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British Military Bases in Cyprus: Law, History and Politics

Sozos-Christos Theodoulou
M Law, D.E.A. International Relations (University of Geneva, Switzerland)
Advocate
The Law Offices of Dr. Christos A. Theodoulou
P.O. Box 40965, 6308 Larnaca
Cyprus
Email: sccth@yahoo.com

Introduction

Military presence on foreign soil is an old phenomenon, existing since Antiquity. Each metropolis would station troops on the soil of its colonies, in order to protect its interests and people. From its own perspective, International Law has always been fascinated by irregular situations such as this, the need for a legal regulation being obvious, since sacred principles are touched, such as the territorial integrity of states, the right of peoples to self-determination, state sovereignty, and others. Selected scholars have written on the subject and most states have treated the matter from a strategic angle, as Military Bases can be found all around the world, nowadays.ⁱ

Military Bases exist under various forms and types. They may be the result of leases, stationing of troops, United Nations resolutions, bilateral defence agreements, regional security agreements, post-war/peace agreements, joint utilization agreements, just to name the major ones. On top of those, one may be confronted with special cases, such as the US Naval Base in Guantanamo Bay in Cuba or the Panama Canal case, or even the British Military Bases in Cyprus.

These special cases are often known to jurists with the Latin expression “*sui generis*” (in English: “of its own kind”). Indeed, they present so many different characteristics that they cannot easily be placed under any of the known categories. That is why each one of them has to be analyzed extensively, in order to understand how it works.

What are the characteristics of a military base that need to be addressed? The reader will not be surprised to learn that various issues are related to the situation of the installation and use of a military base. Construction, functioning, administration, jurisdiction, diplomatic, fiscal and customs privileges, international responsibility and withdrawal of the troops concerned are some of them. Only through their meticulous study one may discover the legal regime applicable.

The special case of the BMBC

One of the idiomorphic cases we refer to above is that of the British Military Bases in Cyprus (BMBC). Frequently cited (by the UK) as “Sovereign Base Areas”, the BMBC constitute a rare case in International Law, as they are neither independent, nor a colony;

they are expressly not European Union soil (the *acquis communautaire* not being applied to them, but only to their residents, who are Cypriot citizens); they do not file reports to the United Nations Organization; they are a peculiar kind of military bases, subordinated to the Ministry of Defence of the UK, while functioning in a state-like way.

Different dates may be quoted as the beginning of the issue of the BMBC. As far as we are concerned, we have chosen 1956, the year when Nasser, the then Egyptian President, had announced the nationalisation of the Suez Canal. At that moment, the British had realised that the retention of their military bases in Cyprus was becoming a *sine qua non* condition within the framework of their efforts to control the neuralgic region of the Middle East. Their plans came in direct opposition with the global tendency towards decolonization, on one side, and the anti-colonial struggle of EOKA (National Organization of Cypriot Fighters) in Cyprus itself, on the other side. After long discussions within the British Parliament, the solution was found: the island of Cyprus would become independent under certain conditions, which would safeguard the British interests. More precisely, two military bases would remain under the sovereignty of the United Kingdom, accompanied with numerous other sites and installations.

Following the intercommunal tensions of 1963-64, President Makarios made a critical choice with regard to the *status quo* which emerged, as a result. Instead of promoting the protection of Cyprus by the NATO – a young regional security organization at the time – he preferred the installation of an International force in Cyprus, the UNFICYP (United Nations Force in Cyprus). Nowadays, we can imagine what would be the situation if

NATO came to Cyprus at that time; nevertheless, this could be the title of a separate doctoral thesis! We had better looked into the analysis of the legal status of the BMBC and the sovereignty exercised on them.

Jurists like definitions. And the truth is that definitions clarify many situations, since their author must really master the object, so that all elements are among the few drafted lines. A definition must be sufficiently comprehensive and concise, at the same time.

We have vacillated between various texts. Some were long, other seemed too succinct. In the end, we came up with the following definition for the legal status of the BMBC:

“Territories on which the United Kingdom has retained, for purely military and defence purposes, an aggregate of disperse sovereign rights, which are well defined by the 1960 Treaties, and which are accompanied by the limitations and precisions included in those Treaties”. Proper attention must be given to all components of this definition, since each one of them has its own importance.

A realistic approach, on the basis of the International behaviour of the UK, obliges us to acknowledge the existence of sovereign rights in favour of the British. In fact, the sovereignty on the BMBC did not pass from the UK to the Republic of Cyprus through the 1960 Treaties. The British attempted to retain their sovereignty over the Bases on an absolute level, because of the strategic importance of the latter to them, as already mentioned. Their regulatory participation in the negotiations of the 1960 Treaties allowed them to introduce in the Constitution of the Republic of Cyprus, as well as in the other

legal texts surrounding it (Treaties of Establishment, Alliance and Guarantee), multiple shields, assuring the integrity of their military bases. However, the said Treaties also comprised a certain number of annexes (called “Appendixes”), which are an integral part of the legal situation of the BMBC in general and which limit and specify the British sovereignty.

One such text is the well known Appendix “O”, which limits UK sovereignty on the BMBC considerably, since their use can only be of military or defensive nature.

Appendix “O” is obviously a unilateral declaration of the UK, but, further from the fact that such declarations are anyway considered among the sources of International Law that bind the States who issue them, this declaration has been deposited with the official depositary of International Treaties, the United Nations. Moreover, it has also been accepted by the Archbishop Makarios III (representing the Greek Cypriots) and Dr. Küçük (representing the Turkish Cypriots) by a letter of response. Taking into consideration that International Treaties must have no special form, according to Customary International Law, we have there a perfectly valid International Treaty! Finally, the uninterrupted practice of the UK itself, which abides by the Appendix “O” since 1960, proves this fact.

Appendix “O” constitutes the cornerstone of any analysis of the legal status of the BMBC. Through this text, the British have engaged themselves: a) to use the Bases only for military purposes; b) to collaborate with the Republic, and; c) to protect the interests of the people residing and/or working there. They have also committed themselves to a

certain number of other obligations of diverse nature, which are written in an elaborated manner in Appendix “O”. All these commitments, not only do they limit UK sovereignty, but precise at the same time that already limited sovereignty, in a considerable way.

Another text, Appendix “R”, obliges further the British to pay a certain sum of money to the Republic of Cyprus, apparently for the various concessions that the latter is offering to them. This sum had been regularly paid before 1965, but stopped being so after that date, on the pretext that the sum would allegedly not be equitably distributed to the two communities (NB: the British had this way widened the gap between the Greek-Cypriots and the Turkish-Cypriots...). There are, for the moment, three special resolutions of the Cypriot House of Representatives (Parliament), in 1979, 2005 and 2012, calling for the payment by the UK of its dues. Nevertheless, it would be perhaps more prudent for the Republic to think again before officially claiming that money, after examining the Cuban practice under the otherwise much criticized Fidel Castro, who, in a form of silent opposition *a la* Gandhi, does not accept any money from the United States in exchange for the Base they hold in Guantanamo Bay. This would also be a way of denouncing, at least *de facto*, the existence of the BMBC against the will of the Cypriot people.

Perhaps the most useful argument for proving the limited character of the UK’s sovereignty over the BMBC is offered by a less known text, Appendix “P”. As jurists know from Roman Law, the rights of a proprietor in Private Law are the following five gerunds: *habendi* (title) – *possidendi* (possession) – *fructu* (usufruct) – *utendi* (use) – **abutendi** (disposal). In our case and transposing these gerunds to Public International

Law, the UK admittedly enjoys the first four, but not the last one, which is the most important! Appendix “P”, widely ignored by politicians, journalists and academics alike, bearing the title “The future of the Sovereign Base Areas”, simply but clearly states that, when the British decide to give the bases away, they could not do so but to the benefit of the Republic of Cyprus. This text is more powerful than the relevant clause in the Treaty of Utrecht, with regard to Gibraltar, to the benefit of Spain: in that case, the Spanish will have to pay to the British a certain sum to get the Rock back, they will have to buy it; here, the whole “transaction” will be “free of charge”! In other words, the UK cannot dispose of the BMBC as it wishes. Consequently, its sovereignty over the BMBC is to be considered as sensibly limited.

Having successfully established the limited extent of the UK’s sovereignty over the BMBC, one could at this stage wonder how this abnormal situation is to be fixed, since it is obvious from the above that the preservation of the BMBC in their current form is a non-option.

The Vienna Convention on the Law of Treaties (VCLT; 1969), applied as Customary International Law (since the 1960 Treaties had been concluded before its entry into force), constitutes the most appropriate and just way to look into the future of the BMBC. The flagrant violation of *jus cogens* (Art. 53) and/or of *jus cogens superveniens* (Art. 64) provisions, such as the obligation of States to a complete decolonization, the principles of state sovereignty, of territorial integrity and of self-determination of the peoples, as well as the grave violation of Appendixes “O” and “R” and the fundamental change of

circumstances (*rebus sic stantibus*), should be enough to the Republic of Cyprus for asking, at least as a first step, for a renegotiation of the legal status of the BMBC, in view of liberating the European Union from one of the few last irregular legal situations that still exist on its soil.

Part V of the VCLT is where all articles relevant to the invalidity, termination and suspension of the operation of treaties are found. Articles 48 (Error), 49 (Fraud), 51-52 (Coercion) are possibilities that need to be examined in depth, through the analysis of newly released confidential documents. But Articles 53 (Jus Cogens) and 64 (Jus Cogens Superveniens), as well as Article 62 (Rebus Sic Stantibus) are sufficient for our purposes, with the elements already in hand.

Article 53 provides for the nullity of treaties conflicting with a peremptory norm of general International Law and is completed by Article 64, which deals with treaties conflicting with a new peremptory norm of general International Law.

The UK has undoubtedly violated a series of International Law principles. Focusing on the most problematic Treaty of Guarantee, a first violation stems from the fact that the Treaty has been concluded in perpetuity, without possibility of alteration, a clear derogation of the Republic of Cyprus's sovereignty and territorial integrity (as set out by the UN General Assembly Resolution 1514 (XV) and by Article 185 of the Cypriot Constitution). The same fact violates the right of the Cypriot people to self-determination, since they never got to vote on their own Constitution or on the other texts surrounding it,

including the Treaty of Guarantee. Had they voted on the question of the preservation or non-preservation of the BMBC, the result would definitely be in favour of the second choice. The Cypriot people cannot freely determine their own destiny and do not have territorial supremacy over their own territory. Thus, peremptory norms, as expressed by both, Article 1 Para. 2 of the UN Charter and by Resolution 2625 (XXV) of the UN General Assembly, are constantly being violated by the UK. The violation of Article 53 and/or Article 64 by the Treaty of Guarantee renders this text null and void.

UN General Assembly Resolution 1514 (XV), referred to above, has given birth to another International Law principle, the one of a true obligation to decolonize. In the case of Cyprus, we are facing a situation of uncompleted decolonisation. Indeed, the UK, by keeping a portion of the Cypriot territory in 1960, even through an allegedly valid treaty in legal terms, has violated its obligation to decolonise the entire territory of the Isle of Cyprus – contrary to the principle of *uti possidetis juris*, i.e. a state right to the maintenance of the territorial unity of the former colony – and has, by this fact, engaged its international responsibility.

UK violations extend to Appendix “R”, too, as already mentioned. The fact that, since 1965, no “financial assistance” has been given to the Republic of Cyprus is a flagrant violation of the British commitments.

Turning to Article 62 VCLT, the provision dealing with the fundamental change of circumstances, it is undeniable that the situation in Cyprus has changed quite a bit in the

last 50 years; after all, it is half a century! The provision requires for the specific circumstances that have changed to have constituted an essential basis of the consent of the parties to be bound by the treaty and that the effect of the change is to radically transform the extent of obligations still to be performed under the treaty. Such a change has occurred by the reduction by 1/3 of the territory under the Republic's effective control, as a direct result of the Turkish military invasion of 1974, an event which was clearly not foreseeable back in 1960. It had been, undoubtedly, the prospective of political stability that had pushed the Cypriot representatives into the signature of the 1960 Treaties; this situation, however, having radically changed in 1974, the Republic needed more space in order to place some of its 200,000 refugees coming from the North, as well as to foster the economic development of the adjacent regions or of those enclaved within the BMBC, in the absence of free lands elsewhere.

Conclusion

The plethora of legal arguments presented here are, in our opinion, sufficient for the Republic of Cyprus to denounce the 1960 Treaties, in part or in their entirety, despite the fact that this eventuality is not provided for by the said texts. It is widely accepted by scholars that there exists a Customary right for a state to proceed to unilateral denunciation of a treaty, especially if that treaty has been concluded to last in perpetuity... In any case, the practical result of such act would be that the parties (Cyprus and the UK, in the exclusion of Greece and Turkey, whose guarantor status should no longer exist) will need to renegotiate the legal status of the British Bases, to start with. It would be in the best interest of the Republic of Cyprus, as well as of the UK – the present irregular

situation not being possible to maintain – to reach an agreement on a lease or even a joint utilisation of the Bases. Another possibility, in order not to abruptly destabilise the already troubled Middle East region, would be to transform the Bases into NATO Bases.

We could not imagine of a better way to conclude our article than by citing the former Chief of Staff of the Turkish Military, General Hilmi Özkök, who was addressing the Turkish Cypriots, a few days before they were supposed to vote for the Annan Plan in April 2004. Özkök, being a thorough expert on regional strategy, was trying to convince the Turkish Cypriots to vote against the Annan Plan, as it would (in his view, largely expressing Turkish views) give away a part of Turkey's power in the region. His main argument was the following: *“Let me remind you how Britain shows great care to maintain its sovereign bases on the island”...*

ⁱ For all relevant references, please consult the author's book: Sozos-Christos Theodoulou, *Bases militaires en droit international: le cas de Chypre* (Mannheim und Möhnese: Bibliopolis, 2006).