian needs and assistance to the Turkish-Cypriot community is made in the next chapter.[88] Relief items were also distributed, however, to Greek-Cypriot families where the father or another primary caretaker had been killed or went missing.[89]

In terms of the level of violence, in his first report to ICRC Ruff concluded that the situation had not yet reached the status of a 'civil war', not excluding that possibility if tension increased.[90] This contradicted the opinion of the Turkish Red Crescent (TRC), which became involved in efforts to offer humanitarian assistance to the Turkish-Cypriot community, including the setting up of a field hospital 'to serve all Cypriots suffering from the calamity of the inter-communal strife without discriminating race, faith or nationality'.[91] Nonetheless, a letter from the TRC was received in Geneva on 6 January 1964 claiming that civilians were deliberately exposed to 'starvation, disease, oppression and atrocities', while 'great difficulties are shown by the local authorities' in permitting the shipment of aid.[92] This is the earliest document that made direct claims based on international legal provisions, invoking the violation of human rights under UDHR and ECHR, the 1948 Genocide Convention,[93] and CA3.[94]

These claims were followed by concrete suggestions to ICRC on the appointment of an impartial committee tasked with undertaking an 'investigation and inquiry'.[95] There is no evidence that these suggestions were followed up with, further contributing to the ambiguity of the claims raised. The humanitarian principles of

[87] ICRC Archive, B AG 200 049-004, Second Activity Report (16 January 1964) Annex 10 (6 January 1964).
[88] See section 5.2.2.
[89] ICRC Archive, B AG 251 049-005 02, Note 187-Future relief actions (10 February 1965) and Note 217 – Distribution of relief to Greek-Cypriot families (22 March 1965).
[90] ICRC Archive, B AG 200 049-004, First Activity Report (7 January 1964) p 9.
[91] ICRC Archive, B AG 200 049-004, Letter from the TRC (6 January 1964) p 2; This intention reported also by BRC; Same file: First Activity Report, Annex 6, Visit to the Mobile Hospital set up by the Turkish Red Crescent (3 January 1964).
[92] ICRC Archive, Letter from TRC (n 91).
[93] ibid; Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (Genocide Convention)
[94] ICRC Archive, Letter from TRC (n 91) p 2.
[95] ibid p 3.

'neutrality' and 'impartiality' have always been subject to extensive debate.[96] Hence, no direct conclusions can be drawn with certainty based on this letter alone, given the fact that on the one side the TRC was correct to raise any concerns it may have had, but on the other side, one cannot overlook the lack of such concerns raised by other actors.

In a document dated 12 January 1964, it is stated that the RoC government did not recognise the TRC 'as an official organisation'.[97] A political position with no legal basis, since recognising the TRC as an 'official organisation' would not have precluded the RoC's *legal* privilege to not give consent to TRC's activities on the Republic's territory; something which of course would adversely affect the government's international image. Recognising eventually that there was a real need for humanitarian relief, and provided that all goods would be documented by and shared with CYBRC, a method of distribution was eventually agreed upon.[98] Overall:

> …there was so much fear amongst both communities that it was imperative that non-Cypriots took over relief operations. [...] [T]he problem of refugees and persons in need was created because they cannot go to work or to their fields, and therefore cannot earn money, and therefore are hungry. The feeling amongst the Turkish community was that they would not be allowed to accept aid from the Government; if they do they will be threatened, and if they do not they will die for lack of aid.[99]

TRC shipments of humanitarian assistance continued even after the ICRC mission left the island, and a total of 13 deliveries of food, clothing, medication and other necessities, weighting few tons each, were made from 1964 to 1968.[100] Once UNFICYP was deployed, as seen next, the peacekeeping force committed to escort the movement of food, essential merchandise and individuals as necessary, from its earliest days on the Island.[101]

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[96] Marion Harroff-Tavel, 'Neutrality and Impartiality – The importance of these principles for the International Red Cross and Red Crescent Movement and the difficulties involved in applying them' (1989) 273 *IRRC* 536.
[97] ICRC Archive, B AG 200 049-004, Third Activity Report (13 January 1964), Annex 1 (12 January 1964).
[98] ibid.
[99] ibid, Annex 3 – Informal interview with British Army Officers (13 January 1964) p 3.
[100] UNSC, Report by the Secretary-General (For the period 9 December 1967-8 March 1968) (9 March 1968) UN Doc S/8446, para 122.
[101] S/5764 (n 24) para 50.

4.2.3 Early Peacekeeping Efforts and the Establishment of UNFICYP

In mid-January 1964, correspondence between the ICRC Cyprus delegation and Geneva gave away an increasing anxiety over diplomatic developments in London. The UK, already burdened with additional military operations in its declining Empire, did not wish to take sole responsibility for the maintenance of order on Cyprus.[102] Though the Joint Truce Force 'markedly reduced the fighting in Nicosia' according to US intelligence, irregular forces from both communities saw the relative calm in January 1964 as an opportunity to strengthen their respective positions.[103] Forceful violence resurged in the first half of February across regions,[104] but according to evidence from secondary sources it was suggested that the British force did not interfere to prevent fighting or disarm irregular fighters.[105]

While a humanitarian emergency unfolded on Cyprus, representatives of all involved parties gathered in London from 15 January to 15 February 1964. Even though the Conference started as a 'peace-making' effort, due to the irreconcilable differences between the two communities, by the end of January attention shifted towards 'peacekeeping'.[106] Initial efforts focused on establishing a NATO peacekeeping force, since all three guarantors were parties to the alliance.[107] This also entailed risks since a full-scale armed conflict between Greece and Turkey was possible. The proposal was rejected by Makarios, who believed that direct involvement by the USA would contradict the Republic's long-term policy of non-alignment.[108] Another option was the establishment of a Commonwealth force which, however, proved unfeasible given developments in South Asia, where 'India and Pakistan [were] busy watching each other and China,' and Malaysia was preoccupied on its frontier with Indonesia.[109]

Under these circumstances, the RoC (by now represented exclusively by Greek-Cypriots) started pursuing with more determination the idea of a UN peacekeeping force. This was more favourably looked upon also by the Soviet Union, who would be

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[102] UNSC Records, 18 February 1964 UN Doc S/PV.1095 paras 53, 83.
[103] CIA, Memorandum Cyprus (n 15).
[104] S/PV.1095 (n 102) paras 66-77.
[105] Linda Miller, *Cyprus: The Law and Politics of Civil Strife* (Center for International Affairs, Harvard University 1968) 28.
[106] Clerides, *Deposition Vol 1* (n 1) 236-330.
[107] Farid Mirbagheri, *Cyprus and International Peacemaking* (Hurst & Co 1998) 35-36; On developments during this period see also: HC Deb 17 February 1964 vol 689 cols 840-47.
[108] Alan James, *Keeping the peace in the Cyprus Crisis of 1963-64* (Palgrave 2002) 76-83.
[109] 'Memo of meeting between Duncan Sandys and Greek Cypriot Delegation on the issue of a NATO Peace-keeping force' (31 January 1964) in Clerides, *Deposition Vol 1* (n 1) 306-307.

enabled to become more involved through its permanent UNSC position.[110] At this point the Greek-Cypriot politicians sought legal advice from Elihu Lauterpacht, who on 30 January submitted his legal opinion on the Treaties of Guarantee and Alliance, already discussed in the previous Chapter.[111] One of the concerns raised was the issue of whether the credentials of Zenon Rossides, Permanent Representative of the RoC to the UN in New York, would have been recognised by the members of UNSC, though Elihu Lauterpacht was of the view that Rossides' credentials could not be 'seriously challenged'.[112] An indication of the level of tension reached and, in retrospect, a reminder that 'the survival' of the RoC was anything but guaranteed at this point.

Throughout this period, UN Secretary-General U Thant, was closely following the developments,[113] and attention shifted to New York immediately after the unsuccessful conclusion of the London Conference.[114] The debates before the UNSC gave everyone involved the opportunity to put their legal, political, and factual arguments on the table.[115] Any efforts by the representative of Turkey to shed doubt on the status of the RoC were fended off by the Soviet and Greek delegations,[116] without reaction by the other members of the UNSC. Apart from the UK, US and the USSR, the position held by the other members of the UNSC was rather neutral, albeit they did put more emphasis than what was desirable by the RoC perhaps, on the internal situation.

The 28 February 1964 was a definitive moment concerning the position of the Turkish-Cypriot community internationally, when Turkey requested on behalf of the Turkish-Cypriots as Rauf Denktash, President of the Turkish Communal Chamber, formally presented the Turkish-Cypriot position before the UNSC.[117] Only the Soviet

[110] Mirbagheri (n 107) 38.
[111] See section 3.2.1.
[112] 'Views of E. Lauterpacht Given on 25, 28 and 29 January 1964 and Note, 30 January 1964' in Stella Soulioti, *Fettered Independence: Cyprus, 1878-1964 Vol 2: The Documents* (University of Minnesota, 2006) 805, 807.
[113] UNSC, Report of the Secretary-General to UNSC (13 January 1964) UN Doc S/5514; UNSC, Report of the Secretary-General to UNSC (17 January 1964) UN Doc S/5516
[114] UNSC, Letter from UK Permanent Representative (13 February 1964) UN Doc S/5543; UNSC, Letter from Cyprus Permanent Representative (15 February 1964) UN Doc S/5545; UNSC, Letter from Cyprus Permanent Representative (17 February 1964) UN Doc S/5550.
[115] S/PV.1095 (n 102).
[116] eg UNSC Records, 28 February 1964 UN Doc S/PV.1099, paras 5-13.
[117] UNSC, Letter from Turkey Permanent Representative (19 February 1964) UN Doc S/5556.

Union and Czechoslovakia were openly against this potentiality.[118] The other members were generally favourable, albeit with reservations. Among them, for instance, Bolivia expressed the view that they would be more willing to hear Fazil Kutchuk, in his capacity as Vice-President of the RoC.[119] A compromise was reached after long debate, to allow Rauf Denktash to speak in his individual capacity as a member of the Turkish-Cypriot community, and not as the formal representative of any entity.[120] This debate, and Bolivia's suggestion, were telling of the privileged position of the Greek-Cypriots as representatives of the recognised government of the already established RoC, whereas the Turkish-Cypriots were too optimistic had they hoped for more visibility. The message should also have been clear that the Republic's responsibility for its failure to take control of the situation internally was being noted.

During his transit in Ankara on the way back to Cyprus, Denktash was informed that the RoC Council of Ministers had published a decision that upon his arrival he was to be arrested and tried for 'offences against the State and other crimes'.[121] Acknowledging this was an internal matter of the RoC, U Thant requested from the RoC government to reconsider its decision, since it was likely to have adverse international repercussions for Cyprus.[122] The government never withdrew its statement, but agreed instead, Turkey to host Denktash for an indeterminate amount of time.[123]

A draft resolution, co-sponsored by Bolivia, Brazil, the Ivory Coast, Morocco and Norway, was presented to the UNSC on 2 March 1964,[124] and adopted unanimously without amendments two days later.[125] UNSC Resolution 186 today holds a paramount position in all communication and public statements on the Cyprus Question, since it constitutes the legally binding instrument that 'seals' the recognition of the sovereignty of the RoC internationally. Over the decades, however, the more nuanced position within the UNSC has gradually been forgotten, and certainly

[118] UNSC Records, 27 February 1964 UN Doc S/PV.1098.
[119] ibid para 10.
[120] ibid para 61.
[121] Glafcos Clerides, *Cyprus: My Deposition Vol 2* (Alithia Publishing 1989) 200.
[122] ibid 201.
[123] ibid.
[124] UNSC, Draft Resolution on Creation of UN Peace-keeping Force in Cyprus (2 March 1964) UN Doc S/5571.
[125] UNSC Records, 4 March 1964 UN Doc S/PV.1102, para 28; For full text of UNSC Res 186 see Annex II of the thesis.

completely abandoned in internal public communication. Along with it, the responsibility the resolution assigned to the RoC and each of the two communities separately, under paragraphs 2 and 3, where the UNSC:

> 2. *Asks* the Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order, to take all additional measures necessary to stop violence and bloodshed in Cyprus;
>
> 3. *Calls upon* the communities in Cyprus and their leaders to act with the utmost restraint.[126]

Early commentary on UNSC Resolution 186, observed that the clear separation of responsibilities between the newly-established UN force as per paragraphs 4, 5 and 6, and the separate UNSC recommendation on the designation of a mutually-agreed upon UN Mediator, suggested that UN participation in Cyprus was not meant to burden the organisation with the resolution of the problem, but that the burden would be on the parties themselves.[127] Further evidence in that regard is the direct allocation of duties to both Cypriot communities by reference to the Mediator, who:

> shall use his best endeavours with the representatives of the communities and also with the aforesaid four Governments, for the purpose of promoting a peaceful solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people of Cyprus as a whole and the preservation of international peace and security.[128]

In setting up UNFICYP, the UN were cautious of their earlier experience with ONUC, the United Nations Operation in the Congo (1960-1964), where UN staff had interfered actively in the political situation in the country.[129] Considering the complex nature of the situation in Cyprus, countries became reluctant to contribute to a mission which may not have been successful, and also held the risk of being accused of partiality.[130] The fact that contrary to other peacekeeping forces UNFICYP was

[126] UNSC Res 186 (4 March 1964).
[127] Miller (n 105) 33.
[128] UNSC Res 186, para 7.
[129] Margot Tudor, 'Blue Helmet Bureaucrats: UN Peacekeeping Missions and the Formation of the Post-Colonial International Order, 1956-1971' (PhD Thesis, Faculty of Humanities, University of Manchester, 2020) 76.
[130] ibid 172; Miller (n 105) 35.

financed by voluntary contributions,[131] posed additional difficulties. As a result, despite the urgency, it was only on 27 March 1964 that the first troops started arriving on Cyprus.[132] Apart from a military component, UNFICYP also has a Civilian Police (UNCIVPOL) and a Civil Affairs unit. [133]

Each side had different expectations of UNFICYP. For the Greek-Cypriots, UN presence was regarded as a means towards ending the Turkish-Cypriot 'rebellion', assisting the government to restore its rule, and defend itself against a potential Turkish invasion.[134] For the Turkish-Cypriots UNFICYP had to protect their community from the threat of Greek-Cypriot oppression, and assist splitting the Island between the two communities.[135] It goes without saying that both were wrong, for UNFICYP was tasked with nothing more than:

> preserving international peace and security, to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions.[136]

Misconceptions about UNFICYP's role caused distress among the local population, who on some occasions expressed their dissatisfaction against the force through demonstrations.[137] Politically there was no considerable clarity either, as shown through the lengthy plenary debate at the House of Representatives regarding the ratification of the Agreement between the UN and the RoC.[138] Here, one of the

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[131] Michael Bothe, 'Peacekeeping' in Bruno Simma and others (eds), *The Oxford Commentary on the Charter of the United Nations Vol 1* (3rd ed, OUP 2012) 1171, 1177.
[132] UNSC Report of the Secretary-General (12 March 1964) UN Docs S/5593; S/5593/Add.1 (12 March 1964); S/5593/Add.2 (17 March 1964); S/5593/Add.3 (26 March 1964); UNSC Exchange of Letters Constituting an Agreement between the UN and the Government of the RoC Concerning the Status of UNFICYP (31 March 1964) Doc S/5634; The agreement was ratified by the House of Representatives on 15 June 1964; See also: UNA, S-0869-0003-03-00001, *Items in Peace-keeping Operation – Cyprus – General Instructions for UNFICYP*, *13 March 1964* (Released 6 June 2006) <https://search.archives.un.org/general-instructions-for-unficyp-2> accessed 28 September 2021.
[133] John Theodorides, 'The United Nations Peace Keeping Force in Cyprus (UNFICYP) (1982) 31 *ICLQ* 765; Barry Barker and Terry Burke, *Police as Peace-keepers: The History of the Australian and New Zealand Police serving with the United Nations Force in Cyprus 1964-1984* (UNCIVPOL Victoria Club 1984).
[134] Stanley Kyriakides, *Cyprus: Constitutionalism and Crisis Government* (University of Pennsylvania Press 1968); Miller (n 105) 35.
[135] ibid.
[136] Resolution 186 (n 126) para 5; S/5764 (n 24) para 1.
[137] e.g Tudor (n 129) 176 citing Anon, 'Turks Mob U.N. Chief on Cyprus: 150 Women Hurl Rocks and Shout "Death to Gyani, Death to Gyani"' (*The Washington Post*, 27 April 1964).
[138] ROCPM, Session 1963 –1964, 15 June 1964, p 84-93; Περί της Συμφωνίας αφορώσης εις το νομικόν καθεστώς της Εν Κύπρω Δυνάμεως των Ηνωμένων Εθνών (Κυρωτικός)

primary concerns in the House was whether UNFICYP would face the same problems as ONUC did, since in the view of many its terms of reference were unclear.[139] Among others, Ezekias Papaioannou, Secretary-General of AKEL, raised the concern that the acceptance of UNFICYP's 'temporary presence' should not be interpreted as inability by the RoC to deal with the ongoing situation.[140]

Disagreement about the exact meaning of 'return to normal conditions' also persisted throughout this period.[141] UNFICYP carried enough arms to be able to act in self-defence if the need to do so arose.[142] This overall included '(a) the defence of United Nations posts, premises and vehicles under armed attack', and '(b) the support of other personnel of UNFCYP under armed attack'.[143] Even then, any conduct would be constrained by the 'principle of minimum force',[144] and the rules and general principles of PIL.[145]

The regulations issued for UNFICYP by the UN Secretary-General also stated that 'The Force shall observe and respect the principles and spirit of the general international Conventions applicable to the conduct of military personnel'.[146] In practice, therefore, at no point UNFICYP troops were allowed to act in a way that would bring them into direct conflict with either community, unless compelled to do so because the security of the force itself was at stake.[147] The Commander of the force was directly accountable to the UN Secretary-General, who in turn could issue directions to the UNFICYP Commander.[148] In case any members of the force were suspected of a criminal offence of any kind, the peacekeeper in question would be

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Νόμος (29/1964) (Law concerning the Agreement on the Status of the United Nations Force in Cyprus (Ratification) Law); RoC Official Gazette 327, 25 Ιουνίου 1964.

[139] ROCPM, (n 138) p 91.

[140] ibid p 85.

[141] UNSC Report by the Secretary-General (10 September 1964) UN Doc S/5950, para 218.

[142] UNSC, Note by Secretary-General; Aide-memoire concerning some questions relating to the function and operation of the United Nations Peace-Keeping Force in Cyprus (11 April 1964) UN Doc S/5653, para 10.

[143] ibid para 16.

[144] ibid para 18.

[145] Andrew Clapham, 'The Concept of International Armed Conflict' in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) 3, 8-10; See section 5.3.3.

[146] UNA, S-0869-0001-07-00001, *Items-in-Peace-keeping operations – Cyprus - United Nations Force Regulations*, *07 April 1964*, UN Doc No. ST/SGB/UNFICYP/1, 25 April 1964 (Released 6 June 2006) <https://search.archives.un.org/united-nations-force-regulations-2> accessed 28 September 2021, para 40.

[147] S/5653 (n 142) para 17.

[148] ibid paras 4-6.

subjected to the criminal jurisdiction of their own national State, including their national State's military rules and regulations.[149]

Local UNFICYP commanders had the power to engage with local leaders from either community,[150] in principle bound by 'neutrality' and 'impartiality'.[151] In traditional forces, this often was reflected in the composition of a peacekeeping force, where UNSC permanent members or interested parties were excluded from the contribution of troops.[152] Nonetheless, the UK has been a contributing State to UNIFCYP from the very beginning, despite the fact that it had both characteristics, as a UNSC permanent member, and a guarantor Power. This might have been a move to ensure that internationally the situation in Cyprus was seen as a Greco-Turkish affair.

The problems arising due to the ambiguity of UNFICYP's mandate were exacerbated by the lack of resources and adequate training for its troops, who often had to improvise regarding their humanitarian response on the ground.[153] This blurred the boundaries between the responsibilities of the ICRC and UNFICYP, and both organisations were reluctant to take responsibility for matters they felt fell out of their respective mandates. One such example was UNIFCYP's early refusal to deal with the issue of missing persons, and its uneasiness to deal with increased displacement.[154] In view of the ICRC the situation was 'too political', while for the UN was 'too humanitarian'.[155]

[149] UNA, *UN Force Regulations* (n 146) para 29.
[150] S/5653 (n 142) para 20.
[151] Nicholas Tsagourias, 'Consent, Neutrality/Impartiality and the Use of Force in Peacekeeping: Their Constitutional Dimension' (2006) 11(3) *Journal of Conflict and Security Law* 465, 478.
[152] ibid 480.
[153] Tudor (n 129) 178-179.
[154] ICRC Archive, B AG 200 049-004, Final Report of activities by Max Stadler (6 June 1964) p 4
[155] Tudor (n 129) 180.

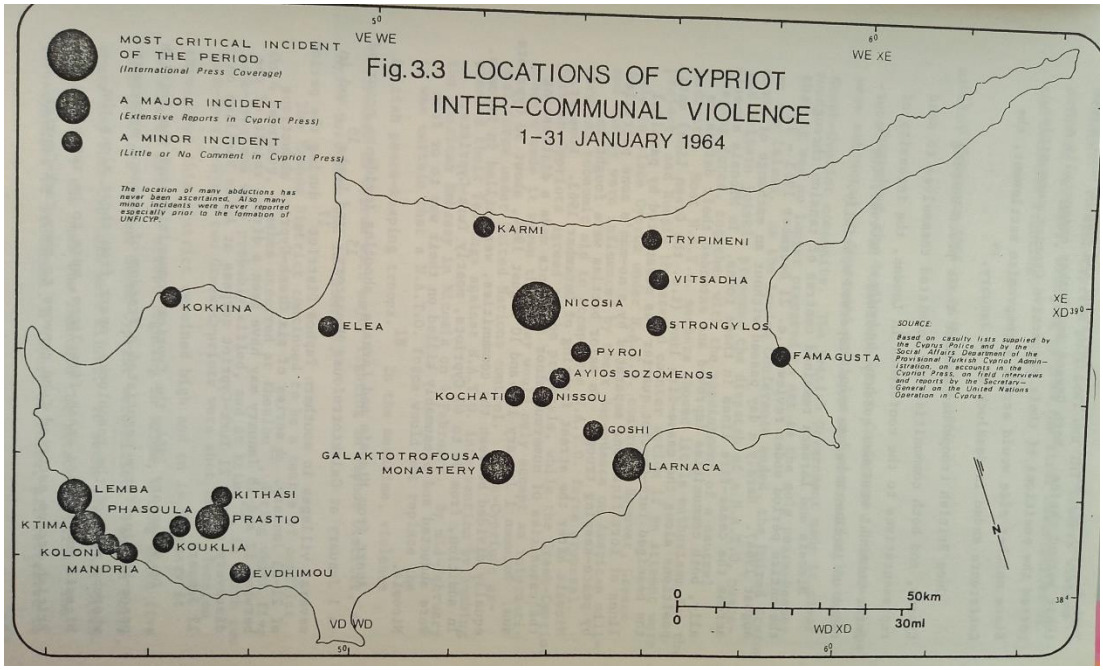

Figure 4.2: Map - Intercommunal Violence 1-31 January 1964. Circles depict the level of intensity, based on media coverage. Bigger circles were covered internationally, smaller circles were covered only locally or received no coverage at all. Source: Richard Patrick, *Political Geography and the Cyprus Conflict, 1963-1971* (University of Waterloo 1989), p 53 (reproduced with permission from Department of Geography and Environmental Management, University of Waterloo).

4.3 Conflict Qualification: Organisation and Intensity

While diplomatic developments were taking place in London and New York in the first quarter of 1964, violence persisted on Cyprus. As already discussed, the applicability of CA3 is conditioned upon the existence of a NIAC.[156] This in turn is subject to satisfying cumulatively the criteria of 'organisation' and 'intensity', through a comprehensive reading of the relevant factual indicators listed in Chapter 2.[157] This section aims at giving an overview of the events that took place from January to mid-August 1964, to legally assess whether these events amounted to a NIAC through an examination of the relevant criteria. Reference to other relevant aspects of international law is also made, as necessary.

4.3.1 Evidence of intensity: Violence in the first half of 1964

Despite the ceasefire agreed upon in Nicosia at the end of 1963, in the first days of January 1964 grievous crimes continued taking place, with the animosity being fed by the political tension that existed in anticipation of the London Conference. One such

[156] See section 2.3.3.

[157] See Table 2.2.

crime was the killing of three monks and a young man at the Galaktotrophousa Monastery, between Kornos and Kophinou villages, on New Year's Day 1964. The attack on the monastery was undertaken by four Turkish-Cypriots, who wounded several more persons, while the Abbot went missing.[158] During those days, in fear of reprisals many of the Turkish-Cypriots in nearby villages moved overnight into the area that eventually became the Kophinou enclave.[159]

Within the same week, the ICRC delegate in Cyprus reported that the Turkish-Cypriot community had no updates on the 102 Turkish-Cypriots inhabitants of Denya village, located a few kilometres west of Nicosia. On the same day, the ICRC reported that nine corpses were found in the vicinity of the village of Ayios Vassilios.[160] By 12 January 1964, it was established that these nine corpses were just a few out of a total of 21 bodies belonging to Turkish-Cypriots found in a mass grave. Some of the bodies had their arms and legs tied, suggesting those killed were possibly also tortured.[161] Apart from this being an offence under domestic criminal law,[162] the act of torture and killing could carry implications under CA3,[163] the ECHR,[164] and the RoC Constitution.[165] Press publications at the time suggested the attack on Ayios Vassilios may had been a reprisal for the killing of Greek-Cypriots in Goneli in 1958.[166] In turn, from 12 to 18 January 1964, six Greek-Cypriots were abducted in Paphos district, believed to be a reprisal for the killings in Ayios Vassilios.[167]

These crimes were a continuing trend from the extensive violence from the last days of December 1963. Throughout the first half of 1964 the scattered clashes were led by decentralised groups of irregular fighters at both sides. During this period, however, we see the re-emergence of TMT in the Turkish-Cypriot community, as well as a new organisation called officially called EOK (*Εθνική Οργάνωση Κύπρου*/ Cyprus National Organisation), better-known as 'Akritas', in the Greek-Cypriot community.

[158] PIO Press Release, Turks kill Greek monks (1 January 1964).
[159] See section 5.3.3.
[160] ICRC Archive, B AG 200 049-004, First Activity Report (7 January 1964) pp 9-10.
[161] Kızılyürek, *Resentment* (n 21) 512.
[162] Criminal Code (Cap 154) pt V, Offences against the person
[163] GCs I-IV, common art 3(1) (a) and (c)
[164] ECHR, art 3.
[165] Republic of Cyprus Constitution 1960 (RoC Constitution), art 8.
[166] Kızılyürek, *Resentment* (n 21) 512; See section 3.3.3.
[167] Kızılyürek, *Resentment* (n 21) 512; On the illegality of reprisals under IHL see further below in this section.

'Akritas' was established in secret in 1961[168] or 1962,[169] with the aim to achieve union with Greece after independence. Within the areas that came under the control of Turkish-Cypriot fighters, UN reports distinguish between those Turkish-Cypriot police, gendarmerie and army officers who on 21 December 1963 came under the exclusive control of the Turkish-Cypriot leadership, and the 'extremists' under direct TMT control.[170] Regardless of this distinction, however, under IHL all Turkish-Cypriot fighters were non-state actors, acting against the legal authority of the State.

As deduced from the archives, 'extremist' elements existed also on the Greek-Cypriot side.[171] These non-state formations enjoyed a certain level of autonomy regarding the control they had in different regions. Such scuttered informal groups acted in addition to 'Akritas' and the formal government-controlled security forces of the RoC. Best known among them were the groups led by Nicos Sampson, which was mentioned above in the context of the Omorphita attack in December 1963, and the Vassos Lyssarides groups, which led the operation at St. Hilarion castle in April 1964, which is further discussed below. Chrysostomou identifies six additional such groups, all of which could be associated to the regional EOKA sectors of the 1955-1959 emergency.[172] This brings the total number of paramilitary formations on the Greek-Cypriot side, including 'Akritas', to ten. Discipline was loose, and some later admitted that there were incidents of 'unacceptable behaviour' among their members.[173]

The violence did not leave unaffected members of the other religious groups either, though their separate experience has been fused in their constitutional Greek-Cypriot communal identity.[174] On 4 March 1964, there was an eviction of all Armenians from the Turkish-Cypriot quarters, while there have been reports of collusions also between Armenian-Cypriots and Greek-Cypriot irregulars.[175] In addition, according to Patrick, apart from the 'military incidents', violence between civilians also occurred often based on personal grievances, leading to theft, intentional provocations,

[168] Chrysostomou (n 11) 225.
[169] Soulioti, *Narrative* (n 41) 259; See also: Kızılyürek, *Resentment* (n 21) 442-453.
[170] S/5950 (n 141) para 23.
[171] ibid para 24.
[172] These groups were led by Nikiphoros Ioannou, Costas Christodoulides MP, Renos Kyriakides, Andreas Moustakas, Ioannis Kassinis and Photis Papaphotis; Chrysostomou (n 11) 252-255
[173] Chrysostomou (n 11) 254.
[174] PIO Press Release, Turks raid Nicosia Armenian Church (29 January 1964); PIO Press Release, Maronite Detained by Turkish Terrorists (12 June 1964).
[175] Patrick (n 3) 74.

spontaneous conflict and vendettas.[176] This phenomenon is not surprising, since research from various disciplines has already established that there is an intrinsic link between 'civil war', rebellion in particular, with criminal activity.[177]

By March a second 'green line' separating the two communities was drawn in the town of Larnaca.[178] Following the establishment of UNFICYP, the earliest UN Secretary-General reports to the UNSC described the situation as 'relatively quiet', even though 'grave incidents' were sporadically noted.[179] Notably, the clashes at Ktima (Pafos) 7-10 March, and Ghaziveran (Kazivera) on 19 March.[180] Few days after the first UNFICYP troops arrived, the first major clashes were reported in the Tylliria region on the northwest coast of the Island, on 4-8 April. There, UNFICYP had to resort to use of force in self-defence following attacks from both communities, eventually putting an end to the violence by obtaining occupation over disputed geographical positions.[181] Despite UNFICYP's success in stopping the violence this time, by the middle of summer the region would become the epicentre of clashes, reaching a climax involving the Turkish Air Force in the first week of August.[182]

The vast majority of casualties during this period occurred during the operation at St Hilarion Castle. The castle overlooks the Nicosia-Kyrenia Road from one of the picks of the Pentadaktylos (Beshparmak/Kyrenia) mountain range north of Nicosia, which had been inaccessible to Greek-Cypriots since Christmas 1963.[183] The secretly planned operation took place roughly from 23-29 April 1964, with some disparity between the dates mentioned across different sources. Ierodiakonou and Chrysostomou agreed that the operation took place in two phases,[184] whereas Kizilyurek stated simply that the operation started on 23 April.[185] All three accounts

[176] ibid 120-125.
[177] e.g Stathis Kalyvas, 'How Civil Wars Help Explain Organized Crime – and How They Do Not' (2015) 59(8) *The Journal of Conflict Resolution* 1517, 1521-1522.
[178] UNSC Report of the Secretary-General (2 May 1964) UN Doc S/5679, para 8.
[179] ibid.
[180] ibid.
[181] ibid para 10.
[182] See next section.
[183] S/5679 (n 178) para 15.
[184] Chrysostomou (n 11) 288; Pavlos Ierodiakonou, *Εθνική Φρουρά: Από τα Πέτρινα Χρόνια στο Σήμερα* (National Guard: From the stone years to today) (Cultural Academy 'Kypropedia' 2016) 71-72 (Ierodiakonou is a military officer).
[185] Kızılyürek, *Resentment* (n 21) 533.

contradict the UN Secretary-General report, according to which the 'outbreak' occurred on 26 April.[186]

Clarity is given by Ierodiakonou, who explained that on the first phase, which started on 23 April 1964 was targeting a nearby area, and only on 25 April attention shifted towards the St Hilarion Castle. This detail is significant in indicating the National Guard's capacity during this period to plan and execute operations. Even though it is well-known that this operation was executed by the paramilitary group led by Vassos Lyssarides.[187] However, according to Ierodiakonou its planning was supported by the officers of the newly-established 'voluntary National Guard',[188] which indicates that there was not at this point a complete separation between the official forces of the Republic and the paramilitary groups. The overall aim was to restore Greek-Cypriot control over the main mountain passage on the road connecting the towns of Nicosia and Kyrenia, but this was only 'partially successful'.[189] The UN evaluated the incident as 'especially serious', since it was a 'planned and organized military effort'.[190]

UNFICYP was unprepared to intervene militarily, since the government had not shared relevant information in advance. Nevertheless, UNFICYP did initiate diplomatic talks with each side immediately.[191] The end of the battle at St Hilarion, coincided with the completion of the first month of UNFICYP presence on the Island.[192] UN Secretary-General Thant was alarmed by the dilemma UNFICYP found themselves in. On the one side, the need to prevent the Cypriots from killing each other and on the other, the need to defend the UN force, as they could not 'stand idly by and see an undeclared war deliberately pursued, or see innocent civilians of all ages ruthlessly struck down by snipers' bullets'.[193] He then added, that his commentary was not to be interpreted as an 'assessment of blame', showing the early detachment from any form of direct legal assessment of the situation.[194] Such an

[186] UNSC Report of the Secretary-General (29 April 1964) UN Doc S/5671, para 1.
[187] Chrysostomou (n 11) 288-289; Ierodiakonou (n 184) 71-72.
[188] Ierodiakonou (n 184) 71-72; See next section.
[189] Chrysostomou (n 11) 289.
[190] S/5671 (n 186) para 6.
[191] S/5671 (n 186) para 8 and Annex II 'Statement by Lt. General Gyani, UNFICYP Commander (28 April 1964).
[192] S/5671 (n 186).
[193] ibid paras 5 and 6.
[194] ibid para 10.

approach was in line with the interim aims that had been set by UNFICYP, whose core objectives were:

> (a) To prevent a recurrence of fighting.
>
> (b) To contribute to the maintenance and restoration of law and order.
>
> (c) To contribute to a return to normal conditions.[195]

In the first month of UNFICYP's presence on the Island, from 27 March to 7 April 1964, a total of 163 shooting incidents were registered in 30 days, with 21 killed, 28 wounded and 36 missing persons from both communities reported.[196] Throughout this period and until November 1967 the case would often be the following:

> neither side was clear about the feelings or intentions of the other. Finally, some dramatic incident which occurred within 'A' would be misinterpreted by community 'B' as an attack. Community 'B' would rush to its own defence but this action would in turn be misinterpreted by community 'A' as an attack. Fighting then began and each side blamed the other for starting it.[197]

One such incident was the exchange of fire on 22 April 1964, when the Greek-Cypriots used fire against a Turkish-Cypriot enclave after they heard gun shots. UNFICYP intervened establishing that the gun shots were part of Turkish-Cypriot Bayram celebrations.[198]

In the last month of the first three-month period of UNFICYP, 2 May to 8 June 1964, exchanges of fire were a daily phenomenon, including five cases of grenade attacks or shooting directed to UNFICYP.[199] These incidents included an attack by Turkish-Cypriot snipers against UNFICYP personnel escorting Greek-Cypriot harvesters, as well as Greek-Cypriots shooting against UNFICYP members conducting an investigation in the death of two bodies found in the St. Hilarion area.[200] A more serious incident concerned the killing of two Greek Army officers and a Greek-Cypriot police officer, as well as the wounding of a third Greek Army officer on 11 May

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[195] ibid, Annex I Objectives and interim aims of a comprehensive programme of action for UNFICYP para 1.
[196] S/5679 (n 178) paras 15-16; On casualties throughout this period see Annex III of the thesis.
[197] Patrick (n 3) 122.
[198] S/5679 (n 178) para 13.
[199] S/5764 (n 24) para 8.
[200] ibid paras 11 and 12.

1964, when the four of them entered the medieval town of Famagusta (the town's Turkish-Cypriot quarter) wearing civilian clothes.[201] According to ICRC, the event followed a series of reprisals by the Greek-Cypriots.[202] This was confirmed by the UN Secretary-General, according to whom, following the abduction of 32 Turkish-Cypriots in Famagusta district after the killing of the military and police officers, no action was known to him regarding the prosecution of any perpetrators.[203]

The explicit reference to 'reprisals' here and throughout the archives is crucial, since reprisals are regulated under IHL, and in IACs are allowed only against specific conditions and categories of people or objects.[204] As mentioned above, Pictet's 1952 Commentary on CA3 had already pointed out that the taking of hostages was understood to include the act of reprisals, and this today is seen as customary IHL (CIHL) under rule 148.[205] Over the years there have been efforts to expand protection from reprisals beyond the limited protection afforded under GCs 1949, especially with regard to civilian populations.[206] Today, the ICRC has expanded this arguing that in CA3 the prohibition of reprisals is inferred through the prohibition of violence to life and person, the taking of hostages, and outrages upon personal dignity, cruel and degrading treatment and torture, and the overarching principle of 'humane treatment',[207] which underlines the totality of the four GCs 1949.[208]

Even though the first three-month periodic report to the UNSC made no reference to IHL, the report gives a good overview of military preparations, lack of freedom of movement and the level of military force engaged. It can be inferred from the language employed that the Secretary-General was guided in his reporting by *jus in bello* and *jus ad bellum.* Examples include the reference to 'Greek Cypriot authorities',[209] but Turkish-Cypriot 'fighting elements',[210] with due regard to military

[201] ibid paras 14-18.
[202] ICRC Archive, B AG 251 049-004 (n 154) p.2
[203] S/5764 (n 24) para 18.
[204] GCs I-IV, Arts 46/47/13/33; CIHL Study, Rules 145-148, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law Vol I: Rules* (CUP 2005), 513-529.
[205] GCs I-IV, CA3(1)(b); Jean Pictet, *Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC 1952) 54; CIHL Rule 148, CIHL Study Vol I (n 204) 526-529.
[206] CIHL Study (n 204) p 514; See also: Basic Principles for the protection of civilian populations in armed conflicts UNGA Res 2675 (XXV) 1970 (9 December 1970).
[207] CIHL Study Vol I (n 204) Rule 87, p 306.
[208] CIHL Study Vol I (n 204) Rule 148, p 526; Pictet, *Commentary GCI 1952* (n 205) 52.
[209] S/5764 (n 24) para 22.
[210] ibid para 23.

developments, including the increased possession of arms and ammunition on each side, as well as the reference to 'reprisals'[211] and the 'siege' of the school in Polis (Polis-Chrysochou), where Turkish-Cypriot civilians remained for safety, even after their freedom of movement had been restored.[212]

Furthermore, the report described in detail the Cypriot 'Armed Forces',[213] distinguishing them from the 'Greek-Cypriot irregulars',[214] and the Turkish-Cypriot 'armed groups'.[215] There was also a comparison between the 'stronghold' enclave of Louroudjina, south of Nicosia, where 4,000 Turkish-Cypriots had gathered, with a large proportion of armed men under the influence of TMT, and the situation in the small, predominantly Turkish-Cypriot villages of Marki (Margi) and Kochatis (Kochati), 7 miles to the west of Louroudjina, whose inhabitants were not as armed, and therefore, exposed to Greek-Cypriot reprisals in case of provocations by the Turkish-Cypriot fighters in Louroudjina.[216]

These indirect IHL-related references explicitly come to the surface in the concluding remarks, where in paragraph 117, reproduced here in full, it is stated that:

> 117. The practice of *abducting people* and *holding them as hostages or killing* them in *retaliation* is most reprehensible. It has been employed by both communities, but, because of the circumstances, to a considerably greater extent by Greek Cypriots. The taking of hostages is *prohibited by international law*, and the *killing of hostages* is a universally recognized *war crime*. Where such killings have occurred, they have to be branded only as cold-blooded *murders*. It is bad enough that such inhumanity can occur in these times; it is far worse that in *no instance has anyone suspected of guilt been found, charged and tried*. President Makarios has condemned these acts and I agree with him that they create throughout the world a bad image of the people and Government of Cyprus, indicating, as they seem to do, an inability on the part of governmental authority to check and control shocking excesses of this kind.[217]

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[211] ibid para 40.
[212] ibid para 35.
[213] ibid paras 43-48; These are sub-divided into the 'Cyprus Regular Police' and the 'National Guard'.
[214] S/5764 (n 24) paras 39, 64; On 'irregular elements' on 'both sides' see also para 67.
[215] S/5764 (n 24) para 46.
[216] ibid paras 38-40.
[217] ibid para 117 (emphasis added).

The report was drafted and disseminated to the UNSC days after conscription for the National Guard was formally launched,[218] as seen in the next section. Despite the fact that the report recognised the new conscription laws as helpful towards the 'definition of status of those bearing arms in Cyprus', and would likely increase control over the 'present irregulars'[219]—another indirect reference to IHL—the Secretary-General was cautious to question the consistency of this new legislation with UNSC Resolution 186(1964).[220] In particular paragraph 1, according to which all UN Member States had to 'refrain from any action or threat of action likely to worsen the situation in the sovereign Republic of Cyprus'.[221] Moreover, Thant asserted in stronger language that 'threats on landing in Cyprus by Turkish military forces' were also 'certainly not consistent' with paragraph 1 of Resolution 186.[222] Lastly, he made reference to increased arms smuggling by both communities, and whereas the situation was evaluated as 'critical', the Secretary-General was quick to add that he did not question the right of the sovereign Government of the RoC to legally import or manufacture arms, but rather he questioned whether extensive import of arms was compatible, once again, with paragraph 1, Resolution 186.[223]

The carefully chosen wording of the report maintains consistency between the law, and the necessities of diplomatic etiquette. The activities mentioned throughout this report are relevant to a broad range of legal obligations under both *jus ad bellum* and *jus in bello.* Thus, they can be seen as an effort on behalf of the UN Secretary-General to indirectly remind the parties of their respective international legal obligations. The very fact that he took caution in recognising the Republic's sovereign right to import or manufacture arms suggests that even though the UN Secretariat and the UNSC would refrain from directly invoking all relevant legal provisions, there was a strong understanding of the respective rights and obligations at all sides.

In early June 1964, IHL considerations were also a priority for the ICRC as seen in the written instructions to newly-arrived ICRC delegate Pierre Boissier, when he was clearly instructed to ensure the liberation of hostages 'in conformity with CA3 of the four 1949 Geneva Conventions', and to remind 'all interested parties' of the

[218] Ο περί της Εθνικής Φρουράς Νόμος του 1964 (20/1964) (National Guard Law of 1964); RoC Official Gazette 320 (2 June 1964.
[219] S/5764 (n 24) para 118.
[220] ibid; UNSC Res 186 (n 126).
[221] UNSC Res 186, para 1.
[222] S/5764 (n 24) para 119.
[223] ibid para 120.

provisions under Article 15 to GC I 1949.[224] The provision according to which the parties to an armed conflict shall take positive action to collect the sick and wounded, protect them 'against pillage and ill-treatment', and allow for their 'removal, exchange, and transport'.[225]

Hence, juxtaposing the information in the UN and ICRC reports, there is limited doubt that by early summer 1964 all interested parties were familiar with the relevant international legal framework and that intensity was evaluated at a level which justified the invocation of CA3. This view is reinforced by the nature of military preparations undertaken by the RoC during this period, as examined in the next sub-section.

4.3.2 Organisational adjustments: The establishment of the National Guard

Efforts by the RoC to organise the scattered, autonomous, paramilitary formations were initiated as early as January 1964, with the establishment of a General Chief of Staff bureau, with the assistance of Greek officers who arrived on the Island to support the process.[226] A 'Defence Council' was also set up on 4 February 1964, aiming to coordinate relations between Nicosia and Athens,[227] its members including Greek and Greek-Cypriot military high-ranking officers, the RoC President, the President of the House of Representatives, and the Minister of Interior, among others.[228]

On 25 February 1964, the Defence Council established a 'voluntary National Guard' (Εθνοφρουρά/ *Ethnofrura*) and a Special Police Force Unit.[229] The aim was for the Special Police Force to be a first step towards recruitment to the voluntary National Guard, and absorb members of the paramilitary formations, into this voluntary, 'legal semi-military formation'.[230] The aim of this centralised military force was to offer adequate training and strengthen discipline, with the introduction of two 'Military Police Courts',[231] and ensure strong collaboration with UNFICYP.[232] Indeed,

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[224] ICRC Archive, B AG 251 049-004, Instructions to Mr Pierre Boissier (4 June 1964).
[225] Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in armed Forces in the Field (adopted on 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (GCI), art 15.
[226] Chrysostomou (n 11) 256-257.
[227] ibid 258; Ierodiakonou (n 184) 50-51.
[228] Chrysostomou (n 11) 258.
[229] ibid 261.
[230] ibid 263 citing Defence Council, Basic Order 1, 1 March 1964.
[231] No corresponding law found on the establishment of such courts. The law concerning the Military Penal Code and Procedure was adopted on 31 July 1964. Περί Στρατιωτικού Ποινικού Κώδικα και Δικονομίας Νόμος (40/1964) (Military Penal Code and Procedure); RoC Official Gazette 338 (31 July 1964).
[232] Chrysostomou (n 11) 270-272.

on 16 March 1964, four members of the voluntary force were found guilty and removed from their ranks for undertaking an armed robbery against a Turkish-Cypriot.[233] On 30 March, three days after UNFICYP had commenced its operation, an order demanding among others, the 'excellent appearance' of its members in terms of 'uniform, discipline etc' was issued.[234] The force was formally presented to the public on 1 April, EOKA's 9th anniversary.[235] These developments suggest a gradual alignment of the Republic's forces with the criterion on 'organisation' under CA3, and in particular, common structure, disciplinary mechanisms, recruitment and military training, planning and coordination.[236]

Despite improvements in the organisational structure, concerns remained that this voluntary force was still unable to respond adequately to a potential Turkish invasion.[237] Therefore, steps to upgrade the operational capacity of the National Guard were taken, which started resembling increasingly a proper army. In that process, the House of Representatives voted a new law, which merged the Police and the Gendarmerie into a single Police Force.[238] According to its Preamble, this merging became necessary due to the 'recent events', so as to improve efficiency under a unified administration.[239] A second law was also adopted formally establishing the National Guard (*Εθνική Φρουρά/ Ethniki Frura*),[240] which provided for the compulsory conscription of all 'citizens of the Republic', aged 18 to 50 years old, subject to exceptions.[241] The law contained no provisions excluding the Turkish-Cypriots from conscription, and it was only upon the first Order for conscripts that 'the Turks' were expressly excluded from it.[242]

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[233] ibid.
[234] ibid.
[235] ibid 272.
[236] ICRC, *Commentary GCI 2016* (n 52) paras 429-430; See section 2.3.3, Table 2.2.
[237] Chrysostomou (n 11) 286.
[238] περί Αστυνομίας (Τροποποιητικός) Νόμος του 1964 (21/1964), s 2 (Police (Amendment) Law 1964); RoC Official Gazette 321 (4 June 1964)
[239] ROCPM, Session 1963 – 1964, 28 May 1964, p 72-73.
[240] Law 20/1964 (n 218).
[241] ibid s 4.
[242] Chrysostomou (n 11) 299; According to Hadjilyras, conscription rules did not apply strictly to the members of the other religious groups. This vague policy was followed until 1980, when it was officially decided that there would be no compulsory conscription for their members. See: Alexander-Michael Hadjilyras, *Η Κυπριακή Δημοκρατία και οι Θρησκευτικές Ομάδες* (The Republic of Cyprus and the Religious Groups) (2012) 115.

Neither law led to substantial debate in the Plenary sessions of the House of Representatives.[243] The importance given to the National Guard bill, however, is evident by the fact that it was discussed for three consecutive days by the Parliamentary Committees on Defence, Finance, and Legal Affairs. A considerable length of time compared to usual practice, as inferred by the Minutes. These deliberations were open to all MPs, regardless of whether or not they were actual members of the three committees discussing the bill.[244] It is important to clarify that the National Guard did not replace the constitutional Cyprus Army, but rather the two were 'amalgamated',[245] through the secondment of army officers to the National Guard.[246] These two laws are the first in a series of legislative acts that directly contradicted the black letter of the Constitution.[247] The dissatisfaction of the Turkish-Cypriot community was expressed through a letter from Kutchuk to Makarios on 30 May, wherein the former attempted to raise a veto against the two laws. The letter, according to Chrysostomou, was 'ignored' by the Cypriot government.[248]

These legislative amendments concerning the RoC security forces aimed at enabling the implementation of a complete defence plan presented by Grivas on 3 May 1964, which included the obtaining of additional equipment, and the setting up of training centres and military barracks.[249] Other measures included the passing of a Military Penal Code[250] and a Law on the establishment of Civil Defence[251] in the last days of July 1964.[252] Amendments to the Criminal Code which prohibited the

[243] ROCPM, Session 1963 –1964, 1 June 1964, p 75.
[244] ibid.
[245] Chrysostomou (n 11) 309 fn 1584.
[246] This was only formalised in 1966: Ο περί Στρατού της Δημοκρατίας (Σύνθεση και Κατάταξη) (Τροποποιητικός) του 1966 (77/1966), s 3 (Army of the Republic (Composition, Enlistment and Discipline) (Amendment) Law of 1966); It amended the Army of the Republic (Composition and Enlistment) Law of 1961 (8/1961) The exact status of the constitutional Cyprus Army today, is disputed. See: Chrysostomou (n 11) 315.
[247] See section 5.2.1.
[248] Chrysostomou (n 11) 296.
[249] ibid 291-293.
[250] 40/1964 (n231).
[251] Περί Πολιτικής Άμυνας Νόμος (42/1964) (Civil Defence Law); RoC Official Gazette 42 (31 July 1964) This law has now been repealed.
[252] On the role the Civil Defence during armed conflict see: Geneva Convention IV relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GCIV), art 63; Jean Pictet, *Commentary on the Fourth Geneva Convention relative to the Protection of Civil Persons in Time of War* (ICRC 1958); 334 ICRC, *Civil Defence in International Humanitarian Law – Factsheet* (21 May 2021) <https://www.icrc.org/en/document/civil-defence-international-humanitarian-law> accessed 20 June 2021.

publication of information regarding any defence-related preparations were also made.[253]

By mid-June 1964, the UN reported that there were 5,000 persons employed in the 'Cyprus Regular Police', the merged police and gendarmerie, and 15,000 volunteer national guards, albeit 'some of its elements under very uncertain Government control'.[254] In parallel, the Greek government, with the consent of Makarios, organised the sending of an initial number of 2,000 additional Greek troops, but by 14 July 1964 this number increased to some 5,000 individuals. [255] They arrived on the Island gradually and in secret, often presenting fake RoC travel documents.[256] These troops were ordered directly by the Ministry of National Defence of the Kingdom of Greece, which led to coordination and legal problems as well as tension between the Greek Army and the RoC National Guard.[257] The practical problems were exasperated by Grivas' return to Cyprus on 12 June 1964,[258] for the first time since he departed from Cyrus upon the end of the EOKA emergency. The full scope of the problems that arose from this situation are examined in the next Chapter.[259]

According to the UN Secretary-General, intensity remained high throughout UNFICYP's second deployment period (June-September 1964), which 'even at its lowest level' was 'dangerously high'.[260] Due to the continuous tension, the initial release from service for the voluntary members of the National Guard was postponed in early August, and were not initiated until November 1964.[261] Even then, those men were available as 'Home Guards', a rural militia active in their respective villages.[262] Thus, their release from formal duty could hardly be assessed as a positive step towards demilitarisation, and subsequently, a decrease in intensity.

Bringing together the analysis in the previous sub-section and this one, CA3 is silent on the temporal scope of its applicability, albeit it has been acknowledged

[253] Ο περί του Ποινικού Κώδικα (Τροποποιητικός) Νόμος 1964 (41/1964) Criminal Code (Amendment) Law; RoC Official Gazette 338 (31 July 1964).
[254] S/5764 (n 24) paras 43 and 44.
[255] Chrysostomou (n 11) 294; Ierodiakonou (n 184) 53.
[256] Chrysostomou (n 11) 293-294.
[257] ibid 294-295.
[258] ibid 316.
[259] See section 5.3.2.
[260] S/5950 (n 141) paras 46, 45-61.
[261] Chrysostomou (n 11) 305.
[262] S/6102 (n 28) para 141; See also UNSC Report of the Secretary-General (For the period 13 December 1964-10 March 1965) UN Doc S/6228, para 32.

that a NIAC 'usually results from a progressive series of actions that initially do not amount to armed confrontation'.[263] This is in line with Kaoullas' concept of 'chaotic security structures', as illustrated above.[264] Thus, it might be the case, and this is for an official authority to determine, that the earliest days of violence were 'internal disturbances', falling short of reaching the NIAC threshold, as per ICRC's description of the term:

> Internal disturbances are marked by serious disruption of domestic order resulting from acts of violence which do not, however, have the characteristics of an armed conflict. They encompass, for example, riots by which individuals or groups of individuals openly express their opposition, their discontent or their demands, or even isolated and sporadic acts of violence. They may take the form of fighting between different factions or against the power in place.[265]

At this stage the issue is primarily one of 'intensity', yet it must be recalled that the Cyprus Army was briefly active in Omorphita, on 24 and 25 December 1963.[266] The debate before the UNSC on 26 December, and the negotiation and conclusion of a ceasefire agreement between the two parties on 30 December 1963, arguably indicate a shift towards a NIAC, but still do not clarify *when* that shift was complete.

Juxtaposing the ICRC's criteria of 'organisation' and 'intensity' with the information provided from the beginning of this chapter, it appears that most of the indicators were gradually fulfilled during spring 1964, at least to a minimum degree.[267] Turning to 'organisation' specifically, as already mentioned, CA3 accepts that fighting between irregular groups suffices to qualify a violent situation as NIAC under that provision. From there, the Greek-Cypriot side started organising more diligently in February 1964, whereas the St. Hilarion operation in April proved a *prima facie* capacity to sustain military operations, and use military tactics. As the months moved on, the government clearly improved the command structure of its forces, organised

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[263] Gabriella Venturini 'The Temporal Scope of Application of the Conventions' in Andrew Clapham and others (n 52) 51, 69.
[264] See section 4.3.1.
[265] Marion Harroff-Tavel, 'Action taken by the International Committee of the Red Cross in situations of Internal Violence' (1993) 294 *IRRC* 195, 203-204; ICRC, 'The International Committee of the Red Cross's (ICRC's) role in situations of violence below the threshold of armed conflict - Policy document' (2014) 96 (893) *IRRC* 275.
[266] See section 4.3.1.
[267] See Table 2.2.

Headquarters, had control over territory, recruited soldiers and organised military training.

The process was concluded with the adoption of the laws merging the Police and the Gendarmerie, and the final act in the establishment of the National Guard.[268] The information available, such as the lengthy sessions of the Parliamentary Committees discussing Law 20/1964 on the National Guard,[269] indicates that IHL considerations had contributed to the whole process. Even though a distinction between the 'voluntary' and 'conscription-based' National Guard can be drawn, the difference is of limited significance, since what differed was effectively merely the method of recruitment, and the 'voluntary National Guard' was as much under governmental control as the conscription-based National Guard. It is a customary rule of IHL that each individual State enjoys autonomy in how to best organise the internal structure of its armed forces.[270] This view can be supported with reference to IHL, such as article 4 GCIII on PoWs, which entitles 'militias and members of other volunteer corps' to the same protection under the GCIII, in case they are captured by enemy forces.[271]

On the Turkish-Cypriot side, the fact that less information is available makes such an evaluation increasingly difficult. We know that there were Headquarters in Nicosia, but it has not been possible to establish the level of efficacy and collaboration between the different units.[272] Neither has there been clear information on planning, the carrying out of operations, and any disciplinary rules and mechanisms. We do know that by summer 1964 the Turkish-Cypriot leadership had control over some of the Turkish-Cypriot population within specific territorial 'pockets', while organisational levels only improved in 1965, as seen in the next Chapter.

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[268] Law 21/1964 (n 238); Law 20/1964 (n 218).

[269] See section 5.2.1.

[270] Regulations Respecting the Laws and Customs of War and Land, Annex to Hague Convention IV 1907 (adopted 18 October 1907, entered into force 26 January 1910) (1910) UKTS 9, art 3; Knut Ipsen, 'Combatants and Non-combatants' in Dieter Fleck (ed), *The Handbook of Humanitarian Law in Armed Conflicts* (2nd edn, OUP 2008) 79, 96.

[271] Geneva Convention III relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (GCIII), Art 4(A)(2); Sean Watts, 'Who is a Prisoner of War?' in Andrew Clapham and others (n 52) 889, 895-896; See also: Ipsen (n 270) 84-86.

[272] A more detailed evaluation of the conditions of the Turkish-Cypriot community is undertaken in the next chapter. See section 5.2.2.

It must be noted that regarding the Turkish-Cypriot irregular forces, some of the indicators under the 'organisation' criterion were not fulfilled to a certain extent due to the government's tight control over the items entering the enclaves in the form of humanitarian assistance. These included objects that were likely to be used for the sewing of uniforms such as camouflage netting, khaki cloth, studs for boots, and 'woollen clothing (if capable of military use)'.[273] Other materials on the list represented materials that could be used for the improvement of military infrastructure such as ammonium nitrate, fuel in large quantities, radio sets, iron poles and rods, cables and wire, among others.[274] Such asymmetries, give rise to a series of additional questions akin to those arising nowadays in the context of so-called terrorist organisations, where the one party fights a conventional war making use of a regular army, whereas the other is bound by rules established by the State, but fails to recognise them as well as the relevant IHL rules.[275] This is an alternative angle through which the armed violence between the two communities could be investigated, which however, the present research does not examine any further.

In addition to the organisational issues mentioned above, most of the indicators under 'intensity' did apply to the regular and irregular forces on both sides without distinction. These include the increase in armed clashes, the spread over territory, the distribution of weapons, attention and the adoption of resolutions by the UNSC, displacement, the besieging and shelling of towns, a number of casualties, ceasefire agreements, and attempts of representatives from international organisations (here UNFICYP) to facilitate the negotiation and enforce ceasefire agreements.[276] Hence, taking all of the above indicators together, it does appear that by summer 1964, the latest, a NIAC was ongoing at full force.

4.3.3 The Tylliria Air Raids: The Internationalisation of the Conflict?

Throughout the first half of 1964 the USA unsuccessfully urged the Turkish-Cypriot officials to return to their formal positions. At the time, there was amble sympathy for the Turkish-Cypriots, but it was estimated that before long UN officials would turn their favour to the recognised government of the Republic.[277] On 27 March 1964, all

[273] S/6102 (n 38) Appendix to Annex II – List of prohibited materials (7 October 1964).
[274] ibid.
[275] Andreas Paulus and Mindia Vashkmadze, 'Asymmetrical War and the Notion of Armed Conflict – A Tentative Conceptualization' (2009) 91(873) *IRRC* 95, 108-109; Robin Geiß, 'Asymmetric Conflict Structures' (2006) 88(864) *IRRC* 757.
[276] ICRC, *Commentary GCI 2016* (n 52) paras 431-432.
[277] Claude Nicolet, 'Turkish Cypriot Failure in 1964' in John Charalambous, Alicia Chrysostomou, Denis Judd and others (eds), *Cyprus: 40 years on from Independence:*

Turkish-Cypriot ministers were replaced with Greek-Cypriots, leading the US officials to conclude that the impasse had reached a 'point of no return'.[278]

When tension reached dangerous levels in early June 1964, US Secretary of State Dean Rusk informed US President Johnson that Kutchuk intended to declare an independent State on Cyprus and ask Turkey to intervene.[279] In a letter to Turkish Prime Minister Inonu, on 5 June 1964 Johnson expressed the USA's disapproval towards any potential use of force by Turkey, since 'the right to take unilateral action [was] not yet applicable'.[280] The letter did prevent a military intervention successfully, but it was perceived as a serious interference with Turkey's sovereign rights.[281] Despite American estimations that this was the 'climax of [the] Cyprus crisis',[282] the situation deteriorated further in the following two months, despite ongoing negotiations on the new 'Acheson Plan', which collapsed in Geneva on 28 August 1964.

Proceedings of a Conference in the University of North London on 16-17 November 2000 (Bibliopolis 2002) 60, 62.

[278] ibid 63-64.

[279] LBJ Presidential Library, *Recordings and Transcripts of Telephone Conversations and Meetings,* Telephone conversation between President Johnson and Dean Rusk #3623 (4 June 1964) <https://www.discoverlbj.org/item/tel-03623> accessed 24 June 2021.

[280] Lindon B Johnson and Ismet Inonu, 'Document - Correspondence between President Johnson and Prime Minister Inonu, June 1964, as released by the White House, January 1, 1966' (1966) 20(3) *Middle East Journal* 386; A summary of the letter is also available here: 54. Telegram From the Department of State to the Embassy in Turkey, in US State Department, *Foreign Relations of the United States, Vol XVI, Cyprus; Greece; Turkey (1964-1968)* <https://history.state.gov/historicaldocuments/frus1964-68v16/d54> accessed 24 June 2021.

[281] Thomas W Adams and Alvin J Cottrell, *Cyprus Between East and West* (John Hopkins Press, 1968) 64.

[282] 56. Telegram from the Embassy in Cyprus to the Department of State, in US State Department, *Foreign Relations of the United States, Vol XVI, Cyprus; Greece; Turkey (1964-1968)* <https://history.state.gov/historicaldocuments/frus1964-68v16/d56> accessed 24 June 2021.

Figure 4.3: Map of Tylliria region, showing the villages of Pomos, Kokkina, Limnitis. Source: Google Maps

The coastal region of 'Tylliria' (Dillirga),[283] is located in Nicosia district encompassing a number of villages of originally mixed and mono-communal population. The region includes the Kokkina (Erenkoy) enclave, which today remains inaccessible to RoC authorities,[284] despite the fact that it is detached and only accessible by sea from the rest of the occupied northern part of the Island. From 1963 to 1974, this was the only sea-coast 'exclave' the Turkish-Cypriot leadership controlled, which given its geographical position served as a 'bridgehead' for the import of fighters, arms, and supplies from Turkey. Its important strategic position was further enhanced by its proximity to two 'particularly sensitive areas'; the enclaves of 'Limnitis' (Yeshilirmak) and Lefka (Lefke).[285] Lefka alone had some 8,000 inhabitants, the vast majority of whom had traditionally been Turkish-Cypriots. All three enclaves enclosed a total of 1,450-1,600 fighters.[286]

Sporadic fighting between Turkish-Cypriot irregulars and the National Guard had already started in the region on 16 June 1964.[287] UNFICYP negotiated the movement of posts and fortifications between the two sides throughout the month of

[283] S/5950 (n 141) paras 64-87.
[284] See Figures 1.1 and 4.3.
[285] S/5950 (n 141) paras 96-99.
[286] ibid.
[287] ibid para 62.

July,[288] and reported on the building up of equipment from both communities.[289] With tension growing, on 16 July 1964 the ICRC sent a telegram to RoC MFA Kyprianou, to remind him of the Republic's duty to facilitate the distribution of and free access to humanitarian assistance, according to the Geneva Conventions and the resolutions of the Red Cross international conferences.[290] The telegram displeased members of the government, since it gave the impression that the ICRC accused the RoC of ignoring the Conventions.[291] This was of such severity that ICRC delegate Boissier requested the ICRC Headquarters in Geneva not to give any publicity to said telegram.[292]

By late July, the Turkish-Cypriots had control over five villages in total,[293] surrounded by two National Guard companies through posts installed in four other nearby villages.[294] These were reinforced with additional troops and heavy equipment from 3 to 7 August, leading to a total of 2,000 soldiers,[295] compared to 500 Turkish-Cypriot fighters within Kokkina, who were the direct concern of the National Guard.[296] Two Greek patrol vessels, 'FAETHON' and 'ARION', had also arrived off the coast of Mansoura in late July.[297] One UNFICYP company was deployed in the same area.[298]

On 25 July 1964, the same ICRC delegate wrote to Geneva that 'conflict [was] always possible', yet there were almost no preparations towards the application of the Geneva Conventions. One such example was the lack of dissemination of identity cards to medical personnel,[299] so they were easily identified and protected in case of

[288] ibid para 63.
[289] UNA, S-0869-0003-08-00001, *Items in Peace-keeping operations, Cyprus - Background notes on reports of build-up of arms and troops in Cyprus, July 1964* (Released 6 June 2006) <https://search.archives.un.org/background-notes-on-reports-of-build-up-of-arms-and-troops-in-cyprus-july-1965> accessed 28 September 2021 pp. 1-2.
[290] ICRC Archive, B AG 251 049-006, Telegram from Pierre Boissier in Nicosia to ICRC, Geneva (16 July 1964)
[291] ICRC Archive, B AG 251 049-005.02, Note 106 – Activités de la délégation (20 July 1964)
[292] ibid.
[293] S/5950 (n 141) para 65; Kokkina, Mansoura, Alevga, Selain t' Api (Selladi tou Appi, Selçuklu), Ayios Theodoros (Nicosia district; Not to be confused with Ayios Thedoros in Larnaca district, discussed in the next Chapter).
[294] S/5950 (n 141) para 65; Piyenia (Pigenia), Mosphileri, Kato Pyrgos, Pakhy Ammos (Pachyammos).
[295] ibid para 67.
[296] ibid para 68.
[297] Petros Savvides, 'Ναυτική Βάση «Χρυσούλη» - Μπογάζι Αμμοχώστου' ("Chrysouli" Military Base – Bogazi of Famagusta) (2004) 2 *Εθνική Φρουρά & Ιστορία* 38.
[298] S/5950 (n 141) para 66.
[299] ICRC Archive, B AG 251 049-005.02, Note 108 - Activités de la délégation (25 July 1964).

active warfare. He further informed that he disclosed to the 'Greek authorities' the location of the hospital set up by the TRC in the Turkish-Cypriot sector of Nicosia,[300] presumably to protect it from potential attacks by the National Guard and/or the Greek army. In closing, he asked the ICRC Headquarters to send six more copies of the Geneva and Hague Conventions to Cyprus.[301]

The first exchange of fire between the National Guard and Turkish-Cypriot fighters in Tylliria occurred on 5 August, while shootings were recorded in other regions of the Island, as well.[302] For example, on 6 August in the afternoon 50 soldiers of the Turkish National Contingent entered the walled city of Nicosia, and by the evening 100 armed National Guardsmen were also seen by UNIFCYP to move towards Nicosia.[303] Despite immediate requests for a ceasefire by UNFICYP, the fighting continued and on the afternoon of 8 August, Turkish aircraft started attacking RoC positions across the region and at open sea.[304] 'FAETHON' was completely burned down, resulting in the killing of five of its Greek crew members, and the grievous wounding of everyone else.[305] According to evidence submitted by Turkey, UNFICYP recorded fire from 'A Greek Cypriot patrol boat' towards Kokkina at 4:50 am on 7 August.[306] On the Turkish side, one aircraft exploded in mid-air. Its pilot managed to eject himself from the plane, but was caught by RoC forces, and eventually died in hospital.[307] His body was returned to Turkey through UNFICYP's good offices.[308] Since the 'occurrence of *de facto* hostilities' is sufficient to apply 1949 GCIII on Prisoners of War (PoWs),[309] the Turkish pilot was the sole PoW from this period.[310]

In the meantime, 200 Turkish-Cypriot civilians were evacuated to the nearby Greek-Cypriot village of Kato Pyrgos where a camp was hastily set up, while the

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[300] ibid.
[301] ibid.
[302] UNA, S-0869-0003-08-00001 (n 289) Summary of Military Action in Cyprus, 5-8 August 1964 para 1.
[303] ibid paras 3-4.
[304] S/5950 (n 141) para 78.
[305] Savvides (n 297).
[306] UNSC Records, 8 August 1964 UN Doc S/PV.1142 para 61 citing UNFICYP, Press release No 529/329 (7 August 1964).
[307] S/5950 (n 141) para 78.
[308] ibid.
[309] GCs I-IV, common art 2; Jean Pictet, *Commentary on the Third Geneva Convention relative to the Treatment of Prisoners of War* (ICRC 1960) 23.
[310] GCIII, art 4; Sean Watts, 'Who is a Prisoner of War?' (n 271) 889.

Turkish-Cypriot fighters in the nearby villages retreated into Kokkina.[311] The civilians requested to be transported to the Turkish-Cypriot town-enclave of Lefka instead, and despite initial agreement by the government to facilitate the move, assistance was withdrawn after only a first group of 40 civilians was transferred by UNIFCYP. This was justified on the basis that the Republic's forces could not guarantee the civilians' safety, while passing through the Greek-Cypriot village of Xeros.[312] This alone is not a convincing argument from a legal perspective, since armed forces have a duty to protect civilians during armed conflict, regardless of the side to which they belong. As the remaining displaced persons continued fearing for their safety in Kato Pyrgos, they were transported back into the Kokkina enclave, upon their own request,[313] seriously jeopardising the application of the principle of distinction between civilians and combatants under IHL, according to which combatants are afforded a lower standard of protection and must therefore, be distinguished from civilians at all times.[314] The decision to transfer them back was also contrary to article 8 GCIV on the protection of civilians, according to which no civilians can renounce the rights secured to them by the Convention.[315]

The Turkish air raids continued on 9 August. On that day, a village-hospital in Pomos that carried the Red Cross emblem,[316] was bombed by the Turkish Air Force,[317] leading to the death of one doctor, four nurses, and six patients.[318] The ICRC did recognise a potential breach of the Geneva Conventions by the Turkish Army, but added that the plane may had been targeting a Greek-Cypriot tank standing against the hospital. According to the same report, 'in their defence, the Greeks affirmed that

[311] S/5950 (n 141) para 76.
[312] ibid para 81.
[313] ibid.
[314] Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grams Weight (St Petersburg Declaration) (11 December 1868) LXIV UKPP (1869) 659, Preamble; Hague Regulations (n 270) art 25; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law Vol II: Practice* (CUP 2005) Rule 1, 3-4
[315] GCs I-IV, arts 7/7/7/8; Pierre D'Argent, 'Non-Renunciation of the Right Provided by the Conventions' in Andrew Clapham and others (n 52) 145
[316] GCI, arts 38-44; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (GCII), arts 41-45; GCIV, Arts 18, 20-22; See also: ICRC, 'The Emblems' (n 78).
[317] UNSC Records, 9 August 1964 UN Doc S/PV.1143 para 58; PIO Press Release, Turkish Aircraft Raid Hospital Ambulances and Civilians at Pomos (9 August 1964).
[318] ICRC Archive, B AG 251 049-005.02, Consequences of the battles of 6,7,8,9, August 1964 (2 September 1964).

the tank was so well-camouflaged that the Turkish aviation could not have noticed it'.[319] The description of this incident is rare evidence of the ICRC attempting to directly apply IHL in Cyprus during this period, since hospitals – in particular military hospitals – have been enjoying a special (protected) status under IHL since the first Geneva Convention 1964.[320] Hence, in combination with the principle of distinction mentioned above, hospitals are considered protected safety zones, against which attacks are prohibited.[321]

Considering the incident in Pomos, it appears that there was a direct breach of the Conventions by Turkey. This conclusion becomes less clear, however, by the fact that a tank of the RoC forces was parked against the wall of the hospital. Today, it is a recognised rule under CIHL, that parties to both IACs and NIACs must 'take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks'.[322] Even if this may not had crystallised as a rule then, from the archives it is obvious that the ICRC had paid attention to such details in their observations. Hence, the intentional positioning of the tank at that spot, if proven, would have given rise to suspicions of using the hospital, and the protected persons within it, as a human shield. An act today prohibited in IACs[323] and NIACS under CIHL.[324]

Examples usually used in the literature do not state clearly whether 'civil objects' or 'protected zones' can establish a 'human shield' to protect (movable) military targets.[325] This however, appears to constitute State practice, according to the military manuals consulted in the ICRC's CIHL study,[326] and to have been the view of the ICRC at the time, as inferred from the report. The ICRC's CIHL study concludes that 'the use of human shields requires an intentional colocation of military objectives and civilians or persons *hors de combat* with the specific intent of trying to prevent the

[319] ibid.
[320] Elżbieta Mikos-Skuza, 'Hospitals' in Andrew Clapham and others (n 52) 207, 209.
[321] GCI, art 23; GCIV arts 14 and 15; CIHL Study Vol I (n 204) rule 35, pp 119-120
[322] CIHL Study Vol I (n 204), rule 22, p 68
[323] GC III, art 23(1); GC IV, art 28; See also: GCI, art 19(2).
[324] CIHL Study Vol I (n 204) rule 97, pp 337, 338.
[325] Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (OUP 2012) 421.
[326] CIHL Study Vol II (n 314) 2287; ICRC, IHL Database on CIHL, Rule 97 <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule97> (accessed 2 July 2021); See also: Beth Van Schaack, 'Human Shields in International Humanitarian Law: A Guide to the Legal Framework' (*Just Security*, 7 December 2016) <https://www.justsecurity.org/35263/human-shields-ihl-legal-framework/> accessed 2 July 2021.

targeting of those military objectives'.[327] It is for this reason that in the ICRC's report the National Guard's affirmation that the tank was so well-camouflaged that the Turkish pilots could not have noticed it carries significant weight from a legal perspective. Even if the tank was put so close to the hospital building on purpose, the fact that it was well-camouflaged and could not have been seen from air, would suggest that what the Turkish pilots aimed at was the hospital. The ICRC concluded that it would have been impossible to establish the truth.[328]

Apart from the number of casualties reported by the Greek-Cypriot side, the exact number of casualties during the Tylliria battles and air raids on all sides is unknown.[329] Indicative of the general lack of clarity is the fact that the grounds of the hospital mentioned here was one of the sites excavated as recently as 2019 in search of missing persons.[330] This in itself raises serious questions relevant to the rules concerning the treatment of the dead and the duty to account for missing persons,[331] which however, are not addressed in detail in the present research.[332]

In itself, bombardment is not an unlawful method of warfare, but its legality '*outside* the battlefield', meaning towns, villages and buildings, is subject to restrictions.[333] Such restrictions include, among others, the types of weapons chosen. According to American estimations, Turkey was engaging in the campaign about 65 F-100 planes, initially attacking with rockets and machine guns, and continuing on the second day of the attacks, on 9 August, with napalm and general purpose 750-pound bombs.[334] The use of napalm bombs aggravated the tension, with strong adverse

[327] CIHL Study Vol I (n 204) rule 97, p 340.
[328] ICRC Archive (n 318).
[329] See Annex III of the thesis.
[330] Jean Christou, 'Excavations in September to locate remains of victims of 1964 battle of Tylliria' (Cyprus Mail, 30 July 2019) <https://cyprus-mail.com/2019/07/30/excavations-in-september-to-locate-remains-of-victims-of-1964-battle-of-tylliria/> accessed 30 June 2021.
[331] CIHL Study (n 204) Rules 112-117, pp 406-427; Anna Petrig 'Search for Missing Persons' in Andrew Clapham and others (n 52) 257; Daniela Gavshon 'The Dead' in Andrew Clapham and others (n 52) 277.
[332] On the missing persons in Cyprus see: Sevgül Uludağ, *Oysters with the missing pearls* (IKME, BILBAN 2006); Nick Danziger, Rory MacLean, *Beneath the Carob Trees* (Armida, Galeri Kultur Publishing, Committee on Missing Persons in Cyprus 2016); Nasia Hadjigeorgiou, 'Truth and Closure in Cyprus: An Assessment of the Committee on Missing Persons (2021) (First View) *Israel Law Review* 1.
[333] Hague Regulations 1907, art 25; Lassa Oppenheim, *International Law: A Treatise Vol II: Disputes, War and Neutrality* (Hersch Lauterpacht ed, 7 edn, Longmans 1952) 418-421.
[334] 111. Telephone Conversation Between President Johnson and the Under Secretary of State (Ball) (9 August 1964) in US State Department, *Foreign Relations of the United States, Vol XVI, Cyprus; Greece; Turkey (1964-1968)*

effects on the civilian population. Napalm bombs fall in the categories of both 'incendiary weapons' and 'chemical weapons', whose use today constitutes a breach of CIHL rules prohibiting the use of weapons 'by nature indiscriminate',[335] likely to cause superfluous injury or unnecessary suffering.[336] They were broadly-used at the time, including by the US Air Force in Vietnam.[337] Their prohibition was only strengthened through a number of relevant resolutions passed by the UNGA after 1969.[338]

On 9 August, Makarios threatened that unless the air attacks stopped by 15:30, he would give an order for an attack against all Turkish-Cypriot villages across the island.[339] Meanwhile, the Greeks were considering the deployment of their heavily reinforced contingent,[340] the RoC MFA had informed the USA that the Soviet Union was ready to intervene on the side of the RoC,[341] and US President Johnson was considering all possible scenarios and outcomes, including 'to cordon off the Island and let the thing settle down itself'.[342] A major concern on behalf of the US was the lack of willingness of States providing peacekeepers for UNFICYP to defend the Island in case of a Turkish invasion.[343]

The armed violence in Tylliria inevitably triggered a new meeting of the UNSC.[344] The fifth over eight months, since 26 December 1963.[345] The legal

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<https://history.state.gov/historicaldocuments/frus1964-68v16/d111> accessed 24 June 2021.

[335] Hague Declaration (IV, 2) Concerning Asphyxiating Gases (adopted 29 July 1899, entered into force 4 September 1900) (1907) UKTS 32; Relevant CIHL rules: 71, 74, 84, 85; See CIHL Study (n 204).

[336] CIHL Study (n 204) rule 70, 237.

[337] National Museum of the United States Air Force, 'M117 General Purpose Bomb' <https://www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/196039/m117-general-purpose-bomb/> accessed 28 June 2021.

[338] eg Question of chemical and bacteriological (biological) weapons UNGA Res 2603(XXIV) (16 December 1969); Jean Mirimanoff, 'The Red Cross and Biological and Chemical Weapons (1970) 111 *IRRC* 301.

[339] S/5950 (n 141) para 83; Telephone Conversation (n 334).

[340] Aggelos Chrysostomou, 'Μάχες Τηλλυρίας (7-11 Αυγούστου 1964) Το Υπουργικό Συμβούλιο της Κυπριακής Δημοκρατίας συνεδριάζει' ('Tylliria Battles' (7-11 August 1964) The Council of Ministers in Session) 35 (2015) *Εθνική Φρουρά & Ιστορία* 49, 56

[341] ibid.

[342] Telephone Conversation (n 334).

[343] ibid.

[344] UNSC, Letter from Permanent Representative of Turkey (8 August 1964) UN Doc S/5859; UNSC, Letter from Cyprus Charge d'affaires (8 August 1964) UN Doc S/5861; S/5950 (n 141) paras 88-89.

[345] S/PV.1142 (n 125) para 134.

arguments raised by Ambassador Rossides focused on the use of force by Turkey in breach of article 2(4) of the UN Charter,[346] firmly distinguishing between the 'Turkish-Cypriot community' and the 'Turkish rebels', stating that it was the latter who were under attack by the National Guard,[347] in an effort to suppress 'the *rebellion*' taking place in Cyprus'.[348] The lengthy deliberations at the UNSC concluded on 9 August 1964 with the passing of UNSC Resolution 193(1964),[349] which expressed concern 'at the serious deterioration of the situation in Cyprus',[350] and 'call[ed] for an immediate cease-fire by all concerned'.[351]

Despite 27 recorded breaches of the 9 August ceasefire,[352] most serious among them a machine-gun air attack by two Turkish airplanes on Polis wounding 10 civilians on the morning of 10 August,[353] Resolution 193 ended the most violent cycle of events pre-1974 that had commenced on 21 December 1963. The debate in New York, was one of the few instances where it can be deduced from the terminology used that in the eyes of the RoC government the Island was going through a 'rebellion' and therefore, the first phase of a civil war according to conflict classification under classical international law. Even so, many questions remained unanswered. Was this 'just' a rebellion, or was it in fact an 'insurgency', as stated by other State officials?[354] Was there a NIAC under CA3, and to what extent the Turkish Republic's direct engagement in hostilities may had changed the status of the armed conflict? Having clarified the factual background, these and some additional legal questions are discussed in the next sub-section.

4.3.4 Legal Issues following Turkey's 1964 Intervention

The period from 21 December 1963 to 9 August 1964 can be roughly divided into three sub-periods, based on the changes in the organisational structure of

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[346] ibid paras 90-92, 112.
[347] ibid para 94.
[348] ibid paras 100-109 (emphasis added); Here Rossides, repeatedly referred to 'a rebellion' more than once.
[349] UNSC Res 193 (9 August 1964).
[350] UNSC Res 193(1964), Preambular paragraph 1.
[351] ibid para 2.
[352] 26 ceasefire breaches took place between 15 August to 8 September. These included 11 cases of firing by Government forces, 14 cases by Turkish-Cypriots, 11 cases of fire of undetermined origin, 23 cases of overflight, 4 cases by Turkish aircraft, 1 by Greek aircraft, and 18 by aircraft of undetermined origin. See S/5950 (n 141) para 92.
[353] S/5950 (n 141) para 86.
[354] Criton G Tornaritis, *Constitutional and Legal Problems in the Republic of Cyprus* (PIO 1972) 20; Kypros Chrysostomides, *The Republic of Cyprus: A study in International Law* (Martinus Nijhoff 2000) 92-93; See also next section 4.4 on the DoN.

government forces; (i) the period of 'chaos' from 21 December 1963 to around 1 April 1964, when no State-controlled military force appears to be active, (ii) the period when the National Guard became operational around 1 April 1964 up to 6 August 1964, and (iii) the Turkish Air Force bombings of Tylliria, from 6 to 9 August 1964. Each of these periods, and in particular Turkey's intervention in August, gives rise to different legal questions, to which we shall turn more extensively.

The bombings in Tylliria raised a series of new intertwined questions on use of force, intervention, and conflict qualification, since they brought an 'international' element to the until then internal violence. Admittedly, existing literature often refers and emphasises Turkey's role over the years, from the establishment of TMT in 1958, to her material support to the Turkish-Cypriot leadership, frequently referring to a 'proxy war' between the RoC and Turkey.[355] Such arguments, however, are not aligned to the relevant legal framework, since 'proxy war' is not a legal term, but rather constitutes a descriptive for a specific factual situation. Therefore, a legal analysis needs to align such issues to the IAC/NIAC binary, instead.

As already explained, the prohibition of 'threat or use of force' under article 2(4) UN Charter,[356] is intertwined with the customary principle of non-intervention under PIL.[357] Though exceptions to the prohibition of the use of force may apply under articles 51 (on self-defence) and 53 (regional enforcement measures) under the UN Charter, the general rule is that Turkey had no right to use force against the sovereign RoC. This is reinforced by the fact that the Turkish-Cypriot community, as a non-state actor in the conflict, was not entitled to invite another State to intervene on their behalf.[358] Neither did Turkey have a right to intervene, despite the fact that Turkey

[355] Kaoullas (n 29) 38; David W Lovell, 'Settling Protracted Social Conflicts: Trust, Identity, and the Resolution of the "Cyprus Issue" in Jonathan Warner, David W Lovell and Michalis Kontos (eds), *Contemporary Social and Political Aspects of the Cyprus Problem* (Cambridge Scholar Publishing 2016) 18, 19

[356] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119 (UN Charter), art 2(4).

[357] See section 2.3.1.

[358] *Corfu Channel (UK v Albania)*, Judgment [1949] ICJ Rep 4, p 35; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment [1986] ICJ Rep 14, para 202; Draft Declaration on the Rights and Duties of States, UNGA Resolution 375 (6 December 1949), arts 3 and 4; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 67-68, 105-107; Dino Kritsiotis, 'Theorizing International Law on Force and Intervention' in Anne Orford and Florian Hoffmann (eds), *Oxford Handbook on the Theory of International Law* (OUP 2016) 655; See also: Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Res 2625(XXV) (24 October 1970).

constantly maintained during this period and thereafter, that she had a right to unilateral military intervention under article IV ToG. This was in spite of the plethora of voices to the contrary from Hans Kelsen in 1959 onwards.[359]

Later, Necatigil expressed the view that justification under article 51 UN Charter in this instance, would have been more suitable,[360] were it not for the 'conceptual hurdle' of the 'nexus of nationality',[361] which the Turkish-Cypriot community lacked, notwithstanding any feelings of proximity with Turkey.[362] He refers to Turkey's description of its use of force as a 'limited military action',[363] but the word 'limited' is of no legal significance. Such questions fall under *jus ad bellum*, and not IHL (*jus in bello*), but they are of direct relevance in terms of the need to qualify an 'armed conflict' as a NIAC or an IAC under IHL.

Once an armed conflict is underway, no matter how short in duration, and regardless of who used force lawfully or unlawfully, all parties involved are obliged to take all measures to protect those afforded protection under IHL. In that regard, in 1972, in a rare instance of invocation of IHL by the RoC pre-1974, Tornaritis claimed that during the Tylliria bombings Turkey had acted in breach of articles 16, 18, 20, 21 GCIV 1949.[364] Therefore, he did suggest that the event constituted an IAC, but left outstanding the question of what the relationship of that IAC was to the NIAC or the 'internal disturbances' involving the RoC and the insurgent elements of the Turkish-Cypriot community.

The term 'internationalised war' was already employed by 1865, yet the first systematic study on conflict internationalisation was undertaken exactly 100 years later by Law Professor, and as of 1980 ICRC Member, Dietrich Schindler.[365] 'Internationalised armed conflict' is not to be understood as an intermediate third category of armed conflict, as the term does no more than denoting the process of

[359] See section 3.2.1.
[360] Necatigil (n 35) 42-43.
[361] ibid.
[362] ibid.
[363] Necatigil (n 35) 42.
[364] Tornaritis, *Constitutional and Legal* (n 354) 20; Art 16 (General protection of wounded and sick civilians), Art 18 (Protection of Hospitals), Art 20 (Protection of Hospital Staff), Art 21 (Land and sea transport of wounded and sick) GCIV 1949.
[365] Kubo Mačák, *Internationalized Armed Conflicts in International Law* (OUP 2018) 24; ICRC, 'Two New Members of the ICRC' (1980) 219 *IRRC* 317; Dietrich Schindler, 'International Humanitarian Law and Internationalized Internal Armed Conflicts' (1982) 230 *IRRC* 255.

transformation of an armed conflict from a NIAC into an IAC.[366] Basing his conclusions on observations drawn primarily from the Vietnam War, but later also Bangladesh, Cyprus and Lebanon in the 1970s, among others,[367] Schindler described two opinions dominating in the 1960s. That i) a civil war will become an IAC simply once a foreign State intervenes militarily, or ii) that an 'internationalized civil war should be broken down into its international and non-international components'.[368] Thus, one should examine the ongoing NIAC separately from the newly-undertaken IAC, which run in parallel. Like many current commentators, in his analysis Schindler would demonstrate numerous alternative scenarios, or combinations, of alliances between the parties to the NIAC and the one (or more) third States that may intervene in a given context.[369] It suffices to state here, however, that in 1982 the 'standpoint' one had to take was that during an 'internationalized civil war' one had to maintain the distinction between IACs and NIACs.[370] Hence, for the purposes of this thesis, Turkey's air attacks from 6 to 9 August 1964, would constitute a 'Four-Day War' between the RoC and Turkey, which was interconnected, but *legally* separate from the ongoing conflict between the RoC government and the Turkish-Cypriot leadership.

It needs to be clarifying here that were the same facts to take place today, the picture would be rather different, since the ICJ's landmark *Nicaragua* judgment,[371] and a series of 1990s judgments by the ICTY[372] and the ICTR[373] have led to new nuances to Schindler's conclusions. As already mentioned, lack of clarity exists in particular on issues of State responsibility and individual criminal responsibility during such 'internationalised' armed conflicts, where the exact nature of the conflict (IAC/NIAC) determines the corresponding ICL and State Responsibility provisions that apply in a given case.[374] Two points are worth mentioning for clarity purposes in this thesis in the absence of judicial or authoritative final decisions in the case of Cyprus. Firstly,

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[366] Andrea Harrison, Kubo Mačák, Internationalized Armed Conflicts in International Law (2019) 101(912) *IRRC* 1201, 1202.
[367] Schindler (n 365) 256.
[368] ibid.
[369] ibid 258-261; Marko Milanovic, 'The Applicability of the Conventions to 'Transnational' and 'Mixed Conflicts' in Andrew Clapham and others (n 52) 27, 34-40; Mačák (n 365) 242-244.
[370] Schindler (n 365) 258.
[371] *Nicaragua* (n358); Gray (n 358) 75-78.
[372] eg *Prosecutor v Tadić, IT-94-1-A*, Judgment (Appeal), 15 July 1999; *Prosecutor v Delalić et al.*, IT-96-21-T, Judgment, 16 November 1998.
[373] eg *Prosecutor v Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998; *Prosecutor v Musema*, ICTR-96-13-T, Judgment, 27 January 2000.
[374] See also section 2.3.2.

that in 1986 the ICJ stated in *Nicaragua*, that 'prohibited intervention' included *both* military action and 'indirect form of support for subversive or terrorist armed activities within another State', and secondly, that such 'forms of action' were 'wrongful in the light of both the principle of non-use of force, and that of non-intervention'.[375] Thus, had Turkey intervened after the *Nicaragua* judgment, this would have offered a clearer and more straightforward line of argumentation.

Secondly, according to Mačák's detailed study on 'internationalised' conflicts, for IAC to 'absorb' an ongoing NIAC, there would be a need for the two 'allied conflict parties' to forego any autonomy they may have, and act 'with a single use of force'.[376] Presumably, it can be argued that this is what happened on 20 July 1974. Whereas in August 1964 Turkey only undertook bombing attacks from air, the Turkish-Cypriot fighters acted independently on land (whatever in kind support they had received, that would not count as 'single use of force',), on 20 July 1974 the arrival of Turkish trips *on* the Island and their mingling with the local fighters, could suggest the moment of completion of the 'internationalisation' as described by Mačák. It is hereby recognised that the above analysis is rather theoretical. Nonetheless, it does help to illustrate the significance of drawing the missing links between the events discussed in the present thesis with the Turkish invasion of 1974, to obtain a better understanding on the legal linkages that potentially exist.

Lastly, the events of August 1964 raised also important questions regarding the continuation of the validity of the ToG and ToA. Even though the abrogation of ToG and ToA was one of the priorities of the Greek-Cypriot leadership,[377] at the London Conference of February 1964 Elihu Lauterpacht considered both ToG and ToA remaining in force.[378] This was despite the fact that the RoC position had stated already in December 1963 that it considered the treaties void.[379] Another effort to denounce the ToG and ToA followed by Makarios in April 1964, when the declaration was accepted by Greece, but not by Turkey and the UK.[380] After the Tylliria events

[375] *Nicaragua* (n 358) para 205.
[376] Mačák (n 365) 87-104, 243.
[377] Clerides, *Deposition Vol. 1* (n 1) 203-209.
[378] Elihu Lauterpacht, 'Opinion requested by the Government of Cyprus on the Treaty of Guarantee', 30 January 1964, in Soulioti, *Documents* (n 112) 267; See also: 'Views of E. Lauterpacht' in Soulioti, *Documents* (n 112) 805.
[379] For an overview of RoC efforts to abrogate the ToA from December 1963 to April 1964 see: Clerides, *Deposition Vol 2* (n 121) 95-112.
[380] Nicolet (n 277) 65 citing Makarios' letter to Prime Minister Inonu on the abrogation of the ToA, 4 April 1964.

the issue resurfaced at the end of August, when the Greek and Turkish contingents were due to undertake a troop rotation and the RoC government refused to allow the rotation of the Turkish troops, on the basis that following Turkey's attack the ToA was no longer in force.[381]

Customarily, under the law of treaties there is a general presumption against the unilateral termination of a treaty by one of the parties.[382] A treaty is only to be terminated either in conformity with the provisions of the treaty addressing its termination, or following a consensus to do so among *all* contracting States.[383] According to article 56 VCLT, which from its inception has been regarded as codification of customary PIL,[384] there are two exceptions to the general rule. Denunciation or withdrawal are allowed either in cases where it can be established successfully that the parties implied the possibility of accepting denunciation or withdrawal, or secondly, when such possibility is implied by the nature of the treaty.[385]

Neither the ToG, nor the ToA contain any provisions concerning their termination. The lack of termination provisions in treaties relating to the new States' sovereignty in the post-colonial context was normal practice, as their termination would have led to instability to the relations of the European powers.[386] In this case, the UK, Greece and Turkey. Considering, however, the fact that both ToG and ToA provided for a continuous monitoring between the parties, the RoC on the one side and Turkey, Greece and the UK on the other, and that they were embedded in the constitutional architecture of the RoC,[387] it is difficult to prove an implied acceptance of denunciation or withdrawal by the parties, not to mention that the termination of either ToG or ToA was highly likely to have a direct impact on the very existence of the Republic.

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[381] UNSC Report by the Secretary-General to the Security Council on the Developing situation with Regard to the Projected Rotation of Turkish National Troops in Cyprus (29 August 1964) UN Doc S/5920, para 3.
[382] Arnold D McNair, *The Law of Treaties* (Reprinted 2003, OUP 1961) 493-494.
[383] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), art 54.
[384] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276,* Advisory Opinion [1971] ICJ Rep 16 [94].
[385] VCLT, art 56.
[386] Partha Chatterjee, 'The Legacy of Bandung' in Louis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Future* (CUP 2017) 657, 664.
[387] RoC Constitution, art 181 and Annex III.

Since treaty law and CIL are unable to resolve the issue, one then must turn to the 'general principles of law' in search of an answer. In this case, however, each community could reply to two different, diametrically opposed principles. The Turkish-Cypriots argued that under the *pacta sunt servanda* principle[388] the Greek-Cypriots had already agreed to the London-Zurich Agreements and the three treaties they led to, and therefore, were bound by their obligations under the Agreements. The Greek-Cypriots, on the other side, turned to the *rebus sic stantibus* principle,[389] according to which a fundamental change in circumstances would repeal a previously-made Agreement.[390] The VCLT generally restricts the application of the *rebus* principle, stating that 'A fundamental change of circumstances […] may not be invoked as a ground for terminating or withdrawing the treaty', subject to minimal exceptions.[391] Hence, as alternative to denunciation, in cases of 'fundamental change of circumstances' the VCLT allows a treaty's suspension,[392] offering the parties time to work towards a solution to the dispute, for an 'uncertain duration' that later may become of permanent nature, eventually leading to termination.[393]

Whether Turkey's attack on Cyprus in August 1964, was a serious enough change of circumstances to justify the application of the *rebus sic stantibus* principle to the ToG and ToA, is a valid question. The further one looks back at the development of PIL, the broader is the view that treaties are abrogated with the outbreak of hostilities.[394] By the first half of the 20th century, however, McNair was of the view that 'war' does not end treaty obligations previously assumed by the parties to the conflict, as such,[395] albeit he did add that political treaties, such as treaties of alliance, are generally considered abrogated with the outbreak of war.[396] Such was the case when the UK annexed the Island of Cyprus from the Ottoman Empire in 1914 at the start of WWI, since the 1878 secret Nicosia Treaty was abrogated once Britain and the Ottoman Empire joined WWI on opposing sides.[397] With this example in mind, it could indeed be argued that there is enough reason to justify that the ToA between

[388] VCLT, art 26.
[389] VCLT, art 62.
[390] Adams and Cottrell (n 281) 78-79.
[391] VCLT, art 62(1)
[392] VCLT, art 62(3)
[393] Thomas Giegerich, 'Article 62. Fundamental change of circumstances' in Oliver Dörr and Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (2nd edn, Springer 2018) 1143, 1174; See section 3.2.1.
[394] McNair (n 382) 698.
[395] ibid 696.
[396] ibid 703.
[397] See section 2.2.2.

the RoC and Turkey was abrogated in 1964, and if not in1964, then in 1974. However, to give a final answer, one would need to consider the position and practice of Greece as the third party to the ToA, and secondly, perhaps more importantly for any practical outcomes, the fact that the ToA is part of a broader framework, upon which the ToG and the ToE are also dependent.

In September 1964, U Thant declared that UNIFCYP found itself 'in the midst of a bitter civil war'.[398] The role of the UN Secretary-General involves carefully treading the path between law and diplomacy,[399] assuming that the two can be easily distinguished from one another. As recently as 2001 Secretary-Generals had no power to draw the attention of the UNSC to situations likely to violate the UN Charter.[400] Nevertheless, their statements have always carried varying degrees of persuasive authority, subject to the power balances within the UNSC and each Secretary-General's approach to the tasks at hand. [401] It appears that at the time, at a political level at least, there was a clear understanding that the severity of the situation had reached the threshold of 'civil war', albeit in this instance the Secretary-General's statement was overtaken by other overriding political factors and priorities.

Having concluded with the most violent period within the 1958-1968 chronology, the next chapter turns to the medium and long-term impact of the events discussed in the present chapter. Before proceeding with this discussion, however, we need to turn to the last major development of 1964. The invocation of the DoN, and its role and relevance as a Constitutional doctrine during internal conflicts, in Cyprus and other parts of the world.

4.4 The Judiciary and the Doctrine of Necessity

One last major development in the turbulent 1964 took place in November, and it had direct impact on the constitutional functionality of the RoC. The lack of participation of the Turkish-Cypriots in the State apparatus, either as a personal choice or due to the restrictions imposed to them by the Turkish-Cypriot leadership, further deteriorated the performance of the already dysfunctional State mechanism, including the administration of justice. Thus, the legal principle *salus populi suprema lex*, was relied

[398] S/5950 (n 141) para 221.
[399] UN Charter, arts 7, 97-99; Simon Chesterman, *Secretary or General? The UN Secretary-General in World Politics* (CUP 2010).
[400] UNSC The role of the Security Council in the prevention of armed conflicts UNSC Res 1366 (30 August 2001) UN Doc S/RES/1366, para 10.
[401] Ian Johnstone, 'The Role of the UN Secretary-General: The Power of Persuasion Based on Law' (2003) 9(4) *Global Governance* 441, 447-451.

upon by the Legislature in June 1964,[402] and the Judiciary five months later,[403] to ensure the 'constitutional survival'[404] of the RoC.

According to the UN, initially both sides were undertaking a practice of arbitrary arrests 'motivated by non-legal considerations'.[405] By the end of 1964, there was a reduction in such incidents, especially after the RoC government instructed the Police to stop arresting Turkish-Cypriots upon the mere suspicion of their involvement in the ongoing violence.[406] In some cases, it was the Courts that had assumed a 'corrective role', by discharging wrongfully arrested Turkish-Cypriot citizens brought before them by the Police.[407] At the same time, detainees accused of serious criminal acts and murders were sometimes released due to 'lack of appropriate judges and courts', or subjected to indefinite detention.[408] This situation contradicts the need to preserve judicial guarantees in penal cases during NIACs, which is one of the core minimum standards protected under CA3.[409]

Case-law from that time confirms that 'with one or two exceptions, no Turkish or mixed cases were tried by the Turkish Judges' in any of the District Courts, from 21 December 1963 to early June 1964.[410] The administration of justice was affected due to a variety of factors, including the Turkish-Cypriot judges' personal insecurity in the Greek-Cypriot quarters of each town, general difficulties in travelling, or pressure from within the Turkish-Cypriot community to not interact with the other community.[411] Exceptionally in Nicosia, where the Court was located within the Turkish quarter, Turkish-Cypriot judges were able to deal with cases concerning their own community.[412] In spite of the above, at least some of the Turkish-Cypriot judges were still attending their chambers as usual, following efforts by Wilson J, the President of the High Court, before his departure.[413] The violence and resulting physical segregation of the two communities made it difficult to follow through with most

[402] ROCPM, Session 1963- 1964, 9 July 1964, p 131.
[403] *The Attorney-General of the Republic v. Mustafa Ibrahim and others* (1964) CLR 195, 237-238
[404] Polyvios Polyviou, *Cyprus on the edge: A study in constitutional survival* (2013)
[405] S/6102 (s 38) para 106
[406] ibid.
[407] ibid.
[408] ROCPM, Session 1963- 1964, 9 July 1964, 131-132; Necatigil (n 35) 63.
[409] GCs I-IV, common art 3(1)
[410] *Mustafa Ibrahim and others* (n 403) 56
[411] ibid 250-252.
[412] ibid 56.
[413] Necatigil (n 35) 62.

Constitutional provisions by the summer of 1964. Nevertheless, the judiciary was commended by the UN Secretary-General in September 1964, for their efforts to respond to their duties:

> It is gratifying to record that throughout the political crisis and inter-communal violence in the island the members of the country's judiciary, both Greek Cypriot and Turkish Cypriot, have to a large degree succeeded in maintaining, as far as is humanly possible, the objectivity and detachment that their high office demands.[414]

To resolve some of the difficulties posed, on 9 July 1964 the House of Representatives proceeded with passing the Administration of Justice (Miscellaneous Provisions) Law of 1964 (Law 33/1964).[415] According to the long title, the purpose was to 'remove certain difficulties, arising out of recent events, impeding the administration of justice and to provide for other matters connected therewith'.[416] The preamble focused on the impossibility of the functioning of the SCC and the High Court, adding that the legislative provisions within this new legislation were to remain in effect 'until such time as the people of Cyprus may determine such matters.'[417] Law 33/1964 is still valid today.

It established a new Supreme Court,[418] which merged the jurisdiction of the constitutionally provided for SCC and High Court.[419] Originally it provided for a bench of minimum five and maximum seven judges, one of whom would hold the position of President,[420] without any reference to communal quotas. Like all laws passed after 21 December 1963, this law too was passed in the absence of the Turkish-Cypriot MPs, and its constitutionality was challenged before the reformed RoC Supreme Court in the landmark case of *Mustafa Ibrahim and Others*.[421]

4.4.1 The Attorney-General of the Republic v Mustafa Ibrahim and Others

If UNSC Resolution 186 (1964) ensured the international survival of the Republic, *Ibrahim* is the moment that safeguarded the survival of the domestic legal order. The

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[414] S/5950 (n 141) para 136.
[415] Ο περί Απονομής της Δικαιοσύνης (Ποικίλες Διατάξεις) Νόμος (33/1964); RoC Official Gazette 331, 9 July 1964.
[416] English translation as provided in *Mustafa Ibrahim and others* (n 403) 245
[417] ibid.
[418] Law 33/1964, s 3(1).
[419] Law 33/1964, ss 9, 11.
[420] Law 33/1964, s 3(2).
[421] *Mustafa Ibrahim and others* (n 403)

case is a turning point showcasing how international developments are only a small proportion of the institutional and socio-political effects internal violence can have in a given society. It is questionable here, whether international legal scholarship engages adequately with such issues.

The case concerned five Turkish-Cypriots arrested, charged, and prosecuted for the possession of arms and explosives with the intent of preparing war, and for using armed force against the authorities of the Republic.[422] The respondents were accused of committing the offences on 25 April 1964 in the Kyrenia, Limassol, and Ktima (Paphos) districts, carrying on 'a *war or warlike* undertaking against the Greek Community of Cyprus'.[423] When each District Assize Court had released the defendants on bail, the Attorney-General's Office submitted an Appeal before the newly-established Supreme Court of the Republic, to challenge the decision.

Counsel for the Respondents, A. M. Berberoglu, raised three preliminary objections to the Appeal, which lie at the epicentre of this case's historical significance. The three Justices hearing the case, unanimously decided that Law 33/1964 was constitutional, on the basis of the DoN, under Constitutional law. The judges gave concurrent judgments addressing the issues at hand from different perspectives, and the case remains a central point of reference in analysing the Constitutional Law of the RoC. Today the DoN is formally recognised as a direct source of Cypriot Constitutional Law, and *Ibrahim* is part and parcel of the interpretation of Law 33/1964. The best known part of the case is found in a list of criteria construed by Judge Josephides, illustrating when the DoN shall be invoked:

> I interpret our constitution to include the doctrine of necessity in exceptional circumstances, which is an implied exception to particular provisions of the constitution; and this in order to ensure the very existence of the State. The following prerequisites must be satisfied before this doctrine may become applicable:
>
> (a) an imperative and inevitable necessity or exceptional circumstances;
>
> (b) no other remedy to apply;

[422] Criminal Code (Cap 154), ss 40, 41; Firearms Law (Capital 57); Explosive Substances Law (Capital 54); Capital 57 is now repealed; Constantinos Kombos, *The Doctrine of Necessity in Constitutional Law* (Sakkoulas 2015) 153.
[423] *Mustafa Ibrahim and others* (n 403) 243 (emphasis added).

(c) the measure taken must be proportionate to the necessity; and

(d) it must be of a temporary character limited to the duration of the exceptional circumstances.

A law thus enacted is subject to the control of this court to decide whether the aforesaid prerequisites are satisfied, i.e. whether there exists such a necessity and whether the measures taken were necessary to meet it.[424]

Using the three preliminary objections as guidance, the aim here is to offer clarifications not only on points of law, but also to draw additional factual and legal information on this period, relevant to the main subject matter of the present research. Namely, whether there were material grounds to argue that CA3 was applicable in the RoC at any point following the events of 21 December 1963. As already explained in the previous chapter, there were no trials considering the vast majority of killings, abductions or enforced disappearances during this period.[425] Therefore, the case is unique in giving a judicial point of view regarding the situation on the Island during this period.

The first preliminary objection raised by Counsel for the Respondents was that Law 33/1964 was unconstitutional, since its adoption did not follow the constitutionally prescribed procedure, in absence of the Turkish-Cypriot MPs, and a Turkish language publication of the law in the Official Gazette of the Republic.[426] The argument failed the legal test, since Law 33/1964 was an ordinary law that did not require separate majorities under the Constitution, and the quorum of the House could be satisfied with only 17 out of 35 Greek-Cypriot MPs being present.[427] Moreover, as per Judge Vassiliades, article 82 of the Constitution, which requires each law or decision of the House of Representatives to be published in the Official Gazette of the Republic, made no explicit reference to the language of the said publication.[428] He did admit that it was 'with greatest difficulty and the utmost strain', that he eventually accepted the Attorney-General's position that not publishing the law in Turkish was due to the

[424] ibid 265.
[425] See section 3.3.3.
[426] *Mustafa Ibrahim and others* (n 403) 196.
[427] RoC Constitution, arts 77-78; *Mustafa Ibrahim and others* (n 403) 208-209.
[428] *Mustafa Ibrahim and others* (n 403) 208-209.

lack of Turkish-Cypriot Officers in the civil service,[429] making this one of the weakest points of legal reasoning in the judgment as a whole.[430]

The second preliminary objection was that the three-judge panel of the Supreme Court was in violation of the articles of the Constitution providing for the allocation of cases to judges belonging to the same community as the defendants.[431] The UN Secretary-General reports confirm that UNFICYP had arranged for Turkish-Cypriot judges, lawyers, Court staff and witnesses to be escorted as long as such an arrangement would be necessary.[432] This practice lasted only until 2 June 1966,[433] when according to Turkish-Cypriot judge Ulfet Emin, that day only one judge managed to pass through police control, only to be eventually removed from his chambers at 'gun point'.[434] Hence, when the *Ibrahim* was before the Supreme Court, there were two Turkish-Cypriot judges[435] that could have sat on the case, including the most senior among them, Judge Zekia, the Court's President at the time.[436] Judge Triantafyllides clarified that 'the full Bench was given an opportunity to consider, in camera, whether it should have sat for the hearing of these appeals',[437] eventually opting for the three-judge formation, which according to Kombos, could have been a strategic choice to safeguard the application of the DoN, by avoiding the inevitability of two dissenting opinions.[438] An outcome which would have led to additional obscurity and ambiguity on an already highly controversial matter.

The third and final preliminary objection raised by Berberoglu, argued that 'necessity' was not justified under the circumstances, since the Council of Ministers had not issued a Proclamation of Emergency under article 183 of the Constitution.[439] It is due to this last preliminary objection that the judges had the opportunity to elaborate in detail on the ongoing situation. Article 183(1) refers to a 'case of war or

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[429] ibid 215.
[430] Kombos (n 422) 171.
[431] RoC Constitution, arts 155(3) and 159(1), (2); *Mustafa Ibrahim and others* (n 403) 213, 230, 256
[432] S/5950 (n 141) para 126.
[433] UNSC Report by the Secretary-General (For the period 11 March to 10 June 1966) (10 June 1966) UN Doc S/7350, para 154, 176; See also: UNSC Report by the Secretary-General (For the period 11 June to 5 December 1966) (8 December 1966) UN Doc S/7611, paras 169-174.
[434] Necatigil (n 35) 63.
[435] *Mustafa Ibrahim and others* (n 403) 244.
[436] Law 33/1964, s 3(4).
[437] *Mustafa Ibrahim and others* (n 403) 242.
[438] Kombos (n 422) 168.
[439] See section 3.2.3.

other public danger threatening the life of the Republic or any part thereof'.[440] The Supreme Court in *Ibrahim*, did take judicial notice of the fact that a state of emergency existed,[441] yet article 183 was inadequate to qualify the existing situation as an 'Emergency'.[442] Specifically, Judge Triantafyllides stated that even though the Council of Ministers had not declared a state of emergency, the court 'cannot close its eyes to notorious relevant facts in deciding these cases':[443]

> At a time when by a resolution, dated 4th March, 1964, of the Security Council of the United Nations an International Force has been dispatched to Cyprus to assist in the return to normality and a U.N. Mediator has been assigned to try and work out a solution of the Cyprus Problem, it would be an abdication of responsibility on the part of this court to close its eyes to the realities of the situation, because, for any reason, no Proclamation of Emergency has been made under Article 183, and to hold that everything is normal in Cyprus. To pretend that the administration of justice could have functioned unhindered as envisaged under the Constitution, because a measure that could have been taken, under a provision of limited application, such as Article 183, has not in fact been taken, would be unreasonable.[444]

The judgment of Judge Vassiliades, had taken a realist approach throughout, with an overall emphasis on the ongoing situation on the island:

> There is ample material on record, to show the conditions prevailing in the Republic at the material time and the circumstances under which the respondents were arrested. Indeed anybody living in the island since the 21st of December, 1963, must have had sufficient occasion, some way or another, to acquire knowledge of the warlike emergency, harassing the people of Cyprus, during the last, nearly, ten months now.[445]

The conditions he described do constitute one of the very few authoritative accounts of what was happening, from a judicial perspective. For the purposes of evaluating the events under IHL, what he described is telling:

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[440] RoC Constitution, art 183(1).
[441] *Mustafa Ibrahim and others* (n 403) 201.
[442] ibid 215; See also: Achilles C Emilianides, 'Cyprus' in André Alen and David Haljan (eds), *International Encyclopedia of Laws: Constitutional Law* (Walters Kluwer 2019) 44.
[443] *Mustafa Ibrahim and others* (n 403) 225.
[444] ibid 225-226.
[445] ibid 201.

There existed within the territory of the Republic of Cyprus, the following conditions:

(a) a *state of revolt*; i.e. armed *rebellion* and *insurrection* against the established Government of the Republic;

(b) *armed clashes* between *organised groups* resisting the authority of the State, and the *forces authorised by the Government* to assert the authority of its organs;

(c) *loss of life*; damage to property interruption of communications; and upsetting of law and order in the affected areas, with all the consequent repercussions on life in general, within the territory of the State;

(d) *assertion of authority and actual physical control, over areas of State territory*, by the *insurgents* and their political leaders and commanders, to the exclusion of the authority of the established Government of the Republic;

(e) *presence, with the consent of the Government, of international troops within the State territory*, under a Commander acting for, and upon orders from an authority outside the State i.e. the Secretary-General of the United Nations and the Security Council thereof, for the declared purpose, inter alia, of preventing armed clashes between combatants, with a view to the maintenance of peace and the prevention of bloodshed ; without, however, exercising government authority, or assuming in any way government responsibility;

(f) *inability of the State-Government*, pending a political settlement in international circles, *to combat the insurgents* in order to re-establish its authority and resume its responsibilities in the affected areas, owing to the presence and intervention of the said foreign troops ; and corresponding uncertainty, as to when the one or the other of the combating forces may eventually prevail, so as to assume the responsibility of government in the maintenance of law and order in the territory of the Republic; and

(g) duration of such conditions over a *period of several months*.[446]

There are a number of conclusions one can draw from the above, even though the statement was only made in *obiter*, without any legally binding force. Firstly, the reference to 'existed' in the past tense, suggests that Judge Vassiliades, distinguished

[446] ibid 201-202 (emphasis added).

between the first half of 1964, when active fighting was almost continuous and the respondents were arrested, from the situation at the time he delivered his judgment on 10 November 1964. It had already been three months since a ceasefire was signed in the aftermath of the Tylliria Air Bombings.

Furthermore, the words highlighted in the above passage, are all relevant to the criteria used in the process of conflict qualification, as discussed in the previous section. Most striking perhaps the open recognition of the 'inability of the State-Government, pending a political settlement in international circles, to combat the insurgents'.[447] Considering the caution with which judges choose the wording of their decisions, the choice of words is not to be taken lightly, albeit admittedly the use of the words 'revolt', 'insurrection' and 'rebellion',[448] suggests these terms may have been used interchangeably. This does not however, diminish the fact that the judges were firmly aware of the potential legal implications of the seriousness of the violence before them. In the literature consulted for this research there is no reference to this specific point of the *Ibrahim* judgment. Only Chrysostomides makes an extremely brief, two-page-long, comparison between 'insurgency' and 'belligerency', retaining a significant scope of ambiguity.[449]

Whether the government at the time had considered the possibility of declaring an emergency as per article 183 above is unknown. There is no indication in *Ibrahim*, or in the Records of the Plenary Minutes of the House of Representatives, that they did. Such a decision would have been a political one and the responsibility of the Executive.[450]

The DoN is distinguished from the declaration of a state of emergency, since the one does not substitute the other. [451] Article 183 of the Constitution has never been used in the RoC, even though the circumstances could have justified it easily, as admitted by Attorney-General Tornaritis in 1980.[452] Hoffmeister has also pointed out that the relevant constitutional provision required the collaboration of both

[447] ibid 202.
[448] ibid 201, 249.
[449] Chrysostomides (n 354) 92-93.
[450] Since the records of the Council of Ministers have not been studied for this research, no conclusions can be drawn with certainty. Had it been considered, however, it is hereby believed that this would have been mentioned at least by authors who held high-ranking official positions, such as Stella Soulioti and Glafcos Clerides.
[451] Kombos (n 422) 11.
[452] Criton G Tornaritis, *Cyprus and its Constitutional and other Legal Problems* (2nd edn, 1980) 74-76

communities, and the Constitution had not foreseen at all the potentiality of the Turkish-Cypriot ministers or MPs being completely absent,[453] though at this stage this must have been of little relevance. Turkish-Cypriot academic and politician, Kudret Ozersay has also argued that a declaration of emergency under article 183 of the Constitution could be an alternative remedy to the DoN, of which the Greek-Cypriot officials made no use.[454] Overall, there is no universal obligation under international law to make such a declaration, even after the issue gained a more central role in PIL once the International Covenant on Civil and Political Right came in force in 1976.[455] The issue is relevant to the overall legal culture of the 1960s as well as the problematic way in which governments usually handle so-called *de facto* emergencies.[456]

Thus, the value of *Ibrahim* does not lie solely in being the authority case on DoN in the RoC. The case also illustrates the difficulties of the judiciary to effectively deal with the situation, and the level at which political arguments embedded the use of a legal language. With reference to whether or not there was a NIAC in Cyprus in the period under question, the case is valuable in indicating that firstly, the members of the Turkish-Cypriot community had a portion of the territory of the State under their control, which will be discussed in more depth in the next chapter, and secondly, that the criminal justice system and the State apparatus more broadly were unable to fully control this situation, at least until November 1964 when the *Ibrahim* judgement was delivered.

4.4.2 The Broader Relevance of the Doctrine of Necessity

Since the DoN concerns the internal constitutional aspect of the Cyprus Question, as opposed to directly engaging with the armed violence during the same period, there

[453] Frank Hoffmeister, *Legal Aspects of the Cyprus Problem: Annan Plan and EU Accession* (Martinus Nijhoff 2006) 25.
[454] Kudret Özersay, 'The Excuse of State Necessity and its implications on the Cyprus Conflict' (2004-2005) IX(4) *Perceptions* 31, 54.
[455] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (ICCPR), art 4(1); UN HRC, General Comment No. 5: Article 4 (Derogations) (31 July 1981), now replaced with UN HRC, 'General Comment No 29, States of emergency (Article 4): International Covenant on Civil and Political Rights' (31 August 2021) UN Doc CCPR/C/21/Rev.1/Add.11; Dominic McGoldrick, 'The Interface between Public Emergency Powers and International Law' (2004) 2(2) *International Journal of Constitutional Law* 380.
[456] ILA Committee on the Enforcement of Human Rights Law, 'Second Interim Report of the Committee' (1988) 63 *International Law Association Report Conference* 148-149; See section 3.2.3.

has been a plethora of publications dedicated on the matter.[457] Indeed, reference to the DoN cannot be avoided, given its dual legal and historical significance. The aim of this subsection is to illustrate the broader historical relevance of the DoN in cases of internal violence, by reference to the role it has played in other post-colonial contexts, but also the debates its invocation has led to in Cyprus.

Turkish-Cypriot commentators in particular, have been highly critical of the DoN and disagree with its application, since it offered a legal justification to the Greek-Cypriot-controlled RoC government, to proceed with a number of questionable legal reforms.[458] Necatigil purported that the judges in *Ibrahim* were 'only tapping a slender stream of authority, particularly academic opinion, to develop an existing doctrine, or rather to create a new spurious doctrine'.[459] Kombos, on the other hand, who has also been critical towards the DoN but from a constitutional perspective, expressed the view that the judgement 'is an example of solid and thoughtful legal argumentation that can be regarded as the leading and most important contribution of the Cypriot legal system to legal science in general'.[460]

Despite its origins in Roman Law, and its heavy influence from Kelsen's Pure Theory of Law,[461] in the mid-twentieth century the DoN was employed in a number of colonial and post-colonials contexts that follow the common law tradition.[462] The earliest cases derive from the US Civil War,[463] and since, there has been a long series of cases across other jurisdictions, from Pakistan,[464] to Uganda,[465] Nigeria,[466] the

[457] Özersay (n 454); Achilles C Emilianides, *Η υπέρβαση του Κυπριακού Συντάγματος* (Beyond the Cyprus Constitution) (Sakkoulas 2006); Polyviou (n 404); Kombos (n 422).
[458] See section 5.2.1.
[459] Necatigil (n 35) 60.
[460] Kombos (n 422) 6.
[461] ibid 15-27.
[462] Necatigil (n 35) 65.
[463] *Texas v White* (1868) 74 US 700; *United States v Insurance Companies* (1874) 89 US 99; *Baldy v Hunter* (1898) 171 US 288; *Reference re Language Rights under the Manitoba Act 1870* (1985) 19 DLR 1; Kombos (n 422) 122-125; Necatigil (n 35) 63-64.
[464] *Special Reference No.1 of 1955* [1955] PLD Federal Court (F Ct) 435; *The State of Pakistan v Dosso and Others* [1958] PLD Supreme Court (S Ct) 533; Kombos (n 422) 27-33, 57-62.
[465] *Uganda v Commissioner of Prisons, ex part Matovu* (1966) EA 514; Kombos (n 422) 85-90.
[466] *Lakamni and Others v Attorney-General Western State* (1971) 1 UILR 201; Kombos (n 422) 77-85.

Seychelles,[467] and more recently Fiji,[468] and Canada.[469] These are all regions where on type or another of a dispute has existed. Central among the cases mentioned in the bibliography is the South Rhodesian case of *Stella Madzimbamuto v Lardner-Burke*.[470] Following the declaration of an emergency on 5 November 1965 by the Governor of the Crown colony of Southern Rhodesia, after the unlawful unilateral declaration of independence by the colony's all-white regime in 1965,[471] the case was an application for unlawful detention by a woman, whose husband continued being detained even after the first state of emergency expired in February 1966.[472]

The case reached the Privy Council in 1968, and dealt with numerous issues, including the rules that govern illegal regimes, and the effects of war on State sovereignty under the DoN.[473] Space does not allow for a detailed assessment of this case, but the comparative analysis undertaken by the judges is an impressive account of the various constitutional and problems faced across the post-colonial world at the time. Albeit therein, *Ibrahim* was recognised as 'The high-water mark of the doctrine',[474] the Court distinguished the situation in Cyprus at the time from that in Rhodesia,[475] stating that Judge Josephides' criteria did not apply to the unlawful regime of Southern Rhodesia,[476] and therefore, implicitly recognising the validity of *Ibrahim.* It is worth noting, on the other hand, that the situation in Southern Rhodesia was relied upon by the RoC at the time, in support of the argument that a 'minority' was trying to 'block the will of the majority of the country'.[477] From a historical

[467] *Valabhaji v Controller of Taxes* (1981) Seychelles Court of Appeal (unreported), noted in (1981) 7(4) *Commonwealth Law Bulletin* 1249; Kombos (n 422) 97-99.
[468] *Attorney General v Prasad* (Appeal) (2001) FJCA 2; Kombos (n 422) 125-134.
[469] *Reference re Language Rights* (n 463); *Quebec (Attorney General) v Lacombe* (2010) 2 SCR 453; Kombos (n 422) 116-122.
[470] *Stella Madzimbamuto v Desmond William Lardner-Burke (First Instance)* (1966) RLR 756; *Baron v Ayre* (1968) 2 SA 284 (Appeal of Madzimbamuto); *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645; [1968] 3 ALL ER 561 (Privy Council).
[471] HC Deb 12 November 1965 Vol 720 cols 524-637; HL Deb 15 November 1965 Vol 270 cols 229-413; *Madzimbamuto* [1969] 1 AC 645, 652-657; F. M Brookfield, 'The Courts, Kelsen, and the Rhodesian Revolution' (1969) 19(3) *The University of Toronto Law Journal* 326-352.
[472] *Madzimbamuto* (n 471) 647.
[473] ibid 681.
[474] ibid 682.
[475] ibid 691; Leslie Wolf-Phillips, 'Constitutional Legitimacy: A Study of the Doctrine of Necessity' (1979) 1(4) *Third World Quarterly* 97.
[476] *Madzimbamuto* (n 471) 682.
[477] UNGA Records 30 September 1965 UN Doc A/PV.1344, para 161.

perspective, this indicates once again the plethora of linkages and convergences between the unresolved disputes that have their route in the post-colonial world.

One conclusion drawn from PIL perspective, is that it would be beneficial to re-establish and reassess today's increasingly blurred post-colonial relevance of the Cyprus Problem and its broader, often toned down, impact to and effect from the post-colonial period. Further, it appears that there is strong potential for additional research on the linkages between internal violence, the declaration of emergencies, and their impact on constitutional matters. As stated by Kombos, the law's 'polycentric and multidisciplinary character'[478] is a commonality between constitutional and PIL. Hence, *intra*-disciplinary research combining comparative constitutional and PIL perspectives would be highly beneficial towards expanding our understanding of NIACs and internal disturbances.

4.5 Conclusion

In December 1964, few days short of the first anniversary of the 'Bloody Christmas', the UN Secretary-General assessed the situation as follows:

> Acute political conflict and distrust between the leaders of the two communities, and the passions stirred among the members of the two groups combine to create a state of *potential* civil war, despite the present suspension of active fighting. This situation adversely affects the entire economy of the island and causes some serious hardship for certain sections of the population, notably segments of the Turkish Cypriot community. The life and economy of the island remain disrupted and abnormal, and it would be unrealistic to expect any radical improvement until a basic political solution can be found.[479]

From the certainty of the existence of a 'civil war' in September 1964, by the end of the year the UN Secretary-General changed his wording to a 'potential civil war'. Perhaps in light of the relative quietness of the period that followed August 1964, diplomatic efforts would benefit more if the severity of the violence experienced in the previous months was toned down. Nonetheless, the lack of violence of the same intensity in the next years, up to July and August 1974, neither undid the physical segregation, nor reduced the heightened levels of mistrust between the two communities, or restored 'law and order and a return to normal conditions'.[480] The

[478] Kombos (n 422) 8.
[479] S/6102 (n 38) para 237 (emphasis added).
[480] UNSC Res 186, para 5.

experience of 1964 remained deeply embedded in the memories of the civilians who bared the consequences, and at the same became the source of further hostility in domestic and international politics.

The monitoring and active involvement of the ICRC and UNFICYP, undoubtedly contributed to the reduction of violence and alleviation of the humanitarian situation, whereas the continuous reporting to Geneva and the UNSC are a valuable source of information on what was happening on the ground. The improved organisation of the Greek-Cypriot forces in the spring of 1964, combined with the self-organisation of the Turkish-Cypriots within the areas under their control suggest that the threshold for a NIAC was reached and that those who were not involved in the fighting should have been afforded the limited protections under CA3. Further, the physical segregation of the two communities led to difficulties in the administration of the State, leading to the introduction of the DoN, which resulted in additional barriers in the relations between the two groups. Like the division of Nicosia and the presence of UNFICYP, the DoN too is one of the 'legacies' of 1963-1964, which have direct impact and practical relevance to this day.

While it is true that the most violent incidents between the establishment of the RoC and 1968 took place during the period explored in the present chapter, the impact of these events in the following years calls for further examination of the qualification of violence under PIL, and of whether the application of CA3 could still be justified from 1965 to 1968. With this in mind, the next chapter explores the longer effects of the segregation of the two communities. It examines the legal and other institutional reforms that took place following the invocation of the DoN, in looks in more detail at changes within the Turkish-Cypriot community, and undertakes an examination of the changing shifts and balances in terms of diplomatic and military developments.

5 A 'TENSE AND FRAGILE TRUCE' (1965-1968)

5.1 Introduction

The standstill following the new *status quo* created with the ceasefire of August 1964 and the implementation of the DoN in November 1964, was described by the UN Secretary-General on 11 March 1965, as follows:

> There is no peace on the Island, but *a tense and fragile truce*. This situation moreover is likely to continue as long as there is a hostile confrontation within the Island and as long as the territory of the Republic is cut up by front lines and fortifications whose presence contributes to, maintaining tension at high pitch.[1]

At the same time, the ICRC was increasingly frustrated by its middle-man role between the two competitive communal leaderships, and the way humanitarian needs were exploited for propaganda and political gains. In the words of Jacques Ruff in March 1965: 'The situation here is extraordinary. Politics before everything'.[2]

Modern books on IHL rarely refer to a 'truce'. The term is usually understood as a synonymous to 'armistice', which contrary to 'suspension of arms' (or ceasefire) is of more permanent nature.[3] An armistice, however, according to Oppenheim and Lauterpacht, is not to be interpreted as 'peace', since the condition of war persists between the parties,[4] even though it can lead to the end of the armed conflict if the parties agree as such.[5] These considerations are directly relevant during the period discussed in the present Chapter, since while calmer, the period from 1965 to 1968 was not in fact peaceful.

CA3 sets no time limits concerning the beginning or the conclusion of its applicability,[6] and interruptions in fighting do not suspend or terminate the parties' obligations under the article.[7] This is in line with the conclusions of the ICRC's 1962

[1] UNSC Report of the Secretary-General (For the period 13 December 1964-10 March 1965) (11 March 1965) UN Doc S/6228, para 67 (emphasis added).
[2] ICRC Archive, B AG 251 049-005.02, Note 209 – General Considerations (18 March 1965).
[3] Lassa Oppenheim, *International Law: A Treatise Vol II: Disputes, War and Neutrality* (Hersch Lauterpacht ed, 7 edn, Longmans 1952); See section 4.2.1.
[4] ibid 546-547.
[5] UK Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict (JSP 383)* (2004) 263.
[6] Gabriella Venturini 'The Temporal Scope of Application of the Conventions' in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) 51, 53.
[7] ibid 60.

Expert Commission, according to which CA3 was to remain applicable to 'situations arising from the conflict and to the participants in that conflict' even after the NIAC may have ended, 'whatever the form or the conditions of the settlement may be'.[8] Thus, the aim of this Chapter is to continue with an examination of the events while maintaining a focus on the legal framework provided for by CA3, in order to assess whether and when the Cyprus NIAC may have ended.

The period from September 1964 to July 1974 has generally attracted less interest from researchers, apart from limited research on the socio-economic dynamics formed after the violent months of 1964 and the initiation of bi-communal and multilateral negotiations.[9] Research on the military developments, is constrained to the single most significant incident of violence, which took place in the villages of Ayios Theodoros and Kophinou, in November 1967.[10] Indicatively, Aggelos Chrysostomou's insightful historical research on the National Guard concludes with 1964,[11] whereas other secondary sources omit any reference to the intermediary period addressed in this chapter, casting an even darker shadow over a complete decade,[12] which could help bridge the continuities observed from the early 1960s to the early 1970s. Many of the practices and the mechanisms employed in the first half of 1964 by early 1965 started obtaining a sense of *de facto* permanence; primarily among them, UNFICYP's presence, the growth of the National Guard into a proper army,[13] and the application of the DoN.[14]

The present chapter lends itself for a deeper socio-legal examination of life on the Island as it was altered following the breaking out of violence in 1963. Therefore, in the first section it examines the legislative changes undertaken by the House of

[8] ICRC, 'Humanitarian Aid to the Victims of Internal Conflicts: Meeting of a Commission of Experts in Geneva' (1963) 3(23) *IRRC* 79, 83.
[9] Marilena Varnava, *Cyprus before 1974: The prelude to crisis* (IB Tauris 2020) 95; Polyvios Polyviou, *Cyprus, Conflict and Negotiation, 1960-1980* (Duckworth 1980) 35-45.
[10] Thomas Ehrlich, *Cyprus 1958-1967* (OUP 1974) 90-116; Pavlos Ierodiakonou, *Εθνική Φρουρά: Από τα Πέτρινα Χρόνια στο Σήμερα* (National Guard: From the stone years to today) (Cultural Academy 'Kypropedia' 2016)119-140; Spyros Papageorgiou, *Επιχείρηση Κοφίνου: Πώς διώχτηκε από την Κύπρο η Ελληνική Μεραρχία* (The Kophinou Operation: How the Greek Contingent was expelled from Cyprus) (Epiphaniou 1987).
[11] Aggelos Chrysostomou, *Από τον Κυπριακό Στρατό μέχρι και τη δημιουργία της Εθνικής Φρουράς (1959-1964)* (From the Cyprus Army until the establishment of the National Guard (1959-1964)
(2015).
[12] Kypros Chrysostomides, *The Republic of Cyprus: A study in International Law* (Martinus Nijhoff 2000).
[13] See section 4.3.2.
[14] See section 4.4.1.

Representatives following the implementation of the DoN, before proceeding with an in-depth examination of the daily-life and administration of the Turkish-Cypriot community in and outside the established enclaves. This sub-section benefits extensively from previously unpublished information from the ICRC archive. Then, the Chapter proceeds to illustrate how in March 1965 the publication of the comprehensive report of the first UN mediator, Dr. Galo Plaza, led to a decisive shift from 'law' to 'diplomacy', before turning once again to the military developments up to November 1967 and the changes the National Guard's 'Kophinou Operation' led to. In the last section, the Chapter and the thesis, conclude with a brief examination of the establishment of the de facto 'Provisional Cyprus Turkish Administration' (PCTA) and the full restoration of the freedom of movement for the Turkish-Cypriot community, for the first time since December 1963.

5.2 A socio-legal study of the Republic in the aftermath of 1964

The persisting uncertainty and lack of security had adverse consequences for the economy of the Republic. In 1964, import duties fell sharply, violence paralysed economic activity in urban and rural centres adjacent to the Turkish-Cypriot-controlled areas, unemployment increased sharply,[15] and public revenue from taxes was reduced.[16] The tourist industry was profoundly affected with only 7,722 foreign visitors visiting the Island in the first half of 1964, compared to 49,585 arrivals 12 months earlier.[17] Foreign experts who provided technical assistance towards the implementation of development programmes left, and economic recovery in the face of an unresolved conflict seemed unlikely.[18] Nevertheless, once violence subsided, immediate steps were taken to reduce unemployment, promote industrial growth and foster the promotion of private initiatives. The successful implementation of these policies led, British High Commissioner Sir Norman Costar, to remark, in 1969:

> Cyprus is the only country I know which has flourished economically on a civil war […]. One might almost say that Cyprus has put all of its nonsense into politics and kept it out of economics.[19]

[15] Varnava (n 9) 81; See also: ROCPM, Session 1963-1964, 30 March 1964, Speech by Minister of Labour and Social Insurance, Tassos Papadopoulos, pp 31-38.
[16] ROCPM, Session 1964-1965, 28 December 1964, Speech by Minister of Finance, Renos Solomides, pp 334-340, 338.
[17] Varnava (n 9) 81.
[18] ibid 82.
[19] ibid 91 citing TNA, FCO 9/785, Costar to FCO, 26 March 1969.

Despite considerable increase in military expenditure, it took the RoC economy no more than two years to recover.[20] Internally, temporary measures were taken to assist those using property in 'adversely affected areas'.[21] At the international level, new trade agreements were signed with countries of the Soviet bloc, an oil refinery was established in Larnaca, and targeted initiatives supported the hospitality industry, such as the enhancement of training opportunities, and the offer of loan packages for the construction of new hotels.[22] In a move worth examining in more depth under the lens of TWAIL and critical International Economic Law,[23] the government was adamant to avoid external borrowing, so as not to reduce the RoC to a 'political dependency or an economic dominion of another state […] under the present emergency conditions'.[24] By the end of 1965, the government's statistical data indicated the lowest unemployment rate since 1958, and 'steady and promising growth' in all sectors of industry.[25]

Nevertheless, neither the policies initiated, nor the data selected took into account the Turkish-Cypriot community. The economic isolation of the Turkish-Cypriots,[26] prevented their participation in the observed economic growth. According to Professor Ozay Mehmet, Turkish-Cypriot, Canada-based Emeritus Professor in Development Economics, discussions on the Cyprus conflict(s) have been dominated by legal experts and political scientists, with the former searching for the 'magic wand in constitution making', and the latter 'dwell[ing] on the politics of identity and ethnicity'.[27] This, he maintained, underestimated the way in which the economic vulnerability of the Turkish-Cypriot community contributed to their increasing separatist tendencies.[28] From a legal perspective, John Reynolds has raised a similar argument, where comparing Cyprus with Ireland, he argued that self-determination

[20] Varnava (n 9) 84.
[21] Ο περί Ανακουφίσεως Δυσπραγούντων Ενοικιαστών Νόμος (19/1965) (Law on the Relief of Adversely Affected Tenants).
[22] Varnava (n 9) 84-85.
[23] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005); Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (CUP 2011).
[24] Varnava (n 9) 85 citing Address by the Minister of Finance at the Annual Meeting of the Larnaca Chamber of Commerce, 16 May 1965, DO 220/129.
[25] Varnava (n 9) 84.
[26] See section 5.2.2.
[27] Ozay Mehmet, *Sustainability of Microstates: The Case of North Cyprus* (University of Utah Press 2010) 22.
[28] ibid 23.

on both islands was 'implemented in the form of a narrow nationalist project without a clear redistributive socioeconomic policy'.[29]

The vast majority of displaced persons in the enclaves were unemployed and sustained through financial relief and assistance from Turkey.[30] According to Varnava, there is no official statistical data for this specific group of persons,[31] and none was identified by this author either, considering also the restrictions imposed during the research process. Indicatively, however, one author supported that by the end of 1964, the average income of a Turkish-Cypriot living in an enclave equated only 24% of the average Greek-Cypriot income, in direct contrast to 86% at the end of 1963.[32]

It must be noted that the UN Secretary-General's periodical reports from this period, engage consistently and in relative detail with economic developments in the RoC at the time, across sectors like agriculture and industry, including changes within the parallel economy that was gradually evolving in the Turkish-Cypriot enclaves. A limited number of initiatives and schemes involved both communities, developed with the assistance of UNFICYP as a means towards fostering collaboration between the two communities, and ultimate aim the return to 'normal conditions'. A complete analysis of economic developments during this period lies beyond the scope of the present research. Nevertheless, economic relations are more often than not a significant factor in obtaining a better understanding of the shifting social dynamics during a NIAC, or internal disturbances.[33] Hence, domestic socio-legal policies are of particular importance in internal conflicts, where all aspects of social relations among the population, as shown in this chapter, can have a tremendous impact on exacerbating or ameliorating the situation.

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[29] John Reynolds, 'Peripheral Parallels? Europe's Edges and the World of Bandung' in Louis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Future* (CUP 2017) 247, 255.

[30] UNSC Report by the Secretary-General (For the period 11 June to 5 December 1966) (8 December 1966) UN Doc S/7611, para 122; UNSC Report by the Secretary-General (For the period 6 December 1966-12 June 1967) (13 June 1967) UN Doc S/7969, para 144.

[31] Varnava (n 9) 87.

[32] Frank Hoffmeister, *Legal Aspects of the Cyprus Problem: Annan Plan and EU Accession* (Martinus Nijhoff 2006) 19 citing Jean-François Drevet, Chypre en Europe (Cyprus in Europe) (Harmattan 2000) 153.

[33] Antony Anghie and Bhupinder S Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflict' (2004) 36 *Studies in Transnational Legal Policy* 185, 196-197, referring to the wars in former Yugoslavia and Rwanda during the 1990s.

5.2.1 The Legislature and the Effective End of Bi-communality

The formal records of the plenary minutes of the House of Representatives on 17 December 1963, contain a note informing that this was the last plenary session with the participation of both Greek-Cypriot and Turkish-Cypriot MPs, before the 'intercommunal disturbances of December 1963'.[34] Nothing else from the discussions recorded on that day, or during the preceding period, suggests the eventual turn of events four days later. Notably, however, t Emilianides observed a general decline in Parliamentary meetings in 1963, compared to the preceding years.[35] On the contrary, the last point on record is a request by Turkish-Cypriot MP Halit Ali Riza to postpone the discussion on one of the topics on the agenda, to allow time for the translation of all relevant materials into the Turkish language.[36] This pending matter on the agenda was never again formally addressed.

Parliamentary debates at the time took place in both formal languages of the RoC, each MP speaking in the language of his own community, with simultaneous interpretation in the other language. The House of Representatives resumed work on 10 January 1964 and the first point on the agenda was the approval of the annual budget for 1964. It was only when the President of the House, Glafcos Clerides, asked the Turkish-Cypriot Secretary to read out the Report of the Budget Committee in Turkish, that the Greek-Cypriot Secretary replied, stating that the Turkish-Cypriot Secretary and all other Turkish-Cypriot MPs were absent, adding that there was no need to read out the Turkish text.[37] The President of the House agreed, and the budget was approved without a discussion on the substance.[38] According to the RoC Constitution, the quorum for the House of Representatives plenary sessions was a mere one third of all MPs, which could be satisfied with 17 Greek-Cypriot MPs in attendance.[39] With only 15 Turkish-Cypriot MPs in total, out of 50, the Turkish-Cypriot MPs could not satisfy the required minimum on their own. Nonetheless, it took the House three whole years to put the issue of the quorum on the agenda and settle the matter formally.[40]

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[34] ROCPM, Session 1963-1964, 17 December 1963, p 130.
[35] Achilles C Emilianides, *Κοινοβουλευτική Συνύπαρξη Ελληνοκυπρίων και Τουρκοκυπρίων (1960-1963)* (Parliamentary Co-Existence of Greek Cypriots and Turkish Cypriots (1960-1963) (Epiphaniou 2003) 26-27.
[36] ROCPM, Session 1963-1964, 17 December 1963, p 130.
[37] ROCPM, Session 1963-1964, 10 January 1964, p 5.
[38] ibid p 6.
[39] RoC Constitution, art 77(1).
[40] ROCPM, Session 1966-1967, 16 February 1967, pp 687-689.

The ongoing violence dominated the work of the House of Representatives throughout 1964, with the discussions recorded being indicative of the general positions held by the Greek-Cypriot MPs. With only two Greek-Cypriot parties represented in the first ten-year-long Parliament of the RoC, Emilianides noted that there was an 'internal confusion' among the MPs of the larger 'Patriotic Front' (*Πατριωτικό Μέτωπο*) party.[41] Most of these MPs were in support of Makarios' government, but held a range of ideologies along the political spectrum,[42] from the conservative right up to Social Democracy, with Communism being the core political line of the second party, AKEL.[43] The Turkish-Cypriot MPs, all of whom came from the 'Turkish National Party' of Fazil Kutchuk,[44] represented the third political party in Parliament until 17 December 1963. They never returned to their seats, notwithstanding one single attempt to do so on 22 July 1965, discussed in detail below.

Debates were usually brief, with agreement over new bills often reached in advance of the vote in plenary.[45] This marginalised the Legislature throughout the 1960s, which was further weakened by the Presidential nature of the RoC Constitution.[46] Whereas the recorded minutes of the Plenary sessions are valuable in filling gaps in the historical record, the relative lack of scrutiny precludes an in-depth assessment of the legal reforms that took place at the time. With the Turkish-Cypriot MPs absent, the House of Representatives proceeded with a series of legal reforms, which radically changed the bi-communal character of the Cypriot Republic. A process one commentator has termed the 'hellenisation' of the Republic,[47] and another the establishment of a 'second *de facto* Greek state'.[48]

[41] Achilles C Emilianides, *Πορεία προς την καταστροφή: Κοινοβουλευτική Ιστορία 1964-1976* (Towards Catastrophe: Parliamentary History 1964-1976) (Aegaeon 2007) 17-20.
[42] ibid.
[43] See section 2.2.2.
[44] Hubert Faustmann, 'Independence Postponed: Cyprus 1959-1960' (2002) 2 *The Cyprus Review* 99, 104.
[45] Emilianides, *Κοινοβουλευτική Ιστορία* (n 41) 38-39.
[46] RoC Constitution, art 1.
[47] Hoffmeister (n 32) 17-19.
[48] Niyazi Kızılyürek, *Μια ιστορία βίας και μνησικακίας: Η γένεση και η εξέλιξη της εθνοτικής διένεξης στην Κύπρο Vol 2* (A story of violence and resentment: The genesis and evolution of the ethnic conflict in Cyprus) (Michalis Theodorou trs, Heterotopia 2019) 590.

Within 20 days from the Supreme Court's *Ibrahim* judgement,[49] the House of Representatives passed a new Municipal Corporations Law,[50] to resolve the problem which had occurred following the expiration of the colonial Municipal Law on 31 December 1962.[51] The new law disregarded completely the Constitutional provisions on the separate municipalities in the five bigger towns of the Island,[52] re-establishing instead the municipalities that were in existence on 1 January 1958.[53] By-passing, therefore, the previously unchallenged unilateral declaration of Turkish-Cypriot municipalities during the bi-communal violent upheaval in 1958.[54]

The next major reform, perhaps the most radical among them, took place on 30 March 1965, and concerned the complete dissolution of the Greek Communal Chamber and the establishment of a Ministry of Education in its place, re-allocating the Greek Chamber's responsibilities to the new Ministry and a number of other governmental bodies.[55] As already discussed in Chapter 2, the two Communal Chambers were constitutional bodies holding the power to pass legislation on religious, educational and cultural matters of communal nature.[56] The Preamble of Law 12/1965 justified this move on the basis that the Greek Communal Chamber i) could not exercise its responsibilities and functions 'as things stand',[57] while ii) the exercise of its functions was vital for the functioning of the State. Moreover, iii) the Greek Communal Chamber had invited the House of Representatives to transfer the responsibilities of the Chamber to the (direct) authority of the Republic 'as soon as possible',[58] elevating its status, as this iv) had 'become necessary'[59] (hinting on the

[49] See section 4.4.1.
[50] Ο περί Δήμων Νόμος (64/1964) (Municipalities Law); RoC Official Gazette, 370 (1 December 1964).
[51] See section 3.3.2.
[52] RoC Constitution, art 173(1).
[53] ROCPM, Session 1964-1965, 28 November 1964, p 283.
[54] ibid p 285; See Section 2.4.3.
[55] Ο περί Μεταβιβάσεως της Ασκήσεως των Αρμοδιοτήτων της Ελληνικής Κοινοτικής Συνελεύσεως και περί Υπουργείου Παιδείας Νόμος (12 /1965) (Law relevant to the transfer of the exercise of responsibilities of the Greek Communal Chamber and the Ministry of Education); RoC Official Gazette, 398 (31 March 1965).
[56] RoC Constitution, art 87; See section 3.3.1.
[57] In the original Greek text «λειτουργία ταύτης [της Ελληνικής Κοινοτικής Συνελεύσεως] κατέστη εκ των πραγμάτων αδύνατος», which is translated as 'the functioning of which [the Greek Communal Chamber] has become as things stand impossible'.
[58] In Greek «το ταχύτερον».
[59] In Greek «κατέστη επάναγκες»; This is the choice of words for a number of the laws with an impact on the Constitution, passed by the House of Representatives at the time.

DoN) 'until the Cypriot people expresse[d] its opinion on these matters'.[60] Not all of the responsibilities of the Communal Chambers under the Constitution related to education and the portfolio of the new Ministry. For this reason, section 3 of Law 12/1965 allocated some responsibilities to other existing ministries, depending on the task at hand.

Notably, any task that was not allocated to another Ministry was transferred directly to the Council of Ministers, which was subsequently empowered to assign the task in question to any organ, authority or individual they decided to.[61] Law 12/1965 does not list expressly the tasks delegated to the Council of Ministers, but one obvious example deriving from a comparison of the constitutional and the legislative texts, are the issues pertaining to charitable and sporting foundations, bodies and associations. Not only this was contrary to the Constitution's explicit provision that the RoC was to have a total of ten Ministries,[62] but also seceded part of the Legislative power directly to the Executive,[63] interfering with the doctrine of the separation of powers. Concerns on the democratic nature of this move are further reinforced in light of the particular role foundations and associations had played in the political life of the Island, during and after the years of 'Palmerocracy', when most political activities were restricted. Overall, the reform deepened the chasm the DoN had created between the black letter of the Constitution and its practical application, in complete disregard of the principle of bi-communality.

In addition, by 1965 it was time for the RoC to hold its second elections, following those held on 13 December 1959,[64] when Cypriots were called to choose the State's leaders prior to independence on 16 August 1960. Amidst the ongoing violent situation and virtual absence of the Turkish-Cypriot community from public life at this point, abiding to the constitutionally assigned procedure was not possible. Thus, the House of Representatives passed a law which extended the presidential and the parliamentary terms of office for a period of up to 12 months.[65] This law was

[60] In Greek «μέχρις ου ο Κυπριακός λαός εκφέρη την άποψιν αυτού επί των ζητημάτων τούτων»; See also: C G Tornaritis, *Cyprus and its Constitutional and other Legal Problems* (2nd edn, 1980) 76.
[61] Law 12/1965, s 3.
[62] RoC Constitution, art 46.
[63] Whether the Communal Chambers fell under the Executive or the Legislature power is unclear in the literature. See section 3.3.1.
[64] Faustmann, *Independence Postponed* (n 44) 103-104.
[65] Ο περί Προέδρου της Δημοκρατίας και Μελών της Βουλής των Αντιπροσώπων (Παράτασις της Θητείας) Νόμος (38/1965), s 3 (Law on the President of the Republic and the Members of the House of Representatives (Extension of Term) of 1965); RoC Official

renewed twice, in 1966[66] and 1967.[67] Thus, the first Presidential elections since the establishment of the Republic were eventually held in 1968, whereas the first parliamentary elections after independence were held as late as 1970, with Parliament completing a full decade-long term.[68]

These laws made no reference whatsoever to the office of the Vice-President or the Turkish-Cypriot MPs. Already in the previous year, on 27 June 1964, the ICRC delegate in Cyprus had informed the ICRC Headquarters that according to information received by the Director-General of the MFA, the RoC government no longer recognised Kutchuk as the Vice-President of the RoC and from then on, he was simply the head of a rebel formation *(le chef d'une fraction rebelle).*[69] With the separate electoral catalogues and the separate administrative roles of each community during elections also being abolished in 1965,[70] the 'communal distinction was written off'.[71]

These developments did not leave unconcerned everyone with a vested interest in developments in Cyprus. The UN Secretary-General issued *ad hoc* reports to inform the UNSC.[72] Among the Guarantor Powers, the UK and Turkey protested the reforms,[73] while there is no record of Greek efforts to defend them. It is at this

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Gazette, 429 24 July 1965; For a detailed account on these developments see: UNSC Report by the Secretary General on Recent Developments in Cyprus (29 July 1965), UN Doc S/6569.

[66] Ο περί Προέδρου της Δημοκρατίας και Μελών της Βουλής των Αντιπροσώπων (Παράτασις της Θητείας) Νόμος (48/1966) (Law on the President of the Republic and the Members of the House of Representatives (Extension of Term) of 1966); RoC Official Gazette, 515 (1 August 1966); S/7611 (n 30) para 106.

[67] Ο περί Προέδρου της Δημοκρατίας και Μελών της Βουλής των Αντιπροσώπων (Παράτασις της Θητείας) Νόμος (46/1967) (Law on the President of the Republic and the Members of the House of Representatives (Extension of Term) of 1967); RoC Official Gazette, 593 (11 August 1967).

[68] Ο περί Μελών της Βουλής των Αντιπροσώπων (Παράτασις της Θητείας) Νόμος του 1968 (86/1968) (Law on the Members of the House of Representatives (Extension of Term) Law of 1968); RoC Official Gazette, 669 (2 August 1968); Ο περί Μελών της Βουλής των Αντιπροσώπων (Παράτασις της Θητείας) Νόμος του 1969 (55/1969) (Law on the Members of the House of Representatives (Extension of Term) Law of 1969); RoC Official Gazette, 738 (25 July 1969).

[69] ICRC Archive, B AG 251 049-004, Note 94 – Activities of the delegation (27 June 1964).

[70] Ο Εκλογικός (Μεταβατικαί Διατάξεις) Νόμος (39/1965), s 3 (The Electoral (Transitional Provisions) Law); RoC Official Gazette, 429 (24 July 1965).

[71] S/6569 (n 65) para 4.

[72] UNSC Report by the Secretary-General on Recent Developments in Cyprus (2 August 1965) UN Doc S/6586; UNSC Report by the Secretary-General on Recent Developments in Cyprus (5 August 1965) UN Doc S/6569.Add.1; UNSC Report by the Secretary-General on Recent Developments in Cyprus (10 August 1965) UN Doc S/6569.Add.2.

[73] S/6569.Add.1 (n 72).

point that Turkish-Cypriot MPs attempted to return to the House of Representatives, requesting the UN Secretary-General's good offices to enable their attendance to the Parliamentary plenary session that would discuss the bill extending the terms of office of the Greek-Cypriot MPs and the RoC President.[74] A meeting between a delegation of Turkish-Cypriot MPs and the President of the House of Representatives was arranged in the afternoon of 22 July 1965, where Glafcos Clerides conveyed to the Turkish-Cypriot delegation the conditions he set to allow for their attendance to the meeting.[75]

> (a) The Turkish Cypriot members would resume their seats permanently rather than only for the purpose of the present debate;
>
> (b) The Turkish Cypriot members would accept that the laws enacted by the House of Representatives would be applied to the whole of Cyprus, including the Turkish areas, by the Government using the normal authorized administrative organs;
>
> (c) While the Greek Cypriot members would regard attendance at the House by the Turkish Cypriot members as implying recognition by them of the present Cyprus Government, the Turkish Cypriot members would not be called upon to make a statement to that effect, and the Greek Cypriots would likewise refrain from making any such statement on the record of the House;
>
> (d) It must be understood that the provision in article 78 of the constitution concerning separate majorities had been abolished and every member of the House would have one vote for all decisions.[76]

The conditions were unacceptable to the Turkish-Cypriot MPs, and the bill was eventually adopted the next day.[77] Among the Greek-Cypriot MPs only one, Lellos Demetriades, expressed the view that the extension of the terms of office should be put before the electorate through a referendum, in place of the expected elections.[78]

Within a fortnight, on 5 August 1965, the House of Representatives made legislative arrangements that would allow the election of one 'Religious Group Representative' for each of the Armenian, Maronite and Latin religious groups, before

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[74] S/6569 (n 65) paras 5-7.
[75] ibid 7-16.
[76] ibid para 8.
[77] ROCPM, Session 1964-1965, 23 July 1965, pp 131-134; S/6569 (n 65) para 17.
[78] ROCPM, Session 1964-1965, 23 July 1965, p 132.

the House and any other authority or organ of the Republic.[79] They were vested with the power to address issues relevant to each of their respective religious group, filling in gaps created in their representation following the dissolution of the Greek Communal Chamber.[80] The last stroke in terms of the legal reforms undertaken by the RoC government during this period came in June 1967, when a new law on the functioning of the Public Service Commission abolished the requirement for the appointment of both Greek and Turkish members, under the usual 70:30 analogy.[81] Contrary to the laws mentioned above, the text of this law contains no preamble stating that its adoption had 'become necessary', and was therefore, justified under the DoN.

In the aftermath of 1963-64 the Turkish-Cypriots held a firm grasp on the 1960 constitutional order. A stance aiming to ensure that their community would not be reduced to a minority within the RoC. For this reason, despite their isolation in the enclaves, the Turkish-Cypriot leadership maintained, by analogy, the application of the provisions of the original 1960 Constitution, to the extent this was possible. Once the terms of office of the President and the Greek-Cypriot MPs were extended, the Turkish-Cypriot MPs passed two communal 'laws' of their own, extending the terms of office of the RoC Vice-President and the members of the House of Representatives, providing for interim provisions concerning the election of the members of the Turkish Communal Chamber.[82] The intention was to facilitate its constitutional functioning and to reiterate that the community's fundamental rights as provided by the RoC Constitution were still in force.[83] While these two legislative instruments have no legal standing under RoC law, they serve as evidence of the earliest efforts by the Turkish-Cypriot community to self-organise and adapt to a new reality, which soon would become the 'new normal'.

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[79] Ο περί Μεταβιβάσεως της Ασκήσεως των Αρμοδιοτήτων της Ελληνικής Κοινοτικής Συνελεύσεως και περί Υπουργείου Παιδείας (Τροποποιητικός) Νόμος (45 /1965) (Law relevant to the transfer of the exercise of responsibilities of the Greek Communal Chamber and the Ministry of Education (Amendment); RoC Official Gazette, (12 August 1965).
[80] ROCPM, Session 1964-1965, 5 August 1965, 355; S/6569.Add.2 (n 72); Alexander-Micahel Hadjilyras, *Η Κυπριακή Δημοκρατία και οι Θρησκευτικές Ομάδες* (The Republic of Cyprus and the Religious Groups) (2012) 91-92.
[81] RoC Constitution, art 124; περί Δημόσιας Υπηρεσίας Νόμος του 1967 (N 33/1967), s 4 (Public Service Law); RoC Official Gazette, 583 (30 June 1967).
[82] S/6586 (n 72); Stanley Kyriakides, *Cyprus: Constitutionalism and Crisis Government* (University of Pennsylvania Press 1968) 118.
[83] Kyriakides (n 82) 119.

Necatigil identifies a total of seven laws which purported to the abolition of the 1960 Constitutional framework.[84] The laws mentioned above, plus the National Guard Law,[85] the Police (Amendment) Law,[86] and the Administration of Justice (Miscellaneous Provisions) Law,[87] all of which were passed before the Supreme Court's *Ibrahim* judgement.[88] Admittedly, whereas in Spring 1964 the establishment of the National Guard, the merging of the Police and the Gendarmerie forces, and the Administration of Justice laws could be justified as emergency measures, from March 1965 onwards it is difficult to justify the radical legal reforms undertaken exclusively by reference to the conflict. The more changes to the constitutional order were made, the harder it became to see such measures as 'temporary'. The gradual abolition of the bi-communal structures by the Greek-Cypriot-led government on the one side, and the opportunity to establish self-governing territorial 'pockets' by the Turkish-Cypriot leadership on the other, portrayed a rapid move towards a point of no return. Commentators on both sides have observed and admitted that the legal reforms on the side of the Republic gradually aligned the constitutional legal order to the 13 constitutional amendments suggested by Makarios in November 1963 and had sparked the violence in the first place.[89]

De facto emergencies can either 'inflate' normalcy to emergency, or 'deflate' the emergency to normalcy,[90] as the case was in the RoC during this period and thereafter. It has been widely acknowledged that emergencies put pressure on democratic decision-making[91] and have direct impact on democracy, human rights and the rule of law,[92] creating additional tensions between the State's 'internal' and

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[84] Zaim M Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, OUP 1993) 56-60; Zaim M Necatigil (Nedjatigil), *The Cyprus Conflict: A lawyer's view* (2nd ed, K Rustem and Brother 1982) 31-34.

[85] Ο περί της Εθνικής Φρουράς Νόμος του 1964 (20/1964) (National Guard Law of 1964); RoC Official Gazette 320 (2 June 1964).

[86] περί Αστυνομίας (Τροποποιητικός) Νόμος του 1964 (21/1964), s 2 (Police (Amendment) Law 1964); RoC Official Gazette 321 (4 June 1964).

[87] Ο περί Απονομής της Δικαιοσύνης (Ποικίλες Διατάξεις) Νόμος (33/1964) Administration of Justice (Miscellaneous Provisions) Law of 1964; RoC Official Gazette 331, 9 July 1964.

[88] *The Attorney-General of the Republic* v. *Mustafa Ibrahim and others* (1964) CLR 195; See section 4.4.1.

[89] Necatigil, *Cyprus Conflict* (n 84); Necatigil, *Cyprus Question* (n 84) 53-56; Emilianides, *Κοινοβουλευτική Ιστορία* (n 41) 73; Kızılyürek, *Resentment* (n 48) 590-591; Varnava (n 9) 44-50.

[90] Alan Green, *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis* (Hart 2018) 62.

[91] ibid 52.

[92] ibid 62.

'external' sovereignty.[93] Paradoxically, the sovereign decision-maker is both 'within and outside the law', and regardless of the character a state of emergency has, law plays an integral role in managing it.[94]

5.2.2 The Enclaves and the Turkish-Cypriot Community

While the above legislative reforms were taking place, the Turkish-Cypriot community continued living in isolation from the rest of the Island's population, both in and outside the by now established enclaves. In the previous chapter, it has already been illustrated how in the immediate aftermath of the violence of December 1963 bridges of communication were built between the two communities for humanitarian reasons, upon the initiative of the ICRC and the British-coordinated Joint Task Force, later replaced by UNFICYP.[95] However, the ceasefire of 9 August 1964, while instrumental in bringing an end to the ever-increasing violence, did not bring a restoration of 'law and order' or 'normal conditions'. On the contrary, the continuous segregation of the Republic's population, along with the legal reforms, and the lack of political and diplomatic progress, led to routine division instead.

Daily life within the enclaves is perhaps the most neglected aspect from this period's historiography. Perhaps the best-known study is Vamik Volkan's research on the psychological effects of inter-communal conflict, particularly in the Turkish-Cypriot community, following a visit to his native Cyprus in the late 1960s.[96] Among the plethora of disciplines that have engaged with the Cyprus Question, it appears that only anthropological research has addressed different aspects of the topic. with some consistency,[97] yet the most detailed study on the enclaves is Richard Patrick's assessment of the conflict, from the scope of political geography.[98] Therefore, this sub-section aims at bridging the topic of the 'enclaves' with the overall scope of the effects of inter-communal violence, based primarily on archival material compiled from

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[93] *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645, 672-679; Gerd von Laffert, *Die völkerrechtliche Lage des geteilten Zypern und Fragen seiner staatlichen Reorganisation* (Peter Lang 1995) 138-141

[94] Antony Anghie, 'Rethinking Sovereignty in International Law' (2009) 5 *Annual Review of Law and Social Science* 291, 306.

[95] See section 4.2.3.

[96] Vamik Volkan, *Cyprus – War and Adaptation: A psychoanalytic history of two ethnic groups in conflict* (University Press of Virginia 1979).

[97] eg Rebecca Bryant and Mete Hatay, 'Guns and guitars: Simulating sovereignty in a state of siege' (2011) *American Ethnologist* 38(4) 631; Rebecca Bryant and Yiannis Papadakis (eds), *Cyprus and the Politics of Memory* (IB Tauris 2012).

[98] Richard Patrick, *Political Geography and the Cyprus Conflict, 1963-1971* (University of Waterloo 1989).

the field reports of the ICRC's Cyprus mission, the UN Secretary General's reports to the UNSC, and a limited number of secondary sources.

An 'enclave' under PIL, is understood as an 'isolated part of a State' circumscribed by a single foreign State, the 'host State', which prevents a direct link with the territory of the State to which it belongs, the 'home State', unless through the territory of the host State.[99] It is acknowledged, however, that historically enclaves have existed also as 'internal' or 'administrative enclaves', within historically set boundaries.[100] In Cyprus, 'enclaves' under PIL are the SBAs, where the UK is the 'home State' and the RoC the 'host State'.[101] The Turkish-Cypriot enclaves during this period, on the other hand, were neither 'enclaves' under PIL (i.e. were not territory of another State) nor 'historical administrative entities', despite the traditionally higher concentration of Turkish-Cypriot citizens in many of these areas. The Turkish-Cypriot enclaves became 'new *de facto* geopolitical fields'[102] through the use of force, and had no autonomous legal standing whatsoever, other than being territory over which the Republic's authorities had lost control as of December 1963.

The law of occupation, which is part of IHL,[103] has no applicability in NIACs. Nevertheless, the existence of the enclaves is of particular significance under the classical understanding of 'civil war' and under CA3, since *de facto* territorial control by non-state armed groups is one of the recognised indicators establishing whether a NIAC exists, under the criteria of both 'organisation' and 'intensity'.[104] Nonetheless, the exact threshold of this requirement has always been unclear, even after AP II was adopted in 1977. According to Moir, territorial control can strengthen the argument in favour of recognising that a conflict has crossed the CA3 threshold, but the absence

[99] Tobias Irmscher, 'Enclaves' *MPEPIL* (September 2007) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1037> accessed 3 August 2021 para 1.
[100] ibid para 4.
[101] ibid para 7.
[102] Patrick (n 98) 99.
[103] Regulations Respecting the Laws and Customs of War and Land, Annex to Hague Convention IV 1907 (adopted 18 October 1907, entered into force 26 January 1910) (1910) UKTS 9 (Hague Regulations), art 42; GCs I-IV, common art 2; GCIV, art 4.
[104] Jean Pictet, *Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC 1952) 45; See section 2.3.3. and Table 2.2.

of territorial control should not be interpreted automatically as non-application of CA3.[105]

It is worth clarifying here that to avoid giving formal recognition and compromise the rights of the RoC over those territories, Patrick explained how UNIFCYP was driven to make a list of politically and legally neutral terms when referring to Turkish-Cypriot officials. Thus, on the one side there was the 'Cypriot Government' and on the other the 'Turkish-Cypriot leadership', there were the RoC 'District Officers' and the 'Local Turkish Cypriot leadership', as well as the 'Cyprus Police' and the 'Turkish Cypriot police element'.[106] These terms survive, dominate even, inter-communal and diplomatic discussions to this day. Their use is subject to continuous scrutiny by politicians, the media, and the public, and indeed, their 'proper use' has been central to the writing of the present thesis, as well.

The obsession with 'etiquette', though perhaps understandable in a diplomatic context, has been a continuous obstacle towards challenging the usual terminology and critically assessing the situation as a whole, since deviating from the normally accepted terms is subject to political criticisms from various sides. In a legal context this is particularly harmful, since legal arguments are dependent on words which, as seen throughout the present research, are rarely static in meaning. The result is a cacophony of politico-legal arguments repeated in a loop, eventually with limited relevance, and decreasing substantial value.

Following the incident that sparked violence on 21 December 1963, the RoC security forces continued allowing entry and exit from the enclaves, subject to checks and searches at designated checkpoints. Greek-Cypriot government officials and private individuals were allowed entry by the Turkish-Cypriot leadership only in 'rare and special cases […] as a matter of political principle with little attempt at justification on practical grounds'.[107] Despite the checks, however, many locations were not accurately demarcated and changes could occur at short notice. One of the problems

[105] Lindsay Moir, 'The Concept of Non-International Armed Conflict' in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) 391, 407; This position was confirmed by the ICTY in *The Prosecutor* v *Slobodan Milošević*, Motion on Judgment of Acquittal, IT-02-54-T, 16 June 2004 [36].
[106] Patrick (n 98) 99 fn 70.
[107] S/7611 (n 30) para 109.

faced in general regarding the 'territorial control' indicator in assessing the CA3 threshold during a NIAC.[108]

The perceived boundaries represented agreements achieved through 'local understandings' and 'compromises' among local officials from both communities, 'between instructions from distant superiors and a desire to live and let live'.[109] Especially in rural areas, such boundaries would take shape based on local patterns of ethnic settlement, land ownership, communication, transportation and levels of inter-communal hostility.[110] Often, freedom of movement was also subject to such local agreements among *mukhtars* or military commanders, following UNFICYP facilitation,[111] some of which may potentially amount to 'special agreements' under CA3.[112] Broadly interpreted such agreements are understood to place additional humanitarian rules between the parties, beyond the strict wording of the article.[113]

In the earliest period of the conflict, archival evidence mentions that individuals who strayed off the territory controlled by their own community would be recorded as missing. Later, Greek-Cypriots who entered the enclaves unintentionally were usually 'detained, questioned and searched', and released following interventions by UNFICYP.[114] Overall, Greek-Cypriots usually avoided places largely inhabited by Turkish Cypriots,[115] notwithstanding the substantial transit of Greek-Cypriots through Turkish-Cypriot-held territories in Nicosia and Limnitis under UNFICYP escort and supervision.[116] This was reflected in the fact that Greek-Cypriots rarely visited relatives detained in the Turkish-Cypriot sector of Nicosia, despite ICRC willingness to arrange such visits for people from both communities.[117]

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[108] Moir 'Concept of Non-International Armed Conflict' (n 105) 406.
[109] Patrick (n 98) 86-87.
[110] ibid 87-88.
[111] S/7611 (n 30) paras 117-118.
[112] GCs I-IV, common art 3; For full text of Common Article 3 see Annex II of the thesis.
[113] Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (OUP 2012) 25-28; Luisa Vierucci, 'Applicability of the Conventions by Means of Ad Hoc Agreements' in Andrew Clapham and others (n 105) 511; For an analogous mechanism under IACs see: Oppenheim (n 3) 534-536; Stuart Casey-Maslen, 'Special Agreements in International Armed Conflict' in Andrew Clapham and others (n 105) 135.
[114] S/7611 (n 30) para 109.
[115] UNSC, Report by the Secretary-General on the United Nations Operation in Cyprus (For the period 10 September to 12 December 1964) (12 December 1964) UN Doc S/6102, para 38.
[116] S/7969 (n 30) para 107.
[117] ICRC Archive, B AG 251 049-005.02, Note 121 – Activities of the delegation (1 September 1964).

On the other hand, even though the Greek-Cypriot position is that the Republic's authorities never precluded Turkish-Cypriots from entering the areas under the control of the Republic, there is considerable evidence that Turkish-Cypriot citizens were subjected to strict, occasionally humiliating, checks.[118] Complaints by Turkish-Cypriots would sometimes be unsubstantiated,[119] but serious incidents have been witnessed and reported by UNCIVPOL. One such example was the arrest of 20 Turkish-Cypriots by the Cyprus Police in Larnaca, for wearing clothing resembling military uniforms.[120] Upon their release they were examined by an UNFICYP doctor, who confirmed that the wounds they carried were consistent with their complaints for ill-treatment and assault.[121] However, as seen below, the movement of Turkish-Cypriots was also strictly regulated by their own leadership on the basis that such control was necessary for security purposes.[122]

The enclaves had a 'civil-military synthesis',[123] following a five-level administrative structure.[124] The smallest units were the Turkish-Cypriot villages – or Turkish-Cypriot quarters within a mixed village or town – which grouped with other neighbouring villages or quarters composed larger clusters. Each cluster had its own 'headquarters' manned by a 'police sergeant' and a 'fighter officer', who led a battalion-like formation of fighters. Many clusters together formed 'sub-regions' with stationed full-time 'fighter units', and two or more sub-regions, depending on geographical proximity, would form a single region. In practice, this led to seven *de facto* Turkish-Cypriot district authorities, each with its own 'district officer' based in Nicosia, Chatos, Famagusta, Larnaca, Limassol, Paphos, and Lefka.[125] This territory covered about 54 square miles (140 sq km) in total, a mere 1.5-2% of RoC territory.[126] If, as Moir suggests, a NIAC can exist without any territorial control,[127] then any

[118] S/7611(n 30) para 110.
[119] ibid.
[120] UNSC Report by the Secretary-General (For the period 11 March to 10 June 1966) (10 June 1966) UN Doc S/7350, para 79.
[121] ibid; See also: S/7969 (n 30) paras 95, 111-114.
[122] S/7611 (n 30) para 109.
[123] Patrick (n 98) 84.
[124] ibid 84-86; The structure described by Patrick was explained to him in interviews by Osman Orek, fist Minister of Defence of the RoC, and Rauf Denktash, initially President of the Turkish Communal Chamber and later, decades-long leader of the Turkish-Cypriot community. These were conducted for his doctoral research in the early 1970s.
[125] Patrick (n 98) 85.
[126] S/6102 (n 115) para 143; Necatigil, *Cyprus Question* (n 84) 53-54; Chrysostomides (n 12) 91.
[127] Moir 'Concept of Non-International Armed Conflict' (n 105) 407.

arguments that the territory controlled by the Turkish-Cypriot leadership is negligible and cannot substantiate the existence of a NIAC lose significance.

The fifth level of administration was the 'policy-making coalition' which directed the community Island-wide, and was based at the headquarters of the Turkish-Cypriot leadership in Nicosia.[128] Regarding the community as a whole, civil affairs were directed by a General Committee of former Turkish-Cypriot ministers and MPs. The Turkish Communal Chamber legislated according to the competences it had under the RoC Constitution,[129] and RoC Turkish-Cypriot public servants retained their positions and continued working for the Turkish-Cypriot *de facto* administration, with a standard monthly salary subsidised by Turkey.[130] In terms of military affairs, Supreme Command was exercised by a General of the Turkish army, who was attached to the Turkish Embassy, and carried the *nom de guerre* 'Bozkurt'.[131] His exact relationship with the Turkish Ambassador was unclear, but Patrick purported that the General was in no way subordinate to the Ambassador.[132] Below him, each enclave was governed by a *Bayraktar*, usually a Turkish Army officer, appointed directly by the Turkish Republic's Special War Bureau.[133]

In February 1964, the ICRC delegate in Cyprus informed the ICRC Headquarters that it was TMT that gave the orders and determined the policy within the enclaves.[134] One of their aims was the promotion of 'Turkish consciousness',[135] through the imposition of movement restrictions outside the enclaves, fines and other sanctions for those associating with Greek-Cypriots, as seen in more detail below. Such information blurs the conclusions made on Turkey's involvement in Cyprus during this period as discussed in the previous Chapter.[136] By the end of 1964 and until 1968, the total number of Turkish-Cypriot 'armed elements' was estimated at

[128] Patrick (n 98) 86.
[129] RoC Constitution, art 87; Necatigil, *Cyprus Question* (n 84) 66; See section 3.3.1.
[130] S/6228 (n 1) para 210.
[131] S/7969 (n 30) para 33; 'Bozkurt' was identified by the UN as member of staff at the Turkish Embassy, who had arrived to Cyprus prior to the 1963 events. According to the UN he left the Island on 24 February 1967.
[132] Patrick (n 98) 86.
[133] Kızılyürek, *Resentment* (n 48) 600.
[134] ICRC Archive, B AG 251 049-004, Report No 3 for the period 1-15 February 1964 (16 February 1964).
[135] Varnava (n 9) 30; Niyazi Kızılyürek, 'Τα πέτρινα χρόνια των Τουρκοκυπρίων, 1964-1974: Μια προσωπική μαρτυρία' (The stone years of the Turkish-Cypriots 1964-1974: A personal testimony' 61 *Χρονικό* (26 April 2009) 14-15.
[136] See section 4.3.4.

about 12,000 men.[137] As mentioned previously, Turkish-Cypriot fighters did not wear distinctive uniforms, in part due to the RoC's policy to prohibit the import of fabric and other materials that could be used for the sewing of uniforms.[138] Nonetheless, new military clothing among the Turkish-Cypriot fighters was observed by UNFICYP in the first half of 1965,[139] whereas in June, used military uniforms of US origin, some with ranking insignia, were found among the items delivered by one of the TRC shipments to Cyprus.[140] By the end of 1965, an 'increasingly professional' organisation of the Turkish-Cypriot fighters was reported,[141] potentially enhancing the levels of 'organisation' observed.

[137] S/6102 (n 115) para 136; UNSC Report of the Secretary-General (for the period 9 December 1965 to 10 March 1966) (10 March 1966) UN Doc S/7191 paras 48-52; S/7969 (n 30) paras 34, 116.
[138] See section 4.3.2.
[139] UNSC Report of the Secretary-General (10 June 1965) UN Doc S/6426, paras 33, 87.
[140] ICRC Archive, B AG 251 049-005.02, Note 258 – Report of Activities (25 June 1965).
[141] UNSC Report of the Secretary-General (for the period 11 June to 8 December 1965) (10 December 1965) UN Doc S/7001, paras 26-29.

S/6102
English
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APPENDIX TO ANNEX II

List of prohibited materials

7 October 1964

Accumulators
Ammonium Nitrate (a)
Angle iron
Automobile spare parts
Bags
Cables (a)
Camouflage netting (a)
Cartridges, shotgun (a)
Cement
Circuit Testers (galvanometers)
Crushed metal
Crushed stone
Detonators, electrical
Exploders (a)
Explosives
Fuel in large quantities
Iron pickets
Iron poles and rods (a)
Khaki cloth (a)
Mine detectors
Radio sets (a)
Safety fuses
Sand
Steel plate, thick
Studs for boots
Sulphur
Telephones
Tents and tent material
Timber
Tyres
Wire, including barbed wire
Wire-cutters (a)
Woollen clothing (if capable of military use) (a)

Note:

(a) Additional items added to previous list.

(b) Items excluded from previous list: Paper and Printing Materials.

(c) Government reserves the right to add any other items to the list at any time.

Figure 5.1: List of prohibited materials. Source: UN Doc S/6102 (12 December 1964)

Reliable statistical data on displacement from this period has not been found for either community,[142] and existing information varies across sources. In December 1964 the UN Secretary-General reported that the population within the enclaves amounted to about 59,000 individuals, equal to 57% of the Turkish-Cypriot population,

[142] After 1960 there is no official RoC census on the total of the Turkish-Cypriot population. The first census on the population in the occupied northern territory of the Island was held in 1996. See: Mete Hatay, *Is the Turkish Cypriot Population Shrinking? An overview of the ethno-demography of Cyprus in the light of the preliminary results of the 2006 Turkish-Cypriot Census – PRIO Report 2/2007* (PRIO Cyprus 2007) 23.

based on the 1960 census.[143] Among them, there were approximately 13,600 Internally Displaced Persons (IDPs).[144] The exact number of displaced Turkish-Cypriots in total, *inside and outside* the enclaves, has not been established. However, after December 1963 UNFICYP estimated that the total number of Turkish-Cypriot IDPs could be at 25,000 individuals; 21,000 accommodated in larger Turkish-Cypriot communities inside and outside the enclaves, and 4,000 finding shelter in IDP camps located within enclaved territories.[145] Based on Patrick's research, the Turkish quarters in 72 mixed villages were completely abandoned and eight were partly abandoned, whereas 24 Turkish-Cypriot villages were completely deserted.[146] It appears that the number of IDPs fluctuated over the years, depending on political and military developments.

The remaining 45,350 Turkish-Cypriots living outside the enclaves,[147] often in areas with an originally high concentration of Turkish-Cypriots, were also isolated and faced similar practical problems to those enclaved. The process was most likely facilitated by the bi-communal Constitution, since they were not integrated in the government's administrative structure *ab initio*. Moreover, the Turkish-Cypriot *mukhtars* refused to take an oath of allegiance to the Republic, and subsequently, the government refused to recognise their authority.[148] This was further exacerbated by the new Municipal Corporations Law, passed in November 1964.[149] Eventually, the government dissociated itself from any responsibility towards their welfare, holding

[143] There is a difference of about 500 persons between the official RoC 1960 record, cited in chapter 3 and consulted here, and the UN numbers regarding the Republic's Turkish-Cypriot population. See: S/6102 (n 115) para 45; See Table 3.1.

[144] S/6102 (n 115) para 143; Though technically 'internally displaced persons' (IDPs), displaced people in Cyprus have usually been referred to as 'Refugees' in the archives but also today, since the term 'IDP' was not broadly used before the early 1990s; See: ECOSOC Analytical Report of the Secretary-General on internally displaced persons (14 February 1992) UN Doc E/CN.4/1992/23

[145] S/6102 (n 115) para 45.

[146] Patrick (n 98) 75.

[147] According to Chrysostomides 79,000 Turkish-Cypriots (65% of the community) resided outside the enclaves, but this number inflates the total number of Turkish-Cypriots beyond the official 1960 census figures, since he is in agreement with the UN number of residents within the enclaves. He cites no formal sources. One possible explanation could be that he refers to numbers after 1968 and the relaxation measures implemented by the RoC authorities then, or that the figures consulted were inaccurate, containing many double-entries, or both. A problem frequently met by the ICRC in the process of its investigation for missing persons at the time. See: Chrysostomides (n 12) 92.

[148] Patrick (n 98) 82.

[149] Municipalities Law 64/1964); Section 5.2.1 above.

the position that these Turkish-Cypriots could share strategic information with TMT and the Turkish-Cypriot leadership.

Regardless of the above argument, a subject to be addressed through criminal law where suspicions arose, it needs to be recalled that CA3 provides that 'Persons taking no active part in the hostilities […] shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria'.[150] To that, one should not add the extensive human rights provisions of the RoC Constitution.[151] Hence, it appears that the Republic failed to apply any due process vis-à-vis the protection of the rights of its Turkish-Cypriot citizens during this period. A silver-lining to the predicament of those who remained in their villages, in spite of the risks involved, was they retained relative freedom and access to their land and farms, and therefore, were self-sustained and able to participate in some limited commercial activities.

Life within the enclaves is often described as life under 'siege'.[152] As soon as violence erupted in December 1963, the RoC government imposed a series of economic restrictions to the enclaves, primarily by prohibiting certain materials from entering into the enclaves. If found at the designated checkpoints, such materials were confiscated by RoC security forces.[153] Moreover, all UN Secretary-General reports from 1964 to 1968 consistently refer to the lack of postal services in the enclaves, problems with regular access to public utilities, especially electricity and water, issues with public revenue, and the payment of social insurance benefits, such as the payment of retirement pensions, to eligible Turkish-Cypriots. Where solutions were available, politically-motivated hurdles would usually arise. For instance, where governmental postal services were accessible to Turkish-Cypriots, people would be prevented from using them by their own leaders, so as not to 'recognise' the authority of the government.[154] A parallel, non-governmental, postal network was established,[155] but in 1965 a Turkish-Cypriot man was convicted for conveying 383 letters in contravention of the privilege of the Postmaster-General.[156] In their

[150] GCs I-IV, common art 3(1).
[151] See section 3.2.3.
[152] ICRC Archive, B AG 251 049-005.02, Note 111 – Needs assessment (2 August 1964); Bryant and Hatay (n 97).
[153] S/7611 (n30) paras 125-127.
[154] Patrick (n 98) 112.
[155] ibid.
[156] Post Office Law (Capital 303), s 24(1)(a); *Mehmet Halil Hamouza* v *The Police (Criminal Appeal No. 2789)* (1965) 2 CLR 91.

judgement, the Supreme Court evaded discussing the contextual background to the case, but reduced the disproportionately high fine imposed at first instance, recognising the humanitarian issues at stake.[157]

Living conditions differed from one enclave to another, often depending on factors such as population density, soil morphology, freedom of movement, and each region's standard of living before December 1963. Between 20 and 30 July 1964, the ICRC mission organised an island-wide inquiry on the living conditions of the Turkish-Cypriot community, assessing the needs of approximately three quarters (75%) of the total Turkish-Cypriot population, in and outside the enclaves.[158] People were distinguished in five categories: (i) the 'refugees', some of whom managed to move along with their cattle, (ii) the 'unemployed', including those whose profession could practically not be exercised, such as construction and factory workers, dockers, and track drivers, (iii) dependents of dead or missing persons, (iv) the 'middle class', small in number and the only ones who could still make some purchases to cover their needs, and (v) the 'combatants', who included more or less all able men residing within the enclaves aged 17 to approximately 40 years old.[159]

A particular concern of the ICRC regarding the Turkish-Cypriot fighters, who were tasked primarily with guarding the frontiers of the enclaves, was that these men continued residing with their families, and 'naturally' sharing meals with them.[160] Varnava points out how the lack of employment within the enclaves led most able-bodied men to enlist as fighters, before conscription became compulsory for all male secondary school students (predominantly minors) and graduates.[161] This meant that it was especially difficult for the ICRC to distinguish between civilians and combatants, and therefore, to prevent any relief items reaching the combatants, who were not meant to enjoy the protections and humanitarian assistance afforded under IHL to women, children, and elderly civilians.[162] Lack of housing, inadequate infrastructure, nutrition, and access to medical services were problems that arose across regions immediately,[163] and persisted to the extent that the resulting ICRC report expressed surprise to the fact that in the ten months between December 1963 and September

[157] *Mehmet Halil Hamouza* (n 156) 92.
[158] ICRC Archive, Note 111 (n 152).
[159] ibid.
[160] ibid.
[161] Varnava (n 9) 89.
[162] ICRC Archive, Note 111 (n 152).
[163] Ibid.

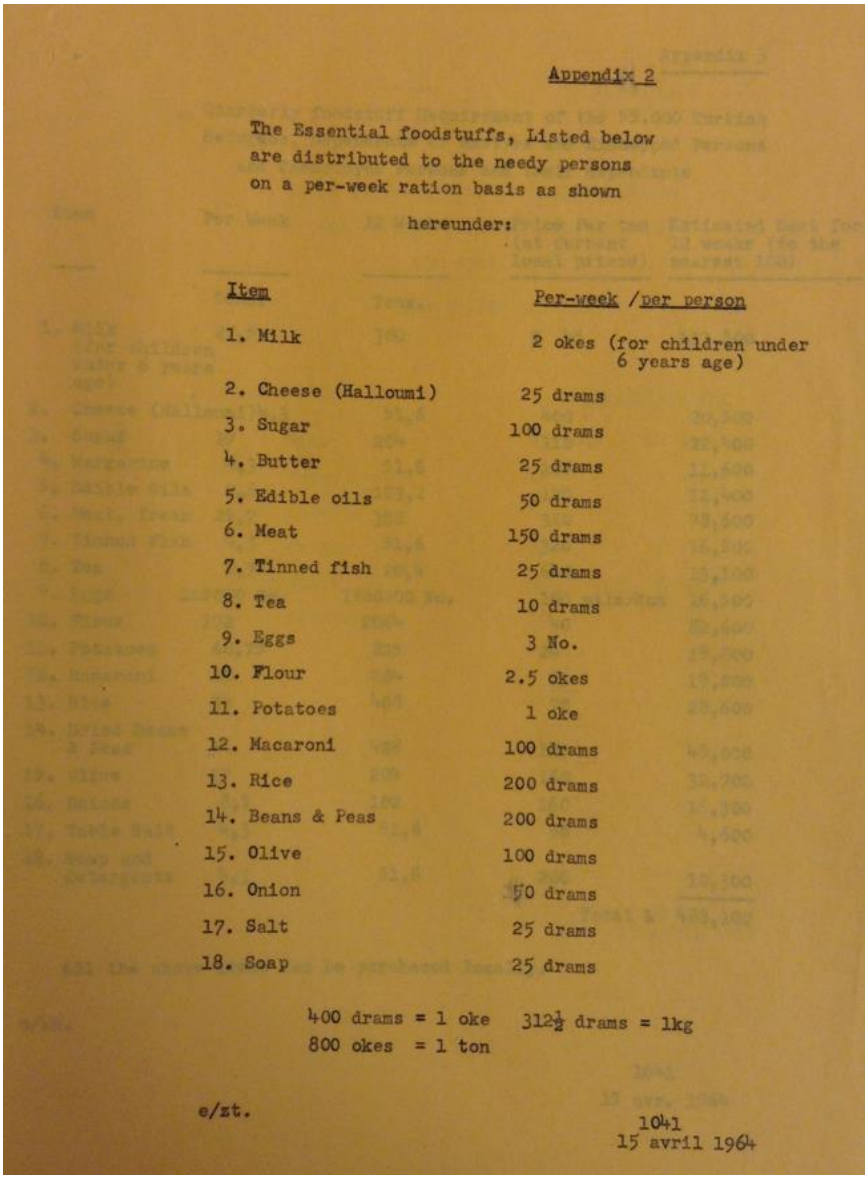
1964, there were no epidemics, serious diseases or nutritional deficiencies developed among the population.[164]

The most densely populated areas were the IDP camp of Mandres, and the Kokkina enclave. In Mandres, located north within the broader Nicosia enclave, the major issue was housing. With the government refusing to facilitate the building of permanent structures, and with the transfer of building materials being restricted, the ICRC suggested the building of traditional mad-brick houses, which offered good isolation from heat and cold. At list 30 such dwellings were built in 1965,[165] but only in June 1966 it was reported that no more IDPs stayed in tents there.[166] In Nicosia town, by late 1965 there were increased incidents of Turkish-Cypriots IDPs occupying Greek-Cypriot-owned houses and government buildings in Turkish-Cypriot-controlled and disputed areas, along the Green Line.[167] In 1966, the government started repairing or building houses, in an effort to start encouraging those displaced to return to their villages.[168] The scheme failed to attract interest, due to security concerns, but also because the Turkish-Cypriot leadership actively deterred and sanctioned members of their community from returning.[169]

In Kokkina the unhospitable, rocky, sea-side landscape made living conditions particularly difficult. With originally only 300 inhabitants,[170] after the fighting in August 1964, the already increased population almost doubled from 850 persons to 1,400.[171] Some lived in caves 'under sub-normal conditions', and daily calorie-intake was reduced by half for all.[172] Owing to its strategic position as a bridgehead to Turkey, this was one of the last areas to benefit from the government's relaxation measures.[173] In the first half of 1967, as many as 1,200 individuals in Kokkina still lived in tents, with the addition of wooden floors for the winter months being the sole improvement

[164] ICRC Archive, B AG 251 049-005.02, Note 128 – Annexed Report on Medical Situation (18 September 1964).
[165] ICRC Archive, B AG 251 049-005.02, Note 274 – Activity Report (27 September 1965).
[166] S/7350 (n 120) para 122.
[167] S/7001 (n 141) paras 69-73; ICRC Archive, B AG 251 049-005.02, No 237 – Blockade of the Turkish quarter of Nicosia (4 May 1965).
[168] S/7350 (n 120) para 123; ICRC Archive, Note 274 (n 165).
[169] ibid.
[170] UNSC Report by the Secretary-General (for the period 9 December 1967-8 March 1968) (9 March 1968) UN Doc S/8446, para 119
[171] UN Report by the Secretary-General (Addendum covering developments from 10 to 15 September 1964) UN Doc S/5950.Add. 2, para 4; ICRC Archive, B AG 251 049-005.02, Note 125 – Activities of the Delegation (15 September 1964).
[172] ibid.
[173] S/8446 (n 170) para 119.

managed.[174] Until January 1968, entry and exit from the enclave was completely restricted, and people were sustained exclusively on humanitarian relief delivered fortnightly, subject to the restrictions imposed by the RoC authorities.[175] They were exempt from any initiatives encouraging the return to 'normal conditions'.[176]



Appendix 2

The Essential foodstuffs, Listed below are distributed to the needy persons on a per-week ration basis as shown hereunder:

Item	Per-week /per person
1. Milk	2 okes (for children under 6 years age)
2. Cheese (Halloumi)	25 drams
3. Sugar	100 drams
4. Butter	25 drams
5. Edible oils	50 drams
6. Meat	150 drams
7. Tinned fish	25 drams
8. Tea	10 drams
9. Eggs	3 No.
10. Flour	2.5 okes
11. Potatoes	1 oke
12. Macaroni	100 drams
13. Rice	200 drams
14. Beans & Peas	200 drams
15. Olive	100 drams
16. Onion	50 drams
17. Salt	25 drams
18. Soap	25 drams

400 drams = 1 oke 312½ drams = 1kg
800 okes = 1 ton

e/zt.

1041
15 avril 1964

Figure 5.2: Relief items per week/per person prepared by the ICRC. Source: ICRC Archive, B AG 251 049-005.01, Note 50 – Appendix 2 (10 April 1964)

[174] S/7969 (n 30) para 143.
[175] S/6426 para (n 139) 144; S/7001 (n 141) para 27; ICRC Archive, B AG 251 049-005.02, Note 121 – Activities of the delegation (1 September 1964).
[176] S/6228 (n 1) paras 225-230; S/6426 (139) paras 121, 144-156.

Access to healthcare was another widespread problem. ICRC medical experts arrived to Cyprus to conduct a medical needs assessment and make recommendations, from late August to early September 1964.[177] Difficulties arose from the beginning, when the exact number of Turkish-Cypriot medical practitioners could not be determined, since according to government figures there were 119 Turkish-Cypriot doctors, and the figures provided by the Turkish-Cypriot representatives contained only 40.[178] Medical conditions were assessed as 'unfavourable' overall, but quality of services ranged from 'primitive', in the eyes of a Swiss expert, to 'excellent', depending on the region.[179] In urban settings there were usually hospitals accessible at various degrees. In isolated areas, the situation was challenging. In the Louroudjina enclave and the nearby villages of Kochatis and Marki for instance, no medic or nurse was identified among some 3,000 individuals, while in Lefka there were only three doctors—a General Practitioner, a Paediatrician, and a Gynaecologist—attending to a population of 6,000 persons, without access to laboratories and other basic equipment.[180]

The Greek-Cypriot doctor of Polis, continued executing his duties 'as the case was before the start of the troubles'.[181] Despite the freedom of movement in that area, Turkish-Cypriots would visit him only if escorted by the UN out of fear for disappearances, while the doctor could not visit the villages despite his good intentions, ever since he was 'welcomed' with gunfire on one such occasion.[182] As an intermediate solution, it was agreed that the doctor would provide his services once per week at the town's Turkish school. Seriously ill persons from isolated areas like this one would be transported by UNIFCYP to the nearest hospital, and in some individual cases, the government allowed exceptions to movement restrictions.[183]

In parallel, UNFICYP had developed a process of routine meetings between local leaders from both communities to alleviate tensions and find commonly-agreed solutions to daily problems, in Larnaca, Limassol and Paphos,[184] and some rural areas. The initiative was quite successful, especially in Limassol where there was no serious incident of violence for a whole year, until May 1965, when the National Guard

[177] ICRC Archive (n 164).
[178] ibid.
[179] ibid.
[180] ibid.
[181] ibid.
[182] ibid.
[183] ICRC Archive, Note 237 (n 167).
[184] S/6228 (n 1) paras 241, 246, 255, 257.

took action against fortified Turkish-Cypriot houses, and two days later a Turkish-Cypriot parade took place, with participants dressed in military uniforms.[185]

The territorial pocket-structure of the enclaves made extremely difficult the continuous supervision of regional developments by military and civil Turkish-Cypriot leadership, based in Nicosia. This is evident by the diverse living conditions and policies followed locally by both communities, and the enhanced role and certain level of discretion enjoyed by the village *mukhtars* of each community, in their local agreements with UNFICYP. In terms of fighting too, according to a testimony recorded by Kizilyurek, the Turkish-Cypriots fought organised in local groups, as indicated above, but only fought in unity in Tylliria, in August 1964.[186]

By mid-1966 the CIA reported that while 'miserable' in some areas, the overall situation in the enclaves had to a certain extent improved for the majority of their inhabitants, despite efforts by Turkey to exaggerate the Turkish-Cypriot 'plight' in diplomatic forums.[187] It estimated here that this diversity of experience from one region to another is one of the factors that allowed the decades-long vague engagement with this period on a political level. The Turkish-Cypriot leadership presented the undeniably extreme suffering experienced in some regions like Kokkina, as representative of the experience of the whole of the community. Conversely, the Greek-Cypriots have consistently played down the severity of the events preceding the 1974 Turkish invasion, even though members of their own community, albeit less in number, were also displaced and exposed to adversity. The legal significance of this state of affairs is examined in the next sub-section.

5.2.3 Legal Issues relevant to Communal Segregation

One of the main controversies in the respective narratives from this period, is the Greek-Cypriot view that the Turkish-Cypriots withdrew and abandoned their official positions and villages in pursuit of *taksim*,[188] whereas the latter maintain that the Greek-Cypriot community pursued a 'campaign of extermination against the Turkish

[185] S/6426 (n 139) paras 86-88.
[186] Kızılyürek, *Resentment* (n 48) 544.
[187] CIA, Doc No CIA-RDP79-00927A005300040003-9, Current Intelligence Weekly Special Report Cyprus: A Status Report, 27 May 1966 (Released 8 February 2008) <https://www.cia.gov/readingroom/document/cia-rdp79-00927a005300040003-9> accessed 12 May 2021 pp. 2, 5-6.
[188] PIO, *Toward a Unified Cyprus: The myth of Turkish Cypriot "Isolation"* (4th edn, PIO 2010); The publication makes no reference to the period before 1974.

Cypriots',[189] by marginalizing and oppressing the Turkish-Cypriot community, so as to declare *enosis* with Greece. Each side has built its respective narrative based on political arguments which, non-surprisingly, have often taken a legal form. As stated in the introductory chapter of the present thesis, in nearly 60 years these legal claims were never substantially put under the microscope, and instead each side accepted its legal arguments as absolute, undeniable truths. A closer look at the facts shows a rather nuanced reality, which blurs the perceived absolute parameters of the legal arguments made.

Legal argumentation, as traditionally understood, aims to determine one 'winning' and one 'losing' party. In criminal trials, circumstances that may improve or worsen the position of the accused are taken into account as mitigating or aggravating circumstances. On the geopolitical field such mechanisms are missing, and the respective community leaderships in Cyprus have taken full advantage of the gap established through the lack of a formal forum that would examine their claims. Decades-long negotiations have proved a poor substitute to address the insecurity, mistrust, and sense of injustice deepening the chasm between the two communities. The respective responsibility potentially carried by the governing Greek-Cypriot community and the insurgent Turkish-Cypriots calls for a separate assessment, since each carried different status under international law.

The hardship faced by the Turkish-Cypriot civilians was not unknown, as shown by the available archival material, and Patrick established that Turkish-Cypriots would usually leave their homes only after members of their community were killed, abducted, or harassed, expecting to return within months,[190] indicating the failure of the State to provide for the adequate protection of its citizens. The topic of 'The coercion of citizens of the Republic by Turkish terrorists to abandon their houses and their property and to be held without their consent away from them', was discussed for the first time at the House of Representatives on 30 March 1964.[191] Only three MPs took the floor, raising concerns about the 'peaceful and law-abiding

[189] ICRC Archive, B AG 200 049-005, ICRC Collection of press clippings and information bulletins, Special News Bulletin No. 9 'Kuchuk Cables UN' (22 January 1964); For relevance of 'extermination' to ICL and specifically, 'Crimes against Humanity' see: Loizou D, 'The impact of the International Criminal Court's establishment on the further and future development of the crimes within its jurisdiction' (PhD Thesis, School of Oriental and African Studies 2016) 85.

[190] Patrick (n 98) 76-78.

[191] ROCPM, Session 1963-1964, 30 March 1964, 47.

Turkish citizens',[192] recognizing the breach of human rights, as well as the duty of the RoC to protect them, and offer assistance for their safe return to their homes.[193] As commented by Kizilyurek, the Greek-Cypriot MPs on the one side tried to show empathy, but on the other they were too concerned with allocating responsibility solely to the Turkish-Cypriot 'rebels' or 'insurgents',[194] failing to engage more critically with the situation as a whole.

It needs to be acknowledged though, that an overview of plenary debates shows that space for scrutiny of the Executive in the two-party House was narrow. Similarly, ICRC reports state explicitly that moderate voices in both communities were unable to declare their views in public.[195] Varnava has also pointed out how Makarios shifted continuously between exercising pressure and moderation towards the Turkish-Cypriot community.[196] These points relate to general trends observed in the post-colonial period, on how 'charismatic nationalist statesmen' in the 1960s, would also be responsible for the level of inequality and violence that followed in many post-colonial States.[197]

Gabriella Venturini has made the general comment that when hostilities cease, it is debatable that IHL *(lex specialis)* can offer better protection than the existing human rights obligations *(lex generalis)*.[198] But to even attempt answering the question, requires a strong human rights infrastructure in the society in question, and in the predominant legal culture therein. Human rights in the 1960s did not aspire to the same level of relevance they do today. Despite the adoption of UDHR in 1948, it would take almost three decades for international lawyers to endorse human rights as an inalienable part of international law.[199] This lack of interest in human rights penetrated the long-term policy of the RoC for decades. The establishment of a Ministry of Education that replaced the Greek Communal Chamber *only*, left exposed

[192] ibid (MP Titos Fanos).
[193] ibid (MPs Georgios Santis and Titos Fanos).
[194] Kızılyürek, *Resentment* (n 48) 577.
[195] ICRC Archive, B AG 251 049-004, Note 113 - Weekly report (10 August 1964); ICRC Archive, B AG 251 049-005.02, Note 274 (n 165); PIO Press Release, Dr. Ihsan Ali Protests to General Thimayya Against the ill-treatment of moderate Turks (4 August 1964).
[196] Varnava (n 9) 109.
[197] Ibrahim J Gassama 'Bandung 1955: The Deceit and the Conceit' in Louis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Future* (CUP 2017) 126, 127.
[198] Venturini, 'Temporal Scope' (n 6) 61.
[199] Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press 2012) 178-179.

any Turkish-Cypriots who in the 1960s resisted the separatist policies of their own leadership, which had absorbed within its own ranks every function of the Turkish Communal Chamber. Then, even after 1974, Turkish-Cypriots who refused to relocate to the Turkish-occupied north of the Island continued to be marginalised, becoming virtually invisible to the mainstream society, and deprived of basic civil rights, like the right to vote, for decades.[200] It is in this regard that an examination of the law completely detached from the dominant social realities fails to uncover subtle prejudices that persist within the legal system.

As indicated through the archives, it seems that the RoC government relied on one other major factor in justifying its overall disposition towards the Turkish-Cypriot community. This was no other than the oppression of the members of the Turkish-Cypriot community by their very own leadership, as shown in a letter from Makarios to UN Secretary-General's Special Representative in November 1964.[201] Therein Makarios included a list of sanctions imposed by the Turkish-Cypriot leadership on those residing in the enclaves if, for example, they were seen conversing or entering into negotiations with Greek-Cypriots, appeared before 'Greek Cypriot Courts', bought goods from Greek-Cypriots, or entered the 'Greek Cypriot sector', for reason other than 'passing through', including 'for promenade', 'amusement' or 'friendly association with Greek Cypriots'.[202]

Admittedly, such detailed list has not been found elsewhere in the material consulted for this research. However, ICRC reports from June 1965 did state that the Turkish-Cypriots were subjected to 'menaces of all kinds' from within their own community including fines and deprivation of assistance, expressing the conviction that the situation would have been very different had the Turkish-Cypriot politicians allowed people to return to their ordinary work.[203] In the same report, the ICRC delegate expressed the view that had Makarios managed to exercise control over the Greek-Cypriot irregulars, who were equally feared by Greek-Cypriot civilians, members of both communities would have been encouraged to restart working

[200] *Aziz v Cyprus* (Application No 69949/01), Judgment, 22 September 2004.
[201] S/6102 (n 115) Annex III – Letter dated 12 November 1964 from President Makarios to the Special Representative, pp 8-9.
[202] ibid 9.
[203] ICRC Archive, B AG 251 049-004, Final report by Max Stalder (6 June 1965) p 5; B AG 251 049-005.02, Note 258 – Activity Report (25 June 1965); See also: B AG 251 049-005.02, Note 268 – Activity Report (25 July 1965).

together.[204] Similar claims were made by the UN Secretary-General during the same month, with reference to a 'deliberate policy of self-segregation'.[205]

As already mentioned, the position of the Turkish-Cypriot community is that life in the enclaves was life under 'siege'. Like 'war', 'siege' is not an exclusively legal term. It does however carry, like 'enclaves' and many others, legal relevance that in a legal context ought to be examined. A siege is an ancient method of warfare, an 'operational strategy',[206] which while lawful *per se*, attaches to rules of conduct which aim at protecting the civilian population within a besieged area, from either 'bombardment' or 'starvation'.[207] It is evident from the above that the RoC government had, by virtue of its sovereign rights over its territory, extensive control over various elements which directly impacted daily life within the enclaves, this, however, does not answer the question of whether this was a 'siege' in legal terms.

On 5 August 1964 for instance, the water supply was cut off for days in the Turkish-Cypriot quarter of Paphos,[208] during the days of the Tylliria Air Raids.[209] This is an act of great severity, considering the level of heat along the Mediterranean in August, but also because it can easily be interpreted as a 'reprisal' against the civilian population.[210] While 'reprisals' are unlawful, however, cutting off the drinking water from a besieged town according to *Oppenheim's International Law* was not forbidden, but the poisoning of water supplies was,[211] presumed here due to the additional threat it constitutes for human lives. Situations like this strongly support criticisms regarding IHL's ambiguity, and how this can be exploited and interpreted either way in critical situations. Days later Makarios explained that this was due to piling unpaid utility bills

[204] ICRC Archive, B AG 251 049-004 (n 203).
[205] S/6426 (n 139) para 106.
[206] James Kraska, 'Siege' *MPEPIL* (December 2009) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e407> accessed 19 August 2021 paras 1, 4-8.
[207] ibid paras 1, 9; Oppenheim (n 3) 417.
[208] ICRC Archive, B AG 251 049-004 (n 195).
[209] UNA, S-0869-0003-08-00001, *Items in Peace-keeping operations, Cyprus - Background notes on reports of build-up of arms and troops in Cyprus, July 1964*, Summary of Military Action in Cyprus, 5-8 August 1964, 14 July 1964 (Released 6 June 2006) <https://search.archives.un.org/background-notes-on-reports-of-build-up-of-arms-and-troops-in-cyprus-july-1965> accessed 28 September 2021 para 7.
[210] GCs I-IV, common art 3(1)(b); See section 4.3.1.
[211] Oppenheim (n 3) 419.

by the Turkish-Cypriot community, which the UN eventually took responsibility to settle.[212]

In addition, Patrick recorded that irregulars on both sides would sometimes deliberately damage equipment across the water network, but it appeared that neither electricity nor water could be completely cut off by the government, as that would have disturbed the network for Greek-Cypriot quarters and villages too.[213] The same author mentions that on one occasion the government had refused to repair Turkish-Cypriot telephones.[214] On another occasion, the RoC MFA rejected the delivery of 400 tons of flour as humanitarian relief, because the harvest season was about to finish and 'the Turks [were] not missing corn'.[215] Nevertheless, the ICRC was careful to point out the absurdity of the situation on both sides, reporting in the same document that the Turkish-Cypriot leadership had asked for a delivery of 40 Kg of typhoid vaccines, when the half of that amount would have sufficed to vaccinate the entire island population.[216]

The very term 'besieged' was used by the ICRC with reference to the '"besieged" Turkish quarters' in August 1964,[217] and the UN Secretary-General with reference to the temporary siege of the Turkish School in Polis (without quotation marks), earlier that year.[218] Moreover, in the aftermath of the Tylliria battle, in September 1964, the Secretary-General stated that the '*economic blockade*' had led to 'serious shortages of many essential products in the Turkish Cypriot sector',[219] concluding:

> [It] seems warranted that the economic restrictions being imposed against the Turkish communit[y] in Cyprus, which in some instances have been so severe as to *amount to veritable siege*, indicate that the Government of Cyprus seeks

[212] ICRC Archive, B AG 251 049-005.02, UN Press Release (Unofficial record, 18 August 1964).
[213] Patrick (n 98) 111.
[214] ibid.
[215] ICRC Archive, B AG 251 049-004, Note 103 – Activities of the delegation (6 July 1964).
[216] Ibid.
[217] ICRC Archive, B AG 251 049-005.02 (n 152) (quotations in the original)
[218] UNSC Report by the Secretary-General to the Security Council on the United Nations Operation in Cyprus, for the Period 26 April to 8 June 1964 (15 June 1964) UN Doc S/5764, para 35.
[219] UNSC Report by the Secretary-General (10 September 1964) UN Doc S/5950, para 99 (emphasis added).

> to force a potential solution by economic pressure as a substitute for military action.[220]

Some relaxation of the strict economic restrictions observed in the summer of 1964 were applied shortly before the above report was published.[221]

It appears that a policy of 'blockade' was sometimes used on an ad hoc basis, as indicated through an ICRC report of 1965, which evaluates that a 'blockade' of the Turkish-Cypriot sector in Nicosia, was used as 'collective punishment',[222] and it was of an 'essentially political' (i.e not military) character.[223] A siege is distinguished from a blockade, which is a separate method of warfare, legally applying only to IACs,[224] with the objective to prevent enemy or neutral vessels and/or aircraft from entering or exiting areas under the control of an enemy State. Thus, the legal framework does not fit exactly the Cypriot context, and the various reports do not employ the terms of 'siege' and 'blockade' in the narrow legal sense of the terms. Nevertheless, the examples mentioned above offer clarity on some of the most significant oppressive practices employed.

Lastly, if agreed that the violence in Cyprus after 1963 amounted to a NIAC, both the RoC and the Turkish-Cypriot leadership were bound internationally to treat everyone under their respective control 'humanely, without any adverse distinction'.[225] The only remaining caveat, not directly addressed in the thesis so far, is that for CA3 to apply to the Turkish-Cypriot leadership and fighters they had to be identified as 'combatants'.[226] Admittedly, the meaning of the term 'combatants' is more clearly, and had been originally reserved, for IACs.[227] However, after CA3 was adopted in 1949, in the 1960 Commentary on GCIII, Pictet did mention that term was used also with

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[220] ibid para 222 (emphasis added).
[221] ibid para 224.
[222] The legality of 'collective punishment' has already been discussed with regard to the British practice during the EOKA emergency. See section 2.4.2.
[223] ICRC Archive, B AG 251 049-005.02 (n 167).
[224] Wolff Heintschel von Heinegg,'Blockade', *MPEPIL* (October 2015) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e252?rskey=F1cJzy&result=1&prd=OPIL> accessed 20 August 2021 para 25.
[225] GC I-IV, common art 3(1).
[226] Knut Ipsen, 'Combatants and Non-combatants' in Dieter Fleck (ed) *The Handbook of Humanitarian Law in Armed Conflicts* (2nd ed, OUP 2008) 79; See also: Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law Vol I: Practice* (CUP 2005) Rule 3, p 12-13.
[227] Hague Regulations, art 3; Ipsen (n 226) 84-96.

reference to members of irregular armed forces, without prejudice to their non-official status under PIL.[228]

Traditionally, corresponding to the three levels of 'civil war', the members of irregular armed forces would be termed 'rebels', 'insurgents' or 'belligerents', and as already seen,[229] if the irregular forces were recognised as 'belligerents', then that would give the right to another State to intervene in the 'civil war' on their side. Thus, when Chrysostomides and Emilianides, held the view that the Turkish-Cypriot fighters were not 'belligerents',[230] they had in mind that the Turkish-Cypriot fighters had no recognised international status under PIL, and therefore, Turkey (or any other State for that matter) had no right to intervene. As seen in the previous Chapter however, Zenon Rossides referred before the UNSC to the Turkish-Cypriot fighters as 'rebels',[231] implying a 'rebellion', whereas the Supreme Court had referred to them as 'insurgents',[232] implying an 'insurgency'. Under the 1949 Geneva rules however, the distinction between the three is unnecessary, and in fact it appears that the 'label' attached to the forces fighting the government, is of minimal importance among the other indicators that fall under the two criteria of 'organisation' and 'intensity'. It is known after all that States have been traditionally reluctant to recognise 'belligerent' status exactly for the purposes of preventing external intervention. Therefore, by foregoing the distinction under CA3 was necessary to ensure that the 'minimum standards of humanity' CA3 aims to protect would be complied with without the need for any technical formalities.[233]

Having established that most likely there was a NIAC and that Turkish-Cypriot fighters can be seen as combatants under IHL, the question of the RoC's responsibility under IHL in general, and CA3 in particular, remains. Thus, firstly, the RoC government was bound to protect anyone on its territory under human rights law, according to its Constitution and the ECHR, at the very least. Secondly, both the RoC and the Turkish-Cypriot leadership had a responsibility not to act in a way which contravened the minimum protections provided for by CA3. Individuals on both sides who committed unlawful killings, rapes or other crimes were subject to the domestic

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[228] Jean Pictet, *Commentary on the Third Geneva Convention relative to the Treatment of Prisoners of War* (ICRC 1960) 44.
[229] See section 2.3.3.
[230] Chrysostomides (n 12) 92-93; Emilianides, (n 41) 63 fn 100.
[231] UNSC Records, S/PV.1142 (8 August 1964); See section 4.3.3.
[232] *Mustafa Ibrahim and others* (n 88) 225; See section 4.4.1.
[233] See for example the (non-legal) term 'unlawful combatants' employed after 11 September 2001. Ipsen (n 226) 83.

criminal law of the RoC. There is evidence in the literature that the RoC government was aware of these distinctions between the two communities. The asymmetry caused between the responsibility of the RoC and that of the Turkish-Cypriot leadership under IHRL, for instance, did have an impact on the issue of the settlement of the Cyprus Question, and it had caused a delay in the Republic's ratification of a number of IHRL instruments, including article 25 ECHR and Optional Protocol to the ICCPR 1966, which allow for individual petitions before these bodies.[234]

All in all, the leaderships of both communities contributed to the adversity experienced by the civilian population. The Turkish-Cypriots as a non-state entity under the limited provisions of domestic criminal law and CA3, provided one accepts that the criteria for a NIAC are satisfied. The Greek-Cypriot, leadership given their position as the recognised representatives of the State of the RoC, were potentially liable under a broader spectrum of laws, including domestic and IHRL, CA3 and the rules on State Responsibility. One cannot neglect, nevertheless, that a completely separate assessment along similar lines, and taking into account the three treaties establishing the RoC, would be needed for the acts (and omissions) of each of the Guarantor Powers.

5.2.4 The Ratification of the Geneva Conventions I-IV 1949

At this point we need to revisit the question of the ratification of the 1949 GCs which, as seen, was not completed upon the Republic's acceding to the treaties in 1962. As mentioned in Chapter 4,[235] on 27 December 1963, the ICRC made an offer of service to the RoC MFA, with no reference to a legal basis.[236] And yet, during the most violent months of 1964 the ICRC made continuous efforts to promote compliance with the provisions of the GCs.[237]

In the detailed report accounting for the damages caused by the August 1964 battles and air raids in the Tylliria region, the ICRC delegate had mentioned that in a meeting with Stella Soulioti, RoC Minister of Justice and President of CYBRC, he was informed of the government's decision to adhere to the GCs, and that the Minister had

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[234] Lawrence Hargrove, Andrew Jacovides, Metin Tamkoç and others 'Cyprus: International Law and the Prospects for Settlement' (1984) 78 *Proceedings of the Annual Meeting (American Society of International Law* 107, 113, 128; eg *Karabardak and others v Cyprus* (Application No 76575/01), Decision (Admissibility) (ECtHR) 22 October 2002.

[235] See section 4.2.2.

[236] ICRC Archive, B AG 251 049-009, Telegram to RoC MFA, Offer of Service (27 December 1963).

[237] See section 4.3.3.

also proposed the establishment of a Cyprus Red Cross Society.[238] The existence of a National Society is an issue altogether separate to the 1949 GCs, since the former is a non-governmental organisation established under domestic law with an enhanced 'auxiliary' role 'to the public authorities in the humanitarian field'.[239] The GCs on the other hand, like any treaty, are governed by the international law of treaties, and in each State by those rules of domestic constitutional law governing the relationship between domestic and international law.[240]

The ratification bill on the 1949 GCs came up for the first time on the agenda of the House of Representatives Plenary on 3 September 1964,[241] weeks after violence reached a climax at Tylliria. According to the minutes, however, it was not yet possible to present the bill for debate and voting since it was not fully prepared.[242] The bill was once again on the House's agenda on 2 October 1964, without progressing.[243] An interim Report was eventually presented to the House of Representatives plenary on 7 January 1965, following meetings of the Parliamentary Committees on Foreign Affairs and on Legal Affairs, joined by a representative of the MFA. It was decided to postpone the preparation of the final report, however, to allow time for the RoC Attorney-General to give clarifications 'on points of law'.[244] The bill was eventually passed into law, without any comments or further information on the process 18 months later, on 7 July 1966.[245] Subsequently, the RoC submitted an Instrument of Ratification to the Federal Political Department of the Swiss Political Department on 18 July 1966, which informed the ICRC accordingly.[246]

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[238] ICRC Archive, B AG 251 049-005.02, Consequences of the battles of 6, 7, 8, 9 August 1964 (2 September 1964); ICRC Archive, B AG 251 049-005.02, Note 264 – Concerning the Cyprus Red Cross and the establishment of a national Red Cross (12 July 1965); Ο περί Κυπριακού Ερυθρού Σταυρού Νόμος (39/1967) (Law on the establishment of a Cyprus Red Cross Society); RoC Official Gazette, 588 (21 July 1967).

[239] Statutes of the International Red Cross and Red Crescent Movement 1986, art 4(3); See: ICRC, *Handbook of the International Red Cross and Red Crescent Movement* (14th edn, ICRC 2008)

[240] See section 3.2.2.

[241] ROCPM, Session 1964-1965, 3 September 1964, p 193.

[242] ibid.

[243] ROCPM, Session 1964-1965, 2 October 1964, p 215.

[244] ROCPM, Session 1964-1965, 7 January 1965, p 4.

[245] ROCPM, Session 1965-1966, 7 July 1966, pp 11-13; Ο περί των Συνθηκών της Γενεύης Κυρωτικός Νόμος του 1966 (Νόμος 40/1966) (Law on the ratification of the Geneva Conventions, Law no 40/1966), RoC Official Gazette, 510 (18 July 1966).

[246] ICRC Archive, B AG 041-088, Copy of Instrument of Ratification by RoC MFA (18 July 1966).

The reception of the Instrument of Ratification seven months after the ICRC delegation had already withdrawn from Cyprus was puzzling for its recipients since the RoC had already *acceded* to the Conventions, according to their records, in 1962.[247] Back then, the RoC had informed that its accession was subject to ratification under article 169 of the RoC Constitution.[248] The Swiss Political Department therefore, inquired with the ICRC whether they believed the date of accession should be revised.[249] The ICRC confirmed they considered the RoC bound by the Conventions as of 23 May 1962, to avoid 'provocation of prejudicial interpretations regarding the application of the Conventions'.[250] It appears that lack of clarity persisted, however, since a reply by Jean Pictet himself, in his capacity as ICRC Director-General, reiterated the fact that the original position of the ICRC remained that the RoC had acceded in May 1962.[251] The letter to which Pictet was replying to was not available in the file consulted, but it was sent out by the Federal Political Department on 4 November 1966.[252] After this exchange the issue was considered settled.

There is a legal rule that supports the position of the ICRC. According to article 11 VCLT, the RoC had already consented to be bound by the 1949 GCs, since that article recognises accession and ratification as two out of a number of different ways through which a State can express its consent to be bound by a treaty. According to McNair, States are under no legal obligation to ratify a treaty, unless this is demanded by the treaty itself,[253] as the case is with the 1949 GCs.[254] Nevertheless, not ratifying a treaty in due course following its signature by a government, could be a 'breach of courtesy and "bad business"', if no intervening circumstances justify the delay.[255] This could have been argued in the case of the RoC, but the argument is weakened by the fact that in May 1962 mass violence had not yet arisen.

[247] See section 3.2.2.
[248] ICRC Archive, B AG 041-088, Copy of Instrument of Accession of RoC (3 May 1962).
[249] ICRC Archive, B AG 041-088, Letter of Swiss Political Department to ICRC President, 1 September 1966).
[250] ICRC Archive, B AG 041-088, Letter from ICRC to Swiss Political Department, Division of International Organisations (3 October 1966).
[251] ICRC Archive, B AG 041-088, Letter from ICRC Director-General to Swiss Political Department (15 November 1966).
[252] ibid.
[253] Arnold D McNair, *The Law of Treaties* (Reprinted 2003, OUP 1961) 135, 204.
[254] GCs I-IV, arts 57/56/137/152.
[255] McNair (n 253) 135.

The 1949 GCs also provide that 'accessions' 'take effect six months after the date on which [accessions] are received', by the Swiss Political Department.[256] Thus, what the lack of ratification prevented in practice was the applicability of the GCs at the domestic level. Considering, for instance, once again the facts of *Mustafa Ibrahim and others*,[257] had the RoC ratified the 1949 GCs shortly after it had acceded to them in 1962, then Counsel for the Respondents in that case could have argued, in addition to the three preliminary objections that had actually been raised, that: i) the ongoing situation in Cyprus was a NIAC under CA3, ii) his clients had to be afforded 'all the judicial guarantees which are recognized as indispensable by civilized peoples';[258] and, iii) that Law 33/1964[259] failed to provide for those guarantees. It would then have been for the Prosecution to rebut that argument, potentially once again through the DoN. Nonetheless, a more substantial engagement of the Court with the ongoing armed violence would be required, the point here being that had arguments by either side to the conflict been raised on the basis of CA3 *domestically*, today, we would probably be debating completely different legal issues, and potentially in a different factual context altogether.

5.3 A Shift in Diplomatic and Military Balances

In parallel to the new social, political and legal realities that took shape on Cyprus from December 1963 onwards, the diplomatic process from September 1964 barely progressed. Following the publication of a report by first UN Mediator for Cyprus, Dr Galo Plaza, in March 1965, a new diplomatic rift between all parties involved occurred, leading to a 'convenient negotiating stalemate'.[260] In the period that followed, the RoC increased its military expenditure and faced internal problems concerning the High Command of the National Guard. In terms of the enclaves, as seen above, the situation remained stable, but always volatile.

From an IHL perspective, shortly after the publication of the Galo Plaza report, the ICRC delegation decided that its presence was no longer needed on the Island. The ICRC was satisfied that UNFICYP was capable of handling the humanitarian needs on the ground,[261] albeit research has shown that UNFICYP's 'improvised

[256] GCs I-IV, arts 61/60/140/156.
[257] *Mustafa Ibrahim and others* (n 88); Section 4.4.1.
[258] GCs I-IV, common art 3(1)(d); Pictet, *Commentary GCI 1952* (n 104) 1952 p 54; ICRC, *Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (CUP 2016) paras 678-688.
[259] Law 33/1964 (n 87).
[260] Varnava (n 9) 95-125.
[261] ICRC Archive, B AG 251 049-005.02, Note 274 (n 165) pp 4-5.

humanitarian efforts' were not always effective, given the peacekeepers' lack of resources and training on such matters.[262] Tension had not completely dissolved and shooting incidents still took place occasionally. This section aims to illustrate how at this juncture, diplomacy came to dominate any international legal considerations, despite the consistency of humanitarian needs and the continued relevance of IHL.

5.3.1 Diplomacy over Law

Dr Galo Plaza Lasso, was appointed Mediator for Cyprus under UNSC Resolution 186,[263] by UN Secretary-General U Thant on 16 September 1964, soon after the ceasefire agreement of August 1964, following the events in Tylliria.[264] A former President of Ecuador (1948-1952), Plaza was already familiar with the realities in Cyprus, as at the time of appointment he had already been holding the position of UN Secretary-General Special Representative in Cyprus, from 11 May 1964.[265] Following the first six months of his mission, during which he completed three rounds of consultations among Nicosia, Ankara, Athens and London,[266] on 26 March 1965 he submitted an ill-received report to U Thant and the UNSC, which was meant to determine the diplomatic atmosphere for the following months, and preoccupy analysists for decades.[267]

The report is a valuable historical document due to its lengthy and comprehensive description of the situation on the Island. Starting with an extensive description of the background information to the violence from the London-Zurich Agreements up to 1965, it then proceeded with describing the general atmosphere on the Island, with an insightful reference to a 'physical' and a 'psychological' Green Line, which held people divided.[268] Furthermore, the report offered a detailed overview of the respective positions held by each community and the Guarantor Powers,[269] and addressed the issue of self-determination, by reference to the unsatisfactory – for the Greek-Cypriots – arrangements under the 1960 treaties,[270] and the controversy over

[262] Margot Tudor, 'Blue Helmet Bureaucrats: UN Peacekeeping Missions and the Formation of the Post-Colonial International Order, 1956-1971' (PhD Thesis, Faculty of Humanities, University of Manchester, 2020) 178-179.
[263] UNSC Res 186 (4 March 1964) para 7.
[264] UNSC Report of the United Nations Mediator on Cyprus to the Secretary-General (Galo Plaza Report) (26 March 1965) UN Doc S/6253, para 1.
[265] S/5764 (n 218) para 2.
[266] ibid paras 5-11.
[267] Galo Plaza Report (n 264) paras 15-60.
[268] ibid paras 50-51.
[269] ibid paras 61-112.
[270] ibid paras 132-148.

the future constitutional architecture of the State. A unitary structure supported by the Greek-Cypriots, against a federal structure supported by the Turkish-Cypriot community.[271] The report also elaborated on the importance of offering adequate protection to individual and minority rights,[272] and the 'inevitably' relevant question of guarantees for any potential settlement agreed upon.[273]

At no point did the report undertake a robust legal analysis or refers to laws other than in respect of the legal points of contestation between the two communities. Neither the report qualified the level of violence as an 'armed conflict', international or non-international, nor it provided for a relevant legal framework that was applicable to the ongoing situation. One minor exception here was Plaza's identification of the protection of human rights and fundamental freedoms, 'as having the highest relevance to any settlement of the Cyprus problem',[274] invoking directly the UN Charter, without reference to any concrete provisions,[275] and referring passim to the 1948 UDHR.[276]

This gives us the opportunity to reflect more extensively on the role of diplomacy in cases of long-term armed violence and frozen conflicts. A term traced back to 1796 and British parliamentarian Edmund Burke, diplomacy consists of methods of communication between State officials, designed for the promotion of foreign policy objectives, by direct or tacit adjustment.[277] Diplomacy enables States to pursue their interests 'without resort to *force, propaganda, or law*,'[278] and its *raison d'être* derives from issues relevant to hostility, security, and the maintenance of relations with a 'potential adversary'.[279] This is not to say that the law has absolutely no role to play. As evidenced through references to U Thant's reports on Cyprus to the UNSC, the law's role was simply rather subtle.[280] This was the result of a 'dual track' approach inherited by U Thant from his predecessor Dag Hammarskjold, which was both 'legalistic' and 'political', and as a result tolerated extensive 'flexibility in

[271] ibid paras 149-157.
[272] ibid paras 158-165.
[273] ibid paras 166-168.
[274] ibid para 158.
[275] ibid paras 158-162.
[276] ibid paras 93 and 153.
[277] Geoff R Berridge, *Diplomacy: Theory and Practice* (4th edn, Palgrave Macmillan 2010) 1
[278] ibid (emphasis added).
[279] Tom Farer, 'Diplomacy and International Law' in Andrew F Cooper, Jorge Heine, Ramesh Thakur (eds), *The Oxford Handbook of Modern Diplomacy* (OUP 2013) 493.
[280] eg S/5764 (n 218) para 117; See section 4.3.1; See also: Martti Koskenniemi, 'The Place of Law in Collective Security' (1996) 17(2) *Michigan Journal of International Law* 455.

diplomatic negotiations and actual policy implementation'.[281] An approach studied in more detail by Abi-Saab in the context of the Congo Crisis of the early 1960s.[282]

Mediation and the use of the UN Secretary-General's good offices is an integral part of the negotiations on the Cyprus Question.[283] Overall, it is defined as a 'special kind' of negotiation, used in pursuit of a settlement during any dispute, including 'international conflict' and 'civil war'.[284] Mediation is a recognised pacific dispute settlement mechanism under the UN Charter,[285] whose significance in war had already been recognised under the 1899 and 1907 Hague Conventions.[286] 'Good offices' is not listed under the Charter, but it can be considered an 'attenuated form of mediation',[287] where the party mandated to offer 'good offices', in Cyprus this is the UN Secretary-General through a Representative, are tasked with encouraging the parties to the dispute to resume or initiate negotiations, without themselves actually participating in them.[288]

From an IR perspective, it is known that the law comes *at the end of a negotiatory process* to seal the deal, through the creation of international obligations for each party,[289] as opposed to playing a determining role throughout the process. At the same time, both lawyers and IR experts have recognised that they may employ a variety of terms to describe what is essentially the same thing, depending on the

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[281] Umut Özsu, 'Organizing Internationally: Georges Abi-Saab, the Congo Crisis and the Decolonization of the United Nations' (2020) 31(2) *EJIL* 601, 603.
[282] ibid; Georges Abi-Saab, *The United Nations Operation in the Congo 1960-1964* (OUP 1978).
[283] UNSC Res 186 (4 March 1964) para 7; Polyviou, *Conflict and Negotiation* (n 9); Oliver P Richmond, 'Ethno-Nationalism, Sovereignty and Negotiating in the Cyprus Conflict: Obstacles to a Settlement' (1999) 35(3) *Middle Eastern Studies* 42; Zenon Stavrinides, 'The Intercommunal Negotiations in Cyprus: Searching for Two One-Sided 'Just' Solutions (2014) 26(2) *The Cyprus Review* 145.
[284] Berridge (n 277) 235; J Michael Greig 'Mediation and Civil War' (*Oxford Bibliographies*, 10 January 2019) <https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0207.xml> accessed 20 December 2021.
[285] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119 (UN Charter), art 33(1); Christian Tomuchat, 'Article 33' in Bruno Simma and others (eds), *The Oxford Commentary on the Charter of the United Nations Vol 1* (3rd edn, OUP 2012) 1069, 1078.
[286] Hague Convention (I) for the Pacific Settlement of International Disputes 1899 (adopted 29 July 1899, entered into force 4 September 1900) <https://avalon.law.yale.edu/19th_century/hague01.asp> accessed 20 December 2021, arts 2-8; Oppenheim (n 3) 8-11.
[287] Tomuchat (n 285) 1078.
[288] ibid 1079.
[289] Berridge (n 277) 71.

priorities of each discipline. McNair admitted that the variety in terminology is 'confusing, often inconsistent, unscientific, and in a perpetual state of flux',[290] contradicting any law-oriented notions of certainty.[291] On the side, Berridge supported that the appropriate label or level of formality in fact depends on the objectives of the negotiating parties. For example, in some instances an informal agreement may be desirable between the parties, where ratification, and therefore domestic scrutiny by the Legislature, is better avoided, by avoiding also in this way the unwanted publicity which usually attaches to Parliamentary debate.[292] If anything, such lack of transparency can be undesirable, if not frustrating. Hence, what for lawyers constitutes the core of the legal profession, the detailed study, scrutiny and cross-referencing of legal texts, for IR experts and diplomats is a factor that can be emphasised or played down, depending on the circumstances surrounding a negotiation process and the objectives at hand.

The present thesis has sought to offer such clarifications on various instances, dominant among them being the juxtaposition of the legally-defined IAC/NIAC dichotomy, and that of the daily usage of terms like war/civil war, and civil war's sub-classifications.[293] This brief parenthesis on the disposition of lawyers and diplomats towards language and legally-charged terminology is more than just a matter of semantics. The aim is to show how the different priorities between diplomacy and law, the former defined as the pursuit of State interests 'without resort to force, propaganda, or law,'[294] has contributed to our piecemeal, almost abstract, understanding of the Cyprus Question today. It would appear as if every round of negotiation, more abstract and detached from the events in question from the previous, has been adding an additional layer of fog over the details that make all the difference when a legal assessment is underway.

Closing the parenthesis, despite its carefully construed language and comprehensive analysis of all events, parties on both sides of the conflict found grounds for dissatisfaction. Initially, the RoC government was positive, since the

[290] McNair (n 235) 22 citing Research in International Law on Treaties (Harvard Research), Supplement to 29 *AJIL* (October 1935) 712.
[291] McNair (n 235) 22.
[292] Berridge (n 277) 72-76.
[293] See section 2.3.3.
[294] Berridge (n 277) 1 (emphasis added); See also from post-1974 perspective: William M Dobell, 'Policy or Law for Cyprus?' (1976) 31(1) *International Journal: Canada's Journal of Global Policy Analysis* 146.

report embraced the sovereignty and independence of the RoC,[295] referred to a 'majority' and a 'minority' with an emphasis to the protection of 'minority rights',[296] and suggested changes to the form of guarantees provided under the ToG.[297] On 12 April 1965, however, the RoC government notified the UN that they could not support the Mediator's view on self-determination,[298] which effectively suggested the abandonment of any aspirations for *enosis.*[299] The Greek government was not so explicit, and though positive towards the report, Greece stressed that they would 'respect the right of the people of Cyprus to decide freely about their own future'.[300] The report did provoke a negative reaction by Turkey, who complained that the Mediator had overstepped his mandate on the basis that he had expressed views and made suggestions concerning the substance of the problem.[301]

The controversy has been analysed extensively across the literature. According to Varnava's study, one of Turkey's core disagreements was the suggestion on prioritising inter-communal negotiations, since they held the view that the Cyprus issue should remain a Greco-Turkish affair primarily.[302] According to Necatigil, the proposal of guaranteeing the minority rights of the Turkish-Cypriots through an appointed UN Commissioner, was also not acceptable,[303] obviously conflicting with the long-term position of the Turkish-Cypriot leadership, that they would not accept the reduction of the status of the 'community' into that of a 'minority group'.[304] Contrary to the highly-legalistic diplomatic debates in London and New York

[295] Galo Plaza Report (n 264) paras 132-133.
[296] ibid paras 155, 158-165.
[297] ibid paras 166-168.
[298] UNSC Note Verbale from Permanent Representative of Cyprus to Secretary-General (12 April 1965) UN Doc S/6275/Add.1, p 2.
[299] Varnava (n 9) 37-38.
[300] UNSC Letter from MFA of Greece to Secretary General (8 April 1965) UN Doc S/6280 p 2, para 6.
[301] UNSC Exchange of Letters between the Permanent Representative of Turkey and the Secretary-General regarding the Report of the United Nations Mediator on Cyprus (2 April 1965) UN Doc S/6267; UNSC Exchange of Letters between the Permanent Representative of Turkey and the Secretary-General regarding the Report of the United Nations Mediator on Cyprus (7 April 1965) UN Doc S/6267/Add.1.
[302] For a historical analysis see: Varnava (n 9) 23-42.
[303] Galo Plaza Report (n 264) para 164; On the use of UN Commissioners in dispute settlement in the mid-twentieth century see: James N. Hyde, 'The United Nations and the Peaceful Adjustment of Disputes' (1953) 25(2) *Proceedings of the Academy of Political Science* 80.
[304] UNSC The question of Cyprus - Note by the Secretary-General (9 April 1965) UN Doc S/6279.

in early 1964,[305] it would appear that the 'uneasy truce' observed as of September 1964 made strong legal expertise hardly relevant, or in fact desirable, six months later.

Despite its misgivings, the Galo Plaza report gave renewed confidence to the RoC government which, according to ICRC delegate Ruff, was no longer motivated to 'come across as conciliatory', was 'as armed as ever', and believed that time worked in their favour.[306] By October 1965, Makarios submitted to the UN Secretary-General a Declaration, stating the Cypriot government's intention to adopt a Code of Fundamental Rights and Freedoms in accordance with the UDHR, to ensure the autonomy of all 'minority communities'.[307] To let them participate in Parliament 'in accordance with the recommendation of the United Nations Mediator', and to accept 'for a reasonably transitional period', 'the presence in Cyprus of a United Nations Commissioner', to observe and advise on Human Rights.[308] The Declaration was accompanied by a Memorandum,[309] containing a chart of Fundamental Rights and Freedoms, with additional protection for 'groups of individuals who possess characteristics differentiating them from the main body of the people of Cyprus – whether they be termed minorities, ethnic groups or communities'.[310]

Not everyone was convinced of the good intentions behind the above proposal, some arguing that it was a strategic move to attract UNGA support in the Assembly's forthcoming annual session.[311] Makarios 'Charter of Minority Rights' was circulated to the UNGA on 11 October 1965. The document was not well-received by the Turkish-Cypriot leadership, and in a letter Kutchuk communicated to the UN Secretary-General, he was supported by a long list of Turkish-Cypriot associations.[312] The UNGA's 20th Session was a major test for the international integrity of the RoC government, despite the fact that UNSC Resolution 186 had already recognised the

[305] See section 4.2.3.
[306] ICRC Archive, B AG 251 049-005.02, Note 232 – Assistance by TRC (21 April 1965).
[307] UNGA Letter from Permanent Representative of Cyprus to Secretary-General, enclosing Declaration on Minority Rights by Makarios (11 October 1965) UN Doc A/6039, p 3.
[308] ibid.
[309] ibid p 5.
[310] ibid; PIO, *Cyprus: The Problem in Perspective* (PIO 1967).
[311] Linda Miller, *Cyprus: The Law and Politics of Civil Strife* (Center for International Affairs, Harvard University 1968) 20; Ehrlich (n 10) 91-92.
[312] UNGA Letter by Permanent Representative of Turkey (15 October 1965) UN Doc A/6052, pp 6-10.

Greek-Cypriot-controlled government as the legitimate representative of the Republic, more than a year and a half earlier.[313]

In the framework of the 20th Session of the UNGA (July to December 1965), the 'Cyprus Situation' was commented upon in 20 Plenary meetings of the Assembly, by predominantly African and Asian member states.[314] Cyprus was also on the agenda of the UNGA's First Committee on Disarmament and International Security from 11 to 17 December 1965, where member states had the opportunity to discuss the matter in more depth, and prepare a draft Resolution presented and voted for in Plenary on 18 December 1965.[315] Three days before the overwhelming majority of UN members voted in favour of the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States*.[316]

UNGA Resolution 2077(XX) took '*cognizance* of the fact that the Republic of Cyprus [remained] an equal Member of the United Nations' and 'should enjoy, full sovereignty and complete independence, without any foreign intervention or interference'.[317] The Plenary Records indicate, however, an overall reserved position among UN members. From those who took the floor, most restated their regret for the lack of a solution and their relief for the end of violence, as well as their willingness to support a resolution which would guarantee the rights of both communities, recognising the Republic's territorial integrity and sovereign equality. The topic of Cyprus, would often be referred in conjunction with other long-term unresolved conflicts of 'exceptional gravity', such Korea, Vietnam, Palestine, the division of Germany,[318] and Kashmir.[319] The resolution passed with 47 votes in favour, predominantly from former colonies and NAM members, with Greece and Yugoslavia being the only European States to vote in favour.[320] A clear manifestation of Makarios' long-term successful relations with the leaders of other former colonies. Only five states voted against (Turkey, USA, Albania, Iran and Pakistan), and 54 states

[313] UNSC Res 186 (4 March 1964).
[314] UNGA Index to proceedings of the General Assembly, 20th Session 1965 (United Nations, 1966) UN Doc ST/LIB/SER.B/A.16, pp 25-26.
[315] Cyprus Question, UNGA Res 2077(XX) (18 December 1965).
[316] UNGA Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty, UNGA Res 2131(XX) (21 December 1965).
[317] UNGA Res 2077(XX), 18 December 1965, para 1.
[318] UNGA Records A/PV.1355 (11 October 1965), para 75 (Statement by Niger).
[319] ibid; UNGA Records A/PV.1350 (6 October 1965), para 102 (Statement by Sweden).
[320] UNGA Records A/PV.1402 (18 December 1965) para 66.

abstained, among them the remaining four permanent members of the UNSC; China, France, the USSR and the UK.[321]

Many states made use of their right to elaborate on their vote. Among them, Malaysia, who had abstained, stated that sovereignty was not a matter of degree, and that all States have their sovereignty constrained to a certain degree through international legal obligations,[322] An obvious rejection of the RoC's argument that its three constituting treaties were a major obstacle to being an 'equal' to other States. On the other hand, even though Lebanon had voted and spoken in favour of the resolution, its UN delegation felt compelled to submit an explanatory letter to the body, clarifying that its vote should be interpreted 'towards the preservation of the State of Cyprus as an independent Republic and not as a step towards its union with any other State'.[323] The clearest indication of the overall atmosphere came from Spain who had also abstained and commented that 'a draft resolution with such a large number of abstentions, representing a mass manifestation of non-adherence, cannot produce very important results'.[324] The abstention of four out of five permanent UNSC members alludes to the same conclusion.

As Miller correctly observed in 1968, in the broader scope of things, the fact that it was the UNSC and not the UNGA that maintained primacy over the Cyprus Question, and that none of its permanent members supported UNGA Resolution 2077(XX), indicated the resolution's limited significance.[325] With the exception of Turkey's military intervention in 1964, Miller estimated, UN members were generally reluctant to authorise major shifts in the *status quo*, while at the same time, the UN was reluctant to 'adjudicate' the legal claims of the parties to the conflict.[326]

In contrast to the statements at the UNGA's 20th Session, back on Cyprus UNGA Resolution 2007(XX) was presented to the public as a major diplomatic victory. In a speech given by RoC MFA, Spyros Kyprianou to the House of Representatives on 7 January 1966,[327] Kyprianou acknowledged and refuted all major points of concern raised at the UNGA. He emphasised that the abstaining States proceeded in

[321] ibid.
[322] ibid paras 76-77
[323] ibid para 90; UNGA Letter from the Charge d'affaires of Lebanon to the UN Secretary-General (28 December 1965) UN Doc A/6224.
[324] A/PV.1402 (n 320) para 71.
[325] Miller (n 311) 20.
[326] ibid 21.
[327] ROCPM, (1965-1966) 7 January 1966, pp 60-66.

this way knowing that with their stance they indirectly facilitated the approval of the Resolution.[328] The approach taken by the Minister failed to consider that the states which supported the RoC had their own vested interests in avoiding precedents that could be detrimental to their own national interests. The most obvious example was India's clearly stated opposition to partition,[329] in light of the unfolding situation in Kashmir at the time.

Supporting the RoC was likely to set a precedent that newly-established States would be able to unilaterally decide when the framework of their independence would no longer suit them. Challenging the sovereignty of the RoC, would open the doors to challenging the sovereignty of other new states facing internal disturbances or armed conflict. Supporting Turkey's position, could dangerously narrow the scope of the principle of non-intervention in the affairs of another state. To become too vocal against Turkey, would give rise to accusations of undermining the human rights of the marginalised Turkish-Cypriot community, at a time when States, in the context of the civil rights movement and apartheid, were increasingly scrutinised for the positions they held on such matters. Abstention was indeed, the most logical option, if no other vested interests dictated otherwise. The survival of the RoC was therefore, not based on the undisputable rightness (or righteousness) of the Greek-Cypriot politicians, but rather it was contingent to the broader international political interests at the time.

The marginalisation of international law and the turn to international relations and policy in the Cold War, was driven by a preference for flexible principles and case-by-case negotiated settlements, which allowed for the use of language as a means to justify political acts, as opposed to adjudicating disputes.[330] In addition to side-stepping many relevant elements of international law, the case-by-case approach also led to an isolation between similar cases, which precluded a broader understanding of issues of common concern.

5.3.2 Organisation and Intensity in 1965-1968

The renewed confidence after Plaza's report was evident at all levels of government, as indicated by MP Georgios Tzirkotis' triumphant statement of 3 June 1965, that

[328] ibid p 66.

[329] UNGA Records A/PV.1358 (12 October 1965) para 47.

[330] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (CUP 2001) 413-509; Partha Chatterjee, 'The Legacy of Bandung' in Louis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Future* (CUP 2017) 657, 665.

'There is no internal danger for us anymore',[331] referring to the Turkish-Cypriot community. During that time the military situation on the Island was described as 'generally calm', and the ceasefire was 'largely maintained',[332] even though 'war-like' activities and living conditions in some regions persevered. Considerable changes in the capacity of the National Guard were also reported in mid-1965:

> It is felt that with the acquisition of certain modern weapons, including armour, and with the training of personnel in their use, the National Guard has acquired a substantial striking-power, which is continuously growing in effectiveness. Moreover, the large- scale acquisition of military transport has given the National Guard the ability quickly to reinforce any area of the island, and has improved its operational mobility in general.[333]

A year later, in the first half of 1966, there was a notable increase in shooting incidents, often initiated by 'trigger happy' individuals on both sides.[334] From only 17 shooting incidents reported in March 1966, an overwhelming 289 incidents were reported nine months later.[335] The UN also noted Turkish-Cypriot psychological provocations in the form of 'battle noises' and military exercises near the Nicosia-Kyrenia road, while the UN convoy was passing through.[336] As stated by U Thant:

> [A]rms have not been laid down; the map of the Island is still dotted with military posts and police checkpoints; the military confrontation persists; only a tenuous quiet prevails.[337]

In May 1966 the CIA interpreted this situation as a 'suspended civil war'.[338]

[331] ROCPM, (1964-1965) 3 June 1965, p 80.
[332] S/7001 (n 141) para 2.
[333] S/6426 (n 139) para 25.
[334] S/7350 (n 120) paras 68-70.
[335] S/7611 (n 30) para 81.
[336] ibid 75-76.
[337] S/7001 (n 141) para 100.
[338] CIA, Intelligence Weekly (n 187).

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English
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(ix) Observance of the cease-fire

79. Shooting incidents during the period covered are summarized below. The figures for previous periods are given for purposes of comparison. It will be seen that there has been a very marked increase in the number of shooting incidents.

	7 June to 5 Dec. 1966	8 Mar. to 7 June 1966	2 Dec. 1965 to 7 Mar. 1966	11 Jun. to 1 Dec. 1965	8 Mar. to 10 Jun. 1965	9 Dec. 1964 to 7 Mar. 1965	9 Sept. to 8 Dec. 1964	9 Jun. to 8 Sept. 1964
Nicosia Zone	Not operative			17	89	97	124	191
Nicosia West	8	2	0	3		Not operative		
Nicosia East District	11	3	1	3		Not operative		
Famagusta Zone	22	2	0	14	10	44	16	10
Limassol Zone	8	1	4	9	5	7	6	5
Paphos District	Not operative			6	2	7	4	53
Morphou District	Not operative			4	153	67	10	
Lefka District	76	7	1	3		Not operative		
Kyrenia District	164	19	11	10		Not operative		
TOTAL	289	34	17	69	259	222	160	259

Figure 5.3: Observance of the cease-fire from June 1964 to December 1966. Source: UN Doc S/7611 (8 December 1966)

Special reference is due to an incident in the villages of Mora and Melousha, east of Nicosia, where on 23 and 24 July 1966 UNFICYP observed preparations for a joint operation by the National Guard and the Cyprus Police, aiming to prevent Turkish-Cypriot fighters from expanding their positions in the region.[339] UNFICYP initiated negotiations both locally and with the National Guard Headquarters in Nicosia in an effort to prevent an escalation,[340] when an allegedly irregular police patrol drove through the streets of a Turkish-Cypriot village, while the National Guard stood nearby.[341] An incident carrying similarities to the tactic followed in the Kophinou operation, discussed in the next section. Contrary to that incident, however, this time further action was prevented successfully. UNFICYP had noted that the National

[339] S/7611 (n 30) paras 49-56; For more incidents during this period see same document paras 57-61.
[340] ibid paras 52-54.
[341] ibid para 51.

Guard had taken initiative without giving the UN an opportunity to find a peaceful solution to the disagreement between the parties.[342]

By 1966, changes in the pattern of violence were also observed, with a rapid increase in other types of criminal activity.[343] Cases involving both Greek-Cypriots and Turkish-Cypriots fell under the responsibility of UNCIVPOL, which acted in liaison with the Cypriot Police and observed its activity.[344] Only in the second half of 1966, UNCIVPOL investigated more than 200 cases, of which 19 involved homicide offences, 55 alleged shootings at persons working in the fields, an unknown number of cases concerning alleged defectors from both communities, including Greek-Cypriots who had crossed into the Turkish-Cypriot sector of Nicosia, 24 bomb explosions, 5 booby-trap explosions, and a number of forest fires amounting to alleged arson.[345] In these cases, UNCIVPOL acted as liaison between the Cyprus Police and the Turkish-Cypriot 'police elements', but prosecutions in many cases were impossible, due to obstacles in conducting criminal investigations within the enclaves.[346] These observations echo views that international crimes are often 'underpinned by ordinary crimes',[347] which showcase the significance of observing more closely the functionality of the domestic criminal system in cases of armed conflict or violence.

Speaking of 'ordinary crimes', one other type of criminality observed since the earliest months of the conflict in 1964, was the engagement of peacekeepers and other foreign nationals with the illicit smuggling of humans, arms and relevant materials, usually in exchange of a fee.[348] Peacekeepers caught in such activities were under the 'excusive [criminal] jurisdiction of their respective national States',[349] and those who were found guilty were dismissed from service.[350] Foreign nationals who were not peacekeepers on the other hand, fell under the jurisdiction of the Cypriot

[342] ibid para 56.
[343] S/7350 (n 120) paras 80-82.
[344] UNSC Report of the Secretary-General (2 May 1964) UN Doc S/5679, para 4.
[345] S/7611 (n 30) paras 85-104; See also: UNSC Report of the Secretary-General (for the period 13 June to 8 December 1967) (8 December 1967) UN Doc S/8286, paras 67-70.
[346] S/7001 (n 141) paras 94-99.
[347] William A Schabas, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals* (OUP 2012) 43-44
[348] S/7611 (n 30) paras 13-14; Tudor (n 262) 191-194.
[349] UNSC Exchange of Letters Constituting an Agreement between the UN and the Government of the RoC Concerning the Status of UNFICYP (31 March 1964) Doc S/5634, Annex I, 'Letter from the Secretary-General of the United Nations to the Minister for Foreign Affairs of Cyprus' para 11.
[350] S/7969 (n 30) para 12.

courts.[351] The effectiveness of the criminal justice system was doubted however, when in one such case a French national convicted with a 12-year prison sentence for sabotage, was released after serving just one year.[352] Such cases would often be the source of irritation at the highest political and diplomatic levels.[353]

The structure of the Turkish-Cypriot military elements did not change radically during this period. The number of fighters was estimated at a constant of 12,000 men, despite changes in recruitment policies.[354] An improved 'combat effectiveness' was also reported, due to continuous training and instruction, including courses on combat leadership, which appeared to produce a 'command structure', especially in Nicosia and the enclave expanding in its northern suburbs.[355] It was later reported that such training appeared to be guided by professional military personnel from Turkey, other than the officers and soldiers present on the island as members of the Turkish national contingent.[356]

Improving the defensive capacity of the National Guard became a priority in the last quarter of 1964. Efforts to secure equipment for 'Akritas', had already been underway as early as 2 January 1964, under precautionary measures so as not to attract the attention of the British forces.[357] Secret shipments from Greece followed in February 1964,[358] including heavy equipment like second-hand armoured vehicles used by the Greek Army from 1945 to 1960.[359] Bilateral meetings between Greek and Greek-Cypriot officials on the matter continued up to the events in Tylliria in August 1964.[360] In addition to formal governmental agreements, there were also private import initiatives of arms, as well as the setting up of amateur mechanical workshops.[361]

Following the Turkish air raids, the Soviet Union accepted to provide additional equipment, strictly under a commercial agreement so as to avoid any political

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[351] *Keith Marley v the Republic* (1964) CLR 143.
[352] UNSC Letter from Permanent Representative of Cyprus to the Secretary General (7 March 1966) UN Doc S/7182; S/7350 (n 120) para 83; S/7969 (n 30) para 88.
[353] ROCPM, (1963-1964) 1 June 1964, 79; See also: S/7182 (n 352).
[354] S/6426 (n 139) para 31.
[355] S/7001 (n 141) para 26-29.
[356] S/7969 (n 30) paras 30-31.
[357] Chrysostomou (n 11) 273 -274.
[358] ibid 274-276.
[359] Ierodiakonou (n 10) 98.
[360] ibid.
[361] Chrysostomou (n 11) 274-278.

undertones.[362] As discussed below with regard to Greece and Turkey, such an approach also holds a legal significance, since had the USSR simply handed over equipment to the RoC, diplomatically and legally it would give rise to arguments that the USSR was taking a clear position in support of the RoC. Under the agreement, there were three shipments of military rockets destined for Cyprus to be delivered via Alexandria, securing the consent of Egyptian President Gamal Abdel Nasser, where National Guard officers would receive training in deploying the system.[363] In the meantime, Greece offered to the RoC training-aircraft that could be adjusted to serve as combat planes.[364] Cyprus asked Syria to host the aircraft given its geographical proximity, but the request was rejected.[365]

UNFICYP, who had made an agreement with the RoC on 10 September 1964 to be informed of arms' shipments arriving at Limassol port.[366] Given its limited mandate, UNIFCYP was not authorised to inspect arms shipments to the Island,[367] and even though they were aware that Limassol was not the only port through which arms were imported,[368] it was not until December 1966 that the RoC confirmed the import of arms from Czechoslovakia, intended for use by the Cyprus Police.[369] This could not be avoided since during unloading the cargo at the Limassol port on 2 December 1966, one of the containers broke down and accidentally uncovered its contents.[370]

On 15 December 1966 there was a parliamentary question addressed to the Minister of Interior and Defence on whether the National Guard was tasked with surveilling the arms' storage of the Cyprus Police.[371] In reply, the minister confirmed that the police faced extensive shortages in equipment, since as it was known to the higher Command of the National Guard, the police force was burdened with tasks 'heavier than the ordinary'.[372] Part of this targeted effort to strengthen the Cyprus Police included the establishment of a 'para-military tactical reserve' of 500 men, a

[362] Ierodiakonou (n 10) 98-101.
[363] ibid 101.
[364] ibid.
[365] ibid.
[366] S/6102 (n 115) para 129.
[367] S/7611 (n 30) para 27; S/7969 (n 30) para 26.
[368] S/7969 (n 30) para 26; See also S/8286 (n 345) paras 31-33.
[369] UNSC Report by the Secretary-General (Addendum) (13 December 1966) UN Doc S/7611/Add.1.
[370] Ierodiakonou (n 10) 112-113.
[371] ROCPM, (1966-1967) 15 December 1966, p 319.
[372] ROCPM, (1966-1967) 20 January 1967, p 440.

'Cypriot Army Unit' *(Σώμα Κυπριακού Στρατού)*,[373] which would be positioned within the ranks and under the control of the police. Given the controversy, the equipment delivered from Czechoslovakia was eventually stored by the Cyprus Police, and the was handed over to UNFICYP almost five decades later, in 2014.[374]

As mentioned in the Mora/Melousha incident above, the police had already started participating in joint operations with the National Guard in the summer of 1966. In his book, Ierodiakonou has claimed that in at least some of the police operations during this period, it was the National Guard that should have been deployed, yet this was avoided so as not to provoke an intervention by Turkey.[375] The fact that many incidents were handled by the police, in spite of views that their intensity was 'heavier than the ordinary' or called for an intervention by the National Guard, distorts our present understanding on how severe those incidents really were. Had the National Guard intervened more often, in retrospect, we would have been prone to assume that the level of tension was higher. Subsequently, the historical narrative of the period expanding from 1964 to 1967 would have been more coherent, giving rise to additional evidence in support of the view that throughout the period from 1963 to 1968—potentially up to 1974—the two communities of Cyprus engaged in a NIAC.

The Czechoslovakia arms controversy, as well as the changing type of violence observed, derived to a significant extent from political disputes within the Greek-Cypriot community, which also manifested in the so-called 'military issue' *(στρατιωτικό ζήτημα)*. A 'protracted political dispute'[376] which concerned the command of the National Guard. The presence of Greek and Turkish forces was integral to the very existence of the RoC, as stipulated by the ToA.[377] By April 1967, CIA estimated a total of 31,000 'Greek Cypriot forces' including 'reserves', both military and paramilitary units, which appeared to have 'tactical superiority' and better equipment, compared to the Turkish-Cypriots.[378] They were also weakened however, by a 'dichotomy of objectives and underlying mistrust between Cypriot officials', which prevented Makarios and the government from choosing its moves freely, further

[373] Ierodiakonou (n 10) 112.
[374] ibid 113.
[375] ibid 112-113.
[376] S/7350 (n 120) para 19.
[377] See section 3.2.1.
[378] CIA, Doc No CIA-RDP79T00826A001800010020-4, Greek and Turkish Military Capabilities, 3 April 1967 (Released 19 January 2006) <https://www.cia.gov/readingroom/document/cia-rdp79t00826a001800010020-4> accessed 12 May 2021 para 9.

restrained, in the view of CIA, by the presence of British and peacekeeping forces on the Island.[379]

The Turkish-Cypriots on the other side, despite the improvements in organisation noted by the UN, were estimated at 10,000 irregular 'badly armed, poorly trained, and with declining morale' fighters, most of whom were concentrated in isolated villages, which would preclude their effective resistance if subjected to attack.[380] According to the CIA, the Turkish-Cypriots were only supported by the 650 men of the Turkish national contingent.[381] A year earlier, a similar report reported that approximately 1,000 regular Turkish army personnel were on the Island, in addition to their national contingent.[382] This was still in direct contrast to the estimated number of 5,750 Greek soldiers (8,500 in 1966)[383] who had infiltrated Greek/Greek-Cypriot positions on the Island.

We have already addressed the general principle of non-intervention in the previous Chapters,[384] but we are yet to examine the issue in terms of Greece's involvement in the RoC during this period. As seen in Chapter 2, according to pre-1949 rules on 'civil war' and its three stages of rebellion, insurgency, or belligerency, a State could only seek assistance from another State once the internal strife reached the level of belligerency, and therefore, was unable to defend itself from the insurgent elements without external assistance.[385] This would make applicable the full scale of law's applicable during war. Following the establishment of the UN in 1945, however, during a NIAC the legally recognised government of the State retains the right to 'invite' another State to intervene on its side, even though in practice serous difficulties may arise if it is unclear which is the 'legal government' of a State involved in a NIAC.[386] In the case of Cyprus such difficulty did no arise in view of UNSC Resolution 186(1964). Thus, putting aside issues of proportionality and the complications deriving from the formal right of Greece to have troops on the territory of the Republic under ToA, as well as the uncertain status of that treaty at this stage, the RoC was justified to seek assistance from Greece, as well as Egypt and Syria, as mentioned above. The asymmetry between the rights of Turkey and Greece to intervene, as

[379] ibid para 10.
[380] ibid para 11.
[381] ibid para 10-11.
[382] CIA, Intelligence Weekly (n 187) 8.
[383] ibid 7.
[384] See sections 2.3.1, 3.2.1 and 4.3.3.
[385] See section 2.3.3.
[386] Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 81.

already explained,[387] derived from the different status of the Greek-Cypriot leadership as government and the Turkish-Cypriot leadership as non-state actors.

5.3.3 The Kophinou Operation

The second half of 1967 was turbulent. Frequent shooting incidents re-occurred from July to October 1967, following a prior 'spell of calm and reduced tension',[388] which even allowed the resumption of direct air and sea travel between Cyprus and Turkey in May 1967, after a two-year pause.[389] The catalyst event that drew a line to the rising tensions this time was the so-called 'Kophinou Operation'.

Kophinou was an almost exclusively Turkish-Cypriot village, which according to the 1960 census had only 18 Greek-Cypriot residents, out of a total of 728 inhabitants.[390] Geographically, it is located a few kilometres inward of the south-east coast of the Island, at a central junction intersecting the Nicosia-Limassol and Larnaca-Limassol roads. From early 1964, a considerable number of Turkish-Cypriots had found refuge there after abandoning their own mixed villages in the surrounding region, constituting the village a Turkish-Cypriot enclave of strategic importance. A short 4 kilometres south of Kophinou stands the adjacent village of Ayios Theodoros, which in 1960 had a population of 685 Turkish-Cypriots and 525 Greek-Cypriots.[391] Within a range of 15 kilometres, there were a number of other mixed villages, which suggested that had the Turkish-Cypriots obtained prime control in that region, then they would have been able to establish a large enclave preventing direct access between the capital Nicosia and the second largest city of Limassol.[392] Something that had already been the case between Nicosia and the considerably smaller town of Kyrenia, since December 1963.

Therefore, it comes as no surprise that Larnaca district, where Kophinou and the surrounding villages are located, was a hotspot for military action in the first half

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[387] See section 4.3.4.

[388] S/8286 (n 345) para 45.

[389] ibid para 109.

[390] RoC Statistical Service, Ministry of Finance RoC, *Census of Population and Agriculture 1960 Vol. I: Population by Location, Race and Sex* (RoC Printing Office, 1960) Table VIII <https://library.cystat.gov.cy/Documents/KeyFigure/POP_CEN_1960-POP(RELIG_GROUP)_DIS_MUN_COM-EN-250216.pdf> accessed 20 December 2021; The same numbers are given by Ieroadiakonou (n 10) 119, however, it is doubtful whether these reflect accurately the demographics of the village in 1967, given the displacement of people in the area.

[391] ibid; This village is in Larnaca District. Not to be confused with villages of the same name in other districts.

[392] Ierodiakonou (n 10) 119.

of 1967, with violent incidents recorded in the village of Mari, 16 kilometres east of Kophinou,[393] and along Artemis Avenue in the town of Larnaca, which by-passes one of two Turkish-Cypriot quarters, located on the west side of the town, also extending towards the Larnaca-Limassol road.[394] Violence there continued in the second half of 1967,[395] as there was a sharp return of violence in the towns of Limassol and Paphos, which were largely calm in the previous year.[396] New peak of criminal activity was reached on 12 October 1967, when a civil aviation aircraft of Cyprus Airways crashed near the island of Kastellorizo, during an ordinary London-Athens-Nicosia flight, killing all 66 passengers on board.[397] The investigations undertaken, with the involvement of the London Metropolitan Police, were inconclusive and the incident today is largely forgotten.[398]

Reporting on the first half of 1967, the UN Secretary-General stated that despite the numerical increase in shooting incidents during those months, there were less deliberate breaches of ceasefire.[399] On the other hand, there was an increase of incidents that required the direct involvement of UNIFCYP, while its relationship with both the National Guard and the Turkish-Cypriot armed groups generally deteriorated. In spring that year, UNIFCYP was involved in minor incidents with Turkish-Cypriot 'police elements'[400]and with the National Guard.[401] On 16 April 1967, the National Guard fired against an UNFICYP helicopter after the latter had just taken off from Kokkina, to transfer a seriously ill person on humanitarian grounds, since the latter had instructions to fire at any unidentified aircraft.[402] By the second half of 1967, there was a 25 per cent increase in incidents that denied UNFICYP freedom of movement, in a way which prevented it from complying with its mandate.[403]

The first shooting incident in Kophinou was recorded in May 1964, without casualties.[404] The next incidents on record took place more than two years later,

[393] S/7969 (n 30) paras 61-67.
[394] S/7969 (n 30) paras 68-75.
[395] S/8286 (n 345) para 53-55.
[396] ibid paras 56-66.
[397] ROCPM, (1967-1968) 12 October 1967, pp 65-66.
[398] ROCPM, (1967-1968) 8 February 1968, pp 507-508.
[399] S/7969 (n 30) paras 76-77.
[400] ibid paras 49-60.
[401] ibid para 19, 117.
[402] ibid para 18.
[403] S/8286 (n 345) para 21.
[404] S/7969 (n 30) paras 49-60; Parker T. Hart, *Two NATO allies at the threshold of war. Cyprus: A Firsthand Account of Crisis Management, 1965-1968* (Duke University Press 1990) 39.

between December 1966 and July 1967.[405] During this time, to avoid further tension, the Cyprus Police decided to divert the route of its period patrols in the region, by avoiding the use of the main road leading into the village through the Turkish quarter. The decision for the change had been taken was taken on the Police Force's own initiative, which kept UNFICYP informed of patrols in advance, in order to ensure that the latter would observe the process.[406] Various efforts were made from September 1967 onwards to restore the free movement of the Cyprus Police,[407] and within this context, UNIFCYP proposed a timetable to progressively achieve this, by 2 November.[408] Despite a personal intervention by U Thant, the Turkish government informed on 3 November, that the timetable would only be accepted on the condition that the National Guard withdrew from the positions it had been holding on Artemis Avenue in Larnaca, since May 1967.[409]

High-level meetings were held among Makarios, Yorkadjis, and Grivas on behalf of the RoC, and the UN Secretary-General's Special Representative and the UNFICYP Commander, on 13 and 14 November 1967.[410] There UNFICYP informed of their readiness to resume escorted patrols with the Cyprus Police, yet a formal request by the RoC authorities was never submitted. Hence, UNFICYP's Commander in Kophinou was taken by surprise when on 14 November he was informed that the National Guard would resume patrols with the Cyprus Police towards Agios Theodoros, only 25 minutes in advance of the operation.[411] The short notice from the National Guard was in the form of an ultimatum, that unless UNFICYP provided protection at the scheduled time of 13:15, then protection would be provided by the National Guard, instead.[412] By that time, UNFICYP had already observed 'large-scale military movements' in the area, and had ruled out the possibility to join the National Guard in any action against the Turkish-Cypriots,[413] as that would constitute a clear

[405] Hart (n 404) 39; UNSC Special Report by the Secretary-General on Recent Developments in Cyprus (16 November 1967) UN Doc S/8248, para 2.
[406] S/8248 (n 405) para 2.
[407] S/8286 (n 345) para 19; S/8248 (n 405) paras 3-4.
[408] S/8248 (n 405) para 5.
[409] ibid paras 4, 6.
[410] ibid para 7.
[411] ibid para 8.
[412] ibid.
[413] ibid.

breach of the principles of neutrality and impartiality as defined by Hammarskjold during UNEF's operation in 1958.[414]

The patrol eventually took place jointly by the police and the National Guard as planned without any problems, and a second one followed on the morning of 15 November, again without incident. When a second patrol was initiated at 14:00 on 15 November, the entrance into Kophinou from the main road was barricaded by a tractor put there by the Turkish-Cypriots guarding the village. The patrol was also stronger, including a group of the National Guard's infantry.[415] At the sight of the tractor the soldiers removed the road block and deployed in the vicinity, at which point three shots and automatic fire came, according to the UN report, from the side of the Turkish-Cypriots.[416] The exchange of fire in Kophinou, triggered parallel shooting in the neighbouring village of Agios Theodoros, over which the National Guard established full control by early evening.

In Kophinou the fighting continued until 20:30, and although the National Guard had cleared most Turkish-Cypriot positions, they were yet to obtain full control. UNFICYP was informed at 21:45 by RoC MFA that a ceasefire had been ordered, but sporadic shooting continued until the early hours of 16 November, and according to the UN, civilians who had been removed from the village by the National Guard, were eventually released and handed over to UNFICYP at 5:00 16 November.[417] The UN Secretary-General reports make no extensive reference to the damages and the casualties from the Kophinou operation, other than 'seventeen unidentified dead and seven wounded'.[418]

According to UN estimations, the 'magnitude' of the operation suggested that the operation was planned in advance.[419] This is now confirmed through secondary literature, explaining that a military plan had been discussed by the RoC Defence Council as early as 31 October 1967.[420] The aim was an operation to restore movement between Kophinou and Agios Theodoros, which should last only a few

[414] UNGA Summary study of the experiences derived from the establishment and operation of the Force: Report of the Secretary General (9 October 1958) UN Doc A/3943.
[415] S/8248 (n 405) para 10.
[416] ibid.
[417] S/8248 (n 405) paras 15-17.
[418] ibid para 18.
[419] ibid para 24.
[420] Glafcos Clerides, *Cyprus: My Deposition Vol 2* (Alithia Publishing 1989) 205-207; Ierodiakonou (n 10) 124.

hours, so as not to provoke a Turkish intervention.[421] According to Ierodiakonou, the generalisation of the fighting was also part of the plan, in order to allow the deployment of heavier equipment by the National Guard.[422]

The National Guard held accountable UNFICYP for its failure to prevent the violence, while UNFICYP protested against 'the forcible and deliberate' disarming of UNFICYP soldiers, the use of UNFICYP positions by the National Guard, and the disabling of UNFICYP's radio equipment.[423] One week later, the National Guard apologised for its interference with UNFICYP, expressing its readiness to compensate any damages caused.[424] It is noting that any exchange of fire between State or non-State forces with peacekeeping forces does not take place outside the law. The general view is that when a peacekeeping force is fighting against State forces, then that would be governed by the laws of armed conflict applicable in an IAC, but the same clarity is lacking regarding the classification of conflicts between peacekeepers and non-State irregular forces.[425]

The Kophinou operation, while not long in duration, was a catalyst in terms of the diplomatic and political balances on the Island. Between 17 and 19 November, UNFICYP and CIA reported a series of incidents in different areas. These included, exchange of fire between National Guard and Turkish-Cypriots around the Kokkina and Limnitis enclaves, and overflights of unidentified and Turkish aircraft over the Karpas Peninsula and Nicosia.[426] More incidents took place along the Green Line in Nicosia, with civilians sustaining injuries, and a physical attack against UNFICYP peacekeepers, by Turkish-Cypriot fighters.[427] On 22 and 24 November, the UN Secretary-General appealed to the governments of Cyprus, Greece and Turkey to seize any military preparations and resort to peaceful means of dispute resolution,

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[421] ibid.
[422] Ierodiakonou (n 10) 132.
[423] S/8248 (n 405) para 22-23.
[424] ibid para 15, 17-21.
[425] Andrew Clapham, 'The Concept of International Armed Conflict' in Andrew Clapham and others (n 6) 3, 8-10.
[426] UNSC Special Report by the Secretary-General on Recent Developments in Cyprus (20 November 1967) UN Doc S/8248/Add.2, para 4; See also: UNSC Letter from the Permanent Representative of Cyprus addressed to the President of the Security Council (23 November 1967) UN Doc S/8260.
[427] UNSC Special Report by the Secretary-General on Recent Developments in Cyprus (18 November 1967) UN Doc S/8248/Add.1, S/8248/Add.2 (n 426); See also: CIA, Doc No CIA-RDP79T00826A002900250001-7, The Cyprus Situation, 18 November 1967 (Released 9 July 2002) <https://www.cia.gov/readingroom/document/cia-rdp79t00826a002900250001-7> accessed 12 May 2021.

according to the UN Charter.[428] Before the end of the month restoration work had already started in the villages and to the surprise of the UN, the relationship between the Greek-Cypriot and the Turkish-Cypriot villagers in the region had 'rapidly returned to normal' for the first time since July 1967.[429]

At the diplomatic level, the fighting immediately sparked a series of communications in Nicosia and New York.[430] The situation gave Turkey the opportunity to put on the table a number of demands, including the removal of all Greek soldiers in excess of the 950 allowed under the ToA, and the disbandment of the National Guard, among others.[431] According to Ehrlich the excessive number of Greek soldiers on the Island gave Turkey a unique opportunity to focus on reaffirming the terms of the 1960 London-Zurich Agreements, while at the same time this was also the point for which Greece could expect the least support internationally.[432] Thus, Greece had no choice but to agree to this term. Therefore, the first group of Greek soldiers left the Island on 8 December 1967, and the withdrawal of the rest of the troops was concluded in the first quarter of 1968.[433]

5.4 New Parameters

Aware that the 1960 Constitution was unique in strengthening the constitutional status of the Turkish-Cypriot community, its leadership never challenged the validity of the original constitutional framework of the RoC, despite the various reforms initiated by the government. Within this context, the events of November 1967 led to a series of rapid developments that set the scene for the following years. Among them, the establishment of the PCTA and further deterioration of intra-communal relations among the Greek-Cypriots. Thus, in 1968 the Cyprus Question entered a distinct new phase, which would last until the summer of 1974. The aim of this section is to illustrate these medium-term changes and connect the events examined in this thesis to the events of 1974.

[428] UNSC Special Report by the Secretary-General on Recent Developments in Cyprus (22 November 1967) UN Doc S/8248/Add.3, UNSC Special Report by the Secretary-General on Recent Developments in Cyprus (23 November 1967) UN Doc S/8248/Add.4.
[429] S/8446 (n 170) paras 40-51.
[430] S/8248 (n 405) paras 11-15.
[431] Ehrlich (n 10) 105.
[432] ibid 103.
[433] S/8446 (n 170) para 25-27.

5.4.1 The 'Provisional Cyprus Turkish Administration'

In the last quarter of 1967, there were a number of changes in the general approach of the Turkish-Cypriot leadership, not with regard to their legal claims and positions, but in view of internal changes concerning the governance of the Turkish-Cypriot community as a whole.

As stated previously, following his address in New York before the UNSC, on 28 February 1964,[434] Rauf Denktash never returned to Cyprus. He did return to Cyprus secretly on 31 October 1967.[435] Even though he was caught and arrested upon arrival, it was agreed that he could not be prosecuted due to lack of sufficient *admissible* evidence that could prove guilt beyond reasonable doubt for the charges.[436] Clerides, who had been tasked by Makarios to interrogate Denktash,[437] admitted that the decision also had a political flare, as in case of conviction Denktash would become a 'political prisoner', a 'hero to the Turkish Cypriot community', and 'a hot potato to hold'.[438] Hence, Denktash accepted a new offer to return to Ankara, instead. Following this brief incident, the events in Kophinou and the removal of the surplus of Greek troops on the Island, the next major development was the announcement of the establishment of a de facto PCTA by the Turkish-Cypriot community, in the evening of 28 December 1967.[439] Four years and a week since 'the troubles' had started.

The alleged objective of the PCTA, as inferred by section 1 of its constitutive document, the 'Basic Law',[440] was to handle the affairs of 'all Turks living in Turkish areas' (the enclaves) 'until all provisions of the 16 August 1960 Constitution of the Republic of Cyprus are applied'.[441] The Basic Law consisted of 19 sections, covering Legislative, Executive and Judicial matters, all of which were aligned, as much as possible, to the provisions of the RoC Constitution. Sections 2 to 6 provided for a 'House of the Provisional Turkish Administration', in which the Vice-President of the RoC House of Representatives would preside, and the Turkish-Cypriot MPs and

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[434] See section 4.2.3.
[435] S/8286 (n 345) paras 87-89.
[436] Clerides, *Deposition Vol 2* (n 429) 205.
[437] ibid 202-204.
[438] ibid 205.
[439] UNSC Special Report by Secretary-General on Recent Developments in Cyprus (3 January 1968) UN Doc S/8323, para 1; Necatigil, *Cyprus Question* (n 84) 65-68
[440] Necatigil (n 84) 67.
[441] Basic Provisions of the PCTA (Basic Law), s 1; S/8323 (n 439) para 2; For the full original text of these provisions see: S/8323 (n 439) Annex I – Press Release by the Cyprus Turkish Information Centre on 29 December 1967.

members of the Turkish Communal Chamber would sit.[442] They would have all the corresponding legislative powers under the RoC Constitution,[443] while all laws passed by the RoC House of Representatives before 21 December 1963 would be 'in force and operation'.[444] Executive power was to be exercised by an 'Executive Council', presided by the RoC Vice-President, closely resembling the RoC Council of Ministers.[445] However, a special provision existed for the establishment of a separate 'Organization' by the Executive Council, that would be in charge of 'Defence and Security Services'.[446] It is hereby estimated that such 'outsourcing' of executive power aimed at formalising the role of TMT or other links with the Turkey, but no further information on this particular provision has been found in any primary or secondary sources consulted. Lastly, sections 16 to19 provided for matters relevant to the Courts.

In his emergency report to the UNSC upon finding out about this development in Cyprus, the UN Secretary-General noted that he was given no advance notice on the establishment of the PCTA.[447] The Secretary-General of the Turkish MFA, who soon thereafter was declared *persona non grata* by the RoC,[448] stated that the establishment of the PCTA was not to be construed as 'an attempt to foster the partition of Cyprus or to create a separate Turkish state in the island'.[449] The Turkish-Cypriot leadership made no separate public statement on the exact purpose of the PCTA.[450]

On the same day, Makarios communicated a brief statement to the UN Secretary-General, according to which the RoC government was 'facing the situation calmly'.[451] The view of the government was, that the PCTA was 'flagrantly unlawful', that any act deriving from it was 'entirely null and void' and 'devoid of any legal effect'.[452] Moreover, it was also seen as contrary to the UNSC resolutions,

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[442] Basic Law, s 2.
[443] Basic Law, ss 3, 4, 6.
[444] Basic Law, s 5.
[445] Basic Law, ss 7-15.
[446] Basic Law, s 13.
[447] S/8323 (n 439) para 3.
[448] ibid para 8.
[449] ibid para 3.
[450] ibid para 9; See however: S/8323 Annex II, Message from Dr. Kuchuk to the Secretary-General transmitted by the Special Representative of Turkey (1 January 1968).
[451] UNSC Letter by Cyprus Permanent Representative enclosing Statement by Makarios (29 December 1967) UN Doc S/8318.
[452] ibid.

undermining the UN Good Offices, and constituting an intervention by Turkey, in the internal affairs of the Republic.[453] In an effort to minimise the impact of this development, the RoC government asked all diplomatic missions in Cyprus not to undertake any visits or contacts with members of the PCTA, warning them that doing so would have been contrary to their accreditation.[454] Greece also followed up with a letter to the UN Secretary-General, concerned that the move undermined agreements made in the aftermath of the Kophinou operation, including the latest UNSC Resolution on the renewal of UNFICYP's mandate,[455] and the ongoing process of disarmament.[456]

According to Necatigil, the establishment of the PCTA was an 'evolutionary organic development' and a 'constitutional arrangement' within the area of RoC constitutional law.[457] Even though this makes for an interesting legal argument in view of the extent to which the 1960 Constitution had already been altered at that point, one cannot overlook the fact that the decision neither involved the recognised government of the RoC, which throughout this period was the strongest card played by the Greek-Cypriot leadership, nor was the PCTA established through the proper legislative procedure. Of course, the same could be said for the series of laws the House of Representatives had passed from 1964 onwards, but the Greek-Cypriot-led government had a legal advantage due the international support it enjoyed and the justification of the DoN.[458]

As the British had noted, the establishment of the PCTA was indeed contrary to the provisions of the Constitution, despite its close alignment to the original Constitution. Challenging any issues of legality, however, would lead to challenging the legality of the RoC government's actions as of 1964 onwards, and in particular all reforms based on the DoN.[459] The British, too, therefore, maintained an approach where the law would be invoked only when deemed appropriate in the pursuit of specific interests, and provided it would not lead to further complications.

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[453] ibid.
[454] Varnava (n 9) 136-137.
[455] UNSC Res 244 (22 December 1967).
[456] UNSC Letter from the Permanent Representative of Greece to Secretary-General (2 January 1968) UN Doc S/8320.
[457] Necatigil, *Cyprus Question* (n 84) 68.
[458] See section 4.4.1.
[459] Varnava (n 9) 137.

The choice not to engage in an in-depth legal analysis and argumentation at a political level then, set a precedent for the way legal issues were handled for decades to come. In the first three months of the establishment of the PCTA, the UN Secretary-General reported on a series of exchanges and accusations over the legality of the provisional administration, including a legal opinion by the RoC Attorney-General, rebutted by an unnamed 'Turkish legal expert'.[460] This is hardly surprising, as each one of them had to build a legal argument in support of the position of their respective 'client-State', in the same way an Advocate or a Barrister would have done the same in a domestic context.

The PCTA remained in place until its replacement by the 'Turkish Federated State of Cyprus' on 13 February 1975,[461] and eventually the 'Turkish Republic of Northern Cyprus' (TRNC) declared unilaterally on 13 November 1983. The TRNC was swiftly rejected by the UNSC,[462] not so much for the sake of the RoC, as for the dangerous legal precedents the recognition of a new State over territory acquired with the use of force would set for other parts of the world.

Humanitarian issues were put aside. The suffering of individuals was only an insignificant fragment of the bulk of PIL concerns. Therefore, the only legal arguments that 'survived' over the decades were abstract issues that are inherently indetermined and highly contested by their very nature; sovereignty, state equality, self-determination, peace and security. Internationally, such issues are the 'bread and butter' of diplomatic circles and international legal and IR academia, but internally, *domestic* politics exploit the abstractness to capitalise on the uncertainty, the fear, the mistrust, and the suffering experienced by the electorate.

5.4.2 'Slightly opening the gates of the Ghetto'

Apart from renewing UNFICYP's mandate, UNSC Resolution 244 of 22 December 1967, enabled UN Secretary-General U Thant to initiate new efforts for a solution 'invit[ing] the parties promptly to avail themselves of the good offices proffered by the Secretary-General and request[ing] the Secretary-General to report on the results to the [Security] Council as appropriate'.[463] This development defined the course of action in the first half of 1968, during which all parties involved embarked on pre-

[460] S/8446 (n 170) paras 76-84.
[461] UNSC Res 367 (12 March 1975).
[462] UNSC Res 541 (18 November 1983); UNSC Res 550 (1984) (11 May 1984).
[463] UNSC Res 244 (22 December 1967), para 3.

negotiatory exchanges, aiming towards the first inter-communal negotiations in search of formulas for a constitutional solution.[464]

Domestically, the first three months of 1968 were reportedly one of the quietest periods since December 1963, leading to cautious optimism on the side of the UN Secretary-General:[465]

> The three-month period covered by this report has been one of the quietest since the disturbances that broke out in December 1963 and, as described in the preceding chapters, inter--communal, incidents have diminished considerably. It is to be hoped that the crisis of last November, which could easily have transformed Cyprus and a broader area in the Eastern Mediterranean into a theatre of war accompanied by widespread loss of life and great destruction may have brought about a realisation to both Greek and Turkish Cypriots of the urgent need to compose their differences.[466]

On 12 January 1968, Makarios announced the lifting of restrictions on the movement of all Turkish-Cypriots residing in all enclaves, apart from Nicosia and Kokkina. This was contrary to initial plans to restore freedom of movement across all regions because of the announcement on the establishment of the PCTA.[467] Simultaneously, Makarios announced the organisation of the second ever presidential elections in the RoC, and a decisive shift in the policy of the government regarding the Island's sovereignty. The announcement of presidential elections was accompanied by a declaration by Makarios, that the government would no longer pursue a policy towards 'what is desirable', meaning *enosis*, but rather it would turn its efforts toward 'what is feasible', meaning a solution along the framework of an independent Cypriot Republic.[468]

Despite the change in policy, Makarios was re-elected President on 25 February 1968 under the original 1959 electoral law, since Attorney-General Tornaritis had advised against the application of Law 39/1965 on the unified electoral roll.[469] On the same day, the Turkish-Cypriot leadership decided to organise a separate, allegedly vice-presidential, elections since in the view of Kutchuk, holding

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[464] Polyviou, *Conflict and Negotiation* (n 9) 62-101; Varnava (n 9) 142-154.
[465] S/8446 (n 170) paras 152, 153.
[466] ibid para 148.
[467] ibid para 74.
[468] ibid para 85; Clerides, *Deposition Vol 2* (n 420) 213-215.
[469] Law 39/1965 (n 70).

presidential elections only would be in violation of the Constitution.[470] He was reappointed 'Vice-President' without opposition, when his contender had to withdraw his nomination,[471] despite support towards him within the Turkish-Cypriot community and enthusiasm among the Greek-Cypriots.[472] In total, there were three 'parallel elections' up to 1974, the other two being the parliamentary elections of 1970, and the next presidential elections in 1973.[473] There is no evidence that the issue of the legality of the PCTA was ever formally resolved, even tentatively until a solution to the political problem was reached.

Even before 12 January 1968, signs of progress were noticeable, such as the entry of a team of 19 technicians and seven vehicles of the Cyprus Electricity Authority in the Turkish-Cypriot quarter of Nicosia, to make repairs on the electrical grid.[474] This was in spite of the continuous lack of support by the Turkish-Cypriot leadership towards initiatives that would seem to encourage governmental administration in the enclaves.[475] At the same time, the government rejected schemes that would appear to give authority to a 'separate' Turkish-Cypriot 'administration', or would need to channel government services through the Turkish-Cypriot leadership.[476]

Despite acknowledgement that the government would have to assist the Turkish-Cypriots residing out of the enclaves,[477] there is no evidence of action in that direction.[478] On the contrary, two laws passed in early 1968 aiming to financially support those adversely affected from 21 December 1963 onwards, explicitly provided that such schemes would apply to Greeks, Armenians, Latins and Maronites only,[479] leaving out of their scope all Turkish-Cypriots, including those who resided in the

[470] RoC Constitution, art 39; S/8446 (n 170) paras 94-96.
[471] S/8446 (n 170) paras 97, 98.
[472] Varnava (n 9) 142; Kızılyürek, *Resentment* (n 48) 679-680.
[473] Hoffmeister (n 32) 20; Kızılyürek, *Resentment* (n 48) 679-680.
[474] S/8446 (n 170) para 132.
[475] ibid para 124.
[476] ibid.
[477] PIO Press Release, Highlights of the Speech Made by Minister of Labour (16 April 1967).
[478] Varnava (n 9) 92.
[479] Περί Ταμείου Βοηθείας Ζημιωθέντων Νόμος, s 2 (2/1968) (Law on the Relief Fund of Injured Parties); RoC Official Gazette, 622 (5 January 1968); Περί Ζημιωθέντων (Απαλλαγή Φορολογίας) (Προσωρινaί Διατάξεις) (34/1968), s 2 (Law on Injured Parties (Tax Exemption) (Temporary Provisions); RoC Official Gazette, 645 (5 April 1968).

areas under the control of the Republic. Law 34/1968 in particular, abolished an earlier law of 1967,[480] which made no explicit discrimination on communal grounds.

In December 1966, the government had established a Pancyprian Committee of 'Turk-affected [Citizens]'[481] *(Τουρκόπληκτοι)* tasked with investigating the financial impact of the conflict on ordinary citizens, through questionnaires disseminated in each district. The results were presented in Parliament on 13 April 1967.[482] Estimated monetary and actual damages were calculated at over 1 million Cyprus Pounds, and outstanding mortgage payments to and from Turkish-Cypriots at nearly 1 million Cyprus Pounds.[483] The discussion continued on 4 May 1967, when MP Andreas Ziartides asked whether the name of the Committee should be reconsidered and changed to 'persons suffering from the rebellion', since:

> once the rebellion is over and once normality resumes then it will become obvious that the problem extends to the other community to a significant degree, and that the State, as a State of all Cypriots, will have to concern itself with dealing with the problem holistically.[484]

Ziartides' comment was dismissed, but the long-term adverse impact such policies had on the Cypriot conflict-related narratives is undeniable.[485] Such an approach was short-sighted, both internally and internationally. Even if policies engaging with the Turkish-Cypriot community had been met with resistance or mistrust, the effort would have increased trust among the Republic's citizens and the international image of the Republic in the longer-term.

The remaining restrictions on movement in Kokkina and Nicosia, and a travel ban imposed on male Turkish-Cypriot students studying in Turkey in 1966,[486] were lifted on 8 March 1968,[487] at which point the timeline of the present research concludes. Small-scale building activity on maintenance and repairs started without implementing any long-term solutions for the displaced and those living in

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[480] Ο περί Εξαιρέσεως εκ της Φορολογίας Ακινήτου Ιδιοκτησίας (Προσωρινaί Διατάξεις) Νόμος του 1967 (36/1967) (Law on the Exemption from Immovable Property Tax (Temporary Provisions)); RoC Official Gazette, 584 (3 July 1967).
[481] In Greek: Παγκύπρια Επιτροπή Τουρκοπλήκτων (no English name found).
[482] ROCPM, (1966-1967) 13 April 1967, pp 945-960.
[483] ibid.
[484] ROCPM, (1966-1967) 4 May 1967, p 997.
[485] Olga Demetriou, ''Struck by the Turks': reflections on Armenian refugeehood in Cyprus' (2014) 48(2) *Patterns of Prejudice* 167.
[486] S/7611 (n 30) para 119.
[487] S/8446 (n 170) para 72, 107.

overcrowded enclaves, like Kokkina, where people continued depending on humanitarian assistance under similar conditions as before.[488] Kizilyurek describes how Makarios' change of policy 'slightly opened the gates of the ghetto', and some Turkish-Cypriots started working for Greek-Cypriots employers, while some others returned to their villages.[489] However, not everyone felt safe to return to their villages under RoC control, and according to some sources, police officers prevented known TMT members from resettling back to their villages.[490]

In June 1968, in his thirteenth periodical UNFICYP report to the UNSC, U Thant referred five times to the 'emergency' that had started in December 1963.[491] A 'plot-twist', considering that less than four years earlier it was again U Thant who had referred to a 'bitter civil war'.[492] Considering that in June 1968 the two communities would enter the first round of formal negotiations the choice of the word 'emergency' suggests that all parties involved were opting once again for 'diplomacy over law'.

CA3 offers no guidance on when a NIAC ceases to exist. The issue was addressed by the 1962 Expert Commission on CA3, according to which the provision was to remain applicable to 'situations arising from the conflict and to the participants in that conflict' even after the NIAC may have ended, 'whatever the form or the conditions of the settlement may be'.[493] Additional guidance is today offered by the ICRC's 2016 commentary, which states that the end 'must be neither lightly asserted nor denied'.[494] Its suggestion is in fact an elaboration of the vaguer statement by the 1962 Commission. A ceasefire or a truce may suggest that a NIAC has ended, but one must be wary of prematurely announcing the end, when atrocities continue.[495] On the other hand, a NIAC may end if one of the parties is completely defeated and 'ceases to exist' itself,[496] or a lasting cessation of armed confrontations suggests that the NIAC that a peaceful settlement has taken place.[497] This is different to cases

[488] ibid paras 119-123.
[489] Kızılyürek, *Τα πέτρινα Χρόνια* (n 135) 17.
[490] ibid 17-18.
[491] eg UNSC Report by the Secretary-General (for the period 9 March to 7 June 1968) (11 June 1968) UN Doc S/8622, para 56.
[492] S/5950 (n 219) para 221.
[493] ICRC, Commission of Experts (1963) (n 8) 83.
[494] ICRC, *Commentary GCI 2016* (n 258) para 485; See also: Venturini, 'Temporal Scope' (n 6)
[495] ICRC, *Commentary GCI 2016* (n 258) para 490
[496] ibid para 489
[497] ibid para 491

where confrontations have only temporarily been reduced in intensity.[498] In view of these criteria, further research would be needed on the events after March 1968 to determine with minimum certainty whether and when the NIAC between Cyprus' two constitutional communities ended.

5.5 Conclusion

Despite the reduced intensity after the ceasefire of 9 August 1964, this chapter has attempted to illustrate the continuities that persisted in the period up to the full restoration of freedom of movement for the Turkish-Cypriot citizens of the Republic on 8 March 1968. As shown, the lack of continuous violence did not mean that no violence was present at all. On the contrary, during this period the National Guard was extensively equipped, and the Turkish-Cypriot irregular forces appeared more professionalised than before. At the same time, the government proceeded with a number of questionable legal reforms that deepened further the divisions between the two communities, while the enclaves assumed a rather normalised presence. The epitome of this normalisation was the establishment of the PCTA in December 1967. The irreparable damage done to inter-communal relations was evident in the difficulties that existed in restoring a sense of normalcy even after movement restrictions were withdrawn.

The complete restoration of freedom of movement in March 1968, and the commencement of inter-communal negotiations a few months later indicated that during this period the material conditions existed to potentially put a final end to the cycle of violence that had started in December 1963. On the other hand, the continued geographical segregation of the Island's population, the continuous presence of UNFICYP, the non-restoration of the constitutional legal order and the establishment of the PCTA, as well as the lack of complete control by the RoC over the whole of its territory, suggest that at this point a return to violence was equally possible.

Late 1967 and the whole of 1968 was a threshold period for the whole of the Eastern Mediterranean region. Within days from the conclusion of the Kophinou Operation, on 22 November 1967, the UNSC passed Resolution 242, following the Six-Day Arab-Israeli War of June 1967.[499] Also in summer 1967, the Nigerian Civil

[498] ibid para 492

[499] UNSC Res 242 (22 November 1967); Noura Erakat, Justice for Some: Law and the Question of Palestine (Stanford University Press 2019) 71-79.

War in Biafra[500] marked a new turn in the reform of the ICRC and the development of humanitarian assistance during armed conflict.[501] Meanwhile by 1968, 'the Troubles' in Northern Ireland had already started brewing,[502] and in August 1968 the Soviet Union invaded Czechoslovakia.[503] At the same time a number of conflicts in Latin America, Africa and Asia were already ongoing or just about to start, underpinned by the rivalries of the Cold War. Like in Cyprus, the memory and the legacy of those events still has a direct impact on the internal and the external affairs of many of the States involved.

In addition to the Six-Day War and the Nigerian-Biafra War, the experience of the Algerian War of Independence, and the continuity of the Vietnam War, led to a need for re-assessment of the strengths and the shortcomings of the humanitarian-oriented legal developments that were initiated with the establishment of the UN and the Nuremberg and Tokyo Military Tribunals onwards, after WWII. Already in 1965, the Twentieth International Conference of the Red Cross in Vienna passed a resolution urging the ICRC to enhance its assistance to victims of NIACs,[504] whereas in 1966, Jean Pictet published a short study entitled 'Principles of International Humanitarian Law'. Therein, he distinguished more clearly between 'Hague law' IHL as 'the law of war properly so-called',[505] and 'Geneva law' as 'humanitarian law properly so-called'.[506] This was one of the early decisive references to a branch of PIL called 'IHL'. Over the next years the UN would encourage the application of IHRL in

[500] Samuel Fury Childs Daly, *A History of the Republic of Biafra: Law, Crime, and the Nigerian Civil War* (CUP 2020).
[501] Marie-Luce Desgrandchamps, '"Organising the unpredictable": the Nigeria-Biafra war and its impact on the ICRC' (2012) 94(888) *IRRC* 1409; Daniel Palmieri, 'An institution standing the test of time? A review of 150 years of the history of the International Committee of the Red Cross' (2012) 94 (888) *IRRC* 1273, 1288.
[502] Secretary of State for Northern Ireland, Policy Paper, Addressing the Legacy of Northern Ireland's Past' (July 2021) <https://www.gov.uk/government/publications/addressing-the-legacy-of-northern-irelands-past> accessed 20 December 2021.
[503] Draft resolution S/8761, On the Serious situation in Czechoslovakia (22 August 1968) (Vetoed by USSR).
[504] Sivakumaran (n 113) 43.
[505] Jean Pictet, 'The Principles of International Humanitarian Law' (1966) 66 *IRRC* 455, 456.
[506] Ibid 457; Amanda Alexander, 'A Short History of International Humanitarian Law', (2015) 26 (1) *EJIL* 109, 118.

armed conflicts,[507] and the ICRC would put forward a series of recommendations that eventually led to the 1977 Additional Protocols.[508]

In the period following 1968, the Greek-Cypriots sunk deeper into intra-communal violent turmoil, which at its worst moments witnessed once again bombings and political assassinations, new levels of terror, impunity, and further divisions, following increased hostility towards Makarios by some circles after his shift towards what was 'feasible'. As Emilianides observed, by 1970 and just around the second ever parliamentary elections held in the RoC, 'It was obvious that the Republic of Cyprus was facing an internal crisis that reached the *threshold of a civil war* among the Greek-Cypriots'.[509] A similar observation on a looming 'civil war among the Greek-Cypriots' on had already been made by the ICRC delegate on 27 September 1965.[510] Eventually, the events caught up with the state of uncertainty that persisted, and the 'normalised abnormality' in the relations between the two communities which had formed by 1968 was disrupted anew in summer 1974.

[507] International Year of Human Rights, UNGA Res 2081(XX) (20 December 1965); Respect for human rights in armed conflicts, UNGA Res 2444 (XXIII) (19 December 1968); UNGA Respect for Human Rights in Armed Conflicts: Report of the Secretary-General (20 November 1969) UN Doc A/7720; UNGA Respect for Human Rights in Armed Conflicts: Report of the Secretary-General (18 September 1970) UN Doc A/8052.

[508] Sivakumaran (n 113) 42-52.

[509] Emilianides, *Κοινοβουλευτική Ιστορία* (n 41) 104-108, at 108 «Ήταν εμφανές ότι η Κυπριακή Δημοκρατία βρισκόταν σε εσωτερική κρίση που έφθανε τα όρια του εμφυλίου πολέμου μεταξύ Ελληνοκυπρίων».

[510] ICRC Archive, B AG 251 049-005.02, Note 274 (n 165) p. 5.

6 CONCLUSION

By early 1968, a complete decade after the early inter-communal violence of 1958, the two communities once again found themselves at an impasse. The disagreements that were at the epicentre of the political disputes in 1958 became the vehicle that would destroy any little chance for the RoC to progress, in spit of its rigid constitutional structure that controlled every aspect of the Republic's governance. The constitution and any semblance of social cohesion that remained after the early violence of 1958 collapsed with the outbreak of violence on 21 December 1963. By 1968, the fundamental reforms to the constitutional order, the four years of Turkish-Cypriot isolation, and the exponential growth of militarism, put the two communities before a series of *faits accomplis.* These would only be disturbed once again in the summer of 1974. Within the ten-year chronological framework examined here, the thesis has sought to consolidate the numerous legal questions that derive from this period, with a particular focus on the least studied events from that time. Namely, the internal violence that had taken place between the two main ethno-religious communities of Cyprus.

This was achieved by focusing on the sole international legal provision concerning the regulation of 'internal armed conflict' that existed under PIL until 1977, CA3 of the 1949 GCs. For decades academics, politicians, legal advisors, diplomats, and other protagonists and eye-witnesses to the events discussed here wrote extensively on the 'Cyprus triangle' engaging with Cypriot, but also Greek, Turkish and British diplomacy for more than half a century. As a result, 'the written history of the Cyprus [Problem] is mainly a history of negotiations from which the experience of the people is missing'.[1] To this contributed the division of the Island since 1974, and the international community's interest to that more recent and more traumatic experience, the consequences of which are still present, albeit perhaps less intensely felt with every passing decade.

The main question set by the present research was straight forward. Under CA3 of the 1949 GCs, was there a NIAC in Cyprus, during the period 1958-1968? As shown in the previous Chapter, the answer is hardly a simple yes or no. As recognised by Savelsberg, different actors may define 'mass violence' using different terms,

[1] Katerina Sergidou, Gregoris Ioannou, Denktaş in the South: the normalisation of partition in the Greek Cypriot side (*Marginalia*, 6 October 2019) < https://marginalia.gr/arthro/o-ntenktas-ston-noto-enischyei-tin-kypriaki-syneidisi-ennea-simeia-kai-ena-ysterografo/> accessed 7 October 2019

'insurgency, or counterinsurgency, a civil war, or a complex humanitarian emergency',[2] or not register the suffering and practice denial altogether.[3] In law this is particularly problematic since, as illustrated in the preceding Chapters, each of the above in its legal sense, has different legal, and by extension political, consequences.

Starting with an overview of the simultaneous colonial origin of international law and 'imperial humanitarianism' in the late-nineteenth century, Chapter 2 first introduced the inherent biases both international law and humanitarianism entailed from their early origins. With Cyprus being an Island 'peripheral' to both Europe and the Middle East, the Chapter sought to illustrate the impact these developments had for Cypriot politics and society, from the early period of British colonisation, up to the Island's anti-colonial movement and the first incidents of inter-communal violence. In that regard, the Chapter drew attention to relevant elements of the global context of decolonisation, allowing to synthesise a significantly broader picture of the events that followed the establishment of the Republic. Notably, the section on the ways 'civil wars' were handled during the period of decolonisation was particularly enlightening in explaining how the vocabularies and the narratives relating to the armed violence in Cyprus after 1955 evolved, including the strong influence IHRL has had, over other areas of PIL, and in particular IHL. As illustrated here, the very fact that the humanitarian experience of inter-communal violence in Cyprus was completely marginalised until recently, is a symptom of a broader disposition PIL had with regard to individual suffering in the post-colonial world.

In the next Chapter, the thesis proceeded with an examination of the internal constitutional legal order, and how that contributed to the dismantling of the constitutional structure within years from the establishment of the RoC in August 1960. Thus, Chapter 3 not only served as a bridge between the events of 1958 and 1963, but also gave the opportunity to bring together discussions from both the internal and international perspectives of the RoC's early history, and inform these further with insights from international legal scholarship. This was significant two ways. Firstly, in expanding on the position and relevance of the RoC internationally during this period, something that was already initiated in the previous chapter. And secondly, in illustrating the significance internal politico-social dynamics play in cases

[2] Joachim J Savelsberg, *Representing Mass Violence: Conflicting Responses to Human Rights Violations in Darfur* (University of California Press 2015) 1.
[3] Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Polity Press 2001) 5,

of ‘internal violence’, be that ‘disturbances’ or NIAC. This second aspect was expanded on with more elaboration in Chapter 5.

The core elements towards answering the primary question set by the present thesis are addressed in Chapters 4 and 5, the first of which dealt exclusively with the most intense period of inter-communal violence from 21 December 1963 to 9 August 1964, whereas the latter examined in more detail the new socio-political state of affairs that was formed from September 1964 to March 1968. Indeed, these elements lay with the most marginalised aspect of the historiography of the 1960s, and it is, therefore, the present thesis’ main innovative and original element, further enhanced through the extensive use of previously unpublished archival material. In particular the ICRC Archive, but also previously overlooked aspects of UN material, organised and assessed through the legal lens of IHL, primarily, and the prohibition of the use of force, where necessary.

In the last report falling within the chronology of this thesis, UN Secretary-General U Thant informed the UNSC that exchanges of fire were ‘almost a daily occurrence over the past four years’.[4] As seen in the previous chapters, however, armed violence in itself does not constitute a ‘NIAC’, or ‘civil war’ under pre-1949 PIL. Factual information, such as the arrival of the ICRC to respond to the humanitarian needs created by the violence on 1 January 1964, did not automatically suggest that violence had reached the threshold of a NIAC. On the other hand, the deployment of UNFICYP in the last week of March 1964, does serve as evidence that the UNSC considered the growing violence on the Island to pose an actual ‘threat to international peace and security’, but nothing more. To determine the answer legally, legal doctrine requires an assessment of violence under the criteria of assessment of whether the threshold of a NIAC has been passed or not in a given situation; the criteria of ‘organisation’ and ‘intensity’.

Chapters 4 and 5 threw light on the level of organisation of the armed formations on *both* sides; from the paramilitary groups that existed initially, to the voluntary National Guard in spring 1964, or the conscription-based National Guard from June 1964 onwards on the one side, and the Turkish-Cypriot fighters, on the other. The level of intensity of violence was also assessed. As seen, in Chapters 4 and 5, while armed violence existed constantly from 1963 to 1968, the level of intensity varied across time, and regions. The two extreme-opposites being the lack

[4] UNSC Report by the Secretary-General (9 March 1968) UN Doc S/8446 para 62.

of shooting incidents in Limassol for almost a year between May 1964 to May 1965, and at the other extreme the experience of the enclaved Turkish-Cypriots in Kokkina, who lived on a narrow strip of rocky coastland under 'sub-normal conditions'[5] for the full five years. Such contradictions, it is hereby submitted, have contributed to the vagueness that exists in our mainstream understanding of these events today, while it also allowed space for political and diplomatic manoeuvring.

To answer the main hypothesis set at the beginning of this thesis, the present research has gathered enough evidence to conclude that looking at the inter-communal violence which broke out in Cyprus from December 1963 onwards as a 'civil war' or a NIAC can be justified. Especially during the period 1963-1964 when, by all accounts, armed violence was most intense, as seen in Chapter 4. Archival material has shown that the term 'civil war' has been used to describe the situation as such during that time by the UN Secretary-General,[6] and legal academics like future ICJ Judge Thomas Buergenthal.[7] The fact that the Greek-Cypriot leadership employed the term 'rebellion' and 'insurgency,' is also indicative of an awareness at the time that this was a 'civil war', in pre-1949 legal language, as admitted more recently by Chrysostomides.[8] It appears that it was only with time that the interrelation between these terms was eventually left to lapse.

Nevertheless, if a NIAC had started in Cyprus in 1963-1964, the question of when and whether that NIAC ceased, remains open to debate. As seen in Chapter 5, there is no criterion to determine when a NIAC ends.[9] This was problematised in Chapter 5, which also sought to illustrate the extent at which NIACs, or situations just below the NIAC threshold, can alter the socio-legal structure of institutions, society and the State. The legal reforms undertaken by the RoC government are a clear indication of the legal aspects of these dynamics, whereas the reality of and within the enclaves, are a starker illustration of the societal aspects of such changes. Since then, the more each community diverted into their separate ways, the more the

[5] UNSC Report by the Secretary-General (15 September 1964) UN Doc S/5950/Add.2 para 4; ICRC Archive, B AG 251 049-005 02, Note 125, 15 September 1964, p 3.
[6] Report by the Secretary-General on the United Nations Operation in Cyprus (10 September 1964) UN Doc S/5950 para 221.
[7] See section 3.2.3.
[8] Kypros Chrysostomides, *The Republic of Cyprus: A study in International Law* (Martinus Nijhoff 2000) 93.
[9] Gabriella Venturini 'The Temporal Scope of Application of the Conventions' in Andrew Clapham, Paola Gaeta and Marco Sassòli, *The 1949 Geneva Conventions: A Commentary* (OUP 2015) 51, 53.

political and diplomatic structures that have been keeping the whole enterprise loosely together since, have contributed towards the creation of a puzzle of continuously increasing complexity.

The drawing of any further conclusions requires additional research. There is limited doubt that the even greater lack of clarity that exists from a historical perspective on the period that leads up to the Turkish invasion of July and August 1974 has contributed to a detachment between that period with the intense inter-communal violence examined in this thesis. Apart from the factual gaps that exist, further legal research on domestic legal matters would also be beneficial, since little is known on how exactly the State and society functioned after the restrictions in movement were lifted, in order to bridge these two periods of Cypriot history. Of particular interest here, would be to understand how the PCTA and the government of the RoC handled their parallel de facto co-existence in the aftermath of 1968.

The 'historical turn' in PIL over the last two decades, was instrumental in contributing to our understanding of the peculiar Cypriot sovereignty as part of a global system, which continued sustaining its oppressive 'civilisational' prejudices even after the majority of the former 'non-self-governing territories' became UN members. The combination of TWAIL and the broader history of PIL in the late-nineteenth century, as addressed also by historians, were central to this. The first, as a bridge across the post-colonial experience of the former colonies, and the latter as a source of information on how specific mechanisms, such as the concept of 'guarantees' and 'communities' were introduced firstly, for the protection of power-interests in the region, and secondly, for the protection of Cyprus' largest religious minority group. In a similar vein, it was within the context given to the RoC's independence by TWAIL researchers, that the meaning (and significance) of the Republic's 'fettered independence' can be fully appreciated. To those unfamiliar with the intensity of post-colonial relations at the apex of the Cold War, and those who have no living memory of either of those critical processes in the formation of international law and global politics, the connection is easy to miss.

In addition, in 1968 Linda Miller concluded her study uncertain of the form a settlement on Cyprus would have, but believing that the legal norms encompassing it would 'promote orderly self-rule […] just as […] they [had] served to limit the stakes

of conflict.'[10] In the same year, Adams and Cottrell doubted that a peaceful resolution between the two communities would be possible 'if left to their own devices',[11] whereas Stanley Kyriakides advised that any settlement should be devised in such a manner that the majority would understand that they had no 'absolute moral right to rule', and the minority would stop believing that they had 'a right to perpetual veto'.[12] The deadlock continued into the 1970s, but on the eve of the coup d'état and the Turkish invasion in July 1974, constitutional law experts Professors Orhan Aldikachti and Michael Dekleris, from Turkey and Greece respectively, had found a formula for a workable Constitution which, eventually, was not politically endorsed.[13]

Miller's 1968 study was conducted under the Civil War Studies Project of the American Society of International Law (ASIL), which at the time was directed by Richard Falk, and through which she had received comments by Thomas Ehrlich, and Rosalyn Higgins, among others.[14] It is not surprising that her rather optimistic conclusion on the positive role PIL had played in Cyprus in the 1960s is echoed by Ehrlich's conclusions on the 'restraining function' PIL had on decision-makers.[15] His study on Cyprus became one of the foundational studies of Harvard's International Legal Process school.[16] However, in his edited volume on 'Civil War' Richard Falk, who became quite critical of the 'New Haven' policy-oriented approach to international law,[17] described in more critical tone how international law was 'employed as a *post hoc* explanation of behavior that is not intended to be convincing and is not taken very seriously by either advocates or critics.'[18]

Almost five decades later, Kizilyurek concluded that the two competing parties, the two communities as understood here, had 'neutralised' each other.[19] it was this

[10] Linda Miller, *Cyprus: The Law and Politics of Civil Strife* (Center for International Affairs, Harvard University 1968) 65.
[11] Thomas W Adams, Alvin J Cottrell, *Cyprus Between East and West* (The Johns Hopkins Press 1968) 78.
[12] Stanley Kyriakides, *Cyprus: Constitutionalism and Crisis Government* (University of Pennsylvania Press 1968) 170.
[13] Marilena Varnava, *Cyprus Before 1974: The Prelude to Crisis* (IB Tauris 2019) 210-211.
[14] Miller (n 10) vii.
[15] Thomas Ehrlich, *Cyprus 1958-1967* (OUP 1974) 120.
[16] Andrea Bianchi, *International Law Theories: An inquiry into different ways of thinking* (OUP 2016) 101-102.
[17] ibid 106, 108.
[18] Richard A. Falk 'Introduction' in Richard A. Falk (ed), *The International Law of Civil War* (John Hopkins Press) 1, 16.
[19] Niyazi Kızılyürek, *Μια ιστορία βίας και μνησικακίας: Η γένεση και η εξέλιξη της εθνοτικής διένεξης στην Κύπρο Vol 2* (A story of violence and resentment: The genesis and evolution of the ethnic conflict in Cyprus) (Michalis Theodorou trs, Heterotopia 2019) 580.

mutual ‘neutralisation’ of the two Cypriot communities that drove to the conceptualisation of the present research project, through the lens of Koskenniemi’s analysis of the international legal argument as a constant, exhaustive and mutually exclusive pattern oscillating between ‘apology’, and objective ‘utopia’.[20] Neither time, nor space, both constrained by the rules of undertaking a doctoral research, allowed for a comprehensive analysis of Cypriot inter-communal relations and conflict under the scope of critical approaches to international law. However, through the empirical evidence provided in the previous chapters, the present research has attempted to show where and how such tensions were formed in Cyprus.

As recognised by others, there is a general lack of systemic understanding of the overall effectiveness of the Geneva Conventions.[21] In view of internal conflicts, and the traditionally strong division between matters ‘internal’ and ‘external’ to the affairs of a State, the situation becomes even graver, since opportunities for external scrutiny are constrained. In that regard the Cyprus Question, despite some unique characteristics, is not in fact dissimilar to other post-colonial and post-soviet conflicts, which remain unresolved or, in case formal political agreements have been reached, remain highly tense and volatile to date. It is, therefore, worth studying it in conjunction with other conflicts, both historically and from a contemporary perspective.

[20] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Reissue with New Epilogue, CUP 2005) 58-69.

[21] Nina Tannenwald, ‘Assessing the Effects and Effectiveness of the Geneva Conventions’ in Matthew Evangelista and Nina Tannenwald, *Do the Geneva Conventions Matter?* (OUP 2017) 3, 4.

ANNEX I: Article 3 Common to Geneva Conventions 1949 I-IV

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

ANNEX II: Security Council Resolution 186 (4 March 1964)

The Security Council,

Noting that the present situation with regard to Cyprus is likely to threaten international peace and security and may further deteriorate unless additional measures are promptly taken to maintain peace and to seek out a durable solution,

Considering the positions taken by the parties in relation to the Treaties signed at Nicosia on 16 August 1960,4

Having in mind the relevant provisions of the Charter of the United Nations and its Article 2, paragraph 4, which reads: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations",

1. Calls upon all Member States, in conformity with their obligations under the Charter of the United Nations, to refrain from any action or threat of action to worsen the situation in the sovereign Republic of Cyprus, or to endanger international peace;

2. Asks the Government of Cyprus, which has the responsibility for the maintenance and restoration of law and order, to take all additional measures necessary to stop violence and bloodshed in Cyprus;

3. Calls upon the communities in Cyprus and their leaders to act with the utmost restraint;

4. Recommends the creation, with the consent of the Government of Cyprus, of a United Nations Peace-keeping Force in Cyprus. The composition and size of the Force shall be established by the Secretary-General, in consultation with the Governments of Cyprus, Greece, Turkey and the United Kingdom of Great Britain and Northern Ireland. The Commander of the Force shall be appointed by the Secretary-General and report to him. The Secretary-General, who shall keep the Governments providing the Force fully informed, shall report periodically to the Security Council on its operation;

5. Recommends that the function of the Force should be in the interest of preserving international peace and security, to use its best efforts to prevent a recurrence of

fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions;

6. Recommends that the stationing of the Force shall be for a period of three months, all costs pertaining to it being met, in a manner to be agreed upon by them, by the Governments providing the contingents and by the Government of Cyprus. The Secretary-General may also accept voluntary contributions for the purpose;

7. Recommends further that the Secretary-General designate, in agreement with the Government of Cyprus and the Governments of Greece, Turkey and United Kingdom, a mediator, who shall use his best endeavours with the representatives of the communities and also with the aforesaid four Governments, for the purpose of promoting a peaceful solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people as a whole and the preservation of international peace and security. The mediator shall report periodically to the Secretary-General on his efforts;

8. Requests the Secretary-General to provide, from funds of the United Nations, as appropriate, for the remuneration and expenses of the mediator and his staff.

ANNEX III: Statistics

UNIFCYP & CASUALTIES STASTICS (1964 - 1968)

UN Doc No.	Report Date	UNFICYP Size*	Shooting incidents		GREEK-CYPRIOT			TURKISH-CYPRIOT			UNFICYP			OTHER	
					Dead	Wounded	Missing	Dead	Wounded	Missing	Dead	Wounded	Missing	Killed	Missing
S/5679	02/05/1964	6,369	163	30 days	7	13		14	15	36 (unverified)		1			
S/5764	15/06/1964	6,411	14	Shooting incidents with casualties only.	4		52	4	9	483	1	2	2	2 (Greek soldiers)	
S/5950	10/09/1964	6,160	259	3 months**	8	20	38	15	14	232					5
S/6102	12/12/1964	6,279	160	3 months	2	4	38	2	14	209					4
S/6228	11/03/1965	6,151	222	3 months	1	0	42	1	3	209		2			4
S/6426	10/06/1965	6,346	259	3 months	3	3	41	1	0	208	3***	3***			4
S/7001	10/12/1965	5,766	69	6 months	1	2	41	2	8	210	2***	2***			4
S/7191	10/03/1966	5,026	17	3 months	No aggregate number given.		41	No aggregate number given.		212	1***	15***			5
S/7350	10/06/1966	4,861	34	3 months			41			211	2***	8***			5
S/7611	08/12/1966	4,610	289	3 months			41			199	8***	27***			5****
S/7969	13/06/1967	4,622	346	6 months			45			198	1***	28***			_
S/8286	08/12/1967	4,737	284	6 months			44			204	4***	22***			_
S/8446	09/03/1968	4,745	67	3 months			43			Several found. No exact number given.	1***	22***			_
S/8622	11/06/1968	4,629	39	3 months			46			+ 2	3***	13***			_
S/8914	04/12/1968	3,533	65	6 months			_			_	3***	24***			_

*Military Force and Civilian Police (UNCIVPOL).
** Excluding fighting in Tillyria 7-11 August 1964.
***Not related to armed violence. Vast majority traffic accidents. Other causes include natural causes and disfunctional arms.
****3 British, 1 German (1964) and 1 Greek (1966)

TYLLIRIA - 6-9 AUGUST 1964

	National Guard	Greek Cypriot Civilians	Turkish-Cypriot Fighters	Turkish-Cypriot Civilians	Greek Nationals	Turkish Nationals
Dead	25	28	Unknown	Unknown	5	1
Wounded	69	56	Unknown	Unknown	13	Unknown

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