Too late to respond? Territorial integrity of the European Union and its member states, its long-standing violations resulting from aggression, and self-defence

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Abstract

The European Union (EU) is facing a crisis of territorial integrity: one of its member states and several of its candidate members have had parts of their territory under occupation as a result of foreign aggression, with the occupation ongoing for an extended time period in each case. It is unclear whether action taken to recover territory from long-running occupation is legal under the law on self-defence. Treaty law does not rule out such an option, but its approval is implicit at best. Furthermore, publicists are split on the matter between those who favour the preservation of the right to self-defence throughout time, especially for weaker victims of aggression, and those who prefer to regard the restored peace and new status quo resulting from long-running occupation. These divisions warrant a turn to customary law for answers.

A case study of state practice and opinio juris *in the question of Cyprus, the sole member state of the EU under partial military occupation, reveals contrasting findings. The international community, through the positions of the United Nations (UN) Security Council and the General Assembly, has repeatedly condemned the occupation and considered any new status quo as illegal. At the same time, the Security Council undertook measures under Chapter VII of the UN Charter to cease the right of Cyprus to self-defence, including by non-forcible means, although these measures were ineffective in attaining the end of occupation and the withdrawal of unauthorised foreign troops from the island. This raises the question whether the formulation of Article 51, requiring "necessary action" by the Security Council to end the right to self-defence while not mentioning sufficiency, is adequate in cases of long-standing aggression.*

Introduction

The European Union (EU) has enlarged significantly since its establishment. Its predecessor, the European Communities, had grown modestly, from 6 to 12 members in the 36 years between the Treaty of Rome and the Maastricht Treaty, which established the EU.[1] By contrast, the EU has accepted 16 new member states in merely 20 years, before the departure of the United Kingdom stabilised the bloc as the "EU-27".[2]

The "widening" of European integration was crucial in making the EU a truly European project and it was one of the drivers of the integration's "deepening", but it did not come without problems. After the 1995 enlargement round, the EU had effectively run out of "easy applicants" willing to join.[3] Subsequently, most of the new member states in the rounds of 2004, 2007, and 2013 suffered from a range of problems in the incorporation of EU law.[4]

However, from the perspective of international law, the most problematic enlargement round was exclusively the one which occurred in 2004 due to the accession of a single state: Cyprus. With its accession, the EU had for the first time admitted a state whose territorial integrity was violated at the time of accession.[5] This violation arose via an armed attack that had not been repelled, and the occupation has not been resolved until the time of writing, making the Cyprus problem one of Europe's "frozen conflicts".[6] As the EU predominantly relies on the member states for the enforcement of its law, the limited sovereignty of Cyprus over its territory is a severe impairment of the EU's jurisdiction.[7]

Strikingly, the problematic case of Cyprus did not prevent actors within the EU to seek the accession of states with similar issues. Ukraine, Moldova and Georgia were granted candidate status in 2023 despite suffering from violations of their territorial integrity, which have persisted for more than a decade in each case.[8] It needs to be remarked that the accession process is a long-term endeavour, and it is not certain whether any of the three states reaches the status of an EU member state in the foreseeable future. However, one thing remains certain: The EU is faced with a problem of long-term violations of territorial integrity both within its

[1] Nugent, 2017, p. 60.
[2] Van Middelaar, 2018, p. 10.
[3] Nugent, 2017, p. 72.
[4] Nugent, 2017, p. 72.
[5] Hoffmeister, 2006, p. 199.
[6] Grant, 2017, p. 374.
[7] Bouris & Kyris, 2017, p. 760.
[8] Bebler, 2015, pp. 45, 98, & 189; European Commission, 2023.

ranks and among its candidates, and it is unclear whether EU actors will be able to do anything to remedy these violations within the boundaries of its power capabilities and of international law.

The aim of this work is to examine the latter aspect, as international law is intimately linked to European integration. It was an intergovernmental treaty what allowed the EU and its predecessors to emerge.[9] Reflecting its roots, the EU has traditionally been a champion of international law in its foreign policy.[10] Even as EU actors strive to establish the Union as a geopolitical power, it would be ill-advised to abandon its foundations: After all, modern international law, much like the EU in its regional context, aims to maintain peace.[11] Yet sometimes mere maintenance of peace does not suffice: In contexts where a breach of international peace has occurred, international law also needs to have instruments for its restoration. Restoration of international peace is a crucial element of the resolution of the violations of territorial integrity of EU member and candidate states, and therefore is a chief motivation of this work.

The challenges faced by the EU here are of a long-term character, their resolution therefore warrants the research question of this work: *How does the longevity of breaches of territorial integrity by acts of aggression impact the legality of self-defence against them?*

Literature review

The research question rests not only on the presented empirical issues, but also on several intertwined conceptual debates.

A core concept of this work is territorial integrity. This term refers to the preservation of a polity's territory as a whole and the polity's right to govern its territory without any external interference or threat.[12] Territorial integrity stands at the heart of the modern international legal order, with the principle enshrined in Article 10 of the Covenant of the League of Nations and later Article 2(4) of the United Nations (UN) Charter.[13] Its importance lies within its implications for international peace, which is perceived as the key value of the international community.[14] An international norm of respect for territorial integrity of existing territorial

[9] Orakhelashvili, 2006, p. 343.
[10] Pollack, 2016, p. 874.
[11] De Zayas, 2011, p. 42; UN Charter, 1945, art. 1(1).
[12] Blay, 2010.
[13] Blay, 2010; LoN Covenant, 1919, art. 10; UN Charter, 1945, art. 2(4).
[14] Bailliet, 2015, pp. 43-44.

units applies social pressure, often accompanied with material sanctions, on any actor that seeks to change international boundaries.[15] If this pressure discourages the given actor from transgressing territorial integrity of a foreign territorial unit, conflict is averted and peace is therefore preserved.[16] Territorial integrity is traditionally understood as a right of states, but it has also assumed an increasing importance for the EU.[17] This shift is best explained from a legal perspective: Lawmaking is the strongest sovereign prerogative of the EU, and only with a full territorial integrity of its member states can the EU exercise its formal jurisdiction to its fullest extent.[18]

Few international legal norms are as important as territorial integrity. Paradoxically, there is one such norm that is at times in tension with it: Self-determination.[19] At the fundamental level, self-determination is the right of a people – a term which has remained relatively vague under international law – to determine their political status freely.[20] Since the era of decolonisation, self-determination has achieved a status of a peremptory norm or *jus cogens*, i. e. a legal norm from which no derogation is allowed.[21] Contemporary practice favours internal self-determination, i. e. a freedom to determine political status within the framework of a parent state.[22] This includes regional or ethnic autonomy or, arguably, democratic mechanisms.[23] Should the parent state fail to endow a distinct people with such rights, secession may be justified on the basis of external self-determination – although a right to secession does not exist *per se*.[24] Notwithstanding the rejection of the link between secession and self-determination, secessionist movements often invoke the right to external self-determination.[25]

The sanctity of peace among the values of the international community is safeguarded by the illegality of its breaches. In fact, the Article 2(4) of the UN Charter only enshrines the importance of territorial integrity negatively, by prohibiting the use of force against it.[26] Later in the UN era, the UN General Assembly Resolution 3314 (XXIX) assumed an authoritative status as a definition of aggression, i. e. use of armed force against, *inter alia*, the territorial

[15] Van der Maat, 2011, p. 212.
[16] Van der Maat, 2011, p. 212.
[17] Bialasiewicz et al., 2005, p. 345.
[18] Bouris & Kyris, 2017, p. 760.
[19] Klabbers, 2006, p. 197.
[20] Crawford, 2007, p. 112; ICCPR, 1966, art. 1(1).
[21] Crawford, 2007, p. 101.
[22] Crawford, 2007, p. 119; Klabbers, 2006, pp. 197-198.
[23] Crawford, 2007, p. 126; Scicluna, 2021, p. 205.
[24] Klabbers, 2006, p. 198.
[25] Bebler, 2015, p. 12.
[26] UN Charter, 1945, art. 2(4).

integrity of a state.[27] The Resolution 3314 was an expression of the UN Charter principles and of customary law and further reinforced aggression's place as one of the gravest, if not the gravest, violations of international law.[28] As such, the prohibition of aggression is firmly established within the *jus cogens*, with sanctions for acts of aggression enshrined not only in the UN Charter, but also in international criminal law, chiefly Article 8 *bis* of the Rome Statute.[29] Article 5(3) of the Definition of Aggression declares any territorial acquisitions via aggression illegal.[30] The consideration of aggression also applies a strict test to the violations of territorial integrity on the alleged grounds of external self-determination: Any claims to self-determination by a polity that has arisen via acts of aggression are legally considered void.[31] In the light of aforementioned Article 5(3) of the Definition, such claims are instead classified as unlawful territorial acquisition.

The illegality of aggression is accompanied by the legality of self-defence, i. e. necessary measures taken by states to end an armed attack.[32] As a countermeasure to breaches of *jus cogens*, self-defence enjoys important exceptions to constraints under international law, with Article 51 of the UN Charter codifying its special standing.[33] The permission to use force is commonly presented as the defining trait of self-defence.[34] However, self-defence extends beyond the use of force to any measure aimed at repelling an armed attack, such as economic sanctions or cyber operations.[35] In fact, Article 51 does not mention any particular measure constituting self-defence, including the use of force.[36] This approach has been replicated by regional security arrangements such as the North Atlantic Treaty and the Inter-American Treaty of Reciprocal Assistance, which provide that the range of possible self-defence measures includes but is not limited to the use of force.[37]

Beyond commonly accepted principles of international law, this study revolves around another, universally applicable concept: Time. While this may sound removed from legal science, it is noteworthy that time is crucial to many of the key concepts of international law.[38]

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[27] UNGA Resolution 3314 (XXIX), 1974, art. 1.
[28] De Zayas, 2011, p. 27.
[29] Crawford, 2007, p. 101; ICC Rome Statute, 2002, art. 8 *bis*; UN Charter, 1945, arts. 41 & 51.
[30] UNGA Resolution 3314 (XXIX), 1974, para. 5(3).
[31] Christakis, 2011, pp. 78 & 82.
[32] Kammerhofer, 2015, p. 629.
[33] Beer, 2022, p. 889; UN Charter, 1945, art. 51.
[34] Buchan, 2023, p. 2.
[35] Buchan, 2023, p. 2.
[36] UN Charter, 1945, art 51.
[37] Buchan, 2023, pp. 13-14; North Atlantic Treaty, 1949, art. 5; Rio Treaty, 1947, art. 3.
[38] Higgins, 1997, p. 501.

This importance is highlighted in the principle of *ratione temporis*, in other words, "because of the relevant timing or time period".[39] This principle is commonly applied in the form of cut-off points, including in questions of self-defence, where custom and treaty law seem to collide over the legality of anticipatory self-defence – whether the cut-off point stands at the actual occurrence of the armed attack or at the imminence of such an attack occurring.[40] However, *ratione temporis* of self-defence is underexplored when it comes to conflicts that have dragged out. Customary international law qualifies the end of lawful self-defence by the principle of immediacy of defensive measures; however, as a customary rule, it only prescribes action within a reasonable time frame, which is a vague delimitation.[41]

In order to help solve questions on self-defence, one can turn to the law on *ratione temporis* of the acts that self-defence aims to repel, i. e. aggression. As the UN Charter does not cover the topic, the most helpful legal tool comes from international criminal law. Article 29 of the Rome Statute of the International Criminal Court precludes the applicability to international crimes, including aggression, of a statute of limitations, i. e. a time period since an occurrence of a criminal act, after the passing of which the crime is no longer prosecutable.[42] Formally, acts of aggression can therefore be punished and their victims compensated without time limitations – and the lack of an explicit statement to the contrary in the UN Charter, accompanied with the *jus cogens* status of the prohibition of aggression, suggests the same on a state level, where the victim is a state that had its territorial integrity compromised.

However, a lack of an explicit position opens room for interpretation, and scholars have seized the gap. In a debate pertaining to occupation resulting from aggression, Ruys and Silvestre[43] argue that where an occupied territory has been peacefully administered for a prolonged – again, not closely defined – period, a new territorial *status quo* is established, and the right to self-defence ceases. Recourse to force in such instances is, in their view, a breach of Article 2(4) of the Charter.[44] On the contrary, Akande and Tzakanopoulos[45] posit that a military occupation that is a result of an illegal armed attack qualifies as a continuation of an armed attack under Article 51 of the Charter and the Definition of Aggression, and that by the virtue of Article 51, self-defence is in order. They argue that if a long time has passed since the

[39] Fellmeth & Horwitz, 2009; Higgins, 1997, p. 507.
[40] Ruys, 2010, p. 250.
[41] Gill, 2015, p. 745.
[42] ICC Rome Statute, 2002, art. 29; Ochoa & Wistrich, 1997, p. 454.
[43] 2021, p. 1289.
[44] Ruys & Silvestre, 2021, p. 1293.
[45] 2021, p. 1303.

cessation of hostilities, but occupation following an armed attack is still ongoing, it means that all peaceful means to end aggression have failed and that use of force in self-defence is necessary, pursuant to the principle of necessity.[46]

In sum, treaty law is favourable to the victims of aggression, with few, if any, qualifications based on the time passed since the act of aggression. Still, there are cases where acts of aggression have been ongoing for decades without meaningful resistance, and scholars have been unable to agree what international law has to say in such instances. This drives the motivation of this work's research question stated above: to see whether the law keeps protecting the victims' right to self-defence and is "only" defeated by hard power, or whether the fact that these acts have persisted for long enough actually changes the law against the victim's possibilities to respond, as Ruys and Silvestre[47] would suggest.

Theoretical framework

The theoretical approach of this work will depart from qualifications on the principle of immediacy.[48] It is agreed that a victim of aggression should not unduly postpone its response; an unduly postponed reaction would qualify as an act of reprisal, which is in itself a violation of international law.[49] However, a victim is allowed to respond with a delay under certain circumstances, including a scenario where the victim is not militarily ready to exercise self-defence.[50] Such a qualification is intended to prevent the "expiry" of the right to self-defence in the most common aggressor-victim dynamics: where the aggressor is stronger and the victim weaker.[51] In such a scenario, the chances that the attacked state will defend itself, let alone repel an armed attack, are limited. This means that the scenarios outlined by Ruys and Silvestre[52] where the defending state refrains from responding with force or fails to repel the invading and occupying forces, followed by prolonged absence of fighting, are likely to occur in most cases of aggression without the intervention of the international community. It follows that if these conditions ended the right to self-defence, international law would inhibit the victims in most cases. Such a standpoint would be incongruent with the *jus cogens* prohibition of aggression as

[46] Akande & Tzanakopoulos, 2021, p. 1306.
[47] Ruys & Silvestre, 2021, p. 1295.
[48] Gill, 2015, p. 745.
[49] p. 745.
[50] p. 745.
[51] Akande & Tzakanopoulos, 2021, p. 1307.
[52] 2021, p. 1289.

it would encourage actual and potential aggressors to attack with an overwhelming force that would be capable of capture and prolonged occupation of a disputed territory.

Due to the aforementioned inconsistency, this work's position in the debate on occupation and self-defence leans towards the position of Akande and Tzanakopoulos.[53] Aggression is firmly illegal, an armed attack and occupation resulting from such an attack qualify as aggression under the 1974 Definition of Aggression, and absent successful Security Council action or the unlikely voluntary withdrawal of the aggressor, the exercise of self-defence by the defending state is the only means of restoring international legality.[54] The necessity criterion of self-defence is thus fulfilled.[55]

While this work's approach is in principial agreement with Akande and Tzanakopoulos[56], it needs to be admitted that Ruys and Silvestre[57] raise a valid concern: The overarching goal of international law in the post-Charter era is to maintain international peace and security, and legal authorities on the prohibition of aggression and on self-defence should be read in that spirit.[58] Hence, even if the use of force in self-defence is legal against a prolonged occupation, it is highly problematic due to the facts on the ground altered by the passage of time.[59]

However, as discussed above, self-defence need not always be forcible, since Article 51 of the Charter and other treaties pertaining to self-defence do not specify use of force as the sole measure to be taken in self-defence.[60] For instance, economic coercion, including trade restrictions, is generally prohibited by the 1947 General Agreement on Tariffs and Trade (GATT).[61] However, a derogation from this prohibition for the protection of essential security interests is enshrined by the Article XXI of GATT.[62] "Essential security interests" include the exercise of self-defence under Article 51 of the UN Charter, and the measures adopted under Article XXI GATT can be effective in deterring or repelling an armed attack, especially if a broad coalition of states opts for such measures.[63] A permissive interpretation of Article XXI

[53] 2021.
[54] UNGA Resolution 3314 (XXIX), 1974.
[55] Akande & Tzanakopoulos, 2021, p. 1306; Gill, 2015, p. 743
[56] 2021.
[57] 2021.
[58] Ruys & Silvestre, 2021, p. 1296.
[59] p. 1296.
[60] Buchan, 2023, p. 11.
[61] GATT, 1947.
[62] Buchan, 2023, p. 17; GATT, 1947, art. XXI.
[63] Buchan, 2023, p. 17; UN Charter, 1945, art. 51.

is tied to the lawful exercise of self-defence, and the cessation of the right to self-defence due to prolonged occupation would restrain the ability of the victim to respond.[64] If economic coercion and other non-forcible but usually outlawed measures were restrained in such a way, the interpretation made by Ruys and Silvestre[65] would rather serve the impunity of the aggressors who manage to hold on long enough rather than international peace and security.

Case selection

In this work, a study of a single case within the context of the research question will be conducted. The selected case for analysis is the Republic of Cyprus (hereafter "Cyprus").

Cyprus gained independence in 1960 following an agreement between the United Kingdom, its previous coloniser, and Greece and Turkey, the "parent states" of the Cypriot ethnic communities.[66] Further agreements were made between these four states that attached strings to Cypriot sovereignty, most notably the 1960 Treaty of Guarantee.[67] Article II defined Greece, Turkey, and the United Kingdom as guarantors of the independence, territorial integrity and security of Cyprus and prohibited them from pursuing the union of Cyprus with another state or its partition.[68] Article IV authorised the guarantors, collectively or unilaterally, to take action against violations of the treaty.[69]

The co-habitation of the Greek and Turkish Cypriot communities was difficult ever since independence. In 1963, an outburst of ethnic conflicts broke out, and in reaction, the UN Security Council recommended the establishment of the UN Peacekeeping Force in Cyprus (UNFICYP).[70] However, this did not prevent further deterioration of the situation. In 1974, the military government of Greece and the Greek Cypriot leaders attempted a coup with the ultimate aim of a political union between the two states, a violation of Article I of the Treaty of Guarantee.[71] Turkey reacted militarily in two rounds. Initially, Turkish troops intervened to prevent or repel human rights violations that occurred against Turkish Cypriots.[72] This intervention was arguably within the scope of the Treaty of Guarantee, and since it both prevented human rights violations on Cyprus and indirectly helped bring about the imminent

[64] Akande & Tzanakopoulus, 2021, p. 1307.
[65] 2021.
[66] Treaty of Nicosia, 1960.
[67] Crawford, 2007, p. 242; Treaty of Guarantee, 1960.
[68] Treaty of Guarantee, 1960, art. II.
[69] Treaty of Guarantee, 1960, art. IV.
[70] Sözen, 2004, p. 62; UNSC Resolution 186, 1964.
[71] Treaty of Guarantee, 1960, art. I; UNFICYP, n. d.
[72] UNFICYP, n. d.

fall of the Greek junta and democratisation, it was met with some sympathy.[73] However, the international position shifted when Turkey intervened for a second time in August 1974, occupying roughly a third of the island's territory.[74] This intervention was an armed attack, a grave violation of the UN Charter and the Treaty of Guarantee.[75] In 1983, the Turkish Republic of the Northern Cyprus (TRNC) was proclaimed on the occupied territory, although its claim to self-determination was rejected due to its origins in aggression.[76] The division of the island has remained stable ever since.

The only serious attempt so far to solve the Cyprus problem was the Annan Plan, a Cyprus reunification plan presented in 2004 by then-UN Secretary-General Kofi Annan.[77] The plan was based on creating a United Republic of Cyprus, a bi-communal federation with strong constitutional safeguards to prevent or diminish political grievances between the communities.[78] However, the plan was defeated in a referendum on the Greek Cypriot side (i. e. on the territory controlled by the Republic of Cyprus).[79] Although the negotiations on the accession of Cyprus to the EU were centred around the approval of the Annan Plan, the negative result did not prevent Cyprus from becoming a member state during the 2004 enlargement round, which took place on 1st May, exactly a week after the failed referendum.[80] Cyprus has been an EU member for 20 years, the TRNC has existed for over 40 years, and in August 2024, the armed attack and its continuation in the form of occupation will have been ongoing for 50 years.

The Cyprus case is of key importance both for the question of legality of self-defence against prolonged occupation and for issues associated with EU enlargement. Firstly, the law found in a case characterised by five decades of occupation can serve as a precedent to cases with a shorter but still long-standing occupation.[81] Secondly, as the only current EU member whose territory is under prolonged occupation, the case of Cyprus is a critical test of the general ability of the EU to legally recover the territory under its formal jurisdiction – especially when several candidates for EU membership have comparable issues.[82]

[73] Goode, 2020, p. 17; Hoffmeister, 2006, p. 237; UNFICYP, n. d.
[74] Crawford, 2007, p. 144.
[75] Treaty of Guarantee, 1960, art. II; UN Charter, 1945, art. 2(4).
[76] Crawford, 2007, p. 144.
[77] Hoffmeister, 2006.
[78] Crawford, 2007, p. 244.
[79] Crawford, 2007, p. 244.
[80] Hoffmeister, 2006, p. 196.
[81] Goode, 2020, p. 139.
[82] Hoffmeister, 2006, p. 236.

Method of analysis

In the study of the case of Cyprus, the legal doctrine as outlined in the theoretical framework will be applied to the facts of the case via an empirical legal analysis.[83] This approach is important because it studies the functioning of law beyond its internal logic, its interaction with the facts on the ground.[84]

An empirical analysis is suitable for this study due to the sources of the law on self-defence. Departing from Article 38(1) of the Statute of the International Court of Justice (ICJ), the most authoritative legal norm on the matter, the sources of international law are a) international conventions, b) international custom, c) general principles of law, and, in subsidiary authority, d) "judicial decisions and the teachings of the most highly qualified publicists".[85] As the literature review and the theoretical framework have shown, international conventions and general principles of law, while implicitly permissive, leave open room for interpretation, and publicists are split on the matter, as the debate between Ruys and Silvestre[86] and Akande and Tzanakopoulos[87] illustrates.

In the absence of sufficient guidance in treaty law, the law on self-defence against occupation is therefore best examined in the domain of customary international law.[88] Its definition in the ICJ Statute as "evidence of a general practice accepted as law"[89] has been developed into two pillars: "General practice" has been interpreted as "widespread and representative practice" of subjects of international law, in the law on self-defence predominantly states.[90] "Accepted as law" sets law apart from other customs and norms, which requires an element of *opinio juris*: Subjects of international law must expressly or implicitly recognise that a particular norm has the status of law and can be enforced as such.[91]

As a single case study, this work cannot aim to identify widespread or even general practice. However, as the aggression against Cyprus is a long-lasting case that has drawn significant international attention, the case can be framed as one that influenced the emerging general practice if such practice exists.

[83] Bhat, 2020, p. 303.
[84] Bhat, 2020, p. 303.
[85] ICJ Statute, 1945, art. 38(1).
[86] 2021.
[87] 2021.
[88] Ruys, 2010, p. 51.
[89] ICJ Statute, 1945, art. 38(1)(b).
[90] Klabbers, 2013, pp. 26-28.
[91] Klabbers, 2013, pp. 28-29.

Data selection

The empirical analysis will draw predominantly from resolutions of intergovernmental organs of the UN, primarily the Security Council and the General Assembly. This selection reflects the focus on customary law: Within the confines of a single case study, the analysis of principal UN organs allows to uncover international custom to the greatest extent possible.[92] The resolutions of the General Assembly as a plenary UN organ are evidence of widespread practice.[93] The binding resolutions of the Security Council, in turn, entail a high degree of authority and therefore qualify as representative state practice.[94] The utility of UN decisions extends into the second pillar of the definition of international custom as well: The deliberation of states within international organisations and its outcomes serve as evidence of *opinio juris*.[95]

The selection of the Security Council and General Assembly resolutions is centred around the database "UN Documents for Cyprus" provided by the portal Security Council Report.[96] This database provides a digest of resolutions concerned with the situation in Cyprus, including 61 Security Council and 5 General Assembly resolutions.[97] Due to the scope of this work, only the landmark resolutions will be analysed explicitly, others will be addressed summarily.

To a lesser extent, other instances of state practice relevant to the case of Cyprus will be analysed as well, such as letters of state representatives to relevant UN authorities and speeches or other interventions in meetings of UN bodies. These sources are also included in the Security Council Report database as well as the UN Digital Library.[98] Exceptionally, state practice that was not channelled through the UN will be analysed.

The timeframe of the analysis is delimited by the duration of the military intervention and occupation of northern Cyprus as discussed in the case selection, i. e. from July 1974 until present. This period will be divided into four sections: July 1974, when the Greece-sponsored coup and the initial Turkish intervention occurred; August 1974 to 1983, i. e. from the initial aggression until the establishment of the TRNC; From 1983 to 2004, i. e. until the failure of the Annan Plan and EU accession; and from 2004 until the present.

[92] Ruys, 2010, p. 52.
[93] Hurd, 2021, pp. 73-74.
[94] Hurd, 2021, pp. 76-77.
[95] Klabbers, 2013, p. 29.
[96] Security Council Report, n. d.
[97] Security Council Report, n. d.
[98] Security Council Report, n. d.; United Nations, n. d.

Empirical analysis

July 1974: The coup d'état

The coup d'état sponsored by the Greek military junta was launched by the Cypriot National Guard.[99] The objective of the coup was the unification of Cyprus with Greece, and its execution was accompanied by abuses not only against political leadership, but also the Turkish Cypriot population.[100] On 20th July, following unfruitful negotiations in London, Turkish forces landed on the island.[101]

The same day, the UN Security Council adopted Resolution 353.[102] The resolution invoked fundamental principles of international law protecting Cyprus, including territorial integrity.[103] It continued by calling for a ceasefire and refraining from escalation.[104] In addition, the Council demanded in the resolution the end of any military interventions and requested the withdrawal of unauthorised military personnel.[105] On the diplomatic side, the resolution called for Turkey, Greece, and the United Kingdom, the guaranteeing powers of Cyprus, to enter negotiations, although these had already failed before the Turkish intervention.[106] Cooperation with the UNFICYP was also requested.[107] Finally, the Council decided to keep the situation under constant review.[108]

The situation of concern was substantively different from the future: The independence, sovereignty, and territorial integrity of Cyprus had been violated by both "mother states" of the Cypriot ethnic communities.[109] The fact that paragraph 3 labelled foreign military interventions as contravening the aforementioned principles of international law was a clear signal that the Council found the Article IV of the Treaty of Guarantee as an inappropriate solution for the peace and security in Cyprus.[110] Nonetheless, Resolution 353 set out the style in which the Security Council would approach the issue. The Council invoked its responsibility for the maintenance of international peace and security endowed to it by Article 24 of the UN Charter

[99] Goode, 2020, p. 17.
[100] p. 17.
[101] p. 18.
[102] UNSC Resolution 353, 1974.
[103] UNSC Resolution 353, 1974, para. 1.
[104] UNSC Resolution 353, 1974, para. 2.
[105] UNSC Resolution 353, 1974, paras 3 & 4.
[106] UNSC Resolution 353, 1974, para. 5.
[107] UNSC Resolution 353, 1974, para. 6.
[108] UNSC Resolution 353, 1974, para. 7.
[109] UNFICYP, n. d.
[110] Treaty of Guarantee, 1960, art. IV; UNSC Resolution 353, 1974, para. 3.

in the preambulatory clauses.[111] Departing from Article 24, the Council went on to adopt formulations derived from Chapter VII of the UN Charter, on "action with respect to threats to the peace, breaches of the peace, and acts of aggression".[112] Unlike the citation of Article 24, however, such provisions of the Charter were not explicitly invoked. The measures mentioned in the resolution included a preambulatory clause determining the situation as a threat to international peace, enshrined in Article 39 of the Charter, and a call for measures that would de-escalate or prevent aggravating the situation, grounded in Article 40.[113]

The reference to provisions of Chapter VII had a clear intention: to fulfil the criterion of taking the "measures necessary to maintain international peace and security", the adoption of which leads to the cessation of the right to self-defence outside of UN auspices under Article 51 of the UN Charter.[114] The Security Council was concerned that the guarantor powers under the Treaty of Guarantee would continue intervening in the name of Cypriot self-defence, and the invocation of Chapter VII was supposed to bring about an internationally organised solution. Unfortunately, that was not the case.

August 1974-1983: The initial occupation

As called for in UN Security Council Resolution 353, a ceasefire was effected on 22nd July 1974, but it was almost immediately violated.[115] As the skirmishes continued, the guarantor powers met in Geneva for two rounds of negotiations.[116] Almost immediately after the second round, the Turkish army launched a second major offensive, making territorial advances from a narrow corridor between the northern coast and the capital Nicosia to almost 40 % of the island.[117] With the fall of the Greek military junta and the unwillingness of the Greek democratic government to get involved, the aggression was purely unilateral.[118]

The invasion was internationally widely condemned, including in the Security Council. In a reaction to the transgression, the Council passed Resolution 360.[119] The resolution's preamble reaffirmed the fundamental principles of international law protecting Cyprus and restated, pursuant to Article 39 of the UN Charter, that the situation was a serious threat to

[111] UN Charter, 1945, art. 24; UNSC Resolution 353, 1974, preamble.
[112] UN Charter, 1945, art. 24.
[113] UN Charter, 1945, arts. 39 & 40; UNSC Resolution 353, 1974, preamble.
[114] UN Charter, 1945, art. 51.
[115] UNFICYP, n. d.
[116] Goode, 2020, p. 20.
[117] p. 20.
[118] UNFICYP, n. d.
[119] UNSC Resolution 360, 1974.

peace and security.[120] The operative paragraphs opened by deploring the unilateral military action against Cyprus, reflecting the change of situation compared to July.[121] Paragraph 2 urged compliance with previous Security Council resolutions, including the demand for the withdrawal of foreign troops.[122] Again, this request would qualify as a provisional measure under Article 40 of the Charter.[123] Paragraph 3 called for the resumption of diplomatic negotiations.[124] Interestingly, the Council stressed that the negotiations should not be affected by advantages resulting from military operations.[125]

Resolution 360 was crucial in two aspects. Firstly, as a direct response to the Turkish invasion, it recognised the unilateral nature of the military actions. Secondly, paragraph 3 established a key principle for the present study: Factual advantages resulting from a violation of international law do not give advantages to the transgressor under law, just as they legally do not disadvantage the victim of such violations.[126] At least in the immediate aftermath, there was no recognition of *fait accompli*. However, this stance was not accompanied by any motion to undo what was accomplished.

Later in 1974, the UN General Assembly took up the issue of Cyprus in Resolution 3212 (XXIX).[127] Following in the Security Council's footsteps, the resolution labelled the crisis as a threat to international security and stressed the principles of international law protecting Cyprus.[128] Paragraph 2 urged a "speedy withdrawal of all foreign armed forces" and the end of foreign interference on the island.[129] Yet again, the resolution called for a peaceful solution to the crisis, and no sanctions for the breach of international law were called for.[130] This resolution therefore had mostly symbolic importance, pointing out that a majority of states disapproved of the breach of the sovereignty, independence, and territorial integrity of Cyprus, constituting an element of state practice. Moreover, this resolution was later endorsed by the Security Council in Resolution 365.[131]

[120] UNSC Resolution 360, 1974, preamble.
[121] UNSC Resolution 360, 1974, para. 1.
[122] UNSC Resolution 360, 1974, para. 2.
[123] UN Charter, 1945, art. 40.
[124] UNSC Resolution 360, 1974, para. 3.
[125] UNSC Resolution 360, 1974, para. 3.
[126] UNSC Resolution 360, 1974, para. 3.
[127] UNGA Resolution 3212 (XXIX), 1974.
[128] UNGA Resolution 3212 (XXIX), 1974, preamble.
[129] UNGA Resolution 3212 (XXIX), 1974, para. 2.
[130] UNGA Resolution 3212 (XXIX), 1974, para. 4.
[131] UNSC Resolution 365, 1974.

UN resolutions not backed by sanctions did not discourage Turkey from continuing and entrenching the occupation, and in February 1975, the occupied Cypriot territory was proclaimed as a "Federated Turkish State" of Cyprus.[132] The Security Council reacted to this act by Resolution 367.[133] This resolution restated the previously cited principles and reaffirmed in paragraph 3 that no acts entrenching the illegal occupation have a legal effect.[134] Yet, despite the deepening violation of fundamental principles of international law, no further measures beyond provisional measures were adopted under Chapter VII of the Charter.[135]

In 1978, the Non-Aligned Movement made a notable statement on the Cyprus problem, among others, at its Conference of Ministers for Foreign Affairs.[136] The conclusions of this conference were submitted to the UN Secretary-General in a letter.[137] Cyprus was a member of the Non-Aligned Movement, and as such, it was consistently supported by the coalition on the global stage.[138] The letter restated the conclusions of previously analysed resolutions of UN organs to a large extent, urging the end to foreign military interference and other unilateral measures, particularly attempts to change the demographic structure of the island.[139] However, unlike the previously analysed documents, the paragraph 77 of the letter explicitly invoked Chapter VII of the UN Charter in the resolution of the issue.[140] As discussed above, this left some manoeuvring space for the Security Council, as it did not specifically mention the coercive measures of Articles 41 and 42.[141]

The last notable decision of the initial period was the UN General Assembly Resolution 37/253, passed in 1982.[142] This resolution's paragraph 12 most strongly rejected the notion that the *de facto* situation created by the force of arms would influence the solution of the problem.[143] Furthermore, paragraph 2 adopted a rare formulation within the scope of the Cyprus problem, calling upon all states to support the Republic of Cyprus in exercising its right to sovereignty over its entire territory.[144] On the other hand, this ambiguous provision, which could be read as in favour of self-defence, was tempered by other provisions: paragraph 13 was

[132] UNSC Resolution 367, 1975.
[133] UNSC Resolution 367, 1975.
[134] UNSC Resolution 367, 1975, para. 3.
[135] UN Charter, 1945, art. 40.
[136] UNGA Letter 33/206, 1978.
[137] UNGA Letter 33/206, 1978.
[138] UNGA Letter 33/206, 1978.
[139] UNGA Letter 33/206, 1978, paras. 75 & 76.
[140] UNGA Letter 33/206, 1978, para. 77.
[141] UN Charter, 1945, arts. 41 & 42.
[142] UNGA Resolution 37/253, 1982.
[143] UNGA Resolution 37/253, 1982, para. 12.
[144] UNGA Resolution 37/253, 1982, para. 2.

a call to refrain from unilateral action against the prospect of a peaceful solution, and paragraph 4 welcomed the Cypriot president's proposal for total demilitarisation of the island.[145]

Indeed, the government of the Republic of Cyprus itself produced an unhelpful instance of state practice when it comes to self-defence. Together with the prime minister of Greece, the president of Cyprus proposed at the 37th session of the UN General Assembly that the island should be completely demilitarised and disarmed.[146] While both statesmen wished to protect the territorial integrity of Cyprus, self-defence in general and Article 51 of the Charter in particular were not on the table, at least not publicly.

The only major instance of state practice in support of self-defence, in its non-forcible form as outlined by Buchan[147], came from the United States. In the days of the Turkish invasion, the presidential administration was in disarray due to President Nixon's abdication, the Congress therefore took the lead and passed an arms embargo on Turkey into law, something that the administration was not willing to do to its ally in the North Atlantic Treaty Organisation (NATO).[148] In negotiations with the executive, the sponsors of the bill cited international rule of law as a ground for action, signalling *opinion juris*.[149] However, the embargo only lasted three years before being repealed in 1978 due to the deteriorating NATO capabilities in the Eastern Mediterranean.[150]

1983-2004: The emergence of the TRNC

A year after the Cypriot proposal for demilitarisation, the Turkish Cypriot leaders proclaimed the TRNC.[151] This step was immediately condemned by the Security Council in Resolution 541, which was later reiterated in Resolution 550.[152] Resolution 541 denounced the declaration of the TRNC as legally invalid and called upon its withdrawal.[153] While the Security Council clearly recognised the proclamation of the TRNC as a unilateral escalation, at the same time, it called for a bilateral refraining from action which might exacerbate the situation.[154] This was a continuation of the Council's approach to the Chapter VII of the Charter from the pre-TRNC era: It imposed provisional measures under Article 40 but refrained from threatening or

[145] UNGA Resolution 37/253, 1982, paras. 4 & 13.
[146] UNGA Records 37/11, 1982, para. 182; UNGA Records 37/21, 1982, para. 42.
[147] 2023.
[148] Goode, 2020, p. 21.
[149] p. 38.
[150] p. 122.
[151] Goode, 2020, p. 139.
[152] UNSC Resolution 541, 1983; UNSC resolution 550, 1984.
[153] UNSC Resolution 541, 1983, para. 2.
[154] UNSC Resolution 541, 1983, para. 8.

imposing sanctions under Article 41, let alone taking action under Article 42.[155] The provisional measures approach had not prevented the occupation of Cypriot territory or its attempted formalisation, yet they continued to be the Council's favoured instrument in dealing with the Cyprus problem.

In the 15 years following Resolution 550, the territorial status quo on the island had solidified, and the language of a threat to international peace and security had all but disappeared from the sample. In the 1990s, a new dominant narrative, focused on the negotiations of the reunification of Cyprus, emerged, as shown in the Resolution 716 of 1991.[156] Only in 1999 did the Security Council note with concern in Resolution 1251 that a military build-up was occurring.[157] Again, the Council pointed out that this was occurring on both sides, disregarding the occupation.[158]

Beyond the UN fora, the practice of the United States regarding arms sales was again important. In 1987, the 1961 Foreign Assistance Act was amended to prohibit sending of U. S. defence articles to Cyprus via Greece or Turkey.[159] This action also reflected the changing narrative: Despite the ongoing unilateral violation of the territorial integrity of Cyprus, the emphasis was to find a lasting diplomatic settlement, and therefore both sides, regardless of their legal standing, were barred from receiving weapons from the United States.

2004-present: Failed reunification and EU membership

Following the rejection of the reunification plan in April 2004, the largest part of the Security Council resolutions sample, 38 resolutions, was issued. However, most of them are only concerned with extending the mandate of the UNFICYP and commenting on the progress of negotiations between the communities.[160]

Worth noting is the Resolution 1548, which was the first one relating to Cyprus after the failed referendum.[161] The resolution itself was not substantively groundbreaking, but it welcomed the extensive report of the UN Secretary-General on the Foundation Agreement.[162] The report particularly highlighted that the Greek Cypriot rejection of the agreement was a

[155] UN Charter, 1945, arts. 40-42.
[156] UNSC Resolution 716, 1991, para. 8.
[157] UNSC Resolution 1251, 1999, para. 7.
[158] UNSC Resolution 1251, 1999, para. 7.
[159] Rubin, 2021.
[160] Security Council Report, n. d.
[161] UNSC Resolution 1548, 2004.
[162] UNSC Report S/2004/437, 2004; UNSC Resolution 1548, 2004, preamble.

major setback to a lasting solution of the Cyprus problem, and that the Turkish Cypriot vote for the agreement was a ground for the cessation of alleged international embargoes against the community.[163] The latter provision was clarified as not promoting recognition or assistance to the TRNC, but rather as a call for inclusion of Turkish Cypriots as belonging to Cyprus as a whole, especially in the application of EU law.[164] However, the Security Council did not explicitly focus on these aspects of the report in Resolution 1548, so it is unclear whether they were accepted by state practice.[165]

Following a relatively calm period marked by on-and-off negotiations, a new period of unrest emerged following Turkey's exploration of hydrocarbon resources in the territorial waters of Cyprus extending from the occupied north of the island.[166] The Security Council reacted to these developments in Resolutions 2506 and 2618 of 2020 and 2022, respectively.[167] None of the resolutions assigned blame for the escalation, and both called for a peaceful resolution of the dispute.

A crucial development in the period after the failed reunification plan was the accession of Cyprus to the EU. More specifically within the scope of this work, the EU got a crucial instrument in 2009, when the Treaty of Lisbon entered into force: a mutual defence clause, enshrined in Article 42(7) of the Treaty on the European Union after the Lisbon amendment.[168] Furthermore, Cyprus participates in the EU's Permanent Structured Cooperation on defence, and following the tensions in the eastern Mediterranean, Cyprus held naval exercises together with other EU members France, Greece, and Italy.[169] However, given that the mutual defence clause started applying to Cyprus 35 years after the initial attack, it is very unlikely, and legally dubious, that it would be invoked to counter that situation.

Not least, contrary to the governmental demilitarisation proposals outlined in 1982, Cyprus has been arming itself. The United States partially lifted the 1987 arms embargo in 2020, renewing and expanding the scope of the decision ever since, and Cyprus has invested into the improvement of its military capabilities.[170] However, the Cypriot authorities maintain that these capabilities are supposed to have a deterrent effect and are not meant to acquire an

[163] UNSC Report S/2004/437, 2004, paras. 83 & 89.
[164] UNSC Report S/2004/437, 2004, para. 90.
[165] UNSC Resolution 1548, 2004.
[166] Reuters, 2019.
[167] UNSC Resolution 2506, 2020; UNSC Resolution 2618, 2022.
[168] Eur-Lex, n. d.**;** Treaty on the European Union, 1992/2009, art. 42(7).
[169] AP News, 2023; Cyprus Ministry of Defence, 2023; EU Council Decision 2017/2315, 2017.
[170] Psaropoulos, 2022; Reuters, 2020; U.S. Department of State, 2022.

aggressive military posture.[171] The references to deterrence despite the territorial integrity of Cyprus being already violated, as well as the reservation against aggressive purposes of the armaments, suggest that the government of Cyprus itself holds the *opinio juris*, at the present moment, that any unilateral action to recover occupied territory via the use of force as illegal.

Discussion of the results

The results of the analysis run contrary to the theoretical expectations of this work. From the very outset of the Cyprus problem, none of the analysed sources mentioned self-defence: neither during the Greece-sponsored coup and Turkish reaction, nor, more strikingly, when the unilateral armed attack by Turkey occurred. The UN Security Council attempted to invalidate self-defence from the start by seizing the matter, adopting measures under Chapter VII, Articles 39 and 40 of the UN Charter, which fulfil the "necessary action" criterion of Article 51.[172] This is illustrated by the fact that at latest since Resolution 541 of 1983, analysed UN documents called for both sides to refrain from escalations, although there was only one aggressor whose actions had repeatedly been called out as illegal. Non-forcible self-defence was exercised on behalf of Cyprus, most notably by the United States, but this form of aid quickly ceased due to geopolitical considerations.

If the prospects for the self-defence of Cyprus were bleak in the first ten years of the occupation, they only got worse as time wore on. No later than in early 1990s had the narrative of the UN organs shifted, omitting references to the occupation as a threat to international peace and security and instead focusing on negotiations and reconciliation. From the viewpoint of the UN, the Cypriot right to even non-forcible self-defence ceased after the failed 2004 referendum, drawing a condemnation of the UN Secretary-General and a call for stopping "embargoes", i. e. means of non-forcible self-defence, on Turkish Cypriots. This was tacitly approved by the UN Security Council.

Conclusion

Summary of findings

In conclusion, the case of Cyprus does not offer much support for the legality of self-defence against long-lasting breaches of territorial integrity via aggression. The longevity of aggression has had a negative impact on non-forcible self-defence, which was initially

[171] Psaropoulos, 2022.
[172] UN Charter, 1945, art. 51.

employed but increasingly discouraged, especially after 2004. However, this is not a confirmation of the claims made by Ruys and Silvestre[173] that long-lasting occupation creates a new legal *status quo*. The existing situation of Turkish occupation was repeatedly established as unacceptable. Nonetheless, its resolution was deemed to be different than via self-defence.

From the outset, the UN Security Council assumed the responsibility for the restoration of international peace and security by acting under Chapter VII of the UN Charter. By adopting measures under Articles 39 and 40, the Council undertook necessary action, as formulated in Article 51, to cease the right to individual or collective self-defence. However, the development of the situation highlights a deficiency in Article 51: the action taken by the Council was necessary to resolve the situation but, in light of continuing violations, absolutely insufficient for a just resolution. Nonetheless, sufficiency is absent from Article 51, so a shortcoming of Council action does not re-enable a victim state to defend itself legally.

Limitations

The present study is limited by several substantive as well as procedural factors.

In terms of substance, the case of Cyprus, while highly relevant to the research question and crucial for the legal perspective of the EU, is problematic. Cyprus has never developed a sufficient force to repel the Turkish attack and occupation, which means that there could be no reasonable extension of the "deadline" to respond even under a permissive interpretation of the principle of immediacy of self-defence. Additionally, as an originally non-aligned nation, Cyprus did not have military allies until 35 years into the occupation, when the mutual defence clause of the Treaty on the European Union entered into force. By that time, the infeasibility of Cypriot self-defence had long been established.

Procedurally, this work is limited in the time and resources at the author's disposal. This limitation precluded an analysis of a greater volume of instances of state practice.

Further research

The limitations of this work, as well as the puzzle raised in the conclusion, provide inspiration for further research.

In terms of case selection, the research question of this work could be examined in cases relevant to the EU enlargement where Security Council has been inactive and where hostilities

[173] 2021.

are ongoing. A possible case would be Ukraine, which is undisputably in a state of war since 2022, but parts of its territory have been under occupation since 2014. Especially the question of the recovery of Crimea is hotly debated.

In terms of further research topics, it would be beneficial to consider the puzzle of Security Council action: Does the necessity of undertaken Security Council action in cases of an armed attack alone cease the right to self-defence under Article 51 of the UN Charter, or is the sufficiency of such action required as well?

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