



UiO • **University of Oslo**

# Cyprus – an island divided

*A transitional justice approach*

Candidate number: 8011

Theory and Practice of Human Rights

30 Credits

Norwegian Centre for Human Rights

UiO • **Faculty of Law**  
University of Oslo

Number of words: 17,994

15.08.2021



**Table of contents**

- 1 CONTEXT TO THE CYPRUS CONFLICT ..... 1**
- 1.1 A brief history of Cyprus ..... 1
- 1.2 The idea of *enosis* ..... 4
- 1.3 Current status on the island..... 6
- 1.4 Perceptions of conflict ..... 8
  
- 2 RESEARCH QUESTIONS AND METHODOLOGY ..... 13**
- 2.1 Research questions..... 13
- 2.2 Definitions..... 13
- 2.3 Methodological approach..... 14
  
- 3 TRANSITIONAL JUSTICE FRAMEWORK FOR THE CYPRUS CASE ..... 15**
- 3.1 Brief history of contemporary transitional justice ..... 15
- 3.2 Transition to what?..... 17
- 3.3 Transitional justice toolbox..... 19
  
- 4 ACHIEVEMENTS AND CHALLENGES OF THE TRANSITIONAL JUSTICE  
PROCESS IN CYPRUS..... 23**
- 4.1 Peace talks..... 24
- 4.2 Missing persons..... 28
- 4.3 The property issue..... 36
  
- 5 WAY FORWARD..... 41**
  
- TABLE OF REFERENCE ..... 47**
- Books and articles: ..... 47
- Other references: ..... 49

# 1 Context to the Cyprus conflict

## 1.1 A brief history of Cyprus

The island of Cyprus is located in the eastern Mediterranean Sea, with the closest landmass being Turkey to the north, northeast, Syria and Lebanon to the east. It lies 360 kilometers east of Greece. The distance to mainland Turkey is about 75 kilometers at the closest points.

Historically, the population of Cyprus has been considered Greek, no matter who has ruled the island. Despite changing hands from the English, Templars, Venice, Ottoman Empire, Britain (again) and finally independence, it is an Aegean island, whose population has primarily considered themselves of Hellenistic heritage.<sup>1</sup>

As with most places, though, the population is not entirely homogenous – due to its close proximity to today’s Turkey, and past within the Ottoman Empire, there is a sizeable minority of Cypriots of Turkish descent. In 1960, this was estimated to about 18% of the total population of the island, compared to the 80% of Greek heritage.<sup>2</sup>

While technically part of the Ottoman Empire until 1914, Britain administered Cyprus from 1878, having been leased out by Turkey in return for British naval support against Russia. This continued until 1914, when Britain annexed Cyprus, the Ottoman Empire having allied with Germany during the First World War. Turkey granted Britain formal rulership of Cyprus in the 1923 Treaty of Lausanne, and in 1925 Cyprus became a Crown Colony.<sup>3</sup>

Thus it remained, on paper, until 1960, when Cyprus became an independent nation, with its own constitution, set up to allow for both Turkish Cypriot and Greek Cypriot influence. This was accomplished via three treaties: the Treaty of Establishment (Cyprus and Britain), Treaty of Guarantee (Britain, Greece and Turkey on one side, Cyprus on the other) and the Treaty of Alliance (Greece, Cyprus and Turkey).

- The Treaty of Establishment established Cyprus as independent, the Republic of Cyprus as the nation governing the island (except for two British military bases).
- The Treaty of Guarantee obliged Britain, Greece and Turkey to ensure Cyprus’ independence, and act in unison to resolve any issues – or unilaterally, if required.
- The Treaty of Alliance set up a military headquarters on the island, and allocated 950 Greek and 650 Turkish troops to the security of Cyprus.<sup>4</sup>

---

<sup>1</sup> Mallinson, *Cyprus: a Modern History*, p. 9.

<sup>2</sup> Papadakis (ed), *Divided Cyprus*, p. 2. See also Mallinson, *Cyprus: a Modern History*, p. 9

<sup>3</sup> Mallinson, *Cyprus: a Modern History*, pp. 10-11.

<sup>4</sup> Mallinson, *Cyprus: a Modern History*, p. 34.

In addition to an outsized number of Turkish troops, the Turkish Cypriots received a disproportionately large influence and number of seats in the governance of the new Republic, considering the population size, as well as veto powers<sup>5</sup> - not unlike the constitution of Bosnia-Herzegovina three decades later, also set up by international agreement, and has proven difficult to change, or employ for positive changes.

Preceding the independence in 1960, a process of ethnic homogenization had already been occurring over time – mixed villages in Cyprus declined from 346 to 252 between 1891 and 1931.<sup>6</sup> This process was accelerated by the actions of the National Organization of Cypriot Fighters (*Ethniki Organosis Kyprion Agoniston* (EOKA)), who sought unification with Greece (*enosis*). Between 1955 and 1959, the actions of EOKA, the Turkish counter-organization Turkish Resistance Organisation (TMT) and the British auxiliary police (drawn primarily from Turkish Cypriots), 2700 Turkish Cypriots and 1900 Greek Cypriots were displaced from the villages they lived in, or internally displaced within Nicosia. It should be noted that about half of displaced Turkish Cypriots returned after independence, but only about 10% of Greek Cypriots.<sup>7</sup>

In 1963, intercommunal fighting broke out after President Makarios sought to amend the constitution, leading to disappearances, violence and revenge killings, perpetrated by Cypriots against Cypriots. Tensions were high until August 1964, then quieted down, but by then the Turkish Cypriots had mostly moved, or been displaced, into enclaves with other Turkish Cypriots – it is estimated almost 90% of the Turkish Cypriot community lived in 42 enclaves.<sup>8</sup>

Consequently, the UN set up a peacekeeping force, the United Nations Peacekeeping Force in Cyprus (UNFICYP). Its original mission 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.”<sup>9</sup> Troops “were deployed throughout the island and an effort was made as far as possible to match their areas of responsibility (zones or districts) with the island’s administrative district boundaries.”<sup>10</sup>

Between 1964 and 1974, the island experienced an uneasy *détente*, Greece and Turkey rattling sabers or engaging in political games, but also helping the island with financial support and military troops. The peace was shattered when the Greek Junta sought to unite Cyprus with Greece in July 1974. This is not to say there were no conflicts – the Turkish enclaves were

---

<sup>5</sup> 30% of parliamentary seats were reserved the Turkish Cypriot community, despite only constituting 18% of the island’s population. Mallinson, *Cyprus: a Modern History*, p. 34.

<sup>6</sup> Gürel, *An Overview of Events and Perceptions*, p. 5.

<sup>7</sup> Gürel, *An Overview*, p. 5-6.

<sup>8</sup> Gürel, *An Overview*, p. 7.

<sup>9</sup> <https://unficyp.unmissions.org/establishment-unficyp> [accessed 18 April 2021]

<sup>10</sup> <https://unficyp.unmissions.org/deployment-and-organisation> [accessed 18 April 2021]

subjected to an economic and military siege, with very limited access to good – including building materials – between 1964 and 1967.<sup>11</sup> Further, war was narrowly averted between Greece and Turkey in November 1967, half a year after the Greek coup, which led to 12,000 Greek troops on the island, in contravention of the Treaty of Alliance, being withdrawn.<sup>12</sup>

The Greek Junta-sponsored coup attempt on July 15<sup>th</sup>, 1974 precipitated Turkey to respond with military force, under the Treaty of Guarantee, who launched a counterattack five days later, allegedly to restore order and the constitution.<sup>13</sup> After their subsequent August push, the Turkish army controlled 36% of the island's northern part.<sup>14</sup>

The Turkish military occupation is still ongoing, ensuring the island remains divided. The invasion itself led to the displacement of the vast majority of Greek Cypriots living in the northern part, and likewise for the Turkish Cypriots living in the southern part. This occurred in four waves – for the Greek Cypriots, the first wave were those who ran ahead of the advancing army, the second those who did not – they were enclaved in villages, before later being expelled to the south – although there were records of harassment, mistreatment, rape and murder prior to this.<sup>15</sup>

The third wave were prisoners of war, Greek Cypriots taken to Turkey, and then exchanged for Turkish Cypriot prisoners – this was about 6000 Greek Cypriots and an equal amount of Turkish Cypriots. The fourth wave came after the 1975 Vienna III Agreement regarding reunification of families, leading to a formal exchange of Greek Cypriots to the south and Turkish Cypriots to the north.<sup>16</sup>

Meanwhile, Turkish Cypriots headed north in the first wave, at the start of the invasion, while others sought refuge in the British military bases.<sup>17</sup>

The third and fourth wave were the same for the Greek and Turkish Cypriots, and it is estimated that 162,000 Greek Cypriots and 48,000 Turkish Cypriots were displaced as a consequence of the 1974 invasion – including the roughly 12,000 Turkish Cypriots displaced during 1963 and 1964, this amounts to close to 60,000.<sup>18</sup>

Regarding housing and accommodations for the displaced persons, the Republic of Cyprus, and

---

<sup>11</sup> Gürel, *An Overview*, p. 8.

<sup>12</sup> Mallinson, *Cyprus: a Modern History*, p. 35.

<sup>13</sup> Mallinson, *Cyprus: a Modern History*, p. 81.

<sup>14</sup> Gürel, *An Overview*, p. 8.

<sup>15</sup> Gürel, *An Overview*, pp. 8-9.

<sup>16</sup> Gürel, *An Overview*, p. 10.

<sup>17</sup> Gürel, *An Overview*, p. 10.

<sup>18</sup> Gürel, *An Overview*, pp. 9-10.

the self-declared Turkish Cypriot administration (in 1975, the “Turkish Federated State of Cyprus”, succeeded in 1983 by the so-called “Turkish Republic of Northern Cyprus” (TRNC) – neither internationally recognized as a state), approached the topic of housing very differently. Essentially, in the Republic of Cyprus, the state has assumed control over abandoned Turkish Cypriot dwellings and land, and lease them out on a temporary basis to displaced Greek Cypriots, NGOs or local government organizations.<sup>19</sup>

Meanwhile, the Turkish Cypriot administration allowed displaced persons to trade in deeds to properties in southern Cyprus, in return for “points” they could use to purchase abandoned Greek Cypriot-owned properties in the north. Points were also given to Turkish soldiers who had fought in the invasion, as well as later-arriving Turkish settlers.<sup>20</sup>

Since the occupation of northern Cyprus, the Green Line set up in 1964 became an almost impermeable barrier, with a demilitarized zone between north and south, the UN peacekeeping force having taken a more active role in maintaining the ceasefire on the island. In 1983, the “TRNC” declared its independence, but this “nation” is not internationally recognized, and the only country that purports to recognize it is Turkey. The UN Security Council (UNSC) enacted resolutions in 1983 and 1984 declaring the TRNC invalid, and recognize the Republic of Cyprus as the sole state on Cyprus.<sup>21</sup>

While the UNFICYP’s presence, coupled with the Turkish occupation has ensured no major hostilities have taken place since 1974, Turkey has been found responsible for 1,485 missing people, who were detained by, in the custody of or under the authority of the Turkish military.<sup>22</sup> In 1981, the Committee on Missing Persons in Cyprus (CMP) was established at the joint request of the Greek Cypriot and Turkish Cypriot communities, with the task to recover the bodies or remains of 2002 Cypriots (492 Turkish Cypriots and 1510 Greek Cypriots) who have disappeared between 1963-1964 and during the events of 1974.<sup>23</sup>

Until the head of the administration of northern Cyprus opened passage in 2003, the border remained more or less closed<sup>24</sup>, meaning that Greek Cypriots and Turkish Cypriots had lived apart for almost 30 years.

## 1.2 The idea of *enosis*

---

<sup>19</sup> Gürel, *An Overview*, p. 15.

<sup>20</sup> Gürel, *An Overview*, p. 13.

<sup>21</sup> *Cyprus v. Turkey* (judgement), pp. 14-16.

<sup>22</sup> *Cyprus v. Turkey* (judgement), pp. 119.

<sup>23</sup> <http://www.cmp-cyprus.org/content/about-cmp-0>

<sup>24</sup> Mallinson, *Cyprus: a Modern History*, p.185.

Having been part of the Ottoman Empire since the fall of Byzantium, Greece broke loose from the Ottoman Empire after the War of Independence in 1821. After this, the idea of *enosis* (joining) emerged, where Greece sought to reclaim former Byzantine territories.

During this war, the archbishop of Cyprus, as well as three bishops and the archdeacon, were beheaded in retaliation, and the seeds of *enosis* were firmly planted also on Cyprus. In this idea, Cyprus would also break off from the Ottoman Empire and join with Greece instead<sup>25</sup> – while I have detailed above what actually happened. This does not mean that *enosis* has no part to play as an idea – it can even be construed as a driving force for certain events in recent history that very much has a bearing on the current situation on Cyprus, sufficiently so that it merits a few words.

The idea of *enosis* has expressed itself to a larger or smaller degree since, the impact waxing and waning over the years, with a major push post-WWII, with the Universal Declaration of Human Rights and the advent of decolonization on a global scale. With other colonies gaining their independence, Cyprus also saw liberation from British rule only fair, to join with Greece.

Evidence shows that there was some discussion in the British government regarding Cyprus in the late 1940s and the 1950s, with some urging to give Cyprus up to Greece (enabling the realization of *enosis*). Others, with less regard for emerging human rights and the will of the Cypriots themselves, and more with Cold War military concerns, sought a solution that would benefit themselves.<sup>26</sup>

Thus, instead of acknowledging the (Greek) Cypriots' desire to join with Greece, Britain implemented a campaign whereby they could seed discord on the island, ensuring *enosis* was not possible, and thus keeping their military bases on the island.<sup>27</sup>

Themistocles Chrysantopolous, former Greek diplomat, offers the following perspective:

*The Cyprus question began in 1955. In the summer of that year the British Government convened a conference in London with Greece and Turkey on the subject of Defence of the Eastern Mediterranean and Cyprus. It was the first time Turkey was brought into the Cyprus affair [since 1878], contrary to article 16 of the Lausanne Peace Treaty with Turkey in 1923, by which Turkey waived all rights in territories ceded to other countries, including, of course, Cyprus. To the Greek objection to involving Turkey in Cyprus the British side replied that Turkey was being invited as a witness. During the conference, Turkey demanded that, were the United Kingdom to withdraw from Cyprus, the island should of course be returned to its former owner (Turkey). This claim, of course, blew up the conference. The terrible*

---

<sup>25</sup> Mallinson, *Cyprus: a Modern History*, pp. 10-11.

<sup>26</sup> Mallinson, *Cyprus: a Modern History*, pp. 12-15.

<sup>27</sup> Mallinson, *Cyprus: a Modern History*, pp. 24-25.

*riots in Istanbul and Izmir followed on 6 September, as “proof” of the interest of the Turkish people in Cyprus. Consequences: 1) The end of Greek Turkish friendship dating from 1930. 2) Turkey became an active party in the Cyprus question.*<sup>28</sup>

Of course, the Turkish Cypriots were not necessarily interested in becoming part of Greece, but rather Turkey (again), and began to push for *taksim* (partition) – where part of the island would become part of Greece, the other part Turkey.<sup>29</sup>

On April 1<sup>st</sup> 1955, Colonel Grivas’s EOKA made its mark, by setting up explosions all over the island, in a push for *enosis*. A few months later, the conference Chrysantopolous mentioned took place – where Britain’s aim to sow discord between Greece and Turkey bore fruit.<sup>30</sup>

The chaos between 1955 and 1959 are described above, although there were also riots and attacks on Greeks in various parts of Turkey at the same time – coordinated by the government.<sup>31</sup> While it cannot be said that the Greek and Turkish Cypriot communities were the best of neighbors prior to 1955, Britain certainly fanned the flames of ethnic division – as well as helping Makarios to push for constitutional changes in 1963, sparking more unrest.<sup>32</sup>

Finally, the push for *enosis* by then-General Grivas’ EOKA B, aided by the junta in Greece is what presaged Turkey’s 1974 invasion, and subsequent occupation of part of Cyprus. Since then, *enosis* has not been heavily discussed, and *taksim* the *de facto* state of Cyprus.

Had Britain merely let Cyprus join with Greece in 1960, imagine how much bloodshed and animosity might have been avoided.

### **1.3 Current status on the island**

Today, 47 years later, a third of Cyprus still remains under Turkish occupation, and the UN has again renewed the mandate of the UNFICYP for another six months.<sup>33</sup>

In 1996, the situation was described as follows in *Luizidou v. Turkey*:

---

<sup>28</sup> Mallinson, *Cyprus: a Modern History*, p. 26.

<sup>29</sup> Papadakis (ed), *Divided Cyprus*, p. 2

<sup>30</sup> Mallinson, *Cyprus: a Modern History*, pp. 22-27.

<sup>31</sup> Mallinson, *Cyprus: a Modern History*, pp. 26-27.

<sup>32</sup> Mallinson, *Cyprus: a Modern History*, p. 35.

<sup>33</sup> UNSC, S/RES/2561 (2021)



16. Turkish armed forces of more than 30,000 personnel are stationed throughout the whole of the occupied area of northern Cyprus, which is constantly patrolled and has check-points on all main lines of communication. The army's headquarters are in Kyrenia. The 28<sup>th</sup> Infantry Division is based in Asha (Assia) with its sector covering Famagusta to the Mia Milia suburb of Nicosia and with about 14,500 personnel. The 39<sup>th</sup> Infantry Division, with about 15,500 personnel, is based at Myrtou village, and its sector ranges from Yerolakkos village to Lefka. TOURDYK (Turkish Forces in Cyprus under the Treaty of Guarantee) is stationed at Orta Keuy village near Nicosia, with a sector running from Nicosia International Airport to the Pedhieos River. A Turkish naval command and out-post are based at Famagusta and Kyrenia respectively. Turkish airforce personnel are based at Lefkoniko, Krini and other airfields. The Turkish airforce is stationed on the Turkish mainland at Adana.
17. The Turkish forces and all civilians entering military areas are subject to Turkish military courts, as stipulated so far as concerns "TRNC citizens" by the Prohibited Military Areas Decree of 1979 (section 9) and Article 156 of the Constitution of the "TRNC".

There is no indication that the Turkish troops have significantly decreased since – during and after the 2011 "TRNC" census, there were still 30 000 Turkish troops in Cyprus – out of a total "TRNC" population of 400,000! In addition to the 30 000 troops, there is an estimated 7 500 family members living on the Turkish military bases, leading the Turkish military and their families constituting almost 10% of the total population of northern Cyprus.<sup>34</sup>

Elections continue to be held in the Republic of Cyprus, as well as in the "TRNC". Several cases have been raised to the European Court of Human Rights, in addition to UN-sponsored intercommunal talks in theory aimed at reconciliation and unification (a "bicomunal, bizonal federation with political equality"<sup>35</sup>). After the 2003 "Annan plan" was rejected by the Greek Cypriot side (with good reason – Cypriots were given too little time, didn't feel ownership to the solution and would have been under obligations to support Turkey joining the EU)<sup>36</sup>, peace talks have continued on and off, with a lull since 2017 (after the Crans Montana summit), but with signs they may start up again this year.<sup>37</sup>

Regarding court cases, a landmark case is the 2001 *Cyprus v. Turkey* inter-state case. Cyprus here set forth several claims primarily as regards the 1974 invasion and subsequent developments, including missing persons, property issues and discrimination of Greek Cypriots in

---

<sup>34</sup> Hatay, *Population and Politics in north Cyprus*, p. 48.

<sup>35</sup> UNSC, S/RES/2561 (2021)

<sup>36</sup> Mallinson, *Cyprus: a Modern History*, p. 185-189.

<sup>37</sup> <https://www.theguardian.com/world/2021/apr/26/greek-and-turkish-cypriot-leaders-to-hold-talks-on-resuming-peace-process> [accessed 26 April 2021]

northern Cyprus, as well as the rights of *Turkish* Cypriots in the north. Turkey was found to be in violation of several provisions of the European Convention of Human Rights, including 1485 missing persons (differing slightly from the number the CMP operates with), censorship and no recourse to justice in northern Cyprus – civilians were subject to Turkish military courts.

The CMP, long inactive, was reactivated in 2004, and has, as noted below, been able to continue their work since. Likewise, civilians in occupied Cyprus are no longer subject to military courts as a regular practice, nor do military officers serve as judges in civil courts. Property disputes now have a domestic dispute option in northern Cyprus, via the Immoveable Property Commission (IPC) – prior to this, there was no legally recognized domestic remedy available.

The peace negotiations and court cases will be covered in greater detail in chapter 4.

The Committee on Missing People is still working on identifying missing people and remains, and of the 2002 individuals in their remit, 1006 have been identified<sup>38</sup>, leaving just under half still unaccounted for.

With the unilateral opening of passage between southern and northern Cyprus in 2003, there have been a significant number of crossings by Cypriots on both sides – between the opening of the border on April 23<sup>rd</sup> and May 11<sup>th</sup> in 2003 alone, 238,000 Greek Cypriots and 88,000 Turkish Cypriots had crossed the border.<sup>39</sup>

That is not to say the island has been peaceful since 1974 – unlawful deaths, as well as cases of torture have been reported – the killing of Solomos Solomou in 1996<sup>40</sup> and the torture of Erkan Egmez<sup>41</sup> only two of several cases that have reached the European Court of Human Rights, in addition to all the incidents that never make it that far – settled in local courts, or perhaps not settled at all.

## 1.4 Perceptions of conflict

Above I have detailed events and facts – but that does not mean that these are universally known, and certainly in a few matters perceptions differ quite significantly both when the Cyprus conflict started, as well as what is the heart of the Cyprus question today.

---

<sup>38</sup> <https://www.cmp-cyprus.org/statistics/> (722 identified Greek Cypriots and 284 identified Turkish Cypriots as per 31 May 2021).

<sup>39</sup> Mallinson, *Cyprus: a Modern History*, p. 185.

<sup>40</sup> *Solomou and others v. Turkey*

<sup>41</sup> *Egmez v. Cyprus*

This section gives an overview of the views and arguments of the Greek Cypriot and Turkish Cypriot sides, as background for discussions in later chapters.

As the statement from Chrysantopolous in chapter 1.2 shows, some would argue that the Cyprus issue is a parting gift from the British, from before Cyprus became independent, and while this holds true, perception on the island itself differs slightly. Again, Chrysantopolous demonstrates aptly the Greek (and Greek Cypriot) view:

“The Cypriot constitution of 1959 was applied more or less satisfactorily until the July 1974 Greek coup to overthrow president Makarios, the President of Cyprus.

Turkey then intervened militarily ‘to restore constitutional order’. Constitutional order was restored almost immediately with the return of Archbishop Makarios. The Turkish occupation troops are still there, supposedly to protect the Turkish Cypriots, who were in no way involved in the coup, despite a whole series of UN resolutions calling upon Turkey to withdraw them. The Turkish government also sent 80,000 [now 100,000] settlers and set up a quisling Government in northern occupied Cyprus. Were these measures taken to restore constitutional order? The Turkish troops of occupation are still there [...] Any solution in the presence of troops would be politically and legally wrong. It would legalise military invasion and occupation, creating a disastrous precedent. It would disappoint the peoples of Cyprus and Greece, and have unpredictable political repercussions.

If there is to be a viable solution to the Cyprus question, the Turkish troops, the Turkish settlers and the quisling Turkish Cypriot government must evacuate Cyprus, before any negotiations between the parties concerned. And once they are gone, there might well not be a Cyprus question to solve.”<sup>42</sup>

Here we can see clearly the contempt for the “TRNC”, and continued Turkish occupation – but also that intercommunal fighting in the 1960s glossed over.

Meanwhile, former judge representing Turkey at the ECHR, Feyyaz Gölcüçlü, offered the following dissenting opinion on the *Cyprus v. Turkey* judgement (2001 – i.e. prior to the opening of the border between north and south):

*I agree entirely with that part of Judge Bernhardt’s opinion where he states: “A unique feature of the present case is that it is impossible to separate the situation of the individual victim from a complex historical development and a no less complex current situation. The Court’s judgment concerns in reality not only Mrs Loizidou, but thousands or hundreds of thousands of Greek Cypriots who have (or had) property in northern Cyprus. It might also affect Turkish Cypriots who are prevented from visiting and occupying their property in*

---

<sup>42</sup> Mallinson, *Cyprus: a Modern History*, p. 120.

*southern Cyprus. It might even concern citizens of third countries who are prevented from travelling to places where they have property and houses. The factual border between the two parts of Cyprus has the ... consequence that a great number of individuals are separated from their property and their former homes.”*

*The Cypriot conflict between the Turkish and Greek communities is mainly attributable to the 1974 coup d'état, carried out by Greek Cypriots with the manifest intention of achieving union with Greece (enosis), which the Cypriot head of state at the time vigorously criticised before the international bodies. After this coup d'état Turkey intervened to ensure the protection of the Republic of Cyprus under the terms of a Treaty of Guarantee previously concluded between three interested States (Turkey, the United Kingdom and Greece) which gave these States the right to intervene separately or jointly when the situation so required, and the situation did so require ultimately in July 1974, on account of the coup d'état. In all of the above, incidentally, I make no mention of the bloody events and incidents which had been going on continually since 1963.*

*This implementation of a clause in the Treaty of Guarantee changed the previously existing political situation and durably established the separation of the two communities which had been in evidence as early as 1963.<sup>43</sup>*

It is clear that there is a rather different view on the matter here, and in short, the Greek Cypriots see Turkey's invasion *and continued occupation* since 1974 as a major issue, the Turkish Cypriots claim the issues date back at least to 1963 and Makarios' attempt to change the constitution.

A summary of the views regarding the bizonal solution can be found in Gürel (2008), pp. 3-4:

#### **A. Turkish Cypriot side**

(i) The principle of bizonality – broadly understood – means preserving as much as possible the post-1974 *de facto* situation on the island, particularly regarding 'residency' and 'property.' It involves the following elements:

- Residency: the majority population in the northern zone will remain Turkish Cypriot, and in the southern zone Greek Cypriot (already realised through the implementation of the 1975 Vienna Agreement for 'exchange of populations').
- Property: the majority of property in the northern zone will be owned by Turkish Cypriots, and in the southern zone by Greek Cypriots (to be realised through a settlement of

---

<sup>43</sup> *Loizidou v. Turkey*, Dissenting opinion of Judge Gölcüklü, p. 4.

the property dispute on the basis of a ‘global exchange and compensation’ scheme which does not include restitution, or something very close).

(ii) Status of the TRNC and its territory

- The TRNC is a separate and independent state, representing the right to self-determination and sovereignty in northern Cyprus of Turkish Cypriots.
- Northern Cyprus is its territory in which the only responsible authority is the Turkish Cypriot government

(iii) Status of the RoC

- The RoC, as established by the 1960 Accords ceased to exist in 1964. There are now (and have been in one form or another since 1964) two separate *de facto* Cypriot administrations/states on the island: the TRNC and the Greek Cypriot Administration. What is at present recognised by the international community as the RoC is not the original bicomunal state but a Greek Cypriot state.
- The Greek Cypriot administration’s authority is valid only in southern Cyprus and does not extend to northern Cyprus.

## **B. Greek Cypriot side**

(i) The principle of bizonality – broadly understood – is a painful compromise which should be mitigated by restoring as much as possible the pre-1974 situation on the island, particularly regarding ‘residency’ and ‘property.’

- Residency: There should be freedom of settlement, including all displaced persons’ right to return to the original areas (the 1975 Vienna Agreement was to implement humanitarian measures, *not* for ‘exchange of populations’).
- Property: There should be full respect for property rights, including all displaced persons’ right to have their properties reinstated.

(ii) Status of the RoC and its territory

- The RoC is the only lawful, internationally recognized, independent and sovereign state that exists in Cyprus. It is the state that represents the people of Cyprus which include the Greek Cypriot and Turkish Cypriot communities.
- Its territory is the whole island (except the British Sovereign Bases), with its northern part illegally invaded and occupied by Turkey since 1974.

(iii) Status of the TRNC

- The TRNC is an illegal state that resulted from illegal use of force by Turkey as part of its expansionist aspirations.
- It is a puppet state established and controlled by Turkey.

As with all summaries, they contain generalities that do not hold true for everyone – just because Turkish immigration post-1974 to occupied Cyprus was desired by the current authorities does not mean the Turkish Cypriots were necessarily on-board. Turkish settlers likewise reported discrimination and hostility from Turkish Cypriots.<sup>44</sup> Greek Cypriots point to the import of a large number of Turkish nationals as settlers in an effort by Turkey to change the population balance of the island, and thus also the political make-up as well as strengthening claims that a bicomunal, bizonal solution is necessary.<sup>45</sup>

There are some common views expressed by both Greek Cypriots and Turkish Cypriots, though. Interviewed after the 2003 opening of the border, people on both sides expressed annoyance at the lack of transparency and information regarding the peace negotiations between the administrations, and lack of consultation. Further, most seem to have been surprised by the friendliness and openness of people who lived in their old houses or villages, and while some would wish to move back, many others also expressed the idea that clinging to the past was perhaps not helpful for resolving the issues. One common bond many felt was that of being refugees, even in their own country, which gave a sense of kinship – although there is no clear consensus regarding how to solve the property issues, or whether everyone is on-board with a bicomunal, bizonal solution.<sup>46</sup>

---

<sup>44</sup> Hatay, *Population and Politics in north Cyprus*, pp. 3-6.

<sup>45</sup> Gürel, *An Overview*, p. 14.

<sup>46</sup> Gürel, *An Overview*, pp. 19-31.

## 2 Research questions and methodology

### 2.1 Research questions

In this paper, I am investigating the status of transitional justice in Cyprus, with a focus on violations committed in relation to the 1974 Turkish invasion, together with a discussion of what transitional justice might mean and how such a process can manifest itself, drawing on several relevant sources, including work by UN and regional mechanisms, as well as scholarly writing.

The selected main research question, with sub-questions, for this Master thesis are as follows:

- **What are the achievements and shortcomings of the transitional justice process in Cyprus?**
  - What are the components of the transitional justice process in Cyprus concerning the conflict of 1974?
  - Has the process been beneficial, if at all?
  - Where has the TJ process fallen short?
  - What should be done to ensure a better transitional justice process, and what is the end goal?

To investigate the status of transitional justice, I will primarily look at two issues: Missing persons, as well as displaced persons and property rights.

### 2.2 Definitions

This thesis will use the following definition of transitional justice, in line with the current United Nations understanding:

*Transitional justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. (fn 1 - See S/2004/616).<sup>47</sup>*

Chapter 3 will present some background and discussion on the topic, as well as expand on the processes and mechanisms. Note that these are not exclusively legal, but also political.

---

<sup>47</sup> UN SC, “*The Rule of Law and Transitional Justice in Post-conflict Societies*”, p. 8.

## 2.3 Methodological approach

To investigate the status of transitional justice, first I have performed a historical study of Cyprus' recent history, to identify the background for a transitional justice approach, as well as their causes (chapter 1).

To determine the status of the current transitional justice process, I employ a normative approach, based on existing human rights law and practice. This includes court cases from the European Court of Human Rights (ECtHR), both individual and inter-State cases, where the majority of international jurisprudence currently lies.

Concluding observations from the treaty bodies for Cyprus and Turkey are also a valuable source, as well as results of their latest Universal Periodic Reviews.

The UN Human Rights Council has issued annual reports, and the Secretary-General reports twice a year on his Good Offices in Cyprus and the UNFICYP, which will provide further information.

Finally, I will look at any relevant domestic laws or provisions regarding missing persons, property restitution or similar issues, including bilateral (or trilateral) treaties.

I will employ a mix of qualitative and quantitative approaches, based on statistics from court cases, the Committee on Missing Persons in Cyprus, research bodies like PRIO and other bodies/NGOs to discuss the research questions, and draw briefly on political theory in concluding remarks. Andersen<sup>48</sup> has guided the research method.

The UN has sponsored peace talks and negotiations for decades. The ECtHR has heard many cases, primarily from Cypriots versus Turkey, but also a few from Cypriots versus Cyprus. Further, the International Center for Transitional Justice had a Cyprus program between 2008 and 2011, which culminated in a report (published jointly with PRIO) that has presented facts and suggestions, which I will use.

It is my intent to build on the work that has been done, and previously proposed solutions, but also offer a critical perspective on these and present potential viable solutions free from previous political or legal constraints (like e.g. outdated treaties).

---

<sup>48</sup> Andersen et al., *Research Methods in Human Rights*



### 3 Transitional justice framework for the Cyprus case

#### 3.1 Brief history of contemporary transitional justice

Transitional justice is a term that has emerged in the last 30 years, although the concepts and processes it embodies can be traced back further – to the Nuremburg Military Trials<sup>49</sup>, or even to antiquity, with evidence of processes we today consider part of transitional justice being employed in Athens as early as in 411 and 403 B.C.<sup>50</sup>

There have been several different attempts to define what transitional justice is, for example Ruti Teitel’s 2003 definition as follows:

*Transitional justice can be defined as the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.*<sup>51</sup>

This rather narrow definition, focusing almost entirely on judicial remedies, is not commonly adopted today, as this section will show.

Many writers on the subject, however, agree that transitional justice is *backwards-looking*, i.e. it seeks to right past wrongs and ensure justice for victims of wrongdoings after atrocities (mass disappearances, torture, massacres and genocide as notable examples) – as for example Ruti Teitel’s definition indicates. In this regard, “retributive justice”, “distributive justice” or “reparative or restorative justice” can be inferred from “transitional justice.”<sup>52</sup>

Jon Elster puts it slightly differently, in *Closing the Books* (2004):

*By the beginning of the twenty-first century, one of the first questions that comes to mind when an autocratic regime falls is indeed how to hold the leadership to account and to block its influence in the future. Another, of course, is how to build a new and better regime. A third question is how to deal with the victims of the regime. The present book is mainly concerned with the two **backward-looking** issues: how societies respond to wrongdoings and sufferings. I also consider **forward-looking** issues such as economic reconstruction and constitution making, but only to the extent that they interact with the backward-looking ones.*<sup>53</sup> (Emphasis mine)

---

<sup>49</sup> Sharp, *Rethinking Transitional Justice for the Twenty-First Century*, p. 2.

<sup>50</sup> Elster, *Closing the Books*, chapter 1.

<sup>51</sup> Teitel, *Transitional Justice Genealogy*, p. 69.

<sup>52</sup> Zyberi, *United Nations – related criminal courts and tribunals: fleeting mirages of transitional justice or a piecemeal approach to cosmopolitan justice?*, p. 118.

<sup>53</sup> Elster, *Closing the Books*, p. ix.

Here, he acknowledges that transitional justice contains certain elements of redressing past injustices, but also that there are forward-looking aspects to transitional justice – nation-building efforts, like constitutional reform and economic restructuring and redistribution.

It has been argued that the difference between *transformative* justice and *cosmopolitan* justice is that the former is backward-looking, and the latter is forward-looking – encompassing economic welfare in an effort to ensure social justice.<sup>54</sup>

Elster also distinguishes between “legal justice” and “political justice”, with “administrative justice” as an in-between, moving between the two poles – but only in terms of punishment and retribution. Political justice here being punishments levied due to political decisions, not subject to a court – like Napoleon’s exile after the battle of Waterloo, or the Tokyo Tribunal post-WWII – as compared to the Nuremberg Trials, that did at least take place in a court of law (even if only the leaders of the losing power, Nazi Germany, were put on trial).<sup>55</sup> In this case, he uses “political justice” as a negative phrase, and one can infer that such justice is not compatible with today’s human rights norms (nor the general judicial *ex post facto* principle), including the right to a fair trial.

It is clear that transitional justice is a flexible concept, lacking clear, agreed-upon definitions on exactly what is part of a transitional justice approach and what is not, but most scholars agree that it focuses on justice after gross acts of injustice – although the Nuremberg Trials took place after a major war, the transitional justice of the 1990’s is perhaps more associated with formerly autocratic regimes, with systematic terrorization of the population, enforced disappearances and extrajudicial killings.

Justice in this case has revolved around these matters – the right to life, the right to free elections, the prohibition of torture – mainly civil and political rights, in short. This may be because criminal justice has been preferred and emphasized in these cases, instead of economic reforms that could address structural injustices.

Another key point relates to whom it is for:

“Transitional justice includes efforts to recognise suppressed and hidden narratives, and often includes contributions from different sectors of society in an attempt to ‘set the record straight’. These efforts are designed to help societies come to terms with past atrocities, both in order to give voice to victims whose perspectives were ignored, and to prevent the repetition of further atrocities.”<sup>56</sup>

---

<sup>54</sup> Zyberi, *United Nations – related criminal courts and tribunals*, p. 121.

<sup>55</sup> Elster, *Closing the Books*, pp.84-87.

<sup>56</sup> Bozkurt, *Legacies of Violence and Overcoming Conflict in Cyprus*, p. 5.

Teitel has further argued that transitional justice has moved from “pure” justice, it is now less founded on the rule of law as a developed democracy might practice it, and instead “tends to use flexible understandings of the rule of law that are tied to a particular local community’s political conditions”, and that the “transitional jurisprudence of the time reflects a conception of imperfect and partial justice, as well as a politicized rule of law.”<sup>57</sup> This reflects “alternative values underlying the rule of law, besides universal rights and accountability,”<sup>58</sup> and she goes on to argue post-Cold War transitional justice constitutes a sacrifice of ideal justice on the altar of peace and stability<sup>59</sup> – in her mind, lesser goals than the nation-building in Latin America and other places.

She says that “the normative question is whether it is best to move in the direction of decentralization of judicial power and accommodation of outside forces to local structures, or, instead, to centralize authority and judicial power,”<sup>60</sup> in response to globalization. Others, who have looked at the results of various post-conflict justice processes, like the International Criminal Tribunal for the Former Yugoslavia (ICTY), argue that centralized (here: international) courts may serve justice, but for whom? The ICTY has prosecuted many perpetrators of crimes against humanity, but due to a lack of outreach and internalization of its efforts, to many victims of the crimes, the court seemed remote and of little impact to them. The domestic recourses in Serbia, Bosnia-Herzegovina or Croatia that should be the first recourse remains plagued by gaps in the legal system and a lack of political will to fill said gaps.<sup>61</sup>

Lacking a foundation in the rule of law, Teitel’s criticism rings true – but international courts are not the solution, either – so the focus should indeed be on assisting a society to provide a solid legal system, where the rule of law underpins society. International courts can serve their purpose, as a complementary order, but cannot be a court of first instance – this is simply not viable, considering the resources that would be required. While the International Criminal Court (ICC) now exists to investigate and handle cases, having also subsumed the duties of *ad hoc* courts like the ICTY, it is not equipped to handle all possible cases for prosecution as part of a country’s transitional justice process.

### **3.2 Transition to what?**

---

<sup>57</sup> Teitel, *Transitional Justice in a New Era*, p. 897.

<sup>58</sup> Teitel, *Transitional Justice in a New Era*, p. 897.

<sup>59</sup> Teitel, *Transitional Justice in a New Era*, p. 898.

<sup>60</sup> Teitel, *Transitional Justice in a New Era*, p. 900.

<sup>61</sup> Zyberi, *Transitional Justice Processes and Reconciliation in the Former Yugoslavia: Challenges and Prospects*.

One important question that has often gone unasked, however, is what is the *transitional* in transitional justice referring to?

The United Nations Peacebuilding Support Office explains transitional justice as follows:

Transitional justice is not a special form of justice. It is, rather, justice adapted to the often unique conditions of societies undergoing transformation away from a time when human rights abuse may have been a normal state of affairs. In some cases, these transformations will happen suddenly and have obvious and profound consequences. In others, they may take place over many decades.<sup>62</sup>

The “transition” here is assumed to be from a dictatorship, or autocratic regime, into something else – it does not state into *what*, exactly, but certainly *away* from a “totalitarian regime”. Consistent with previous definitions (see 3.1), it is backwards-looking, although acknowledges that these processes might take decades to bear fruit. This is also evident in some of the earlier writings on transitional justice, including Teitel’s genealogy. In it, she describes phase I as the post-WWII phase (Nuremberg trials), then describes phase II as “a period of accelerated democratization and political fragmentation”, and again describes justice for the purpose of nation-building.<sup>63</sup>

Here, the narrative seems to be that transitions from authoritarian regimes to democratic nations is the way forward, towards the famous “end of history”<sup>64</sup>. As Teitel puts it:

“At present, we find ourselves in a global phase of transitional justice. The global phase is defined by three significant dimensions: first, the move from exceptional transitional responses to a “steady-state” justice, associated with post-conflict related phenomena that emerge from a fairly pervasive state of conflict, including ethnic and civil wars; second, a shift from a focus on state-centric obligations to a focus upon the far broader array of interest in non-state actors associated with globalization; and, third and last, we see an expansion of the law’s role in advancing democratization and state-building toward the more complex role of transitional justice in the broader purposes of promoting and maintaining peace and human security.”<sup>65</sup>

A common thread here is that the term “transitional justice” is losing its original meaning, and as noted above, that “ideal justice” is sacrificed in the name of peace and cultural relativism.

---

<sup>62</sup> UNPSO, *What is Transitional Justice?*, p. 3.

<sup>63</sup> Teitel, *Transitional Justice Genealogy*, pp. 70-71.

<sup>64</sup> See Francis Fukuyama, *The End of History and the Last Man*.

<sup>65</sup> Teitel, *Transitional Justice Globalized*, p. 5.

However, is it given that a formerly autocratic regime has to give way to a liberal democracy? What about a social democracy, or perhaps a direct democracy?

Dustin Sharp has asked critical questions about what “transitional” justice is a transition *to*, and proposes that it should be a transition to positive peace, not just negative peace, i.e. cessation of hostilities.<sup>66</sup> In this regard, it encompasses all human rights violations, including economic and social rights, not “merely” civil and political rights (the right to life, of course, but also the prohibition of torture). In this narrative, “peace” is not a *lesser* goal, but a greater goal – in the sense that positive peace is the absence of direct **and** indirect violence (structural violence – poverty, power and resource inequalities).<sup>67</sup>

In a society where positive peace existed, by its very nature it would be more in compliance with international human rights treaties than any current society – no country or state can claim to be free from institutional bias in its public organizations, and certainly not in the private sector. It presupposes a functioning rule of law, because without an independent and fair judiciary, you could not have positive peace.

In 2008, Teitel hinted at developments in this field:

*At present, we can see that the dynamic interaction of state and non-state actors has created a context where transitional justice is often aimed at advancing a culture of the rule of law.*<sup>68</sup>

Using positive peace as a goal (albeit perhaps an unattainable one – a destination never fully arrived at),<sup>69</sup> will require an evaluation of previous transitional justice processes – as they have built upon a slightly different, narrower version of what “justice” is, and what human rights violations should be prosecuted, the “toolbox” might need to be expanded or modified.

### **3.3 Transitional justice toolbox**

What is the transitional justice toolbox? The definition of transitional justice employed in this thesis refers to the “full range of processes and mechanisms” – these processes and mechanisms can be considered the “toolbox” of transitional justice – international courts like the *ad hoc* ICTY and the now permanent ICC, truth commissions, even amnesties have at one point been part of the toolbox.

---

<sup>66</sup> Sharp, *Rethinking Transitional Justice*, pp. 75-77..

<sup>67</sup> Sharp, *Rethinking Transitional Justice*, p. 89.

<sup>68</sup> Teitel, *Transitional Justice Globalized*, p. 7.

<sup>69</sup> Sharp, *Rethinking Transitional Justice*, p. 90.

Teitel's narrowly legal definition (see chapter 3.1) includes legal mechanisms for justice, including the following:

- Prosecutions
- Historical inquiry
- Administrative justice (by government decisions and acts, not the judiciary)
- Reparation
- Constitutional justice (changing or creating constitutions, perhaps with constitutional courts, to ensure a more just society)<sup>70</sup>

Does the law always bring us justice, however? Changing, or creating new, constitutions allow you to set down the foundations of your society, but an independent judiciary created under a new constitution may not be equipped to excise systematic inequality in existing structures that are carried forward into the new society. In-built sexism, racism, nepotism or a dominant religious view will not disappear just because of a new constitution, and while the transitioning state might adhere (more) to human rights, being able to contend a case of discrimination before a court does not automatically lead to or establish a just society.

Describing primarily nations transitioning from an illiberal rule to a (neo-)liberal democracy, not war-torn nations<sup>71</sup>, perhaps ripped apart by civil war and intra-communal fighting, other measures must be considered

Other measures, outside the purely judicial, consist of (not exhaustive list):

- Truth commissions
- Vetting
- Reparations
- Memorialization
- Police and court reform (see above)
- Inequality reforms<sup>72</sup>

Not all tools are applicable in all situations, and not all tools are equal – some may be of more use in one situation than in others, no matter how convenient one approach may be in a given case – it is time-consuming to investigate and prosecute human rights violations, and thus truth commissions that can grant amnesties, like in South Africa, may be preferred by certain parties (especially those that would benefit from amnesties). Nor do you pick tools at the outset, and

---

<sup>70</sup> Nagy, *Transitional Justice as a Global Project*, 277

<sup>71</sup> Nagy, *Transitional Justice as a Global Project*, 277.

<sup>72</sup> Nagy, *Transitional Justice as a Global Project*, 277.

use those and only those. Experiences from Argentina, arguably the first to implement transitional justice mechanisms, show “how TJ is not a goal to pursue, but rather an evolving process in need of continuous readjustments, making use of diverse sources and tools to ensure the effectiveness of such measures.”<sup>73</sup>

It may thus be helpful to start with some mechanisms, and through those, expand, modify or adapt, perhaps as public opinion also sways – people may at first “merely” wonder where their missing family members are, but with growing awareness of the process, and international human rights, may themselves demand justice in the forms of investigations and prosecutions. Reparations is considered the most victim-oriented mechanism<sup>74</sup>, however, and thus should be considered with regards to Cyprus.

Of note, Security Sector Reform (SSR), as understood by the UN, encompass promoting “effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law”.<sup>75</sup> This includes demobilization, disarmament and reintegration (DDR), as well as the above-mentioned vetting and police and court reforms – and will also go some way towards reducing, if not eliminating, systematic and structural discrimination.

Others have written more on the overlap between (liberal) peacebuilding and transitional justice. Pdraig McAuliffe notes that while transitional justice is an important component of peacebuilding, peacebuilding officers do not necessarily see transitional justice as a major part, but one of many different components.<sup>76</sup>

Importantly, people can be both perpetrator and victim<sup>77</sup>, something that is usually brought up regarding peacebuilding when combined with transitional justice – from chapter 1, we can see that this is applicable in the Cyprus situation. Without a degree of accountability, there can be no justice, but this is an important issue to consider further.

Having looked briefly at some of the tools, chapter 4 will investigate which, if any, have so far been attempted in Cyprus, while the ones I find of relevance to Cyprus will be covered in more detail in chapter 5. Which ones to use, and how to do so, is an important question to ask – lest Cyprus joins the ranks of “one size fits all” approaches that failed.

One of the most important points to come out of recent studies and evaluations of transitional justice approaches is how important the local aspects are – the ICTY and ICTR, as mentioned,

---

<sup>73</sup> Iakovou, *Missing Persons in Cyprys*, p. 45.

<sup>74</sup> Iakovou, *Missing Persons in Cyprys*, p. 39.

<sup>75</sup> Sharp, *Rethinking Transitional Justice*, pp.130-131.

<sup>76</sup> McAuliffe, *The Marginality of Transitional Justice within Liberal Peacebuilding*.

<sup>77</sup> Elster, *Closing the Books*, pp. 99-100

felt too far removed from the daily lives of those affected by violence, torture and even genocide.<sup>78</sup>

The testimonies from residents of Cyprus collected by PRIO, amongst others, also indicates that the view of the locals may differ from what a so-called impartial, international body might decide, or the political elites on either side of the Green Line, highlighting that whatever measures are used, they need to focus on local ownership of the processes and mechanisms. Going forward, I will borrow a few words from Sharp:

“It is thought provoking to imagine, for example, what a transitional justice process might look like that did not privilege international “expertise” at the expense of local agency; nation or capital-based justice at the expense of community and rural based justice; largely Western legal modes of justice at the expense of “traditional” or “local” modalities of justice; the prosecution of the so-called big fish at the expense of a focus on reparations and community needs; and physical violence and civil and political rights at the expense of economic violence and economic and social rights.”<sup>79</sup>

While the Cypriot legal system is archetypically Western, and physical violence historically an issue, reparations, community needs and economic rights will be just as important to seek to heal a divided island. The UN has, in its writings, been clear in recent years that a solution must be negotiated by the parties on the island<sup>80</sup> - a step in the right direction, although the leaders of the two communities will likewise have to involve their respective communities, as we will see in the next chapter.

---

<sup>78</sup> Zyberi, *United Nations – related criminal courts and tribunals*, p. 155.

<sup>79</sup> Sharp, *Rethinking Transitional Justice*, p. 152.

<sup>80</sup> UN Secretary-General, *Report of the Secretary-General on his mission of good offices in Cyprus* (28 September 2017), p. 1.



## 4 Achievements and challenges of the transitional justice process in Cyprus

While the UN has sought to negotiate peace between the Greek Cypriot and Turkish Cypriot sides for decades, starting prior to the 1974 invasion, this does not necessarily imply a transitional justice process. In fact, while “there is no agreed solution, there are attempts to seek redress for human rights violations. This process sits alongside, *and often is also at odds with*, the peace process.”<sup>81</sup>

Looking back at the definition of transitional justice in chapter 2, we see that it has three goals: ensure accountability, serve justice and achieve reconciliation.

In Cyprus, the 1974 invasion led to a number of human rights violations, some that are still ongoing – most notably the missing persons, and issues of property and displacement – not to mention Turkey’s ongoing occupation. It would be disingenuous to start in 1974, though – as noted in chapter 1, inter-communal violence occurred to greater or lesser degrees since 1955, and the CMP’s mandate includes victims of the 1963-64 fighting, not just the invasion.

While there is no unified, systematic approach to transitional justice on Cyprus currently, there are still ongoing processes that may, at least in part, accomplish some of the goals, although there are hindrances too. In the words of Bozkurt and Yakinthou:

“For a number of reasons, Cyprus presents something of a unique context when thinking in terms of transitional justice. On one level, Cyprus is not a post-conflict society, but one that lives between worlds; there is no *transition* as such to speak of. On a still deeper level, if one of the aims of transitional justice is the restoration of trust between citizens and institutions, there should be at the very least some internal agreement on the legitimacy of those institutions; but in Cyprus the institutions themselves are one of the primary sites of intercommunal contestation.”<sup>82</sup>

This chapter will investigate these processes, while the next chapter will propose a way to a more comprehensive and unified approach to transitional justice. Both chapters will draw on the works of PRIO, especially the report on the ICTJ’s Cyprus Program between 2009 and 2011 (as summarized by Bozkurt and Yakinthou), and Iakovou and Kornioti’s study of the issue of missing persons.

---

<sup>81</sup> Bozkurt, *Legacies of Violence*, p. 7.

<sup>82</sup> Bozkurt, *Legacies of Violence*, p. 6.

In terms of the history of transitional justice, the first wave concerned nations coming to terms with its previous authoritarian regimes, while later, it also included war-torn nations, like the former Yugoslavia and Rwanda. While the British colonial rule was far from ideal, the transition from a colony to an independent republic was negotiated jointly by Britain and the future Cypriot republic. Britain is hardly without fault in the current situation on the island, but the colonial government *itself* has not been proven to have arranged for large-scale disappearances, unlawful killings or other such violations emblematic of an authoritarian regime. Rather, the issues stem from inter-communal violence and the Turkish invasion, leading to displacements and disappearances. Where does Cyprus fall in this regard? The coup in 1974 by the Greek junta failed, so there was no autocratic regime instated. The subsequent Turkish invasion led to many human rights abuses, adding to the already-unresolved disappearances and violence on the island. Thus, Cyprus bears more resemblance with a war-torn nation than one transitioning from an autocratic regime – although the ongoing Turkish occupation means the process for healing cannot properly start, nor can Cyprus alone resolve this. Turkey must play a part in any transitional justice processes, even after their troops have left the island. This chapter will thus investigate the UN-led peace talks, as well as relevant domestic court cases, European Court of Human Rights cases, as well as other processes that support the aims of the transitional justice process.

#### **4.1 Peace talks**

The UN-initiated peace negotiations aim to ensure the Republic of Cyprus' full control over the island, but with a bi-zonal, bi-communal federation where the Greek Cypriot and Turkish Cypriots would retain control in "their" zones.<sup>83</sup>

While this process has been on-going since the 1960's, as a complement to the UNFICYP, there was a renewed effort from 2008, where the two leaders at the time pledged their support for a negotiated settlement. The UNSC also concurred with the Secretary-General's approach, and the President of the SC had the following to say:

The Security Council warmly welcomes the launch of fully-fledged negotiations between the two leaders, under the Good Offices Mission of the Secretary-General, aimed at the reunification of Cyprus.<sup>84</sup>

---

<sup>83</sup> <http://www.uncyprustalks.org/sample-page/> [accessed 22 May 2021]

<sup>84</sup> S/PRST/2008/34

This followed the contentious 2003 Annan Plan, with plebiscites in 2004, which saw northern Cyprus vote by 2/3 to accept it, while southern Cyprus voted 3/4 to reject it.<sup>85</sup> While there are claims that the Annan Plan, in its fifth and final draft, was “a balanced text based on a mutually compromised solution (win–win scenario) and compatible with the position of the third parties in the Cyprus conflict”,<sup>86</sup> the fact remains that it was rejected by the Greek Cypriot side. Hardly surprising, this drew the ire of many involved in the process, including the EU and of course the UN Secretary General himself, whose name the proposed plan bore. As mentioned in chapter 1, there have been several proposed reasons for this, among them insufficient time for the people of Cyprus to familiarise themselves with the full text of the Plan and its appendices, a fear that Turkey would not uphold its part of the bargain, that as an EU member, Cyprus would not be allowed to veto Turkey’s eventual accession to the EU (a right afforded to every other EU nation), to on paper giving a more outsized parliamentary influence to the Turkish Cypriots than even the original 1960 Constitution did (under the plan, 50% of the seats in the Senate of the new federated state would be reserved for the Turkish Cypriot component state, while the Chamber of Deputies would have proportional representation, but at minimum 25% from each component state – i.e. a Turkish Cypriot constituent state representation of around 38% – this compared to 30% reserved seats in 1960<sup>87</sup> – public perceptions might not have captured the nuance of this, though). Further, Turkey and Greece would be allowed up to 6 000 troops, then 3000, for the next seven plus seven years (i.e. to 2011 and 2018, respectively), and existing treaties would stay in place (including the three 1960 ones).<sup>88</sup>

In the words of the Cypriot government, in a property case before the ECHR:

“The Cypriot Government, in explaining their fundamental objections as well as those of the people to the Annan Plan, note that firstly, the domestic remedies provided in the plan did not cover the full spectrum of the violations complained of in respect of the applicant's property and home and were generally ineffective. No *restitutio in integrum* was provided and the damages were inadequate (being principally in the form of “property appreciation certificates” payable after twenty five years or longer from a compensation fund to be established under uncertain conditions and with no security of solvency). *Secondly, they argue that the Annan Plan provided for the constitutional divi-*

---

<sup>85</sup> Papadakis (ed), *Divided Cyprus*, p. 4. See also Mallinson, *Cyprus: a Modern History*, p. 188.

<sup>86</sup> Sözen, *The Annan Plan*, p. 129.

<sup>87</sup> Annan Plan, Appendix A, 5(1).

<sup>88</sup> Mallinson, *Cyprus: a Modern History*, pp. 188-189.

*sion of the island of Cyprus on the basis of effective ethnic separation with major restrictions on the freedom of settlement, effective discrimination, confiscation of properties, deprivation of homes, denial of political rights and condemnation of war crimes, for example, the settlement of occupied territories through the transfer of civilian population from Turkey, an occupying state.”<sup>89</sup>*

The Cypriot government’ contention that it was solely a *political* plan holds less true – if the proposals were genuinely not compatible with the ECHR<sup>90</sup>, the Cypriot government had a duty to ensure they were, before putting the plan to a referendum.

Remembering the goals of the transitional justice process, would a politically negotiated plan have been helpful in this? Yes, it is almost certainly essential to achieving reconciliation, serving justice and ensuring accountability. The Cypriot government’s objections to the plan cannot be ignored, however – the Annan Plan did contain proposals that could have sown the seeds of future conflicts. In particular, proposals that further cement Cyprus’ reliance on Turkey and Greece<sup>91</sup> (or Britain) are not conducive to long-term peace, especially when Greek or Turkish military aggression has caused its fair share of trouble already. Likewise, any limitations on human rights (including voting rights, as shown in the *Aziz* case) must be temporary in nature.

Looking at the issue in another manner, the Cyprus government has always maintained the Turkish occupation is illegal, even if others may claim the legality of the original invasion remains unresolved in international law.<sup>92</sup> Under international humanitarian law (IHL), "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."<sup>93</sup> The UN Security Council never gave its blessing to this, and has vociferously rejected the “TRNC”, thus there is little to no evidence this occupation could be considered lawful.

Rephrased, for the Turkish Cypriot community, it is a negotiation, while for the Greek Cypriot community, it is a crime that needs to be rectified – albeit crimes were committed against the Turkish Cypriot community too.

---

<sup>89</sup> Xenides-Arestis v. Turkey, Admissibility Decision, pp. 16-17 (emphasis mine).

<sup>90</sup> Xenides-Arestis v. Turkey, Admissibility Decision, p. 16.

<sup>91</sup> See e.g. Article 8, Appendix A of the Annan Plan that would have made Cyprus exclusively reliant on Turkey or Greece for military protection.

<sup>92</sup> Gürel, *Property and Human Rights in the Cyprus Case*, p. 22.

<sup>93</sup> 142, HagueReg (1907)

A “negotiation” that aims to compromise what is seen as two initial positions will inevitably fail, when one or both of those positions contain non-negotiable demands, or it is seen as a zero-sum game.<sup>94</sup> It must also be a negotiation between the Cypriot parties, not Turkey.

Since 2008, organised talks have resumed, and a final push between 2015 and 2017 between the two leaders (the President of Cyprus and the leader of the “TRNC”), led to the Crans Montana summit in July 2017. While these talks, including the technical committees seeking harmonisation of legislation and cultural issues, provided a major step forward, the summit ended without an agreement.<sup>95</sup> Still, the technical committees have continued working, although with certain restrictions during the COVID-19 pandemic.

One issue raised, however, is that there is a lack of civil society engagement or involvement<sup>96</sup> – a crucial omission when seeking reconciliation. The bicomunal technical committees, and the two leaders, have engaged in talks, but have rarely invited the people of Cyprus in.

The UN Secretary-General further reported in January 2021 that despite the Greek Cypriot’ commitment towards the bizonal, bicomunal proposal (as agreed at the Crans Montana summit), the newly-elected “TRNC” head was ready to consider “new ideas”.<sup>97</sup>

The President of the Republic of Cyprus stated the following:

“Our vision and top priority remains none other than to reunify our island on the agreed basis of a bi-zonal and bi-communal federation as provided by UN Security Council resolutions, in order to establish a truly independent and sovereign state, free from foreign dependencies, guarantees, the right of military intervention or the presence of foreign troops.”<sup>98</sup>

The newly elected “TRNC” leader feels that a bi-zonal and bi-communal federation is “outdated” at this point, claiming it is the current status quo and not the way forward<sup>99</sup>, acting unilaterally in contravention of UNSC resolutions with Turkish support.<sup>100</sup> This is clear in the “TRNC” leader’s statement, most notably over the Varosha opening and hydrocarbon exploration, an issue already causing tension beyond their borders.<sup>101</sup>

---

<sup>94</sup> Tziarras, *Preconditions for Peace*, p. 11.

<sup>95</sup> S/2017/814, pp. 26-27.

<sup>96</sup> Tziarras, *Preconditions for Peace*, p. 16.

<sup>97</sup> UN Secretary General, *Report of the Secretary-General on his mission of good offices in Cyprus (8 January 2021)*, pp. 3 and 11.

<sup>98</sup> UN Secretary General, *Report of the Secretary-General*, p. 13.

<sup>99</sup> UN Secretary General, *Report of the Secretary-General*, p. 20.

<sup>100</sup> UN Secretary General, *Report of the Secretary-General*, pp. 3-4.

<sup>101</sup> UN Secretary General, *Report of the Secretary-General*, pp. 21-22.

If the goal of the peace process and negotiations is to ensure accountability and serve justice, the current talks do not seem to encourage this – it has been said that these efforts are held hostage by the ongoing peace process.<sup>102</sup> Despite the “TRNC” leader claiming three criminals were extradited from “TRNC” to southern Cyprus in November 2020,<sup>103</sup> this does nothing to address the larger accountability, relating to the 1974 invasion and current occupation.

As the goal is further to ensure (or work towards) positive peace, one would have to ensure efforts here were made to remove the potential sources of conflict. Would letting Turkey retain a military presence on the island, and *de facto* keeping it partitioned contribute to a positive peace, to ensure a Cypriot sense of community and culture, rather than keeping it divided in spirit?

The current negotiations seem intended to only look forward – the Technical Committees are working towards merging the two administrative and legal systems of the Republic of Cyprus and the “TRNC”, rather than conduct any detailed examination of the past and propose ways towards trust-building and reconciliation within society. As there is no agreement on demilitarization of the island between the two sides, Turkey’s role and responsibilities seem rarely to be discussed. The Annan Plan contained many solid ideas, like a Reconciliation Commission, but contained other provisions that might hamper a transition. The current negotiations were almost completed at Crans Montana, and the final details should be hammered out, rather than thrown out, as proposed by the “TRNC” leader. The framing about what third parties may want or find acceptable is irrelevant – any negotiation will have to be evaluated on whether it serves the people of Cyprus, to enable them to work towards peace, justice and to truly be free to choose their own path – foreign interference is what brought them to the place they are today. Next, I will examine the transitional justice processes regarding missing persons and the property issue in more detail. While the property issue is a major part of a political settlement, there are efforts also to resolve it via legal means.

## 4.2 Missing persons

Iakovou and Kornioti have done a more comprehensive study on missing persons in Cyprus. First, what is a missing person? The ICRC has an extensive definition, regarding people whose whereabouts are unknown to their families, in relation to IACs/NIACs, national catastrophe or similar.<sup>104</sup>

---

<sup>102</sup> Bozkurt, *Legacies of Violence*, p. 7.

<sup>103</sup> UN Secretary General, *Report of the Secretary-General*, p. 23.

<sup>104</sup> Iakovou, *Missing Persons in Cyprus*, pp. 6-7.

For the purposes of transitional justice, it is important to examine the legal aspects relating to missing persons – both nationally and internationally. Regarding national law, Iakovou and Kornioti has summed up in their report the status as of 2018 – I have below commented on recent developments. Regarding international law, two strands emerge: international human rights law and conventions, and IHL.

In terms of human rights, everyone’s right to life is protected both under the European Convention of Human Rights (article 2) and the ICCPR (article 6), both signed and ratified by Cyprus and Turkey (ratifications: ECHR: 6 October 1952 and 18 May 1954, respectively. ICCPR: 2 April 1969 and 23 September 2003, respectively). The ECtHR has, in several cases, understood Article 2 to encompass the fate of missing persons, as well as a State’s duty to investigate those missing.<sup>105</sup> Further, everyone has the right to liberty and security under ECHR article 5, including that an authority requires a lawful reason to detain people, which must be communicated to them – in Cyprus, claims have been made that many of the missing persons were last seen in the custody of Turkish military forces, and Turkey has been found guilty also of violation of article 5 regarding the missing persons.<sup>106</sup>

The prohibition against torture is also enshrined in the ECHR, in article 3, as well as article 7 of the ICCPR, in addition to having its own convention - the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). ECHR article 3 prohibits torture, inhuman or degrading treatment or punishment – and through its case law, it has recognized this to include relatives of missing persons. If a State fail to provide information or take actions to investigate the fate of missing persons, or actively obstruct such investigations, they may have violated their duties under article 3.<sup>107</sup> While other rights have also been invoked in ECHR cases, these have generally not been considered, due to the severe nature of breaches of articles 2, 3 and 5.

Under customary IHL, each party to a conflict is obliged to account for missing persons and provide information to their families<sup>108</sup> - Geneva Convention IV, ratified by both Cyprus and Turkey prior to 1974, obliges states to provide information to “families dispersed owing to the war”, including supporting organizations working towards reuniting families.<sup>109</sup>

One final aspect regarding justice: it needs to be accessible. One thing is court proceedings – where the UN has clarified the right to translations or interpreters to ensure charges levied against individuals can be understood by them<sup>110</sup> - another is being able to orient oneself and

---

<sup>105</sup> *Cyprus v. Turkey*, p. 145, *Varnava v. Turkey*, p. 174 and p. 185, for two examples.

<sup>106</sup> *Varnava v. Turkey*, pp. 208-209.

<sup>107</sup> *Varnava v. Turkey*, pp. 208-209, pp.200-202.

<sup>108</sup> [Customary IHL, rule 117](#).

<sup>109</sup> GCIV, art. 26.

<sup>110</sup> CCPR General Comment 13, pp. 8 and 13.

knowing what tools and avenues are available, what a government or official agency does to e.g. investigate the fate of missing persons. Thus, as Cyprus in its constitution recognize both Greek and Turkish as official languages, and that all official communications should be available in both languages in article 3, I have analyzed the various websites investigated regarding this criterion.

The **Committee on Missing Persons** in Cyprus, as noted in chapter 1, works to find and identify the bodies of missing Cypriots. They operate with 2002 missing persons, 492 Turkish Cypriots and 1510 Greek Cypriots. As of May 2021, 1006 of those had been identified. In addition, the CMP has identified 197 persons *not* on the official list of 2002 missing persons.<sup>111</sup>

In the case *Cyprus v. Turkey*, the government of Cyprus claimed 1 491 Greek Cypriots were still missing in 2001 as a result of Turkey’s invasion of northern Cyprus – last seen as prisoners of the Turkish army, with some reportedly having been transported to Turkey, to prevent them being killed by Turkish-Cypriot fighters.<sup>112</sup>

Examining again the three goals of ensuring accountability, serving justice and achieving reconciliation, what processes and mechanisms exist regarding missing persons?

Recovering missing persons is an important aspect as it provides a sense of closure, if not justice. Having a body to bury lends a certain sense of finality and an end to uncertainty whether someone is alive or dead, which can allow for a grieving process to start, and perhaps end. It is therefore very important, in an effort to seek justice, as well as build towards a positive peace, to enable this. There are several different approaches to missing persons that have, and are, taking place in Cyprus currently.

The CMP is empowered to investigate whether persons listed in their records are alive or dead, but this list is exclusive – only the individuals on their list are the topic of investigation. This number is disputed and contentious – the ICRC operated with 2,228 names, the subsequent 1983 UN Working Group on Enforced Disappearances with 2400<sup>113</sup>, and as noted above, the Republic of Cyprus with 1491, at least that Turkey were responsible for. Further, both sides have been accused of politicizing the issue over the years, regarding who is included, and who is excluded, from these lists, as well as the lack of transparency in the processes and investigations conducted by the government of Cyprus, as well as the “TRNC” administration<sup>114</sup> - the

---

<sup>111</sup> <https://www.cmp-cyprus.org/current-statistics/> [accessed 7 June 2021]

<sup>112</sup> *Cyprus v. Turkey*, pp. 20-25.

<sup>113</sup> Iakovou, *Missing Persons in Cyprus*, pp. 14-15.

<sup>114</sup> Iakovou, *Missing Persons in Cyprus*, p. 15.



Turkish occupation administration in northern Cyprus immediately following the invasion claimed there were no missing persons, trying to build a narrative about “martyrs”.<sup>115</sup>

The fact remains, however, that the CMP has managed to exhume 1169 persons, and identified the majority of those individuals, just over half of all missing persons on the list, which is a good start. Further, Turkey claims that they granted the CMP access to 30 additional military sites in northern Cyprus in November 2015, and in June 2019, another 30 military sites that could contain remains.<sup>116</sup>

Turkey also claims they handed over all information they possessed regarding possible burial sites in 1997, and that in “TRNC” the Missing Persons Unit (MPU) was established in 2010, with the aim to conduct investigations into the deaths of the missing persons. As of November 2019, they had opened 685 criminal investigations, of which 439 files were finalized and transmitted to the Attorney General, who had adopted a report in relation to 306 of those.<sup>117</sup> However, these numbers are hard to verify, as the reports are not made public.<sup>118</sup> Furthermore, just because a report is completed and transferred to the Attorney General, does not entail a prosecution. Two of the missing persons who were named in the *Varnava* case have had their cases closed because of lack of evidence, as well as the cases of other individuals exhumed by the CMP.<sup>119</sup>

Turkey has argued that the lack of efficiency of the MPU often stems from uncooperative relatives, although some may not know of the MPU, other Greek Cypriot relatives are distrustful of the MPU, and as the MPU conducts all their affairs using Turkish, linguistic difficulties render effective cooperation almost impossible in some cases.<sup>120</sup>

Why is the MPU important here, rather than the CMP?

The CMP does not investigate cause of death, nor do they reveal their sources – they often do not even write down information they receive, acting on oral reports on where bodies are buried! Their mandate, as enshrined in its Terms of Reference (ToR), stipulate many provisions that may have been required for a political compromise at its foundation in 1981, to enable some work to be done, rather than nothing at all. In short, the ToRs include provisions on:

- the composition on the committee (one Greek Cypriot, one Turkish Cypriot and a third member, appointed by the Red Cross)
- No family members of missing persons, or others “directly involved”, can be a staff assistant with the CMP.

---

<sup>115</sup> Iakovou, *Missing Persons in Cyprus*, p. 12.

<sup>116</sup> Cyprus v. Turkey, Status of Execution (2020), p. 2.

<sup>117</sup> Cyprus v. Turkey, Status of Execution (2020), p. 2.

<sup>118</sup> Iakovou, *Missing Persons in Cyprus*, p. 26.

<sup>119</sup> Cyprus v. Turkey, Status of Execution (2020), p. 2.

<sup>120</sup> Iakovou, *Missing Persons in Cyprus*, p. 26.

- Good faith-provisions on access to potential burial sites (no mandate to enter any location on the island)
- Time period covering intercommunal fighting from 1963 onwards.
- Give weight to rotate investigations – ensure investigations equally on both sides (which current statistics show they mostly adhere to)
- Confidentiality of the CMP’s proceedings and findings.
- Perhaps most importantly for the purpose of justice, “the committee will not attribute responsibility for the deaths of any missing persons or make findings as to cause of such deaths” (article 11). Once an individual has been exhumed and identified, the death certificate will simply record the cause of death as “unknown”.<sup>121</sup>

While receiving the remains are important for closure, justice demands accountability and truth. To achieve this, the MPU, as well as the Republic of Cyprus police force, will have to conduct investigations – although recent developments indicate that families can request a detailed forensic report regarding missing family members.<sup>122</sup>

One issue that is hard to reconcile with the principles of transparency and accountability, as well as investigations into the deaths of missing persons, is the CMP’s procedures, or rather lack thereof, for gathering information. There is no formal procedure for registering incoming tips, nor a publicly accessible database of gathered information and status of this.<sup>123</sup> The Archival Unit is going through existing archives, like that of the ICRC in Geneva and presumably the Greek government’s “Cyprus File” – not setting up an archive of CMP information.<sup>124</sup>

The CMP is not the only mechanism, but it is one of the few cross-border ones. This is important, as cooperation between the Republic of Cyprus and the “TRNC” is lacking in many areas, as highlighted by the *Güzelyurtlu* case.

**The Missing People Department** (MPD), established in November 1977, is currently directly supervised by the Office of the Commissioner to the Presidency (of the Republic of Cyprus). Its mission is to ‘establish the fate of every single one of the missing persons, whose tracks were lost during the Turkish invasion of 1974 and the intercommunal disturbances of the period 1963-1964.’<sup>125</sup> This includes updating information on the missing persons, collaborating with other organizations working on missing persons, and also socio-economic problems faced by

---

<sup>121</sup> Iakovou, *Missing Persons in Cyprus*, pp. 31-32.

<sup>122</sup> Iakovou, *Missing Persons in Cyprus*, p. 32.

<sup>123</sup> Iakovou, *Missing Persons in Cyprus*, pp. 33 and 35-36.

<sup>124</sup> Iakovou, *Missing Persons in Cyprus*, pp. 23-23, 33 and 36.

<sup>125</sup> Iakovou, *Missing Persons in Cyprus*, p. 18.

relatives of missing persons, and their jurisdiction cover all Cypriots (Greek and Turkish Cypriots alike).

In theory, this office is thus coordinating its efforts with both government and non-governmental organizations, including the CMP, and collating all the records on missing persons, and recently, a digitalization project started, to seek to collate all the disparate information various branches of government and others may possess. However, it has attracted criticism for its lack of transparency, as well as being a part of the Commissioner to the Presidency – its actions are thus “acts of government”, legally, and thus cannot be challenged in the Administrative Court, thus making access to a fair process more cumbersome for relatives (who presumably will have to challenge any decisions via a full court of law).<sup>126</sup>

An examination of the Commissioner to the Presidency website reveals that the original (Greek) version is the most accurate, with links that (mostly) work, while the English page has some broken links (lists of missing persons, for example) and it is clear not everything has been translated<sup>127</sup>, including a lot of the announcements.<sup>128</sup> There is no Turkish-language version of the site, despite the mission being to represent all missing persons on the island.

A lot of information currently published on the site dates from 2019 and onwards and thus was published after Iakovou and Kornioti’s study. The current information includes, *inter alia*:

- Lists of missing persons (1493 names sent to the CMP, as well as 126 + 44 Greek Cypriots and Greeks that were not, with a new project started to identify those who died between 1963 and 1967 just started).<sup>129</sup>
- Information on the exhumations carried out by the Republic of Cyprus, via the MPD (sometimes, but not always, with the CMP) – exhumations carried out between 1999 and 2019, the latest at Pachyammos hospital.<sup>130</sup>

---

<sup>126</sup> Iakovou, *Missing Persons in Cyprus*, pp. 18-19.

<sup>127</sup> Compare the English version of the “Open Letter by the Presidential Commissioner” and the Greek version of the same page at [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i\\_en/page03i\\_en?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i_en/page03i_en?opendocument) and [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i\\_gr/page03i\\_gr?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i_gr/page03i_gr?opendocument) respectively [accessed 11 July 2021]

<sup>128</sup> [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/Showannouncements\\_missing\\_en/Showannouncements\\_missing\\_en?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/Showannouncements_missing_en/Showannouncements_missing_en?opendocument) (2019: 11 announcements, 2020: 9 announcements, 2021: 8 announcements in English) and [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/Showannouncements\\_missing\\_gr/Showannouncements\\_missing\\_gr?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/Showannouncements_missing_gr/Showannouncements_missing_gr?opendocument) (2018: 1 announcement, 2019: 71 announcements, 2020: 79 announcements, 2021: 22 announcements in Greek) [accessed 5 July 2021]

<sup>129</sup> [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03f\\_en/page03f\\_en?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03f_en/page03f_en?opendocument) and [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03f\\_gr/page03f\\_gr?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03f_gr/page03f_gr?opendocument) [accessed 5 July 2021]

<sup>130</sup> [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc09\\_en/pc09\\_en?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc09_en/pc09_en?opendocument) and [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc09\\_gr/pc09\\_gr?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc09_gr/pc09_gr?opendocument) [accessed 5 July 2021]

- Announcements by the MPD – press releases, the majority in Greek.<sup>131</sup>
- Contact information for how to get in touch (phone numbers) to offer information regarding missing persons, with an open letter from the President of the Commission on the history and background for the missing persons – with an explanation of the work of the CMP in the Greek version (from February 2021).<sup>132</sup>
- Contact information for the private secretary to the commissioner, with email addresses and on the English page, an electronic contact form – not specific to the MPD.
- Their duties and responsibilities, in regards to missing persons and their families. This mentions a digitalization project, where all of the files the MPD has have been digitalized for a joint project, but no mention of what other parties will assist.<sup>133</sup>

In terms of justice, it seems the MPD has sought to improve their efforts at providing information and transparency in their work since 2019, publicly list who is missing and who is registered as deceased, and provides information on how to get in touch. However, while the CMP is mentioned, there is not even a link to their webpage, and in terms of access to justice, the website still states they are committed to determining the fate of all missing persons – Greek nationals, Greek or Turkish Cypriots – but does not offer a Turkish-language version.

**The Parliamentary Committee on Refugees, Enclaved, Missing and Adversely Affected Persons** (Κοινοβουλευτική Επιτροπή Προσφύγων - Εγκλωβισμένων - Αγνοουμένων – Παθόντων)<sup>134</sup>, as part of the Parliament of Cyprus, handles legislation and proposals related to missing persons, as well as the enclaved. While there are currently no pending laws for them to process, the Parliament of Cyprus still debates laws related to the Cyprus problem, occupation and access. The Foreign and European affairs committee (Επιτροπή Εξωτερικών και Ευρωπαϊκών Υποθέσεων) has raised a motion regarding Turkey’s unilateral and illegal reopening of the sealed-off parts of Αμμοχώστου/Famagusta (Varosha) and the military Geçitkale Airport in occupied Cyprus<sup>135</sup>.

---

<sup>131</sup> See note 128.

<sup>132</sup> [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i\\_en/page03i\\_en?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i_en/page03i_en?opendocument) and [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i\\_gr/page03i\\_gr?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/page03i_gr/page03i_gr?opendocument) [accessed 11 July 2021]

<sup>133</sup> [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc11\\_en/pc11\\_en?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc11_en/pc11_en?opendocument) and [http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc11\\_gr/pc11\\_gr?opendocument](http://www.presidentialcommissioner.gov.cy/anthropos/anthropos.nsf/pc11_gr/pc11_gr?opendocument) (The English and Greek versions here containing the same information.) [accessed 11 July 2021]

<sup>134</sup> <http://www.parliament.cy/el/composition/parliamentary-committees-/κοινοβουλευτική-επιτροπή-προσφύγων-εγκλωβισμένων-αγνοουμένων-παθόντων> [accessed 11 July 2021]

<sup>135</sup> <http://www.parliament.cy/images/media/redirectfile/exoterikon%20nomosxedia%20protasis%20nomou0008.pdf>, 5<sup>th</sup> point. (Greek only) [accessed 11 July 2021]

Regarding access to justice, the website of the House of Parliament contains a lot of information concerning the workings of the various committees, pending motions, past meetings, and live-streams of Parliamentary proceedings – in Greek. The English version of the site contains translations of the “main” pages, describing what committees exist, but not pending legislations, not detailed information on the committees itself. The Turkish-language version is very limited, considering the fact the Republic of Cyprus acknowledges both Greek and Turkish as official languages. While there is some information translated into Turkish, there are few pages that are exclusively written in Turkish, as a lot of the writing is in English, including the entire page on Parliamentary committees.<sup>136</sup>

The **Ministry of Foreign Affairs** (MFA) of the Republic of Cyprus at least note that the Turkish-language version is under construction, and will be available in 2021. Their website contains information regarding (their view of) the Cyprus problem, with four separate pages dedicated to the issue.<sup>137</sup> Iakovou and Kornioti mention the MFA is also the government ministry responsible for ratifying the CED<sup>138</sup>, but their website contains no information regarding this process – despite having signed the CED in 2007.

The **Law Office** (LO) of the Republic of Cyprus (Νομικής Υπηρεσίας), independent of any Ministry, consists of several staff, including the Attorney General and the Deputy Attorney General – one supposedly from the Greek Cypriot community, and one from the Turkish Cypriot community, according to the Cypriot constitution<sup>139</sup>, even if this is not reflected in practice. Like the MFA website, it has a subheading specifically for the “Cyprus Problem”, giving a short historical background, as well as links to ECHR court cases - but only those where Turkey is a defendant, not the ones where Cyprus have been a defendant.

In cases before the ECHR, the Law Office has represented the government of Cyprus since 2004, and the Law Office is also responsible for monitoring human rights compliance in the Republic and advising whether proposed laws adhere to the human rights treaties Cyprus is party to. In terms of accessibility, their website exists in Greek, and an incomplete English translation – no Turkish version of the site exists.

---

<sup>136</sup> <http://www.parliament.cy/tr/composition/parliamentary-committees-> [accessed 14 July 2021]

<sup>137</sup> <https://mfa.gov.cy/historical-background.html>, <https://mfa.gov.cy/turkish-military-invasion-and-occupation.html>, <https://mfa.gov.cy/efforts-to-resolve-the-cyprus-question.html> and <https://mfa.gov.cy/our-vision-for-a-reunified-cyprus.html> (the English and Greek versions are more or less identical here.) [accessed 14 July 2021]

<sup>138</sup> Iakovou, *Missing Persons in Cyprus*, p. 21.

<sup>139</sup> [http://www.law.gov.cy/Law/lawoffice.nsf/dmllawoffice\\_gr/dmllawoffice\\_gr?OpenDocument](http://www.law.gov.cy/Law/lawoffice.nsf/dmllawoffice_gr/dmllawoffice_gr?OpenDocument)

Regarding missing Turkish Cypriots, the families have had an extra struggle to seek justice and information regarding their dead, in the dominant narrative in the north that the missing were all martyrs, to be mourned, but nothing more.<sup>140</sup> This attitude may well have contributed to the inefficiency of the CMP for many years, and certainly hampered Turkish Cypriots from seeking truth and justice.

In conclusion, while there are many different avenues investigating missing persons, and the possibility for relatives to now receive a forensic report, is there justice? Recovering bodies is an important step towards closure, although as time passes, the likelihood of identifying perpetrators and securing evidence that will hold up in a court of law diminishes. If perpetrators cannot be brought to justice (many may themselves have passed), one can at least ensure the families are given all the available information, as well as reparations for their loss (as awarded to them in *Cyprus v. Turkey*<sup>141</sup>, although not yet paid by Turkey<sup>142</sup>).

### 4.3 The property issue

Perhaps the most contentious issue regarding the “Cyprus problem” is the issue of property. It is estimated that there is around 400 thousand pieces of land affected that would need to be processed and handled – about three-quarters properties belonging to Greek Cypriots, one-quarter Turkish Cypriot properties<sup>143</sup> (pre-invasion ownership). Of note, property rights can be considered economic rights, although it did not make the transition from the UDHR<sup>144</sup> to the ICESCR – and in the ECHR, it is relegated to the first additional Protocol.

Further, it is an issue that cannot be separated from other issues – the three tools commonly discussed regarding property is restitution, exchange or compensation – and under the idea of a bizonal, bicomunal federation, full restitution of all properties might be impossible, at least under the restrictions given in the Annan plan. Large-scale restitution has been reported as a fear within the Turkish Cypriot community.<sup>145</sup>

The property issue is particularly thorny because it not only related to issues of valuation of properties and bizonality, but because the loss of land was at the same time a loss of community and a loss of individual dignity.<sup>146</sup> It is impossible to put a monetary value on the latter, and

---

<sup>140</sup> Bozkurt, *Legacies of Violence*, p. 8.

<sup>141</sup> *Cyprus v. Turkey* (Just satisfaction), judgement, p. 4.

<sup>142</sup> UN HRC, *Question of human rights in Cyprus*, A/HRC/46/23, p. 26.

<sup>143</sup> Mullen, *Property in the Cyprus Peace Process*, p. 3.

<sup>144</sup> United Declaration of Human Rights, article 17.

<sup>145</sup> Trimikliniotis, *Envisioning a Future*, p. 5

<sup>146</sup> Mullen, *Property in the Cyprus Peace Process*, p. 21.

even if everyone were to choose restitution, to seek to move back to their old homes, the lost community would not necessarily follow.

What is just, regarding properties? Under the ECtHR, five cases have played an important part regarding properties in occupied Cyprus, while several cases regarding properties in southern Cyprus were either declared inadmissible (e.g. *Kazali v. Cyprus*), or in one case a friendly settlement was reached (*Sofi v. Cyprus*). These will be discussed in more detail below, but first it must be noted that the Republic of Cyprus and Turkey chose to pursue two radically different approaches to properties.

In the south, the government chose to put all Turkish-Cypriot property under “guardianship”, where the state holds it in custody for the eventual return of their owners, once the Cyprus problem is resolved. These properties have then been rented out, below market price, to displaced Greek Cypriots, or at market price to the government, local authorities or NGOs.

In theory, this means that once the island is reunited and Turkey has ended its occupation, the original owners across the island can resume their previous residence. In the northern part, on the other hand, the authorities essentially seized all Greek Cypriot properties, including ownership, and redistributed those to Turkish Cypriots, but also to Turkish soldiers that had taken part in the invasion and subsequent occupation, as well as Turkish settlers invited by the *de facto* administration.

*In lieu* of a politically negotiated settlement, Greek Cypriots approached the ECtHR with their complaints regarding their properties, starting with the *Loizidou* case in 1996. Here, Turkey was found in violation of Article 1 of Protocol 1 (P1-1), the protection of property, although not of Article 8.<sup>147</sup> The Court did find violations of both Article 8 and P1-1 in *Cyprus v. Turkey*, in 2001, by the inability of Cypriots to return to or access their properties in occupied Cyprus, as well as a violation of article 13, due to lack of a domestic remedy<sup>148</sup>. The latter point was reiterated in *Xenides-Arestis* five years later, where the court stated the following:

“Holds unanimously that the respondent State must introduce a remedy which secures the effective protection of the rights laid down in Article 8 of the Convention and Article 1 of Protocol No. 1 in relation to the present applicant as well as in respect of all similar applications pending before the Court. Such a remedy should be available within three months from the date on which the present judgment is delivered and redress

---

<sup>147</sup> *Loizidou v. Turkey*, pp. 58 – 66.

<sup>148</sup> *Cyprus v. Turkey*, judgement, p. III, pp. 1-5.

should be afforded three months thereafter.”<sup>149</sup>

This led to the creation of the Immovable Property Commission (IPC) in occupied Cyprus, and in the *Demopoulos* case the IPC was “accepted” by the ECHR as a valid domestic remedy.<sup>150</sup> Thus, no further property cases by Cypriots against Turkey would be tried if they had not first brought a case to the IPC – at a time when there were over 1,400 cases pending before the ECHR regarding Greek Cypriot properties<sup>151</sup>, the ECHR could refer them all to the IPC first. Of note, the IPC claims to abide by the idea of a future bizonal, bicommunal federation, which might influence its rulings. Per their website, as of July 15<sup>th</sup>, 2021, they had received 6,877 applications, of which 1,227 had been resolved via friendly settlement, with another 34 formal hearings. Of these, only in 10 cases in total has restitution been awarded, otherwise compensation or exchange have been chosen – with a total of £318 million paid out in compensation so far.<sup>152</sup> The low amount of cases, out of total cases settled, where restitution was the option rather than exchange or compensation was one criticism levied by the applicants in *Demopoulos*, although the Court did not consider this a violation of the Convention – the Convention requires an adequate means of redress, but does not specify the nature of said redress.<sup>153</sup>

One of the main criticisms from Turkey regarding the cases is that the “property issue” was an integral part of the Cyprus problem, and that it could only be solved via the inter-communal negotiations, not via courts. Further, they argued allowing for restitution of properties would be impossible until a bi-zonal, bi-communal settlement had been negotiated.<sup>154</sup> The ECHR has studiously avoided ruling on the legality of Turkey’s invasion and subsequent occupation, although by holding Turkey responsible for the missing persons and properties in occupied Cyprus, have refused to give the “TRNC” any legitimacy, in line with UN resolutions. With the *Demopoulos* ruling, they find the IPC a valid domestic remedy, although the judgement has been criticized for making the legal state less clear, while awaiting a negotiated settlement.<sup>155</sup> In short, the ECtHR judgements can be said to have advanced or safeguarded *individual* human rights, which can aid in a transition towards positive peace, although a full settlement is outside the Court’s remit. This is evident in the work of the IPC – since its inception in 2006, it has

---

<sup>149</sup> *Xenides-Arestis v. Turkey*, judgement, p. 5.

<sup>150</sup> *Demopoulos v. Turkey*, pp. 127-129.

<sup>151</sup> *Xenides-Arestis v. Turkey*, p. 38.

<sup>152</sup> <http://www.tamk.gov.ct.tr/>

<sup>153</sup> *Demopoulos v. Turkey*, pp. 106-119.

<sup>154</sup> Gürel, *Property and Human Rights in the Cyprus Problem*, pp. 7-10.

<sup>155</sup> Trimikliniotis, *Legal Framework in the Republic of Cyprus*, p. 22.



processed just over one sixth of claims, and those claims are probably a far cry from all potential claims.<sup>156</sup>

Regarding the “Guardian Law” under which Turkish Cypriot properties in southern Greece are managed, this has been criticized for holding those properties hostage from their original owners until a solution can be found.<sup>157</sup> Several Supreme Court cases have been raised by Turkish Cypriots denied access to their properties in the south, the landmark case *Arif Mustafa* eventually concluding with him being allowed to resume possession of his house.<sup>158</sup> As noted above, the *Sofi* case, where a Turkish Cypriot woman alleged she was denied access to her property in southern Cyprus, including violations of P1-1, Articles 8, 13 and 14, concluded with a friendly settlement. The *Kazali* case was lodged in part as a protest at the amended Guardian Law of 2010, where the applicants alleged the same denial of access to their properties, was declared inadmissible due to lack of exhaustion of domestic remedies.<sup>159</sup> This does not mean the Guardian Law remains unchallenged – there have been Supreme Court cases regarding the denial of Turkish Cypriots to sell their properties in the south, once reclaimed, as well as a case for the Ombudsman, who found current practice discriminatory.<sup>160</sup>

The ECtHR judgements, like any property settlement, will have to consider the rights of the current users of a property against those of the owners – throwing people out of a place they may have resided for nearly fifty years because someone else owns it can hardly be said to be just. The scale of any compensation will also have to be considered – while the IPC has paid out £318 million, the total valuation of the relevant properties ranges of €8 - 19 billion, and rehousing costs of €1-2.5 billion – at a maximum of €21.5 billion, this is equivalent to Cyprus’ yearly GNP,<sup>161</sup> although others have put it at €45 billion.<sup>162</sup> Full restitution would remove the issue of compensation, in theory, although that might then negate the idea of bizonality.

To conclude, while there is some measure of *individual* justice regarding properties, this is *in lieu* of a political settlement. In terms of *transitional* justice, that might lead to a positive peace, the ECtHR judgements, and the subsequent IPC play a part in setting the limits for a settlement, while the Guardianship Law was always intended as a stop-gap measure – although it cannot be used to hold properties hostage to a political settlement. None of them discuss the loss of

---

<sup>156</sup> Mullen, *Property in the Cyprus Peace Process*, p. 15.

<sup>157</sup> Trimikliniotis, *Legal Framework in the Republic of Cyprus*, p. 33.

<sup>158</sup> Trimikliniotis, *Legal Framework in the Republic of Cyprus*, p. 34.

<sup>159</sup> *Kazali v. Cyprus*, p. 153.

<sup>160</sup> Trimikliniotis, *Legal Framework in the Republic of Cyprus*, pp. 38-40.

<sup>161</sup> Trimikliniotis, *Envisioning a Future*, p. 6.

<sup>162</sup> Mullen, *Property in the Cyprus Peace Process*, p. 19.

community and dignity, displaced people or the question of territory (bizonality), although they show a future settlement must take into account both owners and occupants of properties.

## 5 Way forward

If the aim of positive peace is to remove the potential causes of conflict, we must investigate how transitional justice can aid in this goal. To accomplish this, we must investigate the causes of conflict.

Originally, ethnic divisions stoked by the British colonial rulership caused violence and tensions in the 1950's. This led to further unrest and violence, starting in 1963, when President Makarios sought to change the Cypriot constitution to enable for a smooth functioning of state, which ultimately led to the Turkish Cypriot members walking out of their appointed positions.<sup>163</sup> The ensuing division, enclaves and violence was eventually reduced to a simmer until 1974, when Turkey invaded in response to the Greek junta-sponsored attempt at a coup. As noted above, this caused the displacement of around 200,000 Cypriots from both communities, as well as about 400,000 pieces of property being rendered inaccessible to their owners, and at least 2,000 persons missing – in addition to any who were already missing prior to this.

While the initial Turkish invasion might have been allowed under the Treaty of Guarantee, the Treaty itself is contrary to the UN Charter<sup>164</sup>, and the subsequent occupation and population transfers Turkey has conducted are illegal under IHL.<sup>165</sup>

The Greek Cypriot dominant narrative portrays them only as victims of Turkey from the 1974 invasion onwards, where both the invasion and occupation are seen as illegal. The Turkish Cypriot dominant narrative has been as victims of Greek Cypriot aggression at least as far back as 1963, if not before, however – and here we are at the core of the issue.

To ensure justice, in this situation, these narratives have to be challenged across the island. Both Greek and Turkish Cypriots are victims, but at the same time perpetrators (wrongdoers). Turkey is also a perpetrator (wrecker), standing in the way of progress and justice, not helpers.<sup>166</sup> To seek justice, in this instance, a unified, multi-faceted and accurate narrative is required for the island, where persons/actors can have multiple roles, and use this understanding to work towards reconciliation.

A thorough investigation on security risks is required – the UN peacekeeping force has remained on the island since 1964, and Turkish troops just a decade less – if they all left, would

---

<sup>163</sup> Mallinson, *Cyprus: a Modern History*, pp. 34-35.

<sup>164</sup> Mallinson, *Cyprus: a Modern History*, pp. 55-56. In particular, the unilateral use of force is contrary to article 2(4) of the UN Charter, and the General Assembly's *Declaration on Friendly Relations*. For more, see Karoubi, *Unilateral Use of Force*, pp. 103-106. Why did 4 countries sign an illegal treaty? Makarios claimed lack of time, if nothing else (Mallinson, *Cyprus: a Modern History*, p. 34.)

<sup>165</sup> Geneva Convention IV, 49(6), AP1 85(4)(a).

<sup>166</sup> See Elster, *Closing the Books*, pp. 99-100, as well as chapters 5 & 6 for more on roles.

inter-communal violence resurge, fifty or sixty years later? Bizonality would reduce this risk, although one of the issues that contributed to violence in the 60's was the lack of a functioning state, with vetoes being used to block necessary actions.. The 2017 Crans Montana summit seems to have found solutions to enable the state to function as a bizonal, bicomunal federation,<sup>167</sup> although the current "TRNC" leader needs to publicly support this, not throw it into question. Either way, justice and the prospects for peace are best served by a functioning state, with an independent judiciary – partition into two separate states would do the opposite exemplified by the *Güzelyurtlu* case. Property is an integral part of this, though, and for the agreement as a whole to work, Turkish Cypriots will have to accept that restitution is offered as a main form of reparation, even if this will challenge the quotas in bizonality. In practice, this may not be an issue (see below).

In case of fears for a resurgence of violence, the UNFICYP can remain on the island for a transitional period, serving as a guarantor for peace (replacing the existing guarantor powers who have, perhaps, overstayed their welcome – see below). This transformation is a natural part of the transition to a unified Cyprus the Secretary-General is engaging in.<sup>168</sup>

To build a unified narrative, incorporating the different sides of the conflict, a truth commission is a valuable tool, as it “narrows the range of permissible lies”, and may let other voices, previously silenced, to be heard.<sup>169</sup> This could perhaps be modelled after the Guatemalan one, although of course designed with the aid of Cyprus' civil society to suit their needs. ¾ of both Greek and Turkish Cypriots support such a measure, despite policy-makers warning it may impact the CMP's work negatively.<sup>170</sup> Whether this commission should have the power to prosecute, or refer cases for prosecution, or not will have to be determined – the Reconciliation Commission proposed in the Annan Plan would not have prosecutorial powers, and would have been able to “protect the confidentiality of its sources” – one has to ensure this does not *de facto* entail amnesties<sup>171</sup>. States cannot cite stability as a reason not to prosecute, especially not crimes against humanity. Further, showing a willingness to prosecute these crimes can (re)build trust in state institutions.<sup>172</sup> This must involve all possible actors, of course – Greek Cypriots, Turkish Cypriots, Greek military personnel, Turkish military personnel and any other actors.

In a further step to foster a feeling of a unified Cyprus, the government should work to ensure all official documents are available in Turkish, as well as Greek (including their websites). This also holds true for education – a unified history syllabus, available in both Turkish and Greek,

---

<sup>167</sup> S/2017/814, p. 6.

<sup>168</sup> UN Security Council, *Resolution 2453 (2019)*, p. 7.

<sup>169</sup> Bozkurt, *Legacies of Violence*, p. 18.

<sup>170</sup> Bozkurt, *Legacies of Violence*, p. 19.

<sup>171</sup> Annan Plan, Draft Annex VIII, Art. 3 (2-3).

<sup>172</sup> Bozkurt, *Legacies of Violence*, pp. 22-23..

will go a long way towards rebuilding trust and ensuring new generations will be able to feel like one Cypriot people, rather than nurse their parents' grudges, especially as fewer and fewer people will remember a time when the two communities lived together. This unified syllabus would be a responsibility of the federal government. Common field trips, the continuation or implementation of new initiatives like "Imagine"<sup>173</sup> should be encouraged and supported. Being able to understand one own government's actions and reasoning is vital in a functioning democracy, which means it is vital to ensure justice and access thereto. The government should also support more initiatives that will build inter-communal engagement, both technical and cultural, to show the path towards one Cyprus, including opening more crossing points (and, during the current pandemic, ensuring the existing ones stay open), economic support and using inclusive language while countering exclusionary language. Perhaps the most important gesture they could make is acknowledging the actions of Greek Cypriots as a major factor in unrest and intercommunal disputes since the 1950s – this would go a long way towards building intercommunal trust.<sup>174</sup>

Further, existing NGOs and civil society initiative to build intercommunal trust, dialogue and memorialization projects should be supported – especially ensuring survivors of violence, disappearances and other events can have their stories recorded, for the future. There are already several such projects underway, a few with government or municipal support,<sup>175</sup> as well as several government-initiated ones – although some of these may be counterproductive regarding reconciliation, like the commemoration day on the 1950 *enosis* referendum, which derailed intercommunal negotiations<sup>176</sup>. Of note, the Home for Cooperation and Cyprus Dialogue Forum, while both limited in influence so far, represent organizations that try to bridge the two communities.<sup>177</sup> To paraphrase one of the Home members, if society doesn't care, civil society initiatives have limited results.<sup>178</sup> There should also be a more formalized dialogue between civil society and political leadership/government, especially in negotiations.<sup>179</sup>

The "property issue" is not just an issue of property, but also of community – an issue that cannot be solved merely by paying compensation. Restitution will require reconciliation, to remove a potential source of conflict – Turkish Cypriots do not want Greek Cypriot neighbors without an acknowledgement of their role in the conflict – and Greek Cypriots are unlikely to

---

<sup>173</sup> Ker-Lindsay, *The Cyprus Problem in an Era of Uncertainty*, p. 32 and UN HRC, *Question of human rights in Cyprus*, A/HRC/46/23, p. 64.

<sup>174</sup> Ker-Lindsay, *The Cyprus Problem in an Era of Uncertainty*, pp. 30-40.

<sup>175</sup> For more information on these measures, see e.g. Bozkurt, *Legacies of Violence*, pp. 27-33.

<sup>176</sup> S/2017/814, p. 15.

<sup>177</sup> Tziarras, *Preconditions for Peace*, pp. 6-11.

<sup>178</sup> Tziarras, *Preconditions for Peace*, p. 8.

<sup>179</sup> Tziarras, *Preconditions for Peace*, p. 27.

agree to a solution where restitution is *not* an option, at all.<sup>180</sup> As seen above, compensation alone would also bankrupt the country, which is not conducive to peace. Just because restitution is an option does not mean everyone will take it, though – after nearly fifty years, new communities have been built both in the north and the south, teenagers then might be grandparents now. There may be other factors than purely ownership that either keeps someone in place (grandchildren, family, new communities) or from returning (property is collapsed, will need renovation, lack of jobs, facilities for religious practice or other activities).<sup>181</sup> To build a positive peace, a settlement must respect the loss of community and dignity, not just the monetary value of property lost – and consult the affected at all stages. If all Turkish Cypriot properties in the south are returned to their former owners, and current residents are asked to move, they will again suffer a loss of community, so the owner/occupier dimension is vital.

One cannot discuss property and territory without also mentioning the Turkish citizens that Turkey invited to occupied Cyprus across the years, who have been given seized Greek Cypriot property and allowed to reside in “TRNC”. A unified island will be an EU member, while Turkey is not. While the act of moving your own civilian population into occupied territory is forbidden under IHL, this is an illegal act by Turkey, for which the civilians themselves should not suffer. Both Turkish and Greek Cypriots have taken issue with this<sup>182</sup>, especially as the Turkish citizens were allowed to vote in the referendum on the Annan Plan. My proposal is that those that wish to stay in unified Cyprus, can apply for citizenship of Cyprus, while those that do not, or are not granted citizenship, return to Turkey. (As citizenship is a human right,<sup>183</sup> stateless individuals should be granted citizenship as a matter of course.) This was one issue discussed at the Crans Montana summit, but no clear solution reached.<sup>184</sup>

Regarding other actors, the “guarantor powers” clearly have a duty – Turkey will withdraw its troops, at the same time as the Treaty of Guarantee is revoked. The Treaty of Alliance and Treaty of Establishment should likewise be re-examined. The Treaty of Guarantee can already be seen to be in contravention with the UN charter, as noted above, and has clearly participated to the current issues – a Cyprus free from Turkish occupation cannot suffer under the threat of another unilateral Turkish invasion, as emphasizes by the UN Secretary-General<sup>185</sup>. One proposal, prior to the Crans Montana summit, was to revise the treaty, adding the EU as a guarantor

---

<sup>180</sup> Mullen, *Property in the Cyprus Peace Process*, p. 21.

<sup>181</sup> Mullen, *Property in the Cyprus Peace Process*, pp. 13 and 24.

<sup>182</sup> Ker-Lindsay, *The Cyprus Problem in an Era of Uncertainty*, pp. 18-19.

<sup>183</sup> UDHR, Article 15.

<sup>184</sup> S/2017/814, p. 20..

<sup>185</sup> S/2017/814, p. 24.

and removing the unilateral right of invasion<sup>186</sup>, but then one has to question what purpose having the Treaty ensures. The UN, who already has a peacekeeping force stationed, can assume the duties of guarantor, as proposed above, possibly with the EU as well. The Treaty of Establishment established Cyprus as an independent nation, and governs the British military bases – the courteous actions would be for Britain to close its military bases and return the land to Cyprus, especially having now themselves chosen to leave the EU (the proposed Treaty revision included a 20-year grace period for the bases, and if an agreement could not be reached, would refer the case to the ICJ for final arbitration on the lawfulness of the Treaty of Establishment)<sup>187</sup>. Any other matters covered by the Treaty can be incorporated into the Cyprus Constitution, if necessary, and with the bases gone, the Treaty serves little purpose.

The Treaty of Alliance is likewise out-of-date, especially since Cyprus now is an EU member, and considering Turkey's long-lasting occupation, allowing them to station troops on the island after they withdraw may not serve the cause of peace, nor justice. The Greek troops would also withdraw, to ensure parity and avoid any possible claims of *enosis*.

Further, Turkey must allow access to their military archives and any information they may have regarding missing persons, the affairs of the "TRNC" and other events that will be crucial in healing the divide and seek justice. Greece and the UK would have to do the same – although out of concern for State secrets, certain information may be reserved for a Truth and Reconciliation Committee (note that the Reconciliation Committee proposed in the Annan Plan would have had the power to request said information<sup>188</sup>).

One step both Turkey and Cyprus could take would be to ratify the Convention against Enforced Disappearances, as this would show a public desire to uncovering the past – while this does not have a retroactive effect, it will have a positive symbolic effect.. Another step would be ensuring the transparency and accessibility of databases regarding information on missing persons – including British, Greek, Turkish and Cypriot military archives, and the work of the CMP.<sup>189</sup>

To ensure a transition to a lasting, positive peace, it is vital to include the Cypriots themselves in any discussion regarding a final settlement and a future together; not just in a referendum, but during the processes to finalize proposals for a truth and reconciliation committee, the property issue and other points, via national projects. not just leave it to the leaders – the Turkish and Greek Cypriots are not one homogenous mass, but differ in their desires, and perhaps in their views of justice – but they all deserve peace and justice.

---

<sup>186</sup> <https://www.ejiltalk.org/revising-the-treaty-of-guarantee-for-a-cyprus-settlement/> and [https://www.researchgate.net/publication/317640516\\_Text\\_of\\_a\\_Possible\\_Treaty\\_of\\_Implementation\\_and\\_Guarantee](https://www.researchgate.net/publication/317640516_Text_of_a_Possible_Treaty_of_Implementation_and_Guarantee)

<sup>187</sup> [https://www.researchgate.net/publication/317640516\\_Text\\_of\\_a\\_Possible\\_Treaty\\_of\\_Implementation\\_and\\_Guarantee](https://www.researchgate.net/publication/317640516_Text_of_a_Possible_Treaty_of_Implementation_and_Guarantee), Article III

<sup>188</sup> Annan Plan, Draft Annex VIII, Art. 3 (1)(b) and (d).

<sup>189</sup> Iakovou, *Missing Persons in Cyprus*, pp. 50-53.

In conclusion, through intercommunal work via the CMP, and recourse to the ECtHR, progress has been made regarding missing persons and property rights on Cyprus, but lack of a political settlement has stymied a holistic approach to transitional justice.



## Table of reference

### Books and articles:

Andreassen, Bård A, Hans-Otto Sano and Siobhán McInerney-Lankford (ed.), *Research Methods in Human Rights. A Handbook*, London: Ed Elgar 2017

Bozkurt, Umut and Christalla Yakinthou, *Legacies of Violence and Overcoming Conflict in Cyprus: The Transitional Justice Landscape*, PRIO Cyprus Centre Report, 2. Nicosia: PRIO Cyprus Centre, 2012.

Elster, Jon. *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press, 2004. DOI:10.1017/CBO9780511607011.

Gürel, Ayla and Kudret Özersay. “Property and Human Rights in Cyprus: The European Court of Human Rights as a Platform of Political Struggle”, *Middle Eastern Studies* 44(2) (5 March 2008): 291–321. DOI: <https://doi.org/10.1080/00263200701874925>

Gürel, Ayla, Mete Hatay and Christalla Yakinthou. *An Overview of Events and Perceptions, Displacement in Cyprus - Consequences of Civil and Military Strife*, 5. Nicosia: PRIO Cyprus Centre, 2012.

Hatay, Mete, *Population and Politics in North Cyprus: An Overview of the Ethno-Demography of North Cyprus in the Light of the 2011 Census*, PRIO Cyprus Centre Report, 2. Nicosia: PRIO Cyprus Centre and Friedrich-Ebert-Stiftung, 2017.

Iakovou, Natasa and Nadia Kornioti, *Missing Persons in Cyprus: Observations from the past and recommendations for the future*, PRIO Cyprus Centre Report, 7. Nicosia: PRIO Cyprus Centre, 2019.

Kaorubi, Mohammad Taghi, “Unilateral Use of Armed Force and the Challenge of Humanitarian Intervention in International Law”, *Asian Yearbook of International Law*, vol. 10 (2001-2002): 95-124.

Ker-Lindsay, James, *The Cyprus Problem in an Era of Uncertainty: Establishing a Culture of Engagement*, PRIO Cyprus Centre Report, 5. Nicosia: PRIO Cyprus Centre, 2019.

Lessa, Francesca and Leigh A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*. Cambridge: Cambridge University Press, 2012. doi:10.1017/CBO9781139177153.

Mallinson, William, *Cyprus: A Modern History*, London: I.B. Tauris, 2005.

McAuliffe, Pdraig, “The Marginality of Transitional Justice within Liberal Peacebuilding: Causes and Consequences”, *Journal of Human Rights Practice*, 9 (2017): 91-103.

Mullen, Fiona (ed.), *Property in the Cyprus Peace Process - Proceedings of the PCC-CEPS Conference, 20-21 May 2010 (Brussels), Displacement in Cyprus - Consequences of Civil and Military Strife*, 6. Nicosia: PRIO Cyprus Centre, 2012-

Nagy, Rosemary. "Transitional Justice as Global Project: Critical Reflections." *Third World Quarterly* 29, no. 2 (2008): 275-89.

Papadakis, Yiannis, Nicos Peristianis and Gisela Welz (eds.), *Divided Cyprus: Modernity, History, and an Island in Conflict*, Bloomington: Indiana University Press, 2006.

Sharp, Dustin N., *Rethinking Transitional Justice for the Twenty-First Century: Beyond the End of History*. Cambridge: Cambridge University Press, 2018. doi:10.1017/9781108609180.

Sözen, Ahmet and Kudret Özersay, "The Annan Plan: State Succession or Continuity", *Middle Eastern Studies*, vol 43:1, 125-141. January 2007.

Teitel, Ruti:

- *Transitional Justice*. New York: Oxford University Press, 2000.
- "Transitional Justice in a New Era". *Fordham International Law Journal* 26(4) (2002): 893-906.
- "Transitional Justice Genealogy". *Harvard Human Rights Journal* 16 (2003): 69-94.
- "Transitional Justice Globalized". *International Journal of Transitional Justice* 2(1) (2008): 3-8.

Trimikliniotis, Nicos and Corina Demetriou, *Legal Framework in the Republic of Cyprus, Displacement in Cyprus - Consequences of Civil and Military Strife*, 3. Nicosia: PRIO Cyprus Centre, 2012.

Trimikliniotis, Nicos and Bozena Sojka (eds.), *Envisioning a Future: Towards a Property Settlement in Cyprus, Displacement in Cyprus - Consequences of Civil and Military Strife*, 7. Nicosia: PRIO Cyprus Centre, 2012.

Tziarras, Zenonas, *Pre-Conditions for Peace: A Civil Society Perspective on the Cyprus problem, PRIO Cyprus Centre Report*, 1. Nicosia: PRIO Cyprus Centre, 2018.

Zyberi, Gentian and Jernej Letnar Černic. "Transitional Justice Processes and Reconciliation in the Former Yugoslavia: Challenges and Prospects", *Nordic Journal of Human Rights*, vol 33:2 (2015): 132-157. DOI: 10.1080/18918131.2015.1047615

Zyberi, Gentian. "United Nations – related criminal courts and tribunals: fleeting mirages of transitional justice or a piecemeal approach to cosmopolitan justice?", *Transnational Legal Theory*, vol 7:1 (2016): 114-132, DOI: 10.1080/20414005.2016.1171560

## Other references:

### Council of Europe:

- *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.
- *Interim Resolution ResDH(2005)44*, 7 June 2005
- *Interim Resolution CM/ResDH(2007)25*, 4 April 2007
- *Interim Resolution CM/ResDH(2020)185*, 3 September 2020
- *CYPRUS v. Turkey*, Status of Execution, 2020

### European Court of Human Rights:

- *Case of Loizidou v. Turkey*, (Application. No. 15318/89). Judgment 18 Decembet 1996.
- *Case of Cyprus v. Turkey*, (Application no. 25781/94). Judgement 10 May 2001.
- *Case of Denizci and others v. Cyprus*, (Applications nos. 25316-25321/94 and 27207/95). Judgement 23 May 2001.
- *Case of Aziz v. Cyprus*, (Application no. 69949/01). Judgement 22 June 2004.
- *Case of Xenides-Arestis v. Turkey*, (Application no. 46347/99). Judgement 22 December 2005.
- *Case of Solomou and others v. Turkey*, (Application no. 36832/97). Judgement 24 June 2008.
- *Case of Varnava and others v. Turkey*, (Applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90). Judgement 18 September 2009.
- *Case of Sofi v. Cyprus*, (Application nos. 18163/04). Friendly settlement 14 January 2010.
- *Case of Demopoulos v. Turkey and 7 other cases*, (Applications nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04). Admissibility decision (Grand Chamber) 1 March 2010.
- *Case of Kazali and others v. Cyprus*, (Application nos. 49247/08). Admissibility decision 6 march 2012.
- *Case of Güzelyurtlu and others v. Cyprus and Turkey*, (Application no. 36925/07). Judgement 29 January 2019.

### UN High Commissioner for Human Rights:

- *CCPR General comment No. 13*, 13 April 1984

UN Human Rights Council (UNHRC), *Question of human rights in Cyprus*, A/HRC/46/23 (2021), 11 February 2021.

United Nations Peacebuilding Support Office, *What is Transitional Justice? A Backgrounder*, 20 February 2008. Accessed at: [https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26\\_02\\_2008\\_background\\_note.pdf](https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf) [Accessed 5 April 2021]

UN Secretary-General:

- The Annan Plan: “*The Comprehensive Settlement of the Cyprus Problem*” (31 March 2004)
- “*The Rule of Law and Transitional Justice in Post-conflict Societies*,” UN Doc. S/2004/616 (23 August 2004), accessed at: [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf) [Accessed 17 February 2021]
- “*Report of the Secretary-General on his mission of good offices in Cyprus*”, UN Doc. S/2017/814 (28 September 2017)
- “*Report of the Secretary-General on his mission of good offices in Cyprus*”, UN Doc. S/2021/5 (8 January 2021), accessed at: [http://www.uncyprustalks.org/wp-content/uploads/2021/01/2021-01-08\\_SG-GO-Report-S-2021-5.pdf](http://www.uncyprustalks.org/wp-content/uploads/2021/01/2021-01-08_SG-GO-Report-S-2021-5.pdf) [accessed 30 May 2021]

United Nations Security Council (UNSC):

- *Statement by the President of the Security Council*, S/PRST/2008/34, 4 September 2008
- *Resolution 2561 (2021)*, S/RES/2561 (2021), 29 January 2021.