

THE PROPERTY ISSUE IN CYPRUS
1974–2012

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ABSTRACT

THE PROPERTY ISSUE IN CYPRUS 1974–2012

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This thesis aims to analyze the property issue in the Cyprus conflict from 1974 up to 2012 based on historical and legal factors. First of all, the historical background of the Cyprus conflict will be evaluated with its different dimensions. After the EU and UN's involvement, the conflict internationalized and regarding the geostrategic importance of the island with the security concerns in the Middle East region the core of today's conflict became the property issue. In this respect, especially both the Turkish and Greek Cypriots proposals about property issue will be detailed one by one. Following that, based on these proposals the Turkish and Greek Cypriots cases to the ECHR about property issue will be analyzed. In the light of these the overall solutions to the Cyprus conflict will be evaluated.

Keywords: Property, Cyprus, Turkish Republic of Northern Cyprus, European Court of Human Rights, Middle East.

ÖZ

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Bu tezin amacı, Kıbrıs sorununda Mülkiyet meselesini 1974'ten 2012 yılına kadar tarihi ve yasal çerçevede incelemektir. Öncelikle Kıbrıs sorununun tarihsel altyapısı farklı yönleriyle ele alınacaktır. AB ve BM'nin müdahil olması ile Kıbrıs'ın jeopolitik önemi ve Ortadoğu güvenliği bağlamında Kıbrıs sorunu uluslararası boyut kazanmıştır ve günümüzde Kıbrıs sorununun temeli mülkiyet meselesidir. Bu bağlamda, özellikle Kıbrıslı Türklerin ve Kıbrıslı Rumların mülkiyet konusundaki önerileri ayrı ayrı incelenecaktır. Bu incelemenin ardından Kıbrıslı Türk ve Kıbrıslı Rumların AİHM'e mülkiyetle ilgili açmış olduğu davalar ele alınacaktır. Tüm bunların ışığında Kıbrıs sorununun muhtemel çözümleri değerlendirilecektir.

Anahtar kelimeler: Mülkiyet, Kıbrıs, Kuzey Kıbrıs Türk Cumhuriyeti, Avrupa İnsan Hakları Mahkemesi, Ortadoğu.

To My Beloved Parents

Dilnur and Mehmet İbrahim SAĞLAM

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TABLE OF CONTENTS

PLAGIARISM.....	iii
ABSTRACT.....	iv
ÖZ.....	v
DEDICATION.....	vi
ACKNOWLEDGMENTS.....	vii
TABLE OF CONTENTS	viii
LIST OF TABLES.....	xi
LIST OF MAPS.....	xii
ABBREVIATIONS.....	xiii
CHAPTER	
1. INTRODUCTION.....	1
2. THE 1974 INTERVENTION INTO CYPRUS	
2.1. Historical Background	9
2.2. The 1974 Intervention.....	17
2.3. The Post 1974 Period.....	19
3. THE CYPRUS LAND CONFLICT	
3.1. UN.....	24
3.2. The Set of Ideas (1992).....	28
3.3. Confidence Building Measures.....	30
3.4. Troutbeck and Glion Negotiations.....	31

3.5. New York and Geneva (1999-2000).....	32
3.6. EU.....	33
3.7. Recognition.....	37
3.8. Internationalization of the Conflict.....	39
3.9. The Annan Plan.....	41
3.10. The Negotiations	
3.10.1. The Negotiations Before the Ghali Set of Ideas.....	47
3.10.2. The Negotiations After the Ghali Set of Ideas.....	49
3.10.3. 2000s Period.....	50
3.10.4. The Christofias-Talat Period.....	52
3.10.5. The Christofias-Eroğlu Period.....	53
4. THE PROPERTY ISSUE	
4.1. Scope of the Concept.....	56
4.2. The Annan Plan Provisions.....	57
4.2.1. Dispossessed Owners.....	58
4.2.2. Current Users.....	62
4.2.3. Territorial Adjustment.....	64
4.3. Turkish Cypriot Proposals On Property.....	68
4.4. Greek Cypriot Proposals On Property.....	73
4.5 Analysis About Proposals.....	77
5. LEGAL BASIS OF THE PROPERTY ISSUE	
5.1. International Covenant of Civil And Political Rights.....	82
5.2. Universal Declaration of Human Rights.....	84

5.3. The Annan Plan Foundation Agreement	85
5.4. Law For The Compensation, Exchange and Restitution of Immovable Properties (Law No. 67/2005).....	87
5.5. The European Convention For The Protection of Human Rights And Fundamental Freedoms.....	89
5.6. The Property Board.....	90
5.7. The 1/3 rd Rule.....	93
5.8. The IPC In Northern Cyprus.....	95
5.9. The Pinheiro Principles.....	101
5.10. The Security Council Resolutions	
5.10.1. The Security Council Resolution 541.....	104
5.10.2. The Security Council Resolution 550.....	104
6. THE ECHR CASES ABOUT CYPRUS PROPERTY	
6.1. The ECHR.....	106
6.2. Turkish Cypriot Cases To The ECHR.....	107
6.3. Greek Cypriot Cases To The ECHR.....	110
7. CONCLUSION.....	118
REFERENCES.....	125
APPENDICES	
A. Application Form of TRNC IPC	133
B. Tez Fotokopi İzin Formu.....	135

LIST OF TABLES

Table 2.1: The Distribution of Population in Cyprus.....	23
Table 4.1: The Land Categories.....	65
Table 4.2: The Ottoman Evkaf	71
Table 6.1: The Turkish Cypriot Cases to the ECHR.....	108
Table 6.2: The Greek Cypriot Cases to the ECHR.....	111

LIST OF MAPS

Map 1: Map of Cyprus Island	16
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LIST OF ABBREVIATIONS

ECHR	European Court of Human Rights
EU	European Union
GCA	Greek Cypriot Administration
GFE	Guaranteed Financial Entitlement
IPC	Immovable Property Commission
NATO	North Atlantic Treaty Organization
ROC	Republic of Cyprus
TRNC	Turkish Republic of Northern Cyprus
UCR	United Cyprus Republic
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFICYP	United Nations Peacekeeping Force in Cyprus

CHAPTER 1

INTRODUCTION

This study deals with the property issue in Cyprus from 1974 up to 2012. Since Turkey intervened Cyprus militarily in 1974, two communities exist as Turkish and Greek Cypriots which are physically separated in the island. They differ in ethnic origin, religion, and also language. Moreover, each community set up its own education system in its own language. Thus, on the island there exists no Cypriot identity that they identified themselves with motherland nations, Greek and Turkey. Closely linked with the issue the transmission of the historic hostility to the generations and economic gap between the sides leads a redistribution of welfare problem in a united Cyprus. Also, they have different arguments and perspectives that, they illustrate the origins of the conflict differently.

The Cyprus conflict does not consist only the constitutional issues, governance and power sharing or self determination but also the population exchange. After 1974, the Greek Cypriots fled to the Southern Cyprus and the Turkish Cypriots moved to the North by leaving their properties on the other side. Hence, the rights of displaced persons as well as the status of property became subject. So, the Cypriots have always differed about the solution of the settlement.

Accepting the Greek Cypriots as the sole legitimate government of all Cyprus and assuming that Turkish Cypriots do not exist and with the Greek Cypriot Administration (GCA)'s European Union (EU) accession in 2004 the violations of the international principles set in London and Zurich agreements underlined. By this, the non recognition of the Turkish Republic of Northern Cyprus (TRNC) brings the isolations from the world. In order to solve the conflict United Nation (UN) Secretary General Annan proposed a very detailed plan. And, as a result the Greek Cypriots voted against the plan with 75 per cent whereas the Turkish Cypriots voted for the plan with 65 per cent. But, still the Annan Plan's provisions are questioned.

After the Annan Plan referenda in 2004, with regard the Turkish Cypriots' consent, the EU have expressed their support for the economic development of Turkish Cypriots. Unfortunately, the EU failed to cancel the embargoes on the TRNC. But, isolations of the TRNC should not be linked to other issues. For, the Annan Plan's insufficient and weak points will be detailed.

After 1974 the two communities of the island have left properties with regard to population exchange. Basically, the property right is stressed by Locke in 1960s and since then it is on the world agenda. Throughout, Hoffmeister's, Necatigil's and Tamkoç's analysis about legal aspects of the issue are mentioned. Also, The European Court of Human Rights (ECHR) cases about Cyprus property issue are examined and analyzed. So, the property issue's international affects to today's politics are emphasized. Moreover, the PRIO's and International Crisis Group's

reports that are written by Kudret Özersay and Ayla Gürel about Cyprus property issue are analyzed and the results of the non recognition of the TRNC are explained due to international law. Extensively, the conflict deadlocked on the property issue but it can be realized that there is not equal protection and representation of the rights of both sides.

This thesis consists of seven chapters. First of all, I will indicate the historical background of Cyprus and then the origins and evaluation of the Cyprus conflict till today. In addition, the property issue in the overall conflict will be explained by emphasizing the parties' proposals and claims. In order to realize the legal components and reasons of the issue one by one related laws will be described which are subjected to ECHR cases. After, ECHR cases by the Turkish and Greek Cypriots will be addressed. As a result, at last overall conflict and possible solutions of the conflict will be discussed in the conclusion.

Throughout this study I tried to answer the questions even ongoing negotiations and presented proposals regarding why there is no resolution to the Cyprus conflict, why although property issue is seen as the precondition for the comprehensive settlement the issues of self determination, the recognition of TRNC and economic aspects have not been solved, how parties provisions would effect each other and how did they critique them. And, there will be an attempt to analyze solutions through international actors within the conflict as UN and EU which have

different interests towards Cyprus. This is why, I will use their documents, releases and resolutions that ensure the Cyprus conflict became forefront.

There is no doubt that the conflict affects each side differently. Starting from 1974, the partition of the island into two the important elements of the conflict will be analyzed in the second and third chapters. For this, not only basic history but also the diplomatic impacts and importance will be underlined by referencing Dodd, Michael, Mallinson. Crawshaw, Ertekün, Bayülken, Tamkoç and Hoffmeister.

The UN has always given a special importance to the Cyprus conflict and UN Secretary Generals show efforts to solve the issue and presented plans. Although the proposals were extensively discussed and clarifications made in the case of Cyprus the big gap between the parties is not possible to bridge. Nevertheless, the Annan Plan lacks understanding the reality in Cyprus conflict. And, the territorial division of the island and the redistribution of property were two important aspects of the Annan Plan but, it also fails to meet the needs of the both sides and the region to end the conflict.

In the fourth chapter, according to Annan Plan 5th version property provisions will be analyzed while stating the Turkish and Greek Cypriots proposals separately. Since 1974 it has become more and more complex and without an agreement on all aspects of the property it will be impossible to reach a settlement on the island. The Greek Cypriots voted against the Annan Plan however, the Turkish Cypriots voted in

favor of it. For, the Turkish Cypriots wanted a solution to the issue and considered the Annan Plan as an opportunity for this. However, the Greek Cypriots focused mostly on blaming the Turkish Cypriots instead of to reach a solution. So, this makes the solution attempts much more complicated day by day. But, still the Annan Plan's provisions are questioned. Through the parties' proposals how the property issue has affected, currently affects and also will affect the Cyprus conflict will be evaluated by using lists. One by one the situations of dispossessed owners, current users and territorial adjustment areas will be detailed.

There is not equal protection and representation of the rights of both sides. So, I will try to describe the legal matters related to property issue by expressing specific laws and their concerned articles in the fifth chapter of this research. While representing these I will try to add an extra dimension and outlook to understand Cyprus' past, present and future to get the legality of the acts clearly. Again, as a result there occur two different perceptions about the issues. Here, although non recognition of the TRNC stay as an obstacle in general, as the non recognized state's legal commission formation of the Immovable Property Commission (IPC) in TRNC with the ECHR decision is important for to solve the property issue.

Given that, many Turkish Cypriots presume that a settlement will require large amounts of compensation whereas many Greek Cypriots consider that reinstatement does not need economic burdens and so funding. Here, the focus is whether foreign aid and funds would be helpful or not. Because, managing this

requires balancing domestic, regional and international elements operates within the conflict. So, in both communities some want to resettle in the other community and some do not. Therefore, in the case of a settlement the preferred solution for the property arrangements somehow satisfy or annoy the either sides.

The two communities of the island have left properties with regard to population exchange. So, in order to regain the rights of their properties left in the other part of the island, they applied to first internal and then international courts. As the comprehensive settlement for the Cyprus conflict will be dominantly based on the solution of the property issue because of non recognition of the TRNC the ECHR cases are all against Turkey.

They both have applied to the ECHR as the last stance to get either compensation, exchange of property or restitution. Also, the ECHR decisions could not find a solution to the property issue. Because, the ECHR based the judgments on UN Security Council Resolutions 541 and 550 which considers the establishment of the TRNC as null and void without examining the 1960 treaties, the facts of the 1963–1974 period, the principles of international law about recognition of the states. Furthermore, non recognition in the international field challenging the ongoing political structure because there exist the negotiations, elections, trade relations, education facilities and tourism on the island. In chapter six, in the context of property issue, I will try to represent the list of cases, reasons and specialize the turning point cases from both parties like Loizidou, Arestis, Tymvios, Demopoulos

case from Greek Cypriots and the only concluded one the Sofi case from Turkish Cypriots.

When cases analyzed from both sides, the ECHR considered admissible most of the Greek Cypriot applications. But, when came to Turkish Cypriot applications, the ECHR considered many of them inadmissible in some way although it is in the same line with the Greek Cypriot applications. And also, the said judgments' declared amount of compensations are highly differs. This shows another double standard regarding the issue. These insights should be changed if a solution on the island is sincerely wanted and the TRNC should be recognized by the international community and treated equally. As the world's attraction points changes in the international dimension more attention needed in order to reach a settlement on the island.

Both parties suffered from the occurred events and population exchanges on the island. Thus, by emphasizing legal aspects of the issue regarding international law I tried to underline the legal situation of TRNC, the non recognition by the international community, embargoes and isolation from the world is unlawful. Following the cases, to conclude all these selected arguments, conditions and positions are summarized including the latest developments and attempts in the island in the conclusion part of the thesis.

In this research, I worked on the second hand resources as the basis about Cyprus conflict because there is not detailed work on this subject. Besides, in order to sustain I tried to use ECHR press releases about the cases and both EU and UN documents for legal aspects, detailed documents and law consultants comments from TRNC presidency. Thus, I think that this work will add an important dimension to the literature of the issue.

CHAPTER 2

1974 INTERVENTION INTO CYPUS

2.1. HISTORICAL BACKGROUND

The Cyprus Island was sold, bought, ceded, colonized and ruled by many civilizations through the history. Human settlement of Cyprus dates back to 58 BC when Cyprus was a Roman province until 395 AD. Then, between 1489 and 1571, the island was ruled by the Venetian Republic. In 1571, the Ottomans took over the island till Great Britain's ceding control of Cyprus in 1878 by signing the Cyprus Convention. Between 1878 and 1914 Great Britain administered Cyprus on lease from the Ottomans. After the outbreak of World War I in 1914, the Treaty of Lausanne in 1923 underlined that Turkey and Greece agreed on the British sovereignty over Cyprus.¹ After, the island was colonized in 1914 by the United Kingdom and in 1925 became a crown colony until 1959.²

In the 1930s, with the growth of nationalism and rising of anti colonialism the Greek Cypriots wanted to be a part of Greece and recreate the Byzantine Empire under the rule of Greece which is called the idea of *Enosis*, union with Greece. And, in 1955, the guerrilla movement EOKA (*Ethniki Organosis Kyprion Agoniston* or

¹ Gobbi, 1998, 32; Ertekün, 1981, 1.

² Crawshaw, 1978, 19; Dodd, 2001, 10; Bayülken, 1983, 18.

National Organization of Cypriot Fighters) began their struggle against the British rule and the struggle of EOKA continued until 1959. Although EOKA made it clear that their struggle was not aimed against the Turkish Cypriots but only against the colonial power with the aim of annexation of the island to the Greece. The Turkish Cypriots were still against EOKA as they were concerned about increasing violence and the possibility of being a minority.³

In the meantime, the Turkish Cypriots began to develop the political goal of *Taksim* which was the division of the island between Greece and Turkey and in order to withstand the threat from EOKA and back up this goal with force. For, Turkish Cypriots found their own organization called Volcano (Volkan). Later, its name changed as Turkish Resistance Movement (Türk Mukavemet Teşkilatı). The members trained in Turkey and they supplied money and arms from Turkey but, they have never been as organized and disciplined as the EOKA. By this, it can be said that the conflict had shifted from community level to the organization level.⁴

However, Britain favored neither the division of the island nor the demand of the Greek Cypriots. Because, they did not want any national integration as they saw it as a threat to their regional political power. But, on the contrary, this failure of

³ Dodd, 2001, 12; Ertekün, 1981, 3; Crawshaw, 1978, 105.

⁴ Dodd, 2001, 11; Gobbi, 1998, 34; Crawshaw, 1978, 256.

integration created new problems among the two constituent states. But now, Cyprus, even more than before, had become an important strategic location for Great Britain.⁵

For the self determination rights, the Radcliffe Plan in 1956 was another constitutional draft that its provisions can be observed in the 1960 settlement. The importance of this plan is that it foresaw *Taksim* as an option.⁶ For instance, it underlined that the exercise of self determination left to the Cypriots itself and there should be a partition among some parts.⁷

As a result, at the London Conference the attempts to solve the Cyprus conflict is argued but, no settlement achieved that Greece applied to the UN in 1958 about the Cyprus issue.⁸ Also, the status quo established after the Treaty of Lausanne is underlined. It is understood that the self determination is about the existing two communities of the island.⁹

In 1958, the Greek and British governments could not come to an agreement on a system of self determination and thus presented the MacMillan Plan which stated that the United Kingdom, Greece, and Turkey would jointly administer

⁵ Dodd, 2001, 9, 11, 21.

⁶ Tamkoç, 1988, 52.

⁷ Tamkoç, 1988, 50.

⁸ Crawshaw, 1978, 272.

⁹ Bayülken, 1983, 15; Tamkoç, 1988, 52.

Cyprus. The Britain's aim was to provide the Greek and Turkish communities to work along with a British governor.¹⁰

Meanwhile, the London and Zurich Agreements signed by Greece, Turkey, Britain, Turkish Cypriots and Greek Cypriots in 1959 which formalized an independent Cyprus state and the Greek and Turkish Cypriots would share power and both *Enosis* and *Taksim* would be banned. So, in 1960, the two communities under agreed terms of cooperation and partnership shared the legislative, executive, judicial and other functions. Matters which the two communities had managed on a communal basis over the centuries, like education, religion, family law were left to the autonomy of the communal administrations which had legislative, executive, and judicial authority over such matters. It underlined that Greek and Turkish Cypriots would share the administration of independent Cyprus.¹¹ Basically, the term "communities" for the first time used throughout the London and Zurich Agreements and the 1960 Constitution.¹²

After signing the London and Zurich Agreements in 1960, the Treaty of Alliance and the Treaty of Guarantee and the Treaty of Establishment were signed that indicates;

¹⁰ op.cit.

¹¹ Michael, 2009, 202; Crawshaw, 1978, 340.

¹² Hoffmeister, 2006, 10; Ertekün, 1981, 8.

The Treaty of Guarantee: Cyprus undertook not to participate in union with any other state or to proceed to partition. The Guarantor Powers guaranteed the independence, territorial integrity and security of the ROC as well as the basic articles of its Constitution. Each Guarantor Power will have a right to take action in the event of a violation of the treaty.¹³

The Treaty of Alliance: Cyprus, Greece and Turkey provided for the stationing of 950 Greek and 650 Turkish troops on the island. Their mandate was to assist in the training under Cyprus army. Also, the Turkish and Greek Cypriots could want from Turkey and Greece to increase or reduce the contingents.¹⁴

The Treaty of Establishment: Cyprus, Greece, the United Kingdom and Turkey concluded the treaty that defined the territory of the ROC as the island of Cyprus with the exception of the two British Military bases, Dhekelia and Akrotiri, which remains part of the United Kingdom.¹⁵ So, Britain's sovereignty over the base areas is recognized.

With these agreements in 1960 Cyprus became an independent republic.¹⁶ So, in 1960, the two communities formed the federal, bi-zonal, bi-communal, bi-national

¹³ Ertekün, 1981, 159; Bayülken, 1983, 24.

¹⁴ Bayülken, 1983, 24; Ertekün, 1981, 160; TRNC Presidency, "Draft Treaty Concerning the Establishment of the Republic of Cyprus", <http://www.kktcb.org/upload/pdf/61444.pdf> (accessed 29 April 2012)

¹⁵ op.cit.; op.cit. 157; op.cit.

¹⁶ Stephen, 2000, 107.

and politically equal states.¹⁷ The main thing is whether these agreements constitute an understanding of legitimacy in the island or only a governmental system. As a matter of fact, these created new dimensions of disputes concluding the interests of other powers because; political equality of the communities and bi-national independence is emphasized.

After, the 1960 Constitution was signed by the British Governor, the representatives of Greece and Turkey. It was not a copy or adaptation of other constitutions, just an original creation that it contained balanced suggestions for the two communities. Thus, the British rule of the island is ended.¹⁸

Regarding the issue, the Constitution provided separate municipalities both for the Turkish Cypriots and the Greek Cypriots. But, the Greek Cypriots did not want any independent Turkish municipalities that gave power to them in the administrative positions. Moreover, as said to be the partnership republic, the two communities' agreement on major political matters was essential. As a whole, it is considered to be a functional federation; the principle of equality is in all cases an important and fundamental element of federalism.¹⁹

¹⁷ Necatigil, 1996, 49.

¹⁸ Crawshaw, 1978, 362.

¹⁹ Necatigil, 1996, 179

Subsequently, because of the struggles started in 1963 and ROC came to an end that the treaties of Establishment, Guarantee and Alliance became irrelevant. And so, once again, the chance of a settlement was lost. For the time being, Greek and Turkish Cypriots live apart. Therefore, the most important issue is international acceptance of the Greek Cypriot administration as the government of all Cyprus and refusal to recognize the right of the Turkish Cypriots to establish their own constituent state.

Soon after, in 1963 Akritas Plan was written in order to explain how the right of self determination of the Greek Cypriots could be implemented.²⁰ Later, the Acheson Plan in 1963 provided another opportunity to resolve the conflict by dividing Cyprus between Greece and Turkey under a NATO framework. Also, Turkish Cypriots would be allowed to have several parts of the island that as a wholly administered by them. In addition to this, there would be no self administered areas for the Turkish Cypriots.²¹

It is safe to say that these plans and resolutions are all one sided and complicated the settlement process on the way to recognition of the TRNC. So, they can not be acknowledged by the Turkish Cypriots as being only in favor of the Greek Cypriots and considering the Turkish Cypriots as aliens of the island.

²⁰ Hoffmeister, 2006, 21; Ertekün, 1981, 12.

²¹ Ertekün, 1981, 20, 165; Acheson Plan, http://www.cyprus-conflict.net/acheson_plan.html (accessed 11 September 2011)

In response, the UN sent a peacekeeping force to the Island in 1964 with the Security Council resolution that envisaged the creation of a United Nations Peacekeeping Force in Cyprus (UNFICYP)²². The UN resolution decision was “in the interest of preserving international peace and security, to use its best efforts to prevent a recurrence of fighting, and as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions.”²³ And so, the UNFICYP has now been functioning since 1964.



Map 1: Map of Cyprus Island

Source: UN

²² Ertekün, 1981, 19.

²³ Security Council Resolution 186 (1964), Paragraph 5.

2.2. THE 1974 INTERVENTION

In December 1963, two Greek Cypriots who claimed to be policemen killed the two civilians in an accident in order to trigger the Turkish side to respond with violence.²⁴ Then, the violence continued towards the Turkish Cypriots. After, under the supervision of the UN the Green Line was formed in Nicosia between the two constituent states.

The Cyprus conflict has been the subject of negotiations under the UN auspices between the Turkish and Greek Cypriots since 1968. After, the talks continued between 1968–1974, 1975–1979, 1980–1983, 1988–1992, 1999–2004 and 2008 to today in order to reach a settlement in the island but still an agreement has not been achieved.²⁵

Accordingly, as there was not a settlement after the 1968 negotiations Turkey intervened Cyprus militarily on 20 July 1974 by invoking Article IV of the Treaty of Guarantee. But also, it was using the own right of unilateral intervention on the basis of Article IV of the Treaty of Guarantee.²⁶ The intervention was to guarantee the rights and freedoms of the Turkish Cypriots for not to be ruled or abolished.²⁷

²⁴ Ertekün, 1981, 31.

²⁵ Stephen, 2000, 87.

²⁶ Necatigil, 1996, 109.

²⁷ Stephen, 2000, 88.

Thereafter, the UN Security Council adopted Resolution 353 that called the immediate cease fire and respect to the sovereignty of Cyprus.²⁸ With this resolution the outbreak of the conflict is marked by the international community.

The intervention partitioned the island into two. The Greek Cypriots fled to the Southern Cyprus and the Turkish Cypriots moved to the North by leaving their residences on the other side. Thus, since 1974 Cyprus has been divided *de facto* into two as Turkish Cypriots and Greek Cypriots. Greek and Turkish Cypriots share many customs but maintain distinct identities based on religion, language. Later on, with the 1974 intervention, this partition extended to the whole island. And since 1974, the foreign policy of the ROC has sought the withdrawal of Turkish forces and the most favorable constitutional and possible territorial settlement. And since 1974, Cyprus has been divided into two and led the ongoing negotiations between the Turkish and Greek Cypriots.

The Turkish Cypriots see the intervention on the island as a peace operation legalized by the Treaty of Guarantee that ended their suffering on the island. The Turkish Cypriots' objective was to solidify their administration and internationally gain recognition.²⁹ And, the Greek Cypriots see the intervention as a crime committed by Turkey to Cyprus. Thus, the Greek Cypriots argue that the Cyprus

²⁸ Gobbi, 1998, 39; Crawshaw, 1978, 389; Bayülken, 1983, 55.

²⁹ Ertekün, 1981, 33.

conflict started in July 1974 by neglecting the occurred events since 1963. According to them, the Cyprus conflict started with the invasion and occupation of the northern part of the Cyprus by the Turkish forces.³⁰ Hence, it can be argued that in the island the differences of perceptions, national history, culture, religion and language were the result of the partition or not.

2.3. THE POST 1974 PERIOD

Post 1974 period showed that the all conditions were initiative for the settlement as this period was temporary and generally the main actors were more open to change.³¹ Since 1975, starting of the comprehensive settlement negotiations under the auspices of the UN, the Greek Cypriots accepted that “Government of Cyprus” existed and the GCA was that government.³² And with the resolution 186 of 4th March 1964 is the first UN Security Council Resolution which equated the Greek Cypriot regime with the name “Government of Cyprus”.

Then, about Cyprus conflict the High Level Agreements of 1977 and 1979 were signed that indicates,

³⁰ Tamkoç, 1988, 107.

³¹ Michael, 2009, 74.

³² Necatigil, 1996, 176.

The Makarios-Denktaş High Level Agreement of 1977: They agreed on four guidelines. First one is that Cyprus should be an independent and bi-communal federated Republic. Second one is that the questions relating to the territory under the administration of each constituent state should be discussed in the economic productivity and land ownership context. Third one is that the freedom of movement, the right of establishment, the right of property and other issues should be openly discussed. Fourth one is that the powers and functions of the federal government should acknowledge the unity of the island and its bi-communal character.³³

The Kyprianou-Denktaş High Level Agreement of 1979: According to so called “10 points agreement”, the negotiations should restart under the auspices of UN, all Cypriot citizens rights should be respected, the negotiations should include the territorial and procedural issues, independence, sovereignty, territorial integrity and non alignment should be guaranteed against any form of union with other states or against partition and secession.³⁴

Neither the 1977 nor the 1979 High Level Agreements or the resolutions of the Security Council and the General Assembly and the Secretary General's reports about Cyprus legally changed the conjuncture.³⁵ But, the 1977 and 1979 High Level Agreements between the Greek Cypriot and Turkish Cypriot leaders provided the

³³Hoffmeister, 2006, 63; High Level Agreements 1977 and 1979, <http://www.kktcb.org/upload/pdf/90577.pdf> (accessed 15 October 2011).

³⁴ Hoffmeister, 2006, 63.

³⁵ op.cit. 74

basic principles for the settlement. And, in 1986, UN Secretary General Javier Perez de Cuellar proposed a Draft Framework Agreement which went beyond the 1977 and 1979 High Level Agreements by indicating the term bi-zonal state which also featured in the Resolution 585 of Security Council.³⁶

Cuéllar Paper: Perez de Cuéllar proposed a three stage negotiating process. The first stage required the acceptance of the elements on which there was already agreement. The second stage, needed negotiations through working groups and joint high level meetings of the unresolved issues. And, the final stage involved ratification of the overall agreement.³⁷

On the way to an agreement features of all are like a draft constitution that set the main clauses so given the general name Draft Framework Agreements.³⁸ The main argument of them is independence and non alignment of the island. And, the key point for this is seen as the securing of the human rights of both communities.

As stated above, the case of Cyprus is *sui generis*. For, there is no other state in the world which came into being as a result of two politically equal communities. Each of the community has its sovereign right of self-determination to create a unique legal relationship that was guaranteed by international law.

³⁶ International Crisis Group, 2010, 5.

³⁷ Michael, 2009, 98.

³⁸ Gobbi, 1998, 40.

Furthermore, the two communities of the island have left properties with regard to population exchange after the intervention. So, the property and land ownership has been a problematic issue between the Cypriots. Especially, after 1974 it has become more and more complex and still an agreement has not been achieved. Greek Cypriots insisted that the original and legal owners who lost properties in the North must have the right to decide for their property. On the contrary, the Turkish Cypriots believed that the current user of the property must have priority and that the issue should be resolved through compensation, exchange or reinstatement.

In fact, regarding the conflict the issue became the core subject but, it depends on the settlement and linked with the claims of the property owners, title deeds, court decisions, land proportions and the number of inhabitants. Another problem is the mutual mistrust of the data of the communities which lead to deadlock the process. So, these will be detailed in the following chapters.

The fundamental basis of the search for a just and lasting solution to the Cyprus conflict in the course of the efforts carried on under the auspices of UN General Secretaries has been the equal partnership of the two community in the island. But, the two communities have grown apart and established new social and economic structures, having lived behind closed front lines and crossing points.

According to 2006 statistics of TRNC Presidency, there are 256,644 Turkish Cypriots and 801,600 Greek Cypriots. The Turkish Cypriots are generally Muslims

and Greek Cypriots are Christians. English is widely used, but dominantly, Greek is spoken in the South and Turkish in the North. Also, it has variety of national, religious, linguistic and cultural differences that they share many traditions. And, it is indicated that on the island, the GCA comprises about 60 per cent of the land and its population is 80 per cent of the inhabitants of the island that consists of Greek Cypriots, Maronites, Armenians and Latinas. This evidence shows that the great majority of the population is of mixed race. In table 2.1 the distribution of population in Cyprus can be seen. There are English, Greek and Turkish citizens living in the island but, they generally have twofold citizenship.

Table 2.1. The Distribution of Population in Cyprus

	CITIZENS OF ROC	ENGLAND-GREECE-TURKEY	UNKNOWN/ OTHER	TOTAL
TRNC	135,106	104,895	16,643	256,644
GCA	554,100	170,000	77,500	801,600

Source: TRNC Presidency

CHAPTER 3

THE CYPRUS LAND CONFLICT

3.1. UN

After the events occurred in Cyprus in 1963, the Guarantor Powers wanted British forces to take a step in order to prevent any kind of struggle in the island for to restore peace. The Greek and Turkish troops formed the “Joint Truce Force” by the British Army Units incentive, which later established the UNFICYP in 1964.³⁹

In March 1964, the UN Security Council released the Resolution 186 which declared the maintenance of the UNFICYP Force in the island. That, the Resolution 186 UN recognized the Greek Cypriot government as the Government of the ROC added another dimension to the Cyprus conflict.⁴⁰

In 1967, a crisis happened in Cyprus. Turkey took effective action that as a result the Greek forces withdrew from the island. Although the Greek Cypriots saw the Turkish Cypriots as occupier, they did not want to negotiate with them.⁴¹ But with the efforts of the UN, Greece and the Greek Cypriots started to talks with the

³⁹ Dodd, 2001, 25; Bayülken, 1983, 40.

⁴⁰ Bayülken, 1983, 41; Gobbi, 1998, 93.

⁴¹ op.cit.

Turkish Cypriots. The first inter communal talks started in June 1968 under the auspices of the UN Secretary General's representative. The talks continued until 1974 without reaching an agreement. When a coup against Makarios by the Greek junta happened, the struggle started in the island once more. After the intervention, the UNFICYP maintained a buffer zone between the Turkish and Greek Cypriots. Moreover, in 1974 the Geneva Conference took place between the Guarantor powers but there was not any advancement. At last, the Security Council achieved a ceasefire on the island on August 16, 1974. However, again there was not an official agreement for this.⁴²

After the struggle calm down in the island, in January 1977, Makarios and Denktas with the UN came together in a meeting which ended with an agreement. According to this agreement, the Turkish and the Greek Cypriots agreed on four principles before starting to comprehensive settlement negotiations. Dodd stresses simply that these four principles as;

- 1) We are seeking an independent, nonaligned, bi-communal Federal Republic.
- 2) The territory under the administration of each community should be discussed in the light of economic viability or productivity and land ownership.
- 3) Questions of principles like freedom of movement, freedom of settlement, the right of property and other specific matters, are open for discussion taking into consideration the fundamental basis of a bi-communal federal system and certain difficulties which may arise for the Turkish Cypriot community.

⁴² Bayülken, 1983, 47.

- 4) The powers and functions of the central federal government will be such as to safeguard the unity of the country, having regard to the bi-communal character of the state.⁴³

Although they were apparent, the two parties had different interpretations of the points. For example, the Greek Cypriots insisted on the importance of the freedoms of movement, settlement and property. But the Turkish Cypriots insisted that these should be arranged after the settlement. Another point was that the Turkish Cypriots wanted a more federal government which had less central federal functions with equality of participation of both communities and to have communities as states. However, the Greek Cypriots insisted on the unity of the country with full central federal functions and only communal zones not any real borders like states.⁴⁴ The other points were, the Greek and Turkish troops could not exceed total a four digit number some 9,999, UN peacekeepers would remain as long as it decided, Cyprus would be demilitarized, during a three year transition period, the leaders of the two parties would be the co-presidents of Cyprus, the 1960 Treaties of Establishment, Guarantee, and Alliance would remain in force. What is more, there would be a single Cypriot citizenship and citizenship of constituent states; residence in a constituent state could be limited by citizenship according to a limited ceiling. Provisions would be made for return, exchange or compensation of property, an end of the Greek Cypriot trade embargo on Turkish Cypriots, three constitutions, one for

⁴³ Dodd, 2001, 26; Gobbi, 1998, 103.

⁴⁴ Op.cit.

each community and one for the central government, vice-presidential who will be a Turkish Cypriot, veto power with no rotating presidency, an island wide referendum on European Community membership and finally the return of Varosha and about 30 villages to Greek Cypriots.⁴⁵

These UN resolutions dealt with the guidelines which the solution should be based, negotiation procedure and the role of the UN Secretary General.⁴⁶ But, as to criticize, although the primary responsibility of the Security Council is to maintain international peace and security, all the resolutions of the Security Council only dealt with the negative aspects of the Turkish Cypriot side.⁴⁷

In 1997, as good offices mission, UN Secretary General Annan called for open ended talks between Clerides and Denktas. But, Clerides refused to sign a joint declaration at the end of the talks. After the December 12, 1997, EU announced to begin comprehensive talks with Cyprus. Thus, the President of the Northern Cyprus Denktas informed the UN that inter-communal talks have ended. And, there could be talks if only would occur between states having equal status and the goal is a Cyprus with a single sovereignty with two politically equal communities in a bi-communal, bi-zonal federation.⁴⁸

⁴⁵ Migdalovitz, 2006, 6; Bayülken, 1983, 41.

⁴⁶ Michael, 2009, 46

⁴⁷ Necatigil, 1996, 238

⁴⁸ Migdalovitz, 2006, 6; Tamkoç, 1988, 120.

When the referendum of April 24, 2004 came, while 65 per cent of Turkish Cypriots accepted, 76 per cent of Greek Cypriots rejected the Annan Plan. Afterwards, Turkish Cypriot leader Talat pushed the international community to end Northern Cyprus' isolations on trade, travel, sports, and flights in order to develop economically and to attract foreign investment. But, Greek Cypriot officials argued that direct flights and exports from the north would not contribute to reunification and that it was the sovereign legal right of the ROC to prevent the flow of the people, capital, and goods.⁴⁹

This is the main frame of the UN's involvement to the Cyprus conflict. It is clear that on the background there stay other draft models to clarify the assessment of the conflict. Following, one by one the analyses of this process will be pointed out.

3.2. THE SET OF IDEAS (1992)

The UN Secretary General Boutros Boutros Ghali prepared a new draft in order to solve the Cyprus conflict in 1992. The Set of Ideas, known as the Ghali Set of Ideas, concerned to be the most comprehensive form of all the agreements in order to solve the Cyprus conflict.⁵⁰

⁴⁹ Migdalovitz, 2006, 11

⁵⁰ Dodd, 2001, 29, 89.

So, the federal republic would have one international personality and one citizenship and the political equality of both communities guaranteed. The Greek Cypriot and Turkish Cypriot communities would have independent bi-communal and bi-zonal federation that composed of one territory and one sovereignty that one community could never claim sovereignty over the other community.⁵¹

Concurrently, the Set of Ideas did not contain any provisions to aim to end the military occupation on the island or even to recognize the results of the occupation. And, the UN Security Council did not put much pressure on the Greek side for the approval of the proposals. However, it can be realized that these proposals could be a basis for a negotiation process that there were many detailed provisions in the proposal for the two communities.⁵²

The Set of Ideas is important because, it is the first draft to be considered as the basis of the property issue by addressing separate part. And, this showed the recognition of the displaced persons' rights from both sides. With this attribution tried to find a balance between human rights and parties' demands.

⁵¹ Migdalovitz, 2006, 4.

⁵² op.cit.; Dodd, 2001, 30.

3.3. CONFIDENCE BUILDING MEASURES

The UN Secretary General called for the first time the confidence building measures on November 19, 1992 which included a reduction of Turkish troops in exchange for a reduction in defense spending of the GCA, UN control of Varosha, restrictions on the buffer zone crossings, cooperation with UN on resettlement and rehabilitation of people affected by territorial adjustments. Also, the opening of Varosha and the reopening of Nicosia Airport are under discussion, which has been supervised by UN but unused since 1974.⁵³

The UN Security Council again released some confidence building measures in 1993 and 1994. Against all odds, the Greek Cypriots feared that these measures would create another dimension about recognition of the TRNC. Thus, the released documents directly attributed to both the TRNC and the GCA.⁵⁴

These measures were to arrange a safe and peaceful daily lives in the island but, again the Greek Cypriots only dealt with the attributions to the TRNC and annoyed about the recognition possibility. Hence, these are also failed to accomplish.

⁵³ Migdalovitz, 2006, 5.

⁵⁴ Dodd, 2001, 30.

3.4. TROUTBECK AND GLION NEGOTIATIONS

In 1997, meetings were held in Troutbeck, New York and in Glion, Switzerland between the Turkish and Greek Cypriots. The UN used the shuttle diplomacy to facilitate the process for both parties to agree on a set of principles that would be a basis for a constitution which was different from the 1984, 1986 and 1992 proposals.⁵⁵

In New York, there were disagreements on the issue of where sovereignty would be located in the new state of affairs. The UN suggested that “sovereignty emanates equally from the Greek and Turkish Cypriot communities” and that political equality “should be reflected in the effective participation of both communities in all organs and decisions of the federal government”⁵⁶ The Greek Cypriots strongly opposed this idea of equality and after, the UN pointed out that effective did not mean equal.⁵⁷

At the second meeting in Glion, since it underlined the idea of shared sovereignty the UN’s declaration was in favor of the Greek Cypriots.⁵⁸ Thus, things changed with respect to the UN’s attitude towards the Turkish Cypriots. At the same

⁵⁵ op.cit., 31.

⁵⁶ Dodd, 2001, 31.

⁵⁷ Gobbi, 1998, 109.

⁵⁸ Dodd, 2001, 32.

time, with the EU's announcement of accession negotiations just with the GCA annoyed the Turkish Cypriots.

Then, it was announced that Turkey was not included as a candidate for the next EU enlargement then the TRNC is supported in all aspects by Turkey. So, there was not any agreement in the Glion Negotiations either.⁵⁹ Generally the statements repeated the same theme and related aspects of the previous released documents that cease to exist again and again. Despite of all attempts because of this there is any progress.

3.5. NEW YORK AND GENEVA (1999-2000)

The UN arranged proximity talk rounds which were to find a common ground for the settlement in 1999. And, the negotiations arranged without any circumstances that the two parties had to negotiate through shuttle diplomacy with the UN Secretary General by taking into consideration the UN resolutions and treaties in order to reach a settlement.⁶⁰ As a result, via December 1999 and November 2000 five rounds of proximity talks were held between the Turkish and Greek Cypriots.⁶¹

⁵⁹ op.cit., 33.

⁶⁰ Necatigil, 1996, 241.

⁶¹ Dodd, 2001, 36.

By the end of 2000, Denktas announced that he would attend to the UN negotiations as if the Turkish Cypriots sovereignty and equality taken into consideration.⁶² When the UN conferred only to the Greek Cypriots about the existence of the UNFICYP on the island, again this showed the non-recognition of TRNC and end of the proximity talks which had lost the purpose.⁶³

Although, an agreement has not been achieved from these negotiations between the parties, they decided to restart the negotiations on 2001 once more. But, in the end again the process deadlocked. When analyzed through history the parties are far from convergence that the negotiation processes started and deadlocked somehow in every attempt.

3.6. EU

The GCA as the ROC applied for full membership to the EU in 1990 by ignoring the TRNC. Starting from the first attempt of Cyprus to be the EU member, the GCA signed the Association Agreement of 1972, the 1977 Protocol and the 1987 Protocol about the Customs Union.⁶⁴ And, in 2004 the GCA became an EU member in the name of the whole island.

⁶² Dodd, 2001, 36.

⁶³ Gobbi, 1998, 110.

⁶⁴ op.cit., 79; Necatigil, 1996, 243.

In 1993, EU mentioned that accession would start if a settlement is achieved in the island. In 1993, the Greek Cypriots, as the ROC, was accepted as a candidate for membership to the EU, in the big picture the actors and the dimension of the Cyprus conflict has evolved.⁶⁵ In 1995, EU formally began the negotiations with GCA. However, the Turkish Cypriots and Turkey argued that the 1960 Treaties forbid the union of Cyprus with any other state. However, the accession process started in 1998. Also, EU member states passed their doubts about Cyprus' accession to the EU without a peaceful settlement in the island.⁶⁶

After the Gulf war that created a new world order in 1991, the EU Parliamentary Assembly, under the good offices mission of the UN Secretary General consulted the governments and parliaments to support action in general for the long standing conflicts, including Cyprus.⁶⁷

In 1999, Greece supported Turkey as a candidate for EU membership in the European Council of Helsinki. At the Helsinki Summit it was decided that the political settlement of the Cyprus conflict would not be considered as a precondition to Turkey's accession to the EU. But, it still stays as a precondition today.⁶⁸ However, at the Helsinki summit the EU hoped that the accession of Turkey would

⁶⁵ Dodd, 2001, 39.

⁶⁶ Op.cit., 48.

⁶⁷ Tamkoç, 1988, 126.

⁶⁸ Migdalovitz, 2006, 17.

leap the efforts to find a solution to the Cyprus conflict. There was a link between Turkey's accession to the EU and the Cyprus conflict starting from candidacy of both Cyprus and Turkey to the EU membership.

And, as a precondition this view about Turkey's accession to the EU continues up to today. On November 5, 2003 the Commission's annual report warned about Turkey's progress toward accession that "absence of a settlement on Cyprus could become a serious obstacle to Turkey's EU aspirations." On the other hand, the December 12 European Council declaration underlined that "a settlement would greatly facilitate Turkey's membership aspirations."⁶⁹

In December 2002, the EU concluded accession talks with GCA. At the same time, the EU and NATO agreed on EU use of NATO assets, underlining that GCA will not take part in EU military operations when it becomes an EU member because of not being a member of NATO nor of NATO's Partnership for Peace. As a result of all, GCA as the ROC, signed the Treaty of Accession to the EU on April 16, 2003 to become an EU member on May 1, 2004.⁷⁰

By serving the political and economic interests of the EU in the Middle East, United Cyprus could become a European outpost in the Eastern Mediterranean. Thus, the decisions taken by the Cypriots have importance for the EU and Eastern

⁶⁹ op.cit.

⁷⁰ Migdalovitz, 2006,16.

Mediterranean. A settlement would be helpful for full cooperation between the EU and NATO, better relations with Turkey and its goals in the Middle East. Of course, the failure of this would mean the opposite and in the region, for energy security and against the threats from Russia, Turkey seen as an ally.⁷¹

Despite the EU membership of the GCA as the ROC in 2004, the EU efforts towards a solution remain hopeless. At the same time, Cyprus still keeps a military value both to NATO strategy and to the Western politics in the Middle East. But, US have not been involved to the conflict in order to avoid possible problems between Turkey and Greece which could lead a war between the two NATO member states.⁷²

On January 24, 2006, Turkey presented a ten point Action Plan to the UN Secretary General, which proposed the opening of Turkish ports, airports and airspace to the Greek Cypriot ships and planes, opening of ports and airports in northern Cyprus, inclusion of Turkish Cypriot in international activities and special arrangements to include North Cyprus in the EU's Customs Union. As a response, the GCA rejected the plan blaming it to be just Turkey's attempts to upgrade the status of the Turkish Cypriots.⁷³

⁷¹ Morelli, 2011, 27.

⁷² op.cit.

⁷³ Migdalovitz, 2006, 12.

By all means, the membership is an important step which provided legitimacy to the Greek Cypriots. Besides, the Greek Cypriots believe that their membership is entitled to international law. Also, this put pressure on the Turkish Cypriots for the solution of the conflict. Although the UN efforts remain incomplete, with the involvement of the EU the Cyprus conflict much more internationalized. But, it is not a key factor for the settlement of the conflict.

3.7. RECOGNITION

International law indicates that recognition of government implies recognition of the state but, it would be impossible to recognize only the government but not the state.⁷⁴ However, for independent statehood it is only explicit when certain criteria are met as mentioned in the 1933 Montevideo Convention Article 1, about the rights and obligations of states, there has to be a permanent population, a defined territory, a government and the capacity to enter into relations with other States.⁷⁵ Moreover, non-recognition of a state does not mean that the state does not exist. This is why; the recognition of new state is a political act which is full subject of international law in principle. In the case of TRNC, the essential characteristics of statehood in international law exists as the people, territory and government whereas, no progress was made for this.⁷⁶

⁷⁴ Necatigil, 1996, 316.

⁷⁵ Hoffmeister, 2006, 50.

⁷⁶ Necatigil, 1996, 311; Tamkoç, 1988, 128.

First of all, Bangladesh recognized the TRNC but US threatened with the cut of aid given to Bangladesh so that they withdrew their recognition. Then, Pakistan declared its willingness for recognition, but she was also threatened. Many countries would recognize TRNC if they are freed from Britain and America's pressure.⁷⁷ Unfortunately, UN Security Council Resolutions 541 and 550 considers the establishment of the TRNC as null and void because it owes its existence to the illegal use of force by Turkey.⁷⁸ So, it is very difficult to build confidence between the communities that do not want to recognize the other.

Another aspect of the problem is the attribution of human rights violations to Turkey by ECHR. This shows that the TRNC is not considered as an independent state. When stressing that there is only one society in the island and treating them as they are in a homogeneous society, it would just be ignoring of the ethnics and differences of Greek and Turkish Cypriots, which is not the case for Cyprus.⁷⁹ Starting with UN Security Council Resolution 186 of 1964, the international community treated the ROC only consisting of Greek Cypriots legitimately.⁸⁰ Therefore, the most important issue is international acceptance of the GCA as the government of all Cyprus and refusal of recognizing the rights of the Turkish Cypriots. Because, the case of Cyprus is *sui generis* that there is no other state in the

⁷⁷ Stephen, 2000, 109.

⁷⁸ Hoffmeister, 2006, 50.

⁷⁹ Necatigil, 1996, 231.

⁸⁰ Hoffmeister, 2006, 237.

world which composed of politically equal two community with the right of self determination which was guaranteed by the recognized agreements.

About recognition, the Greek Cypriots has wrong views as the Turkish Cypriots are minority in the island and so that they could not assert a right or identify their future. There have not been just one Cypriot nation in the island so not a single Cypriot nationalism or religion and language as they regard. This thinking counter with the idea of the Turkish Cypriots' existence in the island is the result of its legitimacy.⁸¹

3.8. INTERNATIONALIZATION OF THE CONFLICT

The internationalization of the conflict was tied with the international environment of the Cold War era which was influenced by the increasing interest of the Soviet Union towards Eastern Mediterranean so towards the Cyprus island. Because of the geostrategic importance of the island and for security reasons to provide balance of power in the Middle East, the conflict became an issue on the world politics with the involvement of external powers.

The Greek Cypriots has internationalized the conflict because they believed that the international community would encourage them. But, this objective could

⁸¹ Tamkoç, 1988, 138.

damage the international relations of the region and trigger another war.⁸² Today, it takes world's attraction more to the region with the newly found valuable energy resources.

The reasons of the internationalization of the conflict led to use the self determination right and established the Turkish administrations under the names of General Community between 1964 and 1967, the Provisional Turkish Cypriot Administration between 1967 and 1974, the Autonomous Turkish Cypriot Administration between 1974 and 1975, and the Turkish Federated State of Cyprus

between 1975 and 1983 and finally, the TRNC.⁸³ The declaration of the TRNC in 1983 resulted with the non-recognition by the international community and with embargoes and isolation from the world.⁸⁴

It is important to point out, after involvement of the EU and UN to the conflict and becoming an international conflict the functioning of the process changed its environment. The non-recognition of the TRNC still stays but things changed towards the settlement. Although, the international community permits a non-recognized TRNC as one of the parties of the conflict, this creates a dilemma in

⁸² Stephen, 2000, 115

⁸³ Migdalovitz, 2006, 2; North Cyprus Guide, "Cyprus History", <http://www.cypnet.co.uk/ncyprus/history/republic/1975.html> (accessed 29 April 2012); Britannica, "The Failure of Intercommunal Talks", <http://www.britannica.com/EBchecked/topic/148573/Cyprus/33833/The-failure-of-intercommunal-talks#ref409803> (accessed 29 April 2012)

⁸⁴ Migdalovitz, 2006, 2.

the international law. So, I will try to demonstrate first the Annan Plan with its 4 versions briefly and then the 5th version of it and the negotiation process very detailed.

3.9. THE ANNAN PLAN

The Cyprus conflict has been on the world's agenda more than fifty years. The ongoing settlement negotiations starting from 1960s were held under the UN auspices and orientation which have set out the basic parameters. So, the Annan Plan can not be considered as a product of only five years of work at all.⁸⁵

The Annan Plan is a result of years of negotiations and a product of the UN Secretary General Kofi Annan and American, British and EU experts. It was an attempt to create a balance between the views of the two parties. After the arrangements, the final 5th revision of the plan has 131 completed laws, 1,134 treaties and is nearly 9,000 pages.

Both parties entered the negotiations with different perceptions about the outcomes.⁸⁶ The Greek Cypriots thought that the best solution for Cyprus was a single sovereignty, international personality and citizenship. On the other hand, the

⁸⁵ Gürel and Özersay, 2006, 44.

⁸⁶ Op.cit., 45.

Turkish Cypriots wanted a more like confederative system where two sovereign and political states exist.⁸⁷

The first version was released in 2002 and not a detailed one that indicated only the general scheme for the settlement by setting the main documents and resolutions. So, later with the necessity of the requirements it will be revised fifth times and I will try to indicate one by one the versions of the Annan Plan with the differences from one another.

Annan I of November 2002: Annan Plan consisted of a main text of four articles and five appendices as Appendix A-E. Appendix A set “Foundation Agreement” plus ten annexes as Annex I-X. Appendix B contained transitional measures to joint and simplify the finalization process. Appendix C referred to a revised Treaty of Guarantee and Alliance, Appendix D included issues that should be submitted to the UN Security Council for decision and Appendix E contained process of Cyprus’ EU accession.⁸⁸

Annan II of December 2002: Annan formed a revised version of Annan I. The representation of Cyprus in the European Parliament based on proportional representation was added but, the Turkish Cypriots would have 2 seats out of 6 seats. About security, proposal defined that between 2,500 and 7,500 numbered troops

⁸⁷ United Nations The Report of the Secretary General to the Security Council 5/2003/398.

⁸⁸ Hoffmeister, 2006, 117; Annan Plan II,
http://www.hri.org/docs/annan/Annan_Plan_November2002.html (accessed 23 November 2011).

could stay on the island. Clarifications were introduced on the assessment of current value of the relevant properties. And, the freedom of movement throughout Cyprus should be provided, including the right of any Cypriot citizen to stay or holiday in their own properties or other accommodation anywhere in Cyprus.⁸⁹

Annan III of February 2003: On property and residence, Annan III increased the period of the Greek Cypriots right of residence up to six years in the North. And the Karpas peninsula would remain under Turkish Cypriot administration, whereas Greek Cypriots would have limitless right to return to the four villages there. Finally, Annan III contained an increase of EU related provisions.⁹⁰

Annan IV of March 2004: Annan IV added a reference to the cohesive of Cyprus and the Guarantor Powers, to international law and the principles of the UN Charter. It also limited the Turkish and Greek troops to be under 6,000 on the island. It did not foresee a total withdrawal of Turkish troops, not even after Turkey's possible accession to the EU.⁹¹

Annan V of April 2004: It proposed equal rights of crossing and residence rights for the Greek Cypriots and Turkish Cypriots. It stressed the "virgin birth"

⁸⁹ Hoffmeister, 2006, 120; UK Parliament Website, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmfaff/113/11305.htm> (accessed 29 April 2012)

⁹⁰ Op.cit., 126; op.cit.

⁹¹ Op.cit., 171; op.cit.

approach which means forming just a new republic. And also, offered the automatic membership of the United Cyprus Republic (UCR) in the EU. In sum, Annan V respected the limits set by UN Security Council Resolutions 541 that revealed the non-recognition of the TRNC and 1251 which stressed single international personality of Cyprus as required by the EU.⁹²

The Annan Plan referendum took place in the island on April 24, 2004. And as a result, the Greek Cypriots voted against the plan with 75 per cent, whereas the Turkish Cypriots voted for the plan with 65 per cent. Also, in 2004 the Greek Cypriots as the ROC became a member of the EU. Although, the Turkish Cypriots approved the Annan Plan, only the Greek Cypriots became a member of the EU. For instance, the EU just planned direct trade and financial assistance to the TRNC. For this, the Greek Cypriots argued that they refused the plan because they thought that too many privileges were given to the Turkish Cypriots.⁹³

The Annan Plan had very detailed provisions concerning the property issue. However, the arguments on the issue of both parties have never been integrated. In this context there exists divergence over representation in the government, incompatibility over the requirements of economic resources and different visions on judicial subjects including refugee and property return. And there is the evidence of

⁹² Op.cit., 180.

⁹³ Gürel and Özersay, 2005, 243.

not reaching a convergence on subjects of sovereignty, territory and property.⁹⁴ This is why the importance of property issue in the Cyprus conflict is the core of this thesis and the issue will be detailed in the next chapters.

When it comes to the issues of property and residence rights, the Greek Cypriots wanted full reinstatement of property that the freedom of movement, the freedom of settlement and the right to return to former lands are necessary for a settlement. Nevertheless, the Turkish Cypriot offered that property rights should be based on global exchange, return and compensation.⁹⁵

Although it was designed for the two communities of the island when analyzed generally the changes which are made in every version of the Plan was for the sake of Greek Cypriots and just the rights of them were taken into consideration. The reason for this is seen as the non-recognition of the TRNC by the international community. The first version sounded a balanced package but in every revised form the released UN resolutions and documents against the TRNC added and became one sided with the political influences so lost the objectiveness for the settlement. And, with this the drafts makes illegal sense.

Given this framework first of all, Annan Plan was formed without mediating with the Cypriot leaders and the two communities. Therefore, it did not reflect their

⁹⁴ Migdalovitz, 2006, 7.

⁹⁵ Hoffmeister, 2006, 180.

realities and lack of understanding the feelings and desires of the parties themselves. Secondly, the Annan Plan to solve the problem focused on the participation of Greece and Turkey. Thus, it may be designed as a perfect solution model but have failed to seize the realities of the island.

The Annan Plan could have arranged neutrally by active contribution of the Guarantor powers Greece and Turkey and the GCA and TRNC in order to help shaping and improving the convergences between the parties. Thus, it should be mediated with the actors before and then formulated under the auspices of the UN and with the consent of the two communities.

In economic means, the Annan Plan foresees a common currency and a single central bank in the two constituent states with undefined competences. So, the Annan Plan lacks the necessary federal regulatory framework. Another weakness of the Annan Plan is the lack of federal competences for economic regulation which differ the banking regulation of the constituent states. The disadvantage here is one constituent state may undermine stability in the other constituent state.

But, the Annan Plan foresees no provision for budgetary planning. That is why there should be clear rules for dealing, definition and implementation of the budget and the political and economic control over the arrangements of the federal and the constituent state governments should be strengthened.

But nonetheless, there is no simple or quick solution to the Cyprus conflict. Both the Turkish and Greek Cypriots have uncompromising attitudes, claims and deeply mistrust one another that the Greek Cypriots want to own the whole island and the Turkish Cypriots do not want to be a minority community in the island.

Against all odds, the Turkish Cypriots voted in favor of the 5th version of the Annan Plan by showing their willingness for the settlement but, the Greek Cypriots rejected. Today, the Annan Plan is not viable but using as the basic detailed provision through the comprehensive settlement process.

3.10. THE NEGOTIATIONS

3.10.1. The Negotiations Before the Ghali Set of Ideas

During the negotiations from 1975 until the Ghali Set of Ideas in 1992, property was not one of the subjects in the Cyprus conflict. Despite this, related issues as human rights, territory and indirectly security generally attributed to property. However, today property is not related to any other subject.

In this period before the Ghali Set of Ideas, the negotiations during 1989 was also as significant as the 1977 and 1979 High Level Agreements period, which basic principles for negotiating an overall agreement were set out.⁹⁶

⁹⁶ Gürel and Özersay, 2006, 241.

According to the 1977 High Level Agreement, the four freedoms; the freedom of movement, the freedom of entrance, the freedom of settlement and the right to ownership of property, would be preserved and applied. Whereas, it had some conditions such as the freedom of movement and freedom of entrance would be exercised without any restrictions from the beginning, the freedom of settlement and the right to ownership of property would be implemented after the settlement. Until this time, all would be regulated by the federated states.⁹⁷

In fact, the Ghali Set of Ideas was the first draft which contained a section attributed to the property issue. Hence, for the first time, the recognition of the property claims of the Greek Cypriots and the Turkish Cypriots was emphasized. The first round ended on 20 September 1984 without any progress, but further discussions were planned and the parties have explained their proposals regarding the issues.⁹⁸ Instead of concentrating on general principles and trying to find a common ground, the first round of the talks were complicated by too detailed issues of government structure and constitutional matters.⁹⁹

⁹⁷ Op.cit., 242.

⁹⁸ Necatigil, 1996, 276.

⁹⁹ Op.cit., 273.

3.10.2. The Negotiations After the Ghali Set of Ideas

In 1992, UN Secretary General Boutros Boutros Ghali introduced the Set of Ideas for a secular, bi-zonal, bi-communal federal republic with two politically equal federated states.¹⁰⁰ Also, the Set of Ideas emphasized to end isolation of the North by seeking more autonomy in the island.¹⁰¹

When the EU announced that the ROC would be included in the enlargement list on between 24 and 25 June 1994, and then, the European Court of Justice executed restrictions on the export of goods from Northern Cyprus into the EU on July 5, the talks remained stagnated between 1995 and 1996.¹⁰²

After, the Greek Cypriots announced that they wanted to buy the S-300 anti aircraft missiles from Russia the basic parameters of the Cyprus conflict changed as the Turkish Cypriots took it as a war threat. Consequently, the EU called out the parties for to start negotiations by adding that Turkey should not have a veto about Cyprus conflict so that the negotiations would encourage both parties to be more moderate.¹⁰³ This was also created a new catalyst for a settlement.

¹⁰⁰ International Crisis Group Report, 2010, 5.

¹⁰¹ Morelli, 2011, 6.

¹⁰² Op.cit, 4.

¹⁰³ op.cit.

These conditions prepared the environment of the 2000s negotiation process. I will try to draw out the current situation in the island with asserting the starting of the face to face meetings and then releasing of the Annan Plan. The parties have the Plan, the regulations, the proposals and the UN mediator. But, this time both the parties and the UN much more aware of the international pressure for the settlement.

3.10.3. 2000s Period

Soon afterwards, Rauf Denktas wrote to Glafcos Clerides on 8 November 2001 to arrange a face to face meeting. The offer was accepted but, the talks soon became deadlocked again. However, the parties agreed on the issues of constitutional framework, territorial adjustments, return of property to pre 1974 owners or compensation payments, return of displaced persons, demilitarization of Cyprus, residency rights and repatriation of Turkish settlers and also the future peacekeeping arrangements would be the basic parameters of a settlement. Beyond this, it was believed that according to these provisions, the whole island would have international personality and sovereignty.¹⁰⁴

In November 2002, after several years of preparation, UN Secretary General Kofi Annan presented a comprehensive plan which was endorsed by the Security Council with the Resolution 1475 on 14 April 2003. Till 2004, five version of the

¹⁰⁴ Necatigil, 1996, 277.

Annan Plan was released. The latest and the most detailed one was the 5th version therefore, this plan deserves a more detailed analysis.

The Annan Plan would only come into force if only accepted by the two communities in the referendums. However, the Greek Cypriots voted against the plan. Generally, it was emphasized that the key parameter for the Greek Cypriots in any territorial settlement of Cyprus was the proportion of displaced persons who could return. While both parties reaffirmed their continuing efforts to reach a settlement, the UN Secretary General has not been willing to restart the talks until being sure of any new negotiations would lead to a comprehensive settlement. Following this, there was not an attempt to restart negotiations between the two parties.¹⁰⁵

In 2008, in the GCA's presidential elections, Papadopoulos defeated Demetris Christofias, who remarked talks on reunification immediately.¹⁰⁶ On 21 March 2008, Christofias held the first meeting with Talat in Nicosia, in the UN Buffer zone. At the meeting, the two leaders agreed that after the negotiations have come to an end, the referendums in both parties would hold.¹⁰⁷

¹⁰⁵ Necatigil, 1996, 276.

¹⁰⁶ BBC News, "Cypriot Victor Rallies For Unity", <http://news.bbc.co.uk/2/hi/europe/7261195.stm> (accessed 29 April 2012).

¹⁰⁷ BBC News, "Cyprus Peace Back on The Agenda", <http://news.bbc.co.uk/2/hi/europe/7308912.stm> (accessed 29 April 2012)

3.10.4. The Christofias-Talat Period

The Turkish Cypriot leader Mehmet Ali Talat and the Greek Cypriot leader Demetris Christofias dealt with issues of governance and power sharing, EU matters and the economy in the talks in September 2008. The leaders prepared a joint paper on categories based on the eighteen meetings on property which will be detailed in the property chapter. On March 21, 2008, Christofias and Talat met and agreed to establish working groups to address governance and power sharing, EU matters, security and guarantees, territory, property and economic matters related to a comprehensive settlement. They also formed seven technical committees to address issues of crime, economics and commercial matters, cultural heritage, crisis management, humanitarian matters, health and environment.¹⁰⁸ In the negotiations, also foreign affairs, federal financial affairs, monetary and banking affairs, posts and telecommunications, international transport, natural resources, federal health and veterinary affairs, standard setting, federal judiciary, appointment of federal officers, defence and security were under discussion.¹⁰⁹

When analyzed they went into a lot of detail in the issues of governance and power sharing, property, EU matters and the economy. There were considerable convergences about the issues under discussion but what they missed was the biggest picture. When Talat lost the Turkish Cypriot leadership elections on 18 April 2010,

¹⁰⁸ Morelli, 2011, 4.

¹⁰⁹ Necatigil, 1996, 278.

the new President Dervis Eroğlu picked up the comprehensive settlement negotiations from where Talat had left.¹¹⁰

3.10.5. The Christofias-Eroğlu Period

Dervis Eroğlu expected to complicate reunification negotiations but, talks were resumed after the elections and on 27 May 2010 Eroğlu stated that he was in favor of a federal state. The leaders agreed to focus on property issue. Negotiations continue to tackle with ideas on establishment of a property commission, mechanisms for exchange, the extent of restitution and types of compensation. In his proposal, Christofias repeated an older proposal that indicated the return of Varosha to GCA in exchange of opening the sea port of Famagusta for use by the TRNC. To conduct international direct trade, the port would be operated by the EU and a joint Greek and Turkish Cypriot administration. But, Eroğlu rejected the proposal.¹¹¹

The talks reached a dead end again in June 2010 and UN Special Advisor Alexander Downer called on the two leaders to decide whether they wanted a solution or not.¹¹² After it, on 18 November 2010, 1st tripartite meeting with UN

¹¹⁰ BBC News, “Nationalist Dervis Eroglu Wins Northern Cyprus Election”, <http://news.bbc.co.uk/2/hi/europe/8627826.stm> (accessed 29 April 2012).

¹¹¹ BBC News, “New Hardliner Joins Cyprus Talks, <http://www.bbc.co.uk/news/10165771> (accessed 29 April 2012).

¹¹² UN Good Offices Mission, “Assessment report of the Secretary-General on the status of the negotiations in Cyprus”, http://www.uncyprustalks.org/nqcontent.cfm?a_id=2954&tt=graphic&lang=l1 (accessed 29 April 2012).

General Secretary Ban Ki-Moon, Christofias and Eroğlu meet in New York, US and concluded without any agreement over the main issues.¹¹³

Following the New York meeting, another tripartite meeting with UN General Secretary Ban Ki-Moon, Christofias and Eroğlu occurred in Geneva, Switzerland on 26 January 2011, 2nd was realized, concluded again without any agreement over the main issues. Parties repeated their proposals but their divergences still stays.¹¹⁴

Turkish Cypriots and Greek Cypriots realized on 18 March 2011 their 100th negotiation since April 2008 without any agreement over the main issues. So, UN Secretary General Ban Ki-Moon reported that the negotiations can not be an open ended process, nor can afford endless talks for the sake of talks.¹¹⁵ By mid 2011, there was another hope for to end the negotiations by the end of 2011 in order to have a united Cyprus before the Greek Cypriots' EU presidency on 1 July 2012. So, on 07 July 2011, the 3rd tripartite meeting with UN General Secretary Ban Ki-Moon, Christofias and Eroğlu occurred in Geneva, Switzerland without any

¹¹³TRNC Ministry of Foreign Affairs, "New York Summit Starts", <http://www.trncinfo.com/tanitma/en/index.asp?sayfa=haberdetay&newsid=1035> (accessed 29 April 2012).

¹¹⁴ North Cyprus Daily, "All the three parties gathered for tripartite meeting in Geneva on Cyprus Issue", <http://www.northcyprusdaily.com/news.asp?newsid=686> (accessed 29 April 2012).

¹¹⁵ UN Good Offices Mission, "Assessment report of the Secretary-General on the status of the negotiations in Cyprus", http://www.uncyprustalks.org/media/SG%20Reports/SG_Report_Good_Offices_4_March_2011.pdf (accessed 29 April 2012).

agreement over the main issues. The parties continued to negotiations till October 2011.¹¹⁶

And, on 30–31 October 2011, the 4th tripartite meeting with UN General Secretary Ban Ki-Moon, Christofias and Eroğlu occurred in New York, US again without any agreement over the main issues. But, this time Ban Ki-Moon warned that the talks should have an end and the parties had to try more for the settlement.¹¹⁷ Today, the talks are continuing on the agreed UN basis. All chapters are being negotiated with the aim of increasing the points of convergence on the understanding that nothing is agreed until everything is agreed.

¹¹⁶ TRNC Ministry of Foreign Affairs, “Un Secretary-General Ban Ki Moon: ‘I’m Pleased With The Political Will Shown by Both Parties At The Latest Tri-Partite Meeting in Geneva”, <http://www.trncinfo.com/tanitma/en/index.asp?sayfa=haberdetay&newsid=910> (accessed 29 April 2012).

¹¹⁷ TRNC Ministry of Foreign Affairs, “Secretary General Ban: “Leaders Should Take Decisive Steps”, <http://www.trncinfo.com/tanitma/en/index.asp?sayfa=haberdetay&newsid=1271>, (accessed 29 April 2012). TRNC Ministry of Foreign Affairs, “Cyprus Summit in New York”, <http://www.trncinfo.com/tanitma/en/index.asp?sayfa=haberdetay&newsid=1040> (accessed 29 April 2012).

CHAPTER 4

THE PROPERTY ISSUE

4.1. SCOPE OF THE CONCEPT

The property issue is one of the important aspects since the beginning of the Cyprus conflict. Because of the island's geostrategic importance, the property and land ownership has been a problematic issue between the Cypriots. Especially, after 1974 it has become more and more complex and still an agreement has not been achieved and without an agreement on all aspects of the property, it will be impossible to reach a settlement. So, this makes the solution attempts much more complicated day by day.

As the property is not a static concept, its meaning changes depending on when, where and by whom it is used. In the 19th century, property was defined as things both for the materials and the ideological purposes that it was gathered as networks of relations among persons. But today, property also refers to nonmaterial things such as ideas, creating debates over copyrights and patents. Thus, property has been treated differently in different times and places.¹¹⁸

¹¹⁸ International Crisis Group, 2010, 18.

According to UN approximate numbers, 45.000 Turkish Cypriots were from the South and 165.000 Greek Cypriots were from the North displaced by leaving their properties as a result of the events between 1963 and 1974. Greek Cypriots insisted that the original and legal owners who lost properties in the North must have the right to decide for their property. On the contrary, the Turkish Cypriots believed that the current user of the property must have priority and that the issue should be resolved through compensation, exchange of property or restitution.¹¹⁹

UN Secretary General Kofi Annan's efforts regarding property issue were the most comprehensive between 2002 and 2004. Since the aim of this thesis is to analyze the importance of the property issue in the Cyprus conflict, Annan Plan 5th version will be analyzed in this context as it includes the detailed provisions about the property issue.

4.2. THE ANNAN PLAN PROVISIONS

The Annan Plan is an expansion of the basic principles of the Ghali Set of Ideas that deals with every aspect of the Cyprus conflict. And, it mostly included detailed provisions for a property regime and a territorial adjustment which I will examine in this chapter.

¹¹⁹ Morelli, 2011, 10.

The Annan Plan proposed a property regime which dealt with affected properties by the events of 1963. Both parties had different arguments about these property provisions which offered alternative properties to individuals by excluding the reinstatement of the properties used for public purposes. If the property was developed the emphasis was on issuing bonds for compensation and paying compensation rather than reinstating property to owners.¹²⁰

The Greek Cypriots were against the Annan Plan and the important reason was the property issue. The Turkish Cypriots voted for the plan but still they had some objections about the property issue. So for this, these provisions had to be in line with the agreements and the UN tries to find a balanced solution between the two parties.

4.2.1. DISPOSSESSED OWNERS

In the Annan Plan, the dispossessed owner is described as “a natural or legal person who, at the time of dispossession, held a legal interest in the affected property as owner or part owner, his/her legal heir, personal representative or successor in title, including by gift.”¹²¹

¹²⁰ Gürel and Özersay, 2006, 243.

¹²¹ Annan Plan, 2004, 107.

The Annan Plan proposed that all the dispossessed owners would have 1/3rd of the value or land of their total property ownership. Also, the dispossessed owners would receive a full compensation of the remaining 2/3rd of their property as mentioned in the Security Council 4940th meeting.¹²² But, full compensation would be in the form of bonds or other certificates on both parties. In addition to this in principle, a person may apply for title to an affected property if s/he is currently using it and is a dispossessed owner of another property or if s/he has purchased the property from such a person or has significantly improved the property.¹²³

Dispossessed owners would have to classify claims to the Property Board by expressing how they wish to exercise their rights of property; either compensation, reinstatement, sale and exchange or long term lease. Also, there would be ‘choice rule’ which provides a situation where the redistribution of properties is not arranged by the Property Board and thus it offers a more flexible system.¹²⁴

Prescribed arrangements about dispossessed owners;

- 1) In the cases where dispossessed owners who would not receive back the 1/3rd of their properties because of the conditions of the rule or a voluntary action of giving

¹²² Security Council 4940th Meeting,
http://www.hri.org/docs/annan/De_Soto_brief_to_Security_Council_verbatim_record.pdf (accessed 27 December 2011).

¹²³ Annan Plan, 2004, Article 10, 13.

¹²⁴ Antal, 2004, 54.

the property to current users, then they would be entitled to receive another dwelling in the same village or municipality.¹²⁵

- 2) The dispossessed owners could exchange their entitlement with the Property Board in order to receive an equivalent property in the same village or a neighboring municipality or receive compensation for their dispossessed property.¹²⁶
- 3) The dispossessed owner or an institution that choose to apply for compensation would receive full compensation of that property on the basis of value of the dispossession time. The compensation would be paid as guaranteed bonds and appreciation certificates.¹²⁷
- 4) The dispossessed owners would have the right to get another property of equal size and value that is in the same village or municipality. He/she also could sell his/her property to an owner from the same place that may unite with his/her own property entitlement.¹²⁸ But, when a dispossessed property had been exchanged by a current user or bought by an improver of the property, then the dispossessed owner would not be able to claim that property for reinstatement.

¹²⁵ Annan Plan, 2004, Article 10, 13.

¹²⁶ Op.cit., 9.

¹²⁷ Op.cit , 14.

¹²⁸ Op.cit., 3c, 14.

- 5) If a person has made significant improvement to a dispossessed property, then he/she would be able to apply for a title of the property that he/she would pay the value of the property in its original state.¹²⁹
- 6) A dispossessed owner who does not submit a claim in time and can show good cause why s/he did not entitled to compensation in exchange for title to the affected property by filing a claim. And then, a dispossessed owner will specify how she/he seeks to exercise his/her property rights.¹³⁰
- 7) Titles of affected properties not claimed by a dispossessed owner within the time period set for submission of claims will be transferred to the Property Board. The Property Board will assist dispossessed owners who choose to exchange, sell or lease their properties by either maintaining a register of interested dispossessed owners, current users or offering advice and providing services and information. The dispossessed owner will make payment for any improvement made to the property or will receive compensation in exchange for title to the affected property.¹³¹
- 8) Full reinstatement would be applied only for self built houses or houses lived in for more than ten years before 1974, with 1,000 m² of adjoint land even if that

¹²⁹ Annan Plan, 2004, Article 10, 3e, 14.

¹³⁰ Op.cit.

¹³¹ op.cit.

amounted to more than one third of the total.¹³²

4.2.2. CURRENT USERS

In the Annan Plan current user is described as “a person who has been granted a form of right to use or occupy property by an authority under a legal or administrative process established to deal with property belonging to dispossessed owners or any member of his/her family who has a derivative right to use or occupy such property, or his/her heir or successor in title.”¹³³

Prescribed arrangements about current users;

- 1) A current user of a dispossessed property may gain the title of that property if he/she agrees to renounce his/her property that exists in the other constituent state where he/she was dispossessed from the same value.¹³⁴

- 2) A current user of a dispossessed property, who is a Cypriot citizen, would not have to grant the property in question until convenient accommodation has been

¹³² op.cit.

¹³³ Annan Plan, 2004, Article 10, 106.

¹³⁴ op.cit., Article 10, 3d, 14.

made available to him/her.¹³⁵ But, current users have to claim their properties in order to get property rights with equivalent value in the other constituent state. Also, it acknowledged that the current users have to pay market rent to the Property Board for the period of continued use of the affected property from the date of the Property Board's decision on eligibility for reinstatement.¹³⁶

3) The current user would receive title to the property in exchange for payment of the value of the property in its original state.¹³⁷

4) The current user can apply for title to the affected property s/he is currently using in exchange for title to the property of which s/he has been dispossessed, provided that the two are of similar value. Otherwise the current user who is a dispossessed owner can opt for the same measures available to owners dispossessed of a property located in the areas that are not subject to territorial adjustment.¹³⁸

5) The current user would agree to transfer title to property of which s/he was dispossessed to the Property Board.¹³⁹

¹³⁵ Annan Plan, 2004, Article 10, 3f, 14.

¹³⁶ op.cit., 78.

¹³⁷ Annan Plan, 2004, Article 10, 3f, 108.

¹³⁸ op.cit., 126.

¹³⁹ op.cit.

- 6) If the current value of the affected property is more than the property which the current user was dispossessed, then s/he will pay the difference; if it is less, she will be entitled to compensation for the difference.¹⁴⁰

4.2.3. TERRITORIAL ADJUSTMENT

The property management rules differed according to the areas which are subject to territorial adjustment. A distinction is made regarding how property rights will be exercised in areas subject to territorial adjustment and how they will be exercised in other areas. Property rights will generally be exercised by way of reinstatement where the properties located in area subject to territorial adjustment.¹⁴¹

In the territorial adjustment areas, properties would be reinstated to its previous owners but in other areas, property rights would be arranged partly by reinstatement and partly by compensation.¹⁴² Alternative nearby properties would be offered if the original property was not available for reinstatement. And, nobody would be removed from any property until suitable, alternative accommodation was existent.

¹⁴⁰ op.cit., 131.

¹⁴¹ Gürel and Özersay, 2006, 365.

¹⁴² op.cit.

Although, regulation of the property rights was an important part of the Annan Plan, an agreement could not be achieved on the issues of access to property, property claims, disputes and the use of property. There need to be a property classification that would ease to learn in which category are the related properties sited. Thus, the parties compromised about the list of land categories which are classified by the reconciliation of the parties are shown in the following table 4.1:

Table 4.1 The Land Categories

1.	Property located in an area subject to territorial adjustment.
2.	Property located in an area not subject to territorial adjustment.
3.	Property that was used for business purposes (including industrial buildings, packing houses etc) at the time of dispossession.
4.	Property which was substantially developed after dispossession.
5.	Property which is being used for purposes of public benefit.
6.	Property that was used for dwelling purposes by the dispossessed owner (home) at the time of dispossession.
7.	Property that was used for dwelling purposes by the dispossessed owner (house-dwelling) at the time of dispossession.
8.	Property that is currently used by persons who are themselves dispossessed owners.
9.	Property that is currently used by persons who are not themselves dispossessed owners.

Table 4.1 (continued)

10.	Property that is not currently being used.
11.	Property that was/is plots of land and land with developmental potential.
12.	Property that was/is used as agricultural land.
13.	Physically damaged or destroyed properties after the time of dispossession. Which are impossible to reinstate.
14.	Properties which are not claimed within a determined period to be agreed, following the entry into force of the settlement.
15.	Property that was used as holiday home at the time of dispossession.
16.	Property that was/is owned by natural persons.
17.	Property that was/is owned by private family corporations or private family companies.
18.	Property that was/is owned by other legal persons.
19.	Property that is either so small or is owned by such numbers of co owners that render it indivisible or otherwise problematic.
20.	Property that has been sold by the former current user to a third party who is not a dispossessed owner following the time of dispossession.
21.	Property owned by Evkaf, the autocephalous Greek Cypriot Orthodox Church as well as other churches and other religious institutions that were used as a religious site in 1963/1974.

Source: TRNC Presidency

There are also some exceptions included in the Plan such as;

- 1) If an affected property would be required for military purposes, then it would be transferred to the constituent state where it is located. The current value of that property would be paid to the Property Board by the relevant constituent state.¹⁴³
- 2) Financial and other incentives would be offered to reconcile some Turkish settlers to leave their occupied properties and go back to Turkey.¹⁴⁴
- 3) If a person has a dwelling that he/she has built or lived in for at least ten years, then he/she has the right of reinstatement. Also he/she has the right up to 1 *dönüm* of adjacent land even though this numbers exceed the 1/3rd value or area of his/her properties.¹⁴⁵
- 4) If the increase in value of a property claim was supposed to be higher than the 1974 value, then the Greek Cypriot would be offered a former Turkish Cypriot South Cyprus property in exchange or given compensation.¹⁴⁶

¹⁴³ Annan Plan, 2004, Annex VII, Article 11, 99.

¹⁴⁴ International Crisis Group Report, 2010, 6.

¹⁴⁵ Annan Plan, 2004, Article 10, 3b, 14.

¹⁴⁶ Thorp, 2010, 6.

About territorial adjustment, the Turkish Cypriot side includes approximately 37 per cent of the island with Varosha, Morphou and Karpas which is approximately 8 per cent of the island that had been under GCA before 1974. And, the Greek Cypriots' zone is around 60 per cent, including the two British Sovereign Base Areas about 3 per cent of the island and the Buffer Zone, the Green Line again about 3 per cent.¹⁴⁷ The Greek Cypriots insisted that the Turkish Cypriot zone should comprise 25 per cent as accepted by Makarios in 1977, whereas the Turkish Cypriots persisted that the zone should be at least 29 per cent.¹⁴⁸

4.3. TURKISH CYPRIOT PROPOSALS ON PROPERTY

According to the Turkish Cypriots the property issue could be solved through global exchange and compensation. And, Turkish Cypriots emphasized that they should remain as the majority in their zone and this will impact how many Greek Cypriots can regain their property. As it is obvious that, if a complete restitution occurs as the Greek Cypriots' wish, the territory of Northern Cyprus will decrease to 29 per cent which is not satisfactory for the Turkish Cypriots.¹⁴⁹

¹⁴⁷ International Crisis Group Report, 2010, 1.

¹⁴⁸ Necatigil, 1996, 280.

¹⁴⁹ op.cit.

After the Turkish intervention in 1974 and the departure of the Greek Cypriots from the North, their properties left behind were given to the Turkish Cypriots. They introduced a system based on points which were used to apply for a Greek Cypriot owned property in the North in exchange of what the Turkish Cypriots left in the South. In the first years the certificates that were given to Turkish Cypriots for the Greek Cypriot property were only used for limited dealings on property. But, in 1995 these certificates were sold, bought and leased freely.¹⁵⁰

With the exception of properties being put to public use which reinstatement will not be possible, the home owners before 1974 from both parties have to reclaim their primary residence. Anyone who had to leave such a property would be compensated with a similar home of the same value. And also, alternative accommodation should be provided for those who have to vacate their current property and have no other housing.¹⁵¹

For a property the Turkish Cypriots offer,

- 1) The main guarantee of payment to finance compensation would be Guaranteed Financial Entitlement (GFE). GFEs would come into force after a certain time limit following a settlement and the relevant constituent state would be responsible for making payments to GFE companions based on current values. But, the calculation

¹⁵⁰ op.cit.

¹⁵¹ International Crisis Group Report, 2010, 20.

method will be determined after the settlement. Payments would come from a fund and special taxes and 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.¹⁵²

2) Religious institutions as Evkaf and Church properties and unpossessed property of other displaced owners who were entitled but could not regain their property due to a population ceiling on Turkish Cypriot territory would receive alternative properties.¹⁵³

3) The Churches and Evkaf would be entitled to the reinstatement of any property that they owned and was used as a religious site in 1963 to 1974. But, the Churches and Evkaf would be entitled to these rights within three years of entry into force of the Foundation Agreement.¹⁵⁴

The table 4.2 shows the detailed information about the records of the Otoman Evkaf properties. There are also Greek claims about them but, all these will be decided after the settlement as agreed by the parties.

¹⁵² Annan Plan, 2004, 124.

¹⁵³ Op.cit, Annex VII, Article 4, 96.

¹⁵⁴ Op.cit.

Table 4.2 The Ottoman Evkafs

EVKAF NAME	AREA (DÖNÜMS)	PROPORTION (%)
Abdullah Paşa	2743	59,1
Lala Mustafa Paşa	1106	23,8
The roads selected from Abdullah Paşa and Lala Mustafa Paşa	788	16,9
Bilal Ağa	1	0,0215
TOTAL	4638	100

Source: TRNC Presidency

4) Properties with TRNC title deeds would be suitable for return after the solution.

Properties without title deeds issued by the TRNC which are not being used and which do not cause a threat to national security or public order would be eligible for immediate return.¹⁵⁵

5) The properties which are automatically suitable for restitution would include properties not given to Turkish Cypriots, undeveloped Greek Cypriot land administered by the Turkish Cypriot authorities as new forests and the armed forces controlled areas but to be vacated after settlement.¹⁵⁶

Except these, for the other cases the Property Commission would decide the remedy and in order to provide compensation for small owners first and would prioritize reinstatement to dwellings, displaced owners of permanent residences.

¹⁵⁵ Op.cit., 100.

¹⁵⁶ Op.cit, 96.

6) The affected properties would be divided into three categories as dwellings, small business premises and land.¹⁵⁷

7) The properties owned by institutions other than the religious sites, would be transferred to the Property Board in exchange of compensation.¹⁵⁸

Beyond these, Thorp also indicates that,

1) The properties where there is increase in the current value of the property through investment or a project approved by the authorities would be convenient and would not exceed its value with the one in 1974.¹⁵⁹

2) In response to the Greek Cypriots' urban transformation proposal. It is mostly abandoned Turkish Cypriot properties in the South, but also Greek Cypriot properties in Varosha and villages within the current Buffer Zone. For this, all compensation is to be paid by the Property Commission using funds from Turkey and no current user or owner in the North will be expected to pay.¹⁶⁰

Turkey offers the “Housing Development Administration of Turkey (TOKİ)” model for redevelopment and rehabilitation of adversely affected properties. The

¹⁵⁷ Op.cit., 101.

¹⁵⁸ Op.cit.,108.

¹⁵⁹ Thorp, 2010, 6.

¹⁶⁰ Op.cit.

Turkish Cypriots want a settlement where each community lives in its own separate zone within a federated state. This is why; they foresee compensation for loss of use and would give displaced owners and current users the right to appeal to the IPC.¹⁶¹

4.4. GREEK CYPRIOT PROPOSALS ON PROPERTY

According to the Greek Cypriots, the property issue is just a matter of human rights that stressed displaced persons' right to return with respect to Pinheiro Principles which is detailed in the legal basis chapter and enjoy property as highlighted in international law. Therefore, they consider the property issue as a violation of human rights by Turkey and as a violation of international law and the European Convention.¹⁶²

The GCA placed the Turkish Cypriot property in the South under the protection of Ministry of Interior as a guard of the Turkish Cypriot property. With this, the GCA became a trust until the property is returned to its owner. But these properties are rented to Greek Cypriots with a minimum amount of money which is allocated in an account in order to make a payment to the owners. By this, we can see

¹⁶¹ Radikal Gazetesi, "Kıbrıs Sorununu TOKİ Çözecek!", <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&Date=&ArticleID=1019391&CategoryID=81>(accessed 29 April 2012).

¹⁶² Gürel and Özersay, 2005, 244.

that a solution to the property issue is highly linked to an overall solution of the Cyprus conflict.¹⁶³

For a property the Greek Cypriots offer,

- 1) The properties would be divided into three main categories as dwellings, productive and unproductive property.¹⁶⁴
- 2) The displaced persons would have the right to return to their home and native land that they left in the North.¹⁶⁵
- 3) The property owner must have the right to choose the remedy.¹⁶⁶
- 4) The current users whose property would be reinstated to original owners safeguarded by offering alternative properties and other choices such as becoming tenants or leaseholders. And developed properties, would be safeguarded and given enough time to find alternatives.¹⁶⁷

¹⁶³ op.cit.

¹⁶⁴ Annan Plan, 2004, 55.

¹⁶⁵ Gürel and Özersay, 2005, 244.

¹⁶⁶ Annan Plan, 2004, 55.

¹⁶⁷ op.cit., 109.

5) A Special Property Court would be established as a final stage against decisions of the Commission.¹⁶⁸

6) Three remedies as restitution, compensation and exchange which give the current user the opportunity to lease the property for an undefined number of years would be recognized. Also, unused and undeveloped property would be eligible for immediate reinstatement.¹⁶⁹

7) Regarding affected property owners who choose compensation either immediate payment of the whole amount equal to a current value fixed by the IPC or payment of partial compensation on the basis of current value would be proposed. And, the remaining amount would be paid in two installments in three and five years on the basis of market value at that time.¹⁷⁰

Resolving the property issue has a huge financial burden for both sides that's why as stated in the International Crisis Group report, necessary funds would be allocated to persons affected by the decisions of the IPC or in the case of compensation from interest bearing bonds issued by the IPC and guaranteed by the

¹⁶⁸ op.cit., Part IV, Article 22, 104.

¹⁶⁹ op.cit., Article 14-15, 123.

¹⁷⁰ Annan Plan, 2004, Article 18, 124.

properties and from contributions of financial institutions or third party governments as an alternative.¹⁷¹

At the same time Thorp offers that some properties may be returned immediately and others only after a solution to the Cyprus conflict. But, in case of exchange if there is a difference between the total amounts of the properties if return is not possible for a Turkish Cypriot owned property abandoned in the South either compensation or exchange would be offered to the Greek Cypriot. And, if the house in the South is deemed to be worth more than the house in the North, the difference would be paid by the Greek Cypriot. In the opposite case, the difference will be paid by the Commission to the Greek Cypriot.¹⁷² Also, it will be easier if which areas will be returned to the GCA and how many settlers will leave Cyprus after a settlement is known.

Since the beginning of the negotiations the Greek Cypriots argue the importance of the maximum number of displaced persons to return to their former homes. With the provisions of the Annan Plan, the displaced Greek Cypriots and their descendants could get their properties reinstated and live under the GCA where areas would be submitted to them after 3½ years and 42 months after the Plan enters into force.¹⁷³

¹⁷¹ International Crisis Group Report, 2010, 16.

¹⁷² Thorp, 2010, 6

¹⁷³ Annan Plan, 2004, Attachment IV, 99.

4.5. ANALYSIS ABOUT PROPERTY PROPOSALS

The aim of the Annan Plan was to tackle with the claims of the dispossessed owners with respect to international law, human rights of both the dispossessed owners and current users and the principle of bi-zonality. It presents guidelines for the comprehensive settlement in the island.

The territorial division of the island and the redistribution of property were two important aspects of the Plan which tried to find a solution to the management of property distribution. If a solution could be achieved, the properties would be reinstated to their original owners. After these arrangements, dispossessed Greek Cypriots would get their properties back. And, this would allow more than half of the displaced Greek Cypriot population to return to properties under their own constituent state. Thus, the Turkish Cypriots insisted on global exchange and compensation.¹⁷⁴

But, it must also be recognized that independent from the political process the property issue has an economic aspect. For, the parties have adopted opposing approaches to the property issue. While the Greek Cypriots emphasizing the return of the properties, the Turkish Cypriots insisted on the resettlement. There are also disagreements about the amount and value of the properties that each community

¹⁷⁴ Immovable Property Commission, <http://www.northcyprusipc.org> (accessed 19 September 2011).

owns on both parties of the island. A major issue is the question of who will fund the property settlement generally.¹⁷⁵

It is assumed that after the settlement the two sides could benefit from the use of resources of the island with their economic relationships. Unfortunately, there was a problem of recognition with respect to direct trade of the TRNC which would foresee the import and export of goods into and from TRNC. It is important that the economic advantage of the settlement for both communities should be emphasized by the international community more definitely and also equality of the communities should be encouraged and supported.

In general, perhaps the most difficult issue is the property restitution process. The property restitution and compensation can lead to important economic inefficiencies. The economic value of the affected properties in the TRNC is much undetermined and little is known about their present situation. But, on the other hand, the Annan Plan arrangements attribute any financial burden to the GCA.

Consequently, after the settlement there would be insolvable economic burden on the Federal government. At the same time, the Annan Plan's proposed property restitution may lead to uncertain and unlimited property claims. The rearrangement of land distribution in the Annan Plan made the property issue more difficult to manage.

¹⁷⁵ International Crisis Group, 2009, 17.

Through the economic development solution to the property issue will lead to discussion of where the funds for property compensation would come from. It is assumed that the international community will fund the property issue to meet the compensation requirements. Also, after the settlement there would be a provision to guarantee property rights and provide economic resources.

They expect the Turkish Cypriots to be more generous on property and territory issues. Linking territory, settlers and property issues would help the Greek Cypriots to learn how much property would be returned in the North. But the Turkish Cypriots insisted to tackle with it only after the settlement.¹⁷⁶ For, there is the “Nothing is agreed until everything is agreed” principle. This principle was set out for the parties to expand the convergence points. After some time, in the negotiations the parties utilized this principle as to provoke the other side to leave the table.¹⁷⁷ And, it seems impossible to reach convergence in all aspects that this legal and financial dilemma should persuade Turkey to push as hard as possible for a political settlement.

Although the proposals were extensively discussed and clarifications made, the big gap between the parties was not possible to bridge. The two communities were unable to synchronize the negotiations and focus on the same subject at the same time. So, the process prolonged and a settlement could not be reached.

¹⁷⁶ op.cit., 21.

¹⁷⁷ Evripidou S., “Nothing is agreed until everything is agreed”, <http://www.cyprusedirectory.com/articleview.aspx?ID=18090> (accessed 29 April 2012).

To conclude, it is important to realize that the property issue will be at the center of the economic and social aspects of the reunification. If the reunification occurs, the property rights of a higher number of the population could be in question. Since time passed, the ownership of property changed and led to inheritance changes that properties changed hands to third parties and also properties have been developed.¹⁷⁸ This is why the concept of property rights accounts an important part of this thesis. Property rights are not considered only as ownership of lands, housing and other real heritages but also as means for new lives and opportunities. In this context, people who are dealing with the issue need to clearly understand the spirit and the boundaries of the property rights.

¹⁷⁸ Gürel and Özersay, 2006, 350.

CHAPTER 5

LEGAL BASIS OF THE PROPERTY ISSUE

In the legal sense, the word property includes the nature of the object, the relationship between the person and the object, the rights of people in or over certain objects or things. The relationship is between a number of people, the object and how the object is regarded within the existing political system.

Historically, the notion of private property and property rights emerged in Europe during the Renaissance in 16th century and the Reformation advanced the property rights. The right to private property emerged as a radical demand for human rights in the 17th century in Europe. But, the right to property as a human right became subject in the 18th and 19th century.¹⁷⁹ The ideas about property and civil and political rights were further developed in 1690 by John Locke. According to Locke the right to property and the right to life were indispensable rights and that it was the duty of the state to secure these rights for individuals. Therefore, international law protects individual rights to enjoy property along with the right of the displaced persons to return to their homes and receive remedies. For, Locke proclaimed that:

"Everyman has a property in his person; this nobody has a right to but himself. The labor of his body and the work of his hand, we may say, are properly his".¹⁸⁰

¹⁷⁹ Necatigil, 1996, 283.

¹⁸⁰The Founders' Constitution, "Property", <http://press-pubs.uchicago.edu/founders/documents/v1ch16s3.html> (accessed 29 April 2012)

Locke's arguments on property and the separation of powers influenced the American and the French Revolution. In 1791, the Declaration of the Rights of Man and of the Citizen of Article 7 stated that:

"No one may be deprived of property rights unless a legally established public necessity required it and upon condition of a just and previous indemnity."¹⁸¹

Today, on the basis of property ownership discrimination is recognized as a serious threat to the equal enjoyment of human rights. That is why the property rights are distinguished from personal rights and also rights over things enforceable against all other persons. And, all international human rights laws for minorities do not establish a separate right for property but prohibit discrimination of property rights. In the end, the property right is commonly limited to protection of the public interest and tied to the right to vote. Regarding Cyprus property issue, I will point out the related international laws which are attributed in the judgments, verdicts and the indictments of the parties and ECHR rulings.

5.1. INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS

The Universal Declaration of Human Rights (UDHR) of 1948 was codified into two Covenants which were adopted on 16 December 1966. It constitutes as the "International Bill of Human Rights" which defends the right to life and stresses that no individual can be subjected to torture, enslavement, forced labor and arbitrary

¹⁸¹ Op.cit.

detention or be restricted from such freedoms as movement, expression and association.¹⁸²

The Covenant is divided into six parts. Part I, reaffirms the right of self determination. Part II, formulates general obligations by states parties, notably to implement the Covenant through legislative and other measures, to provide effective remedies to victims and to ensure gender equality and it restricts the possibility of derogation. Part III, spells out the classical civil and political rights, including the right to life, the prohibition of torture, the right to liberty and security of person, the right to freedom of movement, the right to a fair hearing, the right to privacy, the right to freedom of religion, freedom of expression, freedom of peaceful assembly, the right to family life, the rights of children to special protection, the right to participate in the conduct of public affairs, the overarching right to equal treatment, and the special rights of persons belonging to ethnic, religious and linguistic minorities. Part IV, regulates the election of members of the Human Rights Committee, the State reporting procedure and the interstate complaints mechanism. Part V, stipulates that nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and to utilize fully their natural resources. Part VI, provides that the Covenant shall extend to all parts of federal States and sets out the amendment procedure. The Covenant is not subject to denunciation.¹⁸³

¹⁸² International Covenant of Civil and Political Rights,
http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en
(accessed 25 December 2011).

¹⁸³ Op.cit.

The Covenant considered to be the basic principle and used with its main features for the upcoming documents about human rights laws. Thereby, the discrimination outlawed, rights of property and self determination is underlined and these are outstanding matters for the Cyprus conflict and especially for the Turkish Cypriots. Consecutively, the UDHR has extensive component about the rights of property adopted.

5.2. UNIVERSAL DECLARATION OF HUMAN RIGHTS

The UDHR aimed securing national and international right of peoples which was adopted in 1976. It has specific articles concerning the property rights. Article 17 of the UDHR underlines the right to property as follows:

"(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property" argued that the right to property should be limited to the protection of private property necessary for subsistence."¹⁸⁴

Article 23 of the Declaration states that:

"Every person has the right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home."¹⁸⁵

UDHR is the first document that underlined the private property notion explicitly. This means, for some reasons the displaced persons later have the right to

¹⁸⁴ Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr> (accessed 11 November 2011).

¹⁸⁵ op.cit.

return to previous properties and also the current users private property rights come into being. Thus, in order to protect their rights in Annan Plan and in other specific laws regarding the settlement of the Cyprus conflict tried to clarify the rights and terms separately. Obviously, it is hard to protect the displaced persons and the currents users' rights at the same time.

5.3. THE ANNAN PLAN FOUNDATION AGREEMENT

The Foundation Agreement outlines a draft for new relocation arrangements and other options for the current users who would be affected by territorial adjustment or reinstatement process. Regarding Cyprus the property issue was detailed with the Annan Plan Article 10. According to Article 10,

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

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

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

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

b. All other dispossessed owners have the right to reinstatement of one third of the value and 1/3rd of the area of their total property ownership, and to

receive full and effective compensation for the remaining 2/3rd. However, they have the right to reinstatement of a dwelling they have built or in which they lived for at least ten years, and up to 1 *döniüm* of adjacent land, even if this is more than 1/3rd of the total value and area of their properties.

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

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

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

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

(4) Property claims shall be received and administered by an independent, impartial Property Board, governed by an equal number of members from each constituent state, as well as non Cypriot members. The Property Board shall be organized into branches in accordance with sound economic practice. No direct dealings between individuals shall be necessary.”¹⁸⁶

In the Annex VII and its attachments of the Annan Plan, it is mentioned that since the Foundation Agreement provides a domestic remedy for the affected dispossessed properties, then the Republic would inform the ECHR that the UCR

¹⁸⁶ Annan Plan, 2004, Article, 13-14.

would be the sole responsible party about the property claims. The UCR would ask the ECHR to strike out any proceeding concerning the property issue.¹⁸⁷

Also, in the case where a property could be used for public benefit purposes upon entry into force of the Foundation Agreement, the property would be transferred to the Federal Government or to the relevant constituent state where s/he would be entitled to pay the current value of the property to the Property Board.¹⁸⁸

Regarding the property issue the Annan Plan Foundation Agreement includes very detailed and specialized classifications, descriptions and definitions. So, the ECHR cases generally referenced to Article 10 of the Foundation Agreement. This too detailed formation showed us that the main issue of the conflict is the property from the beginning. The other law to investigate is the Law No 67/2005. This law was the ECHR's ruling as to be the basis for to form the IPC.

5.4. LAW FOR THE COMPENSATION, EXCHANGE AND RESTITUTION OF IMMOVABLE PROPERTIES (Law no. 67/2005)

After the principal judgment of the ECHR, TRNC enacted a new compensation law called Law for the Compensation, Exchange and Restitution of Immovable Properties with law no. 67/2005. Also the IPC was established under this law in

¹⁸⁷op.cit., Annex VII, Article 5, 97.

¹⁸⁸ op.cit., Article 10, 99.

order to examine applications about properties to create a local remedy for the Greek Cypriots' property cases. According to Article 5;

"(a) In applications for immovable property, the applicant, together with the application, should submit the originals or duly approved photocopies by the notary public of his identity card and/or passport, the land registration certificate showing his share on the immovable property and that his rights still exist.

(b) For movable properties, the applicant must;

(i) show the originals or duly approved photocopies of documents that prove that the movable property was bought before 13 February 1975 including receipt, cheque, bank transfer, exchange transfers; or

(ii) show the originals or duly approved copies or photocopies of official documents and/or documents from the archive of a real or legal person that prove that the movable property has been acquired thorough inheritance and/or gift and/or present before 13 February 1975.

(c) The applicant must also show by original or duly approved copies of documents that he had to abandon in the North the movable properties under his possession prior to 13 February 1975."¹⁸⁹

As seen, step by step the law states the procedural process for applicants and needed documents in order to get rights of related properties. This also shows clearly that they had the rights of properties prior to 13 February 1975 which Turkish Cypriots always highlighted. The processing, competences and missions of the IPC is set out. The IPC, as to operate the Property Board in the Annan Plan, formed in the TRNC. It is an internal law procedure that files the Greek Cypriots' applications. Now, the IPC still operates in TRNC and plays critical role within the conflict. That's why I will indicate it in detail.

¹⁸⁹ Law no. 67/2005,
[http://www.internaldisplacement.org/8025708F004CE90B/\(httpDocuments\)/2399D9EEB59AFE04C12573810035F815/\\$file/LAW+67+2005.pdf](http://www.internaldisplacement.org/8025708F004CE90B/(httpDocuments)/2399D9EEB59AFE04C12573810035F815/$file/LAW+67+2005.pdf) (accessed 20 December 2011).

5.5. THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The European Convention for the Protection of Human Rights and Fundamental Freedoms established the ECHR and specified its functions, rights and guarantees that the member states have to respect. It was adopted in 1950 and entered into force in September 1953 that signed by 32 countries including Cyprus and Turkey.

The Convention and its protocols protects many rights as the right to live, the right to a fair hearing in civil and criminal matters, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion, the right to an effective remedy, the right to the peaceful enjoyment of possessions and the right to vote and to stand for election. In the Convention, the property rights are mentioned in Article 1 Protocol 1 as;

“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.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”¹⁹⁰

¹⁹⁰ The European Convention for The Protection of Human Rights and Fundamental Freedom, http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf (accesed 7 January 2012).

Under Article 8 of the Convention is;

“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.”¹⁹¹

So, the ECHR highlighted the significance of a long stay of the applicants on the territory of the other constituent state with the Article 1 Protocol 1 and with Article 8 since the applicant had preserved ties and went beyond own nationality with his native country that they have rights. These two articles mainly stress the ties with the property and right to peaceful enjoyment of the property. Attributions to these two articles make the applications concerned to be admissible by the ECHR. But, although in the same line the Turkish Cypriot applications somehow concerned to be inadmissible in some cases. This is a challenge of the laws and application procedure.

5.6. THE PROPERTY BOARD

Property Board is an independent, neutral and impartial administrative body on the island which established to deal with property claims according to the Foundation Agreement. It consists of two members from each constituent state and three non Cypriots who are not citizens of the Guarantor Powers. Its members

¹⁹¹ op.cit.

appointed for three years and can be reappointed or replaced at the end of this period.¹⁹²

The Property Board can;

- 1) Receive and administer claims and applications filed by dispossessed owners and current users regarding the affected properties.
- 2) Make determinations on and administer the exercise of rights to affected property.
- 3) Decide on most issues arising from the exercise of rights to affected property.
- 4) Administer the compensation fund.
- 5) Acquire and deal with affected property in cases where dispossessed owners opt for compensation or for title to another property in exchange for transfer of title to affected property or where a dispossessed owner does not file a claim in the specified time period.
- 6) Help to provide and allocate alternative accommodation.
- 7) Offer the property for sale to the current user at current value.

¹⁹² Annan Plan, 2004, 14.

- 8) Offer the property for sale to persons from the same constituent state in which the property is located at current value.¹⁹³

In areas subject to territorial adjustment, the Property Board would give the final decisions of reinstatement and would order reinstatement as soon as the current user has been relocated, but ‘no later than three years after entry into force of the Foundation Agreement.’¹⁹⁴

The federal government and the constituent states will cooperate fully with the Property Board, comply with its decisions and take all necessary measures for their implementation. The claims by dispossessed owners and the applications by current users will have to be filed with the Property Board within one year from a date fixed by the Property Board. But, if the Property Board decides that a claimant or applicant has no legal interest in the affected property the application will be rejected. And, the decisions of the Property Board will not be subject to appeal or challenge in any constituent state court.¹⁹⁵

The Property Board was set out in the Annan Plan in order to handle the whole related purchase and sale matters of the affected properties. It has detailed classifications about residents and rights of property owners, their families, any

¹⁹³ Annan Plan, 2004, Annex VII, Attachment 2, Article 10, 123.

¹⁹⁴ Op.cit, Article 2, 110.

¹⁹⁵ Op.cit. Annex VII, 120.

former inhabitants and his/her descendants. It will operate if there is the settlement with respect to Annan Plan. Today, the IPC operates in place of it and concludes the applications without taking into consideration any time limit or place in TRNC.

5.7. THE 1/3rd RULE

The 1/3rd rule were introduced for the Greek and Turkish Cypriots who can not enjoy full restitution rights. According to this principle, in Annan Plan Annex VII Article 16 stated that;

“Persons who lost property located in the other constituent state could get back up to 1/3rd of their property in value and area and be paid compensation for the rest in guaranteed bonds and appreciation certificates that are backed up by real property assets and are likely to appreciate considerably over time.”¹⁹⁶

There are some provisions in order to benefit from the 1/3rd rule. For example, a person must have had a land of at least 15 *döniüms* in 1974. Because, the 1/3rd rule requires at least 5 *döniüms* to be the 1/3rd of the land a person must have had in 1974. If the land would be divided into plots less than 5 *döniüms* or for the productive lands less than 2 *döniüms* there would be a minimum size of 15 *döniüms* requirement when an agricultural land were in question for the reinstatement of 1/3rd. When a situation like this occurred, the owner would be able to sell such entitlement for reinstatement to another dispossessed owner from the same municipality or receive compensation. But, the 1/3rd rule does not apply to houses if the person has

¹⁹⁶ op.cit., Article 16, 9.

built the house and/or lived in it for ten years before 1974. In this case, the person would get full restitution of his/her property.¹⁹⁷

For large land owners, about the 1/3rd rule for reinstatement where there would be a lease obligation for a dispossessed land owner who would get more than 100 *döniüms*. Then they would have to give long term lease minimum of 20 years anything that exceeds 100 *döniüms* to the current user or to another person in that constituent state. No direct dealing between individuals would be necessary because all property claims would be received and administrated by an impartial Property Board.¹⁹⁸ However, if no lease could be achieved, then the dispossessed owner would have full use of that property.

This rule is designed for the large land owners. When the applications are accepted it is seen that the land claims constitutes a very large plots of area. And, sometimes on these areas there are inalienable public institutions such as hospitals and schools. In this cases there is the minimum and maximum limits for the exchange option and the compensation option with regard to 1/3rd rule for the land owners for to unlock the issue. But, this is also lack in application because of the rule of after entry into force of the Foundation Agreement set out in the Annan Plan.

¹⁹⁷ Annan Plan, 2004, Annex VII, 14, 108,124.

¹⁹⁸ op.cit., Article 10, 9.

5.8. THE IPC IN NORTHERN CYPRUS

The Immovable Property Commission (IPC) was formed as a court in 2003 and still operates according to the Article No. 159 of the TRNC Constitution which states;

“(1) (a) All immovable properties registered in the name of the Government of Cyprus before the 16th of August 1960 and all immovable properties transferred to the Government of Cyprus after the 16th of August 1960; roads, waters, water resources, ports, harbors and shores, docks and piers, lakes, riverbeds, and lakebeds, historical cities, buildings, ruins and castles and the sites thereof, natural resources and underground resources, forests, defence buildings and installations, green areas and parks belonging to the public; village roads and rural pathways open to the public; and buildings used for public services;

(b) All immovable properties, buildings and installations which were found abandoned on 13th February, 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or not being owned after the abovementioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined.

(c) all immovable properties found within the area of military installations, docks, camps and other training grounds specified in the 1960 Treaty of Establishment and its Annexes, situated within the boundaries of the Turkish Republic of Northern Cyprus on 15th November 1983, shall be the property of the Turkish Republic of Northern Cyprus notwithstanding the fact that they are not so registered in the records of the Land Registry Office and the Land Registry Office records shall be amended accordingly.

(2) Notwithstanding any other provisions of this Constitution, the ownership of the immovable properties specified in sub-paragraphs (a) and (c) of paragraph (1) above shall not be transferred to physical and legal persons. Provided that the making of the necessary adjustment by the State to public roads and to public village roads and field pathways is exempted from the above provision. Easements and other similar rights for specified periods and long term leases over such immovable properties may be established and registered in the manner and under the conditions prescribed by law for purposes of public interest. The establishment and registration of such rights, the period of which exceeds fifty years, shall be subject to the approval of the Assembly of the Republic.

(3) Out of the properties specified in subparagraph (b) of paragraph (1) above, the transfer of the right of ownership to physical and legal persons of

immovable properties other than forests, green areas, monuments and parking places, waters, underground waters, natural resources and buildings, installations and sites required for defence, public administration and military purposes and those required for purposes of town and country planning and soil conservation, shall be regulated by law.

(4) In the event of any person coming forward and claiming legal rights in connection with the immovable properties included in subparagraphs (b) and (c) of paragraph (1) above, the necessary procedure and conditions to be complied with by such persons for proving their rights and the basis on which compensation shall be paid to them, shall be regulated by law.

(5) Places of religious worship and the immovable properties in which they are situated shall not be transferred to physical and legal persons. The State shall take the necessary measures for the safeguarding, maintenance and preservation of such places and properties.”¹⁹⁹

Property owners registered before 1974, as well as their legal heirs, can apply to that body. After 1974, The Turkish Cypriot Government nationalized the properties of the displaced Greek Cypriots. This fact is not recognized by the world and the displaced persons want the return of their properties. Greek Cypriots aimed full restitution of their property and wanted money for loss of use since they could not enjoy, use and live on their property. So, the Immovable Commission tries to be an effective tool to solve these property issues.

In 2005, in the Xenides-Arestis case the ECHR ordered Turkey to set up an effective system for resolving property disputes in the TRNC. The ECHR now considered the IPC as an “effective domestic remedy”. So, applications to the ECHR will not be admissible unless there has first been an application to the IPC.²⁰⁰ The

¹⁹⁹ Constitution of the Turkish Republic of Northern Cyprus,
<http://www.kktcb.org/upload/pdf/80647.pdf> (aAccessed 21 September 2011).

²⁰⁰ Thorp, 2010, 5.

ECHR's decision, which accepted the IPC as an internal law procedure, can be seen as a positive development for the TRNC. So that, then on all the cases could be directed to the Commission.

A Greek Cypriot applies to the IPC in the case where he/she demands a compensation or restitution of his/her property that he/she left and could not enjoy or live in since 1974. Any Greek Cypriot who accepts this situation is not considered to have rights regarding property in Northern Cyprus. But, the Law which the first Commission based did not include restitution of a property. And the law that established the first Commission was changed in 2005. With the changes in the law, now restitution and exchange was also possible. The IPC consisted of 5 Turkish Cypriots and 2, one of them is Swedish and the other one is French, foreign members.²⁰¹

The applicants to the Commission should prove that he/she owned or inherited the property in question from a displaced Greek Cypriot owner. The necessary conditions and documents that are required are listed in the application form to the Commission which can be seen in Appendix A of the thesis. When the Commission receives the necessary documents, they analyze them and give the documents to the Attorney General and to the related units of the state in order to examine the documents and decide if the claim is right. Beyond, the current situation of the

²⁰¹ Law No.67/2005,
[http://www.internaldisplacement.org/8025708F004CE90B/\(httpDocuments\)/2399D9EEB59AFE04C12573810035F815/\\$file/LAW+67+2005.pdf](http://www.internaldisplacement.org/8025708F004CE90B/(httpDocuments)/2399D9EEB59AFE04C12573810035F815/$file/LAW+67+2005.pdf) (accessed 20 December 2011).

property is also examined.²⁰² This is why, according to the Property Law, “the real properties which the right of ownership or use does not belong to any real or legal individuals and do not have any interests for the national security, public order or interest due to its place and attributes are offered restitution at once. If the verdict concludes that the restitution is for allocated, occupied or developed properties, the return of the property is delayed until the solution of the Cyprus conflict.”²⁰³ The payment of the compensation would be in the name of the state by the Ministry of Internal Affairs. Also there exists the option of exchange where the Greek Cypriot may receive a property of the same value in the Southern part if he gives up his property right in the Turkish Cypriot side.²⁰⁴

After the ruling of the ECHR, every case has to go through some bureaucratic procedures. Both parties have different numbers about the properties owned before 1974 in the island. Also, there is a big mixture of the deed records but, there does not exist very clear statistics about owned properties. This makes the solution of the issue more problematic.

The first ECHR application to be considered by the IPC was in June 2007. It authorized an exchange of immoveable property between the applicant and a Turkish Cypriot who left a similar valued property in the South. This opened the way for the

²⁰² Immovable Property Commission, <http://www.northcyprusipc.org> (accessed 19 September 2011).

²⁰³ Law No. 67/2005,
[http://www.internaldisplacement.org/8025708F004CE90B/\(httpDocuments\)/2399D9EEB59AFE04C12573810035F815/\\$file/LAW+67+2005.pdf](http://www.internaldisplacement.org/8025708F004CE90B/(httpDocuments)/2399D9EEB59AFE04C12573810035F815/$file/LAW+67+2005.pdf) (accessed 20 December 2011).

²⁰⁴ op.cit.

withdrawal of the applications from the ECHR and for future cases to be forwarded to the IPC.²⁰⁵

The applicants to the IPC so far have generally preferred the compensation option. This is because they know the difficulties that they would face in case of restitution or exchange. The IPC has solved many cases through a friendly settlement between the Greek Cypriot applicant and the Ministry of Interior. If the two parties do not agree on the amount of the compensation then, he/she can cancel his/her application to the Commission but, still his/her property rights would remain.²⁰⁶ The IPC prefers to reach a friendly settlement between the parties. For, the court process may be too long and a friendly settlement would solve the problem in a shorter amount of time with less efforts. And, as alternatives, the IPC noted that it would be entitled to take a decision to restore the property after the comprehensive settlement and ban any improvement, sale or purchase in the meantime or offer a Turkish Cypriot owned property of equal value in the South.²⁰⁷

The IPC has concluded 214 cases over the 3069 of them by 14 March 2012 which have been subjected. Although most of its rulings involve compensation that the IPC has paid over £65m to the applicants as compensation and it has also

²⁰⁵ Thorp, 2010,7; Immovable Property Commission, <http://www.northcyprusipc.org> (accessed 19 September 2011).

²⁰⁶ Op.cit.

²⁰⁷ Op.cit..

sometimes ruled for restitution and for exchange of properties. Thus, the IPC provided an accessible and effective framework of redress for complaints.²⁰⁸

The Greek Cypriots do not want to apply to the commission because by this action they would in some way recognize TRNC. That is why the GCA does not want its citizens to apply to the IPC. Also, every applicant to the IPC does not want her/his name to be revealed. But the ECHR's 22 April 2008 judgment of the Tymvios case is very important for the Turkish Cypriots because Tymvios agreed with the IPC despite the pressures from the GCA. So, in order to get their property rights the Greek Cypriot citizens hope to apply to the IPC like Tymvios. However, it should not be considered as the only tool to solve the conflict. A political solution is needed in order to reach a long lasting peace settlement on the island.

The IPC acts as a judicial body that the applications about property claims in TRNC should be made to IPC before ECHR. It tries to investigate the property rights independently by reflecting the realities of the whole island. This also ensures that the rights of the Greek Cypriots are accepted by the Turkish Cypriots and after concluding the legal procedures if the claims are proved then compensation, exchange or return could be possible. As a result, the ECHR throw off the burden of the case load, there is the change for the friendly settlement and so the process become much more fast. If the return is not possible in the case then the compensation amounts are also much more objective than the ECHR sentences.

²⁰⁸ Immovable Property Commission, <http://www.northcyprusipc.org> (accessed 19 September 2011)

5.9. THE PINHEIRO PRINCIPLES

The Pinheiro principles have totally 23 articles and presented in 2005 by UN. It was designed to provide guidelines on housing, land and restitution rights within international law. Related articles concerning the Cyprus conflict property issue are as follows:

Principle 2- The Right To Housing and Property Restitution

“2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/ or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.”

Principle 5- The Right To Be Protected From Displacement

“5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non State actors.”

Principle 6- The Right To Privacy and Respect For The Home

“6.1 Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.

6.2 States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home.”

Principle 7- The Right To Peaceful Enjoyment of Possessions

“7.1 Everyone has the right to the peaceful enjoyment of his or her possessions.”

Principle 16- The Rights Of Tenants and Other Non Owners

“16.1 States should ensure that the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property are recognized within restitution programs. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.”

Principle 21- Compensation

“21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

21.2 States should ensure, as a rule, that restitution is only deemed factually impossible in exceptional circumstances, namely when housing, land and/or property is destroyed or when it no longer exists, as determined by an independent, impartial tribunal. Even under such circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild

whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice.”²⁰⁹

Again, the UN set principles underlines the rights of both communities regarding current users, the first owner and also the ties between them. If the ECHR has taken into consideration these principles without regarding the non-recognition of the TRNC could focus the rights of the Turkish Cypriots.

This is another UN document that stresses the equality, justice and peace which has detailed provisions regarding the property rights of all people. By preventing the displacement, the options of restitution and compensation, the effective protection of the international law is emphasized. So, it could be said to be the basic document regarding especially the displacement. Another challenge of the international community is despite these documents which are for all people, the reasons of the unsolvable Cyprus conflict is attributed only to the Turkish Cypriots as uncompromised side.

5.10. THE SECURITY COUNCIL RESOLUTIONS

The UN Security Council released the Resolution 541 in 1983 and Resolution 550 in 1984 which condemned TRNC’s independence declaration. Today, these resolutions prevent the recognition of TRNC while only recognizing the Greek

²⁰⁹ Pinheiro Principles, <http://ukr.unhcr.org.ua/img/uploads/docs/PinheiroPrinciples.pdf> (accessed 20 January 2012).

Cypriots as the ROC by concerning the only state on the island. During the negotiations these two resolutions are the obstacle for the settlement. Related articles of the resolutions are as follows:

5.10.1. THE SECURITY COUNCIL RESOLUTION 541 (1983)

“Considering that this declaration is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee.”

“Considering therefore that the attempt to create a "Turkish Republic of Northern Cyprus", is invalid, and will contribute to a worsening of the situation in Cyprus.”

“Calls upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus.”

“Calls upon all States not to recognize any Cypriot state other than the Republic of Cyprus.”²¹⁰

5.10.2. THE SECURITY COUNCIL RESOLUTION 550 (1984)

“Condemns all secessionist actions, including the purported exchange of Ambassadors between Turkey and the Turkish Cypriot leadership, declares them illegal and invalid and calls for their immediate withdrawal.

²¹⁰ S/RES/541, 1983.

Reiterates the call upon all States not to recognize the purported state of the "Turkish Republic of Northern Cyprus" set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity.

Calls upon all States to respect the sovereignty, independence, territorial integrity, unity and non-alignment of the Republic of Cyprus.”²¹¹

As mentioned before, these two Security Council Resolutions makes the attempts complicated. In some ways, non-recognition in the international field challenging the ongoing political structure because there are the negotiations. If the international community wants a settlement in the island sincerely first of all these two resolutions should be overruled. Because of these resolutions during the negotiation process, the Turkish Cypriots' rightful subjects seem to be unfair. Also, the embargoes and isolations of the TRNC make the life difficult. The negotiations continue on the legal basis but even though these two resolutions how can we mention the legality is disputed.

²¹¹ S/RES/550, 1984.

CHAPTER 6

THE ECHR CASES ABOUT CYPRUS PROPERTY

6.1. THE ECHR

The ECHR, which is located in Strasbourg, was set up in 1959. The duty of the ECHR is to guarantee the rights set out in the Convention are respected by the states. Its members consist of a number of judges that should be equal to the number of the member states of the Council of Europe which have ratified the Convention and its protocols. However, the judges of the Court, which is 45, do not represent any member state. Beyond this, the lawyers from all member states assist the Court as legal secretaries. But, also these lawyers do not represent any applicants or their states.²¹²

In order to apply to the ECHR, a person has to use all internal remedies of the related state. After using all these internal remedies, the person has to apply to the ECHR in 6 months from the decision taken at the domestic level. Continuing the application process the Court examines the application and if the case complies with the conditions then, the case considered to be admissible. After, first of all the Court tries to reach a friendly settlement between the two parties. If there can not be a

²¹² European Court of Human Rights Information Document on the Court, <http://www.echr.coe.int> (accessed 4 January 2012).

settlement, the Court has to decide if there has been a violation of the European Convention. And so, the Court reaches a judgment if a member state has violated the rights set out in the Convention or not. However, the Court is not responsible for the execution of its judgments. But, there may be cases that the Court could consider as inadmissible and this decision would be final for that application.²¹³

6.2. THE TURKISH CYPRIOT CASES TO THE ECHR

Turkey had accepted the jurisdiction of the ECHR in 1990. But, it considered Turkey's obligation to secure the rights and freedoms set out in the European Convention and regarding Article 1 Protocol 1 underlines the existence of Turkish troops in the Northern part of the island. As the TRNC was not recognized by the international community and was not considered as a state, ECHR considered Turkey responsible for the violation of rights in the TRNC.²¹⁴

However, the TRNC argued that the TRNC was a sovereign, legal state which was independent from Turkey. So, Turkey pointed that the arguments should be against the TRNC. But, the Court considered the UN Security Council Resolution 541 and 550²¹⁵ where the TRNC was declared as a 'non-recognized' legally invalid state. Since, the TRNC was not considered as a state under international law, the

²¹³ op.cit.

²¹⁴ European Court of Human Rights Information Document on the Court, <http://www.echr.coe.int> (accessed 4 January 2012).

²¹⁵ S/RES/541, 1983; S/RES/550, 1984.

ECHR could not attribute legal validity as provisions of the TRNC Constitution Article 159.²¹⁶ Therefore, Turkey accepts the responsibility for the continuing violation of the human rights of all Greek Cypriots.

The Turkish Cypriots after using the local remedies, like as the Greek Cypriots, have applied to the ECHR in order to get compensation and restitution for their left properties in the South. First of all, the Turkish Cypriots had to demonstrate their claims that they legally owned and inherited the related property. But, there are many obstacles for the Turkish applicants as the applications have to be in Greek. Also, the process could last for several years and may not come to an end because the needed documents are mainly in Greek. So, the Turkish Cypriots may not be able to defend their cases in Turkish.

In Table 6.1 it can be realized that there are 13 Turkish Cypriot cases to ECHR which 2 of them considered to be inadmissible and 1 is concluded since now. The left 10 of them are pending the judgments.

Table 6.1. The Turkish Cypriot Cases to the ECHR

NO	TURKISH CASES	APPLICATION NUMBER
1.	Adlan Niyazi Salih	3240/05

²¹⁶ Constitution of the Turkish Republic of Northern Cyprus,
<http://www.kktcb.org/upload/pdf/80647.pdf> (accessed 21 September 2011).

Table 6.1 (continued)

2.	Aiten Abni	38902/05
3.	Alp Z.Nouri	30792/05
4.	Ayla Halit and Others	30565/04
5.	Durmuş Erdoğan	4080/06
6.	Esat Mustafa and Others	49307/08
7.	Hasan Hüseyin Chakarto and Others	1545/07
8.	Kamil Savaş	38902/05
9.	Celul Karabardak Inadmissible	76575/01
10.	Mehmet Ali Osman	34776/06
11.	Nazire Ahmet Adnan Sofi	18163/04
12.	Niazi Kazalı	49247/08
13.	Hüsnü Baybora Inadmissible	77116/01

Source: TRNC Presidency, ECHR.

The only concluded case is the Sofi case. Nazire Ahmet Adnan Sofi is a British and Turkish Cypriot national who was born in 1926 and lives in London. She lodged a case at the ECHR on 21 April 2004 against the GCA.²¹⁷

²¹⁷ European Court of Human Rights Information Document on the Court, <http://www.echr.coe.int> (accessed 4 January 2012).

Following the events of 1974, she was forced to leave the island and had to abandon her properties. Thus, she complained about the continuing violation of Article 1 of Protocol No. 1 and of Article 8. The friendly settlement reached between the parties. According to the friendly settlement the 2 properties in Larnaca will be given to the owner or her heirs and in addition to these 540.000 Euros compensation will be paid.²¹⁸

Until the Sofi case, only the Turkish Cypriots who left Cyprus before 1974 were given property rights in South Cyprus. And, with this decision for the first time, the Turkish Cypriots who left Cyprus after 1974 and who does not use ex Greek Cypriot property in the TRNC will be able to demand their properties in South Cyprus.

The other applicants are pending the hearing date of the ECHR. The Sofi case would be sample for them. But, again non-recognition of the TRNC would stay as an obstacle for the decisions of the pending cases taken by the ECHR.

6.3. THE GREEK CYPRIOT CASES TO THE ECHR

As I have mentioned before, the Greek Cypriots applied to the ECHR to get their property rights by applications either individually or by the GCA.

²¹⁸ op.cit.

In Table 6.2 the Greek Cypriot Cases are listed. There are 31 subjected cases to ECHR in which some of them are concluded and some are also pending the final judgment. The ones that constitute important turning points will be detailed.

Table 6.2. The Greek Cypriot Cases to the ECHR

NO	GREEK CASES	APPLICATION NUMBER
1.	Alexandrou	16162/90
2.	Alexandrou	16162/90
3.	Andreou	18360/91
4.	Andreou Papi	16094/90
5.	Anthousa Iordanou	46755/99
6.	Christodoulidou	16085/90
7.	Diogenous and Tseriotis	16259/90
8.	Economou	18405/91
9.	Epiphaniou and Others	19900/92
10.	Evagorou Christou	18403/91
11.	Gavriel	41355/98
12.	Hadjiprocopiou and Others	37395/97

Table 6.2 (continued)

13.	Hadjithomas and Others	37395/97
14.	Hapeshis and Hapeshi, Iordanis Iordanou	43685/98
15.	Ioannou	18364/91
16.	Josephides	21887/93
17.	Kyriakou	18407/91
18.	Loizidou and Others	15318/89
19.	Lordos and Others	15973/90
20.	Michael	18361/91
21.	Nicolaides	18406/91
22.	Olymbiou	16091/90
23.	Orphanides	36705/97
24.	Ramon	29092/95
25.	Rock Ruby Hotels Ltd.	46159/99
26.	Saveriades	16160/90
27.	Skyropiia Yialias Ltd.	47884/99
28.	Solomonides	16161/90
29.	Strati	16082/90
30.	Vrahimi	16078/90
31.	Zavou and Others	16654/90

Source: TRNC Presidency, ECHR.

The case of Loizidou is a turning point where Turkey was found guilty because Loizidou could not return and lose use of her home in Kyrenia, Northern part of the island that guaranteed under Article 1 of Protocol No. 1 of the European Convention. According to the Turkish Government, Mrs. Loizidou had lost her property right with respect to the Article 159 of the Constitution which was abandoned after 1975. And, this was prior to Turkey's acceptance of the Court's jurisdiction in 1990. So that, according to this Mrs. Loizidou could not be deemed to have lost title to her property.²¹⁹

The Loizidou vs Turkey case is important for Cyprus since it proves that Turkey accepts the decision of the ECHR. So that, Turkey also accepts that Mrs. Loizidou and all the other dispossessed owners are still the legal owners of the land. In December 2003, Turkey paid damages of 1.2 million Euros to Mrs. Loizidou.²²⁰ According to the Greek Cypriots the significance of this case is mostly its political impact. And, which is also important is Turkey has not made any payments on ECHR rulings since the Louizidou case.

The Arrestis case is another important case where Turkey found guilty because of use of loses of the property in Varosha. ECHR sentenced Turkey to pay 885,000 Euros compensation to Mr. Arrestis. But, Turkey claimed that the related property was the Ottoman Evkaf so make an objection against to the ECHR. But, ECHR did

²¹⁹ ECHR Press Release 725.

²²⁰ Op.cit.

not accept this objection and affirmed the judgment. And, Turkey has not paid the compensation.

In addition, the ECHR ordered forming the law on Compensation for Immovable Properties Located in TRNC in line with “The Law on Compensation, Exchange and Restitution of the Immovable Property” which aims to provide an internal law procedure for property cases. This is also detailed in the legal basis chapter.²²¹

The Tymvios case was subjected in 1998 to the ECHR regarding the property in Nicosia but, cancelled by the ECHR in September 2007 when Mr. Tymvios applied to the IPC and reached a friendly settlement with 1 million American dollars compensation in addition to 22 *döniims* land.²²²

So, the Tymvios case is a big disappointment for the Greek Cypriots because the ECHR accepted the friendly settlement of Tymvios with the IPC as a legal decision. This means international recognition of a TRNC institution. Hereafter, the Tymvios case can be considered as a sample case for other cases.²²³

²²¹ ECHR Press Release 761.

²²² ECHR Press Release 414.

²²³ Op.cit.

This is an advantage for the Turkish Cypriots and Turkey because the Greek Cypriots never want to accept the exchange of property. Moreover, this also started arguments about the Greek Cypriot institutions legitimacy that is managing the Turkish Cypriot properties left in the South. As the properties left by the Turkish Cypriots in Southern Cyprus are under the GCA, the ECHR did not take into consideration the opposition of the Greek side and accepted the IPC.

On the other hand, the Tymvios case highlighted that the Turkish Cypriots have property rights over the Ottoman Evkaf properties so that would be sample case if any other related case is filed regarding the Ottoman Evkaf properties. Hereby, it could be important for the recognition of the TRNC.

In Demopoulos case, the ECHR underlined both the passage of time and any political settlement in the Cyprus conflict should be taken into consideration while deciding restitution or compensation. Also, these indicates that the Annan Plan 5th version property arrangements compatible with the European Convention.²²⁴ Thus, the Demopoulos case represents another turning point as the Loizidou case in the Cyprus conflict.²²⁵

The other applicants are pending either the hearing date of the ECHR or IPC. But, the processes in the begining slow down by the application process of the IPC. Also, some Greek Cypriots still wait for to apply to the IPC.

²²⁴ ECHR Press Release 186.

²²⁵ Williams and Gürel, 2011.

To conclude, we can say that the ECHR did not examine the 1960 treaties, the facts of the 1963–1974 period, the principles of international law about recognition of the states and only based their judgments on UN Security Council Resolutions 541 and 550.²²⁶ Moreover, the Turkish Cypriots have affirmed that the proper compensation should be paid to all Greek and Turkish Cypriots who lost their property. Hence, if they had examined the conditions of the period between 1960 and 1974 objectively they would have come to a different conclusion about the rights of the Turkish Cypriots. All this was ignored irrelevantly and the events taken as happened before 1974 by the judges and international community. As a result, during the application process to the ECHR although the same articles are referred by both parties, so they are in the same line but, the Turkish Cypriots applications regarded as inadmissible.

Regarding properties situated in Varosha, the ECHR have not considered that they are the Ottoman Evkaf properties and have inalienable status. This is another example that the ECHR take political sentences about TRNC properties.

As general the other problematic issue is the passage of time. With various reasons the properties changed hands, sold, ceded or inherited even to third generations. It takes time and sometimes difficult to proof these incidents or contact people because of living different countries. Similarly, as Turkey has not made any payments on ECHR rulings except the Louizidou case, in addition to related

²²⁶ Stephen, 2000, 90.

compensations another amount of compensation will be possible if they apply and the ECHR rule. Because they still have their property rights. As a result, in a way Turkey is seen as the tenant of the Greek properties before 1974 which is now situated in TRNC.

CHAPTER 7

CONCLUSION

The Cyprus conflict has been on the world's political agenda more than fifty years. As the Guarantor powers Greece and Turkey, with the sovereign base areas Dhekelia and Akrotiri England, with Greek Cypriot Administration's EU membership the EU, as the ongoing comprehensive settlement negotiations under UN auspices and with the UNFICYP the UN operates actively in the island. And, two communities exist as Turkish and Greek Cypriots which have different arguments and perspectives that they illustrate the origins of the conflict differently. The Greek Cypriots want just the continuation of the Republic of Cyprus that formed in the 1960 not a new partnership as the Turkish Cypriots.

There has been great effort to solve the property issue in the Cyprus conflict. As mentioned before, the Ghali Set of Ideas and the Annan Plan had important arrangements about the property issue but none of them is successful. Although, the comprehensive settlement negotiations which started in September 2008 generally focused on the property issue as a precondition but both parties of the conflict have not succeed in solving this issue. The big gap between the parties seems not possible to bridge. And, this process is becoming slower and inefficient nowadays that divergence between the two parties seems so much remote.

Another remarkable point is that the UN accepted the Turkish Cypriots as one of the parties of the Cyprus conflict and negotiates for the settlement. But, at the same time the UN released resolutions 541 and 550 about non-recognition of TRNC and they are still valid today which is so challenging. So, the negotiation process still continues with non-recognition of the TRNC upon disregarding the international law principles and legal documents. Hence, it is safe to say, owing to failure of the UN's arbitration of the negotiations the process directed incorrectly.

The property issue is very complex and the demands of the both parties are very different. As general the other problematic issue is the passage of time. Thus, the conflict is getting more complicated because with various reasons the properties changed hands, sold, ceded or inherited even to third generations and also properties have been developed. It takes time and sometimes difficult to contact people because of living in different countries.

On a broader level, besides the property issue the politics of population constitutes an important feature of the Cyprus conflict. It affects on the question of majority versus minority rights and is reflected throughout the representation process. For, the Greek Cypriots wanted to take the advantage of being the majority population on the island both for the administration and the representation. The Greek Cypriots want just the continuation of the ROC that formed in the 1960 not a new partnership as the Turkish Cypriots. As a result, all of these hinder the peace

settlement in the island. So, the maintenance of these two distinct arguments will be an important component of the comprehensive settlement of the Cyprus conflict.

Regardless of other events, the property issue will likely to dominate the conflict. However, this issue is very complex and as mentioned in this thesis, approaches of both parties to the issue are very different. The main argument for the Turkish Cypriots is the principle of bi-zonality while global exchange, restitution and compensation are pursued to keep the status quo in property. On the other hand, the Greek Cypriots see this issue as related to the human rights that they want full restitution of property and freedom of movement on the island. In addition to this, as the Greek Cypriots rejected the Annan Plan in 2004 they want much more territory and rights given in the Annan Plan.

For this, the Greek Cypriots want to be seen as standing for the settlement and do not want to leave the negotiation table. When it is analyzed it can be seen that their proposals include articles that the Turkish Cypriots will never accept. This is for to deadlock the process and so make them leave the negotiation table. As a result, the process again and again restarted and deadlocked. Therefore, not only the leaders of the two communities of the island but also the international community with the related international elements should impartially arbitrate the negotiation process. It is obvious that the international community's concerns and hopes for the settlement decreasing gradually.

After 1974, the two communities of the island have left properties with regard to population exchange. Thus, in order to regain the rights of their properties left in the other part of the island, they applied to first internal and then international courts. After using all the internal remedies, the person has to apply to the ECHR in 6 months from the decision taken at the domestic level. Continuing the application process the Court examines the application and if the case complies with the conditions then, the case considered to be admissible otherwise inadmissible.

Concerning the Cyprus property issue there are more than 1500 applications to the ECHR by the Greek Cypriots who complain about violations of the European Convention by Turkey.²²⁷ And, especially most of the applications which generally concern the right to property are by the displaced Greek Cypriots who could not return to their left properties.

As a domestic remedy, the status of IPC is another dimension of the conflict. In order to solve the property issue the IPC is formed as the non-recognized state's legal commission by the ECHR ruling in 2003 and it still operates in TRNC. So, its rulings are considered to be legal on the way to the settlement. However, the Greek Cypriots are not very content with the ECHR's decision about forming the IPC as an effective domestic remedy for to solve the property issue.

²²⁷ European Court of Human Rights Information Document on the Court, <http://www.echr.coe.int> (accessed 4 January 2012).

But, the process slowed down by the application process of the IPC. Also, some Greek Cypriots still wait for to apply to the IPC. This decision can be seen as a positive development because the ECHR, without legal basis by some reasons has taken political decisions. Moreover, the compensation amounts charged by the IPC are also much more objective than the ECHR and also there is the chance for the friendly settlement and so the process become much more fast.

The Cyprus conflict is related to interdependent relationship between the two communities that the peace efforts should be more society based rather than politics. And, this can only be possible with the support of the international community and the international organizations. And, in the case of Cyprus major factor is to secure political and economic stability in the Eastern Mediterranean which mainly focuses oil traffic security of both the Middle East and the Caspian. This is why the international community still imposes economic and political embargoes to the TRNC. Therefore, the parties had to decide whether or not to form the federal state that consists of two constituent states. After, non-recognition and isolations of the TRNC would be abolished.

As we can say, the Greek and Turkish Cypriots perceive the property issue differently. Greek Cypriots who lost their homes and properties still have a desire to return there and do not want to accept anything less than full restitution for all their properties. And, Turkish Cypriots have the fear that if most of the property on the Turkish side will be reinstated back to the Greek Cypriots that they may became

minority along the island. Regarding the governance and power sharing issue after allocating the properties as they are scattered throughout the island it could lead the formation of the cantons and this feared them. The dispossessed owners who moved to the other side of the island by leaving their properties have rights on the property. But, the current users who moved in those properties also have some rights because they have been living there for years. Although it's not possible to globally exchange property, also it is not possible to fully reinstate them. Thus, a balanced approach should be arranged for both the dispossessed owners and the current users at the same time.

Settlement of the Cyprus conflict and solution to the property issue will affect the interrelationship between the communities and their living. After allocation of the properties there will be heterogeneous mixture of population and as they highly differ along the custom, religion and language that it will not be easy to establish a homogeneous structure.

Similarly, as Turkey has not made any payments since the Louizidou case, in addition to related compensations another amount of compensation will be possible. Because they still have their property rights. As a result, in a way Turkey is seen as the tenants of the Greek properties before 1974 which is now situated in TRNC. In this context, people who are dealing with the issue need to clearly understand the spirit and the boundaries of the property rights.

Summing up, the main criticism of the peace building process in Cyprus was that it was lack of representation of the two communities, lack of connections between the issues, lack of common vision and common understanding of what was going in the island. Thus, they did not know the other and also what difficulties they are facing. Additionally, they had different understanding of peace and peace building notions. So, also the settlement would have economic effects on TRNC with increase in income level and growth rate. For, ending isolations on TRNC will allow direct trade with the rest of the world which could lead new trading opportunities. There could be fast capital accumulation but also income per capita will rise if travelling to both sides of the island becomes possible through tourism sector.

Cyprus is now at the crossroads that because of the ongoing problem of distrust and divergences between the communities. In other words, the future of Cyprus is likely to depend on both internal and external actors' conceptions of security and what they understand from a settlement. It is obvious that a solution of the Cyprus conflict will be found through reaching an understanding by the two communities otherwise the international community will impose a solution. Of course, the best solution will be the communities' attained solution. For the settlement of the Cyprus conflict which is a sine qua non is to seek full independence without threatening the international security as well as security of Turkey, the Mediterranean and the Middle East region. Answers to this include different regional powers' oppositions that made such a construction difficult for the geopolitical means.

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APPENDIX A

APPLICATION

Before the Immovable Property
Commission established under
Law No:67/2005
Application No.:

Applicant:(a).....

Id. No.:...../ Passport No.:

and

Respondent: The Ministry responsible for Housing Affairs and/or Office of the Attorney General representing the Ministry responsible for Housing Affairs, Lefkoşa.

The parties cited above are invited to attend the meeting taking place at the Immovable Property Commission, Atatürk Square, opposite the Court Buildings, Lefkoşa, on for the directions stage of the application. The summary of the claims of the applicant in this application are as follows:

The facts supporting the claims in the application can be seen in(b)'s affidavit dated
Applicant's address for service is as stated below: (c)

(Signature)

Personal application (d)

lawyer Registered and sealed on the day of the month ofof the year 201.... Application by

(Signature)

Commission Secretary

Before the Immovable Property
Commission established under
Law No:67/2005
Application No.:

Applicant:(a).....

Id. No.:...../Passport No.:.....
and

Respondent: The Ministry responsible for Housing Affairs and/or Office of the Attorney General representing the Ministry responsible for Housing Affairs, Lefkoşa.

AFFIDAVIT

I..... confirm the following facts and sign the document.

1. The description of the property (Town/Village, Sheet/Plan, Block, Plot and Share will be stated)
2. The registered owner of the property in 1974 and/or any legal heirs will be stated, the degree of kinship will be written.
3. Whether or not there are any mortgage, liability and restriction on the property will be stated.
4. Whether or not the applicant is the beneficiary of any Turkish property in the South will be stated.
5. The applicant will state his/her demands from the Commission. (Compensation, Restitution, Exchange) (If the applicant demands compensation, s/he should write the total sum of money demanded.)

6. Miscellaneous

(Signature)

Name Surname:.....

Id. No.:...../Passport No.:.....

Registered and sealed on the day of the month of.....of the year 201....

(Signature)
Commission Secretary

APPENDIX B



TEZ FOTOKOPI İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü

Sosyal Bilimler Enstitüsü

Uygulamalı Matematik Enstitüsü

Enformatik Enstitüsü

Deniz Bilimleri Enstitüsü

YAZARIN

Soyadı :

Adı :

Bölümü :

TEZİN ADI (İngilizce) :

.....

TEZİN TÜRÜ : Yüksek Lisans

Doktora

1. Tezimin tamamı dünya çapında erişime açılsın ve kaynak gösterilmek şartıyla tezimin bir kısmı veya tamamının fotokopisi alınınsın.

2. Tezimin tamamı yalnızca Orta Doğu Teknik Üniversitesi kullanıcılarının erişimine açılsın. (Bu seçenekle tezinizin fotokopisi ya da elektronik kopyası Kütüphane aracılığı ile ODTÜ dışına dağıtılmayacaktır.)

3. Tezim bir (1) yıl süreyle erişime kapalı olsun. (Bu seçenekle tezinizin fotokopisi ya da elektronik kopyası Kütüphane aracılığı ile ODTÜ dışına dağıtılmayacaktır.)



Yazarın imzası

Tarih