

## **CYPRUS: BRIDGING THE PROPERTY DIVIDE**

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## CYPRUS: BRIDGING THE PROPERTY DIVIDE

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

The property issue is one of the most intractable knots in the settlement of the Cyprus dispute, without which stability in the Eastern Mediterranean remains fragile. Greek and Turkish Cypriots own tens of thousands of buildings and parcels of land on both sides of the divided island. A convincing plan to resolve conflicting claims would give great support to reunification efforts and persuade external partners of Cypriots' will to find a compromise, even as the 2011 electoral calendar sets what is in effect a deadline for the present negotiations. But as Cypriot politicians and Turkey fail to come to terms, the property question is increasingly being atomised by individual actions and the courts – a process that will be more expensive, slow and inefficient for all than a comprehensive property settlement. With a comprehensive deal proving elusive, heavy court and administrative penalties and the actions of Cypriot individuals mean that the property issue can no longer be ignored or avoided. New ideas are urgently needed.

The passage of time since the events that led to mass displacements – 47 years in some cases – means many properties have been assigned to new users by local authorities, sold, destroyed or significantly developed. The two communities have grown apart and established new socio-economic structures in their respective areas, having lived behind closed front lines for three decades and interacted only superficially since crossing points opened in 2003. They have adopted opposing approaches to property, Greek Cypriots emphasising return and Turkish Cypriots resettlement, and a body of local legislation reflects this divergence. There are also disagreements about the amount and value of property each community owns on both sides of the island.

Attempts to find a negotiated settlement have tried to tackle property, which has implications for the individual and collective human rights of the island's 210,000 displaced persons and their heirs, at least one fifth of the population, the majority of whom are Greek Cypriots. UN Secretary-General Kofi Annan's efforts in 2002-2004 were the most comprehensive. But these failed, together with the broader talks, and left more questions open than they provided answers. While there is general agreement

that Cyprus should become a bizonal, bicomunal federation, the two communities have diametrically opposed ideas about how bizonality should affect the right to return. Greek Cypriots stress displaced persons' right to return and enjoy property as enshrined in international law. Turkish Cypriots emphasise that they should remain the majority in their zone and that this will impact how many Greek Cypriots can regain their property. In fact, fewer than one quarter of Greek or Turkish Cypriots say that they will definitely or probably return to their old homes if these fall under the other constituent state.

In the absence of a political settlement, more Cypriots are turning to costly and slow judicial solutions. International courts have found Turkey liable for blocking Greek Cypriot access to their properties in the north and imposed substantial financial penalties. But the courts are recognising that long-term users also have rights and that individual owners should be able to voluntarily exchange properties. The European Court of Human Rights (ECHR) especially has been encouraging Cypriots to rely on domestic remedies, such as a Turkish Cypriot property commission to which several hundred displaced Greek Cypriots have already applied.

In the round of reunification talks underway since September 2008, the two leaders have agreed in principle to settle the property dispute through a mix of restitution, exchange and compensation. Any compromise should balance the rights of displaced Greek Cypriots with those of the displaced Turkish Cypriots, as well as take into account the accommodation needs of a mutually agreed number of Turkish settlers. This migration to Cyprus contravened the spirit of the Fourth Geneva Convention, but the immigrants' children may now have been born and lived their whole lives on the island.

The failures of the past three decades prove that neither side is likely to achieve its ideal settlement, and flexibility is needed. Turkish Cypriots should recognise that while they want to retain a majority in their constituent state, two thirds to three quarters of property in their area was owned by Greek Cypriots in 1974, when the present division of the island took place. They must understand that

the right to restitution holds great importance in Greek Cypriot discourse. Turkish and Turkish Cypriot leaders must remind their populations that the division of the island has no legal basis.

Politicians in Ankara, especially, should relaunch and sustain their outreach to Greek Cypriots to assure them of Turkey's commitment to seeing through a settlement and return of property. For Ankara in particular, indefinite occupation would invite higher costs, both in court judgements and in its efforts to join the European Union. Greek Cypriots, on the other hand, should pay heed to international court rulings that challenge their conviction that the rights of original owners and their heirs supersede all other considerations. A compromise solution will have to accept that not all Greek Cypriots will automatically be able to return to their old properties within a new bizonal, bicommunal federation.

## RECOMMENDATIONS

### To the leaderships of the Greek Cypriot and Turkish Cypriot communities:

1. Convert the Greek Cypriot proposal to link negotiations on property, territory and settlers into the first stage of the international conference on all negotiating topics proposed by the Turkish Cypriots.
2. Commission in both zones a joint, rapid and representative audit of land owned by the other community to achieve a mutually agreed categorisation of properties.
3. Prepare expeditiously and jointly an economic impact study on the various proposals to redevelop property in both zones, including examination of the feasibility for normalisation of the ghost resort of Varosha ahead of a political settlement.
4. To bridge disagreements on basic approaches to the property issue:
  - a) both sides should state that all pre-1974 home owners have the right in principle to reclaim their primary residence;
  - b) the Greek Cypriot side should prepare public opinion to accept that rights to restitution in a Turkish Cypriot constituent state may be restricted by bizonality and in mutually agreed cases such as public usage;
  - c) the Turkish Cypriot side should offer as much reinstatement of property ownership as possible within the context of bizonality, while protecting the rights of the current users, especially if they themselves are displaced and are using the property as a primary residence; and
- d) alternative accommodation should be provided for those who have to vacate current housing and have no other home.

### To the Greek Cypriot leadership:

5. Make legal provision for property exchanges between displaced owners from both sides that have been approved by the Turkish Cypriot Immovable Property Commission (IPC).
6. Stop discouraging Greek Cypriot applications to the IPC.
7. Allow Turkish Cypriots residing in the north who own abandoned properties in the south to seek the same remedies open to owners residing elsewhere.

### To the Turkish Cypriot leadership:

8. Ensure fairness and transparency in IPC procedures, compensation calculations and payment details and commit to extending its mandate beyond the end-2011 deadline.
9. Remove residency restrictions on inheritance of property in the north by heirs of displaced Greek Cypriots.
10. Support ongoing talks with a construction freeze on Greek Cypriot-owned property in the north.

### To the Turkish leadership:

11. Relaunch and sustain efforts to assure Greek Cypriots of Turkey's commitment to a settlement, including the handing back of property and territory along the lines of previous UN plans.

**Nicosia/Istanbul/Brussels, 9 December 2010**

## CYPRUS: BRIDGING THE PROPERTY DIVIDE

### I. INTRODUCTION

Before ethnic tensions rose at the end of the British colonial period, leading to the creation of an independent Republic of Cyprus in 1960, the Greek Cypriot and Turkish Cypriot communities lived intermingled and dispersed across the island. Greek Cypriots, about 80 per cent of the inhabitants at the time, were relatively more numerous in towns, while the Turkish Cypriots, around 18 per cent of the population, were more rural.

The first major displacements came during the constitutional crisis of 1963-1964, when Greek Cypriots in effect took over the government, and Turkish Cypriots were forced into ghettos and groups of villages. Then, in 1974, after Athens backed a coup in Nicosia that aimed to annex Cyprus to Greece, Turkey invoked its treaty rights to restore the 1960 constitutional order and invaded the northern third of the island.<sup>1</sup>

That action, condemned by UN General Assembly (UNGA) and Security Council resolutions, left Turkish armed forces in control of 37 per cent of the island's territory, home to less than 20 per cent of the combined population.<sup>2</sup> The Greek Cypriots' zone is around 60 per cent, including the two British Sovereign Base Areas (3 per cent of the island's territory). The remaining area, again about 3 per cent, makes up the Buffer Zone, or Green Line, controlled by the United Nations Force in Cyprus (UNFICYP).

Between 1963 and 1974, almost half the 570,000 population of Cyprus lost property as a result of the inter-communal strife or military action; in absolute numbers, roughly three times as many Greek Cypriots as Turkish Cypriots were affected, but as a proportion of their com-

munity, substantially more Turkish Cypriots were displaced. The population has now virtually doubled, to 1.1 million, almost all living in two separate zones with little contact for nearly four decades.

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<sup>1</sup>For previous Crisis Group reporting on Cyprus, please see Crisis Group Europe Reports N°171, *The Cyprus Stalemate: What Next*, 8 March 2006; N°190, *Cyprus: Reversing the Drift to Partition*, 10 January 2008; N°194, *Reunifying Cyprus: The Best Chance Yet*, 23 June 2008; and N°201 *Cyprus: Reunification or Partition?*, 30 September 2010.

<sup>2</sup>UN resolutions on Turkey's military intervention and subsequent occupation include Security Council Resolutions 353 (20 July 1974) and 360 (16 August 1974), as well as General Assembly Resolution 3212 (1 November 1974).

## II. PROPERTY AND THE CYPRUS CONFLICT

### A. TURKISH CYPRIOT MANAGEMENT OF GREEK CYPRIOT PROPERTY

Between 162,000 and 170,000 Greek Cypriots fled from the north in 1974.<sup>3</sup> Greek Cypriots say they left behind 46,000 properties<sup>4</sup> and claim to have ownership rights over 78 per cent of the private land in the north. A Turkish Cypriot official estimated the surface area owned by Greek Cypriots is about 1.5 million Cypriot dönüms (about 2,000 sq km, 60 per cent of the 3,355 sq km currently under Turkish Cypriot control), of which Turkish Cypriots are using “a very significant portion”.<sup>5</sup>

In 1977, the Turkish Cypriot administration passed the “Law for Housing, Allocation of Land, and Property of Equal Value”, according to which displaced Turkish Cypriots were allocated abandoned Greek Cypriot properties through a “points exchange” system. They received coupons in exchange for properties left in the south, with which they could obtain abandoned Greek Cypriot properties of equal value in the north.

Between 1975 and 1981, Turkey encouraged its own citizens to settle in northern Cyprus,<sup>6</sup> contravening the spirit of the Fourth Geneva Convention.<sup>7</sup> Greek Cypriots say

Ankara and the then-hardline Turkish Cypriot leadership wished to create colonising-style facts on the ground. The immigrants were also in part a Turkish attempt to foster economic self-sufficiency and eradicate widespread poverty in the north after 1974. Those who had fled from the south were economically and socially vulnerable.<sup>8</sup>

After unilaterally declaring independence in 1983,<sup>9</sup> Turkish Cypriots amended the 1977 property law through Article 159 of their 1985 constitution and gave “title deeds” for Greek Cypriot properties in the north to displaced persons, who in exchange ceded to the administration any claim they had to abandoned property in the south.<sup>10</sup> Others, including veterans of the armed conflicts with the Greek Cypriots and some settlers, also received such “title deeds”. Through this law, which did not mention Greek Cypriots’ property rights, the Turkish Cypriot administration essentially expropriated all abandoned immovable Greek Cypriot properties in the north and handed some of them over to its citizens. A former high-level Turkish Cypriot told Crisis Group: “The majority of properties were distributed as a form of patronage”, not to the most needy, but to those with the best contacts to those running the north.<sup>11</sup>

The 2005 European Court of Human Rights (ECHR) ruling in *Xenides-Arestis v. Turkey* (see below) required the Turkish Cypriots to amend Article 159 to allow for restitution as a remedy for Greek Cypriot displaced owners, along with compensation and exchange. That same year, the Turkish Cypriot administration passed the “Law for the Compensation, Exchange and Restitution of Immovable Properties” and established the Immovable Property Commission (IPC) to handle Greek Cypriot property claims.<sup>12</sup>

As described below, Greek Cypriots are increasingly resorting to this domestic remedy, but the situation on the ground is also becoming more entrenched. Typical is

<sup>3</sup> Lower figure quoted in Özlem Oğuz Çilsal, Praxoula Antoniadou Kyriacou and Fiona Mullen, “The Day After III: The Cyprus Peace Dividend for Turkey and Greece”, International Peace Research Institute, Oslo, 1/2010. The higher figure is from the Republic of Cyprus foreign ministry. According to 2001 UNFICYP data, there were 165,000 internally displaced persons (IDPs) in the south and 45,000 in the north, a total of 210,000 throughout the island. Quoted in “Cyprus: Lack of Political Settlement Prevents the Displaced from Fully Enjoying Their Property Rights”, Internal Displacement Monitoring Centre, 18 December 2007, p. 52.

<sup>4</sup> Crisis Group telephone interview, Greek Cypriot official, October 2010.

<sup>5</sup> Crisis Group interview, Turkish Cypriot official, Nicosia, October 2010.

<sup>6</sup> Perhaps half the estimated 300,000 residents of the Turkish Cypriot north were either born in Turkey or are children of such settlers. “The Turkish state made announcements in Mersin (a Turkish city on the Mediterranean coast) in 1975, asking people to come to Cyprus. My parents moved here when I was very young. I have lived here all my life. I live in an old Greek Cypriot house, passed on to me by my Turkish Cypriot mother-in-law, who got it with ‘equal value points’ in 1974. We made significant improvements to the house”. Crisis Group interview, son of a Turkish immigrant in Morphou, 11 October 2010.

<sup>7</sup> Article 49 of the Fourth Geneva Convention states: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupyp-

ing Power or to that of any other country, occupied or not, are prohibited, regardless of their motive . . . . The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.

<sup>8</sup> “There was a stalemate in the economy. The few slots of original Turkish Cypriot land became very expensive. We had serious problems in the 1980s”. Crisis Group interview, Turkish Cypriot official, Nicosia, October 2010.

<sup>9</sup> The self-declared “Turkish Republic of Northern Cyprus” (TRNC) is officially recognised only by Turkey. Security Council Resolutions 541 (1983) and 550 (1984) declared the entity illegal and called on all states to refrain from recognising it.

<sup>10</sup> “Law for Housing, Allocation of Land, and Property of Equal Value” (Law No. 41/1977).

<sup>11</sup> Crisis Group interview, Brussels, November 2010.

<sup>12</sup> Law 67/2005. The two foreign members, who satisfy the law’s requirement for international composition, are Hans-Christian Krüger, former Secretary of the European Commission of Human Rights, and Daniel Tarschys, former Secretary General of the Council of Europe.

Morphou (Güzelyurt in Turkish), a north Cypriot town with 18,000 residents<sup>13</sup> that was mostly Greek Cypriot before 1974.<sup>14</sup> Some of the Turkish Cypriots who settled there after 1974 had already moved twice, starting with the upheavals of the early 1960s. In 2004, the Turkish Cypriot residents nevertheless voted in favour of a UN reunification plan that for many would have meant moving again.<sup>15</sup> This was in part a vote for legal security in the future, and many Morphou residents also wanted clarity on how they would be compensated for the years they have spent maintaining Greek Cypriot property.<sup>16</sup>

However, the atmosphere has changed since 2004, when 76 per cent of Greek Cypriots rejected the UN reunification plan, while 65 per cent of Turkish Cypriots supported it. Until then, many Turkish Cypriots had held back to see the details of an eventual settlement, only modestly building on and developing Greek Cypriot land and properties. After the referendum, developers were convinced there was no likelihood of a settlement and no point in respecting Greek Cypriot property rights any longer. Fed by the boom in global demand for property, building projects have now carpeted much of the northern Cypriot coastline in villas and hotels, though there has been a construction slowdown in the past two years, due partly to the worldwide economic downturn, partly to rekindled hopes of a settlement by talks that began in 2008 and partly to uncertainties regarding property court cases (see below).

## B. GREEK CYPRIOT MANAGEMENT OF TURKISH CYPRIOT PROPERTY

Turkish Cypriots say they abandoned 130 villages in the south, starting in 1963.<sup>17</sup> They claim ownership of some

16,200 properties, 5,000 of which, they say, are now completely destroyed, 5,500 damaged and 5,700 inhabited by Greek Cypriot displaced persons.<sup>18</sup> Greek Cypriots acknowledge that the Turkish Cypriots own 11,000 properties. Overall, the Turkish side claims 22.8 per cent of the land in the south, while Greek Cypriots use a figure closer to 14 per cent, which is similar to outsiders' estimates.<sup>19</sup> According to an international official, the total land surface owned by Turkish Cypriots is roughly 500,000 dönüms (670 sq km),<sup>20</sup> about 12 per cent of the 5,509 sq km in the Greek Cypriot zone.

Greek Cypriot policy toward abandoned properties in the south has differed significantly from the Turkish Cypriot approach. Republic of Cyprus law continues to regard Turkish Cypriots as legal owners in the government-controlled areas, even though their property was placed under the custodianship of the interior ministry in 1991. This so-called Guardian Law prohibited the sale, exchange or transfer of abandoned Turkish Cypriot properties, at least without the consent of the custodian, due to the "unsettled situation" arising from Turkey's military intervention in 1974.<sup>21</sup> Some, however, were leased to displaced Greek Cypriots and some were used for public sector projects.<sup>22</sup> A "Turkish Cypriot Properties Fund"

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portunity to develop their properties or till their land and had to sell at knock-down prices in order to survive. Thousands had to leave the island in that eleven-year period and there was a huge erosion of Turkish Cypriot property [ownership]". Crisis Group email correspondence, Turkish official, December 2010.

<sup>18</sup> Crisis Group interview, Turkish Cypriot official, Nicosia, October 2010.

<sup>19</sup> Ayla Gürel and Kudret Özersay, "Politics of Property in Cyprus", International Peace Research Institute, Oslo, 2006. The 22.8 per cent includes land once owned by Turkish Muslim charitable *vakıfs* (foundations), the remains of which are now collected in an institution known as Evkaf, but which was redistributed under British colonial rule. Claims based on the Evkaf argument have generally not been successful in the courts (see the discussion of Varosha below). Halil Giray, "Kıbrıs ile İlgili Rakamsal Bilgiler" [Numerical Information on Cyprus], June 1993, another detailed but privately distributed study of the competing claims, cited in Gürel and Özersay.

<sup>20</sup> Crisis Group interview, international official, Cyprus, November 2010.

<sup>21</sup> The exceptions include those Turkish Cypriots who can prove they live permanently abroad and possibly those who can prove permanent settlement in the government-controlled areas for a minimum of six months. Despite this being the official position, "there is no formulated policy or guidance from government [regarding how to prove this permanent residence], and it is not clear how effectively the rule is being implemented". Crisis Group email correspondence, Metin Kemal, Turkish Cypriot lawyer practicing in the Republic of Cyprus, 1 December 2010.

<sup>22</sup> Examples include the site of the airport in Larnaca and power station in Limassol. Many Turkish villages in the south are empty; a Turkish Cypriot study lists 34 that are now completely in ru-

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<sup>13</sup> Crisis Group interview, Turkish Cypriot mayor of Morphou, Nicosia, 12 October 2010.

<sup>14</sup> According to the Republic of Cyprus foreign ministry, Morphou's pre-1974 population was around 7,500 Greek Cypriots.

<sup>15</sup> Most of the displaced have completely cut their ties with the south. "I lived in Limassol when the fighting broke out. I was wounded in the clashes. I took refuge in a British base, before escaping to Mersin (Turkey). From there, I moved to Bostancı village (in north Cyprus) and then to Doğancı village near Morphou, where I now live in a former Greek Cypriot house. We have been through a lot. I didn't even go back to see my property in the south, I don't want anything to do with it". Crisis Group interview, Turkish Cypriot displaced person residing in Morphou, 11 October 2010.

<sup>16</sup> A Turkish Cypriot who was displaced from Paphos at age nine said, "when I moved to my house [in Dikmen village], it was falling apart. I took care of it; I rebuilt it. What will I do if the Greek Cypriot owner wants it back? I am 45 years old and alone. I have nowhere else to go". Crisis Group interview, Nicosia, 13 October 2010.

<sup>17</sup> "Between 1963 and 1974 the Turkish Cypriots were in enclaves that corresponded to 3 per cent of the island. They had no op-

was established to pay compensation for loss-of-use and expropriation to owners after a solution, but it is not clear how much money is in it.<sup>23</sup>

Some Turkish Cypriots have tested their right of restitution from the state custodian. In 2004 a Turkish Cypriot who wanted to return to his property in the south and was initially told that he would have to await a final settlement of the Cyprus problem won a case at the Supreme Court of the Republic of Cyprus.<sup>24</sup> The decision was based on the fact that the applicant had resided in the government-controlled areas for over six months prior to claiming his abandoned property. The government reiterated this official position in its 2009 report to the UN Human Rights Council, saying that Turkish Cypriots who return from the north or abroad to live permanently in the government-controlled areas are entitled to use their property and adding that they are immediately eligible for payments, whether they reside in the government-controlled areas or have settled permanently abroad.<sup>25</sup> But some legal experts say this is not the case, pointing to a section of the Guardian Law that clearly prohibits any payment to Turkish Cypriots while the “unsettled situation” on the island continues.<sup>26</sup>

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ins. “Destroyed Turkish Villages in South Cyprus”, presidency office, Turkish Republic of Northern Cyprus, Nicosia, 2009.

<sup>23</sup> “I have been looking for that Fund. I don’t know where it is or how much is in it”. Crisis Group telephone interview, Achilles Demetriades, Greek Cypriot lawyer who has handled Turkish Cypriot property cases, 8 November 2010.

<sup>24</sup> The applicant, Arif Mustafa, was residing in the south and therefore argued that he did not fall within the definition of “Turkish Cypriot” in the context of the Guardian Law. The interior ministry had initially rejected his request for return, and the Supreme Court only ruled in favour after the attorney general withdrew his opposition to proceeding with the case. About three years passed before Mustafa could re-claim his property. Crisis Group email correspondence, Metin Kemal, Turkish Cypriot lawyer practicing in the Republic of Cyprus, 1 December 2010. In its final decision, the Supreme Court stated that since the purpose of the law was to protect the abandoned properties in the owner’s absence, he should be given his property back. *Arif Mustafa v. The Ministry of Interior*, Supreme Court of Cyprus, Case No. 125/2004.

<sup>25</sup> A/HRC/WG.6/6/CYP/1, paragraph 88, submitted on 16 September 2009.

<sup>26</sup> “I personally know of Turkish Cypriots whose requests for the return of properties were rejected because refugees were living in them. The government then offered to buy the property from Turkish Cypriot owners while making it clear there would be no payments for compensation or rents collected while the ‘unsettled situation’ [to which the law refers] continued .... A Greek Cypriot, wherever he may be resident, [can] apply for compensation from the IPC in [the] north for loss of use of his property from 1974 to the present. By contrast, because of Section 9 [of the Guardian Law, which prohibits payments], a Turkish Cypriot, wherever he may be resident, is prohibited by law from obtaining rents and income which ha[ve]

The legal situation regarding abandoned Turkish Cypriot property changed with an amendment to the Guardian Law in April 2010. A Turkish Cypriot residing in the UK brought a case to the ECHR in 2004, and, pre-empting a court judgement, the Greek Cypriot government settled in January 2010, paying the applicant €500,000 for loss of use of one whole and one half share in two houses in Larnaca in which Greek Cypriot displaced persons were living.<sup>27</sup> The case forced the government to amend the law, after which Turkish Cypriots who reside in government-controlled areas or abroad, even if they had moved there after 1974, can claim their property. It also introduced a new section regarding compensation, saying individuals who suffer a violation of rights guaranteed by the European Convention of Human Rights can sue the District Court for compensation of loss and expenses. However, other sections of the Guardian Law contradict this by prohibiting payments, and the law still does not allow Turkish Cypriot owners residing in the north to claim their property.<sup>28</sup>

Until recently, few Turkish Cypriots who meet the conditions of residency abroad or in government-controlled areas have sought to enforce their property rights, partly because many received from their administration new “title deeds” to abandoned Greek Cypriot properties and partly because they would have to go through Greek Cypriot courts. Many also feel they no longer have access to their property in the south, though Greek Cypriots say they do and that they remain lawful owners of their abandoned properties, since the Republic of Cyprus does not recognise the renunciation of property rights in the south to the Turkish Cypriot administration.

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been derived from his property. The difference in the way the law treats a Greek Cypriot and a Turkish Cypriot is strikingly discriminatory”. Crisis Group email correspondence, Metin Kemal, Turkish Cypriot lawyer practicing in the Republic of Cyprus, 1 December 2010.

<sup>27</sup> “Making it easier for Turkish Cypriots to get their property back”, *Cyprus Mail*, 26 February 2010. The case was *Nezire Sofi v. Cyprus*.

<sup>28</sup> A Turkish Cypriot lawyer pointed out that while the amendment is an improvement, it is too early to assess its true legal impact for two main reasons: first, the right of individual petition under the European Convention of Human Rights has been recognised since 1989, so it is not clear what this new section adds to the existing legal framework; secondly, Section 9 of the Guardian Law, which prohibits any payment to Turkish Cypriots until the “unsettled situation” ends, remains in place. Crisis Group email correspondence, Metin Kemal, Turkish Cypriot lawyer practicing in the Republic of Cyprus, 1 December 2010. “The law still infringes the human rights of Turkish Cypriots”. Crisis Group interview, Emine Çolak, Turkish Cypriot activist and human rights lawyer, Nicosia, 13 October 2010.



Turkish Cypriots are now increasingly seeking more rights. The latest example is the case of an individual living in the UK who was preparing in November 2010 to sue the Greek Cypriot government for parcelling off and giving a portion of her family's property in the south to land developers.<sup>29</sup> Some Turkish Cypriots who have either exhausted domestic courts or are barred from applying to them because they reside in the north are taking their claims against the Greek Cypriot government to the ECHR (see below).

### C. THE UN AND THE PROPERTY ISSUE

Most initiatives for a negotiated Cyprus settlement, principally facilitated or mediated by the UN, have dealt with the return of displaced persons, property and territory. Security Council resolutions have called for the withdrawal of Turkish troops and restoration of the pre-1974 status quo, and the General Assembly has passed resolutions saying that all displaced persons should be allowed to return home.<sup>30</sup>

The 1977-1979 "High-Level Agreements" between the Greek Cypriot and Turkish Cypriot leaders provided the foundations on which all settlement talks seek to build. In February 1977, a four-point agreement for a non-aligned, bi-communal federal republic was negotiated between former Archbishop (and President) Makarios III and Rauf Denktash. In May 1979, Denktash and Syros Kyprianou, Makarios's successor as president, agreed on a ten-point initiative that prioritised "reaching agreement on the resettlement of [the sealed-off ghost resort of] Varosha under UN auspices simultaneously with the beginning of consideration by the interlocutors of the constitutional and territorial aspects of a comprehensive settlement", and called for inter-communal talks to start without delay on the basis of the 1977 Makarios-Denktash guidelines.

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<sup>29</sup> "Fobbed off by the Guardian", *Cyprus Mail*, 20 November 2010. The plaintiff said her family received no compensation and complained that, to her knowledge, no money was placed in the Turkish Cypriot Properties Fund by the interior ministry for her family's property.

<sup>30</sup> UNGA Resolution 3212 says "all refugees should return to their homes in safety", the view expressed by the Security Council in Resolution 365. UNGA Resolution 3395 (20 November 1975) calls upon the parties "to undertake urgent measures to facilitate the voluntary return of all refugees to their homes in safety and to settle all other aspects of the refugee problem". UNGA Resolution 33/15 (9 November 1978) and Resolution 34/30 (20 November 1979) both call for "respect of human rights of all Cypriots and the instituting of urgent measures for the voluntary return of the refugees to their homes in safety". UNGA Resolution 37/253 (13 May 1983) requests "respect of fundamental freedoms of all Cypriots, including the freedom of movement, the freedom of settlement and the right to property".

#### 1. From the "draft framework" to the "set of ideas"

In 1986, UN Secretary-General Javier Perez de Cuellar proposed a Draft Framework Agreement. This went beyond the 1977-1979 accords by introducing the concept of a bizonal state, which the Security Council indirectly acknowledged by taking note of it in Resolution 585 (13 June 1986).

In 1992, Secretary-General Boutros Boutros-Ghali introduced a "set of ideas" for a secular, bizonal, bicomunal federal republic with two politically equal federated states. Going further, it envisaged a property settlement with relatively detailed remedies for displaced persons, to be implemented after territorial adjustments were made.<sup>31</sup> Although this was endorsed by the Security Council in Resolution 774 (26 August 1992), talks between the leaders faltered shortly afterwards.

The Greek Cypriots insisted on the right to return during the negotiations,<sup>32</sup> while Turkish Cypriots ruled out any restitution, citing the precedent of population transfers between Turkey and Greece in 1923-1924 and asserting that all property claims had to be settled by compensation or exchange.<sup>33</sup> These negotiations also considered revised boundaries that would have given roughly 28 per cent to Turkish Cypriots and 72 per cent to Greek Cypriots. The latter would have recovered Morphou and the ghost resort of Varosha (Maraş in Turkish), but not the port of Famağusta. The key parameter for the Greek Cypriots in any

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<sup>31</sup> It would have set up a bicomunal committee to arrange for housing, along with each community's own agency to deal with all matters related to displaced persons. All titles of properties would be exchanged on a global communal basis between the two agencies, and displaced persons would be compensated by their community's agency. It proposed to allow the return of some displaced persons, who could move in after users were relocated, and give the occupant the right to remain if he/she is also a displaced person or if the property has been substantially improved or used for public purposes. It put an undefined cap on the number of displaced persons who could return every year and also introduced the option of long-term leasing and other commercial arrangements.

<sup>32</sup> David Hannay, *Cyprus: The Search for a Solution* (New York, 2005), p. 38. Hannay was the UK's special representative for Cyprus between 1996 and 2003.

<sup>33</sup> Turkish Cypriots often also cite the 1975 Vienna III Agreement, signed by Turkish Cypriot leader Rauf Denktash and Greek Cypriot President Glafcos Clerides. It allowed for transfers of the remaining Turkish Cypriots in the south and most of the Greek Cypriots still living in the north at the time. Turkish Cypriots consider it akin to the Lausanne Treaty that split Turkish and Greek populations at the birth of the Turkish Republic in 1923, although this is rejected by Greek Cypriots.

territorial settlement was the proportion of displaced who could return.<sup>34</sup>

## 2. The Annan Plan

In November 2002, after several years of preparation, Secretary-General Kofi Annan presented a comprehensive peace plan, endorsed by the Security Council in Resolution 1475 (14 April 2003). The text built on previous UN plans but became an extremely long and complex document, the final version of which the Greek Cypriot leadership was unwilling to endorse.<sup>35</sup> The Turkish side, anxious to start EU accession negotiations, revised its Cyprus policy to support the Annan Plan, renouncing the idea that bulk exchange and compensation would be the sole route to settle property claims and accepting for the first time some return and restitution.<sup>36</sup>

The Annan Plan's property provisions can be summarised as follows:

- ❑ It would have set up an impartial Property Board, with non-Cypriot members to supervise the relevant provisions of the agreement.
- ❑ Territorial proposals would have significantly reduced the Turkish Cypriot zone, from 37 per cent to just over 28 per cent of the territory of the 1960 Republic of Cyprus. This would have allowed more than half the displaced Greek Cypriot population to return to properties under their own constituent state's rule.<sup>37</sup> Around 70,000 Turkish Cypriots would have to be relocated, some for the second or third time since the troubles began.<sup>38</sup>
- ❑ The remaining displaced persons would have the right to either one third of the area of their property and compensation for two thirds, or full compensation. Full compensation would be in the form of bonds or other certificates on both sides.

- ❑ Full reinstatement would be applied only for self-built houses or houses lived in for more than ten years before 1974, with 1,000 square metres of adjacent land even if that amounted to more than one third of the total.
- ❑ Alternative properties nearby would be offered if the original property was not available for reinstatement.
- ❑ Current users could obtain title by ceding rights to property with equivalent value in the other constituent state.
- ❑ Those who invested significantly in properties could purchase them.
- ❑ Nobody would be removed from any property until adequate, alternative accommodation was available.
- ❑ Temporary derogations from three basic freedoms in the EU *acquis communautaire* – movement, property ownership and settlement – would limit the right of Greek Cypriots to buy property or reside in the Turkish Cypriot constituent state.<sup>39</sup> After fifteen years, however, any Greek Cypriot would have been able to buy property in the north.
- ❑ In addition to restricting property restitution, the Annan Plan proposed to protect the majority status of Turkish Cypriots in their zone through residency provisions that gave the Turkish Cypriot federal state the right to limit non-Turkish speakers to one third of its population.
- ❑ Greek Cypriots who wished to return to their property in the adjusted areas would have been able to do so, assuming Turkish Cypriots who resided in areas falling under territorial adjustment moved to areas controlled by their constituent state.
- ❑ Financial and other inducements would have been given to persuade some Turkish-national settlers to leave their occupied properties and go back to Turkey.

Greek Cypriots opposed the proposals for compensation, including the system of deferred payments. They also objected to applying derogations from the three freedoms

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<sup>34</sup> Hannay, *Cyprus*, op. cit., p. 36.

<sup>35</sup> The Annan Plan was notably opposed by both the late Greek Cypriot President Tassos Papadopoulos and his then coalition partner Demetris Christofias, the current president. Greek Cypriots say that its compromise suggestions amounted to an imposition by outside powers; some Greek Cypriot commentators believe their leaders stopped negotiating so as to increase the likelihood the Annan Plan would be rejected in the referendum. Crisis Group interviews, Nicosia, October 2007.

<sup>36</sup> Throughout this report, the terms restitution and reinstatement are used interchangeably.

<sup>37</sup> "Report of the Secretary-General on his good offices mission in Cyprus", S/2003/398, 1 April 2003.

<sup>38</sup> Gürel and Özersay, "Politics of Property in Cyprus", op. cit. "Most of this population transfer was going to be from Güzelyurt (Morphou)". Crisis Group interview, Turkish Cypriot mayor of Morphou, 12 October 2010.

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<sup>39</sup> Under EU law, any derogation from the right of Greek Cypriots to buy property or to reside in the future Turkish Cypriot Constituent State, can at most be temporary. However, there is a precedent for permanent derogations on non-permanent resident EU nationals' rights to buy property in Denmark and Malta, and ethnic rules on primary residence protect the ethnic Swedish status of the Åland Islands in Finland. "Accommodation within the EU remains a strong possibility. Again, Greek Cypriots are likely to be in for a nasty surprise. A precedent already exists, though again not as extensive as the ones envisaged in the Annan Plan". Hubert Faustmann, in James Ker-Lindsay, Hubert Faustmann and Fiona Mullen (eds.), *An Island in Europe. The EU and the Transformation of Cyprus* (London/New York, forthcoming in 2011).

of the EU *acquis*, even though these would have been temporary.

#### D. WHAT CYPRIOTS WANT

A recent poll shows that the property issue ranks high among both communities' priorities. For the Greek Cypriot side, it is the third most urgent item (after security and Turkish settlers) for reunification negotiations, while for Turkish Cypriots it ranks second only to security. 53 per cent of Greek Cypriots think that a property settlement must give iron-clad rights of restitution, while 49 per cent think the rights to live, work and exercise political rights anywhere in Cyprus also should be safeguarded. Strict bizonality, however, is the goal of 69 per cent of Turkish Cypriots, with each community primarily residing within its own constituent state. Nevertheless, two thirds of Greek Cypriots support or at least tolerate the idea of a compromise between their desire to live anywhere in Cyprus and the others' desire to remain a majority in their region.<sup>40</sup>

With the exception of properties on which public utilities have been built, around 80 per cent of Greek Cypriots favour priority being given to original owners to choose among possible remedies.<sup>41</sup> One study found compensation to be a "taboo issue", because accepting it might legitimise Turkey's presence in Cyprus.<sup>42</sup> By contrast, many Turkish Cypriots prefer compensation and exchange, even if they have significant property in the south.<sup>43</sup> But when asked if they prefer an original Greek Cypriot owner, or a Turkish settler to get property rights, one third support the property claims of the former.<sup>44</sup>

Contrary to Turkish Cypriot fears, Greek Cypriots are unlikely to flock to Turkish Cypriot areas: 65 per cent believe it would be "difficult" to live with Turkish Cypriots.<sup>45</sup> If the property were under Greek Cypriot admini-

stration, 69 per cent say they would probably go back, but if it were under the other constituent state, 73 per cent say they would "definitely or probably" not return.<sup>46</sup> Indeed, only around 10 per cent indicate they are determined to go back even if their properties are in the Turkish Cypriot zone, and these are mostly people above the age of 55.<sup>47</sup> For those Greek Cypriots who want to return, security is the most important concern. They will not return to the north if they feel insecure or isolated.<sup>48</sup> Similarly, only 24 per cent of Turkish Cypriots say they would use their original property as a primary residence if it were under Greek Cypriot administration after a settlement.<sup>49</sup>

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<sup>40</sup> All figures in this paragraph from Alexandros Lordos and Erol Kaymak, "Public Opinion and the Property Issue: Quantitative Findings", Cyprus 2015, Interpeace, 2010.

<sup>41</sup> Greek Cypriots expect the original owners to have first say, especially for currently unused properties or properties used by immigrants from Turkey. *Ibid.*

<sup>42</sup> "Return is entrenched in displaced Greek Cypriot discourse. Even though they may not return, they still want to have the first say". Katerina Papadopoulou and Derya Beyatlı, "Public Opinion and the Property Issue: Qualitative Findings", conducted by Cyprus 2015, Interpeace, 2010.

<sup>43</sup> Among Turkish Cypriots, 71 per cent reportedly would be happy to accept exchange in lieu of reinstatement if their original property falls under Greek Cypriot administration after a settlement. Lordos and Kaymak, "Public Opinion and the Property Issue", *op. cit.*

<sup>44</sup> *Ibid.*

<sup>45</sup> Only 30 per cent believe that living together with Turkish Cypriots would be easy. Significantly, this represents a steady de-

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crease from 41 per cent in 2008 and 55 per cent in 2007. The past conflict is cited as the main reason for concern. "Cyprobarometer" poll results published in April 2010, survey carried out by RAI Consultants on behalf of Marfin Popular Bank in Cyprus.

<sup>46</sup> "The Greek Cypriots want their property, but they are not going to go back". Alexandros Lordos, presentation at Cyprus Academic Forum, Goethe Zentrum, 27 May 2010.

<sup>47</sup> Lordos and Kaymak, "Public Opinion and the Property Issue", *op. cit.*

<sup>48</sup> Papadopoulou and Beyatlı, "Public Opinion and the Property Issue", *op. cit.*

<sup>49</sup> Lordos and Kaymak, "Public Opinion and the Property Issue", *op. cit.*

### III. THE COURTS HAVE THEIR SAY

International law – customary and treaty based – enshrines individual rights to enjoy property along with the right of the displaced to return to their homes and receive remedies. These include the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>50</sup>

In the absence of a political settlement, the property issue in Cyprus is increasingly being dealt with through courts. While this removes the burden on politicians to make compromises, all sides are at risk from what is sometimes the zero-sum nature of legal decisions. Turkey faces virtually unavoidable and open-ended liability: at best it will in effect have to buy much of the north of the island for billions of euros; at worst, it will have to pay high compensation penalties to Greek Cypriots without gaining legal title to the land for the Turkish Cypriots. The latter will continue to live with the insecurity and economic burden of having their property titles challenged. Greek Cypriots will have to invest their hopes in long, expensive legal processes, with uncertain outcomes and ultimately little likelihood of any restitution.

In addition to the island's courts, the European Court of Justice, the European Court of Human Rights and the UK Court of Appeals have all been involved in Cypriot property cases. Greek Cypriots have most frequently litigated against Turkey, but Turkish Cypriots have begun to sue the Republic of Cyprus, as have Greek Cypriots in a few cases, seeking to support their claims for compensation or property exchange. Judgements have taken quite different approaches, providing a basis for arguments on both sides. Indeed they have even led both sides to admit that using the courts is no substitute for a political settlement.<sup>51</sup>

#### A. TURKEY IS FOUND LIABLE

Unable to return to their homes due to the new property regime in the north and the presence of Turkish troops after 1974, displaced Greek Cypriots eventually turned to

international courts.<sup>52</sup> The landmark ruling came in 1996, when the ECHR asserted the right of Tattiana Louizidou under the European Convention for the Protection of Human Rights and Fundamental Freedoms to her property in Kyrenia (in the north) and ordered Turkey to pay some \$915,000 in damages and costs.<sup>53</sup> Turkey eventually paid around €1.2 million, including interest, in 2003.<sup>54</sup> The *Louizidou* case established that Turkey, as the occupying power, is obliged to compensate Greek Cypriot property owners for blocking access to their northern property.

*Louizidou* was only the beginning of Turkey's legal troubles. The Republic of Cyprus brought inter-state lawsuits at the ECHR, most recently *Cyprus vs. Turkey* in 1999. In its 2001 judgement, the Court rejected Turkey's argument that the relevant defendant should be the Turkish Cypriot administration and held it responsible for several human rights violations in Cyprus.<sup>55</sup> The ECHR has also found admissible over 30 cases from Greek Cypriots after *Louizidou*<sup>56</sup> and handed down judgements assessing substantial, still outstanding, financial penalties, including:

- *Xenides-Arestis v. Turkey*: In a ruling on 8 December 2006, Turkey was ordered to pay €800,000 for loss of

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<sup>52</sup>“Turkey has the [military] power in Cyprus, and Cyprus has legal arguments on its side. It's 40,000 troops versus 40,000 lawyers. We are ready to give up our lawyers. But then we don't have any powers on our side”. Crisis Group interview, Greek Cypriot official, Nicosia, May 2010.

<sup>53</sup>*Louizidou v. Turkey*, application no. 15318/89, was referred to the ECHR in 1993. Judgement was announced in December 1996. In awarding the payment, the Court also said it was compensation not for the property itself but for the denial of ownership and use of the property, of which Louizidou continued to retain full legal ownership.

<sup>54</sup>Both Turkey and the Greek Cypriots accept the jurisdiction of the ECHR. Membership of the Council of Europe, of which Turkey is a founder-member and whose parliamentary assembly's president is currently Turkish, is an essential plank in Ankara's argument that it is adopting core European values in pursuit of full EU membership.

<sup>55</sup>Fourth Interstate Application by the Cyprus Government against Turkey (*Cyprus v. Turkey*), application no. 25781/94. There had been fourteen violations of the Convention, grouped by the Committee of Ministers into four categories: the question of missing persons; the living conditions of Greek Cypriots in northern Cyprus; the rights of Turkish Cypriots living in northern Cyprus; and the question of the homes and property of displaced persons. Turkey was found in breach of Articles 3, 8, 9, 10, 13 and Protocol 1 Article 1 of the Convention. “Report of the Office of the United Nations High Commissioner for Human Rights on the Question of Human Rights in Cyprus” (A/HRC/13/24), 2 March 2010.

<sup>56</sup>Four of the cases were later dismissed by the Court as involving fraudulent information. Crisis Group telephone interview, Rıza Türmen, former ECHR judge, 9 November 2010.

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<sup>50</sup> See Appendix B below for a fuller list, including supporting interpretation and commentary.

<sup>51</sup>“The [European] Court is essentially telling us to find a political solution. But it's not the job of the Court to tell us that a solution is overdue”. Crisis Group interview, Greek Cypriot official, Nicosia, May 2010. “The Cyprus problem is a political issue and can not be resolved in courts”, Turkish Cypriot President Eroğlu's speech to the Turkish Cypriot assembly, quoted in *Zaman*, 21 January 2010.

- use after 1974 of property in Varosha, the fenced-off part of Famagusta under Turkish military control;<sup>57</sup>
- *Demades v. Turkey*: On 22 April 2008, Ankara was ordered to pay €830,000 in damages plus interest for loss of use of Greek Cypriot property in Kyrenia;<sup>58</sup>
  - a 22 June 2010 decision settling the cases of nine displaced Greek Cypriots awarded a total of €1.2 million in damages (€10,000 to €400,000 per applicant);<sup>59</sup>
  - *Solomonides v. Turkey*: On 6 July 2010 applicants were awarded a total €1.4 million for loss of use of their properties in Kyrenia, Famagusta and Nicosia;<sup>60</sup>
  - a 26 October 2010 decision settling the cases of nineteen Greek Cypriots awarded nearly €15 million in compensation (€30,000 to €5 million per applicant) for loss of use of properties, as well as €160,000 in costs and expenses;<sup>61</sup> and
  - in *Lordos and others v. Turkey*, one of the two cases still before it,<sup>62</sup> the ECHR released a judgement on 2

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<sup>57</sup> The Court concluded that there was a violation of Article 8 and Article 1 of Protocol 1 of the Convention. Ruling on 22 December 2005 for application no. 46347/90, referred to the ECHR in 1998.

<sup>58</sup> Application no. 16219/90. In its final ruling on 22 April 2008, the ECHR found Turkey in violation of Article 8 and Article 1 of Protocol 1 of the Convention.

<sup>59</sup> *Economou v. Turkey* (application no. 18405/91), *Evagorou Christou v. Turkey* (18403/91), *Gavriel v. Turkey* (41355/98), *Ioannou v. Turkey* (18364/91), *Kyriacou v. Turkey* (18407/91), *Michael v. Turkey* (18361/91), *Nicolaides v. Turkey* (18406/91), *Orphanides v. Turkey* (36705/97), *Sophia Andreou v. Turkey* (18360/91). In judgements on 20 and 27 January 2009, the Court held that, concerning the applicants' right of access to their property in the northern part of Cyprus, there had been a violation of Article 1 of Protocol 1 (except in one case) and Article 8 (except in two cases).

<sup>60</sup> Application no. 16161/90.

<sup>61</sup> Most of these applications were made in 1990s. The Court on 22 September 2009 and 27 October 2009 had found Turkey in violation of Article 1 of Protocol 1 in all nineteen cases and of Article 8 in eleven. *Andreou Papi v. Turkey* (application no. 16094/90); *Christodoulidou v. Turkey* (16085/90); *Diogenous and Tseriotis v. Turkey* (16259/90); *Epiphaniou and Others v. Turkey* (19900/02); *Hadjiprocopiou and Others v. Turkey* (37395/97); *Hadjithomas and Others v. Turkey* (39970/98); *Hapeshis and Hapeshi-Michaelidou v. Turkey* (35214/97); *Hapeshis and Others v. Turkey* (38179/97); *Jordanis Jordanou v. Turkey* (43685/98); *Josephides v. Turkey* (21887/93); *Loizou and Others v. Turkey* (16682/90); *Olymbiou v. Turkey* (16091/90); *Ramon v. Turkey* (29092/95); *Rock Ruby Hotels Ltd. v. Turkey* (46159/99); *Saveriades v. Turkey* (16160/90); *Skyropiia Yialias Ltd. v. Turkey* (47884/99); *Strati v. Turkey* (16082/90); *Vrahimi v. Turkey* (16078/90); *Zavou and Others v. Turkey* (16654/90).

<sup>62</sup> There were around 1,500 cases against Turkey at the ECHR brought by Greek Cypriots, but a 5 March 2010 ruling by the Court redirected the majority to a Turkish Cypriot institution

November 2010 finding Turkey in violation of the Convention but postponing a decision on the amount of compensation.<sup>63</sup> This may be a defining case for Turkey, because it involves substantial land and will establish parameters for valuations in similar cases relating to Varosha.<sup>64</sup>

Turkey has not made any payments on ECHR rulings since *Louizidou*, appealing latter judgements to the Court's Grand Chamber on the grounds that all disputes should be redirected to the Turkish Cypriot Immovable Property Commission (IPC).<sup>65</sup> However, experts believe it will eventually have to pay, since these cases pre-date the ECHR's acceptance of the IPC as an effective remedy (see below).<sup>66</sup> Nor is the ECHR the only venue for litigating against Turkey. The largest case to date is a class action against Turkey and the Turkish Cypriots that seeks \$400 billion, filed in the U.S. on 19 October 2009 by approximately 200,000 displaced Greek Cypriot property owners.<sup>67</sup>

This legal and financial quagmire should persuade Turkey to push as hard as possible for a political settlement. A recent study found that in the case of a settlement, its

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(see below). It retained only 32 for which admissibility was already decided.

<sup>63</sup> Application no. 15973/90. Thirteen applicants accused Turkey of depriving them of their homes and properties in 1974. The Court found Turkey in violation of Protocol 1 Article 1 of the Convention in eight cases and of Article 8 in seven cases. With regard to damages, it said the parties failed to provide "reliable and objective data pertaining to the prices of land and real estate in Cyprus at the date of the Turkish intervention", making it difficult to assess whether the amount given by the applicants as the 1974 market value of their properties was reasonable. The Court postponed its decision on compensation "with due regard to any agreement which might be reached between the respondent Government and the applicants".

<sup>64</sup> Crisis Group telephone interview, Achilleas Demetriades, Greek Cypriot lawyer, 9 November 2010. "Varosha is a legal test case. Winning in Varosha property cases at the ECHR is very possible". Crisis Group interview, Professor Hubert Faustmann, University of Cyprus, Nicosia, 26 May 2010.

<sup>65</sup> "I'm not satisfied that seven judges in Strasbourg who have never been to Cyprus in their lives can find the right value of these properties". Crisis Group telephone interview, Turkish diplomat, November 2010.

<sup>66</sup> Apart from running the risk of suspension from the Council of Europe, former ECHR judge Rıza Türmen pointed out, Turkey should count itself fortunate that there were only around 35 cases left in this older category after the Court's acceptance of a Turkish Cypriot domestic remedy. Crisis Group telephone interview, 9 November 2010.

<sup>67</sup> Filed by Tsimpedes, a Washington DC-based law firm, at a federal court in that city, it asserts that U.S. arms sold to Turkey were used illegally during its military operation and that this provides a basis for a U.S. court to exercise jurisdiction. "This is just a political move; it's a charade. Nothing will come of it". Crisis Group interview, Turkish diplomat, Ankara, November 2010.

savings from property litigation could be at least €24 billion and as much as €89 billion. Handing back territory to the extent envisaged by the Annan Plan would further reduce liability by one quarter.<sup>68</sup> Restitution of Greek Cypriot property would also trim liability, as would exchange, although the value of Turkish Cypriot property in the south is at most one third that of Greek Cypriot property in the north and probably significantly less.

In the meantime, Turkish Cypriots have started ECHR suits against the Republic of Cyprus, most recently that of a private trustee of a *vakıf* (charitable foundation) which, after unsuccessfully suing three Greek Cypriot institutions in Nicosia for illegal use of its property in the south, took the case to the Strasbourg court in November 2010.<sup>69</sup> In other cases, some ten Turkish Cypriots, including residents of the north, claim that their property rights are being violated. Their hearings are expected in early 2011. There is a chance they may be dismissed for not having exhausted domestic remedies, but the current Guardian Law allows no apparent local recourse.<sup>70</sup>

## B. EU SEES GREEK CYPRIOT LEGAL WRIT EXTENDING TO ALL CYPRUS

In early 2010, a judgement by the UK Court of Appeals rattled Turkish Cypriot nerves and dampened prospects of international investment in north Cypriot real estate development and tourism. Meletios Apostolides, a displaced Greek Cypriot, opened a case in 2003 before Greek Cypriot courts against a British couple who had bought his abandoned property from a Turkish Cypriot and built a villa on it. The courts agreed that Republic of Cyprus laws should apply in the north, even though the government does not exercise effective control, and ordered the couple, David and Linda Orams, to destroy the villa. The Orams ignored the ruling, since it was unenforceable in the north.

After Cyprus joined the EU in 2004, however, Apostolides was able to use EU laws to have the judgement applied against the Orams' assets in the UK. He first took the case

to the UK High Court, and, when that failed, to the Court of Appeals. It asked for an opinion from the European Court of Justice in Luxembourg, which on 28 April 2009 said that suspension of the EU *acquis* in the north was not a legal bar to applying a Greek Cypriot court decision against the Orams.<sup>71</sup> The Court of Appeals then ruled in favour of Apostolides on 19 January 2010, ordering the couple to deliver possession of the land and pay rent for the duration of their occupation. It remains uncertain, however, if and when the judgement will be enforced.

Contrary to expectations, the case did not trigger a flood of similar lawsuits against expatriate residents.<sup>72</sup> The fact that its judgement is only enforceable in EU countries has left the door open for buyers from other nationalities.<sup>73</sup> On the other hand, the case reinforced Turkish Cypriot fears that individual challenges to property provisions of a settlement might take advantage of EU laws to erode temporary safeguards put in place to protect their majority status in their constituent state. This has confirmed their conviction that any such settlement must have EU primary law status.<sup>74</sup>

## C. CYPRIOTS WIN SOME RIGHTS TO SETTLE INDIVIDUALLY

Turkey started planning a Turkish Cypriot domestic remedy to deal with Greek Cypriot property claims after the *Louizidou* case in 1996 established that, in some instances, even an unrecognised local administration's actions could be legitimate.<sup>75</sup> The first property commission was cre-

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<sup>71</sup> Case C-420/07, *Meletis Apostolides v. David Charles Orams, Linda Elizabeth Orams*.

<sup>72</sup> "It is unlikely that we will see other cases like Orams. It is a very long, expensive process, and the result is difficult to enforce". Crisis Group interview, Turkish diplomat, Ankara, November 2010.

<sup>73</sup> Crisis Group interview, Turkish diplomat, Ankara, November 2010.

<sup>74</sup> Primary law is the "supreme source of law in the European Union ... [and] prevails over all other sources of Community law". It consists essentially of the basic treaties establishing the EU and its various authorities, protocols to these treaties or treaties amending them and treaties of accession. See "The decision-making process and the work of the institutions". EUROPA website, [http://europa.eu/legislation\\_summaries/institutional\\_affairs/decisionmaking\\_process/](http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/). For Turkish Cypriots, this suggests a need to give a settlement a legal basis stronger than a normal international agreement, so as to ensure that provisions cannot later be challenged successfully in EU courts.

<sup>75</sup> The judgement in that case cited the 1971 International Court of Justice ruling on Namibia as a precedent which "provides that even if the legitimacy of the administration of a territory is not recognised by the international community, international law recognises the legitimacy of certain legal arrangements and trans-

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<sup>68</sup> Çilsal, Kyriacou and Mullen, "The Day After III", op. cit.

<sup>69</sup> The trustee sued the Electricity Authority of Cyprus, the interior ministry and the attorney-general as representative of the state. The building, which houses the antiquities department, is worth a minimum of €10 million, according to the trustee's lawyer. The demand was for reinstatement of the property, rent arrears estimated at €8,500 per month and moral damages for property rights violations. "Government to be sued for illegal use of Turkish Cypriot building", *Cyprus Mail*, 1 September 2010.

<sup>70</sup> Applicants who reside in the north were not allowed to seek remedies from the interior ministry in the south. "This is a new category of cases for the ECHR". Crisis Group interview, Turkish diplomat, Ankara, November 2010.

ated for this purpose in 2003, but the ECHR found it inadequate because it could not award non-pecuniary damages or restitution, and the panel's impartiality was uncertain, since it had no international representation and some members resided on Greek Cypriot-owned properties.<sup>76</sup>

In *Xenides-Arestis v. Turkey* (December 2005), the ECHR instructed Turkey to establish a domestic remedy within three months and resolve that particular case within another three months.<sup>77</sup> Two days after the judgement, the Turkish Cypriot administration established the IPC. Property owners registered before 1974, as well as their legal heirs, can apply to that body, which began its work in March 2006. As of 8 December 2010, it had received 785 applications, 134 of which have been resolved (130 through friendly settlements), and paid £49.2 million (around €58 million) in compensation.<sup>78</sup>

The Greek Cypriot government discouraged its citizens from applying to the IPC on the grounds that to do so would give legitimacy to what it calls the "pseudo-state" in the north. But it was impossible to ignore the ECHR's 22 April 2008 judgement on the *Michael Tymvios v. Turkey* case that endorsed a friendly settlement reached through IPC, involving a payment of \$1 million and an exchange of 51 plots of Tymvios's land in the north for a large tract in Larnaca owned by a Turkish Cypriot.<sup>79</sup> In August 2008, the government refused to transfer to Tymvios ownership of the land in Larnaca, which was protected under the Guardian Law and housed two schools as well as shops and businesses. In November 2008, Tymvios filed a lawsuit against the interior and education ministries and the Larnaca School Commission for refusing to turn over the property. After exhausting domestic

remedies, Tymvios has returned to the ECHR, this time with his own government as defendant.<sup>80</sup>

The ECHR on 28 July 2009 endorsed another friendly settlement reached through the IPC in *Alexandrou v. Turkey*. No swap was involved, and the plaintiff received £1.5 million and restitution of a plot of land.<sup>81</sup> Perhaps the biggest setback to the Greek Cypriot position came with the ECHR's 5 March 2010 decision in *Demopoulos v. Turkey and 7 other cases*.<sup>82</sup> It ruled that the IPC procedure could be regarded as an effective domestic remedy, meaning that in future it would only consider cases that had already gone through that body.<sup>83</sup> Furthermore, the Court endorsed the "discretionary nature of the restitutionary power under Law 67/2005", thus rejecting Greek Cypriot complaints that restrictive Turkish Cypriot laws mean only a small proportion of their property would be eligible for IPC restitution.<sup>84</sup>

The Court has not imposed an obligation to use the Turkish Cypriot body, but the only alternative is to await a political solution. After the *Demopolous* ruling, over 300 new cases came to it.<sup>85</sup> The IPC is not an open-ended recourse, however; as the law stands, it will no longer take cases after December 2011 unless, as should happen, its term is extended.

#### D. PASSAGE OF TIME WEAKENS THE RIGHTS OF THE DISPLACED

Another important aspect of the *Demopoulos* judgment was ECHR recognition that the passage of time, and political developments, can weaken legal title to a property.

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actions in such a situation ... that effects of which can be ignored only to the detriment of the inhabitants of the territory".

<sup>76</sup> Crisis Group telephone interview, Rıza Türmen, former ECHR judge, 9 November 2010.

<sup>77</sup> The Court called for the introduction of a remedy "which secures genuinely effective redress for the Convention violations identified in the instant judgement in relation to the present applicant as well as in respect of all similar applications pending before the Court .... Such a remedy should be available within three months from the date on which the present judgement will be delivered and redress should occur three months thereafter". Pending details of the remedy, the Court reserved the application of damages, though it ordered Turkey to pay the applicant €65,000 in costs.

<sup>78</sup> 124 cases were resolved by compensation. Of the remaining ten, one was resolved by restitution, two by exchange and compensation, five by restitution and compensation, one by restitution after a solution and one by partial restitution. Immovable Property Commission website, [www.kuzeykibristmk.org](http://www.kuzeykibristmk.org).

<sup>79</sup> Application no. 16163/90. The Court was "satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols". Even so, the decision did not acknowledge the Turkish Cypriot commission by name.

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<sup>80</sup> Crisis Group interviews, Emine Çolak, Turkish Cypriot activist and human rights lawyer, Nicosia, 13 October 2010; Turkish diplomat, Ankara, November 2010.

<sup>81</sup> Application no. 16162/90.

<sup>82</sup> *Demopoulos v. Turkey and 7 other cases*, application numbers 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04. "ECHR was our strongest tool. The Court has always stood for what we considered as legally and morally right. Its March 2010 [*Demopoulos*] decision is a blow to us. We consider the decision political". Crisis Group interview, Greek Cypriot official, Nicosia, May 2010.

<sup>83</sup> The ECHR will still decide all cases that it had accepted prior to this ruling. There were 32 such cases at the time of the *Demopoulos* ruling, but with subsequent decisions, only two remain in this category. Crisis Group interviews, November 2010.

<sup>84</sup> *Demopoulos v. Turkey and 7 other cases*, Grand Chamber decision, 5 March 2010. Turkish authorities say this means that claiming military or public interest may be sufficient grounds for excluding restitution as a possible remedy even in areas such as Varosha where the properties remain vacant. Crisis Group interview, Turkish diplomat, Ankara, November 2010.

<sup>85</sup> Crisis Group interview, Sümer Erkmen, IPC president, Nicosia, 11 October 2010.

Given that 36 years had passed since displaced persons left their property, the Court said it would risk being “arbitrary” and “injudicious” to impose restitution in all cases, “which would result in the forcible eviction and rehousing of many men, women and children”.<sup>86</sup> Its 27 May 2010 decisions in *Petrakidou v. Turkey* and *Asproftas v. Turkey* followed a similar logic. The Court ruled that children of Greek Cypriot displaced persons do not have the right to appeal for return of property in the occupied part of Cyprus unless it was registered in their names, and in order to claim that a particular property is “home” the applicant must enjoy “concrete and persistent links” with it.<sup>87</sup> Greek Cypriot officials considered these rulings “negative developments” but sought to explain them on procedural grounds rather than accept that the legal basis of their claims had weakened.<sup>88</sup>

The ECHR’s lower valuations on property than those requested by plaintiffs further disappointed Greek Cypriots. While the figures on 26 October 2010 in cases of nineteen Greek Cypriots were relatively high, the €15 million total was much closer to the IPC’s offer of over €12 million than the €143 million requested.<sup>89</sup> Similarly, the amounts awarded on 22 June 2010 in nine Greek Cypriot cases and on 27 June 2010 in *Solomonides v. Turkey* were much closer to IPC calculations.<sup>90</sup> These judgements send clear messages that the ECHR considers the IPC is offering acceptable compensation and that it in consequence will not make larger awards to Greek Cypriots.

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<sup>86</sup> The decision made reference to the Greek Cypriot rejection of the EU- and UN-backed Annan Plan for reunification and property settlement. It also used the Plan’s definition of current user in its ruling (“persons who had possession of properties of dispossessed owners as a result of an administrative decision”). *Demopoulos and others v. Turkey*, press release issued by the Registrar, 5 March 2010.

<sup>87</sup> ECHR judgements, application numbers 16079/90 and 16081/90.

<sup>88</sup> “What we are seeing is due to a backlog of cases at the ECHR; the Court is trying to help itself by eliminating repetitive systemic cases. It has more than 8,000 cases and deals with twenty cases every three to four months, so these are purely logistical decisions”. Crisis Group interview, Greek Cypriot official, Nicosia, May 2010.

<sup>89</sup> Turkey still wants to contest the decision at the Court’s Grand Chamber on the basis of principle: “If it recognises an effective domestic remedy, why is the amount awarded to applicants not exactly the same as what was given by the IPC?” Crisis Group interview, Turkish diplomat, Ankara, November 2010.

<sup>90</sup> In the former case, the €1.2 million awarded was about 15 per cent of the amount demanded by the applicants and only slightly higher than the €916,000 Turkey had offered to pay through the IPC. In the latter, the applicants had demanded €7 million, while the Court awarded them €1.4 million.

## IV. PROPERTY IN THE 2008-2010 CYPRUS PEACE TALKS

While the parties have come to realise the cost and inefficiency of resolving the property problem through the courts, the issue remains central to the reunification negotiations started in 2008. As an international official involved in the negotiations put it, “if you can’t solve the property issue, you can’t solve the Cyprus problem”.<sup>91</sup>

### A. MORE QUESTIONS THAN ANSWERS

Many unknowns lie at the heart of the impasse over property, and the lack of clarity is one reason why both sides have been cautious about committing to the other’s proposals for a settlement. They include:

**Bizonality** (how to reconcile Turkish Cypriot insistence on maintaining a strong majority in their constituent state with Greek Cypriot insistence on their right to live, own businesses and buy property anywhere in Cyprus). While some derogations on the basic free movement of people, goods, services and money inside the EU may be possible, it is doubtful that these can be permanent.<sup>92</sup> Given their economy’s reliance on expatriate home-owners, Turkish Cypriots themselves may find it problematic to enforce ethnic bars on the purchase of properties.

**Territory** (deciding where the border line will be drawn between the communities and the constituent states). Without knowing how much territory will be handed back in a settlement, it is hard to agree on how to handle the remaining properties. It is assumed that, as foreseen in the Annan Plan, areas under Turkish Cypriot control will shrink from the current 37 per cent of the island to around 28 per cent. Return will become much easier for Greek Cypriots to the vacated areas.

**Values** of properties for the purpose of compensating original owners. Will compensation be based on prices in 1963-1964, when Turkish Cypriots began losing proper-

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<sup>91</sup> Crisis Group interview, Nicosia, November 2010. The other five issues under discussion are governance and power-sharing, economy, EU affairs, territory and security and guarantees. An additional unofficial issue is that of citizenship and settlers.

<sup>92</sup> An annex to Cyprus’s Accession Treaty, Protocol 10, says the EU is ready to accommodate any settlement as long as it is in line with the principles on which the EU is founded. Some consider permanent derogations a possibility: “The goal of agreement influences a process that often provides for temporary (or even permanent) derogations. The non-introduction of the Euro in Great Britain, Denmark and Sweden is just one prominent example”. Faustmann in Ker-Lindsay et al., op. cit. But see also fn. 38 above.



ties, or 1974, when Greek Cypriots suffered their losses? What is the actual value of land today?<sup>93</sup> Estimates of the total cost to Turkey of lost Greek Cypriot properties range from a few billion euros to as high as €89 billion.<sup>94</sup> Values may need to be adjusted to account for the fact that most Greek Cypriot property is in urban spaces that have become far more valuable than most Turkish Cypriot property, which is in remote villages that have often been abandoned and levelled. Another aspect of compensation is how estimates of loss of use can be kept in proportion to other claims.

**Financing** of compensation schemes. Courts have found Turkey liable to pay most compensation, while the Turkish Cypriots have paid little. There are signs that Turkey is wearying of this. A meeting in Ankara on 1 November 2010 between President Abdullah Gül and the Turkish Cypriot administration's president, Derviş Eroğlu, with the participation of bankers, opened discussions about a formula whereby Turkish Cypriots would help pay compensation, by taking out long-term loans from Turkish banks, secured by deeds for the property on which they live.<sup>95</sup>

Many Cypriots have long assumed that the international community would finance or at least guarantee the financing of any settlement. Indeed, in the past, officials of many major EU states privately encouraged this view. After the global financial crisis, EU states still say they will help if they can, but the idea of a donors conference put forward

in the Annan Plan in 2004 has lost steam.<sup>96</sup> Private sector or international financial institutions could also be involved in certain aspects of a property arrangement, if the sides reach a sustainable agreement.

**Right of original owners versus current occupants.** The focus of Greek Cypriots on the former and Turkish Cypriots on the latter is at the heart of their dispute over property. The passage of time puts into question who should still be considered a displaced person<sup>97</sup> and lends credence to the argument that a current user's rights may need to be balanced with those of the historic owner.<sup>98</sup>

There seem to be no morally pure or legally watertight answers that can satisfy both sides on these questions; the answers, therefore, can only be determined by negotiation and compromise. But several past rounds of UN-brokered negotiations have so far failed to achieve a mutually-acceptable balance.

## B. THE CURRENT CYPRUS-LED TALKS

### 1. The Christofias-Talat period: A missed opportunity

When full talks on a new settlement started in September 2008 between the pro-compromise Turkish Cypriot leader Mehmet Ali Talat and his Greek Cypriot counterpart Demetris Christofias, the first three headings dealt with were governance and power-sharing, EU matters and the economy. The leaders then held eighteen meetings on property, which produced a joint paper on categories. While

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<sup>93</sup> "We must use whichever value is financially more feasible. The question is being fair versus being sustainable. We should aim for sustainability rather than fairness". Crisis Group interview, Erol Kaymak, Turkish Cypriot academic and adviser in the negotiations, Nicosia, 12 October 2010. "We must take the base values in 1974, which of course we don't have because the Turkish Cypriots don't share the information .... You then add to this a rate of increase in value, which we say is 15-20 per cent, and the Turkish side says 5 per cent. And then we add interest, which we say is 9 per cent compounded, but the Turkish side says is 5 per cent flat. So how will the value be determined? Somebody has to sit these people down and tell them how much it will cost". Crisis Group telephone interview, Achilleas Demetriades, Greek Cypriot lawyer, 9 November 2010.

<sup>94</sup> The higher figure is from Çilsal, Kyriacou and Mullen, "The Day After III", op. cit. The lower figure is usually, but not exclusively, cited by Turkish Cypriot officials. A senior Greek Cypriot official has given a figure closer to €30 billion-€40 billion. Crisis Group interviews, Nicosia and Ankara, 2009-2010. Based on the ECHR's *Arestis v Turkey* judgment, involving property in Varosha, one Greek Cypriot calculated that Varosha alone would cost Turkey in 2010 €30 million to €40 million per month, and between €360 million to €480 million a year in loss of use. This means since 1974, the bill for the rent of this town alone could be several billion euros. Crisis Group telephone interview, Achilleas Demetriades, Greek Cypriot lawyer, 9 November 2010.

<sup>95</sup> "Turkish Cypriots could help pay for properties, officials say", *Hurriyet Daily News*, 3 November 2010.

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<sup>96</sup> "The 2004 donors conference was depressing then, imagine now". Crisis Group interview, senior Greek Cypriot official, Nicosia, November 2010. "One of the convergences [of the two sides] is a donors conference. Nobody will donate, when you've got problems in Sudan". Crisis Group interview, international official, Nicosia, November 2010.

<sup>97</sup> Turkish Cypriot leader Eroğlu said, "no one in Cyprus is any longer a refugee. On both sides, people have established new lives, so what we need is a solution that does not bring about social upheaval". Interview with *Sunday Mail*, 19 September 2010. A Greek Cypriot journalist asked: "Who are the refugees the demagogues are claiming want to return to the north under Turkish Cypriot administration? ... Most of the refugees who were over 40 in 1974 have passed away. Those who were under twenty are now middle-aged, with their own families, which are settled all over the free areas .... As for those between 21 and 40 in 1974, the majority of them are now pensioners with grandchildren". Loucas Charalambous, "Eroğlu missed a chance to make fools of us", *Cyprus Mail*, 26 September 2010.

<sup>98</sup> "It shouldn't be thought of as a hierarchy between the current user and owner. The ECHR also recognised that the current user has rights in its ruling on the *Demapoulos* case [on 5 March 2010]". Crisis Group interview, Emine Çolak, Turkish Cypriot activist and human rights lawyer, Nicosia, 13 October 2010.

Talat agreed in principle that the displaced owner had rights, he said the first thing to be considered was the right of the current user. There was no tangible progress in the chapter during two years.<sup>99</sup>

In this period, the Turkish government began to hint that any future settlement might be more restricted than the Annan Plan. For instance, Prime Minister Recep Tayyip Erdoğan began ruling out the return of Morphou, where Turkey had spent “millions [of Turkish Lira] for investments”.<sup>100</sup> Christofias, on the other hand, repeatedly said there would be no deal without the return of this historically Greek Cypriot town.<sup>101</sup> When Talat lost the Turkish Cypriot leadership elections on 18 April 2010, his veteran, hardline successor Derviş Eroğlu picked up the negotiations from where he had left off.

## 2. The Christofias-Eroğlu period: No end in sight

When face-to-face meetings resumed on 26 May 2010, the leaders agreed to focus on property. Eroğlu and Christofias have had sixteen such meetings so far, while their aides have met over twenty times. Both sides officially submitted their proposals on the property issue to the UN in September. Negotiations continue to harmonise ideas on establishment of a property commission, mechanisms for exchange, the extent of restitution and types of compensation.<sup>102</sup> But there is little optimism that the sides can agree as long as they retain fundamentally different approaches and principles. UN Secretary-General Ban Ki-moon said in his 24 November report that despite close to six months of discussions, there was “a worrying lack of progress in efforts to agree on a conceptual framework on property”, and positions remained “irreconcilable”.<sup>103</sup> The

two leaders have agreed to assess progress and convergences in all areas, not just property, and to meet again with the Secretary-General in Geneva at the end of January 2011.

## C. TURKISH CYPRIOT PROPOSALS ON PROPERTY

The Turkish Cypriots’ latest proposals focus on compensation and exchange but also provide for some restitution and share a number of Annan Plan principles.<sup>104</sup> The Turkish side sought guidance from international experts, and Western diplomats and international officials have privately been complimentary of the innovative suggestions.<sup>105</sup> The package:

- emphasises the individual rights of both displaced owners and current users,<sup>106</sup> as well as the fundamental principle of bizonality;<sup>107</sup>
- would set up an independent Property Commission, with equal membership from each community, and

<sup>99</sup> Crisis Group interviews, Nicosia, May and October 2010.

<sup>100</sup> “Güzelyurt garantisi” [Guarantee for Morphou], *Milliyet*, 11 August 2008.

<sup>101</sup> Speaking at an anti-occupation rally on 10 October 2010, Greek Cypriot President Christofias reiterated his position that there can be no solution to the Cyprus problem without the return of Morphou to Greek Cypriots. A Greek Cypriot politician agreed: “Turkish Cypriots keeping Morphou would be a non-starter for us. It was returned in the Annan Plan. The plan was voted down by the Greek Cypriots, so a new plan and a new proposal cannot be the same or cannot be worse than what was turned down. We feel the Turkish approach is not helpful on this point”. Crisis Group interview, Harris Georgiades, spokesperson for the main Greek Cypriot opposition party, DISY, Nicosia, 27 May 2010.

<sup>102</sup> “Report of the UN Secretary-General on his Mission of Good Offices in Cyprus”, 24 November 2010 (to be issued as Security Council document S/2010/603).

<sup>103</sup> Ibid. Summing up the situation after meeting the two community leaders on 18 November 2010, Ban Ki-moon said most of the year had passed “without clear progress or a clear end in sight ... [talks] were losing momentum ... serious differences remain”.

<sup>104</sup> Turkish Cypriot officials are against a direct comparison. “We must not compare these proposals to the Annan Plan, because both leaders rejected it. So this is something different, a model that cannot be compared with the Annan Plan. This is what is positive about the proposals”. Crisis Group interview, Turkish Cypriot official, Nicosia, October 2010. In addition to sharing some of Annan Plan terminology, similarities include the “compensation for loss of use” scheme, treatment of religious sites, the mixture of compensation and restitution to guard the rights of the current user, setting similar criteria for property eligible for reinstatement, establishing a moratorium on reinstatements for a certain number of years and setting up a Property Court.

<sup>105</sup> An international official described them as “good proposals”. Crisis Group interview, Nicosia, November 2010. “The Turkish side gets an A+ for its efforts”. Crisis Group interview, Western diplomat, Istanbul, October 2010.

<sup>106</sup> As in the Annan Plan, a dispossessed owner is “a natural or legal person who, at the time of dispossession, held a legal interest in the affected property as owner or as part owner, his/her legal heir, personal representative or successor in title, including by gift”. A current user is “a person who has been granted a form of right to use or occupy an affected property by an authority under a legal or administrative process or any member of his or her family who has a derivative right to use or occupy such property or his/her heir or successor in title”.

<sup>107</sup> With Greek Cypriots being offered financial compensation for the most part, they seek to legitimise Turkish Cypriot control of the north and “preserve the socio-economic fabric created over four decades in both parts of the island”. In fact, Turkish Cypriot concerns go beyond maintaining bizonality. In a scenario in which Greek Cypriots hold all the property titles in the north, even if many of them won’t return, Turkish Cypriots fear their constituent state’s economy will be in the hands of Greek Cypriots and be “reminiscent of feudal times”. Crisis Group interview, Turkish Cypriot official, Nicosia, October 2010.

- two sub-commissions to handle claims. There would be no direct dealings between individuals;
- would give the property settlement EU primary law status;<sup>108</sup>
  - offers four remedies for displaced owners and current users, adding “alternative properties” to the familiar restitution, exchange and compensation. Property owned by the state, Turkish Cypriots or religious institutions (Evkaf, Church) and unclaimed property of other displaced owners can fall in this category. Displaced owners who were entitled to but could not regain their property due to a population ceiling on Turkish Cypriot territory would be eligible to receive alternative properties;
  - proposes an as yet undefined ceiling for restitution, so as to maintain majorities from the respective communities both on a constituent state level and within municipalities and villages and foresees a moratorium on returns for an undefined number of years;
  - sorts affected properties into three categories: dwellings, small business premises and land. Those automatically eligible for restitution would include properties not allocated to Turkish Cypriots, undeveloped Greek Cypriot land administered by the Turkish Cypriot authorities as “new forests”, and areas now controlled by the armed forces but to be vacated after settlement. In all other cases, the Property Commission would decide the remedy;
  - would prioritise, in order to provide redress for small owners first, reinstatement to dwellings, displaced owners of permanent residences and those who were heads of families when dispossessed, as well as their spouses;
  - proposes an “urban transformation” model for redevelopment and rehabilitation of adversely affected properties, mostly abandoned Turkish Cypriot properties in the south, but also Greek Cypriot properties in the fenced-off ghost town of Varosha and villages within the current buffer zone;
  - would set up a Property Development Corporation (PDC), a separate company under the direction of the Property Commission, responsible for urban transformation in order to bring out the “trapped value” in the above-mentioned properties. It would have title to abandoned Turkish Cypriot properties in the south, as well as properties which the Greek or Turkish Cypriots wish to hand over to receive benefits, other titles or land;
- presents a new model to finance compensation, “Guaranteed Financial Entitlement” (GFE), in which the property itself would be the main guarantee of payment. GFEs would come into force after a certain number of months (or years) following a settlement, with the relevant constituent state responsible for making payments to GFE shareholders based on current values (the calculation method remaining to be determined). Payments would come from a fund, to include a part of the PDC’s revenues, as well as special taxes. The constituent states could also get loans from domestic and international institutions or third countries to pay out GFEs and Turkey would be asked to pay any shortfalls;
  - foresees compensation for loss of use, subject to certain deductions, by the claimant’s constituent state; and
  - would give displaced owners and current users the right to appeal Property Commission decisions to a new Property Court.

Ceilings, timelines – including when GFEs would be paid – and definitions of certain terms (such as “legal interest”, “livelihood” and “small business”) are intentionally left open to be discussed in the course of the negotiations, if agreement can first be reached on the basic principles.<sup>109</sup>

The Turkish Cypriot proposals were publicly rejected and criticised by the Greek Cypriots, mainly because they did not satisfy the demand that all displaced owners be given first say on what happens to their property. The feasibility of the financing and disagreements over who is a current user are among other questions voiced by both Greek and Greek Cypriot officials.<sup>110</sup> There are also concerns regarding potential economic risks.<sup>111</sup>

Greek Cypriots distrust GFEs in part because they would be required to give up properties immediately for a delayed payment scheme, and the idea makes no mention of inter-

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<sup>108</sup> Turkish Cypriots fear that if it is not written into EU primary law, property provisions could be challenged in EU courts. Crisis Group interview, Turkish official, Ankara, July 2009.

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<sup>109</sup> Crisis Group interview, Turkish Cypriot official, Nicosia, October 2010.

<sup>110</sup> Crisis Group interviews, Athens and Nicosia, October–November 2010.

<sup>111</sup> “The economic aspects of their proposals would definitely destroy the Greek Cypriot property market”. Crisis Group interview, senior Greek Cypriot official, Nicosia, November 2010. Turkish Cypriots remain confident, however. “There will be no market crash or inflation. We’re talking about a time period of ten or fifteen years when these properties will be developed. And only a small portion of them will be sold in the end. The rest will be given to Greek Cypriot dispossessed owners who could not get back their [original] properties. Urban transformation is not our invention; it was used successfully in other counties. We foresee ten years of sustainable growth”. Crisis Group telephone interview, Turkish Cypriot official, November 2010.

est payments.<sup>112</sup> They object that there is no long-term lease option for users and no separation among different kinds of currently-occupied dwellings (such as primary residences, second homes or holiday homes).<sup>113</sup>

However, some Cypriots on both sides have reacted positively to the innovative option of alternative property, the introduction of urban transformation and the new financing model, which includes Turkey's willingness to guarantee payments.<sup>114</sup> The Turkish Cypriot package's key advantage compared to the Annan Plan may be that it would satisfy a Greek Cypriot wish to use the market to cash in more quickly, without placing a burden on Greek Cypriot taxpayers.

#### D. GREEK CYPRIOT PROPOSALS ON PROPERTY

Although their main focus is still on restitution, Greek Cypriots, too, have moved beyond demanding unqualified restitution rights for all their displaced persons.<sup>115</sup> Their new package:

- ❑ maintains the general principle that the right of ownership is fully and unconditionally respected, and the owner must have the right to choose the remedy preferred;
- ❑ uses the term "current user" as referring to "genuine user", meaning that a Turkish Cypriot "title deed" alone is not considered proof of genuine use;<sup>116</sup>
- ❑ includes safeguards for current users whose property would be reinstated to original owners. These include giving alternative properties and other choices, such as becoming tenants or leaseholders, and for productive properties, assurances that they will be safeguarded and given enough time to find alternatives;
- ❑ would not allow any permanent derogations from the EU *acquis* and limit any temporary derogations to not more than ten years from the entry into force of the settlement;
- ❑ links the negotiation on property to the territorial adjustment and settlers issues, with the view that flexibility on property will be easier once it is known which areas will be returned to Greek Cypriot administration and how many settlers will leave Cyprus after a settlement;
- ❑ would create an International Independent Immovable Property Commission, with nine members – three from each community and three non-Cypriots – and divide properties into three main categories, as dwellings (residential), productive, and unproductive, with further sub-categories;
- ❑ recognises three remedies – restitution, compensation and exchange – and distinguishes between the right of restitution and the right of immediate vacant possession by the owner, giving the current user the opportunity to lease the property for an as yet undefined number of years. Unused and unproductive property would be eligible for immediate reinstatement, although the owner could choose compensation or exchange instead of restitution;
- ❑ would limit compensation in principle to cases where it is the displaced owner's first wish, the property houses public interests, property is unclaimed or is considered problematic. In all other cases, the Property Commission would decide the appropriate remedy. If it de-

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<sup>112</sup> "The Turkish side believes that the fact of a solution is reward enough, that the friendship of Turkey is reward enough". Crisis Group interview, senior Greek Cypriot official, Nicosia, November 2010. "Everything about the GFE scheme is open for negotiations. We are just presenting an idea, a model for compensation. We can discuss the details in the talks, including whether it will have interest or not, or when the payments will be made". Crisis Group telephone interview, Turkish Cypriot official, November 2010.

<sup>113</sup> Crisis Group interview, Greek Cypriot official, Nicosia, October 2010.

<sup>114</sup> Crisis Group telephone interview, Lefteris Adilinis, political editor of *Politis*, 20 October 2010. Turkish Cypriots say that the urban transformation model turns the fact that the majority of Turkish Cypriot deeds are in the hands of their administration into an advantage, because there will be one authority to deal with rather than individual owners. Crisis Group interview, Turkish Cypriot official, October 2010.

<sup>115</sup> In 2003, UNSG Kofi Annan described the two sides' conflicting approaches to the property issue: "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". "Report of the Secretary-General on His Mission of Good Offices in Cyprus", S/2003/398, 1 April 2003. "[In their proposals] Greek Cypriots themselves have put limitations on the rights given to the original owner. They are actually trying to find a balance between current user and original owner. It wasn't there previously; this is new stuff". Crisis Group tele-

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phone interview, Lefteris Adilinis, political editor of *Politis*, 20 October 2010.

<sup>116</sup> Genuine user means "a person who genuinely uses that property as a home for his family or to earn a living. The difference with the Turkish Cypriot view is that they see 'current user' as a holder of a title deed which has been issued after 1974 by their authority". Crisis Group telephone interview, Greek Cypriot official, October 2010.

cides in the case of a dwelling to reinstate a displaced owner to a productive property, the current user whose livelihood depends on that property would be given “sufficient time” and assisted to find another property or source of income;

- proposes, regarding affected property owners who choose compensation, either immediate payment of the whole amount corresponding to a current value fixed by the Commission, or payment of partial compensation on the basis of current value, with the remaining amount paid in two instalments (in three and five years) on the basis of market value at that time. The Greek Cypriots stress in particular the need for effective guarantees to ensure that compensation would be paid before the claimant’s right to the property is extinguished;<sup>117</sup>
- leaves the door open for formulas involving partnership between user and owner, such as partial restitution and shares in existing development;
- would establish a Special Property Court as a final recourse against decisions of the Commission; and
- would allocate necessary funds (to be used in loans to persons affected by the decisions of the Commission or in the case of compensation) from interest-bearing bonds issued by the Property Commission and guaranteed by the properties and from contributions of financial institutions or third-party governments.

While the UN recognises that Greek Cypriots have modified their positions,<sup>118</sup> the proposals did not get a warm reception from the Turkish Cypriots, who say their counterparts start from extreme positions in order to strengthen their hand in the negotiations.<sup>119</sup> The Turkish Cypriots’ main problem with the package is the emphasis on restitution; they also resist linking property with territory or settlers,<sup>120</sup>

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<sup>117</sup> “This element is crucial in securing that the remedy of compensation will be a credible one and thus will be genuinely attractive to the owners”. Crisis Group email correspondence, Greek Cypriot official, November 2010.

<sup>118</sup> “Report of the UN Secretary-General on his Mission of Good Offices in Cyprus”, 24 November 2010, op. cit.

<sup>119</sup> A Turkish Cypriot familiar with the negotiations said the Secretary-General’s Special Adviser in Cyprus, Alexander Downer, is putting pressure on the Turkish Cypriots to compromise in order to win over the Greek Cypriots. “This puts the Greek Cypriots at an advantage when they start out from an unacceptable position. Our reasonable proposals are watered down when we try to get closer to theirs”. Crisis Group interview, Erol Kaymak, Turkish Cypriot academic and adviser in the negotiations, Nicosia, 12 October 2010.

<sup>120</sup> A Turkish Cypriot official said, “we cannot accept the Greek Cypriot proposals. First of all, the socio-economic structure which we built on Greek Cypriot property in the north would collapse. And secondly, we don’t have any property to take back in the

but their protest that they should not be made tenants in their own constituent state receives little sympathy.<sup>121</sup>

The outlook is not promising, as the UN Secretary-General pointed out in 24 November 2010 report (see above). Turkish Cypriot leader Eroğlu often accuses the Greek Cypriots of denying the realities on the island.<sup>122</sup> His representative at the talks, Kudret Özersay, said Greek Cypriots were putting forward proposals they knew would be rejected and that their offers were “nothing new”.<sup>123</sup> Greek Cypriot President Christofias has been critical of Eroğlu’s intentions and pessimistic about convergence.<sup>124</sup> Further complicating the negotiations is the effect of the domestic opposition on Christofias in the lead-up to the May 2011 parliamentary elections in the Republic of Cyprus.<sup>125</sup>

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south”. Another objected that “giving up territory can only be justified by what you get in other negotiation chapters”. Crisis Group interviews, Nicosia, October 2010.

<sup>121</sup> “You can’t erase the right of property. That’s guaranteed for everyone. What are they going to do? It’s not their house”. Crisis Group telephone interview, Lefteris Adilinis, political editor of *Politis*, 20 October 2010. “We haven’t asked for all of the properties to be returned. We haven’t said we will own 80 percent of properties in the north. That is not our approach”. Crisis Group telephone interview, Greek Cypriot official, October 2010.

<sup>122</sup> In a speech on 6 November 2010, he said, “Greek Cypriot proposals assume that nothing has changed on the island, especially in the north, in the past 36 years. We prepared our proposals taking into consideration the socio-economic structure and way of life that has been established here in the past 36 years”. Quoted by ANKA news agency, 6 November 2010. He also sent a letter to the UN Secretary-General in which he reportedly complained that President Christofias’s statements to the UNGA “did not reflect the realities on the island”. “Eroğlu sends letter to UNSG”, *Cyprus Mail*, 5 November 2010.

<sup>123</sup> “Hristofiyas’ın önerileri yeni değil” [“Christofias’ proposals are not new”], Anatolian Agency, 26 July 2010. In addition to property proposals, this was also a reaction to President Christofias’s speech on 15 July 2010, in which he offered to allow the north direct trade with the EU in return for handing back the fenced-off suburb of Varosha and called for an international conference to discuss only the external aspects of the Cyprus problem (ie, security and guarantees).

<sup>124</sup> On 4 August 2010, Christofias said there were “huge gaps” between the two sides on the property issue; on 11 September 2010, he said the Turkish Cypriot positions “were not bringing the two sides any closer”. “Huge differences on property issue”, *Cyprus Mail*, 5 August 2010; and “Christofias: Two sides are not getting any closer”, *Cyprus Mail*, 12 September 2010.

<sup>125</sup> “Christofias faces serious opposition from his partners. Since half way through 2010, we’re in election mode, [The main opposition party] DISI will be positioned against [Christofias’s] AKEL. After December 2010, the climate won’t be conducive to reaching an agreement at all”. Crisis Group interview, Takis Hadjidemetriou, civil society activist and former Greek Cypriot official, Nicosia, 27 May 2010.

## V. IDEAS FOR PROGRESS

In the absence of a comprehensive solution, it is in both sides' interest to allow mutually acceptable, voluntary domestic remedies to property disputes, so that the international court system can be avoided.

### A. STRENGTHENING LOCAL REMEDIES

Not all the approximately 1,500 pending cases at the ECHR went to the IPC after the *Demopoulos* decision. Some litigants may have chosen to await a political decision; others may have been cautious or sceptical about seeking a Turkish Cypriot remedy. The Greek Cypriot government discourages its citizens from applying to the IPC,<sup>126</sup> despite the ECHR findings,<sup>127</sup> but displaced Greek Cypriots also have doubts about the IPC. One said:

Where in the world have you seen the victim go to the perpetrator for justice? People that took my property from me are supposed to decide how much they will give me? IPC is run by Turkish Cypriots; the two international members do nothing. I don't trust [the IPC]. Greek Cypriots get only 10 or 20 per cent of the actual value of their properties. The IPC says "take it or leave it". Even my Turkish Cypriot lawyer advised me against taking their deal.<sup>128</sup>

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<sup>126</sup> Neither side expects the Greek Cypriot authorities to openly encourage their citizens to apply to the IPC anytime soon. Crisis Group interviews, Turkish and Greek Cypriots, October-November 2010. A Turkish Cypriot lawyer has pointed out that her Greek Cypriot clients who apply to the IPC are very discreet and do not want to be identified. Crisis Group interview, Emine Çolak, Turkish Cypriot activist and human rights lawyer, Nicosia, 13 October 2010. "The ones who are not applying are not doing so for nationalistic reasons, because their government is telling them not to. In some cases, it is because they want to be able to go back to their property, and they think they will lose that chance if they go through IPC". Crisis Group telephone interview, Achilleas Demetriades, Greek Cypriot lawyer, 9 November 2010.

<sup>127</sup> This was made evident in the *Xenides-Arestis* case and repeated in the *Demopoulos* judgement: "Pending resolution of the international dimension of the situation, the Court considers it of paramount importance that individuals continue to receive protection of their rights on the ground on a daily basis". *Demopoulos v. Turkey and 7 other cases*, op. cit.

<sup>128</sup> Crisis Group interview, Nicosia, 26 May 2010. "The Greek Cypriots are wrong if they think the foreign members of the IPC have no influence. It is true that the IPC has no input in friendly settlements, and over 120 cases have been solved this way. But if we do end up going to court, then our foreign members are certainly and always involved". Crisis Group interview, Sümer Erkmen, IPC president, 11 October 2010, Nicosia.

Greek Cypriots mainly complain about low compensation and the three to four years it sometimes takes to resolve cases.<sup>129</sup> IPC sources counter that the average time is one year, compensation is paid within a few months, and the body does not get involved with the valuation in friendly settlements, which is how the majority of cases are resolved.<sup>130</sup> Legitimate or not, Greek Cypriot concerns show that Turkish Cypriots should do more to ensure and communicate fairness and transparency. In particular, they should be clearer about the process, the calculations and details of payments.

A wider concern is whether the IPC will be able to handle all the outstanding 1,500 cases from the ECHR if they do end up on its doorstep, let alone all the Greek Cypriot properties in the north. Such a flood of cases looks unlikely at this point, and both Turks and Turkish Cypriots express confidence in the body's capabilities.<sup>131</sup> According to a Greek Cypriot lawyer, however, many Greek Cypriots who have been holding out will apply to the IPC after January 2011, if there is no sign of a political solution.<sup>132</sup> Time will show if this domestic remedy is indeed strong enough.

In the meantime, Greek Cypriots should commit to allowing all Cypriots to seek individual satisfaction. The majority of Turkish Cypriots have no domestic remedy, because the Guardian Law does not allow residents of the north to apply. Similarly, the Turkish Cypriot side could make their domestic process easier and more transparent for Greek Cypriots; currently the law recognises inherited titles to

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<sup>129</sup> Crisis Group interview, Greek Cypriot official, Nicosia, May 2010.

<sup>130</sup> Crisis Group interview, Sümer Erkmen, IPC president, Nicosia, 11 October 2010. "If the case goes to court, we calculate the [compensation] amount after listening to the two sides, the witnesses and land registry experts. We are generous with loss of use payments", *ibid.* "When the [Turkish Cypriot] state offers figures for the purposes of an amicable statement, it takes the 1974 value and increases it slightly to bring it closer to the current value. But this may differ from the calculation the IPC uses in writing a decision after a hearing". Crisis Group interview, Emine Çolak, Turkish Cypriot activist and human rights lawyer, 13 October 2010.

<sup>131</sup> IPC employs up to ten people, including the two international members and three contract personnel. "Our personnel is sufficient for now. In the future, we can increase this number if needed". Crisis Group interview, Sümer Erkmen, IPC president, Nicosia, 11 October 2010. "In the absence of a solution, the IPC will continue to deal with these cases bit by bit". Crisis Group interview, Turkish diplomat, Ankara, November 2010.

<sup>132</sup> Crisis Group telephone interview, Achilleas Demetriades, Greek Cypriot lawyer, 8 November 2010.

Greek Cypriot property in their zone only if the heirs have permanent resident status in the north.<sup>133</sup>

## B. FACILITATING PROPERTY EXCHANGES AND OTHER PRIVATE ARRANGEMENTS

A legal basis should be established to allow pairs of displaced owners and current users to work out their own mutually agreeable solutions, including property swaps.<sup>134</sup> For productive properties that generate income such as hotels or casinos, owners would have an incentive to engage in profit-sharing agreements or long-term leases with the users. The authorities on both sides could even reward such arrangements by providing incentives, including tax exemptions, amnesties and the like.<sup>135</sup>

The Greek Cypriot system under the Guardian Law does not yet recognise land swaps between Greek Cypriots and Turkish Cypriots, a remedy accepted and utilised by the IPC. The *Tymvios* case, currently before the ECHR, will test the legality of this position (see above). Greek Cypriot owners are potentially interested in exchanges but unlikely to do them until they can be legalised in the Republic of Cyprus.<sup>136</sup>

Other problems will also need to be dealt with before a well-functioning swap system can be established. The Turkish Cypriots' points system in 1977 resulted in their administration holding most property rights. This makes it a possible counterparty for exchanges, if a way can be

found around the Greek Cypriot non-recognition of almost all post-1974 Turkish Cypriot administrative bodies. If both sides agree to swaps as an effective remedy, a joint mechanism could be established to overcome administrative or logistical hurdles.<sup>137</sup>

## C. VAROSHA

The fenced-off ghost resort of Varosha (Maraş), in the southern suburbs of Famagusta, which Turkey has long kept under military jurisdiction as a bargaining chip in any settlement, is a major element of the property restitution question. It includes 6 sq km, on which stand more than 100 hotels and over 4,000 houses, hundreds of commercial business premises, public buildings, museums and schools, a cemetery and several churches. Its 3km beach was once a prime vacation spot, owned and run mainly by Greek Cypriots, but it is now closed to civilians and, apart from two beach hotels used by the Turkish military, its buildings are left to crumble.

Resettlement of Varosha by Greek Cypriots before a full political settlement was accepted in the 1979 High-Level Agreement.<sup>138</sup> In 1984, Security Council Resolution 550 called for its transfer to UN administration, and it would have been returned to the Greek Cypriots had the Annan Plan been accepted in 2004. Varosha has also been part of several complex plans for negotiated interim confidence-building measures, none of which has progressed far.<sup>139</sup>

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<sup>133</sup>“The interpretation of residence, however, is flexible in practice”. Crisis Group Email correspondence, Emine Çolak, Turkish Cypriot activist and human rights lawyer, 12 November 2010.

<sup>134</sup>“Priority should be given to owner-user pairs who can find a solution among themselves. Greek Cypriot [owners] want to see they’re being consulted”. Crisis Group interview, Alexandros Lordos, Greek Cypriot pollster, Nicosia, 27 May 2010.

<sup>135</sup> A model for reducing the compensation bill for property with the help of owner-user pairs is developed by George Lordos in “Treatment of property affected by events 1963-1974”, Centre for European Policy Studies, 21 May 2010. It foresees a cash basis for all transactions.

<sup>136</sup>“The [Greek] Cypriot government says it will not agree to these deals because it did not consent to them as the guardian of Turkish Cypriot properties. After a few years, Strasbourg will tell it that the Turkish Cypriots and Tymvios are right, and it will have to accept it. The Guardian Law will change. But it will take time”. Crisis Group telephone interview, Greek Cypriot lawyer, November 2010. “Exchange is increasingly becoming an interesting and attractive option for the Greek Cypriots. But they are taking a risk with it, because they are giving up rights to their property in the north while the Custodian Law does not accept the swap if the Turkish Cypriot owner lives in the north. [Privately,] Greek Cypriots are probably thinking that the Custodian Law won’t last much longer”. Crisis Group interview, Turkish diplomat, Ankara, November 2010.

<sup>137</sup>“Greek Cypriots in certain cases make requests to the IPC for exchanges. But there is a lack of ‘inventory’ of properties that could be utilised for such exchanges. There is no mechanism in place yet”. Crisis Group interview, Emine Çolak, Turkish Cypriot activist and human rights lawyer, Nicosia, 13 October 2010.

<sup>138</sup> It was included in the ten-point initiative in 1979, which said priority would be given to “reaching agreement of [on] the resettlement of Varosha under UN auspices simultaneously with the beginning of the consideration by the interlocutors of the constitutional and territorial aspects of a comprehensive settlement. After agreement on Varosha has been reached, it will be implemented without awaiting the outcome of the discussion on other aspects of the Cyprus problem”.

<sup>139</sup> Turkish Cypriots did not favourably approach Christofias’s offer in July 2010 to open Famagusta port under EU supervision for international trade in exchange for the return of Varosha. In a speech on 6 November 2010, Turkish Cypriot leader Eroğlu said the status of Varosha can only be discussed as part of the reunification negotiations on territory. “Maraş ‘toprak’la görüşülür” [“Varosha to be discussed under ‘territory’”], *Kıbrıs Gazetesi*, 7 November 2010. “Turkey will open Varosha on its own terms, not in return for Greek Cypriots allowing direct trade with the EU. But conceivably it may be considered in exchange for opening [Turkish Cypriot] Ercan airport [to international flights]”. Crisis Group interview, Erol Kaymak, Turkish Cypriot academic and adviser in the negotiations, Nicosia, 12 October 2010.

As *Xenides-Arestis v. Turkey* and *Lordos and others v. Turkey* have demonstrated, it is a hot subject of litigation. Turkish Cypriots argue that much Varosha land belonged to the Evkaf charitable foundation,<sup>140</sup> but this has had little impact on outside courts<sup>141</sup> and did not stop the ECHR from ruling in *Lordos and Others v. Turkey* that Ankara was in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms with regard to Greek Cypriot properties in Varosha. This will be tested again in the largest case to date at the IPC, for around €115 million, concerning several large hotels, flats, shops and land.<sup>142</sup>

As talks slow, both sides may feel the need to normalise the situation in Varosha without awaiting a political settlement or risking slow, unpredictable and expensive court decisions. As a first step, the Turkish Cypriot side should allow international experts into the town to study the feasibility of rebuilding the resort. It seems unlikely that Turkey and Turkish Cypriots will open Varosha fully without an eye-catching counter-offer, such as permission for international flights to their Ercan airport, under some form of EU or other international supervision. An interim joint project for reconstruction, with third-party financial assistance if necessary, would nonetheless be a compelling gesture. The Greek Cypriots signal that if the town is turned over to UN supervision, they may accept it not being returned to their administration until reconstruction work has been completed, which, they say, could take ten to fifteen years.<sup>143</sup>

#### D. BRIDGING THE NEW PROPOSALS

The two sides' seemingly conflicting proposals on the property chapter in reunification talks could be bridged in some areas. Most importantly, the Greek Cypriot leadership should prepare public opinion for a settlement that will have to balance demands for full right to return with

the establishment of a bizonal federation. With the exception of properties being put to public use or other mutually-agreed criteria for which reinstatement will not be possible, both sides should spell out that pre-1974 home owners in principle have the right to reclaim their primary residence.<sup>144</sup> How this right is implemented will have to take into account various factors, including the rights of the current users, especially if they themselves are displaced, have no intention of returning to their original home in the south or have invested in their current house. Alternative accommodation should be provided for those who have to vacate their current abode and have no other housing.

Ideas worth consideration include the following.

- One way of overcoming Turkish Cypriot worries about being inundated with Greek Cypriots in their constituent state would be to take up the Annan Plan idea to limit political rights (ie, voting rights), rather than putting ceilings on the number of displaced Greek Cypriots who can return.<sup>145</sup>
- Public opinion polls show (see above) that there is room for convergence on how property is categorised, especially regarding property used by third parties or as secondary homes. Further categorisation could address whether it is foreign-owned, a primary or secondary residence or built on a previously empty plot (ie, not usurping someone's home). Greek Cypriots want to know how Turkish Cypriots are using their properties and how much is held by settlers from Turkey. Turkish Cypriots could try to accommodate them on this more transparently to expedite the talks.<sup>146</sup> An impartial audit of land registries on both sides would be useful in this process, although the practical limits of knowing everything about all properties should be borne in mind by both sides, and the process should not distract from the main negotiations. One way forward would be to take an agreed representative sample of property ownership and usage, on which the two sides could base policies with which to manage future individual claims.

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<sup>140</sup> Turkish Cypriots claim there were usurpations of Evkaf (the institution that regulates individual *vakıfs*, charitable endowments) properties in the early twentieth century, before the Republic of Cyprus was established in 1960. Some Turkish Cypriots say around 337,000 dönüms (450 sq km) of Evkaf land were illegally expropriated under British colonial rule. Gürel and Özersay, "Politics of Property in Cyprus", op. cit.

<sup>141</sup> "The Evkaf argument did not hold up in the *Xenides-Arestis* case [at the ECHR]". Crisis Group telephone interview, Rıza Türmen, former ECHR judge, 10 November 2010.

<sup>142</sup> The applicant is Andreas Lordos, different from the plaintiff in *Lordos and others v. Turkey*, although from the same family that owns significant land and property in Varosha. He had filed an application to the ECHR, which referred him to the IPC, citing the necessity to exhaust domestic remedies.

<sup>143</sup> Crisis Group interview, senior Greek Cypriot official, Nicosia, November 2010.

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<sup>144</sup> After taking into consideration territorial adjustments and unusable properties, a Turkish Cypriot researcher estimates that only around 15,000 of the 46,000 Greek Cypriot-owned houses in the Turkish Cypriot zone will be eligible for reinstatement to original owners who want their property back. Crisis Group interview, Istanbul, 6 December 2010.

<sup>145</sup> "If you limit their political rights, people aren't going to live there permanently; they may use it as a holiday house. The bizonality is secure". Crisis Group telephone interview, Lefteris Adilinis, political editor of *Politis*, 20 October 2010.

<sup>146</sup> Greek Cypriot officials say Turkish Cypriot authorities refuse to give this data because it may negatively affect outstanding cases at the ECHR and IPC. Crisis Group telephone interview, October 2010.



- ❑ To assuage Greek Cypriot worries about the economic risks of their proposals, the Turkish Cypriots might commission an economic impact study or produce an analysis of the outcomes in similar urban development cases. (Brazil, Turkey, Lebanon, Canada, South Korea, Italy and Bermuda are among the ones mentioned by Turkish Cypriots.)
- ❑ Greek Cypriots believe they made concessions in the governance and power-sharing chapter, so they expect the Turkish Cypriots to be more generous on property and territory.<sup>147</sup> The Greek Cypriot proposal to link territory, settlers and property headings is useful and practical, as it would help Greek Cypriots learn how much property would be returned in areas vacated by the Turkish side. But the Turkish Cypriots say they can only do that when all six official and one unofficial issues<sup>148</sup> are put on the table in the setting of an international conference and behind closed doors, much like the Burgenstock talks in March 2004.<sup>149</sup> A way forward would be to structure the property-territory-settlers discussion as the first part of a two-stage international meeting at which all areas on which there is significant (not necessarily full) convergence can be subjected to a give-and-take process. It could further be agreed that the guarantor powers – the UK, Turkey and Greece – and the EU would also be at this conference.
- ❑ Given the high concentration of property in the north in the hands of a small portion of the Greek Cypriot owners, a mutual agreement would have a greater chance of acceptance by the public at large if it settled the claims of the small owners first.<sup>150</sup>

As the far stronger military and economic power, Turkey should do much more through meetings, statements and speeches to assure Greek Cypriots that it is committed to a comprehensive settlement, eventual troop withdrawal and handing back of property and territory along the lines of previous UN plans. Outreach by the prime minister, foreign minister and Europe minister to Greek Cypriot civil society and media in February 2010 had a major impact. If it had been sustained, it could have done much more to persuade Greek Cypriots that a deal was possible.<sup>151</sup>

Ultimately, Greek Cypriots will have to accept that return of all their property is not possible, but they could still get some of it back and compensation for the rest.<sup>152</sup> Turkish Cypriots need to realise that the borders of their constituent state will not be international and that any direct limitations they put on ownership and residence would probably be temporary. And Turkey will have to realise that if the goal is to reach a mutually acceptable solution, it cannot give a worse deal on territory than the one it offered in the Annan Plan.

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<sup>147</sup> “There was progress on governance and constitutional aspects [of the negotiations under Mehmet Ali Talat and President Christofias]. That is where the [Greek] Cypriot government was able to give. To include an illegitimate regime with a great minority of the population, almost on an equal basis, required great generosity. Now, it’s up to the Turkish side to deliver what they are holding – property, settlers, security – but they are reluctant to do anything”. Crisis Group interview, senior Greek Cypriot official, Nicosia, November 2010.

<sup>148</sup> See introduction to Section IV above for a list of these issues.

<sup>149</sup> Representatives from Turkey, Greece and the two Cypriot communities came together in Burgenstock, Switzerland, in March 2004 for broad negotiations on the fourth version of the Annan Plan. “There will not be a compromise solution until all of the headings are taken up together in an international conference setting”. Such a conference can happen after reaching 30-40 per cent convergence on individual headings. Crisis Group interview, Turkish Cypriot official, Nicosia, October 2010.

<sup>150</sup> To demonstrate the degree of concentration, one estimate puts 80 per cent of all the Greek Cypriot properties in the north in the hands of only 18 per cent of Greek Cypriot dispossessed owners. Crisis Group interview, Turkish diplomat, Ankara, November 2010. An international official believed that 4 per cent

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of owners hold 40 per cent of the property. Crisis Group interview, Nicosia, November 2010.

<sup>151</sup> A Greek Cypriot official clearly stated his distrust for Turkey’s intentions: “Turkey is not known for honouring its agreements. Look at [its failure to ratify normalisation protocols signed in October 2009 with] Armenia”. Crisis Group interview, May 2010.

<sup>152</sup> “The clock can’t go back to pre-1974. Returning [78 per cent of] the property is not going to happen”. Crisis Group interview, international official, Nicosia, November 2010.

## VI. CONCLUSION

Negotiations to reunify the 1.1 million people of Cyprus are progressing very slowly. A focus on property since April 2010 has yet to provide a breakthrough in the latest round of UN-brokered talks, underway since September 2008. Though it is only one of the six official headings under discussion, property has become a litmus test for continuing consideration of reunification in a bicomunal, bizonal federation. Progress will be assessed once again in a meeting between the two community leaders and the UN Secretary-General in January 2011, and failure to demonstrate agreement at that time will have dire consequences for the future of the federal goal.

The next few months, therefore, carry an implicit deadline for the comprehensive talks, after which the process would go onto a back burner – not only because of looming Greek Cypriot and Turkish elections, but also because any more delays would further erode the international community's faith in both Cypriot communities' political will. Commitment to resolving the property issue, on the other hand, would strongly indicate their readiness and determination for a deal. This is still possible, if the sides can bridge their proposals – a task that requires flexibility, trust and creativity.

Meanwhile, the property issue is becoming increasingly independent of the political process. Local and international courts and other domestic bodies are solving individual disputes and levying penalties on states. Displaced Greek Cypriot owners can seek remedies for their property in the north through the Turkish Cypriot IPC, which the European Court of Human Rights deems an "effective domestic remedy". This imposes sizeable liabilities on Turkey; if all cases go through this body, it will have to pay Greek Cypriots for properties that will in turn be handed over to Turkish Cypriots. If Turkey refuses to pay, it may have to bear a high political cost, and a failure to solve Cyprus is already hobbling its EU membership ambition. A settlement, on the other hand, would mitigate Turkey's burden with territorial adjustments and by bringing exchange and restitution on a larger scale into the mix. A comprehensive deal would also encourage outside financial support from international institutions and the private sector.

Whether the current talks succeed or fail, the property issue is not static and will have a large and continuing impact on the Cypriot people and on Turkey. Some steps could improve conditions to address the property question and make the environment more conducive to compromise. Local legislation should be amended, for example, to allow all Cypriots, regardless of where they currently reside, to claim remedies for their abandoned properties or to engage in mutually agreed property exchanges. The

sides should also jointly prepare an economic impact study on the various proposals to redevelop property in both zones, including feasibility assessments of Varosha's redevelopment.

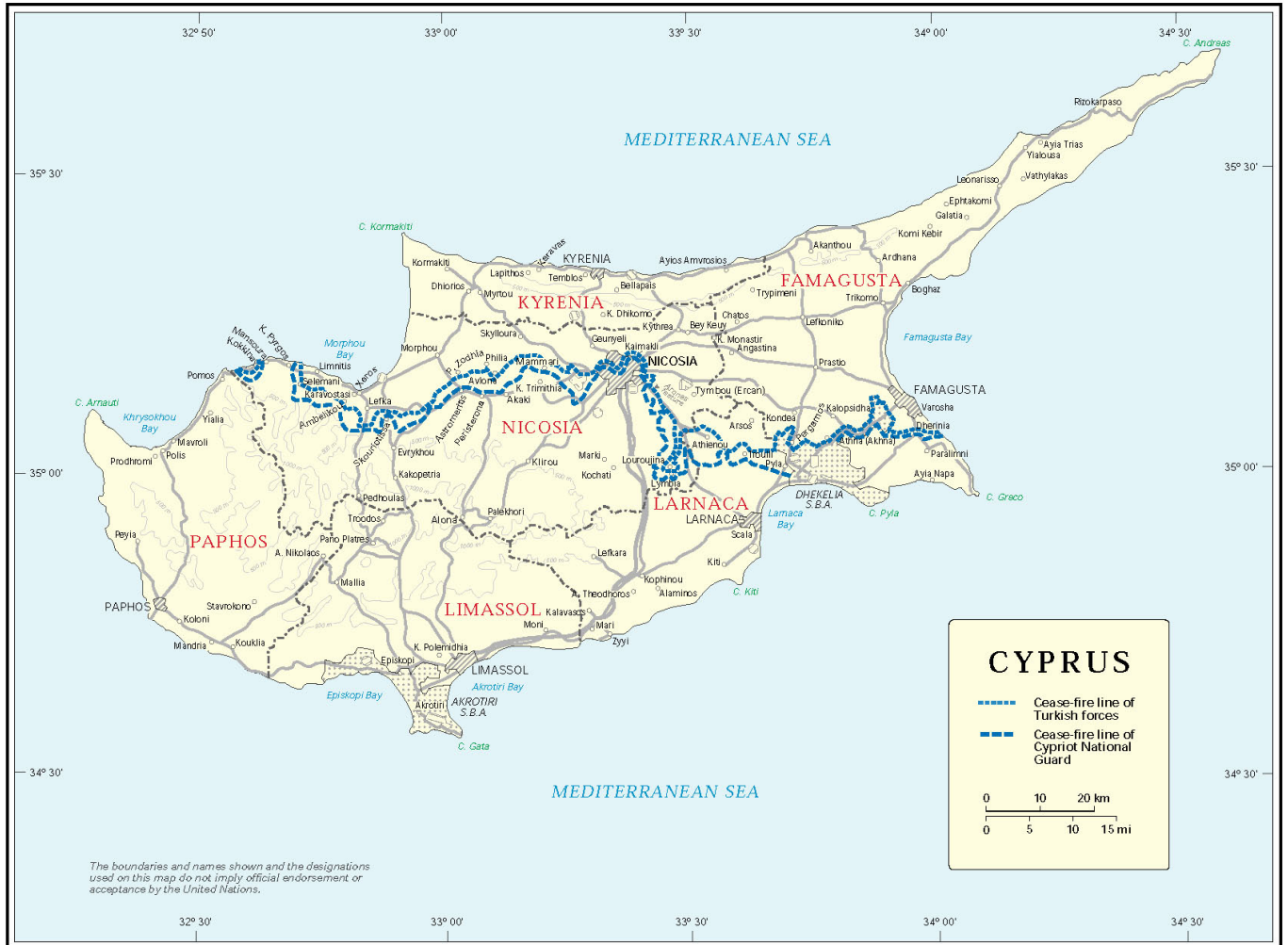
Property is a highly emotional issue linked to a sense of justice and identity. Displaced Greek Cypriots require a fair settlement based on the right to return, while the users of their abandoned properties – often displaced persons themselves – have accumulated rights that are increasingly recognised by international courts. Turkish Cypriots must acknowledge that Greek Cypriot owners of much property in the north have rights, and Greek Cypriots must give them adequate assurances that bizonality will be secured in any mutually agreed property deal.

Without agreement on all aspects of the property conundrum, it will be hard to reach a mutually recognised, sustainable settlement of all claims. If the parties involved need one compelling reason to put their full weight behind the current fourth major round of UN-sponsored talks to reunify the island in a bizonal, bicomunal federation – or indeed any other mutually acceptable settlement – it is that the complicated property problem will otherwise be much more difficult to manage. If politicians fail to come to grips with the urgent need for a property deal, they will ensure that the issue keeps returning to haunt their peoples, treasuries and international relations for many more years to come.

**Nicosia/Istanbul/Brussels, 9 December 2010**

## APPENDIX A

### MAP OF CYPRUS



## APPENDIX B

### INTERNATIONAL LAW RIGHTS TO PROPERTY, RETURN AND REMEDY

**Sources of international law, customary and treaty based, which enshrine an individual's right to enjoy property and the rights of the displaced to return to their homes and receive remedies include:**

❑ Universal Declaration of Human Rights

Article 13(2): "Everyone has the right to leave a country, including their own, and to return to their country".

❑ International Covenant of Civil and Political Rights

Article 12 (1): "Everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his residence".

Article 12 (4): "No one shall be arbitrarily deprived of the right to enter his own country".

❑ European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1 of Protocol 1: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

Article 8: "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

Article 13: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

**The following are examples of supporting commentary and interpretation:**

- ❑ UN Sub-Commission on Human Rights Resolution 2002/30 adopted on 15 August 2002 says all displaced have the right to "return voluntarily in safety and dignity, as established in international human rights law ... return to their original homes or places of habitual residence or to settle voluntarily elsewhere; where authorities send displaced persons to a place other than their habitual residence, this does not affect their right to return to their place of habitual residence, nor their right to restitution or compensation or both ... to adequate housing and property restitution or, should this not be possible, appropriate compensation or another form of just reparation, and the particular importance of these rights for displaced persons wishing to return to their original homes or places of habitual residence".
- ❑ UN Sub-Commission on the Promotion and Protection of Human Rights Resolution 2005/21 adopted on 11 August 2005 urges states to "ensure the right of all refugees and displaced persons to return and have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to implement this right ... neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations". It also says "all refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process".
- ❑ UN Committee on the Elimination of Racial Discrimination said on 8 March 1997 that "after their return to homes of origin, all refugees and displaced persons have the right to have restored to them property of which they were deprived during the conflict and to be compensated for any such property that cannot be restored" (CERD/C/SR.1189, 8 March 1997).
- ❑ UN High Commissioner for Refugees (UNHCR) said in its "Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees" on 8 October 2004 that all returning refugees have the right to housing, land, property return and compensation (No. 101 LV - 2004).
- ❑ UN Sub-Commission on Human Rights Special Rapporteur Awn Shawkat Al-Khasawneh noted in "Human Rights Dimension of Population Transfers" on 27 June 1997 that "every person has the right to return voluntarily, and in safety and dignity, to the country of origin and, within it, to the place of origin or choice. The exercise of the right to return does not preclude the victims' right to adequate remedies, including restoration of properties of which they were deprived in connection with or as a result of population transfers, compensation for any property that cannot be restored to them, and any other reparations provided for in international law" (E/CN.4/Sub.2/1997/23).

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

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**December 2010**

## APPENDIX D

### CRISIS GROUP REPORTS AND BRIEFINGS ON EUROPE SINCE 2007

*Islam and Identity in Germany*, Europe Report N°181, 14 March 2007.

#### Balkans

*Ensuring Bosnia's Future: A New International Engagement Strategy*, Europe Report N°180, 15 February 2007 (also available in Russian).

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*Bosnia's Incomplete Transition: Between Dayton and Europe*, Europe Report N°198, 9 March 2009 (also available in Serbian).

*Serb Integration in Kosovo: Taking the Plunge*, Europe Report N°200, 12 May 2009.

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*Azerbaijan: Independent Islam and the State*, Europe Report N°191, 25 March 2008 (also available in Azeri and Russian).

*Armenia: Picking up the Pieces*, Europe Briefing N°48, 8 April 2008.

*Russia's Dagestan: Conflict Causes*, Europe Report N°192, 3 June 2008.

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#### Cyprus

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*Reunifying Cyprus: The Best Chance Yet*, Europe Report N°194, 23 June 2008 (also available in Greek and Turkish).

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*Turkey and the Middle East: Ambitions and Constraints*, Europe Report N°203, 7 April 2010 (also available in Turkish).

*Turkey's Crises over Israel and Iran*, Europe Report N°208, 8 September 2010.

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