

# *The Politics of Property in Cyprus*

*Conflicting Appeals to 'Bizonality' and 'Human Rights'  
by the Two Cypriot Communities*

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**PRIO Report 3/2006**

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ISBN 82-7288-232-9

**Cover Design:** Hilde Sørby, Bardus Design

**Main Cover Photo:** Sandro Vannini/CORBIS

**Other Photos:** Harun Uçar

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## FOREWORD

**P**RIO IS PROUD TO PUBLISH this third report from the PRIO Cyprus Centre, the first from a new, comprehensive project on the property issue in Cyprus.

PRIO's mission in Cyprus is to contribute to an informed public debate on key issues relevant to an eventual settlement of the Cyprus problem. We hope to achieve this by disseminating information, providing new analyses and facilitating dialogue. We wish to stimulate research cooperation and debates between Greek Cypriots and Turkish Cypriots, as well as within each of the two communities, and also between those communities and various immigrant groups and representatives of international society. In order to achieve our aim, we seek to establish joint research groups, with both Turkish Cypriot and Greek Cypriot participants, and to develop new venues of inquiry among researchers on either side of the communal divide.

The first report from the PRIO Cyprus Centre was written by Mete Hatay, who approached a contentious topic in ways not previously seen. Based on census material and electoral statistics, Hatay's report was a highly innovative study of settlers and other temporary and long-term immigrants in northern Cyprus. The second report, written by a team of economists at S. Platis Economic Research, was a thorough examination of property markets and of the property regime proposed in the Annan Plan.

In this third report, Ayla Gürel and Kudret Özersay employ historical and legal analysis to compare the official Turkish Cypriot and Greek Cypriot approaches to the property issue, as well as the reactions of the two sides to proposals for resolving the issue through a compromise solution. It is inevitable that in any study dealing with one of the hottest issues in the Cyprus problem, such as the present one, the formulations and perspectives of the authors may appear controversial. Our intention is to ensure that the report leads to further inquiry and debate within several scholarly disciplines, as well as in the media. Our hope is to avoid sterile quarrels.

STEIN TØNNESSON

Director

International Peace Research Institute, Oslo (PRIO)

*Nicosia, Cyprus  
December 2006*

# ACKNOWLEDGEMENTS

**T**HIS REPORT IS AN EXPANDED VERSION of an article published in *Mediterranean Politics* (Volume 11, Number 3, November 2006, pp. 349–369) and forms part of a wider project on property-related issues within the context of the Cyprus problem.

A number of individuals, both within and outside PRIO, kindly read earlier versions of the material and made valuable criticisms and suggestions. Particular thanks are due to Olga Demetriou, Mete Hatay, Lisa Jones, Gina Lende, Sabina Lichtensteiger, Michael Moran, Yiannis Papadakis, Rita Severis and Stein Tønnesson. We are also grateful to Kathleen Stephanides for her superb editing of the manuscript. Finally, we would like to express our appreciation to PRIO and its Cyprus Centre for providing the excellent working environment and support that made this study possible.

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## SUMMARY

**T**HE PROPERTY ISSUE is perhaps the most complex and contentious aspect of the Cyprus problem, owing to numerous and diverse legal, economic and social complexities. Most important, however, is the political significance the two Cypriot sides attach to it. This is manifested in the way in which the issue is vitally linked with two basic parameters for any prospective settlement, namely, ‘bizonality’ in the case of Turkish Cypriots and ‘respect for human rights’ in the case of Greek Cypriots. Bizonality and respect for human rights are principles ostensibly agreed by both sides. However, as shown in this report, a common interpretation of these principles is seriously lacking, an important factor that makes the property issue very difficult to solve.

This report is an attempt to understand the deeper political and normative concerns that inform as well as help to sustain the two sides’ official positions regarding the property issue. To this end, we examine Greek Cypriot and Turkish Cypriot perspectives on the issue and the opinions of the two communities on how it should be resolved.

At the outset, some facts and figures are provided. These reveal the extent of the difficulties connected with the property issue, including the considerable difference between the two sides’ figures for Greek Cypriot- and Turkish Cypriot-owned land. For example, while the Greek Cypriot side estimates the 1974 figure for Greek Cypriot-owned land in the present Turkish Cypriot-controlled north at 78.5% of all privately owned land in that area, the Turkish Cypriot side estimates this at 63.8%. Similarly, the Turkish Cypriot estimates for Turkish Cypriot-owned private land in 1974 on both sides of the island (which are 33% of all private land in the north and 22% in the south) are considerably higher than those provided by the Greek Cypriot side (which are 21.1% in the north and 13.9% in the south).

The Greek Cypriots maintain that the property issue is essentially a matter of human rights violation, and therefore can only be resolved by implementing ‘the fundamental principle of respect for human rights’. They interpret this to mean giving all displaced persons unrestricted rights to repossess and return to their former homes and properties, irrespective, in particular, of any bizonal arrangements. The Turkish Cypriots, on the other hand, insist that this contradicts ‘the fundamental principle of bizonality’. While accepting the principle of respect for human rights, they demand restrictions on the exercise of rights to property and return by displaced persons insofar as is necessary to preserve and protect bizonality. This, in their view, entails

preserving as much as possible the present pattern of settlement. Hence, the Turkish Cypriot preference for a 'global exchange and compensation' formula for settlement of property claims.

This report studies the link between the two sides' divergent positions on property and their perspectives on the nature of the Cyprus problem. A particularly useful lead here is the contrast between Turkish Cypriot and Greek Cypriot views on how the 1974 Turkish military operation and the ensuing state of affairs should be perceived.

The Turkish Cypriots generally see the events of July 1974 as marking a turning point in the Cyprus problem and particularly in their struggle – from 1963 onwards – against being reduced to second-class citizens in a Greek-dominated state. They regard the present *de facto* situation as bizonality virtually realized. All that is needed is the return of some territory to the Greek Cypriot side. This division of the island is considered by the Turkish Cypriots as the only solution that guarantees their security – including economic security – and freedom in the face of an apparently unremitting Greek Cypriot determination to dominate the island. One factor has played a crucial role in justifying and strengthening the Turkish Cypriot conviction of what the established principle of bizonality stands for and how this principle affects the property issue: this is the Turkish Cypriot interpretation of the 1975 Vienna Agreement as an agreement for the population exchange of Greek Cypriots and Turkish Cypriots between the north and the south of the dividing line. We argue, in this report, that the Turkish Cypriot side's reading of the agreement has been one-sided and misguided.

The Greek Cypriots, however, generally consider the events of 1974 as marking the beginning of the Cyprus problem, which they see as a problem of 'invasion and occupation by Turkey of one-third of our country'. The Greek Cypriot side objects to the Turkish Cypriot understanding of bizonality, the key feature of which is the creation of a Turkish Cypriot zone in the northern part of the island. Most Greek Cypriots find this painful, because, among other things, they see it as the eradication in the north of all that is historically 'Greek' and believe it to be part of what they regard as Turkey's 'expansionist designs' aimed ultimately at changing the primordial Greek character of Cyprus into a Turkish one. Therefore, the goal is a solution that will essentially reverse the *faits accomplis* resulting from this assumed Turkish strategy. This is the context in which Greek Cypriots demand absolute restoration of the fundamental principle of respect for human rights as the only possible way to settle the issue of displaced persons' property claims and their return to 'the ancestral lands'. This is a demand that goes beyond *individual* rights: it also crucially concerns *collective* rights, especially 'the right of Cypriot Hellenism to the ancestral lands'. This has led many on the Greek Cypriot side inaccurately to perceive the European Court of Human Rights' judgments on Cypriot property-related cases against Turkey as effective recognition of such a collective right.

Included in the final part of the report is a brief review of the Turkish Cypriot and Greek Cypriot reactions to the Annan Plan property proposals.

The report's conclusion is that the two sides' views on the property issue diverge primarily because of their incompatible preoccupations with the principles of bizonality and respect for human rights – an incompatibility that itself is rooted in their irreconcilable, indeed mutually exclusive, perspectives on the Cyprus problem.

The political implication of this conclusion is to be found within the larger argument that the only possible *mutually agreed* solution to the problem is a compromise between the two positions. So far, each side's approach to the principles of bizonality and respect for human rights has been one-sided and categorical, being primarily informed by that side's very different experience of the island's recent traumatic past. To achieve a compromise, what seems to be most needed is a fresh, more flexible and forward-looking reconsideration by both sides of how to understand these two basic principles.

# ABBREVIATIONS

BDH	<i>Bariş ve Demokrasi Hareketi</i> (Movement for Peace and Democracy)
CTP	<i>Cumhuriyetçi Türk Partisi</i> (Republican Turkish Party)
DP	<i>Demokrat Parti</i> (Democratic Party)
ECHR	European Court of Human Rights
EDEK	<i>Eniaia Dimokratiki Enosi Kentrou</i> (United Democratic Centre Union) [Movement of Social Democrats – <i>Kinima Sosialdimokraton</i> ]
EU	European Union
<i>İTEM</i> Law	<i>İskan, Topraklandırma ve Eşdeğer Mal Yasası</i> (Law for Housing, Allocation of Land, and Property of Equal Value)
ROC	Republic of Cyprus
SBA	Sovereign Base Areas
TFSC	Turkish Federated State of Cyprus
TKP	<i>Toplumcu Kurtuluş Partisi</i> (Communal Liberation Party)
TRNC	Turkish Republic of Northern Cyprus
UBP	<i>Ulusal Birlik Partisi</i> (National Unity Party)
UNFICYP	United Nations Peacekeeping Force in Cyprus

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)

It is certain that the right to property is the most sacred of all the rights of citizens and more important in certain respects than liberty itself.

Jean-Jacques Rousseau  
'Political Economy', in Diderot's *Encyclopaedia* (c. 1755)



# INTRODUCTION

**S**ERIOUS DISPUTES OVER PROPERTY OWNERSHIP have existed in Cyprus since at least the beginning of the Cyprus problem in the early 1960s. In 1972, Richard Patrick pointed out that ‘the matter of land ownership is most sensitive because of its significance in any future geopolitical settlement’. He also noted how, at that time, ‘current claims and counter claims are difficult to verify because [among other things] neither community is willing to open its land registration books to an impartial audit’.<sup>1</sup> The controversy over land ownership, of course, has not only remained unresolved but, with the island’s division in 1974, grown dramatically in both scale and complexity.

The so-called property issue will be central to macro-level economic and social considerations in the event of reunification. More importantly, it has a crucial bearing on the whole question of the individual rights and interests of a large part of the population on both sides of the island. Most of the individuals whose rights and interests are involved are persons – or descendants of persons – who have been displaced and/or dispossessed of their properties as a result of the intercommunal clashes of 1963–64<sup>2</sup> or the subsequent *de facto* division of Cyprus in 1974 (when, in response to a Greek Cypriot military coup on 15 July 1974 aided and abetted by Greece, Turkey invoked the Treaty of Guarantee and militarily intervened on 20 July, taking control of the northern third of the island’s territory).<sup>3</sup> Naturally, the passage of several decades without a political solution has complicated the property issue further, turning it into an immense technical and legal conundrum. With time, the number of

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<sup>1</sup> Richard Patrick, ‘A General System Theory Approach to Geopolitical Aspects of Conflict Between Communities with Particular Reference to Cyprus Since 1960’, 1972 doctoral dissertation published in *Political Geography and the Cyprus Conflict: 1963–1971*, ed. James H. Bater & Richard Preston (Ontario: Department of Geography Publications, University of Waterloo, 1976), p. 15.

<sup>2</sup> Patrick, Chapter 3. See also Keith Kyle, *Cyprus: In Search of Peace* (Minority Rights Group International, 1997), pp. 5–15.

<sup>3</sup> Kyle, pp. 16–21. See also Peter Loizos, *The Heart Grown Bitter* (Cambridge: Cambridge University Press, 1981); and Vamik Volkan, *Cyprus: War and Adaptation* (Charlottesville, VA: University Press of Virginia, 1979).

individuals involved continues to multiply, as properties are transferred or change hands through inheritance or sale, or are transformed through development.

Beyond these complexities, however, there is another factor that is key to understanding why the property issue has become such a contentious – perhaps the most contentious – aspect of the Cyprus problem. This is the huge political significance that the Greek Cypriot and the Turkish Cypriot communities ascribe to it. How the question of displaced/dispossessed persons' rights to their homes and properties should be resolved is seen by both Cypriot sides as crucially related to two accepted basic parameters for any Cyprus settlement, namely, 'bizonality' and 'respect for human rights'.

Turkish Cypriots maintain that the property issue must be resolved in accordance with 'the fundamental principle of bizonality'. For them, this means in effect preserving as much as possible the present pattern of settlement of the Turkish Cypriot and Greek Cypriot populations. They accept that 'respect for human rights' should be ensured, but they demand that the exercise of these rights be restricted insofar as is necessary to preserve and protect 'bizonality'. This, they claim, has been the foundation agreed upon by the two sides since at least 1977.

Greek Cypriots, on the other hand, understand bizonality to entail nothing more than having two distinct zones, each under the administration of its own (Greek or Turkish) community. In particular, they strongly disagree that bizonality implies arrangements that will in any way exclude from the Turkish Cypriot zone any of its former Greek Cypriot inhabitants. They hold that the property issue must be resolved according to 'the fundamental principle of respect for human rights'. In their view, this means that all displaced persons should have the right to repossess and return to their homes and properties, irrespective of any bizonal arrangements.

It is quite evident that although both Cypriot sides ostensibly agree that bizonality and respect for human rights are basic parameters for any prospective settlement, a common interpretation of these principles is seriously lacking. In fact, this is undoubtedly a major reason why the property issue is so extremely difficult to solve.

The many highly emotive political, normative and personal sentiments associated with the property issue are unlikely to fade away quickly, even should a comprehensive settlement deal be reached. Rather, these are bound to linger on, adding to the potential minefield of problems to be faced during the implementation of any reunification agreement. Therefore, it is imperative to acquire a thorough understanding of the wide-ranging political significance of the property issue.

In this report, we attempt to elucidate the deeper political and moral concerns that underlie as well as help to sustain the two Cypriot sides' official positions on the matter. We will first look at some facts and figures that starkly indicate the enormous magnitude of the problems involved.

## FACTS AND FIGURES

**D**URING THE 1963–64 PERIOD, it is estimated that around 25,000 Turkish Cypriots (one-fourth of the entire Turkish Cypriot community at that time) and 700 Greek Cypriots (including 500 Armenians) were displaced.<sup>1</sup> Of these, approximately 1,300 Turkish Cypriots had returned to their homes by 1970;<sup>2</sup> the remainder were still displaced in the summer of 1974 when events led to the present *de facto* division of Cyprus. The resulting dislocation of people was massive. According to official Greek Cypriot sources, 142,000 Greek Cypriots (close to 30% of the entire Greek Cypriot community at that time) were displaced from the northern to the southern part of the island;<sup>3</sup> and, according to official Turkish Cypriot sources, 45,000 Turkish Cypriots (close to 40% of the entire Turkish Cypriot community at that time) relocated from the south to the north.<sup>4</sup>

When the Turkish military operation ended on 16 August 1974, many thousands of Greek Cypriots had already fled to the south, with only about 20,000 remaining in the north. By the summer of 1975, this number further diminished to around 10,000 (mainly in the Karpass area). The Greek Cypriot side claims that this was due to ‘the oppressing measures taken by the Turks in order to compel all the enclaved persons to leave’ the Turkish-controlled territories.<sup>5</sup> Despite the Vienna III Agreement in August 1975 (more on this later), the number of Greek Cypriots in the north continued to decline: about 2,500 Greek Cypriots moved to the south during the remaining part of 1975, 5,800 during 1976, and 900 during 1977. By November 1981, only 1,076 Greek

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<sup>1</sup> Patrick, pp. 74–79.

<sup>2</sup> *Ibid.*

<sup>3</sup> ROC Press and Information Office (PIO), *The Cyprus Question*, (Nicosia, 2003), p. 12. See also ROC PIO’s *Republic of Cyprus: From 1960 to the Present Day*, map based on the 1960 census data (Nicosia, 2005).

<sup>4</sup> This is an estimate based on the information provided in an official report of the Turkish Cypriot administration dated 20 October 1974. See Ahmet An, *Kıbrıs Nereye Gidiyor* (Istanbul: Everest, 2002), p. 319.

<sup>5</sup> Criton G. Tornaritis, *Cyprus and Its Constitutional and Other Legal Problems* (Nicosia, 1977), p. 86. (At the time of publication, the author was the Greek Cypriot Attorney-General.)

Cypriots remained in the north.<sup>6</sup> The population subsequently was reduced to less than 500, many of whom were very old. This decline, according to the Greek Cypriot side, was again ‘the result of a sustained campaign of harassment, discrimination and oppression’ directed towards them by the administration in the north.<sup>7</sup>

It has been estimated that, prior to July 1974, the actual Turkish Cypriot population in the territory that subsequently came under Turkish control was 71,000; of these, 10,000 were persons who had originally lived in villages to the south of the new dividing line but had been displaced during the intercommunal strife of 1963–64.<sup>8</sup> As for the Turkish Cypriots who lived south of the new line in 1974, many tried (secretly and apparently often under difficult and dangerous conditions) in the year that followed to reach what they regarded as freedom and the safety of the north.<sup>9</sup> Also, in January 1975, some 9,000 Turkish Cypriots who had taken refuge at the British bases in Akrotiri when the Turkish military offensive began were transported (via Turkey) to the north. Thus, by June 1975 the number of Turkish Cypriots remaining in the south was only about 10,700. By September 1975 – following the Vienna III Agreement of 2 August 1975 – most had moved to the north, leaving only 130 Turkish Cypriots resident in the south.<sup>10</sup>

Thus, the total figure of displaced persons in Cyprus following the events of 1974, including both Greek Cypriots and Turkish Cypriots, was in the range of 210,000. This corresponds to 30% of the total population of the island at the time (636,000).<sup>11</sup>

<sup>6</sup> Pierre Oberling, *The Road to Bellapais: The Turkish Cypriot Exodus to Northern Cyprus* (New York: Columbia University Press, 1982), p. 193.

<sup>7</sup> Republic of Cyprus Press and Information Office, *Turkish Colonisation: A Threat for Cyprus and Its People* (Nicosia, 1995). Such explanations were dismissed by the Turkish Cypriot side as ‘anti-Turkish propaganda of the Greek Cypriot administration’. See, for example, ‘Greek Cypriots in Karpass Fully Satisfied with TFSC [Turkish Federated State of Cyprus]’, published on 5 May 1978 in *News Bulletin* and reproduced as an appendix in *Human Rights in Cyprus*, (Nicosia: Turkish Cypriot Human Rights Committee, May 1979). Here, it should be noted that, concerning the living conditions of the Greek Cypriots in the north, the European Court of Human Rights (ECHR) in a 2001 judgment found human rights violations in the areas of freedom of religion, freedom of expression, right to education, and right to private and family life, as well as infringements of property rights, including the Turkish Cypriot practices of not allowing the property of deceased Greek Cypriots who had been living in the north to be transferred to their heirs not resident there, and deeming the property of Greek Cypriots who left the north permanently as ‘abandoned’. See *Cyprus v. Turkey*, judgment of the ECHR, 10 May 2001. See also Frank Hoffmeister, ‘Cyprus v. Turkey (Case Note on European Court of Human Rights judgment of 10 May 2001)’, *American Journal of International Law*, 96, no. 2 (April 2002), pp. 445–452.

<sup>8</sup> This estimation is based on the figures in the report referred to in note 7 above, as well as the data provided in ROC PIO’s *Republic of Cyprus: From 1960 to the Present Day*.

<sup>9</sup> Murad Hüsnü Özad, *Baf ve Mücadele Yılları [Paphos and the Struggle Years]* (Lefkoşa: Akdeniz Haber Ajansı Yayınları, 2002), pp. 135–303. See also Oberling, pp. ix–xii, 191–192.

<sup>10</sup> Oberling, pp. 191–193.

<sup>11</sup> L. W. St John-Jones, *The Population of Cyprus* (London: Institute of Commonwealth Studies, 1983), pp. 34–62. See also George Karouzis, *Proposals for a Solution to the Cyprus Problem* (Nicosia: Cosmos Press, 1976), p. 13.

Under the present circumstances of what has been called the ‘unresolved division’<sup>12</sup> in Cyprus, the percentages of Turkish Cypriot- and Greek Cypriot-controlled areas are around 36% and 62% of the territory of the 1960 Republic of Cyprus, respectively. The remaining area (excluding the British Sovereign Base Areas [SBAs]) is the so-called Buffer Zone controlled by UNFICYP.

As regards Greek Cypriot and Turkish Cypriot property ownership in these areas, there is no set of established figures that both sides accept. Turkish Cypriot researchers generally have disputed Greek Cypriot estimates of property ownership on grounds of the unreliability of the Greek Cypriot-controlled land registry records (since 1963).<sup>13</sup> In addition, these researchers claim that there were usurpations of the *Evkaf* properties as well as *miri* lands<sup>14</sup> in the past (especially prior to the establishment of the Republic of Cyprus in 1960).

Patrick provided some land ownership figures for 1960 based on statistics supplied (in the post-1964 period) by the Statistics and Research Department of the Cyprus Government’s Ministry of Finance (by then run solely by Greek Cypriots) and by the Planning Department of the Provisional Turkish Cypriot Administration (1964–74).<sup>15</sup> These figures show Greek Cypriot ownership ranging from 61% to 81% and Turkish Cypriot ownership from 18% to 38% of the island’s total privately owned land (an

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<sup>12</sup> An expression used in the *Report of the Secretary-General on His Mission of Good Offices in Cyprus*, UN document S/2003/398, 1 April 2003, para. 107; available at <http://www.un.org/Docs/sc/sgrep03.html> (accessed 8 June 2006).

<sup>13</sup> See, for example, Haşim Altan, *Kıbrıs’ta Türk Malları: Gaspedilen ve Yitirilen Türk Tapu ve Arazi Hakları* [Turkish Properties in Cyprus: Usurped and Lost Turkish Titles and Land Rights] (Istanbul: Kastaş Yayınları, 2001).

<sup>14</sup> The *Evkaf* is the organization of *vakıfs* (traditional Muslim establishments) of Cyprus that began following the Ottoman conquest of the island in 1571. A *vakıf* is founded through properties appropriated for or donated to religious, charitable and public uses, and administered in accordance with a special law called the *Ahkam-ül Evkaf*. According to this law, ownership of the *Evkaf* properties is non-transferable. In 1960, the *Evkaf* was recognized as a Turkish Cypriot institution and the *Ahkam-ül Evkaf* was reaffirmed in the constitution of the Republic of Cyprus. See Behrooz Morvaridi, ‘Social Structure and Change’, in *The Political Social and Economic Development of Northern Cyprus*, ed. Clement H. Dodd, pp. 264–266 (Cambridgeshire: Eothen Press, 1993); M. B. Seager, *Reports on the Evkaf Properties, Cyprus* (British Colonial Office, 1883); and *Cyprus: A Country Study*, ed. Eric Solsten (Federal Research Division of the Library of Congress, 1991) (available at <http://www.country-data.com/cgi-bin/query/r-3512.html>; accessed 20 January 2006). *Miri* land (*arazi-i mirië*; literally, ‘treasury or exchequer land’) refers to agricultural land, which under the Ottoman land code belonged to the state (equivalently, the sultan). This type of land could be transmitted from father to son, but it could not be sold, mortgaged or donated by its possessor (hereditary tenant who cultivated the land and whose right to the land was usufructuary). The Ottoman land code remained in force until 1946, when the British colonial administration enacted a new land law, the Immovable Property Tenure, Registration, and Valuation Law. The 1946 British law ended the *miri* land tradition, stipulating that all state land properly acquired by individuals became their private property. See Halil İnalcık, *An Economic and Social History of the Ottoman Empire – Volume One: 1300–1600* (Cambridge: Cambridge University Press, 1994); and Solsten.

<sup>15</sup> Patrick, p. 14.

illustration of the big difference that has typically existed between the two sides' data on this matter).

Tables 1.1 and 1.2 below illustrate the data from a Greek Cypriot Lands and Surveys Department report on total land ownership in Cyprus (including the SBAs) before 1974.<sup>16</sup> Tables 1.3 and 1.4, on the other hand, show estimates of pre-1974 ownership of land throughout Cyprus based on a study by Halil Giray, a former director of the Turkish Cypriot Cartography Department.<sup>17</sup> The figures in the latter two tables do not include the allegedly usurped *miri* lands (estimated at 322,109 donums),<sup>18</sup> but do include the lands that the Turkish Cypriot side claims were 'illegally expropriated' or 'snatched' from the *Evkaf* (estimated at 337,245 donums).<sup>19</sup>

**Table 1.1** Pre-1974 ownership of land in Cyprus (including the SBAs) based on the Greek Cypriot Lands and Surveys Department figures

Ownership	Area in donums	%
Private	5,067,572	73.3
State forests, state lands, roads, rivers, etc.	1,847,820	26.7
<i>Total</i>	<i>6,915,392</i>	<i>100.0</i>

**Table 1.2** Pre-1974 distribution of private ownership by community based on the Greek Cypriot Lands and Surveys Department figures (includes land in the SBAs)

Private Ownership	Area in donums	%
Greek Cypriot (Church properties included)	4,123,711	81.4
Turkish Cypriot ( <i>Evkaf</i> properties included)	852,455	16.8
Other communities (Armenians, Maronites, etc.)	91,406	1.8
<i>Total</i>	<i>5,067,572</i>	<i>100.0</i>

**Table 1.3** Pre-1974 ownership of land in Cyprus (including the SBAs) based on the Turkish Cypriot Cartography Department records

Ownership	Area in donums	%
Private	5,067,572	73.3
State forests, state lands, roads, rivers, etc.	1,847,932	26.7
<i>Total</i>	<i>6,915,504</i>	<i>100.0</i>

<sup>16</sup> See Karouzis, p. 60.

<sup>17</sup> Halil Giray, *Kıbrıs ile İlgili Rakamsal Bilgiler* [Numerical Information Concerning Cyprus], unpublished report, June 1993.

<sup>18</sup> Unit of measurement of the area of land used in Cyprus: 1 donum = 0.33 acres = 1,338 m<sup>2</sup>.

**Table 1.4** Pre-1974 distribution of private ownership by community based on the Turkish Cypriot Cartography Department records (includes land in the SBAs)

Private ownership	Area in donums	%
Greek Cypriot (Church properties included)	3,624,754	71.5
Turkish Cypriot ( <i>Evkaf</i> properties included)	1,352,792	26.7
Other communities (Armenians, Maronites, etc.)	90,026	1.8
<b>Total</b>	<b>5,067,572</b>	<b>100.0</b>

For the total area of privately owned land in 1974, the Turkish Cypriot data (Table 1.3) are exactly the same as the Greek Cypriot data (Table 1.1): 5,067,572 donums or 73.3% of the total land of Cyprus. However, when it comes to the Greek Cypriot and Turkish Cypriot shares of private ownership, the Greek Cypriot and Turkish Cypriot estimates (in Tables 1.2 and 1.4, respectively) are considerably different. According to the Turkish Cypriot data (Table 1.4), of the total privately owned land in 1974, only 71.5% belonged to Greek Cypriots (considerably lower than the Greek Cypriot estimate) and as much as 26.7% belonged to Turkish Cypriots (considerably higher than the Greek Cypriot estimate). The discrepancy between the Greek Cypriot (Table 1.2) and Turkish Cypriot (Table 1.4) data with regard to the two communities' shares of private ownership amounts to about 500,000 donums, or 10% of all private lands in 1974.

Before ending this review of the contested facts and figures, it will be useful to look at the Greek Cypriot and Turkish Cypriot estimates of land ownership for the areas delineated after 1974, that is, on the two sides of and within the Buffer Zone.

Table 1.5 shows the estimates of the Greek Cypriot Department of Lands and Surveys and the Planning Bureau based on 1964 data.<sup>20</sup> Note that these figures do not include the land in the SBAs. The shaded areas refer to the privately owned lands affected by the property dispute, that is, lands outside the control of the community from which the owners (including the Church in the case of the Greek Cypriot community or the *Evkaf* in the case of the Turkish Cypriot community) come. Based on the data in Table 1.5, we can derive the Greek Cypriot estimates for the three current zones of the island (Table 1.6).

<sup>19</sup> To obtain the Greek Cypriot and Turkish Cypriot private ownership figures in Table 1.4, Giray's estimated figure of 322,109 donums for the area of the allegedly 'usurped' *miri* lands was subtracted from his figure for Turkish Cypriot private ownership and added to his figure for Greek Cypriot private ownership.

<sup>20</sup> See Claire Palley, *An International Relations Debacle* (Oregon: Hart Publishing, 2005), p. 175. The discrepancy between the figures of Table 1.5 and those of Tables 1.1 and 1.2 is largely due to the fact that the SBAs are not considered in Table 1.5.

**Table 1.5** Land ownership in donums for the post-1974 territories based on 1964 figures by the Greek Cypriot Department of Lands and Surveys and the Planning Bureau. (Land in the SBAs not included. ‘Greek Cypriot’ includes Armenian Cypriots and Maronite Cypriots.)

Area	Greek Cypriot	Turkish Cypriot	Non-Cypriot	Public	Total
North	1,463,382 (60.60%)	393,791 (16.31%)	6,767 (0.28%)	551,150 (22.82%)	2,415,090 (100%)
Buffer Zone	112,326 (62.21%)	25,362 (14.05%)	2,494 (1.38%)	40,384 (22.37%)	180,566 (100%)
South	2,543,021 (61.56%)	413,177 (10.00%)	10,011 (0.24%)	1,165,029 (28.2%)	4,131,238 (100%)
Whole island	4,118,729 (61.23%)	832,330 (12.37%)	19,272 (0.29%)	1,756,563 (26.11%)	6,726,894 (100%)

**Table 1.6** Percentages of privately owned land in the post-1974 territories based on 1964 figures by the Greek Cypriot Department of Lands and Surveys and the Planning Bureau. (Land in the SBAs not included. ‘Greek Cypriot’ includes Armenian Cypriots and Maronite Cypriots.)

Area	Greek Cypriot (%)	Turkish Cypriot (%)	Non-Cypriot (%)	Total
North	78.5	21.1	0.4	100
Buffer Zone	80.1	18.1	1.8	100
South	85.7	13.9	0.3	100
Whole island	82.9	16.7	0.4	100

According to Greek Cypriot estimates (Tables 1.5 and 1.6), 1,463,382 donums of land in the north belong to Greek Cypriots. This corresponds to 60.6% of the total land and 78.5% of all privately owned land in the north.

Tables 1.7 and 1.8 below give the same type of data as in Tables 1.5 and 1.6, but on the basis of Turkish Cypriot estimates, and include the properties claimed to have been ‘snatched’ from the *Evkaf*. Here the figures include the SBAs. As above, the shaded areas represent the privately owned lands affected by the property dispute, that is, lands outside the control of the community from which the owners (including the Church in the case of the Greek Cypriot community and the *Evkaf* in the case of the Turkish Cypriot community) come.

**Table 1.7** Land ownership in donums for the post-1974 territories based on 1974 records by the Turkish Cypriot Cartography Department ('south' includes the SBAs)

Area	Greek Cypriot	Turkish Cypriot	Other	Public	Total
North	1,228,838 (50.71%)	637,912 (26.33%)	59,406 (2.45%)	497,000 (20.51%)	2,423,156 (100%)
Buffer Zone	126,230 (69.20%)	35,823 (19.64%)	2,500 (1.37%)	17,867 (9.79%)	182,420 (100%)
South	2,269,686 (52.66%)	679,057 (15.76%)	28,120 (0.65%)	1,333,065 (30.93%)	4,309,928 (100%)
Whole island	3,624,754 (52.41%)	1,352,792 (19.56%)	90,026 (1.30%)	1,847,932 (26.72%)	6,915,504 (100%)

**Table 1.8** Percentages of privately owned land in the post-1974 territories based on 1974 records by the Turkish Cypriot Mapping Department ('south' includes the SBAs).

Area	Greek Cypriot (%)	Turkish Cypriot (%)	Other (%)	Total
North	63.8	33.1	4.1	100
Buffer Zone	76.7	21.8	1.5	100
South	76.2	22.8	0.9	100
Whole island	71.5	26.7	1.8	100

Again, as one would expect, the Turkish Cypriot estimates of Turkish Cypriot-owned land on either side of the island are much higher than the Greek Cypriot estimates: 33.1% of privately owned land in the north, and 22.8% of privately owned land in the south (corresponding Greek Cypriot figures are 21.1% and 13.9%, respectively). What is more important is the percentage of Greek Cypriot private property in the north. The Turkish Cypriot side estimates this at 1,228,838 donums, which is equivalent to 63.8% of all privately owned land in the north. Although significantly lower than the corresponding Greek Cypriot estimate (1,463,382 donums or 78.5%), this is still a remarkably high percentage.



## THE TWO SIDES' OPPOSING DEMANDS: REASONS AND MOTIVES

**I**N ORDER TO UNDERSTAND the complexities of the official positions and how far and why they diverge on the property issue, it is useful to study the essential elements of what might be described as the standard 'maximalist' demands of the two sides: demands with no concession to the concerns of the other side and solely based on pursuing what is perceived by one side as fair, just and in accordance with its own 'national interests'.

The parties' maximalist demands on the issue of property were summarized in April 2003 by UN Secretary-General Kofi Annan as follows:

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*, meaning that *no* displaced persons, from *either* side, would have the right to have their properties reinstated.<sup>1</sup>

The property issue has always been viewed by the two sides (of course with different concerns) as inseparable from the equally contentious question of 'return of displaced persons to their former homes'. On the other hand, the question of 'return' itself is obviously closely connected with the issue taken up at the 2002–04 UN-sponsored intercommunal talks on Cyprus under the heading of 'residence rights'. The latter is a long-term notion that concerns not just those displaced but anyone from either community wishing to establish residency on the 'other side'. On this issue, the UN Secretary-General outlined the parties' maximalist demands as follows:

the Turkish Cypriot side wanted the constituent states to have the unfettered right to decide who could establish residency therein – this was their concept

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<sup>1</sup> Report of the Secretary-General, para 107; emphasis added.

of ‘bi-zonality’. The Greek Cypriots argued that ... basic human rights and the principles of the [EU] *acquis communautaire* should allow any Cypriot citizen to settle anywhere on the island, any limitations being acceptable only in the first few years – for them ‘bi-zonality’ meant only two distinct zones administered by Greek Cypriots and Turkish Cypriots respectively.<sup>2</sup>

Now, ‘bizonality’ is a principle that has long been an accepted basis for reunifying Cyprus under a federal state. The 1977 and 1979 high-level agreements between the two Cypriot sides laid down that the proposed federal Cyprus would be bizonal. In fact, bizonality formally became a UN-endorsed parameter for a prospective Cyprus solution under UN Security Council Resolution 649 (1990), which referred to ‘a federation that will be bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects in line with ... [the] 1977 and 1979 high-level agreements’.

However, as we can see from the Secretary-General’s report above, there has been disagreement between the two sides over the meaning of this crucial term. Indeed, their irreconcilable demands on the issue of property, together with their approaches to the question of ‘residency rights’ (particularly in the context of return by displaced persons), show that the two sides’ notions of bizonality have been quite different all along. In addition, these stances suggest that the two sides’ positions on the issue of the restoration of human rights have been not only incompatible but highly debatable. This is largely because of their very different understandings of the Cyprus problem in general, as well as their problematic interpretations of the concept of respect for individual human rights. A closer examination of the positions may help us clarify these disparities.

## The Turkish Cypriot Position

The generally held opinion among Turkish Cypriots is that the property question should be resolved according to what they call ‘the established principle of bizonality’. By implication, this means that it should be resolved through ‘global exchange and compensation’, a model considered as ideal by most Turkish Cypriots – even now.<sup>3</sup> This is because, to say the least, it is seen as the most practical and sustainable way to resolve the problem posed by the awkward fact that a huge proportion (somewhere between 63.8% and 78.5%) of private property in the Turkish Cypriot-administered north actually belongs to Greek Cypriots.

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<sup>2</sup> *Ibid.*, paragraph 98.

<sup>3</sup> Whether ‘global exchange and compensation’ is still preferred by the Turkish Cypriots has not been systematically investigated. However, a number of things suggest that Turkish Cypriots may still have this preference. For example, development and/or trading of Greek Cypriot properties in the north have continued unabated since the April 2004 referenda. Another indication is the public’s generally sceptical response to the legislation (TRNC Law 67/2005 passed in December 2005) concerning Greek Cypriot properties in the north, which provides for compensation and exchange, as well as restitution.

The global exchange and compensation formula was put forward as early as February 1976 in a paper Rauf Denktaş<sup>4</sup> presented at the fifth round of the Vienna Talks.<sup>5</sup> It translates as a kind of 'lump-sum agreement' between the two Cypriot administrations, entailing an exchange of all Turkish Cypriot properties in the south for all Greek Cypriot properties in the north, with compensation to be paid, if necessary, for any difference in the value of the properties, *taking into account the Turkish Cypriot losses before 1974*.<sup>6</sup>

Until 2003, this was a firmly held doctrine of the TRNC<sup>7</sup> government; it was a stance promoted by both the authorities and the mainstream media, and it had the overwhelming support of the public and the major political parties. One should bear in mind that, until the publication in November 2002 of the UN proposal for the comprehensive settlement of the Cyprus problem (the so-called Annan Plan), global exchange and compensation was the property solution adopted by almost every Turkish Cypriot political party, certainly by the mainstream National Unity Party (UBP), the Republican Turkish Party (CTP), the Communal Liberation Party (TKP) and the Democratic Party (DP).

In the TRNC constitution that came into effect in 1985, a provision was included that declared 'abandoned' Greek Cypriot properties in the north as 'the property of the Turkish Republic of Northern Cyprus notwithstanding the fact that they are not so registered in the books of the Land Registry Office'.<sup>8</sup> Following this, the legislation known as the Law for Housing, Allocation of Land, and Property of Equal Value (*İskan, Topraklandırma ve Eşdeğer Mal Yasası* [*İTEM* law], No. 41/1977) was amended numerous times, eventually to allow the granting of title deeds to various categories of TRNC citizens who had been allocated such properties (1995 amendment to the *İTEM* law).

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<sup>4</sup> Rauf Denktaş represented the Turkish Cypriot community at the intercommunal talks between 1968 and 2004. He became the leader of the Turkish Cypriot community in 1973 and was president of every Turkish Cypriot administration from 1974 until 2005.

<sup>5</sup> See Necati Münir Ertekün, *Inter-Communal Talks and the Cyprus Problem* (Nicosia: Turkish Federated State of Cyprus State Printing Office, 1977), pp. 29–32.

<sup>6</sup> *Ibid.*

<sup>7</sup> 'TRNC' is the acronym for the Turkish Republic of Northern Cyprus. The Turkish Cypriot community has had its own separate administration since the bicomunal government of the Republic of Cyprus broke down as a result of violent intercommunal conflict that started in 1963 (three years after the establishment of the Republic). The Cyprus government then became a solely Greek Cypriot administration, but has since claimed to be – and has gradually come to be accepted by the international community as – the legitimate government of the Republic of Cyprus, the only internationally recognized state on the island (remarkably enough, without any formalities, such as a renegotiation of the internationally approved 1960 Accords, having taken place). Following the *de facto* division of the island in 1974, the Provisional Turkish Cypriot Administration of 1964–74 became the Autonomous Turkish Cypriot Administration, which was afterwards transformed into the Turkish Federated State of Cyprus (13 February 1975). In 1983, the Turkish Cypriots declared independence and the establishment of the TRNC. This declaration was declared by the UN Security Council to be 'legally invalid' (Resolution 541), and no country other than Turkey has since recognized the TRNC.

<sup>8</sup> Article 159 of the constitution; see Appendix II.

Under this law, titles to ‘abandoned’ Greek Cypriot properties, allocated on the basis of properties of ‘equal value’ left in the south, were issued after all rights relating to the latter were transferred to the state (TRNC). This arrangement, adopted in accordance with the above-mentioned article of the constitution, clearly reflected the assumption that a global exchange of properties would be part of an eventual solution. In addition, there are provisions in the *ITEM* law under which certain groups of TRNC citizens who did not necessarily leave any property in the south were given ownership of Greek Cypriot properties,<sup>9</sup> this time the assumption no doubt being that what would not come under global exchange would be dealt with under a scheme of global compensation.

This approach in dealing with so-called abandoned properties stems from what the term bizonality has come to mean to most Turkish Cypriots, a meaning that remains strongly linked with their experience of the 1963–74 period as well as with their interpretation of the events of 1974 and their aftermath.

Turkish Cypriots view the Turkish military operation as a legitimate intervention that brought an end to the suffering of the years between 1963 and 1974, and – disregarding the vastly different and traumatic Greek Cypriot experience of what happened in and after 1974 – that brought peace to the entire island. For them, 20 July 1974 was a turning point, and the Turkish military operation was deemed a ‘peace action’ that:

- a. halted the anticipated annihilation of the Turkish Cypriots, which they believed would have occurred if the Greek/Greek Cypriot coup of 15 July 1974 – which ‘constituted, in fact, the final step towards the materialization of ENOSIS’<sup>10</sup> – had succeeded.
- b. Put an end to Turkish Cypriot suppression by ‘the Greek Cypriots who, for the last twelve years [1963–74], have managed to deprive the Turkish community [in Cyprus] of the economic, administrative and financial resources of the State [of the Republic of Cyprus]; have rendered 1/3 of the Turkish community unemployed and destitute refugees; have tried to reduce

<sup>9</sup> The *ITEM* law established an exchange system of ‘points’ within which values of properties (Greek Cypriot properties in the north and Turkish Cypriot properties in the south) and compensation were stipulated. These ‘points’ can be exchanged for equal value (expressed in points) Greek Cypriot property in the north. They can also be traded (bought or sold) and donated. ‘Points’ as compensation are awarded to: persons who left properties in the south; *mücahids* (fighters in the Turkish Cypriot resistance struggle); closest relatives of martyrs or victims of the events of 1963–74 (martyr being a person killed during the resistance); members of the Turkish forces who fought in the 1974 war and, having received citizenship, settled on the island; veteran soldiers disabled during fighting. Also, immigrants from Turkey who were settled in northern Cyprus as an agricultural labour force in 1975–81 were allowed to purchase ‘points’ at a nominal rate from the government. (On this latter category, see Mete Hatay, *Beyond Numbers: Inquiry into the Political Integration of Turkish ‘Settlers’ in Northern Cyprus*, PRIO Report 4/2005, pp. 13–14.)

<sup>10</sup> Necati Münir Ertekün, *In Search of a Negotiated Cyprus Settlement* (Nicosia: Ulus Matabaacılık, 1981, p. 29).

all the Turkish Cypriots of the island to the status of second class citizens through economic blockades and other oppressive measures; and have used the title of "Cyprus Government" as an instrument of attrition for bringing about the complete capitulation of the Turkish Community, by usurping it through the use of force, violence and terror'.<sup>11</sup>

- c. Brought about a *de facto* bizonal situation, with a safe Turkish zone in the north into which all of the Turkish Cypriot population could move and live as masters of their own destiny away from Greek hegemony.

### Bizonality and Turkish Cypriots

The Turkish Cypriot side interprets the principle of bizonality as 'the manifestation [albeit after the return of some territory to the Greek Cypriot side] of the *de facto* situation on the Island' that 'will form the basis of a future settlement'.<sup>12</sup> Moreover, it is thought to be a solution that was 'not dictated by force of arms (as alleged by the Greek side)',<sup>13</sup> but one that came about as the inevitable consequence of the progressive process of separation of the two communities that had in fact been going on long before 1974.<sup>14</sup>

For Turkish Cypriots, the principle of bizonality is the *key* parameter of a settlement on which there can be no bargaining. Given the fact that their population is much smaller than that of the Greek Cypriots,<sup>15</sup> they see this as the only way to guarantee their security and freedom against the perceived danger of Greek/Greek Cypriot aggression and in the face of what they regard as the Greek Cypriot determination to dominate the island. This principle lies at the core of the Turkish Cypriot side's approach to the 'territory issue', which, as Denктаş put it in February 1976, requires that 'the Turkish zone must be such that all Turks, who wish to do so, live in it as one whole part'.<sup>16</sup> Denктаş also clearly outlined the Turkish Cypriot stance regarding the terms upon which the area of this 'Turkish zone' should be decided:

<sup>11</sup> Quoted from Turkish Federated State of Cyprus, Resolution No. 1 of the Legislative Assembly, adopted unanimously on 5 November 1976.

<sup>12</sup> Zaim Necatigil, *The Loizidou Case: A Critical Examination* (Ankara: SAM Papers No 8/99, 1999), p. 46.

<sup>13</sup> Rauf Denктаş, paper presented at the fifth round of the Vienna Talks on 18 February 1976, in Ertেকün, *Inter-Communal Talks*, pp. 29–32.

<sup>14</sup> The Turkish Cypriots claim that they had to abandon 33 villages between 1955 and 1958, and 103 between 1963 and 1967. According to Patrick, while in 1960 the breakdown of population centres was 392 Greek Cypriot, 117 Turkish Cypriot and 114 mixed, in 1970 it changed to 444 Greek Cypriot, 114 Turkish Cypriot and 48 mixed. He also remarked that 'this classification is misleading since mixed centres were invariably divided into distinct ethnic quarters between which there was little social and economic contact' (Patrick, pp. 8–12).

<sup>15</sup> Throughout the 20th century, Turkish Cypriots have comprised roughly one-fifth of the island's population and Greek Cypriots four-fifths.

<sup>16</sup> Rauf Denктаş, paper presented at the fifth round of the Vienna Talks on 18 February 1976, in Ertекün, *Inter-Communal Talks*, pp. 29–32.

in measuring up the land needed for the Turkish population the area should not be less than their legitimate rights especially having regard to all kinds of usurpations of Turkish land over the years, of illegal acquisition of Turkish land and of preventing – since 1963 – the registration of land in the names of the Turks.<sup>17</sup>

Here, there is a clear presumption regarding the property problems: they are part and parcel of the so-called question of territory and should be handled on the basis of: (a) comparison between what ‘the Turks were forced to abandon over the years’ and what ‘we [the Turks] have now occupied in our own indivisible area’ (i.e. global exchange); and (b) reciprocal compensation.<sup>18</sup>

In the years that followed, the Turkish side rigorously maintained this position, which was entrenched and enhanced in the minds of Turkish Cypriots through frequently repeated public statements such as:

They have no right over the north. In the south, we left them lands far more valuable than the ones they are claiming. Bizonality is an accepted future for Cyprus. As such, the problem would be solved through an exchange of lands and property. *This has been put down on paper by the UN Secretary-General and it has been an accepted fact at the negotiating table for years.*<sup>19</sup>

### The Turkish Cypriot Interpretation of the 1975 Vienna III Agreement

There is another crucial factor that has influenced – and underpinned – the Turkish Cypriot understanding of what the principle of bizonality means with respect to how the property dispute should be resolved. This is the particular way in which the Turkish Cypriot side has come to interpret the so-called Vienna III Agreement reached between the Greek Cypriot and the Turkish Cypriot sides in 1975. Before discussing this, it is important to recall the events that led to that Agreement.

Towards the end of June 1975, a crisis erupted when some Turkish Cypriots trying to cross to the Turkish-controlled area in the north were stopped and beaten up by Greek Cypriot security forces. The Turkish side reacted to this incident by expelling some 800 Greek Cypriots from the north, warning that:

the Turkish side would have no alternative but to transfer all the Greeks in northern Cyprus to the Greek part of the island, if the ill-treatment of Turks

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Statement made by Rauf Denktaş on the Turkish Cypriot *Genç* TV, 17 November 1998; reported by the Public Information Office of the Republic of Cyprus, ‘Turkish Cypriot Press and Other Media’, 18 November 1998; emphasis added.

in the south continued and if the Greek authorities continued to prevent these Turks from crossing to the Turkish-controlled part of the island.<sup>20</sup>

According to an account by Glafkos Clerides,<sup>21</sup> Archbishop Makarios,<sup>22</sup> the Greek Cypriot president at the time, was of the opinion that 'it was more important to keep Greek Cypriots in the north, and particularly in the Karpass area, than Turkish Cypriots in the south'.<sup>23</sup> Makarios was apparently also concerned that 'should a serious incident take place against Turkish Cypriots in the south, Turkey may use it as an excuse to mount a military operation in the south'.<sup>24</sup> The issue was subsequently taken up by Glafkos Clerides and Rauf Denктаş during the third round of Vienna Talks, resulting in the Vienna III Agreement of 2 August 1975.

This Agreement stipulated that Turkish Cypriots then residing in the south (some 10,700 in number) were free to move to the north, if they wished to do so, with the assistance of UNFICYP; and Greek Cypriots then remaining in the north (about 10,000 in number) were free to stay there and were to be provided with access to the facilities they needed to lead a normal life. The Greek Cypriots in the north would also be permitted to move to the south 'at their own request and without having been subjected to any kind of pressure'. In addition, it was agreed that 'priority would be given to reunification of families, which may also involve the transfer of a number of Cypriots at present in the south to the north'.<sup>25</sup>

The results of the Agreement are well known. Within the space of a few months, the number of Turkish Cypriots remaining in the south was reduced to 130. The Greek

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<sup>20</sup> Statement made by Rauf Denктаş, *The Times* (London), 1 July 1975.

<sup>21</sup> Glafkos Clerides represented the Greek Cypriot community at various stages of the intercommunal talks, both before and after 1974. He was the acting president during a brief period following the coup and the subsequent Turkish operation in 1974 (between July and December of that year). He was elected (twice) and served as president between 1993 and 2003.

<sup>22</sup> Makarios was archbishop and primate of the Orthodox Church of Cyprus (1950–77). In 1960, he was elected the first president of the ROC. He kept both posts until his death in 1977. He remains the most venerated Greek Cypriot leader to this day.

<sup>23</sup> Glafkos Clerides, *Cyprus: My Deposition* (Nicosia: Alithia Publishing, 1992), pp. 295–299.

<sup>24</sup> *Ibid.*

<sup>25</sup> For the full text of Vienna III Agreement, see Appendix I. It is worth noting here that this was a kind of gentlemen's agreement between the interlocutors, and was drafted in a way that enabled each side to include what really was significant from its own political perspective. In the case of the Turkish Cypriot side, what mattered was to enable Turkish Cypriots to safely move to the north; in the case of the Greek Cypriot side, what mattered was freedom for Greek Cypriots to stay and live under decent conditions in the north. For example, while the Agreement provided for the safe passage of Turkish Cypriots from the south to the north, it contained no provision for Turkish Cypriots wishing to remain in the south. This could be construed as being due to a tacit assumption that the latter would be an exceptional situation, and no doubt reflected the Turkish Cypriot side's desire for that to be the case. On the other hand, the provisions for Greek Cypriots wishing to remain in the north were very clearly expressed, and it was stated that they would be given every assistance necessary to lead a normal life. Here again, in an *e contrario* interpretation, one could argue that the Turkish Cypriots choosing to remain in the south would not benefit from such help.

Cypriot population in the north also shrank, but more gradually, such that it was only around 500 by the early 1990s.

Given the two sides' very different experiences of the context and their more or less conflicting concerns, it is perhaps not surprising that their interpretations of the Vienna Agreement have always diverged. The Turkish Cypriot side refers to the Agreement as the '1975 Vienna Population Exchange Agreement' or the 'Voluntary Re-grouping of Population Agreement', and has come to see it as simply meaning that 'the Turkish Cypriots living in the south would be allowed to move to the north, if they wished to do so, and the Greek Cypriots living in the north would be allowed to move to the south, if they desired so'.<sup>26</sup> The Greek Cypriots, in contrast, talk about it as the 'Vienna III (Humanitarian) Agreement', which, if implemented properly, 'would have allowed 20,000 Greek Cypriots and Maronites to stay and live a normal life in the occupied Karpasia Peninsula and the Maronite villages'.<sup>27</sup>

It is important to emphasize that the Greek Cypriots accepted this agreement under the pressure of circumstances and despite their general unease at the time that it might help the Turkish Cypriot aim of 'partition'. They agreed because they decided it was the only way to stop the Turks from 'expelling' the remaining 10,000 Greek Cypriots in the north. They also wanted to ensure that the Turkish Cypriots trying to cross to the Turkish-controlled north would not be attacked by Greek Cypriot paramilitaries, as they feared such attacks might trigger further southward incursion by the Turkish army.<sup>28</sup>

One Greek Cypriot leader who opposed the Agreement was Dr Vassos Lyssarides, then leader of the Greek Cypriot political party EDEK (United Central Democratic Union). According to Clerides, his objection was that 'by allowing the Turkish Cypriots to go north we impliedly accepted that the solution would be based on a bizonal federation, and that it would constitute an impediment to the return of all refugees to their homes'.<sup>29</sup>

In fact, as it turned out, this is *exactly* how the Turkish Cypriots have come to interpret the Agreement. The following statement (co-authored by a prominent Turkish law professor and a Turkish Cypriot former Supreme Court judge) sums up the Turkish Cypriot side's attitude on this matter:

This Agreement, reached under the auspices of the UN Secretary-General and implemented in September 1975 *under UN supervision*, consolidated the peace reached as the result of the Turkish Peace Operation. The *voluntary regrouping of populations* made it feasible for the two peoples of Cyprus to

<sup>26</sup> TRNC Public Information Office, Cyprus Issue, Main Negotiations; available at <http://www.trncpio.com/ingilizce/ingilizcesayfa.htm> (accessed 11 December 2005). See also Kenan Atakol, *Turkish & Greek Cypriots: Is Their Separation Permanent?* (Ankara: METU Press, 2002), pp. 100–101.

<sup>27</sup> ROC Embassy in the USA, 'The Cyprus Problem in Perspective'; available at [www.kypros.org/Embassy/](http://www.kypros.org/Embassy/) (accessed 11 December 2005).

<sup>28</sup> Clerides, *Cyprus*, pp. 295–299.

<sup>29</sup> *Ibid.*

live in complete security in their respective zones. No intercommunal fighting or acts of violence took place in Cyprus since the implementation of the Agreement.... The peace achieved by the Turkish Peace Operation became a permanent feature in the island.<sup>30</sup>

The suggestion made here – in a way that can only be perceived as offensive by Greek Cypriots – is that not only had peace been achieved through the Turkish military operation, but the division of the island itself was voluntarily ‘finalised’ with the approval of the UN.

According to this view of things, the Agreement ‘was reached for an exchange of populations as a first step towards the establishment of a bi-zonal federal Republic.’<sup>31</sup> ‘The juridical and bi-zonal status of the two communities was established’ by this Agreement whereby ‘the freedom of movement to the North of the Turks enclaved in the South and freedom of movement of Greeks living in the North to the South was accepted by the intercommunal negotiators’.<sup>32</sup> Therefore, it ‘is the very foundation of a bi-zonal solution for the two communities accepted both by Clerides [in 1975] and Makarios [in 1977]’ and later in 1979 by Kyprianou.<sup>33</sup>

Coming back to the issue of property, the implication of all this was clear to the Turkish Cypriots: naturally the two sides would negotiate the respective compensation due to either community arising from this exchange.<sup>34</sup> Indeed, the Agreement ‘presupposes the settlement of reciprocal property claims through global exchange and/or compensation’.<sup>35</sup>

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<sup>30</sup> Turhan Feyzioğlu & Necati Münir Ertekün, *The Crux of the Cyprus Question* (Nicosia, 1987), p. 39; emphasis added. (Ertekün is a former judge of the pre-1964 ROC Supreme Constitutional Court, former president of the Turkish Cypriot Supreme Court, and former Turkish Cypriot minister of foreign affairs.) On this Turkish Cypriot claim that after 1974 Greek Cypriots moved to the south on a voluntary basis, a June 2006 judgment of the TRNC Constitutional Court is worth noting. In its ruling as to the constitutionality of the TRNC law for ‘compensation, exchange and restitution of immovable properties’ of displaced Greek Cypriots, the Court adopts an interpretation of the TRNC constitution that is consistent with international law. However, when discussing the question of displaced Greek Cypriots’ property rights in the north, it still maintained that ‘many Greek Cypriots abandoned their movable and immovable properties and *on their own volition* migrated to the South in accordance with the 1975 Exchange of Populations Agreement’ (emphasis added).

<sup>31</sup> Ertekün, *Inter-Communal Talks*, p. 17.

<sup>32</sup> Turkish Federated State of Cyprus, Resolution No. 1 of the Legislative Assembly, adopted unanimously on 5 November 1976.

<sup>33</sup> See statement by Rauf Denktaş on 21 March 1981, in Ertekün, *In Search of...*, pp. 40–41.

<sup>34</sup> *Ibid.*

<sup>35</sup> Rauf Denktaş, letter to the UN Secretary-General (A/55/986-S/2001/575), 31 May 2001. Examples of ‘political reality constructing’ that include these kinds of one-sided, self-serving interpretations with undue disregard for the central concerns of the other community exist on both sides. For a perceptive discussion of this, see Michael Moran, ed., *Rauf Denktaş at the United Nations: Speeches on Cyprus* (Huntingdon: Eothen Press, 1997), pp. 93–100. Here, the author gives an analysis of the antithetical interpretations by the two Cypriot sides of the Vienna III Agreement and their similarly antithetical views on whether or not there existed ‘two separate and distinct administrations’ in Cyprus in July 1975.

Now, this Turkish Cypriot reading of the Agreement as providing ‘juridical’ basis for what Turkish Cypriots think constitutes the established principle of bizonality, and therefore for what should happen as regards property arrangements, is obviously and troublingly misguided. It seems that the Turkish Cypriot side *preferred* to understand the Agreement as something like the 1923 Lausanne Exchange Treaty between Turkey and Greece, and probably partly for this reason actually called it the ‘Population Exchange Agreement’. And, since the Greek Cypriots agreed to this exchange, it was perfectly reasonable for the Turkish Cypriots to regard the properties of the Greek Cypriots who moved to the south as ‘abandoned’ (as was the case with the properties left behind after the exchange between Greece and Turkey some eighty or so years ago). Yet, it is clear that there is little sense, if any, in making a comparison between the deal in the August 1975 Vienna Agreement (in which there was no mention of any property arrangement) and the 1923 Lausanne Exchange Treaty. In fact, one need not be a legal expert to realize that the Turkish Cypriot reading of this agreement has been far-fetched.

### The Greek Cypriot Position

The Greek Cypriots regard the property issue – which for them is linked inseparably to the issue of return – as a problem of ‘respect for basic human rights’. The fact that so many Cypriots are displaced and dispossessed of their properties is first and foremost a consequence of human rights violations inflicted by Turkey in 1974. Therefore, the problem can only be resolved by removing these violations, which means giving all displaced persons – Greek Cypriots and Turkish Cypriots alike – the unqualified right to repossess and return to their former homes and properties. This is considered by most Greek Cypriots as not just a legal imperative but the sole morally acceptable solution to the problem.

The Greek Cypriot formula for property settlement, as expressed in the various Greek Cypriot proposals for a solution, stipulates two conditions:<sup>36</sup> (a) substantial territorial concessions by the Turkish Cypriot side, which will allow a considerable number of displaced Greek Cypriots to be resettled in their original homes and properties under Greek Cypriot administration; and (b) the application throughout the island of the so-called three freedoms, that is, freedom of movement, freedom of settlement and the right to property. The ‘three freedoms’ element is understood to include the right of all still-displaced persons (after territorial adjustment) to return to

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<sup>36</sup> See, for example, ‘Statement by Mr Tassos Papadopoulos on the Territorial Proposals of the Greek Cypriot Side on 31 March 1977’, in Ertekün, *Inter-Communal Talks*, pp. 137–139. See also Greek Cypriot Proposals, 1989; available at <http://www.cyprus.gov.cy/moi/pio/pio.nsf/All/CFA4FC4421DF27A4C2256D6D0033FE51?OpenDocument> (accessed 21 July 2006).

their homes and native land,<sup>37</sup> as well as the *unqualified* restitution of their property rights.<sup>38</sup>

In line with this stand, the Greek Cypriot policy concerning Turkish Cypriot properties in the south differs from the Turkish Cypriot policy vis-à-vis Greek Cypriot properties in the north in one important respect: here, dispossessed Turkish Cypriots in principle continue to be regarded as the owners of the properties. For the first 15 years following the 1974–75 displacement, a couple of administrative orders applied to Turkish Cypriot properties.<sup>39</sup> In 1991, however, a law was passed to regulate their use and management.<sup>40</sup> The law describes these properties as ‘abandoned as a result of the massive removal of the Turkish Cypriot population, due to Turkish invasion, to the areas under the occupation of the Turkish invasion forces and the fact that this population is banned from moving to the areas of the Republic of Cyprus’.<sup>41</sup>

According to the legislation, the Minister of the Interior is appointed as ‘custodian’ of all Turkish Cypriot properties (in the south). His function is ‘to protect these properties and also to allocate them on a rational basis in order to serve the basic housing needs and reactivate [*sic*] the thousands of Greek-Cypriot Refugees’.<sup>42</sup> Due compensation resulting from these operations is to be paid to the owners after an overall settlement, and until that time will be kept in the ‘Turkish Cypriot Properties Fund’, also managed by the custodian.

The position that displaced persons’ rights to repossess their properties and to return to their original areas must be uncompromisingly defended generally receives vast support among the Greek Cypriot community, for adopting any other position, they believe, would amount to condoning Turkey for its ‘crimes’ in Cyprus. Moreover, it would also mean endorsing the Turkish Cypriot idea of bizonality, and accepting the *de facto* situation on the island, which was brought about by ‘illegal use of armed force’.

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<sup>37</sup> Andreas Theophanous, *The Political Economy of Cyprus* (Nicosia: Intercollege Press, 1996), p. 42.

<sup>38</sup> Report of the Secretary-General, para 107.

<sup>39</sup> Issued under ROC Laws of 1962 and 1966 on Requisition of Property: ROC Official Gazette, August 1975 and September 1975.

<sup>40</sup> ROC Law of 1991/139.

<sup>41</sup> ROC Ministry of the Interior, ‘Charter Of Citizens' Rights To Use of T/C Properties’ (Nicosia, 2001), Preface. Needless to say, the word ‘abandoned’ here is used just as euphemistically as in the TRNC constitution in relation to Greek Cypriot properties in the north.

<sup>42</sup> *Ibid.* Most of these properties have been allocated (on the basis of a rent that is 80% of the market rent) to Greek Cypriot displaced persons. The rest are rented out (according to the legislation, on the basis of the principle of public benefit) at market rate to the government of the Republic of Cyprus, authorities of local administrations and organizations working for public benefit. The legislation stipulates that, in exceptional cases, such properties can be rented out to persons who were not displaced but whose agricultural land in the border villages was damaged or became inaccessible owing to the occupation, or to persons either parent of whom was displaced. The legislation in question also provides for compulsory acquisition and compulsory distribution or sale of Turkish Cypriot properties under certain conditions (ROC Law 1991/139 and consecutive amendments; see Appendix III.)

A crucial factor sustaining this position is that Greek Cypriots generally think of the Cyprus problem as having started in July 1974. This, of course, is very different from the Turkish Cypriots' understanding of the problem, which they regard as having started in earnest in 1963 with the breakdown of the bicomunal ROC government. The Greek Cypriot side tends to overlook the conflict that existed between the two communities and the dire situation of the Turkish Cypriots before 1974, as well as the Greek/Greek Cypriot coup and *enosis* bid that preceded and precipitated the Turkish military operation. Ignoring all this, Greek Cypriots cast the problem as one of an arbitrary 'invasion and occupation by the Turkish forces of substantial territory of the Republic of Cyprus'. On this point, it is worth quoting an assessment by Clerides:

There are others on the Greek Cypriot side who advocate the idea of ... presenting internationally the Cyprus problem as one of invasion and occupation.... The advocates of this theory forget that the international community is well aware of the following facts: (a) The Cyprus problem started in 1963 and the Turkish invasion occurred in 1974, i.e. 10 years later.... (c) During the same period between 1963–1974 there were no Turkish occupation forces in the island. On the contrary there was a Greek division from the mainland.<sup>43</sup>

When speaking to the UN General Assembly in September 2004, Tassos Papadopoulos, the Greek Cypriot president, stated the official Greek Cypriot view as follows: 'The Cyprus problem is not always perceived in its correct parameters. The fact remains that this problem is the result of a military invasion and continued occupation of part of the territory of a sovereign state'.<sup>44</sup>

The Greek Cypriot idea of a correct or just solution of the Cyprus problem primarily entails reversing the 'present *faits accomplis* of the invasion, which were caused by Turkey's expansionist strategy', and thus securing 'the natural and national survival of Cypriot Hellenism in its ancestral land'.<sup>45</sup> This is a continuous theme in Greek Cypriot official pronouncements, as seen in the following statement Papadopoulos made on 20 July 2005: '31 years are far too many, but the time factor will not make us accept a solution which will not secure the natural and national survival of Hellenism in Cyprus.'

Greek Cypriots find it difficult to accept what the Turkish Cypriots view as the essential aspect of bizonality, namely the creation of a Turkish zone in the northern part of the island. This is unbearable to Greek Cypriots, because it implies the eradication of all that is historically 'Greek' in that part of the island, including Greek

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<sup>43</sup> Clerides, *Cyprus*, p. 469.

<sup>44</sup> Statement by Tassos Papadopoulos at the general debate of the UN General Assembly, 23 September 2004; available at <http://www.un.org/webcast/ga/59/statements/cypeng040923.pdf> (accessed 8 September 2006).

<sup>45</sup> Message by Glafkos Clerides, President of the Republic of Cyprus, on the occasion of Cyprus Independence Day, 1 October 2000; available at [www.hri.org/news/greek/ana/2000/00-10-02.ana.html](http://www.hri.org/news/greek/ana/2000/00-10-02.ana.html) (accessed 8 September 2006).

Cypriots being 'ethnically cleansed from their ancient ancestral lands'<sup>46</sup> and the settlement in Greek Cypriot properties of 'Anatolian settlers and Turkish Cypriots from the free area'.<sup>47</sup> They fear that 'the Greek Cypriot refugees will be prevented from returning to their homes and properties and that, due to the colonisation of northern Cyprus by settlers from Turkey, the Greek Cypriots will be gradually squeezed out of Cyprus'.<sup>48</sup>

Accordingly, Greek Cypriots interpret bizonality to mean 'two zones each administered by one community', *subject to* the application throughout the island of the basic prerequisites of freedoms of movement, settlement and right to property.<sup>49</sup> This, as argued in the Greek Cypriot Proposals of 1989, was 'accepted by both sides in Guideline 3 of the Makarios–Denktash High Level Agreement [of 1977]' and 'reaffirmed in the Kyprianou–Denktash Agreement [of 1979]'. It is conceded that the Turkish Cypriots should constitute the majority of the population in the Turkish Cypriot-administered zone that, in their opinion, should be achieved through 'equitably drawn' territorial arrangements. In other words, territorial arrangements should be such as to enable a considerable proportion of displaced Greek Cypriots to return to their homes under Greek Cypriot administration. Then, 'provided that most Turkish Cypriots choose to reside in the Turkish Cypriot administered Province, the Turkish Cypriots will constitute a majority there, even if all Greek Cypriot refugees were to return to that Province'.<sup>50</sup>

## Human Rights and Greek Cypriots

As explained above, central to the Greek Cypriot formula for resolving the property issue is 'the principle of respect for human rights'.<sup>51</sup> The Greek Cypriot side considers this to be *the* fundamental parameter of a settlement; a parameter on which there can be no bargaining. Moreover, the principle must apply to all displaced persons and without restrictions. This requirement is vital not only to restore and protect the rights of individuals, but because it is the only way to ensure the reversal (as much as

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<sup>46</sup> American Hellenic Media Project (AHMP), 'Letter to Rand McNally', 21 October 1995; available at <http://www.ahmp.org/mcnally2.html> (accessed 2 April 2006).

<sup>47</sup> 'An Overview of Turkey's Aims in Cyprus, Turkey's Violations of Human Rights in Cyprus'; available at [http://www.hri.org/Cyprus/Cyprus\\_Problem/hr/hr\\_12.htm](http://www.hri.org/Cyprus/Cyprus_Problem/hr/hr_12.htm) (accessed 2 April 2006).

<sup>48</sup> See Greek Cypriot Proposals, 1989.

<sup>49</sup> For a useful discussion contrasting the Turkish Cypriot and Greek Cypriot views on bizonality, see Palley, p. 155.

<sup>50</sup> Greek Cypriot Proposals, 1989.

<sup>51</sup> In fact, 'the principle of respect for human rights' was also included in the Turkish Cypriot proposals, but with the emphasis on restrictions. For example, in the 1977 'Constitutional Proposals of the Turkish Cypriot Side', ensuring 'respect for human rights' is put down as a general principle informing the establishment of the 'Federal Republic of Cyprus'. However, the application of this principle is made 'subject to the fundamental requirement of a bi-zonal federation and viability and security of each federated state'. See Ertokün, *Inter-Communal Talks*, p. 120.

possible) of the consequences of the *de facto* division created in 1974. It is a *sine qua non* for the aim of achieving a ‘reunited’ Cyprus. Greek Cypriot President Tassos Papadopoulos described this aim in a speech he gave to the Foreign Policy Association in New York on 15 September 2005:

When I speak about reunification, I mean reunification of *the territory*, the society, the economy and the institutions.... [W]hen the Greek Cypriots rejected the Annan Plan, they did not reject a solution of the Cyprus problem. They rejected that particular Plan, because it did not provide for the reunification of which I have spoken of before. There was not a reunification of *the territory*, of the economy, of the society, of the institutions – on the contrary it contained division and arrangements which would have perpetuated division. This, Greek Cypriots will never accept.<sup>52</sup>

As such, reunification of the island constitutes ‘the first national priority of the Greeks of Cyprus’ because it is, among other things, ‘the only settlement of the Cyprus conflict that can safeguard the survival of Cypriot Hellenism in its ancestral lands and thus restore the unity of its historical space’.<sup>53</sup>

Indeed, in the eyes of many Greek Cypriots, the struggle for ‘the principle of respect for human rights’, in connection with the right of displaced persons to repossess their properties as well as to return to original areas, involves a far more complex issue than simply *individual* rights. It also crucially entails defending a *collective* right, namely the ‘right of Cypriot Hellenism to the ancestral lands’. And the foundation for this is a belief in the historical ‘Greekness of Cyprus’, which is ingrained in the Greek Cypriot ‘collective consciousness’.<sup>54</sup>

Consider, for example, this extract from an article entitled ‘Refugees Must Reclaim, Rebuild and Return’, published in the *Lobby for Cyprus Newsletter*:

The refugees, both in Cyprus and the diaspora, must ... make the persistent call that they intend to reclaim what is theirs.... We cannot overstate the importance of the refugees exercising the right to use their title-deeds and reclaim what is theirs. In order to preserve *the Greek Cypriot identity throughout the island* it is preferable that as many Greek Cypriots as possible

<sup>52</sup> Available at [http://www.fpa.org/topics\\_info2414/topics\\_info\\_show.htm?doc\\_id=305998](http://www.fpa.org/topics_info2414/topics_info_show.htm?doc_id=305998) (accessed 8 September 2006).

<sup>53</sup> Caesar V. Mavratsas, ‘The Ideological Contest Between Greek-Cypriot Nationalism and Cypriotism 1974–1995: Politics, Social Memory and Identity’, *Ethnic and Racial Studies*, vol. 20, no. 4 (October 1997); available at <http://www.cyprus-conflict.net/Nationalism.htm> (last accessed 20 January 2006).

<sup>54</sup> *Ibid.* See also Yiannis Papadakis, ‘The Politics of Memory and Forgetting in Cyprus’, *Journal of Mediterranean Studies*, vol. 3, no. 1, pp. 139–154; available at <http://www.cyprus-conflict.net/Nationalism.htm> (last accessed 20 January 2006); and Takis Hadjidemetriou, ‘A School with New Freedoms’, in *Cyprus – Greece – Turkey: Different Interpretations of the Same History* (printed bilingually in Greek and Turkish) (Nicosia: OPEK, 2005).

resettle on a permanent or temporary basis in the *liberated* area of the north.<sup>55</sup>

This regularly stressed and deep-seated sentiment on the Greek Cypriot side is what largely sustains the idea that a 'correct' solution to the Cyprus problem should repudiate 'an ethnically cleansed division of the homeland' through enforced bizonal formulas and restore the 'Greekness' of (what are significantly and emotively referred to as) the *ancestral* lands in the north, lost since 1974.

In accordance with this conviction, the Greek Cypriot side has sought internationally enforceable means (outside the UN framework of intercommunal talks) to restore these Greek Cypriot rights in the north. It thus became a party in various applications to the European Court of Human Rights (ECHR), either directly through government appeals (e.g. the case of *Cyprus v. Turkey* lodged in 1994) or by supporting individual appeals to the Court (notably the cases of *Loizidou v. Turkey* referred to the Court in 1993 and *Arestis v. Turkey* lodged in 1998). The expectation here has been that the Court would: (a) confirm that, as alleged by the Greek Cypriots, 'Turkey's occupation of Cyprus is unlawful'; and (b) uphold Greek Cypriots' rights to repossess and return to their properties in the north.

### The Greek Cypriot Interpretation of ECHR Judgments

The defining moment of the Greek Cypriot efforts at the ECHR came when – in the now famous case of *Loizidou v. Turkey* – the Court found Turkey in breach of the Human Rights Convention and ruled to maintain Greek Cypriot applicant Ms Loizidou's right to her property.<sup>56</sup> This was described by Clerides, the Greek Cypriot president at the time, as a 'great success' that 'will have immense effects on the Cyprus problem'.<sup>57</sup>

The Court decision was hailed by many Greek Cypriots as a solid affirmation of their view that the property issue was a matter of rectifying an 'illegal situation' (rather than a political matter), and that it was entirely a question of human rights violations in the north brought about by the division in 1974. Since the judgment, the idea that through enforcement of existing international law the property issue can be resolved in a way compatible with Greek Cypriot concerns and expectations has gained ground on the Greek Cypriot side. This is the way that will ensure 'proper' reunification of the island – by guaranteeing, without qualification or prescription, displaced persons' right to return to and regain their properties.

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<sup>55</sup> Issue no. 14 (28 September 2001), emphasis added. Lobby for Cyprus is an influential Cypriot group that describes itself as 'the voice of the Greek Cypriot refugees' and 'a non-party-political organisation with the aim of reuniting Cyprus'.

<sup>56</sup> *Loizidou v. Turkey* (Merits), ECHR judgment, 18 December 1996.

<sup>57</sup> Statement by Glafkos Clerides on 18 December 1996; available at <http://www.hri.org/news/cyprus/cna/1996/96-12-18.cna.html> (accessed 9 October 2006).

For example, note how a later Court judgment ruling on compensation to be paid to Ms Loizidou by Turkey was depicted by Lobby for Cyprus:

The significance of this case is not so much in its financial impact but in the *political repercussions*. The idea of offering Greek Cypriot refugees exchange of properties or compensation in order to surrender ownership of their land is dead.

The stunning victory by Titina Loizidou against Turkey is likely to impact in a major fashion on the UN brokered talks aimed at reuniting Cyprus.... No refugee and/or land owner will surrender their land to facilitate a bizonal bicomunal settlement which will lead to the permanent division of Cyprus.<sup>58</sup>

Similar views were echoed by a Greek Cypriot human rights activist who described the judgment as follows:

[It addresses] the effects and implications of Europeanisation on Cyprus and the Cyprus conflict, the political implications for European Union membership for Cyprus and indeed for Turkey and the effects of such an outcome on the internal dynamics of the Cypriot conflict.... [The] Loizidou v. Turkey judgment serves as a firm legal stronghold in attempts to solve the Cyprus problem: whatever the political solution may be, *the rightful owners of land in the northern part of Cyprus can only be absolved of their property rights when they themselves decide to surrender that land*.... [It] is *the re-affirmation that this court ruling has offered to the numerous UN Security Council resolutions, calling for Turkey to withdraw its illegal military presence in northern Cyprus and allow for the return of the forcibly expelled population, that is the refugees*.<sup>59</sup>

Especially since December 2003, when Turkey eventually paid Ms Loizidou the Court-ordered compensation, the idea that the property issue should be resolved on the premise of 'international legality' has become a matter of almost unshakable faith. Moreover, the Greek Cypriot side believes that Cyprus's recent accession to the EU and Turkey's current negotiations for membership serve to strengthen its position even further.

Indeed, it is now standard in Greek Cypriot official statements to refer to 'the just resolution of land and property issues in accordance with the decisions of the ECHR' as an essential element of any solution to reunify the island. As Papadopoulos put it in his speech at a seminar on international law and human rights held in Limassol on 9 October 2004:

<sup>58</sup> 'The Case of Loizidou v. Turkey: The Political Fallout', 10 August 1998. The Lobby statement is available at <http://www.lobbyforcyprus.org> (accessed 16 December 2005).

<sup>59</sup> Eleni Apeyitou, 'The Case of Loizidou vs. Turkey', *Human Rights Action*, 24 September 1998, emphasis added; available at <http://www.hr-action.org/action/> (last accessed 16 December 2005).

We will not abandon the rights of the Cypriot citizens, as they were confirmed by the European Court, and we will not accept any settlement which will not be in line with the respect of the human rights of all Cypriots, Greek Cypriots and Turkish Cypriots, the fair solution of property issues, according to the ECHR's decision, and the respect of the refugees' right to return to their properties.<sup>60</sup>

This attitude can be compared to the Turkish Cypriot unilateral approach in relation to the Vienna III Agreement, which has been interpreted in a manner that goes far beyond the purpose it was intended to serve. Similarly, the Court's judgment in the *Loizidou v. Turkey* case is widely believed by the Greek Cypriots to be a ruling on issues that, in fact, are outside the scope of protection of individual human rights as laid out in international law. The judgment is generally taken as a definitive recognition by the Court that displaced persons' right to repossess and return to their properties cannot be restricted in any way. In other words, this is a right that is not negotiable.

Having thus chosen to attach a broader meaning to the decision of the Court, the Greek Cypriot side appears to take little notice of views expressed by international law experts, such as: 'when actually made part of a lasting legal agreement to settle the Cyprus situation, *the property regime for a bizonal Cyprus*, including a regulated right to return could well receive the Court's approval'.<sup>61</sup> Accordingly, the Greek Cypriot side tends to ignore various alternative solutions to property disputes in conflict circumstances, which often qualify the exercise of property rights either to allow for protection of other rights, or to accommodate other important concerns such as public benefit or civil and international peace.

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<sup>60</sup> Available at <http://www.greeknewsonline.com/modules.php?name=News&file=article&sid=2070> (accessed 8 September 2006).

<sup>61</sup> See Hoffmeister; emphasis added.



## THE ANNAN PLAN PROPERTY PROPOSALS

**T**HE ANNAN PLAN included detailed provisions for a territorial adjustment and a property regime to resolve the claims of 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’.<sup>1</sup> The Plan proposed the reduction of Turkish Cypriot-administered territory from around 36% to around 29% (of the territory of the 1960 Republic of Cyprus). Properties in the area of territorial adjustment were to be reinstated to dispossessed owners. The UN estimated that this would allow 54% of Greek Cypriot displaced persons to return to their original homes and properties under Greek Cypriot administration, and that, as a result, approximately a quarter of the population of the north would have to be relocated.<sup>2</sup>

Table 3.9 (constructed on the basis of Greek Cypriot estimations) illustrates the land distribution in the two would-be ‘constituent states’ (namely, the Greek Cypriot state and the Turkish Cypriot state) after the Plan’s territorial adjustment (but prior to the implementation of the property provisions in areas outside the territorial adjustment area). The shaded areas in the table represent the privately owned land to which the Plan’s property provisions would apply.

In the areas outside territorial adjustment (both north and south), property rights were to be exercised partly by way of reinstatement and partly through compensation. Subject to certain exceptions and special rules, dispossessed owners would generally receive back one-third of their property while being compensated for the remaining two-thirds.

### Turkish Cypriot Reactions

Although Turkish Cypriots approved the Annan Plan in the April 2004 referendum by a majority of two-thirds, they were distinctly ambivalent about the Plan’s property

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<sup>1</sup> Article 10 in the Main Articles of *The Comprehensive Settlement of the Cyprus Problem* (Annan Plan), 31 March 2004 (fifth version).

<sup>2</sup> *Report of the Secretary-General*, para. 118.

**Table 3.9** Estimated land ownership in the ‘constituent state’ territories as envisaged in the Annan Plan territorial adjustment but before the implementation of the property provisions outside the territorial adjustment area (based on 1964 figures by the Greek Cypriot Department of Lands and Surveys and the Planning Bureau).

Ownership	<i>Turkish Cypriot State</i>		<i>Greek Cypriot State</i>	
	Area in donums	%	Area in donums	%
Greek Cypriot (including Church)	1,088,793	56.04	3,029,935	63.34
Turkish Cypriot (including <i>Evkaf</i> )	365,368	18.79	466,960	9.76
Public	484,605	24.95	1,271,958	26.59
Other	4,153	0.21	15,119	0.32
<i>Total</i>	<i>1,942,919</i>	<i>100.00</i>	<i>4,783,974</i>	<i>100.00</i>

regime. There were worries within the community about the potential social and economic impact of this regime, not least because a large number of Turkish Cypriots (around 70,000 or one-third of the Turkish Cypriot community) would have had to be relocated owing either to territorial adjustment or to reinstatement of properties to dispossessed Greek Cypriot owners.<sup>3</sup> More crucially, many Turkish Cypriots were opposed to the Plan because it contained arrangements (e.g. reinstatement) that were incompatible with their preferred global exchange and compensation scheme and, hence, their idea of bizonality.

The Turkish Cypriot ‘yes’ vote cannot be seen to indicate a change in the Turkish Cypriot stance on the property issue. Rather, one might say that – in the light of a number of other important factors, including the prospect of EU membership, the general Turkish Cypriot desire to join the system of international law, and not least Turkey’s explicit support for the Plan – the Turkish Cypriots accepted the proposed settlement as a *compromise*, especially as regards property.

Also, at that time Turkish Cypriots had another serious concern: the matter of ECHR judgments in property-related cases brought by Greek Cypriots against Turkey.<sup>4</sup> It was feared that, without an overall solution, the implementation of these judgments would lead to a complete reversal of the property situation back to what it was before 1974. The Plan’s provisions for both property and residency – restricting restitution and allowing permanent settlement by persons from the other community to be limited to the extent that the majority status of Turkish Cypriots in their own zone would not be threatened – clearly represented a better alternative to such an eventuality. This was undoubtedly a significant factor that persuaded a great number of Turkish Cypriots to

<sup>3</sup> *Ibid.*

<sup>4</sup> Particularly in *Loizidou v. Turkey*, and after Turkey’s payment to Ms Loizidou of the compensation ruled by the Court.

view the Plan's property regime as a 'lesser evil' and accept it as a necessary compromise.<sup>5</sup>

## Greek Cypriot Reactions

The Greek Cypriots were also unhappy with the Annan Plan property regime, but of course for different reasons. Economics were also a concern for this side, and many Greek Cypriots warned that the impact of the regime on the island's property market would be disastrous.<sup>6</sup> However, a more critical objection concerned the issue of 'respect for human rights'.

As we mentioned earlier, it has been the general understanding on the Greek Cypriot side that the 'right of return' and the 'right to property' are non-negotiable, sacrosanct human rights that have to be fully respected notwithstanding any other concerns. Thus, the proposed property arrangements, which provided for certain qualifications to the exercise of displaced persons' property rights (e.g. limited restitution), were viewed by the majority of Greek Cypriots as rejecting displaced persons' 'inalienable right to full and unqualified restitution'. They saw the Plan's property regime as a set of shameless provisions that were in violation of the norms of international law, European conventions and the EU *acquis communautaire*. Most Greek Cypriots felt that their stance on property had repeatedly and clearly been shown to be the 'correct' one by the numerous ECHR judgments on property-related cases against Turkey.<sup>7</sup>

Moreover, Cyprus – run by a wholly Greek Cypriot administration – would soon accede to the European Union. Once there, the struggle to get Turkey to respect the Greek Cypriot basic human right to properties in the north could be continued under much better conditions, especially given Turkey's own EU membership aspirations. Not surprisingly, all this helped to enhance the Greek Cypriot belief that a settlement closer to its ideal solution was now a real possibility, much more than ever before.

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<sup>5</sup> For example, see speeches by Mustafa Akıncı (leader of the Movement for Peace and Democracy), *Kıbrıs'ta*, 12 December 2003, and Mehmet Ali Talat (then prime minister of the TRNC and leader of the CTP), *Kıbrıs*, on 9 April 2004 (Turkish Cypriot press).

<sup>6</sup> For example, see the following two articles by prominent Greek Cypriot businessman Constantinos G. Lordos: 'Economic Aspects of the Annan Plan and the Plan's Property Proposals', 26 January 2004; available at [http://www.tesev.org.tr/etkinlik/c\\_lordos.php](http://www.tesev.org.tr/etkinlik/c_lordos.php) (accessed 22 November 2005); and 'Surely Turkey Should Be Made To Bear Some of the Cost', *Cyprus Mail*, 1 April 2004.

<sup>7</sup> Note that this is the very reverse of the impact these cases had in the north, as one would expect.



# CONCLUSION

**A**S WE HAVE TRIED TO SHOW, key to the Turkish Cypriot position on property is ‘the principle of bizonality’, and for the Greek Cypriot side ‘the principle of respect for human rights’. Both principles have been nominally established parameters for any Cyprus settlement for many years. However, the two sides’ interpretations of, and emphases on, the two principles have been significantly different and have ultimately led to their seemingly irreconcilable positions on how the property issue should be resolved.

What the Greek Cypriots try to achieve in the name of ‘the principle of respect for human rights’ – that is, ensuring that all displaced persons have a right to fully repossess and return to their properties – is regarded as a distinct threat by the Turkish Cypriots. In Turkish Cypriot eyes, such moves represent nothing less than a design to undermine and eventually erase ‘bizonality’. The majority of the Turkish Cypriots regard bizonality as a necessary defensive measure in the face of an apparently unremitting Greek Cypriot desire to dominate the island. This, the Turkish Cypriots believe, would once again lead to the reduction of the Turkish Cypriot community to second-class citizens in a Greek-dominated state, as in the period 1963–74.

Greek Cypriots, for their part, see Turkish Cypriot efforts to ‘strengthen bizonality’ – that is, to have maximum Turkish Cypriot control in the northern zone by limiting the number of Greek Cypriot inhabitants there – as a gross violation of the principle of respect for human rights, as well as international and EU norms. Not only that: many Greek Cypriots see such efforts as attempts to legitimize the demographic change on the island that has been brought about since 1974, a form of ‘ethnic cleansing’ calculated to create a primarily Turkish Cypriot north, which – given the close geographical proximity of Turkey and what is regarded as Turkey’s ‘expansionist designs’ – is directed ultimately to changing the primordial Greek character of the island into a Turkish one.

The juxtaposition of these two contradictory perspectives is a central feature of the Cyprus problem, and all disagreements on the property issue can be traced to this fundamental conflict.

The political implication of this conclusion is to be found within the larger argument that the only possible *mutually agreed* solution to the problem is a compromise

between the two sides' positions. So far, each side's approach to the principles of 'bizonality' and 'respect for human rights' has been primarily informed by that side's very different experience of the island's recent traumatic past, and has therefore been one-sided and categorical. To achieve a compromise, what seems to be most needed is a fresh, more flexible and forward-looking reconsideration by both sides on how to understand these two basic principles.

## **VIENNA III AGREEMENT– 2 AUGUST 1975 (UN DOCUMENT S/11789)**

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.



## **ARTICLE 159 OF THE CONSTITUTION OF THE TRNC: RIGHT OF THE STATE TO OWNERSHIP**

1. (a) All immovable properties registered in the name of the Government of Cyprus before the 16th of August 1960 and all immovable properties transferred to the Government of Cyprus after the 16th of August 1960; roads, waters, water resources, ports, harbours and shores, docks and piers, lakes, riverbeds, and lakebeds, historical cities, buildings, remains and castles and the sites thereof, natural wealths and underground resources, forests, defence buildings and installations, green areas and parks belonging to the public ; public village roads and pathways in the fields ; and buildings used for public services;
  - (b) All immovable properties, buildings and installations which were found abandoned on 13th February, 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the abovementioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined; and
  - (c) All immovable properties found within the area of military installations, docks, camps and other training grounds specified in the 1960 Treaty of Establishment and its Annexes;  
situated within the boundaries of the Turkish Republic of Northern Cyprus on 15th November 1983, shall, be the property of the Turkish Republic of Northern Cyprus notwithstanding the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry Office records shall be amended accordingly.
2. Notwithstanding any other provisions of this Constitution, the ownership of the immovable properties specified in sub-paragraphs (a) and (c) of paragraph (1) above shall not be transferred to real and legal persons.  
Provided that the making of the necessary adjustment by the State to public roads and to public village roads and field pathways is exempted from the above provision.  
Easements and other similar rights for specified periods and long term leases over such immovable properties may be established and registered in

the manner and under the conditions prescribed by law for purposes of public interest.

The establishment and registration of such rights, the period of which exceeds fifty years, shall be subject to the approval of the Assembly of the Republic.

3. Out of the properties specified in subparagraph (b) of paragraph (1) above, the transfer of the right of ownership to real and legal persons of immovable properties other than forests, green areas, monuments and parking places, waters, underground waters, natural resources and buildings, installations and sites required for defence, public administration and military purposes and those required for purposes of town and country planning and soil conservation, shall be regulated by law.
4. In the event of any person coming forward and claiming legal rights in connection with the immovable properties included in subparagraphs (b) and (c) of paragraph (1) above, the necessary procedure and conditions to be complied with by such persons for proving their rights and the basis on which compensation shall be paid to them, shall be regulated by law.
5. Places of religious worship and the immovable properties in which they are situated shall not be transferred to real and legal persons. The State shall take the necessary measures for the safeguard, maintenance and preservation of such places and, properties.

## EXCERPTS FROM ROC LAW NO. 139/1991

### **The Turkish Cypriot Properties Management and Other Matters (Temporary Provisions) Law**

Whereas, because of the massive removal of the Turkish-Cypriot population as a result of the Turkish invasion to the areas occupied by the Turkish invasion forces and the prohibition by such forces of the movement of such population within the areas of the Republic of Cyprus, properties which consist of movable and immovable property were abandoned,

And whereas it became essential, for the protection of these properties, to take immediate measures,

And whereas the measures taken included the administration of such properties by a special committee which was constituted through administrative arrangements,

And whereas the regulation by law of the issue of the Turkish-Cypriot properties in the Republic of Cyprus became essential.

The House of Representatives enacts as follows:

1. **This Law** may be cited as the Turkish-Cypriot Properties (Administration and Other Matters) (Temporary Provisions) Law of 1991.

2. **In this Law**, unless the context otherwise requires—

...

‘Turkish Cypriot’ means a Turkish Cypriot who does not have his usual residence in the areas controlled by the Republic and includes a company or other legal person which is controlled by a Turkish Cypriot, as well as by the Evcaf;

...

3. The Minister is appointed by this Law as Custodian of the Turkish-Cypriot properties and administers same in accordance with the provisions of this Law and exercises the functions conferred on him by this Law during the abnormal situation and until final settlement of this matter is reached.

...

5. Without prejudice to the provisions of this Law, the Custodian, in administering the Turkish-Cypriot properties and in the exercise of his functions by virtue of this Law, shall have all the rights and obligations of the Turkish Cypriot owner.

6. The Custodian has the following functions which he exercises with the assistance of public officers—

...

- (a) To accept service of actions, references or other judicial process concerning Turkish-Cypriot property, to represent and bind the owner of any Turkish-Cypriot property before any judicial, administrative or other authority in the Republic, to give or receive notifications by virtue of the provisions of any law applicable in connection with Turkish-Cypriot property and to be present at local enquiries and negotiations concerning such property.

...

Provided that in the case of immovable property, the Custodian, in the exercise of his functions by virtue of this section, cannot take action as a result of which after the termination of the operation of this Law—

- (i) The owner of the immovable property would be other than the owner as at the date of entry into force of this Law, except in exceptional cases in which this would be beneficial for the owner or necessary in the public interest; or
- (ii) The right of the owner concerning the property would be in any way restricted or charged more than what would be absolutely necessary or beneficial for the property or the owner or necessary in the public interest:

Provided further that the alienation of Turkish-Cypriot property in any way with the purpose of issuing a title deed for the benefit of any person in accordance with the provisions of the Immovable Property (Registration, Tenure and Valuation) Law or the Compulsory Acquisition Law, is not considered to be beneficial for the owner or his property or necessary in the public interest.

...

7. The Guardian, in administering the Turkish-Cypriot properties and in the exercise of his functions by virtue of this Law, shall look after the needs of refugees and at the same time the interest of the owners of the said properties on the basis of prescribed criteria:

...

9. The payment of any sum due to an owner of Turkish-Cypriot property in relation to such property is suspended during the abnormal situation, which exists in the Republic of Cyprus by reason of the Turkish invasion.

...

11. (1) A Special Fund under the name 'Fund of Turkish-Cypriot Properties' is constituted by this Law and for the purposes thereof, which is under the administration of the Custodian. In the Fund are deposited all receipts and all payments are made therefrom, in accordance with the provisions of this Law.

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