

Displacement in Cyprus

Consequences of Civil
and Military Strife

Report 6

Property in the Cyprus Peace Process

Proceedings of the PCC–CEPS Conference
20–21 May 2010 (Brussels)

Edited by Fiona Mullen



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PEACE PROCESS – PROCEEDINGS
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BACKGROUND

The Cyprus Centre of the Peace Research Institute Oslo (PRIO) and the Centre for European Policy Studies (CEPS) organized a conference in Brussels on 20-21 May 2010 to facilitate dialogue between the Greek Cypriot and Turkish Cypriot communities on the issue of property. The conference was sponsored by the Swedish Ministry of Foreign Affairs, the United Nations Development Programme Action for Cooperation and Trust (UNDP-ACT), the European Union's Civil Society in Action initiative in Cyprus, the Foreign Ministry of the Netherlands and the Embassy of Austria. The representatives of the leaders of both communities, Mr George Iacovou for the Greek Cypriots (GCs) and Mr Kudret Özersay for the Turkish Cypriots (TCs) took part, while the United Nations Office of the Special Adviser on Cyprus (OSASG) attended as an observer. The conference was conducted under the Chatham House rule, therefore all participants were approached to ask if they were willing to have their presentations published and all agreed. The discussions surrounding the presentations have not been included.

INTRODUCTORY SESSION

Leopold Maurer, EC President's Special Representative to the UN Good Offices Mission in Cyprus

Mr Maurer said that European Commission President José Manuel Barroso had responded to the request to appoint a special representative not only because the UN had asked but because he also wanted to underline that he was personally interested in a resolution of the Cyprus problem. President Barroso had organized a steering group within the Commission to deal with the Cyprus issue.

The last meeting of the leaders had been in April. It was a positive sign that only five weeks after the election the two leaders would meet. Much of the burden rested with the Special Representatives and the Commission was ready to support them both when they were needed. A solution to the Cyprus problem remained a strong desire of the Commission and the European Union and the progress made by the leaders so far was highly appreciated. It was crucial that the settlement talks continued on the basis of the progress achieved so far. Three chapters were more or less closed: governance, economy and EU matters. It made sense that this conference focused on one in which there had been less progress.

Property was often described as the thorniest issue in the negotiations, while governance and power-sharing was the backbone. A breakthrough would only be possible if both sides were ready to make a compromise. Court cases could not replace a political settlement. A political solution needed painful compromises on both sides. Cyprus was the only EU member with UN military and police on its soil. The division needed to be overcome as soon as possible. The leaders' meeting next week should not be seen as a new process but as a continuation.

George Iacovou, Special Representative of the Greek Cypriot leader

Mr Iacovou said they had had 28 sessions on governance and power-sharing, nine on the economy, four on EU matters, 18 on property, seven on "aliens, citizenship, immigration and asylum" (as a way of avoiding mentioning the issue of settlers), and three on security and guarantees. He said there were those who criticized them for concentrating only on governance but this was not true. They had spent 18 sessions on property.

Mr Iacovou noted that everyone said property was a "hellishly difficult issue". It was definitely daunting. There were 400,000 pieces of land to deal with—310,000 pieces of GC property and 90,000 pieces of TC property. He did not mean parcels of land. In addition to the pieces there were houses, hotels and homes. This meant that 400,000 or 450,000 individual

decisions needed to be taken in future in the effort to solve the problem. The property issue was not an issue apart from all the other issues. There were three aspects that came to mind. Some of them had been discussed to some extent and needed to be discussed further. As regards the territorial issue, it was taken for granted that a piece of territory would be vested in the GC constituent state/federated unit in such a way that a considerable number of GC refugees would return under GC administration. The bigger the piece, the smaller the problem. There was also the issue of citizens: immigration was also an issue. They had spent approximately 20 hours in seven sessions talking about the issue to get a feel for the size. TC sources referred to anything from 190,000 to 400,000. This was a population many times the size of the TC population. This had an impact on the property issue because many of these people had been allowed to use GC property. Another issue was the number of GC refugees, who within the agreement, would return to their homes under TC administration. The problem was not isolated. Mr Iacovou did not know to what extent they could talk about property without at least by implication bringing some of these issues to bear.

Mr Iacovou said that he might have given the impression that they had made no progress on property but after 18 sessions there had been some progress. They had agreed that the right of property was recognized. This referred to GC properties which would lie in the TC constituent state/federated unit and TC property that would lie in the GC constituent state/federated unit. Proof of ownership would rest on documents that existed in 1963 and 1974. It was also agreed that the owners of affected properties would have at their disposal three remedies: restitution, compensation or exchange. They would need to be assisted by a property commission of some kind. Properties that were used for public benefit or which were impossible to reinstate would be compensated.

They also categorized properties under 22 different headings and in this they had divergences. The GC position was that the legal owner, whether a GC or a TC, had the right to choose the future of the property from the three choices. As far as he was concerned the owner had the freedom to do whatever he liked with it. He wanted to clarify what this meant. In terms of restitution, there was legal restitution. They were not necessarily talking about physical restitution.

Mr Iacovou said that the TC side took the position that it was the current user who had the first option, and that he would decide the future of the property he was using. This would effectively mean that the rights of the legal owner would be completely eroded or substantially eroded and hardly any properties would be restituted unless they had no current user. They also had a disagreement on the property commission. The GCs felt there should be only one responsible body for all properties. They also needed to clarify who was the user. Consider the case of a TC who came into possession of a GC property, who lived in the UK and rented the property to a third party. Who was the user: the person living in the property or the person who had migrated?

Then there was the most difficult of cases: a home owned by a GC who was still alive and a refugee, and who wanted to go back, but the current user was a TC, who was himself displaced and lived in the property and did not want to move. There were also other kinds of properties, for instance a current user who did not even know where the property was. Mr Iacovou said he could not see that these two cases should be dealt with in the same way. When they talked about property, they talked about freehold property. But in their legislation they had leasehold, life interest and so on. This was important because it gave them a number of policy options in resolving the property issue. Similarly, they talked about state land, public land etc. They knew that public land could become private property overnight. There were many issues and various policy options.

Kudret Özersay, Special Representative of the Turkish Cypriot leader

Mr Özersay said that the TC leader, Derviş Eroğlu, had stated his commitment to resuming the negotiations on the basis of the established UN parameters, a bizonal bicomunal federation with political equality; a federal government with a single international legal personality as well as a TC constituent state and a GC constituent state of equal status. The aim was not to have the negotiations continue indefinitely but to find a fair and lasting solution to the Cyprus problem. They believed it was possible with mutual good will and responsible leadership.

In resolving the issue of property they must address the legitimate concerns of both communities.

Mr Özersay said he did not think the issue was really negotiated. They had fundamentally different approaches on this issue and had produced no joint paper apart from one on the categories of properties. They on the TC side were ready to be constructive and creative. They believed it was possible to solve the property issue on the basis of certain principles and criteria. This was the main difference between the two sides. The TCs underlined the principle of objective criteria that had to be applied. The exercise of the right to property could be regulated on the basis of objective criteria, on the basis of UN parameters and factual circumstances. Each community would be guaranteed a clear majority of population and a clear majority of property ownership in each area. A settlement should strike a fair balance between the competing rights of current users and former owners.

This conference would be a good warm-up exercise. The *Demopoulos* case had established the Immovable Property Commission (IPC) as an effective domestic remedy. As regards territorial adjustment and citizenship, they would deal with some of these issues in the afternoon. He noted that the recognition of the right of property was not isolated. There was also an understanding that there was a need to recognize the rights and interests of the current users under the European Convention on Human Rights (the Convention), both property rights and under Article 8 of the Convention.

SESSION 1: NORMATIVE DIMENSIONS OF THE PROPERTY ISSUE

Achilleas Demetriades, lawyer

Demetriades said that legal action brought by the GCs was their answer to Turkish military occupation. From the 1989 *Loizidou v. Turkey* case onwards Turkey had been deemed responsible for human rights violations and the notion of subordinate local administration had been introduced. *Loizidou* also introduced the concept of loss of use, so it is not the normal approach in a property violation scenario, when one would expect the issue to be about expropriation.

The *Arestis* pilot case was based on the fact that a systemic problem had been identified. The Strasbourg system was overloaded. They needed a mechanism to deal with a backlog. It was not a conspiracy against GCs; it had been used with Italy and even with Turkey. The *Demopoulos* case was of huge importance. Its purpose was to establish whether the IPC was an effective domestic remedy. The way GCs went to Strasbourg was unusual in the jurisprudence of the European Court of Human Rights (ECtHR) because there was no domestic remedy. That remedy had now been established. It was the proper approach to be taken: to go to the IPC, appeal to the high administrative court if necessary and if not satisfied to go to Strasbourg. The Cyprus government was telling people not to go to the IPC.

Through the IPC and in *Demopoulos*, Turkey had accepted liability, recognized ownership and made payments. The baseline was that the GC on the title deed was still the owner today. How you regulated that ownership was another matter but one should not forget the starting point.

There were also questions about the IPC. Could claims be effectively dealt with? Was there the manpower? What did people expect to get? Would restoration be granted? Would exchange be allowed? Exchange is not possible now under the rules governing the guardianship of TC properties. What about the time limit of 21 December 2011 for the mandate of the IPC? Would the right to go to Strasbourg be extinguished? This deadline gave a time limit for the political process of negotiations to finish.

There was also the question of what the Republic of Cyprus would do in claims by TCs for just satisfaction of property rights in the south. The *Sofi* case was settled for EUR 500,000. The government was now engaged in amending the law in response to the ECtHR. It would provide the flexibility to take properties out of the guardian of TC properties.

As regards the *Orams* case, this was about a person-to-person trespass as opposed to person-to-state issues. It could be effective in the European Union or in Russia where there was a reciprocal enforcement of judgments agreement. Whether *Demopoulos* affected *Orams* raised difficult questions.

Demetriades said that loss of use, the fact that the owner had lost rent, was being completely ignored by the numbers cited in relation to compensation. Yet it was important because it acted as a disincentive to protracted negotiations, since with every passing day there was an additional cost. Maybe through negotiation procedures could be found to set off the claims but they should not be ignored from the beginning. At the moment calculations were being based only on sale value and ignored the loss of use claim that had accumulated.

Mert Guçlu, lawyer

Citing Shapiro, Guçlu said that the length of time that has elapsed minimized the chance of complete return. Together with many European countries, reinstatement was legally limited by the Polish government: a certain amount of land above a certain number of hectares was non-reinstatable. In Czechoslovakia agricultural land was deemed legally non-reinstatable. Germany had also put limits. In Estonia certain sizes of land was non-returnable. In the US-Iran tribunals compensation was offered not reinstatement. In Bosnia socially owned apartments were not returned. Reinstatement was not the only option. There had been a shift in the ECtHR mind from *Loizidou* to *Arestis* and now *Demopoulos*. This meant that the redress should consist of not only reinstatement, but also of exchange or compensation. Therefore the realities and the circumstances of the population living in the relevant area and their livelihood should be taken into account.

In the EU there were many derogations from the *acquis communautaire* and the Convention. In Denmark there were permanent EU derogations on non-permanently resident EU nationals purchasing property. Malta limited EU citizens to owning properties only as secondary residences. In the Aland Islands residents who had the intention of settling required permission from the government. New residents in Northern Ireland required permission. Also Poland and the UK had derogations in this regard as confirmed by the ECtHR. The Czech Republic had issues about the Convention and the Sudetenland Germans, as in the case of Prince Hans Adam. He said that derogations in EU law were deemed to be valid as long as they were included for a legitimate purpose, and here that purpose was unification.

As regards derogations, the Draft Act of Adaptation in the Annan Plan contained provisions that referred to a letter addressed to the Council of Europe stating that the settlement provided a domestic remedy (such as in the *Kozlova and Smirnova v. Latvia* case). But it was merely a letter of request; it was not conclusive. To reach a strong conclusive arrangement on whatever deviations there would be, the waiver had to be established as part of primary law by means of derogations.

In the case of Denmark and Malta, although many factual resemblances to the Cyprus problem existed, the derogation related only to secondary residences, not primary residences, and had to be applied in a non-discriminatory manner. People who had resided for more than seven years in Denmark were allowed to buy property.

Rhodri C. Williams, international human rights consultant (discussant)

Williams focused on three key international law developments related to the normative framework for property claims in Cyprus. First, it was now well established that the right to a remedy for human rights violations had a substantive as well as a procedural aspect. Traditionally, human rights conventions had focused solely on the procedural aspects of the right to a domestic remedy, for example the right to access justice in the form of guarantees of a hearing before an independent and impartial body. The concept of substantive remedies—or reparations—had recently migrated from the law on state responsibility to human rights law. This was reflected in the existence of international law standards such as the 2006 Van Boven/Bassiouni Principles, which asserted a right not only to procedural access to justice but also to substantive reparations such as restitution and compensation for victims of particularly serious violations of international human rights and humanitarian law. Regional human rights courts in the African, European and Inter-American systems had also supported this trend in their jurisprudence.

A second emerging rule of human rights law involved the proposition that *de facto* conditions such as frozen conflicts did not suspend the immediate *de jure* obligation to provide an effective remedy to victims of violations. The ECtHR had repeatedly asserted its jurisprudence on Cyprus that the status of ongoing negotiations did not justify failure to provide remedies for human rights violations. This principle had also been invoked by the Parliamentary Assembly of the Council of Europe in its recent resolution 1708 (2010) on “solving the property issues of refugees and displaced persons”. Other practice supporting this emerging rule included the UN Register of Damages (UNRoD) formed in order to compile claims related to material harms caused by Israel’s construction of a wall in the Occupied Palestinian Territories. The UNRoD was set up pursuant to a 2004 Advisory Opinion by the International Court of Justice finding that Israel was under an immediate obligation to dismantle the wall and provide substantive remedies to persons adversely affected by its construction.

A third emerging principle was that the criteria for judging the “effectiveness” of domestic remedies may be broadly drawn, for reasons related both to the discretion of states and the needs of victims. For both practical and principled reasons, expedited, ad hoc programmes were increasingly seen as more effective in addressing claims arising from mass violations than individual adjudication of each case, for instance. Similarly, both the Van Boven/ Bassiouni principles and recent jurisprudence of the ECtHR had departed from the traditional rule that

restitution should be prioritized over other forms of reparations such as compensation. For instance, the Court in *Demopoulos* ruled that states providing reparations could not rule out restitution outright, but that they had discretion to limit the circumstances under which restitution would be provided based on contextual circumstances such as the effects of the passage of time. In this context, it was also crucial that victims were consulted and were able to express their views on the nature of remedial measures that would be most useful in overcoming the harms they had suffered as a result of human rights violations.

SESSION 2: PUBLIC OPINION ON THE PROPERTY ISSUE

Erol Kaymak, Eastern Mediterranean University, Department of International Relations

Kaymak introduced the Interpeace Cyprus 2015 project. Part of the research related to polling and part of it to dialogue. He noted that there were different motivations for solving the Cyprus problem. The GCs were trying to change the status quo and they were concerned about security. The TCs had a wide array of interests, such as improvement in the economic situation.

GCs and TCs agreed on security in so far as they both found it important. It was the second highest issue of importance for TCs and third for GCs. As regards property, restitution was “absolutely essential” for 53% of GCs. TCs thought in terms of compensation; only 5% wanted restitution. However, the polls also showed that there was room for a balanced compromise. The issue of bizonality was contested in GC public opinion. There was support in both communities for the notion that affected individuals needed to be consulted. As regards the past, there were contrasting discourses. GCs had strong and vivid memories (61%), TCs much less so (19%). GCs tended to see the past as having been very good. TCs were more divided.

According to the results 97% of GCs owned a primary residence while only 59% of TCs owned a primary residence. Around 50% of GCs reported that they had been granted use of a primary residence as a result of their displaced status; 54% of displaced TCs said they had been granted use of a primary residence.

GCs did not believe that current users should have priority in almost any category except public utilities. TCs were more divided. They were more favourable towards GC preferences as regards vacant land, for example, but might not understand the implications of their answers, since a vast amount of land was vacant and GCs tended to want vacant land back.

Among GCs, 59% said they would return to an area under GC control; only 10% said they definitely would return if the area were under TC control; 7% said they might return and 64% said they definitely would not do so. Older people were much more interested in return than younger people. GCs were more likely to return to an area under TC control if there were GCs in the same village, yet 50% of GCs were still against living in the TC constituent state even if a range of measures were taken to support them, such as churches or GC doctors.

The least interest for return was in the Mesaoria area and the most was in Kyrenia, perhaps explained by differences in the value of the asset.

When GC dispossessed owners were asked what they would do with their property if it fell under GC administration, the most popular answer was to use it as a primary residence and the least popular was to take government guaranteed bonds for it. If the property were in the TC constituent state, the most popular was exchange (57% definitely or probably), followed by compensation (52% definitely or probably). Only 10% would definitely or probably use it as a primary residence.

Katerina Papadopoulou, Researcher, Cyprus 2015

Papadopoulou presented the qualitative findings of the Cyprus 2015 work based on focus groups, in-depth interviews and stakeholder panels. GCs tended to focus on property rights, not necessarily on return. TCs acknowledged ownership but there was more emphasis on the rights of the current user. Both said no one should be thrown out of their homes. GCs would come to an arrangement with current users. TCs saw the problem of what to do with current users as a problem of the administration because it was the administration which granted the use of property. For GCs security was even more important than property. But TCs were also concerned about their safety.

GCs saw TCs as having a better deal: retaining their ownership rights in the south but with access to other property in the north. TCs on the other hand said that they did not have access in the south and did not have rights in north so they felt they owned nothing. It was suggested that the two communities completely misunderstood one another.

At least half of GCs said they were willing to compromise for the greater good. For others, they felt that any solution was bound to be unfair, therefore it would be better to stay as they were. For TCs the status quo was unsustainable and a solution must be found. They stated their willingness to compromise.

There was a suggestion that individuals could solve the property issue among themselves as long as there was an organization to give them guidelines about the values of property. GCs made a distinction between TCs and Turks and were less flexible about the latter. Some TCs with equity in the south were willing to move but would probably sell the property in the south.

GCs saw classification of properties as a ploy to sell them a suboptimal solution. TCs focused more on the type of current user or original owner than types of properties. For GCs, original homes were the most important. For TCs there was no particular order or rank. As regards compensation both TCs and GCs were suspicious about how their property would be valued. For GCs compensation was taboo. They were more flexible about exchange. TCs preferred compensation and exchange even in cases where they had significant property in the south.

Return was entrenched in the GC discourse but they could be flexible as long as they had the first say. Since the crossing points had opened in 2003 they could now entertain different

scenarios. For example, some said the current user must leave the property even if they as dispossessed owner would not return. But another segment had moved from return to justice. Remaining true to the right of ownership was more important than whether they returned or not. It was a question of pride.

Peter Loizos, London School of Economics and Political Science (discussant)

Loizos noted that people say some things in private and sometimes different things in public. Did these surveys count as public or private conversations? There was a difficulty in interpreting survey work: when the researcher was not well known to the respondent, one got officializing responses conforming to the dominant discourse, which was almost coercively exercised in the GC community, maybe less so in the TC community. (The researchers noted that they had made multiple visits, 10 or 11 in some cases and tried to corroborate responses).

How would Cypriots react to a real world settlement? There was no mention, for example, of grandchildren. Cypriots had a huge preoccupation and frequent contact with their grandchildren and provided important support to their own children by offering reliable care for the grandchildren. This allowed women on lower incomes to work, with lower childcare costs, and greater psychological security. Therefore some might not wish return in practice because this would mean they saw less of their grandchildren and this would reduce the practical support they could offer to their working children.

Nor were the practical costs of return being discussed. In many cases, former homes had collapsed and would need to be completely rebuilt, orchards had fallen into decay or been cut down, thus providing no income stream.

SESSION 3: IMPLEMENTATION OF SOLUTIONS

George Iacovou

Mr Iacovou said he wanted to address the question of bizonality. There was no United Nations position or definition of bizonality as being a majority issue. It was mentioned once in a Secretary-General report but was unlike political equality which had been mentioned in Security Council resolutions. No one attempted to adopt a Security Council resolution which mentioned majority property ownership. It was quite a basic disagreement between them and it influenced the negotiations considerably.

They had considerable differences of approach. They were not ultimately irreconcilable but he wanted to examine two models, one that supported compensation as the solution and the other that accepted only restitution as the remedy. With 400,000 pieces of property, valuing for the purposes of compensation would be a mammoth task. The Immovable Property Commission had received 450 applications, and had decided on 70, involving 322 pieces of land. On this basis it would take about 3,000 years. There was also the question of who was going to pay. One was talking of billions of euros. Even at the best of times one would never get funding from the international community. The TCs could therefore never really afford a policy of compensation unless short cuts were taken which would cause many problems.

Considering the other option of restitution, no one ever suggested that people who were users of the property would be ejected from the houses they occupied. Mr Iacovou made the distinction between legal possession and physical restitution. Leasehold and other arrangements were often used in other countries. Why was it that they could not say that they returned the legal freehold to the legal owner until people finally decided what they want to do? There were many other advantages. The market place was going to determine the values and they would have a proper free market in which to decide relationships. According to research most people would want compensation. Even if the owner's preference was to wait for the market to decide the values of property, people wanted compensation immediately. So they had a right to expect a system that really gave them proper compensation. It must be fair compensation so that the individual would have a measure of comparison. For example, if someone were to receive €100,000 for a 5-bedroom house he would not be able to buy a two-bedroomed apartment in Nicosia. There was also the matter of recent arrivals in Karpas who were given the property of people who had died. How could one deny the right to the children of someone who had died?

As for factories, why could they not have a co-operative model? There must be one property market.

Kudret Özersay

Mr Özersay said that as a general approach it was better to focus on principles than on details. A settlement must be based on creative and practical solutions based on UN parameters. It must avoid the seeds of new conflict. For the viability of a settlement one could not take into consideration only certain legal points. It was also important not to create new dispossessed or displaced persons. There was therefore a need to acknowledge the competing rights of owners and users. The four basic principles that should be taken into consideration were: 1) bizonality; 2) established practices of the UN; 3) the acknowledgement that the exercise of property rights can be regulated; and 4) legal certainty and predictability.

As regards bizonality, there were UNSC resolutions (Resolution 750) endorsing this notion in Secretary-General reports S/21183 (1990), S/23780 (1992). There was also the 2 March 2010 admissibility decision in *Demopoulos and others v. Turkey* where the TC law establishing the Immovable Property Commission was found to be in line with human rights standards. The TC law establishing the Immovable Property Commission referred to the principle of bizonality in the context of a settlement of the Cyprus problem.

As regards consistent UN practice through various plans, draft agreements, opening statements ideas or non-papers, in 1992 the Ghali Set of Ideas referred to the principle that a property could not be reinstated if the current user was also a displaced person and wished to remain, if the property had been substantially altered, or if a property had been converted to public use. The Annan Plan followed these principles with more detailed provisions, such as giving priority to the claims of current users, eligibility to title for those who had significantly improved property and included a type of ceiling on ownership for those hailing from the other Constituent State.

The third principle was that a right to property was not absolute. It could be regulated to reconcile competing legitimate rights and interests. Deprivation could be justified as long as "a legitimate aim" was pursued, including avoidance of future conflict. There could be different redresses: compensation, restitution, exchange or alternative property. This had been established by the *Demopoulos* decision, which accepted the IPC as an effective domestic remedy. The main redress of the IPC had been compensation. There was some exchange but restitution was limited.

Given the ruling of the ECtHR, a property regime similar to IPC would be in line with the human rights standards of the Convention.

As regards legal certainty and predictability, this meant that the type of redress could not be based on the dispossessed owner's preference alone. There had to be a type of consultation and it must be subject to pre-determined objective criteria, otherwise the principle of bizonality would be jeopardized. People would not know what would happen to their property when they went to vote.

There were certain factors that needed to be taken into account when deciding the redress. There was the time factor, which included the emotional link to the property of both the dispossessed owner and the current user. Transactions, improvement of properties and the rights and interests of current users also had to be taken into account. The economic disparity between the two sides should also be considered. One should not create new and disproportionate wrongs. And finally one had to be mindful of the decisions of international courts.

SESSION 4: SOCIETAL NEEDS AND EXPECTATIONS

Symeon Matsis, Private Sector Consultant

Matsis said that a property solution also entailed social considerations. There needed to be equality and fair prices for property transactions, whether the remedy was reinstatement, exchange or compensation. What was a fair price? Current value, market prices or another number? It was not easy to determine. But it was important to give people choices to keep it out of court. One probably had to maximize the quantity of land in the GC constituent state because it would reduce the need for compensation.

Referring to the appropriate inflation rate to apply, if one took a base year and added inflation in the intervening years, the average annual consumer price inflation rate since 1978 had been 4.4% in the south and 48.6% in the north. Nevertheless, prices in the north were lower than the south because of parallel depreciation of the Turkish lira. As regards house and land prices, there was not much information at EU or international level. The limited property price information published by the *Economist* on 20 countries showed that there was great volatility in house prices. Prices in many countries had fallen because of the economic crisis but before that had appreciated much more than retail prices because they were purchased not only as homes but as assets, for speculative purposes.

In Cyprus there was no official house price index but studies using factors affecting house prices suggested that house prices oscillated substantially between 1988 and 2008 and differed by type of dwelling. The speaker's own estimate was that on average, property prices in the south must have risen by more than inflation but by less than 10% each year. His assumption was that house prices had risen by 7% per year. In practice, if one took a base year and added property price inflation in the intervening years, it meant that compensation would be very prohibitive. One was looking at EUR 45 billion, or twice the size of combined GDP. Even if this amount of money could be found, it would be extremely inflationary. Therefore it was important to reduce the amount of land to be compensated. So one clear way out would be to encourage owners freely to exchange properties through the market.

Hasan Ali Biçak, Higher Education Accreditation and Coordination Council

Biçak noted the difference in expectations as shown by the polls. For example, the GC preference for restitution was at the top whereas for TCs it was at the bottom. The GCs rank bottom the idea that all GCs should stay in the south and all TCs in the north. In the Annan Plan around 50% of the displaced would return to their properties through territorial adjustment. Then there was the provision of one-third for other owners. The point was that it would not be all exchange, not all settlers would go abroad, and not all dispossessed would return. Political solutions therefore required political will with painful compromises. It was very important that the political leaders acted responsibly and gave the message that the solution would be in the middle of different extremes.

As regards social needs, in economics there were primary needs and secondary needs. There would be dislocation of the people, new settlement, refurbishment of houses, new infrastructure, rebuilding Varosha. They had begun to write the list in the Working Group on Economic Matters and had decided that there would be an ad hoc committee to decide about priorities. The cost should not be a burden on the federal budget.

Rebecca Bryant, George Mason University, Department of Sociology and Anthropology

In the context of societal needs and expectations, Bryant suggested thinking about how property had come to symbolize a range of issues involving territory, belonging, dignity and so on. By identifying some of these issues, it might be possible to think more clearly about some of the less tangible, non-economic impediments to solving the property problem. For example, the relationship between restitution and return was important but was usually disentangled in discussions of the property issue.

1) *Property, territory, and sovereignty*: It had been mentioned that resolving the property issue was a matter of regulating what ownership meant. One could not emphasize this enough. Ownership was regulated through a property regime, and a property regime was directly related to territory and sovereignty. For instance, if the TRNC had been recognized, it would have been possible for the TRNC to confiscate and redistribute GC property. The property issue was, then, in its essence a political and not a legal issue.

In the Cyprus *lawfare*, or the continuation of conflict by judicial means, property was being used as a way of battling over territory and sovereignty, and ultimately gaining a judgment on one's own version of historical "right." It had already been noted that the GC lawsuits were a response to the Turkish invasion and it had become common now for people on both sides of the island to say that "if the property problem is solved, the Cyprus Problem will be finished." But while property lawsuits might present the possibility of "finishing" the Cyprus Problem, they might actually impede its resolution.

2) *Place, belonging, and community*: The difficulty of resolution was related to the fact that GC loss was not only loss of a piece of land but loss of communities. TC villages were for the most part settled together after 1974, while GCs were scattered. This meant that “the home” that GC refugees imagined was not simply a material possession but was something that came to stand for family, community, and ties to place over generations. Unfortunately, the GC discourse of “human rights” had a tendency to obscure this and made this desire difficult to understand, since that rhetoric focused on demands on the return of individual property. But the loss of community was an important reason why many GCs had rejected the Annan Plan. While it was probably impossible to reconstruct community after 36 years, it was also the case that for any plan to succeed in the south it would have to acknowledge and attempt somehow to rectify the loss of community associated with the loss of home. Approaches to the property issue had been fractured by the opening of the checkpoints, when people were faced with the probable impossibility of “real” return.

3) *Dignity and worth*: For many people, the loss of land was a loss of dignity, and hence a loss of self-worth and identity. This, for many people, was the real trauma of displacement, and giving people money would only partially solve the problem. An individual acquired a sense of dignity and self-worth within a particular community where they were known, and so to give some form of compensation without meeting the second need (place, belonging and community) would most likely be successful only in the cases of those who did not really need the compensation anyway, i.e., those who had other forms of community that were more important to them, such as their class or profession.

To date there had been no attempt to rehabilitate people, though their losses had often been politically manipulated. It seemed that a large-scale study of resettlement, coping issues, and long-term psychological and health issues was needed on both sides of the island in order to determine what services might be offered that would not turn the prospect of renewed displacement in the event of a settlement into a re-traumatization.

Practical steps

1) *Any kind of restitution requires reconciliation*: Reconciliation was required because TCs saw that the conflict was started by their former neighbours, and because many were displaced by their former neighbours, most polls showed that TCs did not want GCs coming to live with them. This was tied up with the continuing GC rhetoric of blaming Turkey, seeking justice through lawfare, and thereby effectively erasing what happened in the 1960s. Until these histories were recognized, dealt with, and put in the past, large-scale restitution was not a viable option.

2) *Right of first refusal for those with memories of homes*: Bryant believed that the only way a referendum would pass in the south would be to give all persons *with memories of their homes* the option of restitution. One could talk about this in terms of numbers of refugees, or

one could talk about it in terms of parcels of land. Talking about 400,000 parcels of land made it seem a very big issue. But if one assumed 142,000 original refugees, then took into account those satisfied by territorial adjustment, those who had died and those who were not landowners, the number of claims could fall to 30-40,000. If all 40,000 received up to five donums it would be only one-fifth of the one million donums expected to be left in the north after territorial readjustment. So both in terms of numbers of people and in terms of amount of land, this did not seem to impinge on bizonality as the TC side had articulated it.

A solution like this would be perceived by a certain segment of GC society as “unjust.” The limit on the amount of land to which one was eligible would not be liked by large landowners, although quite a few had already applied to the Immovable Property Commission, precisely because the return of land was not so important to them. In the north, many would not be happy because it presented the possibility of GCs returning without having gone through a process of reconciliation.

Roger Zetter, University of Oxford, Department of International Development

Zetter said that the majority of the world’s refugees now live in protracted exile—a de facto unmixing of people. Yet the refugee regime, developed from the 1951 Geneva Convention on Refugees, was premised on durable solutions to displacement for which the doctrine of return was a fundamental norm. However, return and remixing raises challenging and contradictory issues of sovereignty, justice and land restitution. Cyprus illustrated many of these aspects and the problematic of how the international community unlocked this situation. Cyprus lay on the cusp of an archetypal protracted displacement situation, implying that there might be a resolution on the one hand, and the unfolding of a permanent unmixing of peoples on the other.

Zetter said that land issues lay at the heart of many decades old conflicts, such as Cyprus and Israel-Palestine. Yet only recently had the international community tried to codify the post-conflict resolution of land and property rights through soft law initiatives, such as the Pinheiro Principles. The Pinheiro report cited 20 cases or so of unresolved property issues involving 8 or 9 million people.

Of the three ways of conceptualising the relationship between land and conflict—land as conflict, land in conflict and land after conflict—it was the last which was most problematic in Cyprus. Essentially the conflict and displacement decade, between 1963 and 1974, was not about land and territorial control. And whilst there was physical destruction and significant economic disequilibrium as a result of the conflict, it was the legacy of land issues after conflict that lay at the core of resolving the island’s division.

Urban land market management and urban planning had, to some extent, addressed post-conflict disequilibria. However, what was fundamental to a lasting solution was to tackle the issues of population return and property restitution because land and land ownership

were so embedded in the Cypriot culture. This was perceived largely as an issue of human rights and justice as much as one of compensation *per se*. These challenges were compounded by the extensive process of secondary occupation of abandoned property on both sides of the island and the uncertain status of land occupancy and titles. This had become more difficult to resolve as time passed.

The Annan Plan provided comprehensive proposals linking (partial) return to property restitution and compensation packages mediated by a property commission. With the failure of the plan to produce a lasting solution through international political processes, and the opening of the Green Line, a new phase had emerged. GCs had resorted to international and domestic courts to remedy their individual claims for land restitution and compensation. Although successful, case-by-case judicial decisions were detached from, and potentially undermine, the wider political framework for unlocking the protracted displacement and a sustainable solution to the division of the island.

Charles Philpott, Independent Legal Consultant (discussant)

Philpott drew some comparisons between the Balkans and Cyprus. In Bosnia, there were over 200,000 restitution claims made and formally resolved. There was an explicit policy of promoting return and an attempt to reconstruct pre-war population balances. This was, in part, because of the Dayton Agreement but also how international actors interpreted it: it shaped the restitution process. Consequently, issues of compensation and exchange were off the table.

A major difference between Bosnia and Cyprus was the length of time. Bosnian restitution began almost immediately afterward the war and was completed within ten years. (Initially, it was predicted to take 40 years.) With a longer period, entrenched positions and maximalist claims developed. On the other hand, it would not be a 'hot' situation, as in Bosnia. Besides which, in Bosnia, there was a very strong international presence and international administration. The war also interrupted the transition from communism to a free market: socialist forms of ownership were changing before, but the conflict disrupted the process. Moreover, the restitution process was not planned and the Dayton Commission was not up to the task of managing it: it was evolutionary and responsive to conditions.

The divergence between public and private discourse was the same in Bosnia as in Cyprus. Similar problems were highlighted by displaced persons. There were questions about validity and accuracy. Philpott was impressed by the research to examine likely responses in Cyprus. Very few surveys were done in Bosnia. In Kosovo, they estimated 11,000 commercial/ agricultural claims but instead received 47,000. As regards expectations, in Bosnia it was much simpler because they were not entrenched. There was broad agreement on people's property rights and almost no dispute over private property, although there was more debate about the remnants of socially owned property. With respect to current users, there was a presumption favouring return, so the owner had the paramount right. In certain cases, "constructive notice" was even deemed acceptable because this was such a well established principle.

Restitution succeeded in a formal sense in Bosnia. In the 1990s, property was the biggest issue and this was no longer the case. But, in so far as restitution was equated with return, it was a failure. One could say that restitution succeeded because return failed. Factors contributing to its failure were that the international community misdirected a lot of support. Many issues of security and economic livelihoods were not addressed. Education was tackled only late in the process. Property was restored but people had no basis for return: a lack of jobs was probably the single biggest deterrent.

One of the virtues of the flawed process in Bosnia was that it did give people choice. It was an act of reconciliation because the local authorities, who had taken the properties, were obliged to give them back. And there was formal recognition of the property right: if or how the right was then exercised was left to the owner.

SESSION 5: STRUCTURAL PLANNING

İşilay Yılmaz, Association of Women to Support Living - KAYAD

Yılmaz said one needed to be realistic. Bizonality prevented island-wide restitution and implied two options. The first was full restitution in the territorial adjustment areas. The larger the area, the nearer one reached full restitution. But the greater the population living in the territorial adjustment areas the larger the number of people displaced who needed to be rehoused. Therefore increasing restitution decreased compensation but raised investment and social costs.

The second option was part compensation, part restitution. By dictating strict ratios, like in the Annan Plan, uncertainties about the cost of compensation might be removed but the freedom of choice would be violated. On the other hand if freedom of choice was given, there would be a higher number of preferences for compensation. The evaluation criteria for compensation could be definite but the future market values would be uncertain. Uncertainties should be removed as soon as possible because as long as there were uncertainties about the cost of the property regime, the negotiators would not be able to agree and the people would not vote in favour of it.

One way forward would be to research alternative total cost scenarios. One could measure the preferences of dislocated people. Within the negotiations territorial adjustment and property rights were being considered under two different headings. While it was true that property rights were a personal matter and territorial rights were a political matter a solution should consider both together. Research and studies were vital for making plans. Any property regime that would include considerable investment and relocation needed planning.

Investments would bring a development boom. There might be a need to import labour. The mass relocation of people and potential labour inflow would create huge social problems. The demand for social services would rise faster than capacity. The absence of a spatial plan would be a threat to environmental resources. Excess housing investment might create other problems.

Lessons could be drawn from the construction boom in the north. The Annan Plan property regime removed some uncertainties about GC property left behind. Those who had developed the property would have right of first say. So the boom reflected a false legitimization effect. Investment in construction was triggered, there was a boom in real estate and a wealth effect. The construction sector rose by more than 30% in real terms. The real GDP growth rate surpassed 10% for first time and the investment rate almost tripled, reaching USD 12,000 in 2006 from USD 4,000 in 2002. Imports increased tremendously. During that period TL was under control so the inflationary effect was not so negative.

The initial effect on public sector finances was positive but there was no structural reform, the inflow of workers led to a massive migration problem, and basic public services were missing. There were overcapacity problems and a degradation of public services. The absence of a physical plan led to irregular mass investment in rural and urban areas. Houses were built without infrastructure. This lesson from the past meant one had to avoid a construction boom. Planning for housing and infrastructure investment must be injected into the negotiations. One had to establish some principles that both sides had to abide by.

Andreas Symeou, member of the Greek Cypriot property negotiating delegation

Symeou said that in 1974 about 35% of population—180,000 GCs and 45,000 TCs—were displaced. In the south there were 354,000 hectares belonging to GCs and 58,500 ha belonging to TCs. In the north there was 195,000 ha belonging to GCs and 52,500 belonging to TCs. Of these properties a large percentage, about 38.3% of all private properties, was affected. The population in the south was 789,000 and according to the TC census the population in the north was 256,000. Now the area of GC affected properties per TC user was 4.3 hectares and the area of TC affected properties per GC user was 0.3 ha. The average holding per Cypriot was 1.0 hectare. This explained the importance attached to the notion of user by the TCs.

As regards the costs of solution there had been many studies which probably did not take into account some mitigating factors, such as surplus housing as a result of the fact that several thousand settlers would have to leave, the existence of several thousand vacant houses, including Famagusta, the staging of the process, and incentives to stay in the territorial adjustment areas.

It would be a win-win situation if 38% of private properties were returned to market and possession was legalized. There would be certainty and stability and a flourishing of foreign investment. The benefits were much larger than the costs.

Gaston Neocleous, The Council for Reconstruction and Resettlement

Neocleous gave some estimates for reconstruction. Housing units for 100,000 people would cost EUR 3 billion. Some EUR 3 billion would be needed for public buildings, commercial installations and offices and another EUR 3 billion for infrastructure. These costs would be shared by state and private sector. Over ten years, this was just under EUR 1 billion per year.

Half of this can be found in savings from spending on arms.

Comparing with other places such as Lebanon, Germany and Ireland, one could see that in Lebanon, a company was used essentially to destroy and reconstruct. But it did not give a voice to the people and compensation was not considered adequate. In Germany, individual property rights were transformed into shared rights. The right of the original owner was protected even where expropriated at lower than market value. In Northern Ireland abandoned places were rebuilt. There was EU funding of EUR 900 million.

In Cyprus, a vital precondition would be that there was social consent, therefore property rights must be respected. It was important to secure substantial donor funds. As regards Varosha, this could be reconstructed and resettled according to certain criteria and in consultation with owners. The aim should be to create a modern, efficient, environmentally friendly and cultured town. There was a need for a master plan for all of Famagusta: inside the old walls and outside.

As regards Morphou, the challenge would be to create new homes and new properties for a "twin city" for TCs. This could probably be done on state land. It would be necessary to arrange things so that people could move together. As regards return, the options could be free return immediately if the property was uninhabited, or a grace period if it was inhabited. If certain conditions prevailed there would not be free return but options of exchange, private agreements or a "property stock exchange". One needed to take into account economic and social viability. There was a need for well prepared island and town plans.

Peter Van der Auweraert, International Organization for Migration, Land, Property and Reparations Division (discussant)

Van der Auweraert said that while there had been lots of research efforts in Cyprus on the cost of compensation, doing the opposite was also useful. In Kirkuk they started by talking to key donors and the World Bank to try to assess how much money they thought they were going to get. Once one knew the range, for example, between EUR 200 mln and EUR 1 billion, one could work backwards and ask what were the priorities. If compensation had to be paid for 400,000 pieces of land did anyone have the money? If not then one had to find alternative solutions.

As regards valuations, 100,000 claims would take at least 10 years. In Iraq, claims were based on the value at the time one submitted the claim. But by 2010 property values had increased enormously so people were not happy. Therefore, when looked at value, it was not enough to look at the value today.

If one could not compensate everyone 100% then perhaps the small landowners could get 100% but, in the public interest, the person with the largest amount of land would only get 10%. This way one could insert the notion of social economic inequality into the solution. How the landowners got their land might be an issue.

There was also a need to introduce the notion of practicability. For example, in Iraq there was no categorization of land disputes. Every property affected had to go to the commission yet some of it was empty and could have been restituted directly. In 60% to 70% of cases there was no need to go to a commission.

Implementation was also important. If a community was going from A to B, how should it be done? What did one do with people who refused to abide by decision, who refused to leave the property? People react in very different ways from what can be assessed beforehand. The Iraqi state was incapable of enforcement. Would the different entities involved be up to the task?

SESSION 6: FINANCING A PROPERTY SETTLEMENT

George Lordos, M.A. (Oxon) in Phil., Politics & Economics, MBA (MIT)

Lordos presented an outline proposal for the “Treatment of Property affected by events 1963-1974” which would also significantly reduce the compensation bill by granting the default option to pairs of owners and users who reach mutual agreements amongst themselves. There were three reasons for trying a new approach. Legally a property settlement must have widespread public acceptance and resilience against future challenges, therefore one needed to avoid superfluous or heavy-handed interference with the freedom of choice of owners and users. During the discussion, Lordos clarified that this meant, *inter alia*, that after the solution (and only after the solution) both the points system transactions and the guardian of TC properties law should be simply set aside, with TC and GC dispossessed owners granted symmetrically identical legal interests to their affected property. TCs should be free to choose among options for the fate of their property in the south based on today’s property values, and reap the attendant benefit, as much of it had dramatically appreciated in value since 1974. Under any other less liberal plan, the GCs would be under the shadow of billions in compensations in the event that a court found in favour of a TC who felt effectively expropriated without just compensation. Financially, one also needed a solution that intrinsically reduced the compensation bill. At the same time public opinion research presented on Day 1 showed that owners’ and users’ views needed to be taken into account.

This was a proposal for the first of two phases. The first phase would last two to three years, during which nothing on the ground would change. In this phase there would be institutional support and generous incentives for certified owners and certified users to attempt to decide jointly on the fate of each affected property. There would be some guidance on property values. There would be a Reunification Bank for subsidized loans and a Property Trust that would fulfil the role of the market-maker facilitating a large number of sales on both sides that would collectively amount to effective exchanges. If there were no agreement between certified owner and certified user then their cases would move to the second phase, where decisions would be handled by the Property Commission in a manner to be agreed.

The role of the market-making Property Trust would be to get round the “daisy chain” problem that created uncertainty and illiquidity: A owns a property in which B lives; B owns a property in which C lives; C owns a property in which D lives. In the following simplified example, there were just six houses.

Ayla is a certified user of property N-1 and George is the certified owner. Ayla agrees to buy out George with a loan from the bank. Because she has acquired the property N-1 that she is using, she must surrender to the Trust the property on the other side of which she is a certified owner, property S-1. Property S-1 is preferably a property of similar value and with a certified user inside it. Ayla's ownership certificate for house S-1 is sold to the Trust, which means Ayla's loan for the purchase of property N-1 is paid off. Now the Trust has ownership of both house S-1 and it also owes a debt to the bank.

Then we go on to house S-1. The certified user, Olga, acquires certified ownership from the trust with a loan from the bank. This money pays off the Trust's first loan. According to the rules, Olga now has to surrender to the Trust a similar property of which she is a certified owner, N-2, and in exchange the Trust pays off her loan to the bank. Katerina then acquires S-2 from Erol, surrenders N-3 to the Trust, and Erol acquires N-2 from the holdings of the Trust. Hasan also acquires N-3 from the Trust, surrenders S-3 to it, and George uses the proceeds from his sale of N-1 to Ayla to acquire S-3 from the Trust.

This simplified example showed that by requiring Certified Users who buy the property they use to sell their own affected property to the Trust and by requiring the Trust to offer the properties in its holdings for sale to their Certified Users, the daisy-chain complexity that was blocking the way to widespread private agreements could be bypassed. Moreover, every certified user had legally acquired title to the house he was using with the freely given consent of the certified owner. Nobody owed any money to anybody, the property trust and the reunification bank had no assets and no liabilities, and they could be dissolved.

Lordos said this proposed architecture could provide the support needed to empower large numbers of voluntary cash sales in both directions, equivalent to a mass exchange at valuations agreed by the interested parties. But to be sure of reducing the compensation bill, empowerment must be accompanied by active encouragement. Therefore, time-limited financial incentives would be necessary to reward certified owners and certified users who reach mutual agreements, such as access to the cheap funding of the Bank, exemptions from taxes and fees, code violation amnesties and perhaps a small bonus in floor-area ratio (FAR). FAR is a valuable intangible asset that could be sold in existing secondary markets in Cyprus.

After taking into account the changes to the territorial arrangements, even with a 50% restitution of private GC land the *de facto* outcome would be more than satisfactory for bizonality. Moreover, the proposal was based on cash rather than risky bonds or property appreciation certificates. There would be fewer cases for the property commission to decide and more exchanges so the fiscal impact would be reduced.

Lordos noted that this model did not offer compensation as an option for individual citizens. Compensation should only be given where it was factually impossible to reinstate or exchange and should be an option of the state, not the individual.

Serden Hoca, member of the Turkish Cypriot property negotiating delegation

Hoca said that whenever he talked to GC friends about the property issue they were usually ignorant of the outcomes of their proposed approaches. Many factors needed to be taken into consideration, as there were things one might break while trying to build something else.

To date there had been two approaches to the property issue. The TC approach was founded on the maintenance of bizonality. One of the tools used for redistribution of ownership was the exchange of properties left by TCs in the south for properties left by GCs in the north. Another tool was the granting of new ownership through certain concepts of rehabilitation. A special law was enacted to conduct the exchange (the ITEM law) and 99% of TCs voluntarily renounced their title to the south in exchange for property left by GCs. As regards rehabilitation, thousands had been aggrieved in 1963-74. Many had lost family members, many were displaced, and many lived in poverty. Unemployment rates were over 90%. After 1974 many of these were allocated properties and later granted titles. The aim of this system was to improve living standards.

GCs had a different approach to property that had been left by TCs. Provisional use was granted through guardianship. The use of TC properties was only granted if they remained in their current state. There was no right to develop or sell, so the users in effect were tenants paying a low rent. The GC approach to TC properties reflected a desire to return to pre-74 conditions. But as a result of this, only half of the TC properties in the south had been used and had very little development. The rest were desolate and not worth much on the market. TCs were unable to develop properties in 1963-74 so many properties were effectively "museums" of how life was in 1963. Then there were the properties in Varosha and the buffer zone where it would be impossible for individual owners to deal with reconstruction even with full reinstatement.

Regardless of the legal validity of and philosophy behind these two approaches there had been certain consequences. In the north it was now impossible to distinguish between the properties that were formerly owned by GCs and the rest. It was the opposite in the south because TC property had not been developed. The guardianship regime applied to the TC properties in the south resulted in these properties remaining undeveloped both on an individual and regional basis. The result was that a fair valuation of these properties could not be done on an individual basis. They currently had low value. A collective approach was therefore necessary to rectify a situation that arose from the anomaly of low values and poor developmental status.

Another consequence was that in the north there were titles with different status. Some people acquired property through exchange, some paid for it and some received titles owing to rights granted to them as part of a scheme involving various forms of socio-economic rehabilitation. An important point to note was that many properties that had been distributed under this regime were being used as collateral in financial transactions. So this property had become part of the socioeconomic fabric of the north.

It was tempting to think that a solution was possible by way of an individual exchange scheme. But if the exchange system that had already been applied by the TCs was not properly understood, any such attempt to exchange after a solution was bound to end in failure. It should be remembered that 99% of TCs had renounced title to their properties in the south in favour of the TC authorities, and had accepted from the authorities titles to properties left behind by GCs. These properties had since been developed, rented, sold or gifted to heirs. Therefore, any idea of an exchange scheme which disregarded this fact and its consequences would end up creating more problems than it was intending to solve.

As regards the idea of restituting property to GCs and then granting use to TCs through leases, experience showed that such an approach had a slim chance of being accepted by TCs. They did not want to become, in effect, "a leasehold federated state". The restitution and lease-based approach would destroy the delicate socioeconomic fabric with a bigger cost than compensation.

Another important problem to tackle was the assessment of a current value for the purposes of valuing the properties for compensation and exchange. It was important to note that the value of TC properties had been negatively affected from 1963 even without them being dispossessed. Since 1963 they had been effectively outside an internationally recognized state, leading to a huge drop in the values of their properties. If one compared TC and GC property values between 1963 and 1974, and then compared the same values between 1974 and 2010, in both cases there would be a huge gap between the TC property values and the GC ones. Values were higher in the recognized part.

The conclusion was that if one did not understand the outcomes of the current property regimes on both sides and the socioeconomic fabric of the north, then most ideas for finding a solution would not be compatible with the realities and would therefore be doomed to fail.

Fiona Mullen, Sapienta Economics (discussant)

Mullen said that from an economist's perspective there were three key challenges to a property settlement. These were the state of the global economy, the size of the Cypriot economy and refugee expectations. The global economic crisis meant that international funding was unlikely to be forthcoming for compensation. At the same time, the Cypriot economy was small. Even EUR 2 billion in compensation was 10% of all-island GDP, so would create a big liquidity shock if it was all paid at once. On the other hand, refugees, especially GC refugees, expected to be paid immediately and expected to be paid at prices prevailing in the south, which are higher than the market price one might receive for their property if it was sold today in the north. Since it was not possible to compensate refugees at southern prices today, perhaps they could be offered less money now or more money later, if they were prepared to wait. Whatever the solution, the property market needed to keep moving, since it is such a fundamental part of the economy. One didn't want the property market tied up in claims and processes.

Panos Koutrakos, Professor of European Union Law and Jean Monnet Chair in European Law at the University of Bristol (concluding remarks)

Koutrakos said that the seminar had brought out a number of threads. The first thread was a quest for alternative ways of addressing the political impasse in relation to the property issue. This could be done through the market or through the law (or perhaps both). The two rulings discussed at the workshop (*Apostolides v. Orams* at the European Court of Justice and *Demopoulos* at the ECtHR) might appear to suggest two different routes. However, each judgment had to be understood in its own, very specific, legal context. What one could see was that the ECtHR judgment was characterized by a lingering frustration with the status quo, with the failure of politicians to decide and the ensuing transfer of responsibility onto judges.

The second thread was centred around the various practical difficulties: what do citizens really want? To what extent do their responses reflect the political rhetoric? And how might a consultation process be set out in a way that would address these problems? This was very difficult to address, as the discussion at the workshop revealed wide divergence, for instance, on numbers.

Both these threads seemed to focus on the role of the law. This addressed issues on the basis of a case-by-case approach. Would this approach, as illustrated in the *Orams* and *Demopoulos* judgments, give rise to bottom-up pressure with repercussions for the intensity of the political process? What emerged was the distinct displeasure of judges for being put in a position where they had to answer political questions. However, the involvement of different transnational courts might lead to a variety of approaches and perhaps lack of certainty. Viewed from this angle, the parties relied on judges at their peril.

Emine Çolak, lawyer, Chairperson of the Turkish Cypriot Human Rights Foundation (concluding remarks)

In the warfare leading up to the *Demopoulos* decision, much emphasis was put on trying to dismiss the IPC as an organ of an unrecognized authority and therefore invalid. The decision, however, acknowledged that for the purposes of human rights, if an administrative entity, irrespective of its name and disputed status, was implementing human rights, then the court could require complainants to make use of the mechanisms it had established to do this. The Court observed that the IPC in the north had been working, awarding compensation and organizing the funding to do so.

Rather than adopting an attitude of pure opposition to the IPC, it would be helpful to see that there was a lot that could be learned from the workings of the IPC, including lessons about “needs” and perceptions of justice. Was the IPC meeting a need such as “homelessness”, or more the need for justice for loss of a home? Moreover, it was extremely difficult to put a price on such “needs”.

More and more, applicants to the IPC were persons who were either very young or were not even born in 1974 and had acquired the property through inheritance or gift. Some might not even have seen the property for which they were applying. They had fewer emotional ties

and could reach amicable agreement on economic calculations. But often such applicants would respect the older generations request that they should not “sell” the family home.

As people set out to use the various mechanisms for remedy on each side, serious issues of ethics also arose. For example, if someone had been given property in the north, was it fair to go back and also claim the property they left in the south? There were known instances of this kind of misuse of remedies and these were best avoided if the two sides could cooperate by sharing information at least on a case-by-case basis. Çolak did not consider that the “recognition” issue needed to get in the way of this kind of cooperation for which the current negotiation process could provide “unofficial” channels. There was a serious issue of ethics involved.

There was a great difference in how people on the two sides were interpreting basic concepts and basic definitions. What is a user? What was a settler? What is a title deed and what are the rights attached to that title deed?

The logic behind the regime in the north was that if you left property in south you got property in north of equal value. That was at least the intention. People signed a piece of paper saying they handed over their property to their side so that their side could sit at the table and negotiate. There was a whole pool of property in the south which TC owners had given over to their authorities for the purposes of settling the property dispute. The legality of it was another issue.

There was the official position relating to the right to return as if it were a commonly desired reality. One should use opinion polls to test, on the basis of all evidence, whether bizonality could be achieved by what people were currently saying they would do rather than obliging the GC side to appear that they were denying its citizens rights through a legally binding document. These were not the only polls showing that few people had an inclination to go back. Perhaps they were trying to solve a problem that did not exist.

Progress required leadership. There had been measures agreed between the two sides which if implemented would have significant psychological impact—showing that this island was shared and creating a whole different climate. One example was the agreement to have traffic signs in both Greek and Turkish on both sides. There was agreement but no implementation because of lack of leadership.

Legal processes could create a terminology of regulating rights which resolved problems without creating a higher number of new cases. High profile court cases could be used in this way. When one looked at the ECtHR, the *Demopoulos* decision began with an in depth examination of the Annan Plan provisions on property. She found this very significant.

It was possible to see the work of the IPC as effectively buying up GC property. Also one could consider that often property was held by the current user in return for something they left in the south. Could it not be said that the Commission or the TRNC or Turkey through the IPC was buying up land in the south? Even there, there was room for creativity in how one could use that.

Çolak hoped that more emphasis would be put on allowing this kind of creative exercise. The more it got spoken about the more it started to come together and one could see the gaps. What was bizonality? What was it trying to solve in what kind of world?

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The Cyprus Centre of the Peace Research Institute Oslo (PRIO) and the Centre for European Policy Studies (CEPS) organized a conference in Brussels on 20-21 May 2010 to facilitate dialogue between the Greek Cypriot and Turkish Cypriot communities on the issue of property. The conference was sponsored by the Swedish Ministry of Foreign Affairs, the United Nations Development Programme Action for Cooperation and Trust (UNDP-ACT), the European Union's Civil Society in Action initiative in Cyprus, the Foreign Ministry of the Netherlands and the Embassy of Austria. The representatives of the leaders of both communities, Mr George Iacovou for the Greek Cypriots (GCs) and Mr Kudret Özersay for the Turkish Cypriots (TCs) took part, while the United Nations Office of the Special Adviser on Cyprus (OSASG) attended as an observer. The conference was conducted under the Chatham House rule, therefore all participants were approached to ask if they were willing to have their presentations published and all agreed. The discussions surrounding the presentations have not been included.

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