

THE ZURICH AND LONDON AGREEMENTS AND THE CYPRUS REPUBLIC

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The genesis of the Republic of Cyprus did not follow the normal precedents by which a new state comes into existence and, although the mode and methods to bring into being a new state constitute a historic rather than a legal fact¹, the procedure followed in the case of Cyprus differs from that applied in other instances.

The initiative to promote the colony of Cyprus to a republic was due neither to the people of the island nor to the Colonial Power dominating Cyprus, but to Greece and Turkey, who decided by themselves to settle in a final way the problem of Cyprus and asked later the United Kingdom and the Cypriots to accept the agreement.

The facts are briefly as follows :

After a Conference held at Zurich in Switzerland at the beginning of February 1959, the Prime Ministers of Greece and Turkey initialled on February 11, 1959, three documents, i.e. a/ the basic structure of the Republic of Cyprus ; b/ a treaty of guarantee between the Republic of Cyprus on the one part, Greece, Turkey and the United Kingdom on the other part, and c/ a treaty of alliance between the Republic of Cyprus, Greece and Turkey. On the same day the Foreign Ministers of Greece and Turkey flew to London, where they had consultations with the Foreign Secretary of the United Kingdom and accepted that the claims presented by the British Government in respect of certain areas of the territory of Cyprus to be retained under the Sovereignty of the United Kingdom and various servitudes on the territory of the

1. RAFAEL ERICH, *La naissance et la reconnaissance des États* (Recueil des Cours de l'Académie de Droit International de La Haye, Vol. 13 (1926, III), p. 442. « La naissance d'un nouvel État est toujours un fait historique qui ne dépend pas de certaines conditions juridiques ». JEAN SPIROPOULOS, *Théorie générale du Droit International*. J. L. BRIERLY, *The Law of Nations*, 5th Ed. Oxford Commencement of the Existence of a State, p. 129.

Republic of Cyprus in favour of the United Kingdom should form an additional article to be inserted in the treaty of guarantee ².

The areas to be retained by the United Kingdom under British Sovereignty are two and lie at the southern part of the island (Akrotiri-Episkopi-Paramali and Dhekelia-Pergamos-Ayios Nicolaos-Xylophagou), In addition the British Government asked that provision should be made by agreement for : (i) the protection of the fundamental human rights of various communities of Cyprus ; (ii) the protection of the interests of the members of the public services in Cyprus ; (iii) determining the nationality of persons affected by the settlement, and (iv) the assumption by the Republic of Cyprus of the appropriate obligations of the Government of Cyprus, including the settlement of claims ³.

In view of the absence of an elected body representing the people of Cyprus, on account of the abolition of the island's Legislative Council in 1931, it was found impossible to adopt in the case of Cyprus the normal procedure followed in other instances where agreements, affecting the constitutional and international status of a territory were first submitted to the interested national representative body for approval ⁴. A *modus vivendi* was therefore adopted. The documents initialled at Zurich together with the British declaration and its acceptance by the Foreign Ministers of Greece and Turkey were submitted to Archbishop Makarios, the proclaimed leader of the Greek Cypriots, and to Dr. Kutchuk as leader of the Turkish minority in Cyprus who, at a solemn meeting held at Lancaster House on February 19, 1959, declared their acceptance and initialled the agreements as representatives of their respective communities. Three committees were then set up for preparing the establishment of the new Republic and giving effect to the agreements : a/ A joint commission for drafting the constitution ; b/ a transitional committee for the transfer of authority to the independent Republic of Cyprus, and c/ a joint committee with a duty of preparing the final treaties giving effect to the conclusions of the London Conference and, thereupon the Prime Ministers of the United Kingdom, Greece and Turkey signed a memorandum by which they adopted on behalf of their respective Governments the documents as the agreed foundation for the final settlement of the problem of Cyprus ⁵.

2. Conference on Cyprus, pp. 11-13, London. Her Majesty's Stationery Office (Miscellaneous, N° 4 (1959), cmnd. 679.

3. *Ibid.*, p. 12.

4. See : Ghana ; Malaya ; The West Indies, etc. *The Making of Ghana 1958*. London H. M. Stationery Office.

5. Conference on Cyprus (Documents signed and initialled at Lancaster House on February 19, 1959, London H.M.S.O.), Cmnd. 679.

THE CONSTITUTIONAL STRUCTURE OF THE REPUBLIC

The Constitution of Cyprus contains 199 articles thus it has more articles than any other known constitution. It embodies the principles and provisions of the 26 articles laid down by the basic Structure of the Republic of Cyprus as agreed upon at Zurich by the Prime Ministers of Greece and Turkey, which cannot be amended ⁶.

Under the provisions of Art. I the State of Cyprus is an independent and sovereign Republic with presidential regime, the President being Greek and the Vice-President Turk, elected by the Greek and Turkish communities respectively. Both exercise the executive power conjointly in certain matters (institution of compulsory military service, reduction or increase of the security forces etc.), while either of them has the right of separate veto on Laws of the House of Representatives or decisions of the Council of Ministers concerning foreign affairs, defence or security and other matters ⁷. The legislative power is exercised by the House of Representatives and the Communal Chambers. There are two Communal Chambers, one Greek and one Turkish, each having competence over religious, educational, cultural, charitable and similar matters and the personal status of the members of its respective community. Small Christian religious groups such as the Armenians, Latins and Maronites are each represented by one member in the Greek Communal Chamber ⁸. On all other matters, except those expressly reserved to the Communal Chambers, the legislative power is exercised by the House of Representatives composed of 50 members, of whom 35 are Greeks and 15 Turks.

Among the other essential provisions of the Constitution we can cite the following: a/ The official language of the Republic shall be the Greek and Turkish. b/ Public service shall be composed as to 70% of Greeks and as to 30% of Turks. c/ The High Court of Justice

6. Art. 7 of the Basic Structure. Art. 182 of the Draft Constitution, par I: « The articles or parts of articles of this Constitution set out in Annex III hereto which have been incorporated from the Zurich Agreement dated 11th February, 1959, are the basic articles of this Constitution and cannot, in any way, be amended, whether by way of variation, addition or repeal ».

7. Art. 47.

8. Arts. 48, 49, 50, 51.— Art. 2 of the Constitution provides that Religious Groups acquiring rights under the Constitution are only those whose number at the inauguration of the Republic exceeds one thousand persons out of which at least five hundred become citizens of the Republic. Religious Groups possessing this qualification were only three: the Latins, the Maronites and the Armenians. It is evident that no further religious groups could be recognized in future, even if their number at any future time may exceed the one thousand persons.

shall consist of 2 Greeks, 1 Turk and 1 neutral having 2 votes. d/ The army of the Republic shall consist of 2000 men of whom 60% shall be Greek and 40% Turkish. e/ There shall be a Constitutional Court composed of one Greek, one Turk and one neutral. f/ Total or partial union of Cyprus with any other State or partition of the island shall be excluded and g/ the treaty guaranteeing the independence, territorial integrity and Constitution of the Republic concluded between Cyprus, Greece, Turkey and the United Kingdom and the treaty of Military Alliance concluded between Cyprus, Greece and Turkey shall have constitutional force⁹. It is further provided that the Republic of Cyprus shall by agreement accord most-favoured-nation treatment to Greece, Turkey and the United Kingdom¹⁰.

The Cyprus Constitution is the outcome of a compromise reached between Greece and Turkey and embodied in the Basic Structure of the Republic. In some respects the Constitution of the Republic presents analogies to that of Lebanon, where the President of the Republic is a Christian and the Prime Minister a Moslem. In other respects it follows the American system of Government, where the office of the Vice-President is a constitutional institution¹¹. For the sake of settlement many concessions are granted to the Turkish minority of Cyprus at the expense of the Greek majority. Thus, the numerical proportion between the Greek majority (80%) and the Turkish minority (18%) has not been observed in the composition of the House of Representatives, the Police, the public service and the army. What, however, makes the Constitution susceptible to scepticism is the clause of Art. 182 (I), under the provisions of which the articles or parts of articles incorporated in the Constitution from the Zurich Agreement of February 11, 1959, cannot in any way be amended, whether by way of variation, addition or repeal, while other articles of the Constitution may be amended by a majority of the two-thirds of the Greek members and of the two-thirds of the Turkish members of the House of Representatives¹².

The clause is in conflict with the provisions of Art. 1 of the Constitution defining the State of Cyprus as an independent and sovereign

9. Arts, 86, 87. Appendix F. The Rights of smaller religious groups in Cyprus (Cyprus, London 1960, Cmnd. 1093), H.M.S.O.

10. Arts. 61-85.

11. In fact most-favoured-nation treatment is granted not only to the United Kingdom but also to all independent territories of the British Commonwealth and the British Commonwealth generally. Art. 170 Appendix N.

12. B. MIRKINE GUETZÉVITCH, *Les Constitutions des Nations Américaines*, Paris 1932.

13. Art. 182 (1) (2) (3).

Republic. A sovereign State can always amend its Constitution by a constituent assembly convened *ad hoc*, but the Republic of Cyprus, although a sovereign and independent State, cannot. The provisions of Art. 182 (I) are further safeguarded by the treaty of Guarantee by which Greece, Turkey and the United Kingdom guaranteed the state of affairs established by the Basic Articles of its Constitution. In the event of a breach of the provisions of the treaty Greece, Turkey and the United Kingdom shall have the right to consult together with respect to the representations or measures necessary to ensure observance of the provisions and, in case common or concerted action may not be proved possible, each of the three guaranteeing Powers shall reserve the right to take action with the sole aim of reestablishing the state of affairs created by the treaty of Guarantee ¹⁴.

A further feature of the Constitution is the provision of Art. 185 of the Constitution, which defines that the territory of the Republic is one and indivisible and declares that the integral or partial union of Cyprus with any other state or the separatist independence is excluded. The provision is intended to avoid any attempt for union of Cyprus with Greece, which is the resolute aspiration of the Greek people of Cyprus, and to elude the recent movement of the Turkish minority for partition of the island ¹⁵. Analogous provision excluding political union of a state with another is contained in the State Treaty for the re-establishment of Austria ¹⁶.

The provisions of the Constitution favour rather the maintenance of a separate life between the Greek and Turkish community than the creation of an homogeneous state (separate municipalities in the five principal towns; separate courts composed of Judges belonging to the community of the parties etc.) ¹⁷.

THE TREATY OF ALLIANCE AND THE UNITED NATIONS CHARTER

By a treaty of Alliance concluded between the Republic of Cyprus, Greece and Turkey the three States undertake to «resist any attack or aggression, direct or indirect, directed against the territorial integrity

14. Draft treaty of Guarantee. Appendix B., p. 86-7. Cyprus. Cmnd. 1093. H.M. S.O., London 1960.

15. Art. 185 (1) (2). The Turkish separatist movement for partition of the island took its origin from the declaration made by the Colonial Secretary of United Kingdom Mr. Alan Lennox Boyd on presenting to the House of Commons in December 1956 the Radcliff Constitution.

16. Staatsvertrag betreffend die Wiederherstellung eines unabhängigen und demokratischen Oesterreich. Artikel 4, Verbot des Anschlusses.

17. Arts. 159, 173.

of Cyprus » and in order to achieve this object a tripartite Headquarters is established on the territory of the Republic of Cyprus. The preamble of the treaty defines that it is concluded in the common desire of the three States to « uphold peace and preserve the security of each of them » and it is added that their efforts are « in conformity with the purposes and principles of the United Nations Charter »¹⁸. Two protocols are attached to the treaty. By the first is fixed the participation of Greece and Turkey to the tripartite Headquarters and it is further stipulated that the President and Vice-President of the Republic of Cyprus acting in agreement, may request the increase or reduction of the Greek and Turkish contingents, while by the second protocol a committee is established, consisting of the Foreign Ministers of Cyprus, Greece and Turkey, as the supreme political body of the Alliance¹⁹.

The treaty is intended to come within the category of regional arrangements, the existence of which is not precluded by the Charter of the United Nations²⁰ and although it seems to supplement the treaty of Guarantee it is, in this respect, superfluous. Both the treaty of Guarantee and the treaty of Alliance guarantee the independence and territorial integrity of the Republic of Cyprus. The treaty of Guarantee goes even further. It guarantees in express terms the security and the state of affairs established by the basic articles of the Constitution of Cyprus, and provides for an additional guarantee, that of the United Kingdom. The only new element of the treaty of Alliance is the presence of Greek and Turkish contingents on the territory of the Republic of Cyprus.

If the terms of Art. 11 of the treaty of Alliance are properly interpreted the Greek and Turkish contingents cannot be used except in case of external attack or direct or indirect aggression from any other state against the independence or the territorial integrity of the Republic of Cyprus. What is, however, dubious is whether Greece or Turkey may not use their forces in Cyprus, either by concerted action or individually, in taking action under the provisions of the treaty of Guarantee in order to ensure the observance of the basic articles of the Constitution. Under the treaty of Alliance, Greece or Turkey have not such

18. Cyprus, *op. cit.*, Appendix C, pp. 88-89.

19. *Ibid.*, p. 89. The Committee shall meet in ordinary session once a year and in a matter of urgency in special session at the request of one of the members of the Alliance. The Committee shall be presided over in rotation for the period of one year by each of the Foreign Ministers. The Greek contingent consists of 950 and the Turkish of 650 officers, non-commissioned officers and men.

20. United Nations Charter. Charter VIII. Regional Arrangements. Art. 52 (1) (2) (3) (4).

right and they must comply with the provisions of Art. 52 of the United Nations Charter²⁰ to make every effort to achieve pacific settlement of local disputes before referring them to the Security Council. But both Greece and Turkey may use, by concerted or individual action, their forces in Cyprus in order to ensure observance to the provisions of the treaty of Guarantee, although the presence of Greek and Turkish contingents in Cyprus aims only at the defence of the new Republic from external attack or aggression.

A further point which needs clarification is the provision relating to the request for increase or reduction of the Greek and Turkish contingents. Under the terms of Art. 11 of protocol I the president and Vice-President of the Republic acting in agreement may request Greece and Turkey to increase or reduce their contingents in Cyprus. Thus the President's power is hampered by the Vice-President's will, but even in case of agreement to formulate such a request there is no stipulation either in the Treaty or the protocols that Greece and Turkey should comply with that request. No answer is given in case where the one of the two States, Greece or Turkey, accedes to the request and the other declines to accept it. The only probable solution is that the matter shall be left to the Committee of Foreign Ministers of the three States to decide by majority of votes.

THE BRITISH SOVEREIGN BASES IN CYPRUS

The territory of the Republic of Cyprus does not comprise the whole island of Cyprus. Two areas known as the Akrotiri Base Area and the Dhekelia Base Area of about 99 sq.m. remain under the sovereignty of the United Kingdom²¹. Under the provisions of the Treaty of Establishment concluded by the United Kingdom, Greece and Turkey on the one part and the Republic of Cyprus on the other part, Cyprus recognizes the Akrotiri and Dhekelia Base Areas as Sovereign British territories and undertakes to co-operate fully with the United Kingdom to ensure the security and effective operation of the areas, the delimitation of which is described in Annex A to the Treaty. In case of disagreement on technical interpretation of the boundaries the matter shall be referred to an independent expert selected by agreement between the United Kingdom and the Republic of Cyprus, whose decision shall be final and binding²².

The Government of the United Kingdom shall have also the right

21. Cyprus, *op. cit.*, App. A. Treaty Concerning the Establishment of the Republic of Cyprus, p. 13.

22. *Ibid.*, Annex A. Sect. 2, 4, p. 16.

to use, without restriction or interference, certain sites in the territory of the Cyprus Republic with exclusive right to defend them as well as the use of the Nicosia airfield and the port of Famagusta ²³.

The British Base Areas in Cyprus will not be used, however, except as military bases and they will not be developed and administered as colonies. No civilian, commercial or industrial enterprise, or commercial or civilian seaports or airports will be established on these areas under British Sovereignty. The Cyprus currency shall be legal tender in the British Base Areas and property of Cypriots situated in the areas will be protected ²⁴.

With regard to the future of the British Sovereign areas the United Kingdom Government handed a note to the President and Vice-President of the Republic by which they declared that the British Government « do not intend to relinquish their sovereignty or effective control » over the areas and that therefore the question of their cession does not arise. In reply Archbishop Makarios and Dr. Kutchuk assured the United Kingdom that the Republic of Cyprus « will not demand the British Government to relinquish their sovereignty » but in case, at any time, the United Kingdom may decide to divest of the sovereignty or control of the bases or part thereof, it is understood that such sovereignty or control shall be transferred to the Republic of Cyprus. The United Kingdom Government agreed with the views of the note of the Cypriot leaders ²⁵.

COMMENTS ON THE AGREEMENTS

Both the Treaty of Guarantee and the Treaty of Alliance have not been concluded for a specific period of time. No stipulation is contained in either of them regarding their termination or dissolution by withdrawal after notice to the other parties or otherwise. They are not, however, supposed to have been concluded for ever. They are the outcome of a compromise and they should be interpreted in the light of the circumstances which led to their conclusion at Zurich and London by which it was foreshadowed the coming into existence of the Republic of Cyprus. What is apparent in both Treaties as well as in the Constitution of Cyprus is that Greece, Turkey and the United Kingdom endeavoured to establish agreements and a constitutional structure by which their interests should be better served, their relations with the

23. *Ibid.*, Annex B, part II, Sched. A, B, C, D, pp. 21-30.

24. *Ibid.* Appendix O. Declaration by H. M. Government regarding the administration of the Sovereign Base Areas, p. 201-5.

25. *Ibid.* Appendix P. Future of Sovereign Base Areas, p. 207.

new State fostered so as to create no cause of friction between them, as in the past, and to leave very slight, if no initiative at all, to the new Republic, at least, in its initial steps as an independent and sovereign State.

But conditions in the everchanging world we live in, cannot remain static, despite the intention of the promoters of the Zurich and London Agreements, especially because local conditions prevailing in Cyprus were not taken into account. It would therefore be only pertinent to expect that the Republic of Cyprus will be forced in the foreseeable future to seek amendments and alterations of its constitution. Its structure may be proved fragile on account of the right of veto to be exercised by the President or the Vice-President in many instances provided for in the basic articles of the Zurich Agreements embodied in its Constitution ²⁶.

There are two considerations to be examined in case of an eventual attempt to amend the basic articles of the Constitution. On the one side is the *lex specialis* of the Zurich Agreements embodied in the Constitution of the Republic, which Cyprus is bound not to alter in any way and, in addition, the provisions of the treaty of Guarantee by which, Greece, Turkey and the United Kingdom have the right to take concerted or individual action for restoring the *status quo*. On the other hand in case of deadlock on account of abuse of the right of veto or demolition of the fragile balance of power between the President and the Vice-President any action leading to the restoration of the state of affairs established by the basic articles of the Constitution would only mean perpetuation of the deadlock and nothing more.

Furthermore Cyprus as an independent and sovereign state has every right to manage its own domestic affairs without intervention from outside, even in the case where other States have a right based on a treaty. The right of a State, that has guaranteed by treaty the form of Government of another state, to intervene in case of a change in the form of Government is not generally accepted. Its existence is not

26. The President and the Vice-President have separately and conjointly the right of final veto on any law or decision concerning foreign affairs (except the participation of the Republic of Cyprus in international organisations and pacts of alliance in which Greece and Turkey both participate), defence (composition and size of the armed forces and credits for them, appointments and promotions, imports of warlike stores and of all kinds of explosives, granting of bases and of other facilities to allied countries) and security (appointments and promotions, allocation and stationing of forces, emergency measures and martial law, police laws). Art. 8 of the Basic Structure of the Republic of Cyprus. Annexes A and B.

recognised by distinguished authors of International Law ²⁷ and it cannot be reconciled with the purposes and principles of the United Nations. The Republic of Cyprus, by becoming a member of the United Nations, may invoke the application of the provisions of Art. 2 of the Charter and ask Greece, Turkey and the United Kingdom or either of them to refrain from interfering in « matters which are essentially within its domestic jurisdiction », or from taking any action or using threat or force against its political independence ²⁸.

In our view the provisions in the treaty of Guarantee entitling Greece, Turkey and the United Kingdom to take concerted or separate action for restoring the basic articles of the Constitution, is not, in this respect, consistent with the purposes and principles of the United Nations and in case of insistence on their part to use the right granted by the treaty, the Republic of Cyprus will have the right to apply to the Security Council ²⁹.

A further omission of the Treaty of Guarantee and the Treaty of Alliance is that there is no stipulation in either treaty regarding the fate of the treaties in case one or more of the contracting parties desire the amendment or dissolution of the treaty and the other parties object. No provision is contained also concerning the dissolution of the treaties by notice of withdrawal by one of the contracting parties.

Both treaties are not self-executing. They belong to the executory type of treaties and the general principles of International Law concerning the termination of treaties should be applied. Treaties of Alliance and Guarantee as well as commercial treaties are not intended to set up an everlasting condition of state of affairs ³⁰. Even if they do not expressly provide for the possibility of withdrawal they can nevertheless be terminated after notice by one of the parties. The same also applies to the Agreements for according the most-favoured-nation treatment to the

27. HALL, *A treatise on International Law*, 8th Ed. (1924), Par. 93. L. OPPENHEIM, *International Law*, 8th Ed. (1955), Par. 135, Page 305 et seq. ST. SÉFÉRIADÈS, *Principes généraux du Droit International de la Paix*, Académie de Droit International de La Haye. Recueil des Cours, 1930, IV (34), Chap. VII, pp. 386 et seq., p. 392. Car intervention voulant dire ingérence, substitution de sa propre volonté à la volonté d'autrui, nul être souverain ne saurait admettre cette ingérence, sans perdre par là même sa propre souveraineté.

28. U. N. Charter. Art. 2 (4) (6) (7).

29. *Ibid.* Charter VI, Art. 33, 34, 35. League of Nations Pact, Art. 20. LOUIS DE BROUCKÈRE, *La prévention de la guerre* (Recueil des Cours Académie de La Haye, Tome 34, p. 74-75).

30. OPPENHEIM, *op. cit.*, p. 938. A commercial treaty, or a treaty of alliance not concluded for a fixed period only, can be dissolved after notice, although such notice be not expressly provided for.

United Kingdom and The British Commonwealth, Greece and Turkey by the Republic of Cyprus, although there is, in this respect, as far the treaties of Guarantee and Alliance, provision in the Constitution that no alteration of the basic articles is permissible.

The circumstances in which all the above agreements were concluded and the nature of the subject matter show that there was only a *modus vivendi* and they are all, according to International Law, susceptible to denunciation. Their span of life is depended on the will of any of the contracting parties ³¹.

The international status of the Republic of Cyprus foreshadowed by the Zurich and London Agreements could not be regarded as such of an absolute independence. The new State could not freely maintain its own foreign policy or manage its domestic affairs except under the restrictions and terms of the Zurich Agreements incorporated in its constitution. We are inclined therefore to believe that the intention of the authors of the Zurich Agreements was to grant to Cyprus a quasi or imperfect independence ³². By the admission, however, of Cyprus to the United Nations Organisation in September 1960, its international position has been automatically changed, as membership in the United Nations is not open except to sovereign States accepting the obligations of the Charter and able and willing to carry out these obligations ³³. The Republic of Cyprus is free to change its constitution by legal procedure or plebiscite without violating the principles of the protection of the rights of minorities as universally recognized and no intervention, even by treaty, is admissible to its domestic affairs.

It remains only to examine whether such an intervention is permissible by direct invitation from the Government of Cyprus. Such an action, however, is not always devoid of foreign inspiration and may be considered as lacking also in impartiality, unless it is addressed to the United Nations Organization as a whole ³⁴.

31. J. L. BRIERLY, *The Law of Nations*, p. 256. Treaties of alliance and commerce ... are intended to be susceptible of denunciation even though they contain no express term to that effect.

32. Γεωργίου Κ. Τενεκίδου, *Ανημόσιον Διεθνές Δίκαιον*, Τ. Α' σελ. 154. ('Αθήναι 1959).

33. Art. 4 of the Charter.

34. E. LAUTERPACHT : Intervention by invitation (*The Times*, London 24.8.1960, p. 9).