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THE GREEN LINE

40 Years of Division in Cyprus: The Issue of Displaced Persons'
Property Related Rights

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Abstract

In Cyprus, the ethnic conflict between Greek and Turkish Cypriots has a long history. Especially, during the clashes in 1963/64 and the Greek coup d'état and the subsequent Turkish invasion in 1974, more than 220,000 Cypriots (half of the Turkish Cypriots and one quarter of the Greek Cypriots) had been internally displaced. After Turkey occupied northern Cyprus, Greek Cypriots were transferred from the north to the south and Turkish Cypriots from the south to the north. This transfer of populations led to the creation of ethnically homogenised zones, divided by the so-called "green line". The way the Turkish Cypriots leadership dealt with the abandoned Greek Cypriot properties in the north resulted in a multitude of Greek Cypriot applications - all claiming a violation of their right to property and home under the Convention - before the ECtHR. The issue of displaced persons' right to return to their homes and properties is one of the most complicated issues in elaborating a settlement agreement for the conflict in Cyprus. Until today, more than 50 years after the first UN peacekeeping mission was placed in Cyprus, 47 years of peace talks and more than 40 years of division of the island, the Cyprus conflict has still not been solved.

“The first man who, having enclosed a piece of land, thought of saying ‘This is mine’ and found people simple enough to believe him, was the true founder of civil society. How many crimes, wars, murders; how much misery and horror the human race would have been spared if someone had pulled up the stakes or filled in the ditch and cried to his fellow men: ‘Beware of listening to this impostor. You are lost if you forget that the fruits of the earth belong to everyone and that the earth itself belongs to no one!’”

Jean-Jacques Rousseau Discourse on the Origin of Inequality among Men
(1755)

List of Abbreviations

CoE – Council of Europe

CMP Committee on Missing Persons

ECHR – European Convention on Human Rights

ECtHR – European Court on Human Rights

EU – European Union

ICRC - International Committee of the Red Cross

ICJ - International Court of Justice

RoC – Republic of Cyprus

TRNC – Turkish Republic of Northern Cyprus

UN – United Nations

UNFICYP –United Nations Peacekeeping Force in Cyprus

UNGA – United Nations General Assembly

UNSC – United nations Security Council

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1. Introduction

In 1960, Cyprus became independent from British rule and the Republic of Cyprus (RoC) was founded.¹ The political system of the RoC was one of power-sharing, between the Greek Cypriot community (which accounted for 80% of the population) and the Turkish Cypriot community (which represented almost 20% of the population). Due to violent clashes between the two ethnic communities three years after its foundation, in 1963, the island became entirely administrated by the Greek Cypriot community and many Turkish Cypriots were internally displaced. In 1974, a Greek coup d'état triggered a Turkish invasion, in the course of which Turkey took over more than 36 % of the island's territory in the north, leading to the still existing division of the island into two geographically separate territories.² In the course of the following year, the leaders of the two communities, under the auspice of the UN, conducted a population exchange, turning Cyprus into an ethnically homogenised state with the Turkish Cypriots living in the north and the Greek Cypriots in the south.³ The so-called "green line", a UN buffer zone that separates the north from the south, was partly opened for the first time in 2003, allowing refugees to visit their properties and homes for the first time after 29 years of separation.⁴

Throughout the conflict in Cyprus around 162,000 Greek Cypriots and approximately 60,000 Turkish Cypriots lost their homes and properties.⁵ As time went on, the property dispute has turned into a legally and technically very complicated issue, to which a solution is necessary in order to reach a peace agreement for the conflict in Cyprus.⁶ However, since Cypriots link the issue of displaced persons' right to return to their homes with the wrongs committed by the other side, the property dispute has turned into one of the most delicate issues in elaborating a settlement agreement for the conflict in Cyprus.⁷

¹ Hoffmeister, 2006, p.1.

² Sözen, 2007, p.24.

³ The Third Vienna Agreement, 1975.

⁴ UNFICYP, About the Buffer Zone (website).

⁵ Gurel, Hatay & Yakinthou, 2012, pp. 8-10.

⁶ Ibidem, 2012, p. 1.

⁷ Tocci, 2008, p. 126.

One of the most challenging aspects of the property dispute is the question of individual rights of both those who lost their homes and properties and those who subsequently took over those properties. In Cyprus, a large percentage of the population on both sides of the island is confronted with a situation of living in properties that belong to displaced persons of the respective other ethnicity. The two sides, however, dealt with this situation of displacement in very different ways: while the Greek Cypriots were waiting to return to their homes in the north, the Turkish Cypriots felt that they had reached their final destination in the north and declared their own state in 1983; namely the Turkish Republic of Northern Cyprus (TRNC). In 1985, the TRNC Constitution entered into force, basically providing for an expropriation of all so-called “abandoned” Greek Cypriot properties.⁸ Due to the TRNC authorities’ policy, Greek Cypriots were not allowed to cross the “green line” in order to access and enjoy their properties in the north.⁹ This Turkish Cypriot resettlement policy resulted in a multitude of Greek Cypriot applications before the European Court of Human Rights (ECtHR).¹⁰ After the Court’s ruling in the *Loizidou* case in 1996, concerning a Greek Cypriot displaced person’s claims to her property in the north, many subsequent applications from Greek Cypriots (and one from the Republic of Cyprus) were brought before the Court.¹¹ In 2005, more than 1400 applications from Greek Cypriots were pending before the ECtHR. All applicants claimed that their rights under Article 8 and Article 1 Protocol No. 1 of the ECHR were violated by Turkey, as the occupying power in the north, preventing them from having access to and from using and enjoying their homes, property and possessions in northern Cyprus.¹²

⁸ 1985 TRNC constitution, Article 159 (1) (b).

⁹ *Cyprus v. Turkey*, ECtHR, 2001, para. 172.

¹⁰ The European Court of Human Rights is international court, which rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. The Court’s judgments are binding on the countries concerned.

¹¹ Gürel & Williams, paper 1, 2011, p. 2.

¹² To this date, the ECtHR has been dealing with almost solely Greek Cypriot property claims arising from the island’s de facto division in 1974. Although there have been applications by Turkish Cypriots against the RoC regarding violations of their property related rights in the south, the vast majority of application were launched by Greek Cypriots against Turkey. The only Turkish Cypriot case that has been concluded so far, ended in a friendly settlement (*Sofi v. Cyprus*, ECtHR, 14 January 2010) (Gürel, Hatay & Yakinthou, 2012, p. 1).

Regarding the peace process as a whole, already in 1964, the first UN peacekeeping mission was deployed in Cyprus. In 1968, UN-facilitated inter-communal negotiations aimed at finding a solution to the conflict started.¹³ In 2004, the most famous attempt of bridging the gaps between the two communities presented by the former UN Secretary General, Kofi Annan.¹⁴ However, the so-called “Annan plan” was rejected by the Greek Cypriots and on 1st May 2004, the Republic of Cyprus joined the EU as a divided island with an ongoing conflict.¹⁵

Legally, the Republic of Cyprus is recognized by the international community as the *de jure* state of the whole island, however, *de facto* it only has sovereignty over the two-thirds of the island in the south. The north is governed by the TRNC, which is an illegal entity under international law and does not have any legal validity. Internationally, the territory in the north counts as Turkish occupied territory.¹⁶ Nevertheless, it exists and has *de facto* sovereignty over 36 % of the island in the north.¹⁷

Today, we count 50 years of UN presence, 40 years of a divided island and 47 years of peace talks and the conflict is far from being solved. Due to its legal complexity, the passage of time and displaced persons’ emotions, the property issue is seen as one of the major impediments to finding a solution to the Cyprus conflict.

This thesis proceeds as follows: Chapter II analyses the emergence of the Cyprus Conflict and looks at the conflict through the lenses of international law. Chapter III provides an overview of the peace process, especially the role of the UN in solving the conflict. Part IV addresses the history of displacement in Cyprus and how the two sides to the conflict dealt with the division of the island and subsequent properties issues. Chapter V examines the key jurisprudence of the European Court of Human Rights dealing with the situation of an illegal occupation in the north and the Greek Cypriots’ property related claims.

¹³ Sözen, 2007, p.25.

¹⁴ Demopoulos and Others v. Turkey, ECtHR, 2010, para. 7.

¹⁵ Sözen, 2007, pp.18-19.

¹⁶ The legal status of the TRNC, as well as of Turkey’s presence in the north, will be evaluated further down.

¹⁷ Sözen, 2007, p.25.

Furthermore, this chapter will try to establish the Court's broader role in solving the property dispute and its impact on the negotiations of a peace agreement. Finally, in Chapter VI, I will summarise the main findings of the previous chapters and give my personal opinion on how to overcome the conflict in Cyprus.

2. The Cyprus Conflict

2.1 The Emergence of the Conflict

Although Greek Cypriots (80% of the population) and Turkish Cypriots (almost 20% of the population) originally lived as neighbours in mixed villages and towns all over the,¹⁸ the roots of the conflict go back to the period of the Ottoman rule and the emergence of separate Greek-speaking Orthodox and Turkish-speaking Muslim communities. Particularly during the early years of the British rule in Cyprus,¹⁹ tensions intensified between the two ethnicities, as well as with the British regime. But unlike other peoples trying to liberate themselves and become independent from their colonisers, the Greek Cypriot community - identifying themselves with mainland Greeks - started to call for “*enosis*” - the union of Cyprus with Greece.²⁰ During the 1950s, the struggle against the British rule became more violent and guerrilla movements, such as the Greek Cypriot EOKA (Ethniki Organosis Kypriou Agoniston, or in English “the National Organization of Cypriot Fighters”), were formed. EOKA launched military attacks primarily against the British, who countered the Greek Cypriot struggle for a union with Greece, through violent repression and the mobilisation of the Turkish Cypriot community. The growing resistance of the Turkish Cypriot community against *enosis* resulted in the Turkish Cypriot demand for “*taksim*” – the partition of the island into a Greek and a Turkish Cypriot zone. Additionally, the TMT (Turk Mukavemet Teskilati), a Turkish Cypriot para-military organization and counter-movement to the EOKA, was formed.²¹ Finally, in 1958, the UN General Assembly declared that the Cypriot people, as a British colony, have a right to self-determination and therefore a peaceful, democratic and just solution should be found for the independence of Cyprus.²²

¹⁸ Hoffmeister, 2006, p.1.

¹⁹ In 1878, Britain took over Cyprus with the agreement of the Ottoman government. Cyprus was annexed by Britain on the outbreak of war with the Ottoman Empire in 1914, becoming a Crown Colony in 1925.

²⁰ Tocci, 2008, p. 124.

²¹ Ibidem, p. 125.

²² UNGA Resolution 1287 (1958).

2.1.1 1960: The Foundation of the Bi-Communal Republic of Cyprus

In 1959, Greece, Turkey, the UK and representatives of the Turkish and Greek Cypriots met in London and Zurich in order to create a framework for an independent Republic of Cyprus (RoC), reconciling the two opposing demands of *enosis* and *taksim*.²³ In London, three treaties were signed, which – together with the constitution – are the basis of the RoC:

- (1) The *Treaty of Establishment*, which gave effect to the declarations made in the London conference and defined the island's territory including two sovereign British military bases;
- (2) The *Treaty of Alliance*, which allowed the stationing of 950 Greek and 650 Turkish troops on the island; and
- (3) The *Treaty of Guarantee*, which was concluded between Cyprus and Great Britain, Turkey and Greece, who guaranteed the “*independence, territorial integrity and security*” of the Republic of Cyprus. The Treaty of Guarantee forbid *enosis* with Greece or Turkey and outlawed any form of partition of the island.²⁴

On 16 August 1960, the Republic of Cyprus became independent and its constitution entered into force. Like the *Treaty of Guarantee*, the constitution also forbid any kind of reunion, partly or as a whole, with Greece or Turkey and outlawed any form of partition of the island.²⁵ The Republic of Cyprus was designed as a bi-communal partnership state. The political system was one of power-sharing, with a Greek Cypriot president and a Turkish Cypriot vice-president. The presidents of the RoC, each elected by their own community, had the right to veto over legislative decisions. Civil services as well as the government were built on a 7 to 3 ratio.²⁶

²³ Tocci, 2008, p. 125.

²⁴ Hoffmeister, 2006, p.6; Kizilyürek, 2008, p 96.

²⁵ Hoffmeister, 2006, p.5.

²⁶ Sözen, 2007, p.24.

Equality within the Turkish and Greek Cypriot community

The 1959 treaties as well as the 1960 constitution use the terms “communities” and “bi-communalism” in order to express the power-sharing arrangements between the two constituent communities. Recognizing the co-existence of two political entities and according them equal powers, demonstrates that, despite the numerical inferiority of the Turkish Cypriots, the two communities were regarded as political equals.²⁷

2.1.2 1963: The End of the Bi-Communal Republic of Cyprus

Many Greek Cypriots were dissatisfied with the London and Zurich agreements and the 1960 constitution. The Greek Cypriot community felt that they had to grant too generous concessions to the Turkish Cypriots, constituting less than 20 % of the Cypriot population, and that the way the constitution was set up hindered its functionality. In November 1963, Archbishop Makarios, the first president of the republic, suggested an amendment of the constitution. In essence, the proposal would have strengthened the Greek Cypriot position in the direction of a Greek Cypriot unitary state with Turkish Cypriot minority rights, which considerably increased tensions between the two ethnic groups.²⁸

One month later, in December 1963, the situation escalated, when Greek Cypriot policemen killed two Turkish Cypriots, who refused to identify themselves. Several military attacks launched by the Greek and Turkish Cypriot para-military organizations (EOKA and TOT) resulted in violent clashes between the two ethnicities, backed by Greece and Turkey. Already in these early years, several UN Security Council Resolutions were passed to stop the fighting and prevent further escalations. In addition, the first United Nations Peacekeeping Force (UNFICYP) was deployed in Cyprus.²⁹

²⁷ Hoffmeister, 2006, p.10.

²⁸ Tocci, 2008, p. 126.

²⁹ UNSC Resolution 186 (1964), UNSC Resolution 187 (1964), UNSC Resolution 192 (1964), and UNSC Resolution 193 (1964).

Consequences of the Clashes

During the violent clashes in 1963/64, in total 109 villages were destroyed and 25,000 – 30,000 Turkish Cypriots were forced to leave their homes and became internally displaced. Although the number of casualties in the clashes is unclear, it has been established that more Turkish than Greek Cypriots died.³⁰ As a consequence of the clashes, Turkish Cypriot officials left the public administration, which triggered a collapse of the constitutional order of the republic.³¹ At the same time, the Turkish Cypriots stopped recognizing the government of the RoC as the lawful government of Cyprus and refrained from participating in the affairs of the state.³² The Turkish Cypriot leaders started to resettle the Turkish Cypriots into enclaves, where they set up their own provisional administration.³³ At the same time, the Greek Cypriot administration retained control everywhere else in the republic and claimed to be the only legitimate government of the RoC, which was accepted by the international community. The Greek Cypriots, under president Makarios, took advantage of the Turkish absence in the government and amended the constitution in their favour, destroying the bi-communal character of the RoC.³⁴

2.1.3 1974: The Greek Coup d’Etat and the Turkish Invasion

Ten years later, on 15 July 1974, the Greek dictator Ioannidis ordered a coup d’état in Cyprus for the purpose of unifying the island with Greece. After the Makarios regime had been overthrown, Nicos Sampson, who initiated several attacks against Turkish Cypriots during the clashes in 1963/64, was appointed as the new president of the RoC. In reaction to Greece’s coup d’état, Turkey intervened on 20 July 1974 and took over control of approximately 5 % of the territory, which led Sampson to resign as president of Cyprus on 23 July 1974.³⁵ On 8 August 1974, inter-communal talks started between the Foreign Ministers of Greece, Turkey and the UK. But on the night of 13 to 14 August, the

³⁰ Hoffmeister, 2006, pp.14-15.

³¹ Tocci, 2008, p. 126.

³² Hoffmeister, 2006, p.17.

³³ Gurel, Hatay & Yakinthou, 2012, p. 11.

³⁴ Hoffmeister, 2006, p.17.

³⁵ Ibidem, pp.35 -36.

conference broke down and from 14 to 16 August, Turkey carried out a second military operation, bringing 36.4% of the territory under her control.³⁶ UN Security Council formally disapproved the unilateral military action undertaken by Turkey against the RoC and demanded an immediate withdrawal of Turkey's military personnel.³⁷ Nevertheless, the Turkish troops have remained in northern Cyprus until today.³⁸

1975: The Vienna III Agreement

Since Turkey's second military intervention, the island has been divided into two zones. However, in order to actually transfer Turkish Cypriots from the south to the north and Greek Cypriots from the north to the south, a population exchange agreement was signed by the two community leaders in 1975. The so-called *Vienna III Agreement* was implemented under the auspice of UNFICYP and turned Cyprus into an ethnically homogenous island with the Turkish Cypriots living in the north and the Greek Cypriots in the south.³⁹

2.1.4 1983: The Proclamation of the Turkish Republic of Northern Cyprus

In 1975, the Turkish Cypriots first declared the "Turkish Federated State of Cyprus", as a federal state of a not yet existing federation and in 1983, they unilaterally declared their own independent state: the "Turkish Republic of Northern Cyprus" (TRNC).⁴⁰

³⁶ Ibidem, p.36.

³⁷ UNSC Resolution 360 (1974).

³⁸ Tocci, 2008, p 126.

³⁹ The Third Vienna Agreement, 1975.

⁴⁰ Tocci, 2008, p. 126.

2.2 Legal Evaluation

2.2.1 Right to Self-Determination of the Cypriot People

Article 1 (2) of the Charter of the United Nations (UN Charter) sets out that relations among Nations shall be “*based on respect for the principle of equal rights and self-determination of peoples....*”⁴¹ Although this provision holds that the “peoples” are entitled to claim a right to self-determination, the UN Charter does not provide any information on who can be qualified as a “people”. Thus, it needs to be examined to whom such a right actually applies.

When the UN General Assembly declared that the Cypriot people have a right to self-determination in 1958,⁴² both Cypriot communities claimed their separate right to self-determination: The Greek Cypriot side to reunify with Greece and the Turkish Cypriot side for the purpose of partitioning the island.⁴³

During the 1960s/ 70s, the right to self-determination under Article 1 (2) of the UN Charter has been applied to a people liberating itself from a colonising power. Thereby, the right to self-determinations was applied to a people as a whole, rather than any sort of ethnic, religious or linguistic group. Thus, there is no separate right to self-determination for ethnic groups, neither for the Greek Cypriots nor for the Turkish Cypriots. Only the Cypriot people as a whole could claim their right to self-determination enshrined in Article 1 (2) of the UN Charter.⁴⁴ In 1959, at the London conference, the two community leaders issued a declaration of independence, which transferred sovereignty from the UK to the Republic of Cyprus. This act was qualified as the exercise of the right to self-determination under Article 1(2) of the UN Charter of the Cypriot people against the UK (their former colonial power).⁴⁵

⁴¹ UN Charter, Article 1 (2).

⁴² UNGA Resolution 1287 (XIII), 1958.

⁴³ Tocci, 2008, p. 125.

⁴⁴ Hoffmeister, 2006, pp.8-11.

⁴⁵ Hoffmeister, 2006, pp. 9-11.

2.2.2 The Turkish Invasion: Legality of Military Intervention by Treaty Right?

Turkey has been claiming that her intervention was fully compliant with international law, since it was justified under Article IV of the *Treaty of Guarantee*. In order to analyse whether Turkey's intervention can find any justification under international law, it is necessary to scrutinise Article IV of the *Treaty of Guarantee* in-depth.

The Treaty of Guarantee and international law

As already established above, the *Treaty of Guarantee* prohibits the union of Cyprus, partly or as a whole, with another state or the partition of the island.⁴⁶ Under Article II, the three Guarantor powers recognised “*the independence, territorial integrity and security of the Republic of Cyprus*” and guaranteed not to undertake “*any activity aimed at promoting, directly or indirectly, either union of Cyprus with any other State or partition of the Island.*”⁴⁷

Turkey justified its actions based on Article IV of the Treaty of Guarantee, which provides the following:

*“In the event of a breach of the provisions of the present Treaty, Greece, Turkey and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions. In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the State of affairs created by present Treaty”*⁴⁸

⁴⁶ “*The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution. It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island.*” (Article I of the Treaty of Guarantee).

⁴⁷Treaty of Guarantee, Article II.

⁴⁸Treaty of Guarantee, Article IV.

Article IV sets out 4 criteria that must be met in order to justify Turkey's conduct under the *Treaty of Guarantee*:

(1) Breach of the provisions of the present Treaty

On 15 July 1974, Greece overthrew the government of the Republic of Cyprus for the purpose of reunification with Greece, thereby interfering with the territorial integrity and security of the Republic of Cyprus. This act can be qualified as a direct activity to reunify Cyprus with Greece, which violates Article II of the Treaty of Guarantee.⁴⁹

(2) Consultation between the Guarantor Powers

Turkey met this requirement, since consultations took place between Turkey and the UK in London.⁵⁰

(3) Right to take action

By signing the *Treaty of Guarantee*, Cyprus allowed the UK, Turkey and Greece to "take action" in the case of a treaty breach in order to uphold the sovereignty and constitutional order of the RoC.

Whether under international law such a right to take action - in the sense of a right to take unilateral military action - can be conferred by treaty has been questioned: On the one hand scholars have argued for the validity of such treaties, since such a provision allowing for military intervention can be seen as an expression of state sovereignty and is based on the consent of the parties to the treaty.⁵¹ In line with this argument, Hoffmeister⁵² found that Cyprus' signature of the treaty can be seen as a legally valid *ex ante* invitation to the Guarantor powers to intervene with military means in the case of a treaty breach.⁵³ On

⁴⁹ Treaty of Guarantee, Article II.

⁵⁰ Hoffmeister, 2006, p. 42; Greece chose not take part in the consultations, despite a formal British invitation.

⁵¹ Brownlie, 1963, p. 317.

⁵² He was formerly a member of the 'External Relations' and the 'Institutional' Team at the European Commission's Legal Service. Previously, he worked on the European Commission's Cyprus Desk as well as for the United Nations Special Advisor on Cyprus. I am referring to Hoffmeister a lot, since he has worked on the Cyprus issue extensively.

⁵³ Hoffmeister, 2006, pp. 44-45.

the other hand, a number of scholars have argued that a treaty cannot confer a right to take military intervention. In order to qualify a treaty as legally valid, its provisions must be lawful, i.e. compliant with the general principles of law. Thus, the standards set out by the international legal order cannot simply be ignored in the name of contract autonomy. Lauterpacht observes that the content of a treaty must be in line with existing rules of international law and although treaties are to be interpreted in light of the intention of the parties, the intention of the parties has to be interpreted by reference to the rules of international law.⁵⁴ Thus, if the provisions of a treaty violate the general principles of law, the treaty is void.⁵⁵ Accordingly, Article 53 of the Vienna Convention on the Law of Treaties, signed at Vienna in 1969, holds:

*“A treaty is void if at the time of its conclusion conflicts with a peremptory norm of international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”*⁵⁶

Article 2 (4) of the UN Charter prohibits *“the threat or use of force against the territorial integrity or political independence of any State”*, except in cases of self-defence and collective action authorized by the UN Security Council. The prohibition of the use of force also exists under customary law, and qualifies as peremptory norm (and a rule of general international law). In fact, the International Law Commission used the prohibition of recourse to force as an example of an *ius cogens* norm in its commentary on the draft of the Vienna Convention.⁵⁷ Article 103 of the UN Charter establishes that *“in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”*

⁵⁴ Lauterpacht, 1933, p. 109.

⁵⁵ Kareklas, 2014, 67.

⁵⁶ Vienna Convention on the Law of Treaties, Article 53.

⁵⁷ International Law Commission, 1966, pp. 248-9, 261.

Therefore, even if there was a right to intervene militarily under the Treaty of Guarantee, Turkey should have refrained from exercising such a right, since according to Article 103 of the UN Charter the prohibition of recourse to force under Article 2 (4) of the UN Charter prevails over the *Treaty of Guarantee*. Furthermore, Article 53 of the UN Charter clarifies that “no enforcement action shall be taken under regional arrangements or regional agencies without the authorization of the Security Council”. Turkey, acting under the Treaty of Guarantee, a regional agreement, has never obtained any Security Council authorization leading to a violation of this provision.

Furthermore, it also seems questionable whether the “right to action” under the *Treaty of Guarantee* can be interpreted as a “right to military action”.⁵⁸ Following Lauterpacht’s argument above, treaties need to be interpreted in line with rules of international law. Accordingly, the *Treaty of Guarantee* needs to be interpreted in line with the prohibition of the use of force, leading to the conclusion that the “right to action” under the *Treaty of Guarantee* can be interpreted as a “right to military action”.

Despite the strong arguments against the validity of the provision, Hoffmeister argues that Turkey’s military intervention was in line with the Treaty of Guarantee and thus neither constitutes a violation of Article 2 (4) UN Charter, nor of the *ius cogens* and customary norm of the prohibition of the use of force.⁵⁹ Following Hoffmeister’s point of view makes it necessary to examine the last requirement of Article IV:

(4) Re-establishment of the State of affairs

The notion of “State of affairs” refers to the bi-communal structure of the Republic of Cyprus, which ceased to exist in 1964, when the RoC turned into a fully Greek Cypriot administered state.⁶⁰ Following Hoffmeister’s reasoning regarding the re-establishment of the State of affairs, the two phases of the Turkish intervention (the first one on 20 July 1974 and the second one on 14-16 August 1974) must be evaluated separately:

⁵⁸ The *travaux préparatoires* provide little help on whether the treaty drafters meant interventions by peaceful means or not.

⁵⁹ Hoffmeister, 2006, pp. 44-45.

⁶⁰ Ibidem, 2006, p.44.

- (1) In the first phase of intervention, it can still be argued that Turkey pursued the goal of preventing *enosis* of Cyprus with Greece and aimed at re-establishing the state of affairs. This is also reflected by the UN Security Council resolution of 20 July 1974 expressing the “*necessity to restore the constitutional structure of the Republic of Cyprus established and guaranteed by international agreement*”.⁶¹ According to Hoffmeister, the first phase of the Turkish intervention was compatible with Article IV of the Treaty of Guarantee and thus can still be qualified as legal.⁶²

- (2) In the second phase of the Turkish military intervention, Turkey took control over 36.4 % of the territory of the RoC. This act cannot be justified under the Treaty of Guarantee, since it did definitely not serve the aim of re-establishing the State of affairs. On the contrary, the second phase rather aimed at the partition of the island, which itself is a violation of Article II of the Treaty of Guarantee and must be qualified as a violation of international law.⁶³

Evaluating the legality of the Turkish intervention in 1974, it becomes clear that the question is not if the intervention was illegal or legal, but rather when exactly the intervention became illegal. Thus, Turkey cannot neither justify its actions under the *Treaty of Guarantee*, nor does it seem coherent to let contract autonomy prevail over the prohibition of use of force under international law. The Turkish invasion, leading to the partition of the island, amounts to a violation of Article II of the *Treaty of Guarantee*. Following the above made arguments, Turkey’s actions violated the prohibition of use to force and consequently her presence in northern Cyprus is regarded as an illegal occupation of the territory of the Republic of Cyprus.

⁶¹ UNSC Resolution 353 (1974).

⁶² Hoffmeister, 2006, p. 46.

⁶³ *Ibidem*, 2006, p. 47.

2.2.3 TRNC: Statehood under International Law

There are two leading theories regarding the concept of statehood under international law: the declarative theory and constitutive theory. According to the *constitutive theory*, new states emerge solely through being recognized by the international community.⁶⁴ Under the *declarative theory*, a State becomes a subject of international law as soon as it exists as a fact, i.e. when it fulfils the objective criteria of statehood under international law.⁶⁵ Independent of its recognition by other states⁶⁶, a state exists (as a fact) as soon as it meets the following criteria: (1) a defined territory; (2) a permanent population; (3) a government; and (4) a capacity to enter into relations with other states.⁶⁷

The Constitutive Theory and the TRNC

Article 2 (4) of the UN Charter prohibits the use of force “*in any other manner inconsistent with the Purposes of the United Nations.*” The principle self-determination of peoples is such a purpose and thus takes priority over the prohibition of the use of force against the territorial integrity of a State.⁶⁸ However, as established above, the right to self-determination only applies to the Cypriot people as a whole and therefore cannot be invoked by one ethnic group within the Cypriot people.⁶⁹ Thus, the proclamation of the TRNC by the Turkish Cypriots does not qualify as an exercise of the right to self-determination and consequently, any use of force cannot be justified.⁷⁰ Therefore, the TRNC no legal validity,⁷¹ which has been reaffirmed by the UN Security Council, who responded to the establishment of the TRNC by adopting Resolution 541, which “*considers the declaration ... as legally invalid and ... calls upon all States not to recognise any Cypriot State other than the Republic of Cyprus*”⁷² In 1984, the UN

⁶⁴ Lauterpacht, 1947, p. 38.

⁶⁵ Ibidem, 1947, p. 41.

⁶⁶ Under the declarative theory, the recognition of the international community of a state has a purely declaratory character.

⁶⁷ Bora, 2013, pp. 48-49.

⁶⁸ Kareklas, 2014, pp. 139 -140

⁶⁹ Hoffmeister, 2006, p. 47.

⁷⁰ Kareklas, 2014, p. 140.

⁷¹ Ibidem, 2014, p. 144.

⁷² UNSC Resolution 541 (1983).

Security Council adopted Resolution 550, declaring all secessionist actions, including the exchange of ambassadors between Turkey and the Turkish Cypriot leadership as illegal and invalid.⁷³ Also the Committee of Ministers of the Council of Europe expressed that it regards “*the Government of the Republic of Cyprus as the sole legitimate Government of Cyprus and called for the respect of the sovereignty, independence, territorial integrity and unity of the Republic of Cyprus.*”⁷⁴ Consequently, the declaration of the TRNC on occupied territory was highly condemned by the international community and until today, Turkey is the only state that has ever recognised the TRNC as a state.⁷⁵ In fact there is a duty under international law not to recognise an unlawful territorial occupation, if it originates from a violation of the prohibition of the use of force.⁷⁶ Therefore, under the constitutive theory, the TRNC can consequently not be qualified as a state, since it lacks recognition.

The Declarative Theory and the TRNC

Although the establishment of the TRNC was not in accordance with international law and not recognised by the international community, the TRNC might still carry the attributes of effective statehood under the *declarative theory*. According to Article 1 of the Montevideo Convention 1933, a State has to be regarded as a person of international law, if it possesses a permanent population; a defined territory; government; and the capacity to enter into relations with other States.

The TRNC has a permanent population in northern Cyprus and its territory is sufficiently defined: 36.4 % of the Cypriot territory north of the UN buffer zone.⁷⁷ Furthermore, the TRNC has a number of representations in foreign countries and has been accepted to participate in the Organization of Islamic Cooperation (OIC), which demonstrates a certain capacity to enter into relations with other states.⁷⁸ The criterion of an independent government, however, needs further analysis. Although the TRNC claims that it has a

⁷³ UNSC Resolution 550 (1984).

⁷⁴ Committee of Ministers, 1983.

⁷⁵ Cyprus v. Turkey, ECtHR, 2001, para. 15.

⁷⁶ Binder & Lachmayer, 2014, pp. 12-13.

⁷⁷ Hoffmeister, 2006, pp.50-51.

⁷⁸ Bora, 2013, p. 49.

fully independent government, a legislature and a functioning judiciary system, the fact that Turkey has around 30,000 troops placed in the northern part of the island⁷⁹ and that the TRNC is financially dependent on Turkey, render the government's independence questionable. Generally, statehood is not questioned if a foreign army is invited on a state's territory for mutual defence purposes. However, regarding the case of northern Cyprus, the Turkish army does not only fulfil the duty to defend northern Cyprus, but it has command over the TRNC police and the secret services and is in charge of regulating parts of internal security and border control.⁸⁰ Additionally, the TRNC exclusively receives donations from Turkey,⁸¹ which demonstrates the TRNC's economic dependence on Turkey. The more the TRNC is financially supported by Turkey, the more influence Turkey has on the Turkish Cypriot affairs.⁸² Thus, Turkey exercises a certain amount of control over the TRNC, which interferes with the self-governance of northern Cyprus. In line with this finding, the European Court of Human Rights found that Turkey has overall control over northern Cyprus and therefore exercises jurisdiction within the TRNC territory,⁸³ which will be analysed further down.

The TRNC has to be qualified as unlawful under international law,⁸⁴ deriving from the Turkish military operation, which was in violation with international law.⁸⁵ Since the TRNC does not only lack recognition, but also does not meet the objective criteria of independent statehood, it cannot be regarded as a state under either of the two theories.

⁷⁹ Geneva Academy, current conflict (website).

⁸⁰ Hoffmeister, 2006, pp. 50-51.

⁸¹ Ibidem, 2006, p. 51.

⁸² Bozkurt, 2013.

⁸³ Cyprus v. Turkey, ECtHR, 2001, para. 77.

⁸⁴ The TRNC is a so-called "puppet state".

⁸⁵ Binder & Lachmayer, 2014, p. 11.

2.2.4 The Cyprus Conflict: An International Armed Conflict

Since the Cyprus conflict involves a military occupation of Turkey⁸⁶ in the northern part of the territory of the Republic of Cyprus, the conflict itself qualifies as an international armed conflict under international humanitarian law.⁸⁷ The law of military occupation applicable to Cyprus is enshrined in the 1907 Hague Regulations (Articles 42-56), the 1949 Fourth Geneva Convention, 1977 Additional Protocol I, and customary international law. Since Turkey intervened in 1974, the Additional Protocol I, which Cyprus ratified in 1977, is not directly applicable. Nevertheless, the provisions of Additional Protocol I, reflecting customary international law in an international armed conflict, apply to Cyprus.⁸⁸

Art. 43 of the Hague regulations holds the following:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

According to the above provision, Turkey – as the occupying power – does not enjoy sovereign rights over the territories it occupies. The local law, which was applicable prior to the occupation, remains in force. Furthermore, Turkey is responsible for the local administration of the population under its control and for providing security. It also has an obligation to maintain the occupied territory as it was prior to the occupation.⁸⁹

⁸⁶ E.g. UNGA Resolution 37/253 (1983).

⁸⁷ Kareklas, 2014, p. 91.

⁸⁸ Geneva Academy, Cyprus-Applicable International Law (website).

⁸⁹ Geneva Academy, Applicable international law (website)

Displacement and property during armed conflict

The International Committee of the Red Cross (ICRC) has issued a study clarifying which are the customary rules that apply in a situation of military occupation.⁹⁰ The study also addresses the treatment of private property stating that “*in occupied territory ... (c) private property must be respected and may not be confiscated; except where destruction or seizure of such property is required by imperative military necessity.*”⁹¹ This rule (International customary law rule 133) has been established by state practice and is applicable to the Cyprus Conflict.⁹²

Regarding displaced persons the study provides the following:

*“Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. States may not deport or transfer parts of their own civilian population into a territory they occupy.”*⁹³

Human rights during armed conflict

In its advisory opinion addressing the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice (ICJ) established that international human rights law was also applicable to situations of military occupation.⁹⁴ Thus, human rights law is binding on Turkey in the territories it occupies in Cyprus. This finding has also been upheld by the European Court of Human Rights, who ruled that Turkey has jurisdiction over northern Cyprus in terms of Article 1 of the European Convention on Human Rights (ECHR)⁹⁵, which will be analysed in-depth further down.

⁹⁰ICRC, Study available at http://www.geneva-academy.ch/RULAC/pdf_state/Customary-Rules-of-International-Humanitarian-Law-Applicable-to-a-Military-Occupation.pdf

⁹¹ Ibidem.

⁹² ICRC, Customary IHL Rule 133 (website)

⁹³ Ibidem 90.

⁹⁴ ICJ, 2004, para. 106.

⁹⁵ Cyprus v. Turkey, ECtHR, 2001, para. 77.

Excuse: Transfer of Own Civilian Population into Occupied Territory

Occupying powers are not allowed to transfer parts of their own civilian population into occupied territories. This prohibition is not only enshrined in the Fourth Geneva Convention,⁹⁶ but also constitutes a grave breach of Additional Protocol I,⁹⁷ and a war crime under the Statute of the International Criminal Court.⁹⁸ Furthermore, the transfer of own civilian population into occupied territory is prohibited by customary international law (International customary law rule 130).⁹⁹ Today, it is estimated that about 150,000 - 160,000 Turkish settlers from the Turkish mainland live in the occupied territories in the north of Cyprus. Since 1974, Turkey has implemented policies facilitating the migration of mainland Turks to northern Cyprus. The Greek Cypriot Government claims that Turkey pursues the goal of changing the demographic character of the island.¹⁰⁰ If these allegations are true, Turkey might be in violation with the above quoted treaties, as well as with international customary law rule 130.

⁹⁶ Fourth Geneva Convention, Article 49 (6).

⁹⁷ Additional Protocol I, Article 85 (4) (a).

⁹⁸ ICC Statute, Article 8(2) (b) (viii).

⁹⁹ ICRC, Customary IHL Rule 130 (Website).

¹⁰⁰ Embassy of the RoC (website).

3. The Cyprus Peace Process

In the course of this chapter, I will first provide a brief overview of more than 50 years of UN presence in Cyprus and 47 years of UN facilitated peace negotiations. In a second step, I will summarise the opposing positions taken by the Turkish and Greek Cypriots throughout the conflict and attempts of bridging the gap between the demands of the two sides.

3.1 The Role of the UN in Cyprus

Throughout its presence in Cyprus the United Nations have provided assistance to Greek and Turkish Cypriots in the virtue of finding an agreement to Europe's oldest conflict. Until today, the United Nations have been a facilitator, trying to provide a platform for the two communities to reach a mutually acceptable solution for the Cyprus problem.¹⁰¹

The UN Peacekeeping Force in Cyprus (UNFICYP)

In reaction to the clashes in 1963/64, the first UN peacekeepers were placed in Cyprus. Today, 50 years later, they are still there and fulfilling the following duties:

- Supervising the ceasefire lines;
- Maintaining the buffer zone (the Green Line) between the lines of the Cyprus National Guard and of the Turkish and Turkish Cypriot forces;
- Undertaking humanitarian activities; and
- Supporting the good offices mission of the Secretary General.¹⁰²

Secretary-General's Mission of Good Offices

In 1964, the UN Security Council asked the UN Secretary General to conduct a mission of good offices in Cyprus. After the events of 1974, Resolution 367 was adopted, which called on the Secretary General to undertake a new mission of good offices with the

¹⁰¹ UN Good Offices Mission, About the Peace Talks (website).

¹⁰² UNFICYP, Contributing to a political settlement in Cyprus (website).

representatives of the two communities¹⁰³. Since then, several Secretary Generals and their Special Representatives have been facilitating negotiations and supported the two communities in finding a solution acceptable for both sides.¹⁰⁴

In the course of the 2008 peace talks, the representatives of the two leaders agreed to set up a number of working groups and technical committees. Additionally, confidence-building measures in the fields of crime and criminal matters, cultural heritage, health matters and environment, were approved by the leaders.¹⁰⁵ One institution that plays a significant role in the peace and reconciliation process in Cyprus is the Committee on Missing Persons.

Committee on Missing Persons (CMP)

In 1981, the leaders of the Greek Cypriot and Turkish Cypriot communities established, under the auspices of the United Nations, the Committee on Missing Persons (CMP). The committee is of a bi-communal nature with working teams consisting of Greek Cypriot and Turkish Cypriot scientists involved at every stage of the exhumation and identification processes. The CMP tries to recover, identify, and return the remains of 493 Turkish Cypriots and 1,508 Greek Cypriots, who went missing during the inter-communal fighting of 1963/64 and the events of 1974. Most Cypriot families on both sides have family members, who went missing during the conflicts. Today, in 2015, the CMP has excavated more than 988 suspected burial sites and exhumed the remains of more than 1000 persons. 451 Greek Cypriots and 144 Turkish Cypriots have been identified and the remains returned to their families.¹⁰⁶

The work of the CPM can be structured in four phases:

- an *Archaeological Phase*, in which remains of missing persons are located and excavated,
- an *Anthropological Phase*, in which the recovered remains are analysed at the CMP Anthropological Laboratory,

¹⁰³ UNSC Resolution 367 (1975).

¹⁰⁴ UNFICYP, UNFICYP Background (website).

¹⁰⁵ UN Good Office Mission, Working Groups and Technical Committees (website).

¹⁰⁶ CMP, Facts and Figures (website).

- a *Genetic Phase*, where genetic analyses and bone profiling for the purposes of identification and association of skeletal elements is carried out, and
- an *Identification and Return of Remains Phase*, in which the information obtained in all previous phases is put together and once the formal identification has been carried out, the remains are returned to their families.¹⁰⁷

The objective of the CMP is to return the remains of missing persons to their families in order to arrange a proper burial and to close a long period of anguish and uncertainty. The CMP aims at healing of old wounds, without establishing the cause of death and without establishing the responsibility for the death of missing persons. The CMP is one of the rare examples where Greek and Turkish Cypriots collaborate in peace and its work has contributed a lot to the reconciliation process between the two communities.¹⁰⁸

3.2 The Peace Talks

3.2.1 Brief History of almost 50 Years of Negotiations

Since 1968, UN-facilitated negotiations between the two communities and the guarantor powers for finding a peace agreement have been taking place. In 1977, “The Four Guidelines” and in 1979, the “Ten-Point Agreement” in which the two sides agreed to base a future solution plan on the principle of bi-zonality and bi-communality, were negotiated.¹⁰⁹ Until today, these two principles constitute the only agreement that has ever been reached between Greek and Turkish Cypriots. In 1984, based on the 1977 and 1979 high level agreements, the first comprehensive framework agreement was created by UN Secretary General Perez de Cuellar, who was UN special representative for Cyprus from 1975 – 1977. The plan was accepted by Turkey and the Turkish Cypriot Community, but rejected by the Greek Cypriot leadership. In 1988 and 1989, the two leaders met over forty times in Nicosia under UN mediation, without reaching any agreement. In 1992,

¹⁰⁷ CMP, What we do, (website).

¹⁰⁸ Ibidem.

¹⁰⁹ Sözen, 2007, pp. 4-7.

UN Secretary General *Boutros Ghali* drafted a “Set of Ideas”, which was rejected by both sides.¹¹⁰ In reaction, the UN Secretary General tried to counter the lack of trust between the two sides by proposing “15 Confidence Building Measures”, which were not taken seriously by the two leaders and consequently proved to be futile as well. In 1997, after a deadlock of over four years, UN Secretary General, Kofi Annan, managed to get the leaders of the two communities to face-to-face meetings in New York and Geneva.¹¹¹ At the same time, the EU opened accession negotiations with Cyprus. But as the Turkish Cypriot leadership refused to be part of the Cypriot delegation, the EU accession negotiations were conducted solely with the Republic of Cyprus, without any Turkish Cypriot participation.¹¹²

In 2002, when the accession negotiations between Cyprus and the EU were reaching a final stage, Kofi Annan put forward a plan, which has until today been the most comprehensive and the most detailed solution plan to the Cyprus issue. The plan took all the past attempts of reaching an agreement into consideration and was designed to comply with all the Security Council Resolutions and EU standards of democracy, rule of law and human rights.¹¹³ Although the EU would have preferred a unified Cyprus to join the EU, it did not require a solution of the Cyprus conflict as a prerequisite for joining the EU.¹¹⁴

In March 2003, Kofi Annan asked the two sides to approve to his solution plan and put it to separate simultaneous referenda on 30 March 2003, in order to solve the conflict before Cyprus would join the EU. However, although the Greek Cypriot leadership approved the plan, the Turkish Cypriot government rejected and lost the opportunity of putting it to referenda prior to the signature of the *Accession Treaty* in April 2003. From April 2003, when the *EU Accession Treaty* was signed, it was clear that Cyprus would join the EU, regardless of whether or not a solution to the conflict would be found.¹¹⁵

¹¹⁰ Ibidem, 2007, pp. 8-12.

¹¹¹ Ibidem, 2007, pp. 15-16.

¹¹² Hoffmeister, 2006, p. 96.

¹¹³ Ibidem, pp. 160-161.

¹¹⁴ This was mainly because of Greece threatened the EU with blocking the EU enlargement to Eastern European States.

¹¹⁵ Hoffmeister, 2006, p. 161.

In 2004, Kofi Annan managed to get the leaders of the two sides and representatives of Greece and Turkey together in Bürgenstock, Switzerland, where the final *Comprehensive Settlement of the Cyprus Problem* was elaborated. The so-called 5th Annan plan tried to bridge the gap between the fixed, maximalist positions of the two sides (which will be analysed further down) by providing a mutual compromise.¹¹⁶ After the Annan Plan V was finalized and prepared to be put to referenda, the two sides started their political campaigns. While in the north, a good attitude towards finding a solution could be observed, the perception of the plan was a rather negative one in the south. This negative view of the plan was mainly due to propaganda from the Greek Cypriot president, Papadopoulos, who held an emotional television speech, requesting the Greek Cypriots to vote “NO” to the plan. Furthermore, mass media discussions were used to advocate for how unbalanced and unfair the plan was, without allowing any representatives of the UN or the European Commission to participate in the public debate.¹¹⁷ Finally, on 24 April 2004, the final plan was put to simultaneous and separate referenda for the Greek and Turkish Cypriots. Although 65 % of Turkish Cypriots accepted the settlement plan, it was rejected by 76 % of Greek Cypriots. The international community, who was expecting both sides to show genuine political will, was shocked by the result.¹¹⁸

After the rejection of the Annan plan by the Greek Cypriot side, the Council of the European Union was “*determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community*”.¹¹⁹ Nevertheless, on 1 May 2004, the Republic of Cyprus became a full EU member, despite the existence of a conflict and the *de facto* division of the island. Until a solution to the conflict is found, the application of EU law was suspended in the north, which *in contrario* means that EU law finds application only in the south, where the Republic of Cyprus exercises effective control.¹²⁰ Thus, the application of EU law stops at the “green line”, which nevertheless is considered

¹¹⁶ Sözen, 2007, pp. 17-18.

¹¹⁷ Hoffmeister, 2006, pp. 180-181.

¹¹⁸ Sözen, 2007, pp. 17-18.

¹¹⁹ Council of the European Union, 2004.

¹²⁰ 12003T/PRO/10, Article 1 (1).

to be an internal border of the EU.¹²¹ The fact that the *acquis* is not applicable to the north, excludes the TRNC from the EU's customs and fiscal territory. Turkish Cypriots are considered to be citizens of the Republic of Cyprus, even though they live outside of its government control and thus they enjoy all rights as EU citizens. Once the Cyprus Conflict will be settled, EU legislation will be applicable over the whole island.¹²²

The Negotiations since 2004

After the rejection of the Annan plan, a phase of silence and disappointment followed. Only in 2008, the two communities managed to get together and try to find a settlement again. A new type of approach was adopted: The “Cypriot-led and Cypriot-owned process”, which was conducted under the auspices of the United Nations Secretary-General *Ban Ki-Moon* and was a reaction to the fears of many Greek Cypriots fearing too much involvement of the UN and other actors. In this approach, every step was decided through the will of the parties under a very limited influence of the UN. Unfortunately, this concept as well turned out to be insufficient for reaching an agreement.¹²³

3.2.2 Irreconcilable Positions?

Throughout the years, the two parties to the conflict have developed positions regarding several disputed areas, which are crucial for finding a solution to the conflict and have shown little willingness to make concessions to the other side.¹²⁴

The original demands of the two sides for finding a solution:

Concerning the political system of the island, the Turkish Cypriots want to build either a confederation or two independent states, whereas the Greek Cypriots prefer a unitary state or a strong federation. In terms of Guarantorship, Greece wants to eliminate the right of unilateral intervention in the case of conflict, but Turkey insists on the continuation of the validity of the 1960 Treaty of Guarantee. Regarding the freedom of movement, settlement

¹²¹ Council Regulation (EC) 866/2004.

¹²² European Commission, Aid Programme for the Turkish Cypriot community (website).

¹²³ Özersay, 2012, pp. 409-410.

¹²⁴ UNSC Resolution 649 (1990).

and the right to property ownership, the Greek Cypriots ask for all three freedoms to be fully guaranteed, whereas the Turkish Cypriots want limitations on all of them in order to prevent a future Greek Cypriot domination of the whole island. While the Greek Cypriots push to administrate at least 75% of the island's territory, the Turkish Cypriots insist on maintaining at least 29% of the territory.¹²⁵ Concerning displaced persons and properties, the Greek community advocates that all displaced Greek and Turkish Cypriots shall have the right to return to their properties, which would lead to a *de facto* elimination of the principle of bi-zonality. The Turkish community advocates for a “global property exchange system”, which would provide financial compensation instead of allowing displaced persons to return to their properties and consequently would strengthen the principle of bi-zonality.¹²⁶ The issue of Turkish settlers is very high on the Greek Cypriot agenda, since the Greek Cypriot fear to become the minority on the island, they want all Turkish settlers to leave Cyprus. Regarding the military status of Cyprus, the Greek side wants the island to be completely demilitarised, only having a small armed police force. The Turkish side, however, wants to maintain the current amount of military personnel. The last key issue regarding the EU membership has become irrelevant, as the Republic of Cyprus has joined the EU as a divided island in 2004.¹²⁷

3.2.3 A summary of the Annan Plan

The above mentioned *Comprehensive Settlement of the Cyprus Problem* provided for the establishment of a single new and sovereign state: the *United Cyprus Republic (UCR)*. The UCR would have been a bi-zonal loose federation, consisting of two constituent states: One Greek Cypriot state in the south, comprising 71% of the territory of Cyprus; and one Turkish Cypriot state in the north, comprising 29%. Cypriots would be citizens of the UCR and at the same time of their constituent State.¹²⁸ Whereas some restrictions on the freedom of settlement and the freedom of property ownership were planned in order to uphold the principle of bi-zonality, the freedom of movement would have been

¹²⁵ Özersay & Sözen, 2007, p. 126.

¹²⁶ Ibidem, 2007, p. 128.

¹²⁷ Ibidem, 2007, p. 129.

¹²⁸ Demopoulos and Others v. Turkey, ECtHR, 2010, para. 8.

fully guaranteed. Concerning the military build-up, the Annan plan foresaw that the Turkish forces would be reduced to 650¹²⁹ and the Greek forces to 950 within a schedule of five years.¹³⁰ Furthermore, the positioning of a lightly armed separate police force for each state and a police force for the federal state was planned. In order to settle displaced persons accordingly to the territorial adjustments, properties would have been either reinstated to their previous owners or financially compensated.¹³¹ Regarding the Turkish settlers in the north, the plan proposed that, based on a list prepared by the TRNC authorities, 45.000 Turkish immigrants could have remained on the territory of the United Cyprus Republic.¹³² However, as analysed above, the plan was rejected by the Greek Cypriots in 2004 and thus never entered into force.

3.2.4 Where Are We Today?

After the disappointment of the 2004 referendum, many people lost their interest and hope in solving the Cyprus problem and seem to have started to accept the *status quo*. However, today Cyprus faces immense economic crisis and a settlement of the Cyprus problem could mean a way out of the country's current economic problems.¹³³ In 2004, a big majority of the Greek Cypriots rejected the Annan plan because they were expecting political and economic benefits of the EU accession, which would allow them to negotiate a better deal in the future. The Turkish Cypriots, on the other hand, regarded the Annan proposal as a chance to end their isolation. In the past ten years, however, the situation has changed dramatically. While the Republic of Cyprus faces a huge economic crisis, the economy in the north has significantly improved. Not only the GDP per capita nearly tripled, but unemployment declined and currency remains relatively stable.¹³⁴ Thus, from an economic point of view, it makes more sense for the Republic of Cyprus to agree to a solution today than it did in 2004, when the wealth disparity between the two parts of the island was more than double of what it is now.

¹²⁹ Currently there are estimated to be around 30,000 – 35,000 troops placed in northern Cyprus.

¹³⁰ As originally enshrined in the Treaty of Alliance from 1960.

¹³¹ The solution regarding property provided in the Annan Plan will be analysed further down.

¹³² Özersay & Sözen, 2007, p.130.

¹³³ Bozkurt, 2013.

¹³⁴ Amani, 2013.

Another possible trigger for finding a solution is related to natural gas discoveries in the southern coast of the Republic of Cyprus.¹³⁵ In times of the Ukraine crisis and tensions between Western countries and Russia, this discovery has attracted the interest of the international community.¹³⁶ In May 2014, US Vice President *Joe Biden* visited the island and explained how the resolution of the Cyprus issue has become important for the US energy policies in the Eastern Mediterranean.¹³⁷ He emphasized that “*Cyprus is a key partner in a challenging region. And we know it can be an even stronger partner if the next generation of Cypriots can grow up without the burden of conflict.*”¹³⁸

Hope for change?

On 26 April 2015, Mustafa Akinci, a leftwing moderate who is known as the most reconciliation-minded leader, won the northern Cyprus presidential elections. After his election, he told thousands of joyful supporters: “*We achieved change and my policy will be focused on reaching a peace settlement,*” stressing that Cyprus cannot tolerate any more wasted time.¹³⁹ During his campaign, Mustafa Akinci challenged Turkey’s involvement in the TRNC. He clarified that the relationship between north Cyprus and Turkey should be one of “*brothers and sisters*” rather than of “*a motherland and her child.*” His election can be regarded as a Turkish Cypriot message of reconciliation, as well as an expression that Turkey is involving too much in the affairs of northern Cyprus.¹⁴⁰

In May 2015, peace negotiations between the Greek Cypriot president Anastasiades and the newly elected Turkish Cypriot leader Mustafa Akinci started. Akinci emphasized that he plans to focus more on the role of society in the reconciliation process and one of his first suggestions was to Varosha, a ghost town of Famagusta, which was perceived in a

¹³⁵ Bozkurt, 2013.

¹³⁶ Cyprus Mail, 10 April 2014.

¹³⁷ Cyprus Mail, 23 May 2014.

¹³⁸ Evripidou, 2014.

¹³⁹ BBC News, 26 April 2015.

¹⁴⁰ The Guardian, 28 April 2015.

positive way by many Greek Cypriots.¹⁴¹ Being in power for very little time, the new Turkish Cypriot president has made a decision to dispense the visa requirement for entering the TRNC and has implemented a number of confidence-building measures ranging from increasing the crossing points connecting the two communities to linking mobile telephone and electricity grids.¹⁴² Furthermore, the moment for a peace agreement seems right, since for once Athens and Ankara are showing a rare interest in improving their relations.¹⁴³

Both Anastasiades and Akinci acknowledged that time was the biggest adversary in the Cyprus conflict. *“The more time passes, the more the division becomes consolidated. This is a fact that everyone should understand,”* said Akinci recently. Recently he urged Turkish Cypriots to regard their counter parts not as enemies, but future partners, recognizing that *“[i]t is our fate as Turkish Cypriots and Greek Cypriots to live together on this island. The Cyprus problem has been negotiated exhaustively. All that is needed, now, is determination, political will and a shared wisdom and vision.”*¹⁴⁴

¹⁴¹ Ibidem.

¹⁴² The Guardian, 31 May 2015.

¹⁴³ The Guardian, 14 May 2015.

¹⁴⁴ The Guardian, 31 May 2015.

4. Displacement, Homes and Properties

The clashes in 1963/64 and the Turkish invasion in 1974 led to the internal displacement of around 162,000 Greek Cypriots and approximately 60,000 Turkish.¹⁴⁵ After the division of the island into a Turkish Cypriot-controlled north and a Greek Cypriot-controlled south, the *Vienna III agreement* was signed, which allowed for the transfer of Greek Cypriots from the north to the south and Turkish Cypriots from the south to the north, where they were resettled in the abandoned properties of the other ethnicity.¹⁴⁶ After a violent conflict is over, it is the hope of every displaced person to return to his/her home and property. In Cyprus, this expectation has turned into a political problem, making the issue of displaced persons' property-related rights one of the major obstacles within the peace and reconciliation process. As time went on, the property issue has turned into a very complicated legal and technical issue. One aspect, which makes finding a solution to the property issue (and the whole conflict in Cyprus) so difficult, is that most Cypriots associate the issue of displaced persons' property rights with the wrongs done by the other community and are very emotional about the topic. However, the main challenge resulting from the displacement is that today, a vast percentage of the Cypriot population has been living in the houses of displaced owners for 40 years. Thus, there is a conflict between individual rights of both those who lost their homes and properties and those who subsequently took over those properties.

Finding a solution to this problem is very difficult, since the Greek Cypriots have upheld the fulfilment of the right of all displaced persons to return to their homes, whereas the Turkish Cypriots have insisted on a property exchange system providing for financial compensation, without any restitution at all. Especially the way Turkish Cypriots dealt with the so-called abandoned properties in the north, has led to a series of applications from Greek Cypriot displaced owners claiming a violation of their property rights before the European Court of Human Rights (which will be analysed further down).¹⁴⁷

¹⁴⁵ Gürel, Hatay & Yakinthou, 2012, pp. 8-10.

¹⁴⁶ Ayla Gürel and Kudret Özersay, 2006, pp. 3-4.

¹⁴⁷ Gürel, Hatay & Yakinthou, 2012, p. 1.

4.1 Cyprus: A History of Displacement

In 1924, when the Lausanne agreement - transferring sovereignty over Cyprus from Turkey to Britain - was signed, many Muslims left the island and migrated to Turkey. In fact, between 1911 and 1946, the percentage of the Muslim population in Cyprus dropped from 22% to 18%,¹⁴⁸ and the number of mixed villages in Cyprus dropped from 346 in 1891 to 252 in 1931.¹⁴⁹

Displacement during 1955-59

Ethical conflicts throughout the late 1950s, especially initiated by Guerilla movements, i.e. the EOKA and the TOT, led to the displacement of approximately 2,700 Turkish Cypriots and 1,900 Greek Cypriots. After the declaration of the Republic of Cyprus in 1959, almost half of the displaced Turkish Cypriots and a small number of Greek Cypriots returned to their villages.¹⁵⁰

Displacement during the 60s

The clashes in 1963/64 resulted in the displacement of 1,500-2,000 Greek and Armenian Cypriots, and approximately 25,000 Turkish Cypriots.¹⁵¹ Between December 1963 and August 1964 Turkish Cypriots abandoned 72 mixed villages and 24 Turkish Cypriot villages and moved into enclaves. During this period, 364 Turkish Cypriots and 174 Greek Cypriots were killed.¹⁵²

Displacement in 1974/75

10 years later, in 1974, in reaction to the Greek Coup d'état, Turkey invaded Cyprus and took control of 36.4 % of the island.¹⁵³ The Turkish occupation and the subsequent exchange of populations led to the displacement of a considerable part of the Greek and Turkish Cypriots. This population exchange was carried out under the scope of the *Vienna*

¹⁴⁸ Gürel, Hatay & Yakinthou, 2012, p. 4

¹⁴⁹ Ibidem, 2012, p. 6

¹⁵⁰ Ibidem, 2012, p. 6

¹⁵¹ Patrick, 1976, p. 343.

¹⁵² Ibidem, p. 340.

¹⁵³ Gürel, Hatay & Yakinthou, 2012, p.8.

III Agreement, which was signed by the leaders of both communities in Vienna in 1975 and was conducted under the auspice of UNFICYP.¹⁵⁴ The agreement allowed for the voluntary and assisted movement of Greek Cypriots from the north to the south and of Turkish Cypriots from south to north. This process resulted in the creation of two ethnically homogenised zones: A Turkish Cypriot zone in the north and a Greek Cypriot zone in the south. Although the agreement did not oblige anyone to leave and even provided for human rights protection for those who did not move, out of the initially 10,000 Greek Cypriots who decided to stay in the north in 1975, only 1,000 Greek Cypriots were left by 1981.¹⁵⁵ By the end of 1975, all the Turkish Cypriots had moved to the north, leaving behind only some 130 elderly Turkish Cypriots.¹⁵⁶

The Green Line

Thus, the island of Cyprus has been divided into a Turkish Cypriot north and a Greek Cypriot south for more than 40 years now. The border separating the north from the south is called “Green Line”, a UN Buffer Zone that is guarded by UNFICYP. The Green Line is approximately 180 kilometres long. In some places it is only a few meters wide, whereas in others it is a few kilometres wide. The UN buffer zone was built according to the ceasefire lines of 16 August 1974. Within the buffer zone there are several villages or special areas and in the eastern region of the buffer zone, lies the only remaining mixed village where Greek Cypriots and Turkish Cypriots live side by side. The zone is permanently watched by UNFICYP.¹⁵⁷

4.2 The Resettlement Process

After the population exchange was conducted, the resettlement process began. Due to the different way the two ethnic groups regarded the nature of the conflict, they dealt with the situation in a very different manner: The Turkish Cypriots, who were advocating for the partition of the island since the 1950s, perceived the division of the island as a

¹⁵⁴ The Third Vienna Agreement, 1975.

¹⁵⁵ Embassy of the RoC, Enclaved Persons (website).

¹⁵⁶ Gürel, Hatay & Yakinthou, 2012, p. 10.

¹⁵⁷ UNFICYP, About the Buffer Zone (website).

permanent one. They regarded the northern part of the island as their new final destination, where they would settle down for good. The Greek Cypriots, on the other hand, regarded the Cyprus problem as an issue of Turkey's continuing military presence. Thus, they perceived the separation of the island as temporary and constantly waiting for the illegal occupation to come to an end and to be able to return to their homes in the north.¹⁵⁸ Furthermore, it cannot be ignored that the Turkish Cypriots only amounted to 18% of the total population and since many of them had been displaced in 1963/64 they were living in very poor circumstances in enclaves or rural areas. But after Turkey's intervention around 162,000 Greek Cypriots were displaced from the north to the south, which created the following situation: In the north, there was a surplus of empty Greek Cypriot properties compared to the number of Turkish Cypriot refugees. In the south, however, the opposite was the case. There were far less abandoned Turkish Cypriot houses, than needed in order to accommodate the Greek Cypriot refugees.¹⁵⁹

4.2.1 The Greek Cypriot Approach

Since the Greek Cypriots always hoped to return to their homes in the north, they tried to uphold ownership rights as much as possible: Turkish Cypriots continued to be regarded as the legal owners of the properties in question, which were usually leased to Greek Cypriot displaced persons. Notwithstanding the Greek Cypriot's approach regarding the full respect for all displaced persons' property related rights, Turkish Cypriots were prevented from exercising their property related rights. For decades, Turkish Cypriot property owners could only claim their rights, if they had lived in the south or moved abroad before 1974. Only in 2010, when a Turkish Cypriot who left Cyprus after 1974 lodged a case against the RoC at the ECtHR, a law was introduced allowing Turkish Cypriot property owners to request restitution or compensation before RoC district courts.¹⁶⁰

¹⁵⁸ Gürel, Hatay & Yakinthou, 2012, p. 14.

¹⁵⁹ Ibidem, pp. 8-9.

¹⁶⁰ Ibidem, p. 15.

4.2.2 The Turkish Cypriot Approach

The Turkish Cypriot side has generally viewed the two communities' separation as a permanent one, advocating for the principle of bi-zonality and bi-communality. Therefore, each community should organise its own internal structure within its own area – Turkish Cypriots in the north and the Greek Cypriots in the south.¹⁶¹ From the 1970s, the Turkish Cypriots started a process of building a new social and economic environment in the north. In order to facilitate that process, the Turkish Cypriot leadership adopted a series of unilateral measures and laws regarding the Greek Cypriot abandoned properties. These measures entailed the allocation of Greek Cypriot properties – initially only for use but later also for possession – to Turkish Cypriots refugees and other groups (such as victims of the conflict; Turkish Cypriot resistance fighters) and Turkish soldiers. The procedure of reallocation of Greek Cypriot properties to Turks and Turkish Cypriots was based on the notion of “equivalent property”. In order to establish the value of the properties, a property evaluation and exchange system was introduced, which accorded points to Turkish Cypriot properties in the south and Greek Cypriot properties in the north. Turkish Cypriots received points for submitting their title-deeds of properties in the south to the Turkish Cypriot government and thus could use these points for acquiring a Greek Cypriot property of equal point value located in the north. Furthermore, points were issued for various reasons and also mainland Turks, who settled in northern Cyprus before 1982 could acquire points from the Turkish Cypriot government, enabling them to become the owners of Greek Cypriot property.¹⁶²

The legal basis for this process of expropriation, was Article 159 (1) (b) of the 1985 TRNC Constitution, which allowed for transferring ownership from “abandoned” properties of Greek Cypriot refugees to the TRNC.¹⁶³ Until 1989, the Turkish Cypriot

¹⁶¹ Ibidem, 2012, p. 12.

¹⁶² Ibidem, 2012, p. 13.

¹⁶³ *"All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined ... and ... situated within the boundaries of the TRNC on 15 November 1983, shall be the property of the TRNC notwithstanding the fact*

authorities had an administrative practice to leave the official land register unaffected and to register the “abandoned” Greek Cypriot properties separately and only possessory certificates were issued. However, from June 1989, the Turkish Cypriot authorities stopped recognising any ownership rights of Greek Cypriots and started issuing title deeds to the new beneficiaries and changing the Land Registry, without paying any compensation to the Greek Cypriots.¹⁶⁴ This way of dealing with the Greek Cypriot properties led to a *de facto* expropriation of the Greek Cypriot owners of their properties in the north and created a situation, where most Greek Cypriot property is under new ownership (private or public) and can be inherited, mortgaged, traded, sold (including sale to foreigners), and developed for private or public use.¹⁶⁵

4.3 40 Years of Division: The Ethno-Demographic Impact

As analysed above, when Turkey invaded the northern part of the island in 1974, the Greek Cypriot government lost control over more than 36 % of its territory and its effective authority became restricted to the southern part of the island. Whereas the Greek Cypriots desperately held on to their desire to return to their homes in the north, the Turkish Cypriots started to build their own administration in the north and established the Turkish Republic of Northern Cyprus in 1983. From 1974, the island has been divided and travel between north and south was not possible for many decades. Only in 2003, when the Turkish Cypriot authorities unilaterally opened the border separating the Turkish Cypriot-controlled north and the Greek Cypriot-controlled south, Greek Cypriot refugees could for the first time in 29 years return to their homes, properties and land on the other side. This situation of separation did not only impact Cypriots’ freedom of movement, settlement and ownership, but also had a huge impact on the Cypriot population as such: In 1974, the island’s total population was estimated at 641,000, of whom 506,000 (78.9%) were Greek Cypriots, 118,000 (18.4%) Turkish Cypriots and the rest were foreign residents (2.7%). As a consequence of the division, about a quarter of

that they are not so registered in the books of the Land Registry Office; and the Land Registry Office shall be amended accordingly.” Article 159 (1) (b) of the 1985 TRNC Constitution.

¹⁶⁴ Cyprus v. Turkey, ECtHR, 2001, para. 32.

¹⁶⁵ Gürel, Hatay & Yakinthou, 2012, p. 14.

the Greek Cypriot population, and half of the Turkish Cypriot population were displaced and two ethnically homogenised parts were created. In the course of the last 40 years of division, life on each side has evolved independently from each other and two separate Cypriot societies have emerged. Each side with its own state, economy and social and civil structures. This development of two different societies - with different language, religion and ethnicity - in geographically separate territories has led to further disputes between the two sides.¹⁶⁶

As will be analysed further down, the fact that the people have been living in abandoned properties for decades has led to the emergence of new rights of the current users that cannot simply be ignored when deciding on displaced persons property-related rights. Furthermore, many Greek Cypriot refugees who demand for restitution of their properties, do in reality not even want to return to their former homes. Especially, because within the last 40 years, communities have changed: where there was a church, might now be a mosque and where there were Greek street signs, there might be Turkish ones, and vice versa. Thus, until today, the property issue has remained unsettled; not only because of its legal and technical complexity, but also because Cypriots attach many emotions and historical wrongdoings to it. Additionally, solving the property issue is connected with certain key elements of a Cyprus settlement, e.g. bi-zonality, political equality, the current political and legal status of the two Cypriot administrations and their political and legal relevance in the creation of any post-solution Cyprus state.¹⁶⁷

¹⁶⁶ Ibidem, 2012, p. 11.

¹⁶⁷ Ibidem, 2012, p. 12.

5. The “Property Cases” before the ECtHR

Art 159 (1) (b) in the 1985 TRNC constitution and the above demonstrated practice of the TRNC authorities have led to an expropriation of all Greek Cypriots, who had to leave their homes, properties and possessions behind after the Turkish military operation in 1974. Due to the policy of the TRNC authorities, Greek Cypriots were unable to cross the “green line” in order to access and enjoy their properties in the north.¹⁶⁸ As a consequence many Greek Cypriots launched cases before the European Court of Human Rights (ECtHR or the Court). Especially, since the mid-1990s the ECtHR has been dealing with almost solely Greek Cypriot property claims arising from the island’s de facto division of the island caused by Turkey.¹⁶⁹ Although there are Turkish Cypriot applications against the RoC claiming a violation of their property rights in the south,¹⁷⁰ the vast majority of cases have been launched by Greek Cypriots against Turkey.¹⁷¹ After the Court’s ruling in the *Loizidou* case in 1996, concerning a Greek Cypriot displaced person’s property rights, many subsequent applications from Greek Cypriots (and one case from the Republic of Cyprus) were brought before the Court.¹⁷² In 2005, more than 1400 applications from Greek Cypriots were pending before the Court. All applicants were claiming that Turkey violated the ECHR by preventing them from having access to and from using and enjoying their homes, property and possessions in northern Cyprus.¹⁷³

In the course of this Chapter, I will analyse how the European Court of Human Rights has dealt with alleged human rights violations deriving from the Turkish invasion and continued occupation in northern Cyprus. For this purpose, the following cases will be analysed: *Loizidou v. Turkey* (ECHR 1996), *Cyprus v. Turkey* (ECtHR 2001), *Xenides-Arestis v. Turkey* (ECtHR 2005), and *Demopoulos v. Turkey* (ECtHR 2010).

¹⁶⁸ *Cyprus v. Turkey*, ECtHR, 2001, para. 172.

¹⁶⁹ Gürel & Williams, 2011, p. 1.

¹⁷⁰ The only Turkish Cypriot case that has been concluded so far, the case of *Sofi v. Cyprus*, ended in a friendly settlement

¹⁷¹ Gürel & Williams, 2012, p. 17

¹⁷² *Ibidem*, 2011, p. 2.

¹⁷³ Will be analysed in-depth further down.

5.1 Jurisdiction over the TRNC under the ECHR

In 1961, the Republic of Cyprus, at the time being a bi-communal republic, joined the Council of Europe and ratified the European Convention on Human Rights in 1962. Consequently, the Convention is applicable to the whole territory of Cyprus, even after the de facto division of the island in 1974.¹⁷⁴

In the case *Loizidou v. Turkey*, Ms. Loizidou claimed that since the Turkish occupation in 1974, she “*had been denied access to her property and had, consequently, lost all control over it.*” She continued that this denial of access “*constituted a continued and unjustified interference with her right to the peaceful enjoyment of property in breach of Article 1 of Protocol No. 1 as well as a continuing violation of the right to respect for her home under Article 8 of the Convention.*”¹⁷⁵

Article 1 of the ECHR states that “*the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined ... in the Convention*” States parties to the Convention are obliged to secure the rights enshrined in the ECHR to the people living under their jurisdiction.¹⁷⁶ Thus, the first question that the Court had to address in *Loizidou v. Turkey* was whether Turkey actually has jurisdiction over the TRNC, which is located within the territory of the Republic of Cyprus. The Court found that jurisdiction under Article 1 ECHR was not restricted to the national territory of a state, explaining the following:

“The responsibility of a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be

¹⁷⁴ Embassy of the Republic of Cyprus in Washington, The Council of Europe and the Cyprus Question (website).

¹⁷⁵ *Loizidou v. Turkey*, ECtHR, 1996, para. 31.

¹⁷⁶ ECHR, Article 1.

exercised directly, through its armed forces, or through a subordinate local administration.”¹⁷⁷

This means that Turkey’s jurisdiction is not limited to the territory of the Republic of Turkey, but extends to territories where Turkey exercises effective control “*through its armed forces, or through a subordinate local administration.*” The Court specifically referring to Turkey’s continued presence in the northern part of Cyprus concluded that Turkey exercises jurisdiction under Article 1 ECHR in the territory of northern Cyprus, giving the following explanation:

*“It is obvious from the large number of troops engaged in active duties in northern Cyprus that her [Turkey’s] army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the TRNC.”*¹⁷⁸

In the interstate case¹⁷⁹ *Cyprus v. Turkey*, the Court went even further and reasoned that

*“... having effective overall control over northern Cyprus, her [Turkey’s] responsibility cannot be confined to the acts of her own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support.”*¹⁸⁰

Furthermore, the Court continued that Turkey’s obligations, arising from having jurisdiction over the territory in the north, comprise all substantive rights enshrined in the ECHR and its Protocols, stating that “*Turkey’s ‘jurisdiction’ must be considered to extend to securing the entire range of substantive rights set out in the Convention and those*

¹⁷⁷ *Loizidou v. Turkey*, ECtHR, 1995, para. 62.

¹⁷⁸ *Ibidem*, para.56.

¹⁷⁹ Under Article 33 of the ECHR, every High Contracting Party can bring a case before the ECtHR, claiming that another High Contracting party has breached the ECHR or a Protocol. Such cases are called “interstate cases” and are to be distinguished from Individual applications under Article 34 of the ECHR.

¹⁸⁰ *Cyprus v. Turkey*, Judgment, 10 May 2001, para. 77.

additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey.”¹⁸¹

Finally, the Court concluded that due to the presence of the Turkish military in northern Cyprus, the Republic of Cyprus, which is the only recognized authority on the island, is not able to exercise its obligations under the Convention in the northern part of the island. In order to avoid a “*vacuum in the system of human rights protection in the territory in question*”, the Court reasoned that since the Republic of Cyprus does not exercise jurisdiction in the Turkish occupied territories in the north, it was only logic to hold Turkey, having the factual control over the territory, responsible for any human rights violations occurring under her jurisdiction.¹⁸²

Therefore, all violations of Convention rights taking place within the territory of the TRNC are imputable to Turkey, no matter whether violations derive from acts of her own soldiers or the TRNC administration.

5.2 Continuous Violation of Article 1 Protocol No. 1 and Article 8 ECHR

As already explained above, the policy pursued by the Turkish Cypriots on the basis of Article 159 of the 1985 TRNC Constitution led to a *de facto* expropriation of Greek Cypriots of their abandoned homes in the north.¹⁸³

5.2.1 Right to Property and the Question of Ownership

In 1996, in *Loizidou v. Turkey*, the ECtHR addressed the irreversible expropriation of the Greek Cypriots of their properties in the north for the first time. Mrs. Loizidou, a Greek Cypriot, who grew up in northern Cyprus and moved to Nicosia in 1972 (before the

¹⁸¹ Ibidem, para. 77.

¹⁸² Ibidem, para. 78.

¹⁸³ *Loizidou v. Turkey*, ECtHR (Merits), 1995, para.42.

occupation), claimed that her right to property under Article 1 of Protocol 1 of the Convention has been violated since 1974, due to the Turkish troops preventing her from gaining access to her property in the north. She continued that her loss of control of her property originated from the occupation of the northern part of Cyprus by Turkish troops and the establishment of the TRNC.¹⁸⁴ As established above, the Court found that *“the continuous denial of the applicant’s access to her property in northern Cyprus and the ensuing loss of all control over the property is a matter which falls within Turkey’s “jurisdiction” within the meaning of Article 1 and is thus imputable to Turkey.”*¹⁸⁵ However, in order to claim a right to property, one must first be the legal owner of the property in question.

The question that the Court had to answer before examining an alleged violation was whether Ms. Loizidou was still the legal owner of the property she left behind more than twenty years ago. According to Turkey, all Greek Cypriots had lost their ownership rights of the properties in the north on the basis of Article 159 of the 1985 TRNC constitution. Thus, in order to establish who owns the properties in the north, the Court had to assess the validity of the above quoted provision, which was used as the legal basis for the expropriation of the Greek Cypriots. In this assessment the Court also had to address to some extent the question of statehood of the TRNC under international law and reasoned as follows:

“In this respect it is evident from international practice and the various, strongly worded resolutions¹⁸⁶ referred to above that the international community does not regard the “TRNC” as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus - itself, bound to respect international standards in the field of the protection of human and minority rights. Against this background the Court cannot attribute legal validity for purposes of the Convention to

¹⁸⁴ Loizidou v. Turkey, ECtHR (Preliminary Objections), 1995, para. 63.

¹⁸⁵ Loizidou v. Turkey, ECtHR (Merits), 1995, para. 57.

¹⁸⁶ E.g. United Nations Security Council Resolution 541 (1983) declaring the proclamation of the establishment of the TRNC as legally invalid and calling upon all States not to recognise any Cypriot State other than the Republic of Cyprus; Security Council in Resolution 550 (1984); Committee of Ministers of the Council of Europe Resolution (1983).

*such provisions as Article 159 of the fundamental law on which the Turkish Government rely.”*¹⁸⁷

Thus, the Court found that since the TRNC cannot be regarded as a state under international law, no legal validity can be attributed to the TRNC Constitution or its provisions either. As a consequence of Article 159 of the 1985 constitution being considered as void, displaced Greek Cypriots had not lost their titles to the property in the north and must still be regarded as the legal owners for the purposes of assessing the alleged violations of the Convention.¹⁸⁸

Furthermore, Turkey argued that Mrs. Loizidou was unable to claim a violation of Article 1 of Protocol No. 1, since this interference with her property occurred in 1974, but Turkey had only accepted the jurisdiction of the European Court of Human Rights in 1990. Nevertheless, the Court accepted the concept of a continuing violation, arguing that Mrs. Loizidou still was to be regarded as the legal owner of her property in the north.¹⁸⁹

Article 1 Protocol No. 1 of the ECHR:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions.”

The Court concluded that the refused access to the land was an interference with the peaceful enjoyment of her possessions, since not only a legal impediment, but also a hindrance can amount to a violation of Article 1 of Protocol No. 1.¹⁹⁰ Having established that Mrs. Loizidou (and the Greek Cypriots in general) have remained the legal owners of their properties in the north,¹⁹¹ the Court found that *“the applicant has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property. The continuous denial of access must*

¹⁸⁷ Loizidou v. Turkey, ECtHR, 1996, para. 44.

¹⁸⁸ Ibidem, paras.46-47.

¹⁸⁹ Carss-Frisk, 2003, paras. 167–169.

¹⁹⁰ Ibidem, 170.

¹⁹¹ Loizidou v. Turkey, ECtHR, 1996, paras. 62, 39 ff.

therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1.” Since the right to property under Article 1 is not an absolute right, not every interference automatically amounts to a violation. The Court, however, found that *“the complete negation of the applicant’s property rights in the form of a total and continuous denial of access”* and without any compensation cannot be justified and thus amounts to a continuing violation of Article 1 of Protocol No. 1.¹⁹²

The Court came to the same reasoning in *Xenides-Arestis v Turkey*¹⁹³ and in *Cyprus v. Turkey*, finding that *“the continuing and total denial of access to their property”* amounts to a *“continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.”*¹⁹⁴

5.2.2 The Right to a Home

Furthermore, Mrs. Loizidou claimed that although in 1974 she was not living in her property in the north, she had planned to move there and therefore her right to a home under Article 8 of the ECHR was violated as well.

Article 8 of the ECHR:

*“Everyone has the right to respect for his private and family life, his home and his correspondence.”*¹⁹⁵

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for

¹⁹² Ibidem, paras. 63-64.

¹⁹³ *Xenides-Arestis v. Turkey*, ECtHR, 2005, para. 32.

¹⁹⁴ *Cyprus v. Turkey*, ECtHR, 2001, paras. 187, 189.

¹⁹⁵ ECHR, Article 8 (1).

the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”¹⁹⁶

The right to respect for one’s home as enshrined in Article 8 (1) is not an absolute right. This means that not every interference automatically amounts to a violation. An interference can be justified if the criteria under Article 8 (2) of the Convention are met. Therefore, the measure in question needs to be prescribed by law, necessary in a democratic society (proportionate) and serve one of the purposes enumerated in Article 8 (2) ECHR. “Home” within the meaning of Article 8 (1) is where one lives on a settled basis. Ownership alone is not sufficient to qualify a property as a home. Nevertheless, the long absence of one’s former property does not affect the qualification as a home as long as sufficient continuing links with the property for it to be considered their home are retained.¹⁹⁷

In the *Loizidou case*, the Court did not even find an interference with Mrs. Loizidou’s right to respect for her home under Article 8 (1) of the ECHR, since at the time of the Turkish invasion she was not living in her property in the north anymore.¹⁹⁸

However, in cases of displaced Greek Cypriots who actually lived in their properties in the north at the time of the Turkish intervention in 1974, the Court qualified the abandoned properties as “home” under Article 8 (1) ECHR. In *Cyprus v. Turkey*, the Court reasoned that in the cases where the abandoned properties were “homes” of Greek-Cypriot displaced persons, “*the complete denial of the right of displaced persons to respect for their homes has no basis in law within the meaning of Article 8 § 2 of the Convention,*”¹⁹⁹ and thus amounts to “*a continuing violation of Article 8 of the Convention.*”²⁰⁰ In the case *Xenides-Arestis v Turkey*, Mrs. Xenides-Arestis was living with her husband and children in her house in the north and was displaced to the south

¹⁹⁶ ECHR, Article 8 (2).

¹⁹⁷ Kil Kelly, 2003, para. 19.

¹⁹⁸ *Loizidou v. Turkey*, ECtHR (Merits), 1995, para. 66.

¹⁹⁹ *Cyprus v. Turkey*, ECtHR, 2001, para. 174.

²⁰⁰ *Ibidem*, para. 175.

when Turkey invaded in 1974. Since that moment, she has been unable to gain access to, use and enjoy her property. In this case, the Court qualified her property in the north as “home”, since she was living there at the time of the Turkish intervention and thus found a continuing violation of Article 8 of the ECHR.²⁰¹

These findings are significant, since the Court ruled that the involuntary absence of Greek Cypriots from their homes for periods of up to thirty years did not suffice to break this bond necessary to claim a violation of the right to respect for her home. This finding implies that wrongful evictions or denial of access do not automatically break the link between displaced applicants and their homes.²⁰²

5.3 Situation of Systematic Violation

Already in 2001, in the case *Cyprus v. Turkey*, the Court noticed that “*the physical exclusion of Greek-Cypriot persons from the territory of northern Cyprus is enforced as a matter of “TRNC” policy or practice.*”²⁰³ In 2005, when the Court was dealing with the *Xenides-Arestis case*, there were more than 1400 similar applications from Greek Cypriots, claiming a violation of their property related rights, pending before the Court. This situation led the Court to conclude that violations of Article 8 of the Convention and Article 1 of Protocol No. 1 in northern Cyprus derived from a “*widespread problem affecting large numbers of people ... as a matter of “TRNC” policy or practice.*”²⁰⁴ In order to counter this systematic violation of Convention rights, in *Xenides-Arestis v Turkey* the Court obliged Turkey to

“*...introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment in relation to the present applicant as well as in respect of all similar applications pending before it, in accordance with the principles*

²⁰¹ *Xenides-Arestis v Turkey*, ECtHR, 2005, paras. 17-22.

²⁰² Gürel & Williams, 2011, p. 16.

²⁰³ *Cyprus v. Turkey*, ECtHR, 2001, para. 185.

²⁰⁴ *Xenides-Arestis v Turkey*, ECtHR, 2005, para. 38.

*for the protection of the rights laid down in Article 8 of the Convention and Article 1 of Protocol No. 1*²⁰⁵

This method of dealing with clone cases in situations where the underlying human rights problems could be resolved by the adoption of generally applicable measures at the national level is called “pilot judgment procedure.” In pilot judgment cases, the Court finds a violation in a particular case and identifies the root cause of the systematic violation under national law, and instructs the responsible Government how to solve the problem.²⁰⁶ In the case *Xenides-Arestis v. Turkey*, for instance, the Court required Turkey to introduce a mechanism for providing effective domestic remedy for displaced Greek Cypriots claiming a violation of their property related rights.²⁰⁷

In order to comply with this ruling and provide effective remedy to displaced Greek Cypriots, the *Immovable Property Commission* (IPC) was set up. However, this commission was not introduced by Turkey directly, but by the authorities of the TRNC.²⁰⁸

Consequently the following questions arise: Can an illegal entity under international law provide legal redress and effective remedy? And if so, does this redress qualify as domestic remedy provided by Turkey? Furthermore, does this lead to the consequence that Greek Cypriots are required to exhaust the remedies provided by the TRNC in order to fulfil the admissibility criteria under Article 35 (1) of the Convention²⁰⁹ before bringing a case to the ECtHR?

²⁰⁵ Ibidem, para. 40.

²⁰⁶ ECHR, The Pilot-Judgment Procedure (website).

²⁰⁷ *Xenides-Arestis v Turkey*, ECtHR, 2005, para. 40.

²⁰⁸ TRNC is an illegal entity under international law and does not have any validity.

²⁰⁹“*The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.*”²⁰⁹ Article 35 (1) of the Convention (former Article 26).

5.4 Validity of Acts Issued by the TRNC

Although in the *Loizidou* judgment the Court refused to attribute any legal validity to the TRNC, its constitution, or its provisions, in the interstate case *Cyprus v. Turkey*, the Court acknowledged that the TRNC regime *de facto* existed. The Court continued that although the Republic of Cyprus remains the solely legitimate government in Cyprus, the TRNC exercises *de facto* authority - under the overall control of Turkey - in the north.²¹⁰ Regarding the question of whether the TRNC can issue legally valid acts the Court referred to the so-called “Namibia principle” issued by the International Court of Justice in the *Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*.²¹¹

The Namibia Principle

*“In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international Cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.”*²¹²

The ECtHR recognised that life in such questionable territories continues and thus the obligation under international law not to recognise acts of illegal *de facto* entities cannot be regarded as an absolute one. The Court expressed that *“life must be made tolerable and be protected by the de facto authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions”* It continued that the non-recognition of such acts *“would amount to stripping the inhabitants of the territory of all*

²¹⁰ *Cyprus v. Turkey*, ECtHR, 2001, para. 90.

²¹¹ *Ibidem*, para. 93.

²¹² ICJ, 1971, para. 125.

their rights whenever they are discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they are entitled."²¹³

Applying the "Namibia Principle" to the situation in the TRNC, the Court reasoned that it "cannot simply disregard the judicial organs set up by the TRNC," ... since "it is in the very interest of the inhabitants of the "TRNC", including Greek Cypriots, to be able to seek the protection of such organs; and if the "TRNC" authorities had not established them, this could rightly be considered to run counter to the Convention." The Court concluded that "the inhabitants of the territory may be required to exhaust these remedies, unless their inexistence or ineffectiveness can be proved – a point to be examined on a case-by-case basis."²¹⁴ Finally, the Court clarified that remedies available in northern Cyprus qualify as domestic remedies of Turkey and need to be exhausted in order to fulfil the admissibility criterion of Article 35 para. 1 of the Convention for applying to the Court.²¹⁵

It can be concluded that, although the TRNC is not recognized internationally, there is a need for recognition of some acts issued by the TRNC in order to not create a vacuum of human rights protection. If the TRNC is capable of providing effective remedy for displaced Greek Cypriots, those remedies need to be exhausted in order to fulfil the admissibility criteria to apply to the Court.

5.4.1 The Immovable Property Commission

In *Xenides-Arestis v. Turkey* the Court established that there was a "widespread problem affecting large numbers of people" and called upon Turkey to "introduce a remedy, which secures genuinely effective redress" for displaced Greek Cypriots.²¹⁶ In reaction to this finding, the Immovable Property Commission (IPC) was set up in the TRNC under

²¹³ Cyprus v. Turkey, ECtHR, 2001, para. 96.

²¹⁴ Ibidem, para. 98

²¹⁵ Ibidem, para. 102.

²¹⁶ Xenides-Arestis v Turkey, ECtHR, 2005, para. 40.

Law 67/2005.²¹⁷ On 17 March 2006, the IPC officially began its activities. Its duty is to examine and decide on Greek Cypriot claims for restitution, compensation and exchange relating to abandoned properties in northern Cyprus after 1974.²¹⁸ The Immovable Property Commission is composed of five to seven members (comprising at least 2 members of other nationalities than the United Kingdom, Greece, Greek or Turkish Cypriot Administration or Republic of Turkey).²¹⁹ No member of the commission can have any benefits – directly or indirectly - deriving from the disputed properties.²²⁰

Law No. 67/2005

The Immovable Property Law (No. 67/2005) deals with the compensation, exchange and restitution of immovable properties, which are within the scope of Article 159 (1) (b) of the 1985 constitution of the TRNC. The TRNC Constitutional Court had to deliver a judgement on whether Law No. 67/2005 was in line with Article 159 of the constitution, which seems to exclude any restitution or compensation. The Court found that Law No. 67/2005 was compliant with Article 159, since the constitution needs to be interpreted in conformity with international law and the ECHR.²²¹

The procedure before the IPC:

Law No. 67/2005 provides that all natural and legal persons claiming rights to immovable or movable property can bring a claim before the IPC.²²² The burden of proof stays upon

²¹⁷ Demopoulos and Others v. Turkey, ECtHR, 2010, para 50.

²¹⁸ IPC (website).

²¹⁹ Law No. 67/2005, Section 11 (1).

²²⁰ Law No. 67/2005, Section 11 (1) (B).

²²¹ Demopoulos and Others v. Turkey, ECtHR, 2010, para. 38-39.

²²² For the purpose of this law, “Applicant” means the person applying to the Commission with a claim of right in respect of immovable properties which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution, and in respect to movable property which is claimed to be owned by such person, such property having been abandoned in the North prior to 13 February 1975, being the date of the proclamation of the Turkish Federated State of Cyprus. “Commission” means the commission constituted under section 11 of this Law. “Movable property” means property remaining abandoned on 13 February 1975, the date of the proclamation of the Turkish Federated State of Cyprus, and property described by law as such after that date, or described by law as movable property not being owned by any person. “Immovable property” means immovable property within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution. (Law No. 67/2005, Section 2).

the applicant who must prove that he/she has a legitimate title regarding the immovable property and that he/she was forced to abandon his/her property in the north.²²³

Types of Remedy

There are three types of remedies that the commission is able to decide upon: restitution (reinstatement of the property to applicant), exchange (offering an alternative property to the applicant) or compensation.²²⁴ In order to reach a decision, the Commission listens to the arguments of the parties and witnesses and examines the submitted documents.²²⁵ Immovable properties that are subject to a claim for restitution by the applicant shall be resituated, if the ownership has not been transferred to any natural or legal person other than the State.²²⁶ In the cases where restitution of immovable property is claimed but due to various reasons not feasible, a proposal for exchange or compensation will be issued. The compensation shall be determined on the basis of the market value of the immovable property on 20 July 1974, and eventually also damages for loss of use and non-pecuniary damages due to the loss of the right to respect for home are to be considered.²²⁷ Section 8 (4) of Law No. 67/2005 determines objective criteria in order to attribute an adequate amount of compensation depending on the concrete situations of the applicant.²²⁸ In cases where a property exchange is carried out, the properties have to be of equal value. Otherwise, the difference between the values of the two properties must be settled. The property exchange does not affect claims under the right to respect for home.²²⁹

Right to appeal

Parties have the right to appeal to the TRNC High Administrative Court against the decisions of the Immovable Property Commission. If the applicant is not satisfied with

²²³ Law No. 67/2005, Section 6.

²²⁴ Also compensation for loss of use and non-pecuniary damages where the property in question was a “home” can be issued.

²²⁵ Law No. 67/2005, Section 8.

²²⁶ Ibidem, Section 8 (1).

²²⁷ Ibidem, Section 8 (3).

²²⁸ Ibidem, Section 8 (4).

²²⁹ Ibidem, Section 8 (5).

the judgment of the High Administrative Court, he/she can file an application at the European Court of Human Rights, since he/she has exhausted the domestic remedies.²³⁰

By 23 June 2015, in total 6,194 applications have been lodged with the Commission, out of which almost 700 cases have been decided: 671 have been concluded through friendly settlements and 18 through formal hearing. So far, the Commission has ruled for exchange and compensation in two cases; for restitution in one case and for restitution and compensation in five cases. In one case, the IPC has delivered a decision for restitution, once the Cyprus conflict is solved, and in one case it has ruled for partial restitution. In sum, 203,151,598 GBP have been paid as compensation to the applicants.²³¹

5.4.2 Can the IPC be regarded as Domestic Remedy of Turkey?

In *Demopoulos and Others v. Turkey*,²³² the ECtHR rejected the applications of seventeen Cypriot citizens regarding claims under Article 1 Protocol No. 1 and Article 8 of the Convention against Turkey, since they did not make use of the IPC procedure and thus not fulfil the admissibility criteria under Article 35 (1) of the Convention. The Court had to answer two main questions regarding the procedure before the IPC: Firstly, whether remedies provided by the IPC may constitute an effective domestic remedy of Turkey and, secondly, whether Greek Cypriot applicants must demonstrate that they have exhausted this remedy before their applications can be found admissible before the ECtHR.²³³

Once again the Court emphasised that Turkey has jurisdiction over the TRNC, since Turkey exercised overall control over the territory of northern Cyprus. Consequently,

²³⁰ Ibidem, Section 9.

²³¹ IPC (website).

²³² All of the applicants in *Demopoulos* are Greek Cypriots who were displaced by the 1974 Turkish invasion and occupation of north Cyprus, and subsequently denied the use of their properties and access to homes they left behind. The decision represents the most emphatic expression to date of the Court's determination to implement a new "pilot case" procedure. This procedure is meant to relieve the Court of a large backlog of cases by encouraging States Parties to the Convention to adopt systematic approaches allowing the domestic resolution of repetitive, or "clone" cases pending before the Court.

²³³ *Demopoulos and Others v. Turkey*, ECtHR, 2010, para. 86.

Turkey is responsible for all violations of the ECHR within the TRNC and even has to take positive steps to respect, protect and fulfil the rights enshrined in the ECHR. Thus, the Court found that it was only consequent to recognise measures adopted by the authorities of the TRNC, as measures taken by Turkish authorities, since also human rights violations of TRNC authorities are regarded as violations committed by Turkish authorities.²³⁴ The Court highlighted that “*the key consideration is to avoid a vacuum which operates to the detriment of those who live under the occupation, or those who, living outside, may claim to have been victims of infringements of their rights.*”²³⁵ The Court also emphasised on the importance of ensuring human rights protection at the domestic level, finding that a domestic body constitutes a better forum for deciding matters of property ownership than the Court in Strasbourg. Especially, since local authorities have access to the properties, registries, and records and therefore can value properties in a more efficient way. Thus, the Court concluded that the IPC procedure – as a remedy available in the TRNC - has to be regarded as domestic remedy provided by Turkey.²³⁶

5.4.3 Does the IPC provide effective redress?

According to the principle of subsidiarity, before applying to the Court, an applicant is required to make use of domestic remedies where effective redress is available.²³⁷ In *Demopoulos* the applicants claimed that they were not obliged to exhaust the IPC procedure, since it is not an effective remedy. This claim was based on the fact that until today the IPC has found for restitution in only one case. The Court, however, made clear that Turkey was free to choose the implementation of redress for breaches of property rights.²³⁸ The Court explained that the more time passes, the stronger the rights of the current users get and the position of the title holder weakens, which impacts on the nature of the redress.²³⁹ Thus, the fact that only very little properties have been resituated so far

²³⁴ *Demopoulos and Others v. Turkey*, ECtHR, 2010, para. 95.

²³⁵ *Ibidem*, para. 96.

²³⁶ *Ibidem*, paras. 97, 101-103.

²³⁷ *Ibidem*, paras. 97, 101.

²³⁸ *Ibidem*, para. 118.

²³⁹ *Ibidem*, para. 113.

does not undermine the effectiveness of the IPC redress scheme and complies with the Court's demand in *Xenides-Arestis*.²⁴⁰ The Court continued that Law No. 67/2005 “provides an accessible and effective framework of redress” and rejected the complaints in *Demopoulos and Others v. Turkey* for not having made use of the IPC mechanism and consequently not fulfilling the admissibility criteria of Article 35 (1) of the Convention.²⁴¹ By doing so, the Court explicitly rejected the Greek Cypriot position that all properties – at least where feasible - should be subject of restitution.²⁴² Finally, the Court stressed that nobody was obliged to seek redress before the IPC, but had the choice to wait for a political solution.²⁴³

It can be concluded that although the Court has never treated the TRNC as a state, it has avoided to rule on the legal nature of the TRNC. Rather it has relied on the positions taken by the international community and limited its own findings to matters directly and necessarily deriving from the questions asked in the relevant cases. Regarding the validity of acts issued by the TRNC officials, in *Loizidou v. Turkey*, the Court found that the TRNC constitution and its provisions did not have any validity, since there is an obligation under international law not to recognise any situation deriving from a violation of general international law. In *Cyprus v. Turkey*, however, the Court referred itself to the so-called Namibia principle, and followed the opinion of the ICJ, that certain acts can have legal validity even if issued from an illegal entity, if they are beneficial for the individuals living on the territory in question. In sum, throughout the above analysed case law addressing human rights violations in northern Cyprus, the Court has justified its reasoning on the basis of international law.²⁴⁴

²⁴⁰ *Demopoulos and Others v. Turkey*, ECtHR, 2010, para. 119.

²⁴¹ *Ibidem*, para. 127.

²⁴² Gürel & Williams, 2011, p. 6.

²⁴³ *Ibidem*, para. 128.

²⁴⁴ Lagerwall, 2014, p. 25.

5.5 Finding a solution to the property issue

Until today, the only aspect the two sides have managed to agree upon is that Cyprus should be reunified on a bi-zonal and bi-communal basis.²⁴⁵ The issue of bi-zonality is however strongly linked with the issues of territory, displacement and property. As with all issues, each side has adopted its own interpretation of the “bi-zonality”, leading to two inconsistent positions about what bi-zonality actually means. The Turkish side believes that the right to property restitution needs to be restricted in order to preserve the division of the island. The Turkish Cypriots have argued favour of a “global exchange and compensation scheme”, which would guarantee that the majority of properties in the north is in Turkish Cypriot hands. On the other hand, the Greek Cypriots demand the restitution of all properties, in order to ensure respect for property rights, the freedom of settlement. Despite any bi-zonal arrangements, the Greek Cypriots want all displaced persons to return to their homes and properties.²⁴⁶

On 1 April 2003, Kofi Annan, then UN Secretary General, issued a *Report of the Secretary-General on his mission of good offices in Cyprus*. Under the heading “properties affected by events since 1963” he summarises the two opposing demands of the Greek and Turkish Cypriots regarding the displaced persons’ property rights as follows:

“Almost half the population of Cyprus lost properties as a result of inter-communal strife or military action between 1963 and 1974 and the unresolved division of the island since that time. The Greek Cypriot side advocated a solution based on full respect for property rights so that all displaced persons, from either community, would have the right to have their properties reinstated. The Turkish Cypriot side argued that property claims should be settled through liquidation by means of a global exchange and compensation scheme,

²⁴⁵ Gürel, Hatay & Yakinthou, 2012, p. 12.

²⁴⁶ Gürel & Özersay, 2008, pp. 292-293.

*meaning that no displaced persons, from either side, would have the right to have their properties reinstated.*²⁴⁷

In this report, Kofi Annan emphasized that a settlement based on respect for individual property rights should be generally preferred. However, regarding the conflict in Cyprus, the restitution of all properties to the displaced owners does not seem feasible anymore. It must be acknowledged that roughly half of the Turkish Cypriots and one quarter of the Greek Cypriots have been living in houses of the other ethnicity for decades which created a situation, both of property owners and current users of the disputed properties have legitimate claims. Therefore the best way to solve the property dispute is through the means of a negotiated compromise.²⁴⁸

5.5.1 The solution presented in the Annan plan

In the above explained “Annan Plan V”, Kofi Annan proposed a compromise, aiming at resolving property claims of the dispossessed persons *“in a comprehensive manner in accordance with international law, respect for the individual rights of dispossessed owners and current users, and the principle of bi-zonality.”*²⁴⁹

In Article 10 of the Main Articles he suggested to reduce the Turkish Cypriot administrated territory from 36 % to around 29 %. In areas subject to territorial adjustment properties would be restored to their dispossessed owners.²⁵⁰ Although a range of incentives should encourage dispossessed owners to sell, lease or exchange their properties or seek compensation, they should be able to claim reinstatement of their properties. However, where restitution was not possible, dispossessed owners would receive full and effective compensation. All other dispossessed owners had the right to reinstatement of one-third of the value and one-third of the area of their total property ownership, and full and effective compensation for the remaining two-thirds. A

²⁴⁷ S/2003/398, 2003, para. 107.

²⁴⁸ Ibidem, para. 108-109.

²⁴⁹ Annan Plan V, 2004, Main Articles, Article 10 (1).

²⁵⁰ Ibidem, Article 10 (2).

dispossessed owner, whose property could not be reinstated, had the right to another property of equal size and value in the same municipality or village. In the case a property significantly improved in its value, a dispossessed owner should be able to obtain a title if he/she pays for the value of the property in its original state.²⁵¹

Priority would be given to claims of current users who have themselves been displaced and dispossessed of their properties. Current users could apply for a title of the property if they agreed in exchange to renounce their title to a property of similar value in the other constituent state, of which they were dispossessed.²⁵²

All the property claims would be administered by an independent, impartial property board, composed of an equal number of members from each constituent state, as well as non-Cypriot members.²⁵³

Although Kofi Annan's proposal for solving the property dispute stroke a fair balance between competing legitimate interests, neither of the two communities was happy with the above proposed property solution. One of the reasons why the Greek Cypriots rejected the Annan plan might have been the restrictions regarding the exercise of displaced persons' property rights.²⁵⁴

If the plan had been accepted, an estimated number of 15,000 to 18,000 Turkish Cypriot current would have had to move from where they are currently livening, would have amounted to persons.²⁵⁵ Furthermore an estimated 54 % of Greek Cypriot displaced persons would have returned to their original homes.²⁵⁶

²⁵¹ Annan Plan V, 2004, Main Articles, Article 10 (3 a-f).

²⁵² Ibidem, Article 10 (3 a-f).

²⁵³ Ibidem, Article 10 (4).

²⁵⁴ Gürel & Özersay, 2006, p. 365.

²⁵⁵ S/2003/398, 2003, para. 109.

²⁵⁶ Ibidem, para 118.

5.5.2 The Court's Role in Solving the Property Dispute

Since the ECtHR has delivered the landmark decision in *Loizidou v. Turkey* in 1996, the Court's jurisprudence has played a vital role in the Cyprus negotiations and has strongly influenced both the negotiating parties' and UN mediators' approaches to the property issue. This is also due to the fact, that the property issue has been a key item on the agenda of the UN-sponsored inter-communal negotiations for a settlement of the Cyprus problem.²⁵⁷

Throughout its case law the Court has tried to reconcile the Greek Cypriot demand for "all displaced persons to get their properties reinstated and to return to their homes" and the Turkish Cypriot demand for the introduction of a "property exchange mechanism", not allowing for restitution of properties. Unfortunately, the Court's decisions have been frequently portrayed as rendering one side victorious against the other, which has had a rather negative impact on the peace process as a whole.²⁵⁸

Especially in its *Demopoulos* decision the Court seemed to try to strike a balance between the irreconcilable Greek and Turkish Cypriot negotiating positions, taking current situation in Cyprus into consideration. However, the *Demopoulos* decision came as a big shock to the Greek Cypriot community, who has tended to interpret the Court's early case-law to be on their side.²⁵⁹

Reaffirming that all the displaced Greek Cypriots have continued to be the legal owners of their properties in the north,²⁶⁰ in *Demopoulos v. Turkey* the Court recognises that "some thirty-five years have elapsed since the applicants lost possession of their property in northern Cyprus in 1974."²⁶¹ Addressing the passage of time and the failure of the parties to the conflict to arrive at a political settlement, the Court continued as follows:

²⁵⁷ Gürel & Williams, 2011, pp. 2-3.

²⁵⁸ Gürel & Williams, 2011, p. 1.

²⁵⁹ *Ibidem*, p. 1.

²⁶⁰ *Demopoulos and Others v. Turkey*, ECtHR, 2010, para. 110.

²⁶¹ *Ibidem*, para. 84.

*“Cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all parties assuming full responsibility for finding a solution on a political level. This reality, as well as the passage of time and the continuing evolution of the broader political dispute must inform the Court's interpretation and application of the Convention which cannot, if it is to be coherent and meaningful, be either static or blind to concrete factual circumstances.”*²⁶²

These reflections imply that the passage of time has significantly weakened the links between claimants and their properties and has led to the current situation, where the right to a “home” under Article 8 of the Convention seems to have shifted from the displaced owners to the current users, who have been living in the properties for decades.²⁶³ To put it in the words of the Court:

*“It cannot be within the Court’s task in interpreting and applying the Convention to impose an unconditional obligation to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.”*²⁶⁴

In the above statements, the Court clarified that it cannot simply order Turkey to reinstate all the properties to their legal owner, since this would not reflect the reality and complexity of the situation in Cyprus. The Court recognised that after passage of many decades, the property claims of displaced Greek Cypriotes become *“increasingly speculative and hypothetical”* and that the expectation of the fulfilment of all benefits linked to the legal title was not a realistic one. Due to *“the strong legal and factual link between ownership and possession”*, the Court emphasised that *“it must be recognised that with the passage of time the holding of a title may be emptied of any practical consequences.”*²⁶⁵ The Court clarified that the displaced persons have lost their ownership

²⁶² Ibidem, para. 85.

²⁶³ Williams & Gürel, 2011, pp. 18-19.

²⁶⁴ Demopoulos and Others v. Turkey, ECtHR, 2010, para. 85, 116-117.

²⁶⁵ Ibidem, para. 111.

in any formal sense and that a military occupation cannot be regarded as “*a form of adverse possession by which title can be legally transferred to the invading power.*” Nevertheless, considering the current situation in Cyprus, the Court found that the demand of Greek Cypriot displaced persons to “*obtain access to, and full possession of, their properties, irrespective of who is now living there*” is not an option anymore.²⁶⁶

Emphasising on the advantages of a negotiated solution, the Court - also referring to the solution provided in the Annan plan²⁶⁷ - seemed to imply that Greek Cypriot property rights are much better protected through a negotiated solution, rather than continued litigation. Accordingly, it can be concluded that the Court has tried to charter the way forward by sending a central message, namely that a negotiated solution represents the best way to uphold human rights in the context of the Cyprus property issue.²⁶⁸

²⁶⁶ Demopoulos and Others v. Turkey, ECtHR, 2010, para. 112.

²⁶⁷ Ibidem, para. 10.

²⁶⁸ Gürel & Williams, 2011, p. 25.

6. Conclusion

In Cyprus, ethnic conflict between the Greek and the Turkish Cypriots dates back to the 1920s. Especially the Turkish intervention in 1974, in reaction to Greece overthrowing the government of Cyprus, has raised questions under international law. In the course of Turkey's military invasion, 36.4 % of the territory of the Republic of Cyprus were brought under Turkish control. Evaluating the legality of Turkey's actions, it becomes clear that the question is not if the intervention was illegal or legal, but rather when exactly the intervention became illegal. As analysed in-depth in the first chapter, Turkey's actions do neither find coverage under the Treaty of Guarantee, nor under international law. Therefore, Turkey's military intervention cannot be justified and has to be qualified as an illegal use of force, which amounts to a violation of Article 2 (4) of the UN Charter, as well as *ius cogens* and customary law. Consequently, the Turkish presence in the north of Cyprus has to be qualified as an illegal occupation, to which the laws of international armed conflict, as well as human rights law, are applicable. Furthermore, as a consequence of the Turkish intervention the island has been divided into two ethnically homogenised zones, in a Turkish Cypriot north and a Greek Cypriot south, which amounts to a violation of Article II of the Treaty of Guarantee.

Regarding the legal status of the TRNC, it was established that the declaration of independence by the Turkish Cypriots cannot be seen as an exercise of the right to self-determination, since it does not apply to secessionist acts of one ethnicity. Rather the right to self-determination was exercised by the Cypriot people as a whole, when Cyprus became independent from British rule in 1960. Furthermore, the foundation of the TRNC derives from an illegal occupation and thus has to be qualified as an illegal entity under international law. Nevertheless illegal entities can become states under international law, if they meet certain criteria under the *constitutive* and/ or the *declarative theory* of statehood. However, under both theories the TRNC cannot be regarded as a state, since it lacks recognition by the international community (*constitutive theory*) and does not carry the objective criteria of independent statehood (*declarative theory*). Consequently, the TRNC exists, but has to be regarded as an illegal entity under international law.

Due to the clashes in 1963/64 and the Turkish intervention in 1974, half of the Turkish Cypriot and one quarter of the Greek Cypriot population has been internally displaced. Especially, the implementation of the *Vienna III agreement* in 1975, which facilitated the transfer of the Greek Cypriots to the south and the Turkish Cypriots to the north, homogenised the island. Since 1974, the “green line” - a UN buffer zone - has been separating the north from the south, preventing Greek Cypriots from accessing their properties and former homes. Only in 2003 check point where opened allowing for the crossing from one side to the other.

In 1985, the TRNC constitution was adopted, including Article 159, which provided for the expropriation of displaced Greek Cypriots of their properties in the north. The way the TRNC leadership dealt with these “abandoned” Greek Cypriot properties has resulted in a multitude of Greek Cypriot applications before the ECtHR.²⁶⁹

Regarding property related rights of displaced Greek Cypriots, the ECtHR has delivered the following landmark decisions: *Loizidou v. Turkey* (1996); *Cyprus v. Turkey* (2001); *Xenides-Arides v. Turkey* (2005); and *Demopoulos and others v. Turkey* (2010). Analysing the above cases, it becomes clear that the Court did not only have to address alleged violations of convention rights, but also deal with the broader Cyprus conflict and thus issues of international law. The Court has issued the following findings:

- Turkey has jurisdiction, within the meaning of Article 1 of the ECHR, over the territory in the north, since Turkey exercises effective control over the TRNC. As a consequence, Turkey bears responsibility for all the violations, as well as an obligation to undertake positive measures in order to uphold the rights enshrined in the ECHR.

²⁶⁹ In 2005, more than 1400 applications from Greek Cypriots were pending before the ECtHR. All applicants were claiming that Turkey - as the occupying power in the north - was preventing them from having access to their properties and homes and thus violating their rights under Article 8 and Article 1 Protocol No. 1 of the ECHR.

- Neither the TRNC, nor the provisions of its constitution have any validity under international law. Thus, Article 159 TRNC constitution²⁷⁰ () is invalid and all Greek Cypriots have remained the legal owners of their land, properties and possessions in the north.
- The refusal of access to one's land interferes with the right to peaceful enjoyment of ones possessions under Article 1 of Protocol No. 1. The complete negation of the applicant's property rights in the form of a total and continuous denial of access cannot be justified and thus amounts to a continuing violation of Article 1 of Protocol No. 1.
- In cases where displaced Greek Cypriots actually lived in their properties in the north at the time of the Turkish intervention in 1974, the Court might find a violation of the right to respect for one's "home" under Article 8 (1) ECHR..²⁷¹
- Since Turkey is still occupying the north, the violations are of a "continued" nature, making it possible to hold Turkey responsible for the consequences of the intervention in 1974, even though Turkey has only accepted the jurisdiction of the Court in 1990 (16 years after the intervention).
- Although the TRNC is an illegal entity under international law, it can issue legally valid acts, as long as they serve the protection of the rights of the people affected, including the displaced Greek Cypriots.²⁷² Accordingly, the TRNC is capable of providing remedy for displaced Greek Cypriots regarding their properties in the north.
- The IPC - the remedy mechanism set up by the TRNC authorities – has to be qualified as domestic remedy provided by Turkey. Since Turkey is being held responsible for acts committed by the local administration of the TRNC, it reflects common sense that domestic remedies provided by the TRNC authorities are regarded as domestic remedies provided by Turkey.

²⁷⁰ The legal basis of the expropriation of the Greek Cypriots.

²⁷¹ However in recent case law, The Court implies that the passage of time has led to a shift regarding the protection of one's home under Article 8 ECHR from the Greek Cypriot title holders, to the Turkish Cypriot current users.

²⁷² The Namibia principle.

- The IPC procedure provides an effective remedy for Greek Cypriots claiming a violation of Article 8 and Article 1 Protocol No. 1 of the ECHR. Therefore the IPC needs to be exhausted in order to fulfil the admissibility criteria to apply to the ECtHR.

Looking at jurisprudence of the Court, it becomes clear that the Court has not tried to solve the property issue, as such. Rather it has tried to set out parameters, which any viable resolution of the property issue should take into consideration.²⁷³

Today, in 2015, we count more than 50 years of UN presence and more than 40 years of division of the island of Cyprus. In order to find a solution to Europe's oldest conflict, thousands of meetings have been held throughout the last 47 years and many leaders from different parties have tried to reach an agreement under the auspices of six different UN-Secretary Generals.²⁷⁴ Especially former UN Secretary General, Kofi Annan, has dedicated years to elaborate a solution plan, which would bridge the gap between the maximalist demands of the two ethnicities. But without success. If the plan had been accepted, today, an estimated 54 % of Greek Cypriot displaced persons would have returned to their original homes, under Greek Cypriot administration.²⁷⁵ Nevertheless, the plan was rejected by 76% of Greek Cypriots in 2004.²⁷⁶ Despite the shock of the international community, Cyprus joined the EU as a divided island.²⁷⁷ To me it seems very likely that today the Cyprus conflict would be history, if the EU would not have failed to require a peace agreement as a precondition for becoming a member state to the EU.

²⁷³ Gürel & Williams, 2011, p. 1.

²⁷⁴ Özersay, 2012, p. 407.

²⁷⁵ S/2003/398, 2003, para 118.

²⁷⁶ ECtHR, Demopoulos and Others v. Turkey, Decision, 1 March 2010, para. 9.

²⁷⁷ Today, the Cyprus conflict, is the only conflict within the EU.

The two main obstacles in finding a solution to the Cyprus problem:

First, in my opinion one of the main impediments in overcoming the conflict in Cyprus has been the absence of willingness to find a solution. For 47 years, community leaders have defended the traditional positions of the two communities, without making any concessions to the other side. Thus, it can be said that the leaders have failed to look at the interests underlying the fixed positions and realistically evaluate possibilities on how to satisfy the real needs of the two communities. Furthermore, I believe that the Cyprus conflict can only be solved through a bottom up approach. To put it in the words of US Vice President Biden, who visited the island recently: *“No peace can be made between leaders alone. Peace has to reside in the hearts of those who are making peace.”*²⁷⁸ Especially, since the Cypriot people are the ones who will have to implement and live with a solution plan. They need to get involved more in the elaboration of a peace agreement, because only if a solution reflects the will of the two communities, it can be expected to be a durable and successful one.

Second, I believe that there is no way out of the conflict, unless the Cypriot people start acknowledging their common history, which counts severe violations as well as victims on both sides. The Greek Cypriots need to confront reality and recognise that the Cyprus problem did not start in 1974 and that the conflict cannot be reduced to a problem of occupation, but that the roots of the conflict go back way further. The Turkish Cypriots and Turkey need to recognise injuries suffered by the Greek Cypriots since 1974. The property issue plays a big role in the peace process, since it is linked to the wrongs committed by the other side. And although both sides need to recognise that no redress can entirely heal the wounds and make up for the violations that took place, it is of utmost importance that the Turkish side, through the IPC mechanism, provides fair and effective redress for the abandoned Greek Cypriot properties in the north.

²⁷⁸ Christou, 2014.

Finally, I agree with the Court's findings in the *Demopoulos* case, that the fact that many decades have passed since the Greek Cypriots have been displaced from their homes in the north has weakened their position. In the words of the Court:

*“It cannot be within the Court’s task in interpreting and applying the Convention to impose an unconditional obligation to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.”*²⁷⁹

Thus, it has become clear that the passage of time has negatively affected the Greek Cypriot ownership rights. Within the last 40 years new rights of current users arose and conflict with the rights of displaced Greek Cypriots to return to their properties in the north. It needs to be acknowledged more than ever that a negotiated agreement, which represents a compromise reconciling the competing interests of the two communities, represents the best solution to uphold human rights of both Greek and Turkish Cypriots.

Finally, I believe that in the case of Cyprus, the passage of time constitutes a big threat to the peace process, since it leads to the acceptance of the *status quo* within the Cypriot population and increases the divide between Turkish and Greek Cypriots.

²⁷⁹ ECtHR, *Demopoulos*, para. 85, 116

“The person living in my house was a refugee. He told me that one of his children was born in the same hospital in Lemessos where my daughter was born. That man has a family, he has children who were raised in that house. I lived four years in my house. They have lived thirty years in that house. They were raised there, they married there, they have families there and grandchildren. Situations have changed. I don’t feel that they are the enemy. They also had to leave, they also lived nightmares. Their children are not to blame, just like our children are not to blame. Their roots are there now, and the point is where do you take those people? Why? They have rights too.”

Greek Cypriot refugee expressing his feeling of when he visited his house in the north for the first time after 29 years in 2003.²⁸⁰

²⁸⁰ Gürel & Williams, 2011, pp. 20-21.

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8. Annexes

8.1 VIENNA III AGREEMENT– 2 AUGUST 1975

1. The Turkish Cypriots at present in the South of the Island will be allowed, if they want to do so, to proceed North with their belongings under an organized programme and with the assistance of UNFICYP.

2. Mr. Denktash reaffirmed, and it was agreed, that the Greek Cypriots at present in the North of the Island are free to stay and that they will be given every help to lead a normal life, including facilities for education and for the practice of their religion, as well as medical care by their own doctors and freedom of movement in the North.

3. The Greek Cypriots at present in the North who, at their own request and without having been subjected to any kind of pressure, wish to move to the South will be permitted to do so.

4. UNFICYP will have free and normal access to Greek Cypriot villages and habitations in the North.

5. In connection with the implementation of the above agreement priority will be given to the re-unification of families, which may also involve the transfer of a number of Greek Cypriots, at present in the South, to the North.

8.2 Property: Article 10, Main Articles, Annan Plan V

1. The claims of persons who were dispossessed of their properties by events prior to entry into force of this Agreement shall be resolved in a comprehensive manner in accordance with international law, respect for the individual rights of dispossessed owners and current users, and the principle of bizonality.

2. In areas subject to territorial adjustment, properties shall be reinstated to dispossessed owners.

3. In areas not subject to territorial adjustment, the arrangements for the exercise of property rights, by way of reinstatement or compensation, shall have the following basic features:

a. Dispossessed owners who opt for compensation, as well as institutions, shall receive full and effective compensation for their property on the basis of value at the time of dispossession adjusted to reflect appreciation of property values in comparable locations. Compensation shall be paid in the form of guaranteed bonds and appreciation certificates;

b. All other dispossessed owners have the right to reinstatement of one-third of the value and one-third of the area of their total property ownership, and to receive full and effective compensation for the remaining two-thirds. However, they have the right to reinstatement of a dwelling they have built, or in which they lived for at least ten years, and up to one donum of adjacent land, even if this is more than one-third of the total value and area of their properties;

c. Dispossessed owners may choose any of their properties for reinstatement, except for properties that have been exchanged by a current user or bought by a significant improver in accordance with the scheme. A dispossessed owner whose property cannot be reinstated, or who voluntarily defers to a current user, has the right to another property of equal size and value in the same municipality or village. S/he may also sell his/her

entitlement to another dispossessed owner from the same place, who may aggregate it with his/her own entitlement;

d. Current users, being persons who have possession of properties of dispossessed owners as a result of an administrative decision, may apply for and shall receive title, if they agree in exchange to renounce their title to a property, of similar value and in the other constituent state, of which they were dispossessed;

e. Persons who own significant improvements to properties may apply for and shall receive title to such properties provided they pay for the value of the property in its original state; and

f. Current users who are Cypriot citizens and are required to vacate property to be reinstated shall not be required to do so until adequate alternative accommodation has been made available.

4. Property claims shall be received and administered by an independent, impartial Property Board, governed by an equal number of members from each constituent state, as well as non-Cypriot members. The Property Board shall be organized into branches in accordance with sound economic practice. No direct dealings between individuals shall be necessary.²⁸¹

²⁸¹ Kofi Annan, The Comprehensive Settlement of the Cyprus Problem, 31 March 2004

8.3 Traditional negotiation positions of the two communities

Issues of Negotiation	Greek (Cypriot) Position	Turkish (Cypriot) Position
Political System	<p>-A unitary state structure is preferred.</p> <p>-A federation in which the Turkish Cypriot can have “autonomy” is offered</p> <p>-may accept a bi-communal, bi-zonal federation without the equality of the Turkish Cypriot community.</p> <p>However, enormous side payments are needed for the acceptance of a bi-zonal, bi-communal federation which the two federated states will have political equality.</p>	<p>“Two sovereign states” or a bi-zonal, bi-communal “confederation” of “two sovereign states” is preferred.</p> <p>However, with substantial side payments, a bi-zonal, bi-communal federation with specific political equality for the Turkish Cypriot community may be accepted.</p>
Federal powers	Strong federal (central) system	Very weak (con)federal/ federal (central) system
State powers	Very weak and limited powers	Very strong and extensive powers. Specifically, the states will be sovereign.
Sovereignty	Single sovereignty for the whole island (i.e. for both communities)	Separate sovereignty for each people/nation (community) based on the self-determination right of each community.
Representation	Greek Cypriot President, (maybe) Turkish Cypriot	Rotational Presidency; 50:50 Greek and Turkish Cypriot

	Vice-President (no rotational presidency) Ratio of Greek to Turkish Cypriots in the council of ministers, federal legislature and institutions to be based on population ratio (80:20 Greek to Turkish Cypriot)	representation in (con)federal institutions.
Guarantorship	No guarantorship or an EU or UN guarantorship. No unilateral intervention right for Turkey.	1960 Treaty of Guarantee to remain without any change (unilateral intervention right for Turkey)
Three freedoms		
Freedom of movement	Absolute freedom	Freedom with very small restrictions (for former EOKA terrorists, etc.) (EOKA: Ethniki Organosis Kyyprion Agoniston (Greek National Organization of Cypriot fighters))
Freedom of settlement	Absolute freedom	Freedom with restrictions (a quota to be imposed so the bi-zonality is respected).
Freedom of property ownership	Absolute freedom.	Strong restrictions (a quota to be imposed so the bi-zonality is respected) and a long moratorium (transitional period)

Territorial adjustment	Greek Cypriot state having 80% of the land. May go down to around 75 %.	Turkish Cypriot state to retain 29 % or more of the land.
Military buildup	Demilitarization of the island. A lightly armed police force of Cypriots maintaining order.	Separate forces of defense and police for each state. Turkey keeps a contingent on the island for the security of Turkish Cypriots.
Displaced persons and properties	All displaced persons have the right to return to their properties	Restricted access to the displaced persons. Compensatory payments for the displaced persons and territorial adjustment to respect the bi-zonality.
Settlers/ immigrants	All Turkish settlers should go back to mainland Turkey.	All Turkish immigrants should stay in Cyprus.
EU Membership	Strongly supports	Supports membership only after a final solution, separate referenda for the two communities and special relations of Cyprus with turkey (i.e., Turkey having same rights as other EU members in Cyprus.

Table accessible in Özersay & Sözen, 2007, pp. 127,128.²⁸²

²⁸² Data based on interviews by Prof. Sözen conducted in Nicosia, Ankara, Athens, Brussels and London during 1997/98, the daily news from the local media in Cyprus, Turkey, Greece, as well as from the international media and updated until 2005.

8.4 Solution presented in the Annan Plan

Issues of Negotiation	Annan Plan
Political System	United Cyprus Republic comprising of a bi-zonal structure of a Greek Cypriot and a Turkish Cypriot constituent states. Belgian and Swiss models are used for the external relations of the state and for the internal relations between the central government and the two constituent states, respectively.
Federal powers	Weak central powers
(Constituent) state powers	Strong and extensive powers on certain areas (education, religion, etc.)
Sovereignty	Single shared sovereignty (prohibition of both Enosis (Greek term for “union” – union with Greece) and Taksim (Turkish term for “partition”))
Representation	Rotational Presidency and 50:50 ratio in upper house (Senate) (to symbolize the bi-communality/nationality), population ratio in lower house (Chamber of Deputies) and the council of ministers (Presidential council) and in federal institutions.
Guarantorship	1960 Treaty of Guarantee will remain in force mutatis mutandis (to make it compatible with the current realities of the island).
Three freedoms	
Freedom of movement	No restriction on the freedom of movement
Freedom of settlement	Restricted freedom to respect the bi-zonality of the new state. A quota in a moratorium of X years (or until Turkey becomes a EU member)
Freedom of property ownership	Restricted freedom to respect the bi-zonality of the new state. A quota in a moratorium of X years (or until Turkey becomes a EU member)

Territorial adjustment	72:28 ratio
Military buildup	A time-table of foreign troop withdrawal in X years (or until Turkey becomes an EU member) to become down to 650 Turkish and 950 Greek forces as it was agreed upon in the 1960 Treaty of Alliance. Lightly armed separate police force for each state and a police force for the federal state.
Displaced persons and properties	A complex formula where some of the displaced persons will be settled according to the territorial adjustment and the rest will be either reinstated to their previous property or financially compensated.
Settlers/immigrants	A fixed number (45.000) Turkish immigrants/settelers will remain based on a list prepared through certain criteria (marriage, a certain period of employment and/or residency etc.) the rest will have the option to ask for resettlement in mainland turkey. A similar list (of 45, 000) is also designed for the Greek Cypriot side.
EU Membership ²⁸³	EU membership after a solution where the arrangements of the overall solution would be incorporated into the <i>acquis communautaire</i> .

Table accessible in Özersay & Sözen, 2007, p. 130.

²⁸³ Though, after 1 May 2004 when the Republic of Cyprus joined the EU, the EU membership is no longer a negotiation issue, the Greek Cypriot side this time tries to use its EU membership as a trump card in aiming to reach a “unitary state solution” in which the Greek Cypriots would be dominant in all decision making mechanisms.